

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

246

CRR-2977-2016

Date of decision: 27.07.2022

MANJIT

.....Petitioner

VERSUS

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Satish Chaudhary, Advocate
for the petitioner.

Mr. Rajesh Kumar Ambavta, AAG, Haryana.

VINOD S. BHARDWAJ. J.(Oral)

1. The present revision petition has been preferred against the judgment of conviction dated 09.03.2012 and order of sentence dated 13.03.2012 passed by the Judicial Magistrate First Class, Hisar whereby the petitioner has been convicted for commission of offences punishable under Section 279 & 304-A of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") in case bearing FIR No. 280 dated 11.09.2004 registered under Sections 279 & 304-A of the IPC at Police Station, Barwala, District Hisar and has been sentenced as under:-

Offence	Sentence	Fine	In default of Payment of fine
279 of Indian Penal Code	Rigorous imprisonment for a period of six months	Rs.1000/-	Simple imprisonment for a period of two months.
304-A of Indian Penal Code	Rigorous imprisonment	Rs.2,000/-	Simple imprisonment

	for a period of six months		for a period of three months
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2. A further challenge is raised to the judgment dated 02.08.2016 passed by the Additional Sessions Judge, Hisar whereby the appeal preferred by the petitioner against the judgment of conviction and order of sentence passed by the Judicial Magistrate First Class, Hisar was affirmed.

3. Learned counsel appearing on behalf of the petitioner submits that he has instructions not to raise a challenge to the judgment of conviction and that he wishes to confine the prayer only to the extent of quantum of sentence.

4. Brief facts of prosecution case are that on 11.9.2004, ASI Sudhinder Kumar alongwith his colleagues was present at Daulatpur Turn, Barwala in connection with routine patrolling duty and in the meantime, complainant Ranbir Singh alias Kalu son of Ram Bhaj R/o Uklana got recorded his statement as under:

"I am a student of second year. Today, I alongwith my mother Prem in Maruti car had gone to Barwala for some personal work where my eldest brother Rajbir, who does the work of finance in Hisar met us. Rajbir was on scooter bearing No. HR-51J-7491 of Grey colour. I and my mother in Maruti car and eldest brother Rajbir in their respective vehicles set out from Barwala to Uklana at about 2 O' Clock. Near railway crossing of village Daulatpur, about 100 yards past it, a Tata 709 bearing registration no. HR-51GA-0990 came from Daulatpur side being driven in a rash and negligent manner and caused accident with my elder brother Rajbir who was going on scooter. Tata 709 dragged my brother Rajbir and scooter to the left side of the road and

then it struck against Shisham tree. My brother Rajbir got crushed between Shisham tree and Tata vehicle. Tata vehicle driver hurriedly reversed the vehicle and parked it on the one side of the road and he also dragged the scooter of Rajbir and put the scooter of Rajbir at the rear the Tata vehicle. When I and my mother checked Rajbir, then because of the injuries on the head and legs, he had breathed his last. The name of Tata driver later on was revealed to be Manjit. Tata driver leaving his vehicle at the spot ran away in the fields. This accident has been caused due to rash and negligent driving of Tata driver, so action be taken against the driver of offending vehicle.”

5. On this statement of the complainant, present FIR was registered. Inquest proceedings on the dead body were conducted. Accidental vehicles were taken into possession by the police. Investigations were carried out. Site was inspected. Petitioner/ accused was arrested. After completion of investigation, challan/final report under Section 173 of Criminal Procedure Code, 1973 (for short Cr.P.C.) was filed. Copies of challan and accompanying documents were given to the accused as per Section 207 Cr.P.C.

6. Learned Court of JMIC, Hisar, vide order dated 18.03.2005 charged sheeted the accused under Sections 279/304A, to which he pleaded not guilty and claimed trial.

7. To prove its case, the prosecution examined six witnesses and, thereafter, prosecution evidence was closed by the order of the court.

8. The complainant had reiterated the version given by him to the police and proved recovery memo Ex.PW6/A vide which scooter and Tata vehicle were taken into police possession.

9. In his statement recorded under Section 313 Cr.P.C., the petitioner-accused pleaded his false implication and claimed innocence.

His case was of total denial. However, no defence evidence was led.

10. Upon consideration of evidence adduced by the respective parties and the arguments advanced, the Judicial Magistrate First Class, Hisar convicted the petitioner for the commission of the offences referred to above and sentenced the petitioner.

11. Aggrieved thereof, an appeal was filed before the Court of Additional Sessions Judge, Hisar. Vide judgment dated 02.08.2016, the Additional Sessions Judge, Hisar affirmed the judgment of conviction dated 09.03.2012 and order of sentence dated 13.03.2012 for commission of offences punishable under Section 279 and 304-A of the IPC was upheld.

12. Learned counsel appearing on behalf of the petitioner submits that he does not press challenge to the conviction & restricts his arguments only to quantum of sentence.

13. While advancing the arguments for seeking reduction of the sentence so imposed upon the petitioner, learned counsel for the petitioner had submitted that the petitioner is a first time offender and has no previous conviction against him. It is further submitted that the petitioner is 33 years of age at the time of conviction and as the incident in question took place in the year 2004, he was around 21 years of age at that time. It is further submitted that the petitioner has already faced incarceration of a criminal trial for a period of nearly 18 years. He further submits that the petitioner has a small child and is the only bread winner in the family and his continued incarceration has created huge

financial hardship to the family. He also points out that petitioner has already undergone an actual custody of 02 months and 18 days.

14. Per contra learned counsel appearing on behalf of the respondent-State submits that the prosecution had duly established the case against the petitioner and that on account of his rash and negligent driving a person had lost his life. He further contends that the incident of rash and negligent driving are on the rise and that the irresponsible driving on the part of the petitioner has only contributed to making the roads unsafe for commuters. He contends that no such undue sympathy ought to be shown in favour of the violators. He, however, could not controvert the fact that the petitioner does not have any other criminal antecedents. It is also not controverted that even though the petitioner was admitted to bail after the commission of the offence, however, there has been no other case that has been registered against him for any rash and negligent driving after the registration of the present case till the date of his conviction and so far as today.

15. I have heard learned counsel representing the parties and have gone through the submissions made by them. The position in fact is not disputed. The parameters of sentencing and the philosophy behind the same mandate that the Court is required to balance the reformatory and retributive aspect of the crime and the deterrent impact of sentencing, ought to be reflected. The said aspect gains special significance when the conviction reflects a pre-determined /pre-meditated crime. However, in the case where the offence shows rashness or negligence, the element of *mens rea* need not exist and element of knowledge becomes crucial. It would thus ordinarily not be a circumstance where an accused has

deliberately chosen to commit an act for desiring the consequences to follow. It is also evident that the petitioner has faced the rigors of criminal prosecution for a period of more than 18 years since the registration of the FIR and as against the substantive sentence of 06 months he has already undergone an actual and total sentence of 02 months and 18 days.

16. The Supreme Court has in the matter of ***“State of Punjab versus Saurabh Bakshi”*** passed in Criminal Appeal No. 520 of 2015 dated 30.03.2015 had reduced the sentence of 02 years for commission of offence under Section 304 (A) of the IPC to a period of 06 months and this Court has also in the matter of ***“Jaswant Singh versus State of Punjab”*** passed in CRR No. 1239 of 2012 dated 29.08.2019 had reduced the sentence to already undergone where the petitioner had undergone an actual custody of 04 months and 27 days.

Parameters and Principles of Sentencing:

17. The Hon'ble Supreme Court has laid down certain principles to govern the Courts in the matter of sentencing. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in the matter of ***State of Punjab Vs. Prem Sagar & Ors (2008) 7 SCC 550***, the relevant extract of the said judgment is reproduced hereinbelow:-

'Whether the court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstance of each case.

5. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health

must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

6. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice delivery system. The Parliament, however, in providing for a hearing on sentence, as would appear from Sub-section (2) of Section 235, Sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.

9. What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been

noticed in regard to imposition of fine.

10. In Dhananjay Chatterjee Alias Dhana v. State of W.B. [(1994) 2 SCC 220], this Court held:

"15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime..."

11. Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjay Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges.

12. In a recent decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], this Court opined:

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be--as it should be--a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the

corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

Relying upon the decision of this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471], this Court furthermore held that it was the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

18. Don M. Gottfredson in his essay on "Sentencing Guidelines" in "Sentencing: Hyman Gross and Andrew von Hirsch" opines:

"It is a common claim in the literature of criminal justice- and indeed in the popular press- that there is considerable "disparity" in sentencing.. The word "disparity" has become a prerogative and the concept of "sentencing disparity" now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase "unwarranted disparity" may be preferred; not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly

justified, beneficial and proper, so long as the variable qualities are carefully monitored or consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment- that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate."

[Emphasis supplied]

The learned author further opines:

"In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima, leaving a broad range of discretion, as to the length of sentence."

19. Kevin R. Reitz in Encyclopedia of Crime and Justice, Second edition "Sentencing guidelines" states:

"All guideline jurisdictions have found it necessary to create rules that identify the factual issues at sentencing that must be resolved under the guidelines, those that are potentially relevant to a sentencing decision, and those viewed as forbidden considerations that may not be taken into account by sentencing courts. One heated controversy, addressed differently across jurisdictions, is whether the guideline sentence should be based exclusively on crimes for which offenders have been convicted ("conviction offenses"), or whether a guideline sentence should also reflect additional alleged criminal conduct for which formal convictions have not been obtained ("nonconviction offenses").

Another difficult issue of fact-finding at sentence for guideline designers has been the degree to which trial judges should be permitted to consider the personal characteristics of offenders as mitigating factors when

imposing sentence. For example: Is the defendant a single parent with young children at home? Is the defendant a drug addict but a good candidate for drug treatment? Has the defendant struggled to overcome conditions of economic, social or educational deprivation prior to the offense? Was the defendant's criminal behavior explicable in part by youth, inexperience, or an unformed ability to resist peer pressure? Most guideline states, once again including all jurisdictions with voluntary guidelines, allow trial courts latitude to sentence outside of the guideline ranges based on the judge's assessment of such offender characteristics. Some states, fearing that race or class disparities might be exacerbated by unguided consideration of such factors, have placed limits on the list of eligible concerns. (However, such factors may indirectly affect the sentence, since judges are permitted to base departures on the offenders particular "amenability" to probation (Frase, 1997).)"

20. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

- 1. What interest are violated or threatened by the standard case of the crime- physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.*
- 2. Effect of violating those interests on the living standards of a typical victim- minimum well-being, adequate well-being, significant enhancement*
- 3. Culpability of the offender*
- 4. Remoteness of the actual harm as seen by a reasonable man.'*

18. The said issue was also examined by the Hon'ble Supreme Court in the matter of **Soman Vs. State of Kerala, (2013) 11 SCC 382**, the relevant extract of the said judgment is reproduced hereinbelow:-

'15. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. In State of Punjab v. Prem Sagar (2008) 7 SCC 550, this Court acknowledged as much and observed as under –

“2. In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines.”

16. Nonetheless, if one goes through the decisions of this Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation etc.

14. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. The question is whether the consequences of the offence can be taken as the measure for determining its

harmfulness? In addition, quite apart from the seriousness of the offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while awarding a sentence. Thus, to understand the relevance of consequences of criminal conduct from a Sentencing standpoint, one must examine: (1) whether such consequences enhanced the harmfulness of the offence; and (2) whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence.

26. Punishment should acknowledge the sanctity of human life. We fully agree.

27. From the above, one may conclude that:

27.1. Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of

consuming the spurious liquor.

19. The fundamental purpose of imposition of sentence is based upon making an accused realize the consequences of the crime committed by him and the creation of the dent in the life of the victims and also the social fabric. The same by itself does not oblige the Court to not extend an opportunity to a convict for reforming himself. The principles of proportionality have to be balanced and the impact of the offence on the society as a whole and its ramifications on the victim and the immediate collectives also has to be examined.

20. Taking into consideration, the mitigating circumstances noticed above as well as the period of actual and total custody undergone coupled with the legal parameters prescribed by Court; the pendency of proceedings for 18 years & the petitioner being a young boy at the time of offence as well as non-involvement of petitioner in any other case, I deem it appropriate to partly accept the petition. While maintaining the judgment of conviction dated 09.03.2012 passed by the Judicial Magistrate First Class, Hisar in Criminal case bearing No. 650-C titled 'State versus Manjeet' and affirmed by Additional Sessions Judge, Hisar vide Judgment dated 02.08.2016 passed in Criminal Appeal bearing No.151 of 2012 titled "Manjit versus State of Haryana, the order of sentence so passed is modified. The sentence awarded by the Judicial Magistrate First Class, Hisar vide the order of sentence dated 13.03.2012 is modified and reduced to the period already undergone. The sentence of fine is however increased to Rs. 10,000/- to be deposited within 06 weeks of receipt of a certified copy of the order failing which the present petition shall be deemed to have been dismissed and the petitioner shall

have to surrender to undergo the remainder of his sentence.

JULY 27, 2022

(VINOD S. BHARDWAJ)
JUDGE

Vishal Sharma

Whether speaking/reasoned:	Yes/No
Whether Reportable :	Yes/No