

227

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

**CRR-518-2021(O&M)
Date of Decision: 28.9.2021**

Manik Chand @ Upender

Petitioner

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Kumar Yadav, Advocate for the petitioner.

Ms. Geeta Sharma, Deputy Advocate General, Haryana.

AVNEESH JHINGAN, J.

[1] Due to COVID-19 situation, the Court is convened through video conference.

[2] This criminal revision petition is filed being aggrieved of conviction by the Chief Judicial Magistrate, Rewari under Sections 279, 337 and 304A of the Indian Penal Code, 1860 [for short 'IPC'] vide judgment dated 6th January, 2018 and order dated 8th January, 2018 of quantum of sentence. Further, upholding of conviction by dismissal of appeal by the Additional Sessions Judge, Rewari on 2nd April, 2021 is also under challenge.

[3] The relevant facts are that on 23rd February, 2015, Sonu (injured) was brought to the hospital whereas Lalit was declared brought dead. Statement of Sonu was recorded, he stated that he

alongwith his friend Lalit (hereinafter referred to as 'deceased') were going on motorcycle bearing registration No. HR-36R-9607. The deceased was driving the motorcycle. On reaching near Lukas TVS Company, a bus bearing registration No. DL-1PC-5075 [hereinafter referred to as 'offending vehicle'] driven in a rash and negligent manner hit the motorcycle from the front side. The driver of the offending vehicle ran away from the spot. Sonu sustained injuries whereas deceased succumbed to the injuries suffered in the accident.

[4] The prosecution proved its case by examining ten prosecution witnesses which included the complainant Sonu (PW1), Dr. Pinkesh Dhariwal (PW4) and Investigating Officer ASI Rajender Singh (PW5). The mechanical report was pressed into service to set up the case against the petitioner. In spite of the fact that Jaipal Solanki (PW10) turned hostile, the prosecution was able to prove the accident and rash and negligent driving of the offending vehicle. The petitioner was convicted under Sections 279, 337 and 304A IPC and was sentenced to undergo rigorous imprisonment as under:-

Under Section	Imprisonment RI	Payment of Fine (Rs.)	In default of fine (SI)
279 IPC	6 months	1,000/-	7 days
337 IPC	3 months	500/-	5 days
304A IPC	1 year	5,000/-	15 days

The appeal filed against the conviction was dismissed.

[5] At the very outset, learned counsel for the petitioner confines his prayer to the quantum of sentence. He submits that FIR

was registered on 23rd February, 2015, the petitioner has faced agony of trial for more than six years. He has undergone more than six months custody, the sentence be reduced to the period already undergone by him.

[6] Learned counsel for the State opposes the prayer made by learned counsel for the petitioner. She submits that a human life was lost due to rash and negligent driving of the petitioner. Submission is that learned trial Court appreciated the evidence and after analysing the facts on record, convicted the petitioner and no interference is called for. Custody certificate by the State is filed today, the petitioner has undergone actual sentence of five months and twenty six days including remission, the total sentence is six months and six days.

[7] Heard learned counsel for the parties at some length and perused the record.

[8] There is no ground made out in the revision petition for interference in the impugned judgment of conviction and the appellate order. The conviction of the petitioner is upheld.

[9] The contention of learned counsel for the petitioner regarding quantum of sentence deserves acceptance. As per the custody certificate the petitioner has undergone total sentence of six months and six days including remission.

[10] It would be appropriate to note at this stage that FIR was registered on 23rd February, 2015, the petitioner has faced agony of

trial for more than six and a half year.

[11] The Supreme Court in ***State of Punjab v. Saurabh Bakshi, 2015(2) RCR (Criminal) 495***, while setting aside the order of the High Court, reduced the sentence of one year to twenty four days i.e. period already undergone, awarded sentence of six months to the accused. The relevant para is quoted below:-

“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 then 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.”

[12] Considering the law laid down by the Supreme Court and the facts that petitioner is first time offender, he is only bread earner of the family and has faced agony of trial for a considerable long period, to meet the ends of justice, the criminal revision petition is partly allowed.

[13] The conviction of the petitioner is upheld, his sentence is reduced to the period already undergone by him subject to payment of fine as imposed by the trial Court. The petitioner is directed to be released, if not required in any other case, subject to payment of fine.

[AVNEESH JHINGAN]
JUDGE

28th September, 2021

pankaj baweja

1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes