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

CRR-1639-2021 (O&M)

Date of decision : 09.12.2021

Rakesh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Navneet Singh, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision is to the judgment dated 27.08.2018 passed by the Judicial Magistrate Ist Class, Sonapat, vide which the petitioner had been convicted under Sections 279, 337, 338, 304-A and 427 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) and had been sentenced as under:-

“So, the convict Rakesh is hereby sentenced to undergo three months simple imprisonment for the offence punishable under Section 279 of IPC, three months simple imprisonment for the offence punishable under Section 337 of IPC, one year (twelve months) simple imprisonment for the offence punishable under Section 338 of IPC, 1 ½ years (eighteen months) simple

*imprisonment and Rs.4000/- as fine for the offence punishable under Section 304A of IPC and one year (twelve months) simple imprisonment for the offence punishable under Section 427 of IPC. In case of defaulting of fine the convict Rakesh shall suffer two months simple imprisonment. All the sentences shall run concurrently. Jail warrants be prepared. **Fine paid by the convict.** File be consigned to the record room after due compliance.”*

Challenge has also been made to the judgment dated 25.11.2021 passed by the Additional Sessions Judge, Sonipat, vide which the petitioner was acquitted from the charges framed under Sections 338 and 427 of the IPC and judgment of the trial Court to the said extent was set aside but the conviction of the petitioner was upheld under Sections 279, 337 and 304-A of the IPC and he was sentenced as under:-

Sr. No.	Section	Sentence
1	U/s 279 IPC	SI Three months
2	U/s 337 IPC	SI three months
3	U/s 304-A of IPC	SI One year with fine of Rs.4000/- (paid before trial Court)

11. However, all the sentences shall run concurrently.”

In the present case, an FIR was registered on the complaint made by Naresh Kumar, Head Constable, who had appeared as PW5 in the trial, to the effect that on the intervening night of 05/06.07.2013, he alongwith deceased EASI Ved Parkash, was going on motorcycle bearing registration No.HR-10P-4952 which was being driven by the complainant and when they reached near Sewli road, at about 12.30 a.m, then, a Car Marka Quanto Mahendra No.HR-10-K-0090 being driven by its driver

(present petitioner) in a very rash and negligent manner and at a very high speed, came from side of GT Road, and directly hit the motor-cycle, as a consequence of which, the complainant as well as the deceased fell down from the motorcycle and sustained multiple injuries. On account of the injuries suffered by Ved Parkash, he was declared as brought dead. It was stated that the accident took place due to the rash and negligent driving of the present petitioner.

The petitioner was charged under Sections 279, 337, 338, 304-A and 427 of the IPC and as many as 13 witnesses were examined, the details of which are as under:-

1. PW1-Deepak,
2. PW2-HC Ramdutt,
3. PW3-Mukesh {Superdar},
4. PW4-SI Dharambir,
5. PW5-HC Naresh {complainant},
6. PW6-Gandhi Chauhan {identified dead body},
7. PW7-Sonu Chauhan {owner of motor-cycle No.HR10-P-4952},
8. PW8-Dr. Poonam Dahiya,
9. PW9-Dr. Anvita Kaushik,
10. PW10-Dr. Jitender Sharma
11. PW11-Harpal Singh
12. PW12-ASI Tejpal,
13. PW13-Ravi {Injured}.

PW5-Head Constable, Naresh (complainant), was the star

witness in the present case and since he was the person who was driving the motorcycle which met with an accident, he had fully proved on record that it was the present petitioner who was driving the offending vehicle and by driving the same in a rash and negligent manner had caused the accident and the deceased had suffered injuries, on account of which, he had died. It is stated that even the said PW5 had suffered some injuries and thus, his statement was beyond doubt.

PW8-Dr. Poonam Dahiya had proved the Post Mortem Report as Ex.PW8/B and proved the fact that the death had occurred on account of the injuries which had been suffered in the accident.

PW9-Dr. Anvita Kaushik, had proved the MLR (Ex.PW9/D) of the injured-PW5-complainant, who had received four injuries.

PW10-Dr. Jitender Sharma, had proved the MLR of PW13-Ravi as Ex.PW10/B.

PW2-Head Constable Ramdutt, had proved the mechanical report of the vehicle bearing registration No.HR-10-P4952 as Ex.PW2/A and of Vehicle bearing registration No.HR-10-K-0090 as Ex.PW2/B.

PW7-Sonu Chauhan, had proved the recovery memo as Ex.PW4/F, whereby the motorcycle was taken into possession.

PW12-ASI Tejpal had proved the photographs as Ex.P1 to Ex.P12 with respect to the said accident.

After considering the said aspects, the trial Court had convicted the petitioner under Sections 279, 337, 338, 304-A and 427 of the IPC and had passed the order on quantum of sentence which has been

reproduced hereinabove.

The petitioner had filed an appeal before the Additional Sessions Judge, Sonapat, who after re-appreciating the entire evidence and documents on record, upheld the conviction of the petitioner under Sections 279, 337 and 304-A of the IPC but however, acquitted the petitioner under Sections 338 and 427 of the IPC and the sentence of the petitioner was reduced to one year as has been detailed hereinabove.

It is the said judgment which is sought to be challenged before this Court.

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 2013 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 33 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 14 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. Manish Dadwal, AAG, Haryana,

appears and accepts notice on behalf of the State of Haryana and has submitted that he is fully prepared to argue this matter and assist this Court. 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. He has further submitted that in the present case, the petitioner has already been granted the concession inasmuch as the period of 1 year and 6 months has been reduced to 6 months by the order passed by the Additional Sessions Judge. 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, PW5 was the star witness, who himself was injured as is apparent from MLR (Ex.PW9/D) which has been duly proved on record by PW9-Dr. Anvita Kaushik. PW5 had stated that he was driving the motorcycle whereas the deceased was the pillion rider and the present petitioner was driving the car in a rash and negligent manner, which caused the said accident, upon which the deceased had suffered injuries which had resulted in his death and four injuries were

also received by the petitioner. Although, MLR of complainant stated that there was no external injury, however, the said witness was cross-examined and nothing was reduced from his cross-examination so as to cause a dent in the case of the prosecution. PW8-Dr. Poonam Dahiya had duly proved on record the Post Mortem Report of the deceased as Ex.PW8/B. PW10-Dr. Jitender Sharma, had proved on record the MLR of PW13-Ravi as Ex.PW10/B. PW2 -Head Constable Ramdutt, had proved on record the mechanical report of the vehicle bearing registration No.HR-10-P4952 as Ex.PW2/A and of Vehicle bearing registration No.HR-10-K-0090 as Ex.PW2/B. PW7-Sonu Chauhan, had proved on record the recovery memo as Ex.PW4/F, whereby the motorcycle was taken into possession and PW12-ASI Tejpal had proved the photographs as Ex.P1 to Ex.P12 with respect to the said accident and the said documents and witnesses have fully proved the case of the prosecution and thus, conviction of the petitioner under Sections 279, 337 and 304-A of the IPC 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 2013 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 33 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 14 days of actual custody, 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 to six months.

The same would, however, be subject to the petitioner depositing an amount of Rs.50,000/- before the Chief Judicial Magistrate, Sonapat, within a period of two months from today.

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

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

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

Since, the main case has been decided, application bearing CRM-41912-2021 for suspension of sentence of applicant-petitioner is rendered infructuous and is disposed of as such.

09.12.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**