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

CRM-44373-2021 in/and
CRA-S-2478-SB-2018 (O&M)
Date of decision : 07.01.2022

Jaipal

...Appellant

Versus

State of UT, Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Saransh Sabharwal, Advocate for the appellant.

Mr. Anil Kumar Lamdharia, Addl. PP UT Chandigarh.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

CRM-44373-2021

This is an application filed under Section 482 of Cr.P.C. for release of original driving licence of the appellant.

Learned counsel for the applicant-appellant as well as U.T. Chandigarh, have stated that instead of deciding the present application, main appeal may kindly be heard and decided. It is submitted that both the counsel are prepared to argue the appeal.

In view of the same, the present application is disposed of with the observation that the main appeal is taken up on Board today

itself for final disposal.

Main case

Challenge in the present appeal is to the judgment dated 17.04.2018 passed by the Additional Sessions Judge, Chandigarh and also to the order of sentence dated 20.04.2018 vide which the appellant had been convicted as under:-

<i>Name of Convict</i>	<i>Offence under Section</i>	<i>Imprisonment</i>
Jai Pal	304 Part-II IPC	To undergo rigorous imprisonment for a period of 7 years (Seven years) and to pay fine of Rs.50,000/- (Rs.Fifty Thousand Only) and in default of payment of fine, to further undergo rigorous imprisonment for 6 months (SIX months)
	338 IPC	To undergo rigorous imprisonment for a period of 2 years (two years) and to pay fine of Rs.1,000/- (Rs.One Thousand Only) and in default of payment of fine, to further undergo rigorous imprisonment for 7 days (Seven days)
	185 of Motor Vehicle Act	To undergo rigorous imprisonment for a period of 6 months (six months) and to pay fine of Rs.2,000/- (Rs.Two Thousand Only) and in default of payment of fine, to further undergo rigorous imprisonment for 15 days (fifteen days)

All the sentences shall run concurrently. The period of detention already undergone by the convict during the investigation and trial is ordered to be set off from the substantive sentence imposed upon him. Case property be disposed of/returned to the rightful owner, as per rules

after the period of expiry of the limitation for appeal/revision in the case. File be consigned to the record room. Fine not paid.”

The case in brief of the prosecution is that the FIR was registered on the statement of Constable Ajay Kumar with the allegations that on the intervening night of 01/2-11-2016, he was on patrolling duty alongwith Kulwinder No.1303 and on reaching the lights point of Sector 40/41, Chandigarh, they saw a Tempo-Traveller bearing registration No.PB-01-A-7736 (offending vehicle) being driven in a rash and negligent manner and after jumping the red light, struck against the Aactiva Scooter bearing registration No.CH-01-BE-1164 which was coming from Badheri Chowk Sector 40/41 and 54/55 on which two persons were stated to be travelling and the said car dragged the scooter for 20- 25 steps and on account of the said accident, grievous injuries were suffered by Surinder, which resulted in his death. Even the other rider-Santosh had suffered multiple grievous injuries. The appellant was apprehended on the spot. On the basis of the said statement, FIR was registered and challan was presented and the appellant was tried by the Sessions Court.

The prosecution has examined 19 witnesses, in support of its case, which are as follows:-

1. PW1-HC Harbans Singh
2. PW2-Constable Sombir Singh
3. PW3-Constable Ajay Kumar

4. PW4-Dr. Harmeet Sodhi
5. PW5-Dr. Parsoon Kumar, Sr. Resident, Department of Orthopedics,
PGIMER, Chandigarh
6. PW6-Milab Chand
7. PW7-Dr. Satyam Tyagi, EMO, GMSH-16, Chandigarh
8. PW8-Naresh Kumar
9. PW9-HC Satish Kumar,
10. PW10-Volunteer Kulwinder No.1303
11. PW11-Devinder Singh Rawat, Data Entry Operator,
12. PW12-Meenu, Junior Scientific Officer, CFSL, Chandigarh
13. PW13-ASI Dharamvir Singh,
14. PW14-Santosh
15. PW15-HC Dharam Pal
16. PW16-Mohinder Singh, Investigating Officer,
17. PW17-Constable Vikas Kumar,
18. PW18-HC Yash Pal No.3104,
19. PW19-Pardeep Singh Rawat,

The statement of the appellant under Section 313 of Cr.P.C. was recorded wherein he had denied all the allegations levelled against him.

There were three eye-witnesses i.e. PW3-Constable Ajay Kumar, PW10-Volunteer Kulwinder No.1303 and PW14-Santosh, who was also an injured person and the said witnesses have given the details of the accident and have stated that the accident took place in their

presence and it was on account of the rash and negligent driving of the appellant who was driving the Tempo-Traveller due to which, the accident had taken place after having jumping the red light.

PW3-Constable Ajay Kumar, had also identified the appellant who was present in the Court.

PW5-Dr. Parsoon Kumar, and PW7-Dr. Satyam Tyagi, have proved on record the medico legal report and postmortem report respectively and as per the said medical evidence, it was proved beyond doubt that the deceased had died on account of the injuries suffered at the time of accident.

PW11-Devinder Singh Rawat, had produced on record the driving licence of the appellant.

PW12-Meenu, Junior Scientific Officer, had proved her report as Ex.P16 to show that the appellant was under the influence of alcohol at the time of accident.

PW13-ASI Dharamvir Singh, had mechanically examined the Tempo Traveller which was the offending vehicle and the vehicle that was hit i.e. Activa Scooter and had submitted its report as Ex.P19.

PW16-Investigating Officer had duly proved on record the investigation.

PW19 was the owner of the offending vehicle and had stated that he had employed the appellant as a driver for the offending vehicle.

Statement under Section 313 of Cr.P.C. was recorded and after considering the entire evidence and documents on record, the trial

Court had convicted the appellant under Sections 304 Part-II, 338 of the IPC and Section 185 of the Motor Vehicle Act and had sentenced the appellant as has been detailed hereinabove.

During the course of arguments, learned counsel for the appellant has submitted that although, he does not wish to challenge the conviction of the appellant but would be satisfied in case a lenient view is taken with respect to the sentence which has been awarded to the appellant. In this regard, he has submitted that the FIR in the present case is of the year 2016 and thus, the appellant has suffered agony of trial/appeal for all these years and the appellant was granted bail/suspension of sentence but he has never misused that concession. It is further submitted that the appellant is 46 years of age and has two children and is the sole bread winner in the family. It is further submitted that as per the custody certificate (which is taken on record), the appellant had already undergone 3 Years, 10 months and 22 days of actual custody and has also earned remission of 1 year, 4 months and 18 days and his total sentence including remission is 3 years, 10 months and 24 days. It is submitted that the appellant is not involved in any other case. It is also stated that even the family of brother of the appellant is dependent upon the appellant and the appellant has an old aged mother also to look after, who is also solely dependent upon him. It is further argued that in the present case, there was no intention of the appellant to have caused the accident. In support of his arguments, he has relied upon judgment passed by the Coordinate Bench of this Court in case titled as **Rajinder Singh @**

Lala and another Vs. State of Punjab, reported as **2017(4) Law Herald 3121** to contend that said case was a case in which conviction was under Section 304 of IPC and the appellant therein had undergone 1 year, 8 months and 5 days of actual custody out of total sentence of 4 years and the Coordinate Bench of this Court was pleased to reduce the sentence to one already undergone.

Reliance has also been placed upon **CRR-1931-2010 decided on 23.07.2019 titled Chander Bhan Vs. State of Haryana** in which in a case where the appellant therein had actually undergone sentence of 04 months and 07 days in a case under Sections 279 and 304-A of the 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 Sections 279/304-A of the 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 v. State of Punjab, CRR-1239-2012 decided on 29.08.2019, 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.

Learned counsel for the U.T. Chandigarh has stated that the judgment of the trial Court had been passed after considering the entire evidence and material on record. The other factual aspects have not been rebutted by the learned counsel for the UT Chandigarh. He has also produced on record the custody certificate of the appellant, which is taken on record, as per which, the period of custody as stated by the learned counsel for the appellant, is correct.

This Court has heard the learned counsel for the parties and has perused the paper book.

Insofar as the conviction of the present appellant under Sections 304 Part-II, 338 of the IPC and Section 185 of the Motor Vehicle Act is concerned, this Court is of the view that Additional Sessions Judge, Chandigarh, had considered the entire evidence and material on record in detail and had rightly come to the conclusion that it was the appellant who was driving the offending vehicle and the accident had taken place on account of his negligent driving due to which one person had died and one person was injured. There were three eye-witnesses in the present case i.e. PW3, PW10 and PW14 and they all have fully proved on record that it was the present appellant who was responsible for the accident which had taken place on account of his rash and negligent driving. PW5 and PW7 are the Doctors who have been examined and they have duly proved on record the medico legal report and postmortem report respectively, to prove that the death of the

deceased-Surinder had taken on account of the injuries that he had suffered in the accident in question. PW13-ASI Dharamvir Singh, had duly proved on record the mechanical examination report of the offending vehicle and of Honda Activa Scooter as Ex.P19. PW16-Investigating Officer had duly proved on record that the investigation had been carried out, in accordance with law. Nothing has come out from the cross-examination of the said witnesses so as to even remotely demolish the case of the prosecution and thus, conviction of the present appellant is upheld.

Insofar as the sentence which had been awarded to the appellant is concerned, this Court is of the view that the incident in the present case is of the year 2016 and the appellant had never misused the concession of bail/suspension of sentence and he is not involved in any other case and the appellant is 46 years of age and has two children and an old aged mother and is the sole bread winner in the family and has already undergone 3 Years, 10 months and 22 days of actual custody and has also earned remission of 1 year, 4 months and 18 days and his total sentence including remission is 3 years, 10 months and 24 days.

Thus, in view of the abovesaid facts and circumstances, as also the judgments relied upon by the learned counsel for the appellant, sentence awarded to the appellant is ordered to be reduced to the period already undergone subject to the fact that an amount of Rs.1,00,000/- will be deposited by the appellant before the concerned Appellate Court/Chief Judicial Magistrate within a period of two months from today. The said

amount of Rs.1,00,000/- would be in addition to the fine of Rs.53,000/- which would also be deposited by the appellant within a period of two months from today.

It is also made clear that in case, the amount of Rs.1,00,000/-, in addition to the fine of Rs.53,000/-, total amount Rs.1,53,000/-, is not deposited within the aforesaid period, then the present criminal appeal would be deemed to have been dismissed.

The concerned Appellate Court/Chief Judicial Magistrate, after the deposit of an amount of Rs.1,00,000/-in addition to the fine of Rs.53,000/- by the appellant as aforesaid, would issue notice to the legal representative of the deceased-Surinder and thereafter, release Rs.1,00,000/- to the said legal representative of the deceased.

With the abovesaid observations, the present criminal appeal is disposed of.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

07.01.2022

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**