

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.220

CRR-1018-2015(O&M)
Date of decision : 13.9.2022

Rajesh @ Raju

.....Petitioner(s)

VERSUS

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Gurinder Singh Lalli, Advocate for the petitioner
Mr.Gaurav Bansal, AAG, Haryana

AMAN CHAUDHARY, J.

1. The present revision petition has been filed by petitioner- Rajesh @ Raju, challenging the judgment dated 2.3.2015, passed by the learned Additional Sessions Judge, Hisar, dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 2.8.2014, rendered by the learned Judicial Magistrate, 1st Class, Hisar, 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 15 month
304A IPC	SI for 6 months	-	-

All the sentences were ordered to run concurrently. .

2. The brief facts of the prosecution case are that on 1.9.2009 at about 9.20/10.00 O'clock while one Vinod Kumar and his cousin Parveen Kumar were going on motorcycle bearing registration No.HR-99DT(T) 2796, a jeep bearing registration No.HR 20-C-4510 driven by the accused-

petitioner in a rash and negligent manner struck with their motorcycle and thereafter, hit the vehicle to other persons including Jogi Ram, Vinod Kumar, Ajay, who were standing there, as a result of which, they suffered multiple grievous injuries. They were rushed to Life Line Hospital, Hisar. The driver of the jeep ran away from the spot. On the statement of one injured-complainant Vikram, an FIR No.860 dated 1.9.2009, under Sections 279, 337, 338, 304A, 427 IPC was registered at Police Station Sadar, Hisar.

3. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the court against the accused- petitioner. On finding a prima facie case, charges under Sections 279, 337, 338 and 304-A of the IPC were framed against the accused, to which the accused-petitioner pleaded not guilty and claimed trial.

4. The prosecution in order to bring home guilt of the accused examined as many as 18 PWs.

5. On closure of the prosecution evidence, statement of the accused-petitioner was recorded under Section 313 of the Cr.P.C.. He denied all the incriminating circumstances appearing against him in the prosecution case and pleaded his false implication. The accused in his defence evidence did not examined any witness.

6. The learned trial Court after hearing the learned counsel for the parties, convicted and sentenced the accused as noticed above.

7. Against the said judgment of conviction and order of sentence, the petitioner had preferred an appeal before the learned Additional Sessions Judge, Hisar, which was dismissed vide judgment 2.3.2015, affirming judgment of the trial Court.

8. Being dissatisfied with the above judgments / order of the courts below, the petitioner has preferred the present revision petition.

9. Learned counsel for the petitioner, at the very outset, submits that he does not wish to challenge the judgment of conviction and 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 old aged parents, wife and two children; there is no other male member in the family except the petitioner; as per the custody, the petitioner has already undergone total sentence of 2 months 2 days, out of the total sentence of 6 months awarded to him; the petitioner has also faced agony of protracted trial since the date of incident i.e. 1.9.2009 and is a first offender.

10. Per contra, learned counsel for the State submits that the learned Courts below after appreciating every aspect of the matter have rightly convicted and sentenced the petitioner, therefore, he prays for the dismissal of the present petition.

11. Learned counsel for the parties have been heard and the record perused.

12. Though, the petitioner has given up his challenge to the conviction and restricted his prayer only with regard to reduction of his sentence as undergone, in view of the mitigation circumstances as mentioned above. However, still this Court deems it appropriate to examine the judgment of the courts below. The learned trial Court had thoroughly examined the evidence and observed that the prosecution has proved its case beyond reasonable doubt against the petitioner because the

testimony of complainant PW10 stands corroborated by the PW5 Jogi Ram, PW6 Vinod Kumar and PW7 Ajay Kumar, who were the injured. Learned Additional Sessions Judge in appeal filed by the petitioner had also considered all aspects of the matter and only thereafter, upheld the judgment of the conviction passed by the learned Trial Court. Accordingly, both the Courts below after having scrutinized the evidence on record have rightly convicted the petitioner for the offence under Sections 279 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.

13. Regarding the prayer 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, peculiarity of facts and circumstances of the present case, particularly, that the petitioner being the only breadwinner in the family; having old age parents, wife and two children; besides, which he having undergone a substantial period of sentence of 2 months 2 days, out of the total sentence of 6 months awarded to him and the fact that the petitioner has faced the mental agony of a prolonged trial and he being a first offender, 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 his Court in "**Sahab Singh vs. State of Haryana**" 2019(3) RCR (Crl.) 727.

14. 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."

15. 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."

16. 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."

17. 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. 2 months and 2 days, as per the custody certificate dated 1.9.2022, issued by Deputy Superintendent, Central Jail, Hisar, filed by the learned counsel for the State.

18. 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.

19. With the aforesaid modification in the order of sentence dated 2.8.2014 , the criminal revision petition is partly allowed.

13.9.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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