

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 1505 of 2016 (O&M)
Date of Decision: 06.2.2020

Hari Kishan

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Deepanshu Mehta, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARNARESH SINGH GILL, J.

The petitioner has preferred this petition being aggrieved of the judgment dated 31.3.2016, passed by Additional Sessions Judge, Jhajjar, vide which the appeal filed by him, challenging the judgment of conviction and order of sentence dated 7.1.2015, passed by Additional Chief Judicial Magistrate, Jhajjar in case FIR No. 84 dated 10.5.2009 under Sections 279, 304-A IPC, registered at Police Station Beri, was upheld.

As per prosecution case, on 10.5.2009, complainant Chand Singh along with pillion rider Rampal, were going from Beri to their village Bisan on their motor cycle bearing registration No. HR-13A-6363. Parveen (since deceased) and Pardeep, pillion rider (since deceased), who were ahead of them, were also going to the same village on their motorcycle bearing No. HR-12-L-2416. Meanwhile, one truck bearing registration No. HR-46B-6948, being driven by the petitioner at a high speed and in a

rash and negligent manner, came from front side and dashed against the motorcycle of Parveen. As a result of this, both Pardeep and Parveen sustained several injuries. The truck driver fled towards the fields of Hawa Singh after leaving the truck on the spot. Both the injured were shifted to PGIMS, Rohtak. On the way, Pardeep succumbed to his injuries whereas Parveen died at the hospital. Thereafter, the FIR in question was registered.

After completion of investigation and necessary formalities, challan was presented against the petitioner.

Charge was framed against the petitioner under Sections 279, 304-A IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, prosecution had examined as many as 13 witnesses.

In the statement recorded under Section 313 Cr.P.C., the accused denied the prosecution case and pleaded false implication.

The trial Court vide judgement and order dated 7.1.2015 convicted the petitioner under Section 279 IPC and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/-. The petitioner was also convicted under Section 304-A IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 2,000/-. In default of payment of fine, he was to further undergo imprisonment for thirty days. The petitioner was also directed to pay compensation of Rs. 50,000/- in equal shares to the dependants of both the deceased.

Aggrieved against the said judgment and order, the petitioner preferred an appeal. The Appellate Court vide judgment dated 31.3.2016 upheld the judgment of conviction and order of sentence, passed by the trial

Court.

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

Learned senior counsel for the petitioner has argued that neither the vehicle was mechanically examined nor any test identification parade was conducted. It is further argued that the identity of the driver of the offending vehicle was not established nor was it proved that the vehicle was being driven in a rash and negligent manner. Hence, in the absence thereof, the petitioner could not have been held guilty and convicted. In support of his argument, learned senior counsel has relied upon the judgments in *Sarjeet Singh versus State CCJ 2013(2) 797*, *Hiral Lal versus State of Delhi CCJ 2012 (2) 460*, *Rakesh Kumar versus State of Himachal Pradesh CCJ 2014 (1) 783*, *Nachimuthu versus State by the Inspector of Police 2011 (2) CCJ 82*.

On the other hand, learned State counsel submits that the petitioner while driving the offending vehicle in a rash and negligent manner had caused death of two young boys. He further submits that PW-2 proved beyond the shadow of reasonable doubt that the accident was caused by the offending vehicle and the same was being driven at that time in a rash and negligent manner by the petitioner. The doctors have proved that the injured had died due to the injuries suffered by them in the accident in question.

I have heard learned counsel for the parties and with their able assistance, have also gone through the paper book.

In the instant case, on the basis of the evidence on record, it stood proved on record that on account of rash and negligent driving of the

petitioner, two persons namely Parveen and Pardeep had lost their lives. In

view of the said fact, I do not find any patent illegality or perversity in the findings recorded by the Courts below. Hence, the conviction of the petitioner as recorded by the Courts below, is upheld.

However, while coming to the sentence part, by now, the petitioner has undergone 08 months and 22 days of actual sentence out of substantive sentence of 02 years. Taking into consideration that the FIR in the present case was registered on 10.5.2009 and the fact that the petitioner has been facing the agony of trial for the last more than 10 years, in my opinion, no useful purpose would be served by sending the petitioner behind the bars to undergo the remaining sentence. The ends of justice would be suitably met, if the substantive sentence imposed upon the petitioner is reduced to the one already undergone by him.

The Hon'ble Supreme Court's in ***State of Punjab versus 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. one 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."

Keeping in view of the law laid down by the Hon'ble Supreme Court in **Saurabh Bakshi's** case (supra) and further taking into consideration the fact that the petitioner has been facing the agony of trial for the last more than 10 years, in my opinion, it is a fit case, where the substantive sentence imposed upon the petitioner can be reduced to the period already undergone by him i.e. 08 months and 22 days.

In view of the above, while upholding the conviction of the petitioner under Sections 279 and 304-A IPC, the substantive sentence

imposed upon the petitioner is reduced to the period already undergone by him.

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

(HARNARESH SINGH GILL)
JUDGE

February 06, 2020
Gurpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No