

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

438

**Criminal Revision No. 3003 of 2016 (O&M)
Date of Decision : 21.05.2019**

Tara Chand

... Petitioner

Versus

State of Punjab

...Respondent

CORAM:HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Naveen Sharma, Advocate for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

HARNARESH SINGH GILL,J.

The present revision petition has arisen out of the judgment dated 09.08.2016 passed by the Additional Sessions Judge, Ludhiana, vide which the appeal filed by the petitioner, challenging the judgment of conviction and order of sentence dated 12.10.2015, passed by the Judicial Magistrate Ist Class, Ludhiana, in case FIR No. 20 dated 19.01.2011 under Sections 304-A, 279, 337, 427 of the Indian Penal Code (for short 'IPC'), registered at Police Station Focal Point, Ludhiana, was dismissed.

Brief facts of the present case are that Jasbir Singh recorded his statement to the effect that on 19.01.2011 at about 12:30 p.m., he

along with Tilak Raj were going on a motorcycle bearing registration No. PB-10CN-4130, make Hero Honda Splender. Tilak Raj was driving the motorcycle at a normal speed and complainant was a pillion rider. When they were 100 metres short of transport cut, towards Sherpur, a truck bearing No. JK-02AC-6081 came in a rash and negligent manner without blowing horn, struck into their motorcycle and due to this, their motorcycle fell down on the road and the said truck dragged their motorcycle along with the complainant and Tilak Raj. Tilak Raj had received grievous injuries on his head and complainant got him admitted to the Cancer Hospital, where he died. The truck driver left the truck and fled away from the spot and later he came to know about his name as Tara Chand.

Charges were framed against the petitioner under Sections 279, 304A, 337 IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined, as many as six witnesses including complainant-Jasbir Singh as PW-4 and Sohan Singh, Medical Record Clerk, Mohan Dhai Oswal Cancer Hospital, Ludiana as PW-6.

After taking into consideration the evidence on record, the learned Judicial Magistrate Ist Class, Ludhiana had drawn the conclusion that petitioner was challenged under Section 337 of IPC for causing injuries to the complainant-Jasbir Singh, but no medical record to that effect was produced by the prosecution. Even Jasbir Singh, who stepped into the witness box as PW-4, had not supported the case of the prosecution. Accordingly, the trial court acquitted the petitioner of the charges under Section 337, IPC. However, the petitioner was convicted

under Sections 279 and 304-A, IPC and vide order dated 12.10.2015 was sentenced as under:-

<i>Offence</i>	<i>Sentence</i>
279 IPC	Rigorous Imprisonment for six months and fine to the tune of Rs.1000/- and in default of payment of fine shall further undergo S.I. for 15 days.
304-A IPC	Rigorous Imprisonment for two years and fine to the tune of Rs.5000/- and in default of payment of fine shall further undergo S.I. for two months.

Aggrieved of the said judgment and order, petitioner preferred an appeal before the Additional Sessions Judge, Ludhiana which was dismissed by the Appellate Court vide judgment dated 09.08.2016.

Still aggrieved, the petitioner has preferred the present revision petition.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the Courts below.

At the outset, learned counsel for the petitioner has confined his arguments to the quantum of sentence. As per custody certificate dated 21.05.2019, the petitioner has undergone 5 months and 15 days of actual sentence out of the total sentence of two years. FIR in this case was registered on 19.01.2011. The petitioner has been facing agony of trial for the last about 8 years. Thus, taking into consideration the above facts and circumstances, in my opinion, no useful purpose would be served by sending the petitioner behind bars once again to undergo the remaining period of sentence.

The Hon'ble Supreme Court in ***State of Punjab Vs. Saurabh Bakshi***, 2015(2) RCR (Criminal) 495, while setting aside the order of the High Court, thereby reducing the sentence imposed upon the accused i.e. 1 year to the period already undergone by him i.e. 24 days, awarded the

sentence of six months to the accused-respondent therein. It was held as under:-

“17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is,

in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months."

Admittedly, the petitioner has already undergone 5 months and 15 days of actual sentence out of the total sentence of two years imposed upon him. As per **Saurabh Bakshi's** case (supra), petitioner is required to undergo six months of sentence. However, taking into consideration that there is a shortfall of only 15 days in this case, in my opinion, no useful purpose will be served by sending the petitioner behind the bars once again to undergo the meager sentence of 15 days so as to make the total undergone sentence as six months, in terms of **Saurabh Bakshi's** case (supra). Rather the said process would prove to be a cumbersome one, thereby causing unnecessary burden on the public exchequer as also harassment to the petitioner. Therefore, considering the shortfall of 15 days being a meager one, the sentence already undergone by the petitioner (i.e. 5 months and 15 days) is treated to be six months.

Accordingly, the conviction of the petitioner under Sections 279, 304-A, IPC is maintained. However, sentence qua imprisonment of the petitioner, is reduced to the period already undergone by him. The petitioner is directed to deposit the fine of Rs.25,000/- with the Chief Judicial Magistrate concerned within a period of one month from the date of the receipt of certified copy of this order. The fine so deposited, shall be paid as compensation to the legal heirs of the deceased. It is

made clear that in the event of failure to deposit the said amount, the revision petition shall stand dismissed.

With the aforesaid order, the revision petition is disposed of.

21.05.2019
pooja saini

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned? *Yes*

Whether reportable? *Yes*