

104

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

CRR-1176-2021 (O&M)
Date of decision : 08.10.2021

Arun Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ankit Grewal, Advocate for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision Petition is to the judgment dated 12.02.2019 passed by the Judicial Magistrate Ist Class, Patiala, vide which the petitioner has been convicted and sentenced as under:-

<i>Offences U/s</i>	<i>Sentences awarded</i>	<i>Fine imposed</i>	<i>In default of payment of fine</i>
279 IPC	6 months simple imprisonment	---	---
337 IPC	6 months simple imprisonment	---	---
304-A IPC	1 year simple imprisonment	---	---

*All the sentences imposed today shall run concurrently.
The period of previous custody, if any, be set off from the
period of substantive sentence of imprisonment.”*

Challenge has also been made to the judgment dated 02.08.2021 passed by the Additional Sessions Judge, Patiala, vide which the appeal filed by the petitioner was also dismissed.

Briefly stated that the facts of the present case are that on 06.09.2016, on receiving the telephonic message from Amar Hospital, Patiala regarding the admission of injured-Karamjeet Singh, ASI Amrik Singh, after reaching Amar Hospital, Patiala along with police party moved an application seeking fitness of the injured and for recording his statement but however, the injured was declared unfit. In the meantime, another information was received with respect to same accident from Rajindra Hospital regarding the admission of injured Manjit Singh. The said ASI Amrik Singh reached Rajindra Hospital, and after moving an application of fitness of injured-Manjit Singh, who was declared fit, the statement of the said injured-Manjit Singh was recorded. In his statement, he had stated that on 05.09.2016, he alongwith Karamjit Singh was going on a motorcycle bearing registration No.PB-11PT-9146 towards village Gajjumajra to book sound system and that Karamjit Singh was driving the motorcycle and he was the pillion rider of the same. At about 07:10 pm, from the Patiala side, one Swift car bearing registration No.PB-03AF-1216, which was being driven in a very rash and negligent manner and at a very high speed, came and struck against the motorcycle which the deceased-Karamjit Singh was driving and the complainant-Manjit Singh was the pillion driver of the same. Thereafter, the deceased and the injured were admitted in the Hospital and on account of the said accident,

Karamjit Singh had died. Thereafter, the petitioner was arrested and his licence was also taken into police custody.

The challan was presented and the charges were framed in the case under Sections 279, 338, 337, 304-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) against the petitioner and the prosecution had examined 4 witnesses, the details of which are as under:-

1. PW1-Dr. Nikhil Mehta
2. PW2-Prabhjit Singh
3. PW3-ASI Rajinder Kumar-Mechanic
4. PW4-Manjit Singh-complainant

PW4-Manjit Singh was the injured and also the eye-witness of the occurrence, who while appearing in the witness-box had fully supported the case of the prosecution and had given the details with respect to the occurrence which had taken place on 05.09.2016 and he had stated that the offending vehicle was the vehicle in question and the driver/petitioner was driving the same in a very rash and negligent manner and the said driver hit the Swift car with the motorcycle, on which the deceased and the complainant were travelling and on account of the said accident, the deceased had died and the complainant had suffered injuries. It was also brought out that in the present case, the owner of the offending vehicle i.e. Swift Car, was Dharampal whose statement under Section 161 of Cr.P.C. was recorded and it was found that the present petitioner was the driver of that car.

PW1-Dr. Nikhil Mehta had proved the fact that the injuries

which had been caused in the said accident, had caused the death of Karamjit Singh. The said Doctor had conducted the postmortem of the deceased and had also proved the postmortem report on record.

PW3-ASI Rajinder Kumar had mechanically checked the car in question as well as the motorcycle and had duly proved on record the mechanical reports as Ex.PW3/A and Ex.PW3/B and as per report-Ex.PW3/A, front bumper, front alloy, front number plate and left side portion of the car in question, were damaged.

After considering the entire evidence on record, the Judicial Magistrate Ist Class, Patiala, had convicted the petitioner under Sections 279, 337 and 304-A of the IPC and sentenced him as has been detailed hereinabove.

The petitioner had filed an appeal before the Additional Sessions Judge, Patiala, who after considering the entire material on record including the evidence and the documents produced, dismissed the appeal of the petitioner and upheld the conviction and sentence awarded to the petitioner.

Aggrieved against the said, the present Criminal Revision Petition has been filed.

During the course of arguments, learned counsel for the petitioner has submitted that he is not challenging the conviction of the petitioner but is praying for leniency as far as the sentence which had been awarded to the petitioner is concerned and with respect to the same, it has been submitted that the incident in question is of the year 2016 and

the petitioner has suffered the agony of trial/appeal/revision for all these years and the petitioner was granted the bail/suspension of sentence but he has never misused the said concession. It is further submitted that petitioner is 44 years of age and 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 2 months and 5 days of actual custody after conviction. It is further submitted that the petitioner is not involved in any other case.

In support of his arguments, learned counsel for the petitioner has relied upon **CRR-1931-2010** 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 case 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**, 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. Further reliance has been placed upon the judgment dated 22.07.2019 passed by the Coordinate Bench of this Court in **CRR-444-2019** titled **Sunil Kumar Vs. State of Haryana**, in which case also, the petitioner therein was convicted under Sections 279, 337, 304-A of the IPC and had undergone about 3 months of judicial custody and was released on probation in the said case.

Notice of motion.

On advance notice, Mr. Saurav Khurana, DAG, Punjab, appears and accepts notice on behalf of the State of Punjab and has submitted that he is fully prepared to argue this matter. He 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 him.

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

As far as conviction of the petitioner under Sections 279, 337 and 304-A of the IPC is concerned, this Court is of the view that both the Courts below 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. In the present case, PW4, who is an injured in

the case at hand and also the eye-witness of the said occurrence, has fully supported the case of the prosecution and has given the details of the incident, which took place on 05.09.2016 and has stated that the offending car i.e. Swift car which was being driven by the petitioner in a very rash and negligent manner, hit the motorcycle, on which the deceased and the complainant were travelling and it was on account of the said accident, that the deceased had suffered fatal injuries and even the complainant was injured. Further, in the present case, PW1-Doctor has also been examined and he has proved on record the postmortem report which also shows that the injuries because of which the deceased had died, were caused on account of the accident. The other witnesses have also fully supported the case of the prosecution and the presence of the petitioner, having committed the offence, has also been proved on record. Nothing has come out from the cross-examination of the witnesses so as to demolish the case of the prosecution and thus, the conviction of the petitioner is upheld.

As far as sentence which has been awarded to the petitioner is concerned, this Court is of the view that keeping in view the fact that the incident in the present case is of the year 2016 and the petitioner has never misused the concession of bail/suspension of sentence granted to him and the petitioner is not involved in any other case and is also 44 years of age and is the sole bread winner of his family and as per the custody certificate, he has already undergone a period of 2 months and 5 days and the entire period of 2 months and 5 days is after conviction, and

also in view of the judgments relied upon by the learned counsel for the petitioner, it is ordered that the sentence awarded to the petitioner, be reduced to the period already undergone by him.

The same would, however, be subject to the petitioner depositing an amount of Rs.50,000/- before the Chief Judicial Magistrate, Patiala, within a period of two months from the date of receipt of certified copy of the present judgment.

The Chief Judicial Magistrate, Patiala, is directed to issue notice to the legal representatives of the deceased after the deposit of abovesaid Rs.50,000/- by the petitioner, so that the same can be released to the legal representatives of the deceased-Karamjit Singh.

It is made clear that in case, the amount is not deposited within a period of two months from the date of receipt of certified copy of the present judgment, the present Criminal Revision Petition would be deemed to have been dismissed.

Accordingly, the present Criminal Revision petition is disposed of in the abovesaid terms.

Since, the main case has been decided, application bearing CRM-34020-2021 for suspension of sentence of applicant-petitioner is rendered infructuous and is disposed of as such.

08.10.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No