

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

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**CRR-1454-2021 (O&M)
Decided on : 18.11.2021**

Jaswinder Singh @ Kala

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Amaninder Singh Sekhon, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VIKAS BAHL, J. (Oral)

Challenge in the present revision petition is to the judgment and order of sentence dated 06.11.2017 passed by the Chief Judicial Magistrate, Fardikot vide which the petitioner has been convicted under Section 279, 304-A and 427 IPC and has been sentenced as under:-

<i>Offence U/s</i>	<i>Sentence</i>
279 IPC	<i>To undergo rigorous imprisonment for six months and to pay fine of Rs.500/- and in default of payment of fine, to undergo further imprisonment for ten days.</i>
304-A IPC	<i>To undergo rigorous imprisonment for one year and to pay fine of Rs.1,000/- and in default of payment of fine, to undergo further imprisonment for fifteen days.</i>
427 IPC	<i>To undergo rigorous imprisonment for six months and to pay fine of Rs.500/- and in default of payment of fine, to undergo further imprisonment for ten days.</i>

Challenge is also to the judgment dated 19.10.2021 passed by the Additional Sessions Judge-I, Faridkot vide which the appeal filed by the present petitioner has also been dismissed and the sentence imposed upon the petitioner has been upheld.

Briefly stated, the case of the prosecution is that on 11.04.2014, a medical ruqa was received with respect to the accident of Raj Kumar S/o Chanan Ram and on receipt of the same, a police party had reached the hospital where, opinion with respect to the fitness of the injured was sought but however, the injured was stated to be unfit to make a statement and on 20.04.2014, the injured- Raj Kumar succumbed to his injuries and thus, FIR was registered on the statement of the complainant Mohan Lal which was recorded to the effect that on 11.01.2014, he alongwith, Rishu Kumar, was going towards Kotkapura Bypass on motorcycle which was being ridden by Rishu Kumar and he was the pillion rider and at about 07:30 PM, one motorcycle bearing registration No. PB03-G-0585 of Suzuki make, having milk drums on both sides, came from the back side and crossed them in a very rash and negligent manner and at a very high speed and struck the motorcycle of Raj Kumar, bearing registration No. PB04-N-5030 from the side of the milk drum and on account of which the said Raj Kumar fell down on *pacca* surface and suffered several injuries on his head and fell unconscious and it was, thus, submitted that the petitioner, driving in a rash and negligent manner, had caused the accident due to which the said Raj Kumar died. Challan was presented and the charges were framed under Sections 279, 304-A and 427 of IPC. The prosecution had examined 6 witnesses which are detailed

hereinbelow:-

“PW1 Rishu Kumar, PW2 Mohan Lal, PW3 Dr. Shilekh Mittal, PW4 ASI Gurmail Ram (Retd.) PW5 Amar Singh, PW6 HC Subhash Kumar and APP for the State closed the prosecution evidence.”

After recording the statement under Section 313 Cr.P.C., the petitioner examined DW1-Jasvir Singh in his defence. PW2-Mohan Lal who was the eye witness to the accident, had reiterated the submissions as stated by him in the FIR and restated that the petitioner, while driving his motorcycle in a rash and negligent manner, had caused the accident with the motorcycle of Raj Kumar. On a similar footing was the evidence of PW1-Rishu Kumar, who was also an eye witness to the accident. PW3-Dr. Shilekh Mittal had proved on record the injuries suffered as well as the postmortem examination report Ex.PW3/B and stated the cause of death to be multiple organ failure due to injuries. PW4-ASI Gurmail Ram, who was the Investigating Officer, had duly proved on record the memo Ex. PW4/N vide which the motorcycle of the petitioner was taken into custody alongwith the RC and the two milk drums. He had also produced on record the driving license of the petitioner Ex. P3 and other relevant documents. PW-6 HC Subhash Kumar had stated that he was working as an official mechanic and had mechanically checked the motorcycle of the petitioner and of the deceased and submitted his report Ex. PW6/A. The trial Court after considering the entire evidence as well as documents on record, convicted the petitioner under Section 279, 304-A, 427 IPC and sentenced the petitioner in the manner mentioned hereinabove.

The petitioner filed an appeal before the Additional Sessions Judge-I, Faridkot against the judgment and order of sentence dated 06.11.2017, who after reappreciating the entire evidence and all the documents, dismissed the same vide judgment dated 19.10.2021. The said two judgments are under challenge in the present revision petition.

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 2014 and the petitioner has suffered the agony of trial/appeal/revision for all these years and the petitioner was granted bail/suspension of sentence but he has never misused the said concession. It is further submitted that the petitioner is 44 years of age and has one child 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 29 days of actual custody after conviction. It is stated 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 of 2010*** decided on 23.07.2019 titled as ***Chander Bhan Vs. State of Haryana*** wherein the petitioner had actually undergone sentence of 04 months and 07 days in a case registered under Sections 279 and 304-A IPC, a Coordinate Bench of this Court had 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, 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 has perused the record.

As far as the conviction of the present petitioner under Sections 279, 304-A, 427 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. PW-1 and PW-2, who were the eye witnesses, have duly proved on record that it was the petitioner who was riding the motorcycle in a rash and negligent manner and caused the accident and struck the motorcycle of the nephew of the complainant and on account of which the deceased fell down and suffered grievous injuries and died on account of the same. PW3 Dr. Shilekh Mittal had duly proved on record the postmortem examination report Ex.PW3/B and as per his opinion, there were multiple organ failure due to injuries. PW4 ASI Gurmail Ram, who is the Investigating Officer, has duly placed on record the memo Ex. PW4/N vide which the motorcycle of the petitioner was recovered as well as driving license of the petitioner and other relevant documents. PW-6 HC Subhash Kumar had duly produced on record the mechanical report of the motorcycle of the petitioner as Ex. PW6/A. It is also proved on record that identification parade of the accused had been conducted for the complainant and regarding the same, the memo has been duly exhibited as Ex. PB. Nothing has come out from their cross-examination 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 2014 and the petitioner has never misused the concession of bail/suspension of sentence and that the petitioner is not involved in any other case and also the fact that the petitioner is 44 years of age and has one child and is the sole bread winner of his family and has undergone an actual sentence of 29 days 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 is reduced from rigorous imprisonment of 1 year to rigorous imprisonment of 6 months and the fine is enhanced from Rs.2,000/- to Rs.22,000/-. The reduction of sentence from 1 year to 6 months is subject to the petitioner depositing an amount of Rs.22,000/- with the Court of the Chief Judicial Magistrate, Faridkot within a period of 1 month from the date of receipt of the certified copy of the present order.

Learned Chief Judicial Magistrate, Faridkot is directed to issue notice to the legal representative of the deceased after the said amount is deposited by the petitioner.

With these observations, the present petition is disposed of.

It is made clear that in case the said amount of Rs.22,000/- is not deposited within a period of one month from the date of receipt of the certified copy of the present order, then the present petition would be deemed to have been dismissed.

Pending miscellaneous application, if any, shall also stands disposed of, in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

18th November, 2021

Mehak

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No