

IN THE HIGH Court OF PUNJAB & HARYANA
AT CHANDIGARH

225

CRR-1783-2021 (O&M)
Date of decision: 15.07.2022

ANKUSH KUMAR

....Petitioner(s)

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

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

Present : Mr. Suvir Sidhu, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The present petition raises a challenge to the judgement dated 17.12.2021 passed by the Sessions Judge, Jalandhar as well as to the judgement and order dated 27.09.2018 passed by the Judicial Magistrate 1st Class Jalandhar in case bearing FIR No. 58 dated 19.04.2013 registered under Sections 304–A, 279, 337, 338 and 427 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Maqsudan, District Jalandhar whereby the petitioner was convicted for the commission of the aforesaid offences and was sentenced as under: –

Under Section 304-A IPC	R.I. For 15 months with fine of Rs.3,000/- and in default, S.I. For 30 days
Under Section 279 IPC	RI for 06 months with fine of Rs.1,000/- and in default S.I. For 30 days All the sentences shall run concurrently

2. Briefly summarized the case of the prosecution and history leading to the filing of the present petition is as under: –

- i. On 19.04.2013 ASI Gurmej Singh along with other police officials, was present in the police station and MHC handed over to him a slip bearing No. 204481 dated 19.04.2013 pertaining to Dhian Masih, whereupon ASI Gurmej Singh along with co-officials reached Sacred Heart Hospital, Maqsudan Jalandhar and sought opinion of the doctor regarding fitness of injured Dhian Masih to make statement and the doctor declared the injured unfit to make statement. Then, Constable Ranjit Singh No. 951382060, who was present along side injured Dhian Masih, got recorded his statement before ASI Gurmej Singh wherein he has stated that on that day, on the orders of their seniors, he along with HC Dhian Masih No. 911270735 were going to Lidhran Camp, 114 Battalion CRPF Camp in connection with some official work. He was on his motorcycle No. PB-18-S-1351 and Dhian Masih was on his motorcycle No. PB-18-S-5718 and was ahead of him. At about 6:35 P.M. when they reached near gate No.1, ITBP Camp, Bidhipur, a Swift car bearing registration No. PB-08-BF-0041 came from the opposite side and while being driven rashly, negligently and at high speed, hit the motorcycle of Dhian Masih by coming on the wrong side of the road and the car stopped near the wall of ITBP camp. Due to the accident, Dhian Masih received multiple grievous injuries and his motorcycle was also damaged. He informed about the incident to his seniors and called the Ambulance and the injured was admitted in Sacred Heart Hospital, Maqsudan. He further stated that car driver disclosed his name as Ankush son of Satnam Singh, resident of Sarai Khas. He further stated that the accident has taken place due to rash and negligent driving of the car by its driver.
- ii. On the basis of aforesaid statement of the complainant, the present FIR

- under Sections 279,337,338,427 IPC was registered. The Investigating Officer visited the spot and prepared the rough site plan. The vehicles involved in the accident were taken into possession. On 20.04.2013, Dhian Masih succumbed to his injuries whereupon offence under Section 304-A IPC was added in the present case. The Investigating Officer conducted the inquest proceedings on the dead body of Dhian Masih. The autopsy on the dead body of the deceased was conducted at Civil Hospital, Jalandhar. Accused was arrested in the case. Statements of the witnesses were recorded and on completion of the investigation, challan against the accused was presented in the Court of Area Magistrate.
- iii. On presentation of the challan in the Court, copies of the same were supplied to the accused free of costs and finding a prima facie case, the accused was charge-sheeted under Sections 279, 304-A IPC, to which accused pleaded not guilty and claimed trial.
- iv. In order to prove its case, prosecution examined PW-1 Ranjit Singh, complainant, PW-2 Surjan Singh, PW-3 ASI Gurmej Singh, PW-4 Dr. Navneet Kaur, PW-5 Nirmal Kapoor, PW-6 ASI Hari Chand, PW-7 Khazan Masih, PW-8 HC Tarlochan Singh and PW-9 Narinder Singh. Thereafter, evidence of the prosecution was closed by order of the Court dated 21.05.2018.
- v. After closure of the prosecution evidence, statement of the accused was recorded under Section 313 Code of Criminal Procedure (hereinafter referred to as 'CrPC') and he was confronted with the incriminating evidence appearing against him. He denied the prosecution allegations and pleaded his innocence and false implication. Appellant-accused did not lead any

evidence in his defence.

vi. After hearing the learned APP for the State, learned counsel for the accused and going through the evidence on record, the learned trial Court vide impugned judgment of conviction and order of sentence dated 27.09.2018 convicted and sentenced the appellant-accused.

3. Aggrieved of the aforesaid judgement of conviction and order of sentence, the petitioner preferred an appeal before the Court of Sessions judge, Jalandhar bearing Criminal Appeal No. 485 of 2018. After hearing learned counsel representing the respective parties, the Sessions Judge recorded as under: –

14. Now, this Court is to see as to whether there is any merit in the argument of the learned counsel for the appellant-accused? PW-1 Ranjit Singh, complainant, while reiterating the prosecution version has categorically stated in his examination-in-chief that on the day of accident, on the directions of their senior Officers, he along with Dhian Masih were going to Lidhran Camp, 114 Battalion, CRPF for some official work. At that time, Dhian Masih was driving his motorcycle No. PB-18-S-5718 and he was following him on his motorcycle No. PB-18-T-1351 and at about 6:30 p.m. when they reached near Gate No.1, ITBP Camp, Bidhipur, a swift car bearing No. PB-08-BF-0041 came from the opposite side and while being driven rashly, negligently and at high speed, hit the motorcycle of Dhian Masih, due to which Dhian Masih received injuries. The car after striking the motorcycle of Dhian Masih stopped near the wall of ITBP. The injured was taken to Sacred Heart Hospital, Maqsudan where he succumbed to his injuries on the next day. This witness has also identified the accused, who was present in the Court on that day, as the person, who was driving the car at the time of accident. This witness has been cross-examined at length but

nothing could be elucidated from his cross-examination to raise any dispute regarding his presence at the spot. A critical analysis of the testimony of this witness reveals that the learned defence counsel has failed to bring on record even a minor contradiction in the evidence of this witness so as to suggest that he was not present at the spot or that accident has not taken place in the manner disclosed by him. Moreover, on the demand of learned counsel for the accused, this witness also produced the record pertaining to entries made at the gate of CRPF Campus i.e. the place of posting of this witness as well as deceased Dhian Masih. Perusal of cross-examination of this witness reveals that there is an entry in the record regarding deceased having went out of the campus. However, no question or any suggestion has been put to PW Ranjit Singh that there is no entry regarding his going out of the campus along with deceased Dhian Masih.

15. Much stress has been laid by the learned counsel for the appellant that in the slip mark A, the name of the person, who brought the injured to hospital is recorded as Lovepreet Singh and had PW Ranjit Singh been accompanying the injured, then his name would have been mentioned in the slip mark A. In the opinion of this Court, merely on the basis of document mark A, the presence of PW Ranjit Singh cannot be doubted because firstly this document was never put to PW Ranjit Singh in his cross-examination and secondly the accused has not examined Dr. Alok G. Kilwani, who authored this document. Moreover, in such like situation where the injured has received grievous injuries, the first priority of an attendant is to look after the injured and provide him the medical aid, rather than running after the hospital authorities to get his name recorded in the records. Therefore, in the opinion of this Court, the presence of PW-1 Ranjit Singh at the spot is duly proved.

16. It has been vehemently contended by learned counsel for

the appellant-accused that in fact the accident in question has taken place with an unknown vehicle between 4:00 to 5:00 p.m. but the time of accident has been changed to 6:30 p.m. with a view to justify the presence of PW Ranjit Singh at the spot and in this regard, learned counsel has drawn the attention of this Court towards the cross-examination of PW-7 Khazan Masih. Though, PW-7 Khazan Masih has stated in his cross-examination that he received telephonic information about accident at about 5:00 p.m. but in the opinion of this Court, by picking a stray line from the cross-examination of this witness, no doubt can be raised about the time of accident or about the presence of PW Ranjit Singh, which has been duly proved on record. PW-7 Khazan Singh is not the eye witness of the accident and no question has been put to him as to from whom he received the information about the accident. No call detail record of the mobile phone on which this witness received the information about the accident has been produced on the record.

17. As far as identity of the appellant-accused is concerned, then it is observed that PW-1 Ranjit Singh has clearly stated in his statement that after hitting the motorcycle of the deceased, the car being driven by the accused stopped near the wall of the ITBP. He identified the accused as the person, who was driving the car at the time of accident. This witness has clearly stated in his cross-examination that he along with people gathered at the spot apprehended the accused at the spot and when he was looking after the injured, the accused ran away from the spot. Moreover, it is neither the case of the accused nor there is anything on record that PW Ranjit Singh has any motive to falsely implicate the accused in the present case. The learned counsel for the appellant has failed to convince this court as to why the complainant would falsely implicate the appellant in this case more so, when no enmity has been

suggested between the them. Furthermore, PW-5 Nirmal Kapoor, Junior Assistant from the office of DTO, Jalandhar has produced the record pertaining to Car No. PB-08-BF-0041 and deposed that as per record the aforesaid car is registered in the name of Satnam Singh son of Lachhman Singh, resident of Mohalla Patti Billa, Sarai Khass, Jalandhar. Thus, it emerges that offending swift car is owned by father of the appellant accused and in these circumstances, it was for the appellant-accused to disclose as to who was driving the offending car at the time of accident, if it was not being driven by him. Moreover, perusal of the possession memo, Ex.PW.4/D, reveals that appellant-accused himself produced the swift car bearing No. PB-08-BF-0041 along with copy its registration certificate and copy of his driving licence before the Investigating Officer. So, if the vehicle in question and the accused were not involved in the accident in question then there was no occasion for the accused to produce the car, its RC and his driving licence before the police. The learned counsel for the appellant has failed to disclose as to why appellant-accused produced the offending car, its RC and his driving licence before the police if he was not involved in the accident in question. There is nothing on record that appellant-accused moved any application before any authority that he has been falsely involved in the present case. In the present case, PW-1 Ranjit Singh has not only identified the accused in the Court but from the evidence on record it emerges that he had seen the accused at the spot at the time of accident also. Thus, it stands proved that PW-1 Ranjit Singh had seen the appellant-accused at the time of accident and then he identified him in the Court as well.

4. The appeal so preferred was accordingly dismissed by the Sessions Judge, Jalandhar. Hence, the present revision petition.

5. During the hearing held on 18.02.2022, the counsel appearing on behalf of the petitioner made a categorical statement that he does not press challenge to the conviction recorded in the impugned judgements and confines his prayer only for the reduction of the sentence so imposed by the Courts below. Notice of motion was accordingly issued in the instant revision petition restricted to the said aspect only.

6. Today on resumed hearing, the counsel representing the petitioner has reiterated the statement made before this Court on 18.02.2022 and restricted his contention and prayer to the sentence part alone.

7. While advancing arguments on the quantum of sentence, it has been contended by the learned counsel that the incident in question had taken place in the year 2013 and that the petitioner has already suffered the agony of a criminal trial for a period of more than 9 years. He further contends that as on the date of the accident, the petitioner was in his early 20s and was of young age. His conviction in a criminal case is likely to have severe impact on the future career prospects of the petitioner. He further argues that proceedings had also been instituted against the petitioner for compensation under the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal, Gurdaspur and that compensation to the tune of Rs.48 lakhs approximately (Rs.43.71 lakhs as the principal amount plus interest) was awarded in favour of the claimants—legal representatives of the deceased and that the said quantum of compensation also stands disbursed.

8. Learned counsel for the petitioner has further argued that the father of the petitioner has passed away and that he has a mother aged 62 years, who is suffering from various ailments and is currently bedridden. He contends that he

has one younger brother, who is residing with his grandfather in Canada for the last 7 years and is mentally advanced. Hence, the petitioner is the only person in the family who is there to take care of his ailing mother. He further submits that the incident in question had taken place in the year 2013 and that there has been no other involvement of the petitioner in any other case of such or similar nature since then.

9. While controverting the prayer made by the counsel representing the petitioner, learned State counsel has submitted that a person had lost his life on account of a rash and negligent driving of the petitioner and that the offences relating to rash driving are on a rampant increase. No amount of monetary compensation to the family can indemnify loss of the person. It is submitted that the petitioner does not deserve any leniency and that the punishment of 15 months as awarded by the Judicial Magistrate 1st Class, Jalandhar cannot be said to be excessive or harsh. Rather, all the said aspects have already been taken into consideration by the Judicial Magistrate while imposing sentence upon the petitioner. It is further pointed out that as against the punishment imposed of 15 months, the petitioner has undergone an actual sentence of 7 ½ months only and that the Hon'ble Supreme Court has already held in the matter of ***State of Punjab versus Balwinder Singh and others (2012) 2 SCC 182*** that deterrence is one of the considerations to be kept in mind while imposing sentence for lessening high rate of motor accidents due to careless and callous driving of vehicles, Courts are expected to consider all relevant facts and circumstances.

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 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.'

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 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 extend 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 ramification on the victim and the immediate collectives also has to be examined.

13. In the matter of **State through Central Bureau of Investigation, Anti Corruption Branch, Chandigarh Vs. Sanjiv Bhalla and another** the Hon'ble Supreme Court had held as under:-

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.

23. In Ajahar Ali v. State of West Bengal 19 the appellant was convicted of an offence of outraging the modesty of a woman punishable under Section 354 of the IPC. This was held to be "a heinous crime and with the social condition prevailing in the society, the modesty of a woman has to be strongly guarded" and so the benefit of the Probation of Offenders Act was not given to him. This may be contrasted with Prem Chand and subsequently Dharam Pal where the convict was guilty of a far more serious offence of attempted rape and yet granted the benefit of the Probation of Offenders Act, notwithstanding the nature of the crime, and only because of his age.

24. These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift - from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act, what is imperative for the judge is to strike a fine balance between releasing a convict after admonition or on Probation of Offenders Act, what is imperative for the Judge is to strike a fine balance between releasing a convict after admonition or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing mission must not be forgotten.

14. The Hon'ble Supreme Court had in the above said aspects after taking due note of the judgement relied upon by the counsel for the State of Punjab in the

matter of Balwinder Singh's case (*supra*) and had recorded the aforesaid observations while being alive to the said situations. It was also noticed by the Hon'ble Apex Court that both the aforesaid judgements reflect certain extremely shocking circumstances. In the case of Dalbir Singh, the bus driver knocked down the cyclist in a place where offices were located while in the case of Balwinder Singh (*supra*) five persons had lost their lives. The present case is however distinguishable on the facts.

15. 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 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.

Conclusion

16. Taking into consideration the circumstances referred to by the counsel, the judgments of the Hon'ble Supreme Court as well as this Court coupled with the mitigating circumstances referred to above along with the fact that the petitioner has undergone nearly half of the total sentence imposed upon him by the trial Court and there has been no further involvement of the petitioner in any other criminal case which reflects upon reformatory conduct of the petitioner fulfilling the object to be achieved while sentencing, I deem it appropriate to partly accept the present petition. While maintaining the judgment of conviction passed by the Judicial Magistrate First Class, Jalandhar and affirmed by the Sessions Judge, Jalandhar, however, the order of sentence is modified and

the sentence is reduced to the period already undergone. Further, the sentence of fine to the tune of Rs.3,000/- imposed by the Magistrate for commission of offence under Section 304-A IPC is enhanced to Rs.10,000/- and the petitioner is further directed to pay a compensation of Rs. 1½ lakhs to the legal heirs of the deceased (Dhian Masih) over and above the amount of compensation already awarded by the Motor Accident Claims Tribunal, Gurdaspur vide judgment dated 04.12.2014 and without prejudice or detriment to the rights of the claimants.

Needless to mention that in the event of failure on the part of the petitioner to deposit the fine and compensation within a period of six weeks from the receipt of a certified copy of this judgment, the present petition shall be deemed to have been dismissed and the petitioner shall have to undergo his sentence as imposed by the Courts.

The present revision petition is partly allowed in terms as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

July 15, 2022

S.Sharma(syr)

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*