

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

CRR-872-2020 (O&M)
Date of Decision:-18.08.2021.

Joga Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gaurav Gogna, Advocate for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

The present criminal revision petition is directed against the judgment and order dated 18.01.2020 passed by the learned Sessions Judge, Kapurthala and the judgment of conviction and order of sentence dated 10.07.2019 passed by the learned Judicial Magistrate Ist Class, Kapurthala, *vide* which the petitioner has been convicted under Sections 304-A and 279 IPC and has been sentenced to undergo rigorous imprisonment for a period of 02 years along with fine of Rs.3,000/- and 06 months along with fine of Rs.1,000/-, respectively. In default of the payment of fine, he has been directed to undergo rigorous imprisonment for one month.

The brief case of the prosecution is that on 13.05.2015, at about 02.00 p.m. in the area of Bus-Stand, Phagwara, the petitioner was driving bus No.PB08-AG-4155 in a rash and negligent manner and voluntarily

caused death of Gurbax Kaur, on account of which, FIR No.211 dated 13.05.2015 under Sections 279 and 304-A IPC was registered. After the *challan* was presented finding a *prima facie* case against the petitioner, charges under Sections 279 and 304-A IPC were framed against him. The contents of the charges were read and the petitioner pleaded not guilty and claimed trial.

The prosecution examined as many as 06 witnesses which are detailed hereunder:-

- (i) Dr. Sukhwinder Pal Singh -- PW1
- (ii) ASI Amrik Singh -- PW2
- (iii) Baljit Singh, Complainant – PW3
- (iv) Head Constable Nazar Singh – PW4
- (v) Head Constable Surjit Singh – PW-5
- (vi) Retired ASI Sarabjit Singh – PW6.

PW1 Dr. Sukhwinder Pal Singh, Medical Officer, Civil Hospital, Phagwara had conducted the post mortem of deceased Gurbax Kaur and found following injuries on her body:-

“1. Contusion of 10 cms x 3 cms present over the back of left shoulder joint.

2. Crush injury with over lying skin peeled off of upper part of left thigh abdomen left side of Pelvis. Underlying muscles, arteries and veins crushed underlying Pelvic bone and femer fractured.

3. Crushed injury left lower part of abdomen

having exposed enternal viscera, intestines, musscles, arteries and veins etc.”

It was opined by the said Doctor that death has been caused because of extensive crushing of body and fractured femur. The said PW1 produced the post mortem report and the pictorial diagram as Ex. PA/1 and PA/2, respectively. Further, PW2 ASI Amrik Singh who had partly conducted the investigation had proved on record the possession memo of the bus in question. PW3, Baljit Singh-complainant, who is the son in law of the deceased had deposed that he was the eye-witness of the occurrence and had seen that the petitioner drove the bus in question in a rash and negligent manner and hit the deceased and after the said accident had taken place, the petitioner had alighted from the bus along with some passengers and it is, thereafter, that he made a call at 108 for the ambulance to come, after which the ambulance had come and had taken his mother-in-law to the Hospital. However, his mother-in-law died in the said accident. PW4 Head Constable Nazar Singh had proved the mechanical report of the bus in question as Exs. PW4/A, PW5 and PW6 had proved on record several documents including rough site-plan Ex.PW6/D, identification memo Ex.PW6/F, recovery memo of the clothes Ex.PW6/G driving licence of the petitioner Ex.PW5/G. In spite of the detailed cross-examination, nothing had come out in favour of the petitioner.

Learned Sub-Judicial Magistrate, Phagwara, after considering the entire evidence and documents on record, held that the prosecution has successfully proved its case against the petitioner beyond any reasonable

doubt under Sections 279 and 304-A IPC and accordingly, convicted the petitioner. The following sentence was passed against the petitioner:-

<i>Offences U/s</i>	<i>Sentences awarded</i>	<i>Fine imposed</i>	<i>In default of payment of fine</i>
279 IPC	Rigorous imprisonment for 6 months	Rs.1000/-	Rigorous imprisonment for one month
304-A IPC	Rigorous imprisonment for 2 years	Rs.3000/-	Rigorous imprisonment for one month

Aggrieved against the said judgment, the petitioner filed an appeal before the Sessions Judge, Kapurthala, who *vide* a detailed judgment dated 18.01.2020, dismissed the appeal and upheld the conviction and the sentence. The learned Sessions Judge also re-appreciated the entire evidence while passing the judgment dated 18.01.2020. It is against the said judgments, the present criminal revision petition has been filed.

During the course of arguments, learned counsel for the petitioner has submitted that he does not wish to challenge the conviction of the petitioner but would be satisfied if a lenient view is taken with respect to the sentence, which has been awarded to the petitioner. In this regard, it has been submitted that the incident is of the year 2015 and the petitioner has suffered the agony of trial/appeal/revision for all these years and although the petitioner was granted bail/suspension of sentence but he has never misused the said concession. It is also submitted that the petitioner is 47 years of age and has two minor children and he is the sole bread winner of his family. It is further submitted that as per the custody certificate which is taken on record, the petitioner has already undergone 04 months and 19 days of actual sentence and also has earned remission of 20 days and, thus, his total custody including remission is 05 months and 09 days. The

petitioner is not involved in any other case. In support of his arguments, learned counsel for the petitioner has relied upon **CRR-1931 of 2010** decided on 23.07.2019 titled as **Chander Bhan Vs. State of Haryana** in which in a case where the petitioner had actually undergone sentence of 04 months and 07 days in a case under Sections 279 and 304-A IPC, this Court has suspended the sentence by imposing a fine of Rs.25,000/- and the judgment of the Hon'ble Supreme Court in **State of Punjab Vs. Saurabh Bakshi, reported as 2015 (2) RCR (Criminal), 495** was considered. Further reliance has been placed upon a judgment of this Court in **CRR-4830-2016** decided on 08.03.2017 titled as **"Balwinder Singh @ Binder Vs. State of Punjab"** in which case also the sentence was reduced to four months in a case of conviction under Section 279/304-A IPC where rigorous imprisonment was awarded for 02 years. In the said also, the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (supra) was considered. Further, reliance has also been placed upon case of **Jaswant Singh Vs. State of Punjab, CRR-1239-2012** decided on 29.08.2019, reported as **2020 (1) RCR (Criminal) 163**, in which also after taking into consideration the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (supra), the sentence was reduced to already undergone.

Learned counsel for the State of Punjab has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on record. However, the fact with respect to the custody of the petitioner as well as having never misused the concession of bail/suspension of sentence

has not been disputed by the learned State counsel.

This Court has heard the learned counsel for the parties and have perused the record.

As far as the conviction of the present petitioner under Section 379 and 304-A IPC is concerned, this Court is of the view that both the Courts have considered the entire evidence and record in detail and have rightly come to the conclusion that it was the petitioner who was involved in the incident. The medical evidence which has been produced by PW1 Doctor clearly shows that the death of Gurbax Kaur has taken place on account of extensive crushing of body and fractured femur. Moreover, PW3, the complainant, who is the eye-witness in the case has also fully proved the whole incident and in fact, he is the one who had taken the deceased to the hospital in an ambulance. The police officials PW4, PW5 and PW6 have proved the charge against the petitioner by duly exhibiting the recovery memo, identification memo, driving licence and the other documents. Nothing has come out from the cross-examination so as to demolish the case of the prosecution. Thus, the conviction of the petitioner is upheld.

As far as the sentence which has been awarded to the petitioner, this Court is of the view that keeping in view the fact that the incident is of the year 2015 and the petitioner never misused the concession of bail/suspension of sentence and that he has never been involved in any other case and also the fact that he is 47 years of age and has two minor children and he is the sole bread winner of his family and that he has undergone

actual sentence of 04 months and 19 days and has also earned remission of 20 days, thus, making his total custody including remission to be 05 months and 09 days and also the judgments relied upon by learned counsel for the petitioner, it is ordered that the sentence awarded to the petitioner is reduced to the period already undergone by him. However, this shall be subject to the condition that the petitioner shall deposit an amount of Rs.50,000/- with the CJM, Phagwara within a period of 03 months from today i.e., on or before 18.11.2021.

After the money is deposited by the petitioner, the learned CJM, Phagwara is directed to issue notice to the legal representatives of the petitioner so that the amount of Rs.50,000/- can be handed over to them. It is made clear that in case the petitioner fails to deposit the said amount within the stipulated period, then this petition shall be deemed to have been dismissed with no further orders.

With the above observations, the present criminal revision petition stands disposed of.

Since the criminal revision petition has been disposed of **CRM-11189-2020** has become infructuous and is disposed of as such.

(VIKAS BAHL)
JUDGE

August 18, 2021.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.