

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(288)

CRR-1990-2022 (O&M)
Date of decision: - 09.11.2022

Jaspal Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. G.S. Nagra, Advocate
and Mr. K.S. Rawat, Advocate,
for the petitioner.

Mr. Iqbal S. Mann, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision Petition is to the judgment and order of sentenced dated 21.11.2019, passed by the Judicial Magistrate Ist Class, Gurdaspur, vide which the petitioner has been convicted and sentenced as under:-

<i>Under Section</i>	<i>Imprisonment</i>
<i>Section 279 IPC</i>	<i>Imprisonment for 6 months</i>
<i>Section 304-A IPC</i>	<i>Imprisonment for 2 years</i>
<i>Section 427 IPC</i>	<i>Imprisonment of 2 years</i>

All the sentences shall run concurrently. Case property be dealt with in accordance with law. File be consigned to the record room."

2. Challenge is also to the judgment dated 08.09.2022, passed by the Sessions Judge, Gurdaspur, vide which in the appeal that had been filed against the said judgment and order dated 21.11.2019, the conviction

and the sentence awarded to the petitioner (appellant therein) under Sections 279 & 304-A IPC had been upheld.

3. On 22.09.2022, this Court was pleased to pass the following order: -

“Learned counsel for the petitioner has submitted that since, findings of both the Courts below on the aspect of conviction are legal, thus, he does not wish to challenge the conviction of the petitioner but argues that the petitioner has two daughters aged 15 years and 12 years respectively and they are studying in 10th and 9th class respectively and the petitioner also has old aged parents to take care of and thus, prays that a lenient view be taken with respect to the sentence awarded to the petitioner.

Notice of motion for 09.11.2022.

To be taken up at 04:00 pm.”

4. As per the report of the Registry, the service is complete.

5. Learned counsel for the petitioner has reiterated the arguments which have been raised on 22.09.2022 and has submitted that since findings of both the Courts below on the aspect of conviction are legal, thus, he does not wish to challenge the conviction of the petitioner, but urges that the petitioner has two daughters aged 15 years and 12 years, respectively and they are studying in 10th and 9th class, respectively and the petitioner also has old aged parents to take care of and thus, prays that a lenient view be taken with respect to the sentence awarded to the petitioner. It is further submitted that the incident in the present case is of the year 2016 and petitioner has suffered the agony of trial/appeal/revision for all these years and the petitioner was granted the bail/suspension of sentence but he has never misused the said concession.

It is further submitted that petitioner is 47 years of age and is the sole

bread winner of his family. It is further submitted that the petitioner has already undergone a period of more than 2 months of actual custody after conviction and he is not involved in any other case.

6. In support of his arguments, learned counsel for the petitioner has relied upon CRR-1931-2010 decided on 23.07.2019 titled as “***Chander Bhan Vs. State of Haryana***” in which in a case where the petitioner had actually undergone sentence of 04 months and 07 days in a case under Sections 279 and 304-A IPC, this Court has suspended the sentence by imposing a fine of Rs.25,000/- and the judgment of the Hon'ble Supreme Court in “***State of Punjab Vs. Saurabh Bakshi***”, ***reported as 2015 (2) RCR (Criminal), 495*** was considered. Further reliance has been placed upon a judgment of this Court in CRR-4830-2016 decided on 08.03.2017 titled as “***Balwinder Singh @ Binder Vs. State of Punjab***” in which case also, the sentence was reduced to four months in a case of conviction under Section 279/304-A IPC where rigorous imprisonment was awarded for 02 years. In the said case also, the judgment of the Hon'ble Supreme Court in ***Saurabh Bakshi's case (supra)*** was considered. Further, reliance has also been placed upon case of “***Jaswant Singh Vs. State of Punjab***”, ***reported as 2020 (1) RCR (Criminal) 163***, in which also after taking into consideration the judgment of the Hon'ble Supreme Court in ***Saurabh Bakshi's case (supra)***, the sentence was reduced to already undergone. Further reliance has been placed upon the judgment dated 22.07.2019 passed by the Coordinate Bench of this Court in CRR- 444-2019 titled as “***Sunil Kumar Vs. State of Haryana***”, in which case, the petitioner therein was

convicted under Sections 279, 337, 304-A of the IPC and had undergone about 3 months of judicial custody and was released on probation in the said case.

7. Learned State counsel has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on record. However, the fact with respect to the custody of the petitioner as well as having never misused the concession of bail/suspension of sentence, has not been disputed by him.

8. This Court has heard the learned counsel for the parties and perused the record.

9. Briefly stated facts of the present case are that the present FIR was registered on the statement of Santokh Raj s/o Dhian Chand r/o village Machla P.S. Dinanagar on the allegations that on 27.08.2016, at about 10:00 a.m., Shashi Kumar who is friend of his son Rohit @ Vicky, had come to their house and asked Rohit to accompany him to Gurdaspur and the complainant told them that since he, along with his brother Kundan Lal, was also going to Gurdaspur, so both of them could accompany them. It is further alleged that Rohit and Shashi Kumar were on motor-cycle bearing No.PB-06-T-1812 and the complainant and his brother Kundan Lal were on another motor-cycle and when his son Rohit and his friend Shashi Kumar were near Australian farm at about 10.10 a.m. then one bus bearing No.PB-02-AU-9934 came from the side of Gurdaspur and without blowing any horn, hit the motor-cycle of his son Rohit @ Vikcy and after that, the driver of the bus (petitioner) ran away

from the spot and son of the complainant had died on the spot and his friend succumbed to injuries and even their motorcycle was totally damaged. On the basis of the said statement of the complainant, the FIR in question was registered under sections 304-A, 279, 427, 337, 338 of IPC against the petitioner. The investigation was completed and the challan was presented under against the petitioner under sections 304-A, 279, 427, 337, 338 of Indian Penal Code and on finding a prima facie case, the charges were also framed under Sections 304-A, 279, 427 of Indian Penal Code. The prosecution had examined 10 witnesses, the details of which have been mentioned as under: -

1. PW-1 ASI Kuldip Singh
2. PW-2 Kulbir Singh AME (wrongly mentioned as PW-3)
3. PW-3 Santokh Raj
4. PW-4 Kundan Lal
5. PW-5 Balbir Kumar
6. PW-6 PHC Jasvir Singh
7. PW-7 ASI Krishan Gopal
8. PW-8 Dr. Prince Ajaypal Singh
9. PW-9 Rohit Data Entry operator RTA office
10. PW-10 Retired Yard Master Ashok Kumar

10. The trial Court, after considering the entire evidence, had convicted the petitioner under Sections 279, 304-A and 427 IPC and had sentenced the petitioner as mentioned hereinabove. Thereafter, the petitioner had filed an appeal before the Sessions Judge, Gurdaspur, who had upheld the conviction of the petitioner under Sections 279 and 304-A and had acquitted the petitioner with respect to the offence under Section

427 IPC and had maintained the maximum sentence of two years.

11. As far as conviction of the petitioner under Sections 279 and 304-A of the IPC is concerned, this Court is of the view that both the Courts below have considered the entire evidence on record in detail and have rightly come to the conclusion that it was the petitioner who was involved in the incident and the accident had taken place on account of the rash and negligent driving of the petitioner.

12. PW-3 Santokh Raj (complainant) and PW-4 Kundan Lal were both the eye witnesses of the occurrence and the said witnesses had supported the prosecution version given in the complaint/FIR and had stated that the offending bus was being driven by the petitioner, which had caused the accident with the motorcycle on which Rohit alias Vicky and Shashi Kumar were travelling and it was on account of the said accident, that both the said persons had died.

13. PW-1 ASI Kuldip Singh has also fully supported the case of the prosecution and had proved on record the inquest report (Ex. P7), the postmortem report (Ex. P11), the Fard Makbujgi of Bus bearing no. PB02-AU-9934 (Ex. P12), the identification memo of accused by complainant (Ex. P16), driving license of the petitioner/accused (Ex. P18), mechanical test reports (Ex. P23 & Ex. P24) and the time table of the bus (Ex. P26) that had been obtained from the Punjab Roadways Depot Amritsar and the other relevant documents on record.

14. PW-2 Kulbir Singh AME had brought the record of offending bus and also the duty roaster of the bus to show that the offending bus, at the relevant time was being driven by the petitioner.

15. PW-8 Dr. Prince Ajaypal Singh had conducted the postmortem of Rohit Kumar and Shashi Kumar and had proved that the death had taken place on account of the injuries suffered in the accident. The other witnesses i.e., PW-5 Balbir Kumar, PW-6 PHC Jasvir Singh, PW-7 ASI Krishan Gopal, PW-9 Rohit Data Entry operator RTA office and PW-10 Retired Yard Master Ashok Kumar, had also supported the case of the prosecution and proved the case against the present petitioner.

16. Nothing has come out from the cross-examination of the witnesses so as to demolish the case of the prosecution and thus, the conviction of the petitioner is upheld. As far as sentence which has been awarded to the petitioner is concerned, this Court is of the view that keeping in view the fact that the incident in the present case is of the year 2016 and the petitioner has never misused the concession of bail/suspension of sentence granted to him and the petitioner is not involved in any other case and is also 47 years of age and is the sole bread winner of his family and has two minor daughters aged 15 years and 12 years respectively and they are studying in 10th and 9th class respectively and the petitioner also has old aged parents to take care of and has already undergone custody of more than two months after conviction and also in view of the judgments relied upon by the learned counsel for the petitioner, it is ordered that the sentence awarded to the petitioner, be reduced to six months.

17. The same would, however, be subject to the petitioner depositing an amount of Rs.60,000/- before the Chief Judicial Magistrate 1st Class, Gurdaspur, within a period of two months from today.

18. The Chief Judicial Magistrate, Gurdaspur, is directed to issue notice to the legal representatives of the deceased after the deposit of above-said Rs.60,000/- is made by the petitioner, so that the same can be released to the legal representatives of the deceased in the following manner: -

- (i) Rs. 30,000/- to the legal representative of deceased-Rohit @ Vicky.
- (ii) Remaining Rs.30,000/- to the legal representative of deceased-Shashi Kumar.

19. It is made clear that, in case, the said amount is not deposited within a period of two months from today, the present Criminal Revision Petition would be deemed to have been dismissed.

20. Accordingly, the present Criminal Revision petition is disposed of in the abovesaid terms.

21. Since, the main case has been decided, application bearing CRM-36171-2022 for suspension of sentence of applicant-petitioner is rendered infructuous and is disposed of as such.

November 09, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes