

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.3494 of 2018

DATE OF DECISION: OCTOBER 14, 2019

VICTOR GARDNER

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. ADITYA SINGH YADAV, ADVOCATE
FOR THE PETITIONER.

MR. NISHCHAL MANN, DAG, HARYANA.

MANOJ BAJAJ, J.(ORAL)

The petitioner has preferred the revision petition challenging the Appellate Court judgment dated 4.10.2018 passed by the learned Sessions Judge, Rewari, whereby the judgment of conviction and order of sentence dated 26.3.2018 passed by the Addl. Chief Judicial Magistrate, Rewari, against the petitioner was upheld.

The prosecution arises from case FIR No.48 dated 17.03.2013 under Sections 279, 337, 338 and 304-A IPC and Section 196 of Motor Vehicle Act, Police Station Rampura, Rewari. The petitioner was convicted and sentenced rigorous imprisonment for 2 years alongwith fine of ₹5000/- and in default of payment of fine, to undergo further period for 2 months for the offence punishable under Section 304-A IPC; rigorous imprisonment of 3 months alongwith fine of ₹1000/- and in default of payment of fine, to undergo a further period of 1 month for the offence punishable under Section 279 IPC; and rigorous imprisonment of 3 months alongwith fine of ₹500/- and in default of payment of fine, to undergo a further period of 15

days for the offence punishable under Section 337 IPC. All the sentences were ordered to run concurrently.

The facts leading to the revision petition are noticed below.

On 17.3.2013, a telephonic message was received in the police station that two vehicles had met with an accident. SI Bhagat Singh alongwith other police officials went to the spot, where he came to know that the injured had been taken to Birendra Hospital. The police party reached Birendra Hospital and presented an application with regard to fitness of the injured to make statement. Injured Prem was declared fit by the Doctor to make a statement who stated that he alongwith Rajesh Kumar (elder brother), Naresh (nephew) and Matu Ram (father-in-law) were going from Jainabad to Dharuhera in Alto Car No.HR-36L-2016. At about 3.30/4.00 p.m., when they reached near liquor vend at Roliyawas, one Ascent Car bearing No.DL-1CH-5430, being driven at a wrong side at a fast speed and rash and negligent manner dashed against their car, due to which he alongwith Rajesh Kumar, Naresh and Matu Ram received injuries. In the said accident, Parveen, Sunil Kumar, Vikram, Jitender and Deep Kumar also received injuries. The said car was driven by Victor Gardner (petitioner). The passers-by took the injured to Government Hospital, Rewari and Birendra Hospital, Rewari. During the course of treatment, injured Rajesh , Parveen and Deep Kumar died.

On the basis of above statement, the present case was registered against the petitioner.

After investigation of this case, the final report (challan) under Section 173 Cr.P.C. was submitted before the Court and the learned trial Court after completion of formalities proceeded to frame the charges against

the accused under Sections 279/337/304-A IPC. The accused pleaded not guilty and claimed trial.

To bring home the guilt of the accused persons, the prosecution examined as many as 16 witnesses and also adduced documentary evidence. Thereafter the statements of the accused was recorded under Section 313 Cr.P.C., wherein he submitted that he had been falsely implicated. No evidence was led by the accused.

The trial Court after relying upon the statements of the injured eye witnesses proceeded to hold accused person guilty and imposed the sentence as notice above. Dissatisfied with the judgment of conviction and order of sentence dated 26.3.2018 passed by Addl. Chief Judicial Magistrate Rewari, an appeal was carried by the convict bearing Appeal No.162/2018. The appellate Court while dismissing the appeal also declined the prayer of the convict for releasing him on probation .

On 19.12.2018, learned counsel appearing on behalf of the petitioner was heard, wherein learned counsel gave up his challenge to the conviction part in the impugned judgment and confined his prayer for reduction of sentence alone.

Learned counsel for the petitioner contends that the petitioner is first offender and neither there is any case pending against him nor he has been previously convicted in any other case. It is contended that the family of deceased Rajesh Kumar and injured Naresh Kumar and Matu Ram have been suitably compensated by the Motor Accidents Claims Tribunal, Rewari and the petitioner alongwith others have been made liable to pay the compensation. It is prayed that keeping in view the above, the petitioner be released on probation or in the alternative, his sentence may be reduced to

the period already undergone by him. Reliance has been placed on various judgements passed by this Court in *Sunil vs. State of Punjab, 2014(1) RCR (Criminal) 2479, Sahab Singh vs. State of Haryana, 2019(3) RCR (Criminal) 727 and Darshan Singh vs. State of Punjab, 2019(2) Law Herald 1739.*

Learned counsel for the State has referred to the custody certificate dated 28.09.2019 filed by Dinesh, Deputy Superintendent, District Prison, Gurgaon to contend that the petitioner has undergone actual sentence of more than 11 months and 25 days as on 28.9.2019, which as on today comes to more than a year, pursuant to the impugned judgment of conviction and order of sentence. It is not disputed that neither any case is pending against the petitioner, neither he is convicted in any other case.

After hearing learned counsel for the parties, this Court finds that as the petitioner has undergone sufficient part of his sentence and the family of the deceased and the injured have also been suitably compensated by the Motor Accident Claims Tribunal, Rewari, therefore, some leniency deserves to be extended to him, considering the nature of offence and other attending circumstances. It is not dispute that the accident in question took place in March, 2013 and since then the petitioner is facing the agony of trial, appeal, etc. Therefore, this Court is of the opinion that the ends of justice would be met if the sentence imposed upon the convict is reduced to the period already undergone by him.

Resultantly, the conviction of the petitioner in case FIR No.48 dated 17.03.2013 registered under Sections 279, 337, 338, 304-A IPC and Section 196 of Motor Vehicle Act, Police Station Rampura is upheld and he is sentenced to the period already undergone by him.

He be released forthwith, if his custody is not required in any other case.

Revision petition is disposed off.

October 14, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No
Whether Speaking/Reasoned : Yes/No