

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

101

**CRR-3076-2016 (O&M)
Reserved on : 15.03.2019
Pronounced on :19.03.2019**

Balwinder Kumar @ Jaggu

... Petitioner

Versus

State of Punjab

...Respondent

CORAM:HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Piyush Aggarwal, Advocate, Advocate for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J.

Present criminal revision is filed against the judgment dated 04.08.2016, passed by Sessions Judge, Patiala vide which the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 10.06.2015 passed by Judicial Magistrate Ist Class, Patiala in case FIR No. 202 dated 16.08.2012 under Section 279, 304-A Indian Penal Code (for short 'IPC'), Police Station Kotwali, Patiala, was dismissed.

Brief facts of the present case are that the present FIR was registered on the complaint of Mohinder Singh, who stated that on 16.08.2012 at 7.15 P.M. he along with his son, namely, Jashanpreet and grandson, namely, Bawanpreet Singh @ Rahul was going on foot to the market, Patiala and when they reached near Raju Karyana Store, then one Force Cargo King vehicle came from behind being driven rashly and negligently, struck into Babanpreet Singh @ Rahul and due to the impact, he fell on the ground. Babanpreet Singh was admitted to Amar Hospital where, after sometime, he passed away. The vehicle in question was being

driven by Balwinder Kumar @ Jaggu who was known to the complainant as he was his neighbourer. The registration number of the vehicle was noted down as PB-31F-1593. On the statement of complainant-Mohinder Singh, FIR under Section 279, 304-A IPC was registered against Balwinder Kumar @ Jaggu, the present petitioner.

In oral evidence, prosecution had examined as many as nine witnesses in which complainant appeared as PW-1. His son Jashanpreet Singh appeared as PW-3, being eye-witness. FIR was placed on record as Ex.PW5/7 and the postmortem report is Ex.PW6/A.

The petitioner-accused got his statement recorded under Section 313 Criminal Procedure Code, in which he pleaded not guilty and claimed trial, but no evidence was lead in defence by the petitioner-accused.

After taking into consideration the arguments and evidence on record, the petitioner-accused was convicted vide judgment dated 10.06.2015 passed by Judicial Magistrate Ist Class, Patiala and sentenced as under:-

<i>Charge under Section</i>	<i>Sentence</i>
249 IPC	To undergo rigorous imprisonment for period of 6 months along with a fine of Rs.1000/- and simple imprisonment for 15 days in default of payment of fine.
304-A IPC	To undergo rigorous imprisonment for a period of two years along with a fine of Rs.4,000/- and simple imprisonment for one month in default of payment of fine.

Against the judgment and order dated 10.06.2015, petitioner-accused filed an appeal which came up for hearing before the Sessions Judge, Patiala. The appeal of the petitioner-accused was also dismissed vide judgment dated 04.08.2016. Hence the present appeal.

It has been argued by learned counsel for the petitioner-accused

that petitioner-Balwinder Kumar @ Jaggu and his vehicle were not involved in the accident in question as number of vehicle was not given at the first instance by complainant-Mohinder Singh. It is an improved testimony of PW-1, namely, Mohinder Singh and PW-3, namely, Jashanpreet Singh which cannot be relied upon. It is further argued that Kuldeep Singh, who was alleged to have brought petitioner-Balwinder Kumar before police authority, turned hostile and had not supported the version of the prosecution nor any independent witness was introduced, though occurrence took place at 7.15 P.M., in the evening

Per contra, learned State counsel has argued that the petitioner-accused had caused the death of Bawanpreet Singh, who was minor, due to rash and negligent act. In addition to that, Jashanpreet Singh is an eye-witness, who was present at the spot. In defence, petitioner-accused had failed to show any enmity with Mohinder Singh-complainant to show that he had been falsely implicated in the present case. He has prayed that the judgment passed by the courts below are well reasoned and are liable to be upheld.

I have heard the arguments raised by learned counsel for the petitioner and learned State counsel and with their able assistance, I have perused the record of the case.

It is a case in which the accident had occurred due to the rash and negligent driving of the petitioner-accused. Bawanpreet Singh, who was a minor, had lost his life and his family is facing the trauma. In my opinion mentioning of name in the FIR as Jaggu cannot give any benefit to the petitioner-accused because FIR is not only a piece of substantive evidence whereas it is only for the purpose to set the criminal machinery in motion.

Moreover, the eye-witness Jashanpreet Singh had also stepped into the witness box and he had named the accused and had identified him. The statement of complainant-Mohinder Singh was recorded at 9.30 P.M. whereas, the accident took place on 7.15 P.M. and his grandson was suffering from severe injuries in the hospital. Thus there is no delay in lodging of FIR. Regarding vehicle involved in accident, PW1-Mohinder Singh had categorically stated that the petitioner was driving Force Cargo vehicle bearing registration number PB-31F-1593.

Thus, there is no reason to interfere in the well reasoned judgment passed by the courts below.

Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in ***Mahadeo Hari Lokre Vs. State of Maharashtra***, 1972 CrL. L.J. 49, to contend that when a passenger suddenly crosses a road without taking note of the approaching vehicle, the driver of the vehicle cannot be held liable. Still further, while relying upon the judgment of this Court in ***Sunil Vs. State of Punjab***, 2014(10) RCR (Criminal) 2479, it is contended that if this Hon'ble Court comes to the conclusion that the conviction of the petitioner is to be upheld, then the substantive sentence imposed upon the petitioner may be reduced to the one already undergone by him.

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.”

As per the custody certificate placed on record by the learned State counsel, the petitioner has already undergone a period of 10 months and 24 days out of the maximum sentence of two years imposed upon him besides other substantive sentences for lesser periods. Therefore, in view of the aforesaid judgment of the Hon'ble Supreme Court, the plea of the learned counsel for the petitioner for reducing the sentence imposed upon the petitioner to the period already undergone by him, can be accepted.

Thus, this Court is of the considered view that a chance should be given to the petitioner to reform his life and in the given circumstances, sentence imposed by the trial court to the extent of rigorous imprisonment for 2 years being on higher side and an exorbitant one, can be termed not to be commensurate with the offence complained of.

This Court is, thus, of the considered view that ends of justice would be fully met, in case, the substantive sentence of the petitioner is reduced to the period already undergone by him but with no change in the fine clause.

In the light of what has been discussed above while upholding the conviction of the petitioner under Sections 304-A, 279 IPC, the substantive sentence imposed upon him is reduced to the one already undergone by him. However, there shall be no change in the fine clause.

Disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

19.03.2019

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>