

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

**Reserved on 17th of November, 2022
Pronounced on 20th of December, 2022**

CRR No.4793 of 2016

Sarban Kumar

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.S. Sandhu, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab
for the respondent/State.

PANKAJ JAIN, J.

Petitioner is in revision against the judgment passed by the Appellate Court dismissing his appeal against order of conviction dated 17th of October, 2015 passed by Judicial Magistrate 1st Class whereby he has been convicted for offences punishable under Sections 279, 304-A IPC in case FIR No.198 dated 13th of July, 2010 registered at Police Station Zirakpur.

2. As per the case of the prosecution, FIR was registered on the statement made by one Harbant Singh brother-in-law of the deceased Mangal Singh. As per him on 13th of July, 2010 when he went to meet his brother-in-law. They were going by foot to have tea across the road when one motor-cycle coming from wrong side hit them. Mangal Singh fell on

the road and sustained head injuries. He was admitted to GMCH-32 Chandigarh where he succumbed to injuries. Petitioner was booked for offences punishable under Sections 279, 304-A IPC. During trial eyewitness Harbant Singh appeared as PW-1 and proved the case of the prosecution. After analyzing the evidence threadbare Trial Court held the petitioner guilty of offences punishable under Sections 279, 304-A IPC and sentenced him as under :-

Offence	Sentence	Fine	In default of payment of fine
279 IPC	To undergo simple imprisonment for 4 months	Rs.200/-	To undergo simple imprisonment for 3 days
304-A IPC	To undergo simple imprisonment for 1 year	Rs.200/-	To undergo simple imprisonment for 3 days

3. The appeal preferred by the petitioner was dismissed vide judgment dated 3rd of December, 2016.
4. Ld. Counsel for the petitioner has emphatically argued that the identity of the petitioner could not be established and the same assumes significance in view of the fact that the offending vehicle is not owned by the petitioner.
5. Per contra Ld. State Counsel submits that the case of the prosecution has been fully proved by PW-1 Harbant Singh, who in his testimony is unambiguous w.r.t. the occurrence and the involvement of the petitioner in the same. He further submits that the presence of Harbant Singh on the place of occurrence has been fully established from the

records of the case and, thus, no fault can be found with the judgments passed by the Courts below.

6. I have heard counsel for the parties and have gone through the records of the case.

7. It is not in dispute that the death of the petitioner and cause of death have been fully proved on record by PW-4 Dr. Dushyant Singh and the medical evidence on record in form of Exhibit PW6/D. From Exhibit PW6/E it is also clear that the complainant Harbant Singh was present on the spot and it is on his statement the present case was recorded. Petitioner has been identified in Court by Harbant Singh. Trite it is that a Court identification can be well believed.

8. In view of the aforesaid facts no fault can be found with the findings recorded by the Courts below resultantly there is no ground to interfere in the findings of conviction recorded by the Courts below.

9. At this stage, Ld. Counsel for the petitioner submits that out of substantive sentence of 1 year, the petitioner has undergone actual sentence of 3 months. The petitioner has suffered prolonged protracted trial for last more than 12 years and, thus, ends of justice will be met if the sentence awarded to the petitioner is modified to the already undergone. He further submits there is no other case against him. During trial and during pendency of the present revision petition before this Court, the petitioner has never misused the concession of bail or suspension of sentence. He has drawn attention of the Court to the observations made by Apex Court in

State of Punjab vs. Saurabh Bakshi, 2015(2) RCR Criminal 4950, to the effect that opportunity may be granted to the convict for reforming himself and while deciding upon the quantum, the Court is not precluded from invoking principle of proportionality while weighing the allegations against the petitioner *vis-a-vis* the sentence awarded. In the case of **Saurabh Bakshi's** case, sentence of 1 year imposed by the Trial Court was ordered to be reduced to 6 months.

10. In support of his prayer, counsel for the petitioner relies upon **Jagdish Chander vs. State of Delhi, AIR 1973 2127** wherein the Apex Court taking in view the mitigating circumstances, reduced the sentence of imprisonment from six months to a period of three weeks of imprisonment already undergone by the accused. He also relies upon **Nand Ballabh Pant vs. State (Union Territory of Delhi), AIR 1977 890**, wherein the accused, convicted under Section 304-A of IPC, was sentenced to two months RI and the same was reduced by Supreme Court to one month and the fine was enhanced from Rs.500 to Rs 1,000/-.

11. Reliance has been placed upon the orders passed by Co-ordinate Bench in **Criminal Revision No.843 of 1995** titled as **Nirmal Singh @ Pappu Vs. State of Haryana** decided on 04.03.2008, wherein the sentence of convict under Section 304-A IPC was reduced to already undergone. He further relies upon **CRR-1931-2010** decided on 23.07.2019 titled as '**Chander Bhan vs. State of Haryana**' wherein considering the factum of law laid down by Saurabh Bakshi's case (supra), this Court

reduced the sentence to the period actually undergone.

12. The petitioner is the first time offender and has no past criminal record or antecedents. He is not stated to have ever misused concession of bail/suspension of sentence. He has undergone about 6 months out of substantive sentence of 1 year. He is facing protracted trial for last 12 years.

13. As a sequel of the discussion held hereinabove, the substantive sentence of 1 year awarded to the petitioner by the Courts below is hereby reduced to 6 months.

14. Since the petitioner has already undergone 3 months out of awarded sentence of 1 year, he is directed to surrender before the CJM/Jail Authorities concerned within two weeks from today. On his doing so, he shall be taken into custody forthwith to suffer the remaining period of his sentence.

15. In case the petitioner does not surrender within the stipulated period, CJM concerned shall order arrest of the petitioner for compliance of the above-said direction.

December 20, 2022

Dpr

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No