

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.231

CRR-230-2021 (O&M)
Date of decision : 5.9.2022

Ravi

.....Petitioner(s)

VERSUS

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Saurabh Dalal, Advocate for the petitioner
Ms.Adity Girdhar, AAG, Haryana

AMAN CHAUDHARY, J.

The present revision petition has been filed by petitioner- Ravi, challenging the judgment dated 15.2.2021, passed by the learned Additional Sessions Judge, Rewari, dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 4/5.12.2018, rendered by the learned Sub Divisional Judicial Magistrate, Kosli, vide which the accused-petitioner had been convicted and sentenced as under:

<i>Offence u/s</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine</i>
279 IPC	-	Rs.1000/-	SI for 1 month
337 IPC	-	Rs.500/-	SI for 15 days
338 IPC	RI for 2 years	Rs.1000/-	SI for 1 month
304A IPC	RI for 2 years	Rs.2000/-	SI for 2 months

All the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that complainant Bijender made a statement before the police stating therein that on 17.6.2015, while he driving his motorcycle bearing registration No. HR-

43B-6155 alongwith his uncle as pillion rider was coming from village Jakhala to their village Gudiani, a Bolero Canter came from the opposite side driven at a high speed in a rash and negligent manner hit his right arm and the ribs of his uncle. Thereafter, the said vehicle lost control and turned turtle at a distance of 70-80 feet. The passengers sitting in the vehicle also suffered injuries. They were rushed to the hospital. However, the driver of the Bolero fled away from the spot. FIR was registered and during investigation, it came to know that the vehicle was being driven by Suresh Kumar @ Ravi- present petitioner. On his statement, a case was registered against the accused and after the completion of all the formalities, challan was presented against the accused in the court.

Finding a prima facie case, learned trial Court framed the charges against the accused for commission of offence under Sections 279, 337, 338 and 304A IPC, to which he pleaded not guilty and claimed trial.

The prosecution, with a view to prove its case, produced as many as 14 prosecution witnesses, besides placing on record other documentary evidence.

On closing of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. He denied the allegations, alleged false implication and claimed himself to be innocence. However, the accused did not lead any evidence in his defence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has proved its case, bringing home guilt

against the accused. Accordingly, the accused- petitioner was convicted and sentenced as mentioned above in para no.1.

Feeling aggrieved, the convict-petitioner had filed an appeal, which was dismissed by the learned Additional Sessions Judge, Rewari vide impugned judgment dated 15.2.2021.

Hence, the present revision.

Learned counsel for the petitioner, at the very outset, submits that he does not wish to challenge his conviction and only prays for modification of order of sentence awarded to the petitioner to the period already undergone on account of the facts, namely; the petitioner is the only breadwinner in the family, which consists of his mother, wife and two minor children; his father having died on 14.9.2021; his mother, who is 75 years of age, is not maintaining good health, as mentioned in her affidavit attested on 5.4.2021, as appended with application in this case, wherein she has also stated that she has four other sons besides the petitioner but she and her husband used to live with the petitioner, his wife and their two children aged 10 years and 6 years. It is also stated in para no.6 thereof that she does not have good relations with the other sons and thus, being the dependent upon the petitioner for taking proper care of her in old age, she needs his support in undergoing medical procedure and hospital visits; there is no other male member in the family except the petitioner and after the death of his father, his family is virtually on the verge of starvation and there is an urgent need for him to make adequate arrangements for their survival; in addition to the aforesaid facts, the learned counsel for the petitioner has submitted that the matter also stands compromised between

the petitioner and family of the deceased, who have agreed to not proceed further against the petitioner and as per the custody certificate, the petitioner has already undergone 01 year, 1 month and 26 days, including remission, out of the total sentence of two years awarded to him and the petitioner has also faced the agony of a protracted trial since the date of incident i.e. 15.7.2015.

Learned counsel for the complainant has also put in appearance and filed his *Vakalatnama*. He has produced on record two affidavits, one of which has been filed by Sushila, injured and other is of Bijender Singh, which are taken on record as Marks 'A' and 'B'. In the said affidavits, it has been mentioned that they agreed to not proceed further against the petitioner and there is no grudge subsisting between their family and that of the petitioner.

On the other hand, learned counsel for the State opposes the prayer of the petitioner and states that the learned courts below after examining all aspect of the matter, have rightly convicted and sentenced the petitioner.

I have heard the learned counsel for the parties and perused the record.

The learned trial Court had thoroughly examined the evidence, which was to the effect that the complainant and his uncle were travelling on their motorcycle, when a Bolero Canter came from the opposite side being driven in a zigzag manner, forcing them to stop the vehicle on the side of the road but still the offending vehicle being driven in a rash and negligent manner hit him and his uncle on their right side leaving them to

fall in a nearby pit and the offending vehicle also made some flips and stopped around 70-80 feet ahead as it had turned upside down. The accused was identified in the Court and version of the complainant, who appeared as PW8 was corroborated by independent witness, who appeared as PW3, who was herself the injured- eye witness and deposed on the same lines that when she had boarded the vehicle driven by the accused- petitioner, it was being driven at a very fast speed and before the accident, the driver was asked to calm down and drive the vehicle properly, but all in vain. It was found by the learned trial Court that identity of the accused alongwith victim of accident had been duly proved by PW8 -Bijender Singh and PW3 -Sushila. In the said accident, injured Bimla had died, her PMR was proved by PW4 Dr. Avinash while that of Ashok, who also died was proved by PW9 Dr. Vinod Kumar. Even the examination of the offending vehicle was conducted by PW12 EHC Sanjay, as per the report of which alongwith photographs Ex.PA to PG, it was categorically proved that the accident in question was committed by the offending vehicle driven by accused – petitioner. It was also the medical reports of fracture having been received by PW8- Bijender Singh and PW3 Sushila were proved by PW11 Dr. Sudhir Punia. The learned trial Court, based on the statements of PW8 and PW3 and the medical evidence, held that it was proved beyond reasonable doubt that the rash and negligent driving of the offending vehicle by the petitioner, led to the accident.

The submissions on behalf of the petitioner were also carefully considered, only to be discarded being of minor contradictions and immaterial for the germane issue at hand. Learned Additional Sessions

Judge before whom, the present petitioner had filed an appeal against the judgment of the learned trial Court also considered the factum of death of Ashok Kumar and Bimla, which was duly proved by PW4 and PW8, the medical records of grievous injuries received by PW8 and PW3, proof of identity of the accused and the factum of rashness and negligent driving on his part, concluded that when the passengers of the offending vehicle driven by the petitioner –accused could anticipate that the accused- petitioner was not driving the same safely even the accused petitioner must be aware of the same fact, which may lead to the accident. Learned Additional Sessions Judge affirmed that the prosecution had successfully established that the accused failed to exercise duty with reasonable and proper care and precaution guarding against the injury to public generally or to an individual in particular which resulted into the unfateful accident and death of Ashok and Bimla and grievous injuries to Bijender Singh and Sushila. Accordingly, both the Courts below after having scrutinized the evidence on record have rightly convicted the petitioner for the offence under Sections 279, 337, 338 and 304A IPC and there is no scope for interference in the concurrent findings recorded by both the Courts below. As such, the conviction of the petitioner is affirmed.

Regarding the second limb of argument of the learned counsel for the petitioner that in view of the aforestated mitigating circumstances, the sentence of the petitioner be reduced to the period already undergone, this Court is of the view that in view of the peculiar fact and circumstances of the present case, particularly in view of the affidavit of the mother of the petitioner; the matter having been compromised between the parties, as also

affidavits Mark 'A' and 'B', the petitioner having undergone custody of 1 year, 1 month and 26 days and faced the agony of protracted trial since, 2015, it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him. It is settled proposition of law that each case is to be decided on its peculiar facts and circumstances. The view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in the case of "**R. Soundarajan v. Seed Inspector, Coimbatore and another**" reported as 2006(4) R.C.R. (Criminal) 645; "**Umrao Singh v. State of Haryana**", 1981 AIR (SC) 1723. and the judgment of this Court in "**Sahab Singh vs. State of Haryana**" 2019(3) RCR (Crl.) 727.

The relevant observations made by the Hon'ble Supreme Court in the case of **R. Soundarajan** (supra) are as under:-

"26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment."

Similarly in the case of **Umrao Singh** (supra) the Apex Court has observed as under:-

"After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16 (1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents.

2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.

3. The appeal is disposed of accordingly."

In the case of **Sahab Singh** (supra) by following the judgment of the Hon'ble Supreme Court in "**State of Punjab vs. Saurabh Bakshi**" 2015 (2) RCR (Criminal) 495, this Court while upholding the conviction of

the petitioner therein has reduced the sentence of the petitioner by observing as under:-

“However, the prayer of the learned counsel for reduction of the substantive sentence of the petitioner to six months in view of the Hon’ble Supreme Court's judgment in **Saurabh Bakshi's** case, merits acceptance.

It may be noticed that as per the custody certificate produced on record, the petitioner has already undergone 7 months and 9 days out of the total sentence of two years imposed upon him.

The Hon’ble Supreme Court in **Saurabh Bakshi's** case (supra), while setting aside the order of the High Court, thereby reducing the sentence imposed upon the accused i.e. one year to the period already undergone by him i.e. 24, days, awarded the sentence of six months to the accused-respondent therein. It was held as under:-

“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 than 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.”

Reverting to the facts of the present case and keeping in view the mitigating circumstances noted above, this Court is of the considered view and has no hesitation to conclude that the ends of justice would be adequately met if the sentence of the petitioner is ordered to be reduced to the period already undergone by him i.e. 1 year, 1 month and 26 days including remission, as per the custody certificate dated 2.9.2021, issued by Deputy Superintendent, District Prison, Gurugram, filed by the learned counsel for the State.

In view of the peculiar facts and circumstances of the present case noted above, coupled with the reasons aforementioned, the conviction of the petitioner in the criminal revision petition is upheld. However, the sentence is ordered to be reduced to the period already undergone by petitioner. However, the fine shall remain intact. The petitioner would also pay Rs.50,000/- as compensation to the LRs of the both the deceased- Ashok and Bimla (Rs.25000/- each).

The amount of compensation shall be deposited by the petitioner with the concerned Chief Judicial Magistrate within a period of one month from today, failing which, the present petition shall be deemed to be dismissed and the petitioner would undergo imprisonment as awarded by the learned trial Courts below. The Chief Judicial Magistrate concerned would disburse the said amount to the legal heirs of the deceased against the

proper receipt and identification.

With the modification in the order of sentence dated 5.12.2018 passed by learned trial Court, as noted above, the criminal revision petition is partly allowed.

5.9.2022
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No