

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

**CRR-2575 of 2018
Reserved on 07.03.2022
Date of decision : 28.03.2022**

Gurpreet Singh

.....Petitioner

VERSUS

State of Punjab

.....Respondent

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

Present:- Ms. Anshika, Advocate, for
Mr. H. S. Brar, Advocate, for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

VINOD S. BHARDWAJ, J.

The petitioner has raised a challenge to the judgment dated 15.03.2016 passed by the Judicial Magistrate 1st Class, Patiala, in the matter of State Vs. Gurpreet Singh arising out of the case FIR No.172 dated 11.11.2009 under Sections 279, 337, 338, 304-A, 427 IPC at Police Station Julkan, Patiala, Punjab, whereby, the petitioner was convicted for offences under Sections 279, 304 -A IPC and sentenced as under:-

Offence U/Ss	Sentence awarded	Fine imposed	In default of payment of fine
279 IPC	6 month simple imprisonment	Rs.1000/-	Simple imprisonment for one month
304-A IPC	2 years simple imprisonment	Rs.1000/-	Simple imprisonment for one month

(2) Challenge was also made to the judgment dated 24.07.2018 passed by the Additional Sessions Judge, Patiala in CrI. A. CIS No.250 of 2016 arising out of the aforesaid judgment of conviction. The appeal preferred by the

petitioner was dismissed by the Additional Sessions Judge and the order of conviction as well as sentence imposed by the judicial Magistrate 1st Class, Patiala was affirmed.

The aforesaid judgments are challenged by the petitioner alleging that the same are perverse, suffered from legal infirmity and unsustainable in law.

FACTS

(3) Before proceeding of the case on merits the relevant facts as are essential for adjudication of the instant case are being referred to as under:-

The incident in question is stated to have taken place at about 4:30 p.m., in the area of Village Budh Singh Wala on 10.11.2009. The petitioner-accused is alleged to have been driving a Jeep (Bolero) bearing registration No.PB-13N-4686 on a public way in a rash and negligent manner so as to endanger human life and personal safety of others and eventually resulting in death of Charan Singh. As there was direct nexus between the act of the petitioner-accused and the cause of death of Charan Singh, hence, the petitioner was charged with culpable homicide on account of rash and negligent act punishable under Sections 279, 304-A IPC.

Upon completion of the investigation, a final report was filed. The prosecution examined as many as 4 witnesses to prove its case. The entire incriminating evidence was put the petitioner to which he pleaded false implication. However, no evidence was led in defence.

After considering the evidence adduced by the

prosecution as well as the plea of defence, the Judicial Magistrate 1st Class returned a finding of conviction against the petitioner. The aforesaid judgment of conviction dated 15.03.2016 was challenged by the petitioner by means of filing an appeal before the Sessions Judge, Patiala. Vide judgment dated 24.07.2018, the appeal preferred by the petitioner was dismissed by the Additional Sessions Judge, Patiala. Hence, the present revision petition.

ARGUMENTS

(4) Learned counsel for the petitioner has argued that the judgments passed by the Courts below suffered from the vice of non-appreciation of evidence as well as misreading thereof. Consequently, it is alleged that the judgments passed by the Courts below are liable to be set aside.

Arguments raised by the learned counsel are summarized as under:-

- (i) No identification of the petitioner-accused was undertaken and as such, there was no way for prosecution to determine the culpability of the petitioner.
- (ii) There is a considerable delay in registering the FIR and the same must be held as fatal to the case of prosecution.
- (iii) There are material contradictions in the statements of the witnesses rendering their deposition unworthy of acceptance.
- (iv) Owner of the offending vehicle had not been examined and as such, there was no way to determine as to whether the petitioner was driving the offending vehicle on the

date and at the time of the accident.

(v) It is also submitted that the evidence of the prosecution did not prove that the vehicle in question was being driven rashly and negligently.

(vi) Lastly, it was argued that in case the submissions made by the petitioner do not find merit, the case of the petitioner may be considered against the sentence already undergone by him. It was pointed out that the petitioner has been sentenced to undergo a total sentence of 2 years and that he had already undergone an actual sentence of 11 months and 24 days before the said sentence was suspended on 17.07.2019.

(5) *Per contra*, Sh. Sukhbeer Singh, AAG, Punjab has argued that the Courts below have concurrently held against the petitioner and have found him guilty of committing the offence. The identity of the petitioner was duly established through an eye-witness account and as such, there was no necessity for examination of owner of the offending vehicle. The rash and negligent act of the petitioner was fully established by the prosecution and that the delay stands duly explained. It was also argued that the petitioner cannot seek re-appreciation of evidence in a revisional jurisdiction and should confine the submission to any illegality, impropriety, perversity or gross misappreciation/misreading of the evidence. The jurisdiction of revisional Court is not to be exercised for seeking the substitution of the concurrent opinion rendered by the Courts below. It is also submitted that the case of the petitioner should not be considered sympathetically even

increased manifold. A strict message thus, needs to be sent up against the drivers who drive irresponsibly.

(6) I have heard learned counsel for the parties and have gone through the records as well as the impugned judgments with their able assistance.

ANALYSIS

(7) Argument Nos.(i) and (iv) raised by the petitioner are dealt with together. A perusal of the judgment passed by the Courts below shows that the FIR had been registered at the instant of PW-2 Dhian Singh who happens to be the brother of the deceased-Charan Singh. He is a witness to the accident from a distance of 1 Acre and had specifically deposed that the accident occurred due to rash and negligence driving of the accused. The presence of said witness at the spot is not doubted by the Courts below and once he identified the petitioner to be the driver of the offending vehicle at the time of accident, the mere non-examination of the owner of the vehicle would not render the prosecution case unreliable or unworthy of acceptance. It is also not disputed that the complainant-Dhian Singh reached at the place of accident within two minutes of the accident and the said circumstance corroborates the claim of the witness that he was at a distance of about an acre when the accident in question occurred. As the accident had taken place in the early evening hours. There is nothing to infer that the accident could not be seen from the said distance. It is also not the suggested case of the defence that he could not have seen the occurrence clearly from the distance of about 1 Acre and no such circumstance has been established. The relevant part of the judgment dealing with the submission is extracted as

under:-

“11. From the close scrutiny of the entire evidence on record, this Court is of the considered opinion that the prosecution has successfully proved its case against the accused beyond any reasonable doubt. The entire evidence led by the prosecution clearly connect the accused with the commission of offence. The meticulous scrutiny of depositions of complainant evidently reveal that he has not only proved the fact of causing of accident by accused, exact time and causing of death of Charan Singh, brother of complainant with rash and negligent act of accused, but also proved the identity of the accused. He has specifically deposed that his brother came to their house from field on his motorcycle and Car Bolero came from Pehowa side in a very rash and negligent manner hit the motorcycle of his brother, due to which his brother fell down on the road and his brother suffered various injuries in head and his leg was also broken in that accident. He clearly identified the accused at the time of accident and he specifically deposed that the accident took place in his presence and identified the accused in the Court also. During his cross-examination he deposed that he witnessed the accident from the distance of one acre and the fact that accused fled away from the spot. He deposed that the accident occurred due to rash and negligent driving of accused.

12. The contention of Ld. Defence counsel that the complainant reached at the place of accident within two minutes after the alleged accident and he was standing at a distance of one kila from the place of accident, which renders case of prosecution untrustworthy, is without any considerable force for the reason that complainant while appearing as PW-2 has categorically proved the occurrence as well as the identity of the accused. It is pertinent to mention here that complainant in his deposition has apparently deposed that he identified the accused at the time of the accident and in the Court also. In the opinion of the court a person can easily see anything (accident in the present case) from a distance of one acre in broad day

light. Hence that circumstance alone cannot be made a ground for concluding that the prosecution story is untrustworthy.

(13) The contention of learned counsel for accused that accused was not known to the complainant and no test identification parade of accused was conducted and identity of accused is doubtful, is also without any substance for the reason that FIR in this case has been lodged against the accused by name. Moreover PW2 in his deposition has categorically deposed that he identified the accused at the time of occurrence and in the court also while recording his examination-in-chief. In this eventually test identification is not necessary. So this fact cannot be taken a ground to disbelieve the case of prosecution.

The aforesaid argument was also considered by the lower Appellate Court and it was observed as under :

13.....Complainant also deposed in regard to the fact that accused Gurpreet Singh was driving Bolero No.PB-13N-4686 in a rash and negligent manner on 10.11.2009. Complainant also stated that his brother was coming from the fields on his motor cycle bearing No.HR-99-3959 and at about 4:30 PM Bolero Car came from Pehowa side in a very rash and negligent manner hit the motorcycle of his brother. His brother fell down on the road, who has suffered various injuries on his head and his leg was also broken in the accident. He reached at the spot and got his brother admitted in Mission Hospital Pehowa. On the next day his brother was referred to Chandigarh Sector 32 hospital, but later on his brother has expired on 15.11.2009. Complainant has deposed that the accident has taken place due to rash and negligent driving of driver of offending vehicle and he identified him at the time of accident t the spot as well as in the Court. Complainant also stated that accident took place in his presence.

14.....It is worth mentioning that complainant

Dhian Singh being eye witness is the real brother of deceased Charan Singh, then he would be the last person to implicate some one falsely leaving aside the real culprit.....”

15. *During arguments learned counsel for the appellant-accused contended with vehemence that as per case of the prosecution neither the complainant has identified the accused and nor any identification parade has been conducted, but, this plea raised by him is also found to be without any basis, because on this account complainant in his testimony specifically deposed the fact he identified the accused on the spot as well as in the court. Furthermore, identification in the court is also equally good, when the accused-appellant has also been identified by the complainant on the spot.....”*

(8) A perusal of the same shows that the submissions have been duly considered by the Courts below and that the petitioner has failed to indicate toward any material to establish as to why the finding so recorded by the Courts below is perverse or not sustainable in law. Learned counsel for the petitioner could not indicate towards any specific part of evidence on the basis whereof the finding of the Courts below could be held to be perverse or unsustainable.

(9) Insofar as the argument in relation to the delay in lodging of the FIR is concerned, it is evident that accident in question had taken place on 10.11.2009 at about 4:30 p.m., and the FIR was lodged on the following day i.e. 11.11.2009 at about 5:05 p.m.. It is also not in dispute that the deceased Charan Singh was having four external injuries on his person i.e.,

“Over the left parietal region, over right side of forehead, over back of right shoulder and below the back of left shoulder. He also deposed that deceased had right tibia, right fibula and left femur fracture and opined that cause of death was due to result

of cerebral damage.”

While considering the aforesaid arguments raised by the petitioner, the trial Court has recorded its finding as under:-

16. Furthermore, the contention of Ld. Defence counsel that there is delay in lodging the FIR as the accident took place on 10.11.2009 but the FIR was lodged on 11.11.2009, is also without any force for the reason that delay in filing FIR by itself cannot be a ground to doubt the prosecution case. In the present case the accident has taken place at 4:30 pm on 10.11.2009 but the FIR has been lodged at 5:05 p.m on 11.11.2009. Delay in such like accident cases is no ground to discard the case of prosecution, as a person makes every effort to take the injured who has received serious injuries in accident, to hospital first and thereafter to proceed further. More so delay in lodging FIR by itself is not enough to reject the prosecution case unless there are clear indication of fabrication.”

The said argument has also been considered by the Additional Sessions Judge and he has recorded his finding as under:

“16. Learned counsel for the accused-appellant also pressed on the point that the case has been got registered on the next day, but, this plea raised by him in regard to non-explanation of delay in registration of the case is found to be bereft of any merit due to the reason that firstly, complainant was caring about his injured brother, who has expired after five days whereas the FIR registered on the next very day. Accordingly, when the complainant party was caring for the injured and case has been registered later on, then it is not fatal in any manner. It is further worth mentioning that his brother later on expired. As such, circumstances and evidence on record itself explained the delay in a very well manner. Accordingly submission raised by learned defence counsel is

also found to be without any basis.”

(10) It is thus evident that the delay has been reasonably explained and well considered. Needless to mention that it is equally well settled that a mere delay cannot be held to be fatal to the case of the prosecution unless the defence is able to establish how and in what manner the delay occasioned failure of justice. Learned counsel for the petitioner has failed to indicate to any judgment to supplement his argument. The effect of delay on a case has to be examined on the facts of each case. Not every delay can be ruled to be fatal. Not such circumstances have been indicated by the counsel for the petitioner as would render the delay to be crucial and fatal to the case of the prosecution.

(11) The same would leave this Court to refer to the arguments pertaining to the contradictions in the testimony of the witnesses and also the argument that the prosecution could not establish that the accident in question occurred as a result of any rash and negligent act on the part of the petitioner. Without adverting to the relevant extract of the judgment where the said submission has been dealt with, it would be suffice to hold that the testimony of the eye-witness to the accident has not been *disbelieved*. Even the presence of the said eye-witness is not doubted along with the fact that the eye-witness was at a distance of near one acre from the place of occurrence. The said witness has specifically identified the accused and has also deposed with respect to the accident having been caused due to rash and negligent act of the petitioner. Further, learned counsel for the petitioner could not indicate any contradiction in the statements/testimonies of the witnesses as would have any bearing on the merits of the case. No such reference was made even during the course of arguments of the present

revision petition. It is also evident that no effort was made by the petitioner to lead any evidence or even the evidence of the owner of the offending vehicle to establish that any person other than the petitioner may have been driving the offending vehicle at the time of the accident. Hence, there is no merit in the above arguments as well.

(12) It is well settled position in law that the revisional Court does not sit in re-appreciation of evidence and merely examines as to whether the judgment/orders under challenge before it suffer from any illegality, infirmity, perversity or based upon gross-misreading/misappreciation of the evidence. In the event the conclusions drawn by the Courts below are sustainable on a meaningful reading of the evidence brought before it, such conclusion shall not ordinarily be interfered with by the revisional Court unless the revisional Court is satisfied that sufficient grounds as noticed above exist and that the judgment in question is based upon misappreciation/misreading of the evidence in a manner as to record findings that would not be plausible or possible on a meaningful construction of the evidence or when the same suffers from illegality or infirmity or perversity.

(13) Finding no force in the argument assailing the judgments on merits, I am now confined to the plea of the petitioner to reduce the sentence imposed upon him.

PARAMETERS AND PRINCIPLES OF SENTENCING

(14) It is evident that the petitioner has been sentenced to undergo imprisonment for a period of 2 years out of which he has already undergone an actual custody of 11 months and 04 days. It is thus, essential to examine the broad principles to be kept in mind by a Court while sentencing an accused and to balance the aggravating and mitigating circumstances. 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.'

Conclusion

principles that must be kept in mind by the Court while examining, I notice that the following mitigating circumstance emerge in the instant case:-

(i) The accident in question had taken place in November 2009 and already a period of more than 11 years has passed since the commission of offence. The petitioner has thus suffered the agony of a protracted criminal litigation over such a long period.

(ii) The petitioner has also undergone an actual custody of 11 months and 24 days out of the total sentence awarded to him. He has thus, undergone nearly half of the substantive sentence.

(iii) There is nothing on record to suggest that the petitioner was involved in any other accident or criminal case prior to the registration of the instant FIR or committed any other such or similar offence or any other criminal offence after the registration of FIR.

(iv) It is also not established from the record that the petitioner was driving under the influence of some intoxicant at the time of the accident.

(v) The petitioner is the sole bread earner of the family and has responsibility of taking care of his ageing parents as well as two children.

(vi) The petitioner is currently in his early forty and would have greater family responsibilities as the children would be small and health of the parents' may have further deteriorated.

(vii) There is no basis to assume that the petitioner has not reformed and as to why the benefit under the Probation of Offenders Act should not be extended to the petitioner. No reasons have been assigned by the Courts below while declining the benefit of probation to the petitioner.

(viii) That the benefit of probation was extended in case of conviction

under Section 304A IPC by the Hon'ble Supreme Court of India in *Aitha*

Chander Rao v. State of andhra Pradesh 1981 (Supp) Supreme Court Cases 17 and *A.P.Raju Vs. State of Orrisa 1995 Supp (2) Supreme Court Cases 385*, after considering that the occurrence was almost 15 years old. Similarly in the matter of *State Vs. Sanjiv Bhalla and Another (215) 13 Supreme Court Cases 444*, the observations recorded by the Hon'ble Supreme Court are extracted as under:-

"11. Every accused person need not be detained, arrested and imprisoned - liberty is precious and must not be curtailed unless there are good reasons to do so. Similarly, everybody convicted of a heinous offence need not be hanged however shrill the cry "off with his head" - and this cry is now being heard quite frequently. Life is more precious than liberty and must not be taken unless all other options are foreclosed. Just sentencing is as much an aspect of justice as a fair trial and every sentencing judge would do well to ask: Is the sentence being awarded fair and just?"

12. In Ved Prakash v. State of Haryana (1981) 1 SCC 447, this Court observed that:

"[I]t is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitation slant."

A little later in the judgment, it was held that: (SCC p. 448, para 1)

[E]ven if the Bar does not help, the Bench must fulfil the humanizing mission of sentencing implicit in such enactments as the Probation of Offenders Act."

In other words, this Court was of the view that punishment should be rehabilitative and humanizing and, therefore, need not necessarily be retributive in character.

13. Subsequently, in Hari Singh v. Sukhbir Singh (1988) 4 SCC 551, this Court held that extending the benefit of

probation to first time offenders is generally not inappropriate. The humanizing principle was extended even to a conviction under Part II of Section 304 of the IPC in State of Karnataka v. Muddappa (1999) 5 SCC 732 in which case the benefit of release on probation was granted to the convict.

16. *In the meanwhile, however, in Dalbir Singh v. State of Haryana (2000) 5 SCC 82, this Court declined to give to the appellant, convicted of an offence punishable under Section 279 and Section 304-A of the Section 360: **Order to release on probation of good conduct or after admonition** --(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:
Provided ... [not relevant].*

(2) [Not relevant].

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against

him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) to (10) [Not relevant].

Section 361: *Special reasons to be recorded in certain cases.--*

Where in any case the Court could have dealt with,--

(a) an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or

(b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youth ful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

Probation of Offenders Act 13 keeping in mind "the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families." It was held that,

" 13.[C]riminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence."

That decision, in which a cyclist was killed, resulted in a sentence of three months and one year respectively for the violation of the two Sections mentioned above. This decision, in a sense, was a precursor to a stricter application by this Court of the provisions for releasing a convict on probation and went

contrary to the grain of earlier decisions of this Court.

22. It does appear that depending upon the facts of each case, causing death by what appears (but is not) to be a rash or negligent act may amount to an offence punishable under Part II of Section 304 of the IPC, not warranting the release of the convict under probation. There may also be situations where an offence is punishable under Section 304-A of the IPC in an accident "where mens rea remains absent" and refusal to release a convict on probation in such a case may be too harsh an approach to take. An absolute principle of law cannot be laid down that in no case falling under Section 304-A of the IPC should a convict be released on probation. This is certainly not to say that in all cases falling under Section 304-A of the IPC, the convict must be released on probation- it is only that the principles laid down in Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act should not be disregarded but should be followed and an appropriate decision, depending on the facts of the case, be taken in each case.

28 . To sum up:

(28.1) For awarding a just sentence, the Trial Judge must consider the provisions of the Probation of Offenders Act and the provisions on probation in the Criminal Procedure Code;

(28.2) When it is not possible to release a convict on probation, the Trial Judge must record his or her reasons;

(28.3) The grant of compensation to the victim of a crime is equally a part of just sentencing;

(28.4) When it is not possible to grant compensation to the victim of a crime, the Trial Judge must record his or her reasons; and

(28.5) The Trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case.

(16) Counsel for the petitioner has further submitted that the

petitioner is willing to offer some reasonable compensation that may be so

awarded to the victim and/or members of his family considering that the petitioner himself is a mere driver.

(17) After considering the submission made by the respective parties and after noticing the facts of the case as also the judicial pronouncements, I find no merit in the present petition insofar as the judgment of conviction passed by the Judicial Magistrate 1st class, Patiala and its affirmation by the Additional Session Judge, Patiala is concerned. The judgment of conviction is thus, affirmed. Petitioner has however made out sufficient mitigating circumstances on the basis whereof, the benefit of probation can be extended to the petitioner while balancing the interest of justice. The present petition is thus partly allowed for the reasons given above and the petitioner shall be released on probation of good conduct for a period of one year. Petitioner is directed to deposit Rs.50,000/- before the Court of Illaqa Magistrate/ Judicial Magistrate 1st Class who shall ensure that said amount is disbursed to the LRs of deceased Charan Singh.

The instant petition is thus partly allowed in terms as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

28.03.2022
anil

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>