

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

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CRR-1198-2018 (O&M)
Date of decision: 25.07.2022

BASHIR KHAN

.....Petitioner

VERSUS

STATE OF PUNJAB

....Respondent

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

Present: Ms. Shubreet Kaur, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J.(Oral)

1. The present revision petition has been preferred against the judgment of conviction and order of sentence dated 18.08.2017 passed Chief Judicial Magistrate Gurdaspur whereby the petitioner has been convicted for commission of offences punishable under Section 279 and 304-A of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) in case bearing FIR No. 31 dated 21.02.2013 registered under Sections 304-A, 279, 337 & 427 of the IPC at Police Station City Gurdaspur 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	Rs.1000/-	Rigorous imprisonment for a period of

	six months		15 days
304-A of Indian Penal Code	Rigorous imprisonment for a period of 18 months.	Rs.4,000/-	Rigorous imprisonment for a period of one month.

2. A further challenge is raised to the judgment dated 01.03.2018 passed by the Additional Sessions Judge, Gurdaspur whereby the appeal preferred by the petitioner against the judgment of conviction and order of sentence passed by the Chief Judicial Magistrate, Gurdaspur was dismissed and the judgment of conviction for offences punishable under Section 279 & 304-A of the IPC was upheld.

3. The case was listed for hearing today. The counsel appearing on behalf of the petitioner submitted that she has instructions not to raise a challenge to the judgment of conviction and that she wishes to confine her prayer only to the quantum of sentence.

4. Brief facts as necessary for adjudication for the instant petition are extracted as under:-

4.1 That on 21.02.2013 ASI Satbir Singh alongwith other members of police party was present in the vicinity of Purani Sabzi Mandi Chowk, Gurdaspur, in connection with patrolling, when Sukhbir Singh son of Didar Singh, resident of House No. 648 Ward No. 8 Kahnuwan Road, Gurdaspur, got his statement recorded before ASI to the effect that "I (Sukhbir Singh son of Didar Singh) am resident of aforementioned address and am agriculturist by profession. Today i.e. 21.02.2013 I had come in the Market at Gurdaspur, in connection with my personal work in library Chowk, Gurdaspur, where my son along

with my wife met with me on Splendor Motorcycle and at that time was on another motorcycle and time is at about 04:00 PM and we are going to our house i.e. Kahnuwan road on separate Motorcycle and my son was going ahead on Splendor Motorcycle bearing registration No. PB-06-R9975 and when we reached near Kahnuwan Chowk, Gurdaspur, then one truck bearing registration No. HP-38-C-6625 in a rash and negligent manner came from back side and struck it with the Motorcycle of my son from backside, due to which, my son Sandeep Singh and my wife Narinder Kaur fell down on the road and front tyre of truck crushed the head of my wife and she died on the spot. My son was also got injuries. Motorcycle was also broken down. The driver of truck ran away from the spot by leaving the truck behind on the spot. I can identify the truck driver. This accident occurred due to rash, negligence driving by driver of truck without blowing any horn. I left Iqbal Singh son of Gurbachan Singh, resident of Village Shahpur Goraya to safeguard the dead body. Action be taken”.

4.2. The statement was read over to Sukhbir Singh and he after admitting the same to be correct signed in English. From the statement, offence under Sections 304-A, 279, 337 & 427 IPC was found to be made out.

4.3 Thereafter, the investigation was started. Accused was arrested. After completing other formalities of investigation, challan against accused was presented in the Court.

4.4. Finding a prima facie case against the accused, charge sheet was served upon the accused under Sections 304-A, 279 & 337 of the IPC, to which, the accused pleaded not guilty and claimed trial.

4.5. In order to prove its case, prosecution examined PW1 HC Krishan Gopal, Mechanic, Police Line, Gurdaspur, PW2 PHC Satnam Singh, PW3 complainant Sukhbir Singh, PW4 Sandeep Singh, eye witness, PW5 Dr. Rajesh Lakhanpal, Medical Officer, Civil Hospital, Gurdaspur, PW6 ASI Satbir Singh, PW7 Deepak Rai, Development Clerk, office of SDM Noorpur, District Kangra (H.P.), PW8 Ranjit Singh Sanoria. Thereafter, Ld. APP for the State closed the prosecution evidence.

4.6 The statement of accused under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) was recorded, in which, all the incriminating circumstances appearing against the accused were put to him. The accused pleaded his innocence and has submitted that he has been falsely implicated in the case. The accused opted to lead defence evidence but did not lead any defence evidence.

5. Upon consideration of evidence adduced by the respective parties and the arguments advanced, the Chief Judicial Magistrate, Gurdaspur convicted the petitioner for the commission of the offences referred to above and sentenced the petitioner. Aggrieved thereof, an appeal was filed before the Court of Additional Sessions Judge, Gurdaspur. Vide judgment dated 01.03.2018, the Additional Sessions Judge, Gurdaspur dismissed the appeal and the judgment of conviction for commission of offences punishable under Section 279 and 304-A of the IPC was upheld.

6. 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 incident in question took place in the year 2013, he was around 29 years of age at the time. It is further submitted that the petitioner has already faced rigor of a criminal trial for a period of nearly 09 years and the petitioner has minor children to take care of. She further submits that the petitioner is the only bread winner in the family and his continued incarceration has created huge financial hardship to the family. She also points out that petitioner has already undergone a total custody of 06 months and 28 days out of the total sentence of 18 months. Furthermore, the petitioner has not committed any other such or similar offence which shows that the petitioner has been more cautious and careful in driving. She further submits that the object of punishment should also be retributive and reformatory. A punitive sentence is to be imposed where the incident is grossly shocking to the conscience of the Court and the society, taking into consideration the nature of the offence and the manner in which such an offence is committed. Where an accused reflects reformatory tendencies, the penal stint of sentencing should be relaxed so as to contribute towards the reformatory attribute of an accused.

7. 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 incidents 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.

8. 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 crime. However, in the case where the offence shows rashness or negligence, the element of *mens rea* does not exist. It would thus ordinarily not be a circumstance where an accused has consciously committed an act of desiring the consequences to follow. It is also evident that the petitioner has faced the rigor of criminal prosecution for a period of more than 09 years since the registration of the FIR and as against the substantive sentence of 18 months, he has already undergone a total sentence of 06 months and 28 days.

9. The Hon'ble Supreme Court 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 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:

10. 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 Dhananjoy 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 Dhananjoy 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.'*

11. 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. (See: Ramashraya Chakravarti v. State of Madhya Pradesh (1976) 1 SCC 281, Dhananjay Chatterjee alias Dhana v. State of W.B. (1994) 2 SCC 220, State of Madhya Pradesh v. Ghanshyam Singh (2003) 8 SCC 13, State of Karnataka v. Puttaraja (2004) 1 SCC 475, Union of India v. Kuldeep Singh (2004) 2 SCC 590, Shailesh Jasvantbhai and another v. State of Gujarat and others (2006) 2 SCC 359, Siddarama and others v. State of Karnataka (2006) 10 SCC 673, State of Madhya Pradesh v. Babulal (2008) 1 SCC 234, Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498)

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.

12. The imposition of sentence is steered to make 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 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.

13. Taking into consideration, the circumstances as noticed above as well as the period of actual and total custody undergone coupled with the mitigating circumstances noticed above, I deem it appropriate to partly accept the petition. While maintaining the judgment of conviction by the Courts below, the order of sentence so passed is modified. The sentence awarded by the Chief Judicial Magistrate Gurdaspur vide order dated 18.08.2017 & affirmed by Additional Sessions Judge, Gurdaspur is modified and reduced to the period already undergone. However, the sentence of fine awarded by the Courts below is increased to Rs.15,000/-. The same to be deposited within a period of two months of the receipt of a copy of this order.

Petition is partly allowed.

JULY 25, 2022
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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