

CRR-2709-2018

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

CRR-2709-2018 (O & M)
Date of Decision: 04.03.2020

Jaswant

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Neha Rana, Advocate for
Mr. Abhimanyu Singh, Advocate,
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARNARESH SINGH GILL, J.

Custody certificate by way of affidavit of Deputy Superintendent, District Prison, Gurugram, has been filed in the Court today. The same is taken on record.

Challenge in the present petition is to the judgment dated 24.07.2018 passed by the learned Sessions Judge, Gurugram, whereby while dismissing the appeal filed by the petitioner, the judgment of conviction dated 28.01.2016 and order of sentence dated 29.01.2016 passed by the learned Judicial Magistrate Ist Class, Gurugram, have been upheld.

The petitioner was tried for committing the offences under Sections 279, 337, 338 and 304-A IPC. As per the prosecution, on 08.03.2012, complainant-injured, Sunil alongwith Devender while travelling in a car being driven by Devender, was

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returning to his village Shikohpur. When they reached at Rampura turn on Jaipur-Delhi Road, his co-villager Ajay alias Dara met them. They parked their car near the road side and while sitting in the car, they were talking with Ajay alias Dara, who was standing at the driver side of car. It was about 12.05 p.m., then a canter, bearing registration No.HR-47-B-5372, being driven by its driver at a high speed, rashly and negligently, came from the side of Manesar and hit the car and tyre of the canter passed over the head of Ajay. He and Sunil also sustained injuries in the accident and the car was badly damaged. After causing the accident, driver of the offending canter stopped it at some distance from the place of accident, who on inquiry disclosed his name as Jaswant (present petitioner). Ajay succumbed at the spot due to the injuries suffered in the accident. On the basis of the statement of the complainant, FIR in this case was registered.

On the basis of the evidence led, it stood proved before the learned trial Court that on account of the rash and negligent driving of the petitioner, injured-Devender suffered simple injuries and death of Ajay alias Dara took place. Consequently, the petitioner was convicted under Sections 279, 337 and 304-A IPC, but acquitted under Section 338 IPC. He was, accordingly, sentenced as under:

Section	Sentence	In default of payment of fine
279 IPC	Rigorous imprisonment for two months and to pay a fine of Rs.200/-.	To undergo simple imprisonment for 15 days.
337 IPC	Rigorous imprisonment for two months and to pay a fine of Rs.200/-.	To undergo simple imprisonment for 15 days.

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304-A IPC	Rigorous imprisonment for two years and to pay a fine of Rs.1,000/-.	To undergo simple imprisonment for one month.
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Aggrieved of the judgment and order passed by the learned trial Court, the petitioner preferred an appeal before the learned Sessions Judge, Gurugram. However, vide judgment dated 24.07.2018 passed by the learned Sessions Judge, Gurugram, the appeal was dismissed, thereby affirming the judgment and order passed by the learned trial Court.

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

I have heard the learned counsel for the parties and have gone through the case file.

Both the Courts below after having scrutinized the evidence on record, have rightly convicted the petitioner for the offences under Sections 279, 337 and 304-A IPC. Learned counsel for the petitioner could not point out any perversity or illegality in the findings recorded by the Courts below nor could it be disputed by the learned counsel that on account of the rash and negligent driving of the petitioner, Devender received simple injuries and death of Ajay @ Dara took place. Thus, in my opinion, in view of the evidence on record, there is no scope for interference in the findings of the Courts below, so far as the conviction part is concerned. Hence, the conviction of the petitioner under Sections 279, 337 and 304-A IPC is upheld.

Faced with this situation, learned counsel for the petitioner confines his prayer to the sentence part. He submits that the occurrence in this case took place on 08.03.2012; that the

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petitioner has been in custody since the date of dismissal of appeal and that by now the petitioner has undergone the actual sentence of 01 year, 07 months and 14 days out of the total sentence of 02 years. Thus, it is prayed that the sentence imposed upon the petitioner may be reduced to the period already undergone by him.

On the other hand, learned State counsel while opposing the prayer of the learned counsel for the petitioner states that on the sentence count, the petitioner does not deserve any indulgence by this Court.

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

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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 noticed above, the petitioner has already undergone the actual sentence of 01 year, 07 months and 14 days out of the total substantive sentence imposed upon him. Hence, the prayer of the learned counsel for the petitioner for reducing the petitioner’s sentence to the period already undergone, can be considered and allowed in terms of the judgment of the Hon’ble Supreme Court in Saurabh Bakshi’s case (supra).

In view of the above, the sentence imposed upon the petitioner is reduced to the period already undergone by him, subject to his depositing the compensation of Rs.10,000/- under Section 357 Cr.P.C. with the trial Court to be paid to the legal heirs of deceased-Ajay alias Dara, in addition to the fine already imposed by the courts below. The impugned judgments of conviction and order of sentence, including default clause, stand affirmed with aforesaid modification. It also goes without saying that in case, the amount of fine/compensation is not deposited, the present revision petition shall stand dismissed automatically.

With the observations made above, the present revision petition is disposed of.

04.03.2020

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note: Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No