

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

253

CRR-630-2022

Date of decision : 09.10.2023

Ramphal

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Raman Chawla, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (Oral)

1. Petitioner has filed the instant revision petition impugning the judgment dated 07.03.2022 passed by Additional Sessions Judge, Hisar whereby appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 10.09.2019/11.09.2019 passed by SDJM, Hisar, stands affirmed.
2. Vide impugned judgment, Ld. Trial Court convicted the petitioner for offences punishable under Section 279, 304-A, 337 and 338 of IPC in case FIR No.588 dated 30.08.2105, at Police Station City Hansi and sentenced him as under:-

Section (IPC)	Rigorous Imprisonment	Fine (in Rs.)	In default of payment of fine (rigorous imprisonment)
279	6 months	500	10 days
337	6 months	500	10 days
338	1 year	1000	15 days
304-A	1 year	1000	15 days

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3. As per the case of prosecution, the FIR was registered on the statement of one Jagdish to the effect that on 29.08.2015, he alongwith his wife, daughter and son Vivek Kumar were going to Hajampur via Hisar in a private bus. Bus driver dropped them as well as other passengers outside the entry gate of bus stand, Hansi. His son Vivek was in the lap of his wife Rajni, while his daughter was with him. At the time of entering into bus stand premises for taking bus of Hajampur, a bus bearing No.HR-99UL(T)-3477 being driven by Ramphal-petitioner in a rash and negligent manner, came from behind. Front tyre of the bus ran over both legs of his wife who suffered multiple injuries and his son died at the spot. Bus driver Ramphal fled away from the spot alongwith his bus. Statements of witnesses were recorded. Accused-petitioner was arrested. After completion of investigation, challan against the petitioner was presented.

4. Trial Court after appreciating the evidence on record came to the conclusion that the prosecution has proved its case beyond doubt. Accident was caused on account of rash and negligent driving by petitioner and thus, convicted him for offences punishable under Section 279, 337, 338 and 304-A IPC.

5. The petitioner preferred an appeal before the lower Appellate Court. The learned Appellate Court found that the judgment and order of sentence passed by the learned Trial Court is well reasoned and based on proper appreciation of facts and evidence.

6. Counsel for the petitioner contends that in case, finding of conviction is being maintained, the act of the petitioner is of negligence and not intentional. He is a first time offender and sole bread earner of

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his family. He submits that apart from this case, there is no other case pending against the petitioner. Thus he prays that a lenient view be taken against the petitioner especially in the light of the fact that he is facing protracted trial for the last 08 years.

7. Learned State counsel submits that both the Courts below have rightly found petitioner guilty of offences punishable under Sections 279, 304-A, 337 and 338 of IPC. It is a case wherein a precious life was lost in the accident.

8. In support of his prayer, counsel for the petitioner relies upon **Jagdish Chander vs. State of Delhi, (1973) 2 SCC 203** wherein the Apex Court taking in view the mitigating circumstances, reduced the sentence of imprisonment from six months to a period of three weeks of imprisonment already undergone by the accused. He further relies upon **Nand Ballabh Pant vs. State (Union Territory of Delhi), (1976) 4 SCC 512** wherein the accused, convicted under Section 304-A of IPC, was sentenced to two months RI and the same was reduced by Supreme Court to one month and the fine was enhanced from Rs 500 to Rs 1,000.

9. Further reliance has been placed upon the orders passed by Coordinate Bench in **Nirmal Singh @ Pappu Vs. State of Haryana, 2008 (13) R.C.R. (Criminal) 408** decided on 4th of March, 2008, wherein the sentence of conviction under Section 304-A was reduced to already undergone. Apex Court in the case of '**Surendran vs. Sub-Inspector of Police, 2021 AIR (SC) 3197**' and '**K. Jagadish vs. State of Karnataka and another, 2018 SCC Online SC 2489**' reduced the sentence imposed by the Trial Court to 06 months.

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10. I have heard counsel for the parties and have carefully gone through records of the case.

11. Counsel for the petitioner has not been able to point out any glaring error of law that can persuade this Court to exercise revisional jurisdiction to upset the findings recorded by the Courts below. The Courts have rightly appreciated the entire evidence and found the petitioner guilty.

12. However, having held so, the question that arises is “*whether the petitioner should be sent to jail at this stage?*”

13. In the offences punishable under Section 304-A IPC there are two parallel threads of judgments occupying the field. In the case of **Jagdish Chander vs. State of Delhi** (supra), the Apex Court observed as under :

“9. The more difficult question seems to be one of sentence in- the present case. The accident took place on April 20, 1965, the trial Court convicted the appellant on April 30, 1968 sentencing him to rigorous imprisonment for 6 months and to a fine of Rs. 500/-. His appeal was dismissed by the Addl. Sessions Judge on September 7, 1966 and his revision was disallowed on September 11, 1969. He was ordered to be released on bail by this Court on February 2, 1970. We are now in May 1973. The criminal proceedings against the appellant have thus gone on since April 1965 which means a little more than 8 years. The circumstances in which the collision between the truck and the appellant's scooter occurred seems prima facie to suggest that they (their drivers) were both to blame. Penalties designed to deter crime should be gauged so far as possible to the degree of social danger that is represented by the crime and its repetition. To send the appellant back to Jail to serve the sentence of 6 months after 8 years seems to us to be highly unjust for the kind of offence which has been upheld against him by the three courts below. It is unlikely to have any

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reformatory effect on him. Harassment of a criminal trial for more than 8 years and the expense which he must have incurred, in our opinion, can legitimately be taken into account when considering the question of sentence to be imposed by this Court at this point of time. The appellant is stated to have served out only three weeks of imprisonment but on a consideration of all the relevant circumstances of the case we think it would be just and proper to reduce the sentence of imprisonment to that already undergone but to increase the sentence of fine from Rs. 500/- to Rs. 700/-. Out of the fine, if realised, Rs. 500/- should be paid to the mother of the deceased child. We, however, cannot help expressing our grave concern over the inordinate delay in the disposal of criminal cases including appeals and revisions. If our criminal justice is to achieve its real purpose and if it is to inspire the confidence of the people generally, causes for such delays should be eliminated as early as practicable. Law's delays tend to turn justice sour.

(emphasis supplied)”

14. Somewhat similar view was taken by Apex Court in **Nand Ballabh Pant vs. State (Union Territory of Delhi) (supra)** holding as under :

“1. We have gone through the evidence in this case and we are satisfied that there is no reason to interfere with the conviction recorded against the appellant for the offence under Section 304A of the Indian Penal Code. The sentence which has been imposed on the appellant has been progressively reduced and ultimately the appellant has been sentenced to suffer rigorous imprisonment for two months and to pay a fine of Rs. 500/-. We think that having regard to the special facts and circumstances of the present case, it would meet the ends of justice if the sentence of imprisonment is reduced to one month and in lieu thereof, the fine is enhanced to Rs. 1000/-.

“2. We accordingly allow the appeal only in regard to sentence and reduce the sentence of imprisonment imposed on the appellant from two months to one month's rigorous imprisonment and in lieu thereof, enhance the sentence of

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fine from Rs. 500/- to Rs. 1000/- with a direction that in default of payment of fine, the appellant will suffer further rigorous imprisonment for one month. We have told that the appellant has already deposited a sum of Rs. 1000/- in respect of the sentence of fine which has been imposed on him by the learned Judicial Magistrate who tried the case. This amount may be directed to be appropriated towards payment of the fine and it may be paid over to the lady who was the wife of the deceased at the time of his death, as and by way of compensation.”

15. Similar view was again reiterated by Supreme Court in the case of **K. Jagdish vs. State of Karnataka and another** (supra) holding as under :

“6. Pursuant to the aforesaid order, a sum of Rs.4,00,000/- has been deposited and that has been withdrawn by the respondent No.2- the complainant. It is stated at Bar that it is in addition to the amount of Rs. 5,00,000/- that was awarded in the death claim case in the MACT matter in Lok Adalat settlement.

7. In view of the aforesaid order of depositing Rs.4,00,000/- that was passed by this Court and also the fact that the appellant was directed to surrender vide order dated 10.5.2013, he surrendered on 19.6.2013. Then was released on bail on 1.7.2013.

8. He has undergone sentence for about 2 weeks and in addition, he has paid the aforesaid amount of 4 lakhs. Thus, the sentence of imprisonment is reduced to the period already undergone in view of the monetary compensation of 4 lakhs that has been paid by the appellant and withdrawn by the respondent No.2 and fine of 2,000/- imposed has also been deposited.

9. Thus, the sentence of imprisonment is accordingly modified.”

16. Again Three Judges Bench in the case **Surendran vs. Sub-Inspector of Police, 2021** (supra) held as under :-

“9. The judgment of this Court in Prakash Chandra Agnihotri (Supra) as relied by learned counsel for the

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appellant does support his submissions. In the above case, the accused was convicted and sentenced for six months under Section 304A. This Court converted the sentence of imprisonment into fine of Rs.500/-. The Court was of the view that it would be harsh to send the appellant to the Jail after 18 years of the occurrence. Following was observed in paragraph 1 of the judgment: -

“1. The Courts below have maintained the conviction of the appellant under Section 304-A Indian Penal Code. We have gone through the judgments of courts below and we find no infirmity therein. We uphold the conviction. The occurrence took place on February 18, 1972. The appellant has throughout been on bail. He has been sentenced to six months rigorous imprisonment and a fine of Rs.250. We are of the view that it would be rather harsh to send the appellant to jail after 18 years of the occurrence. The ends of justice would be met if the appellant is asked to pay a fine of Rs.2000/-. The sentence is thus converted to a fine of Rs.2000/-. On realisation the amount shall be paid to the family of the deceased girl. The amount be deposited with the Trial Court within two months from today and the trial court shall disburse the same to the parents of the girl and in absence of the parents to the next of kin of the girl. In default of the payment of fine the appellant shall undergo imprisonment for six months.”

10. The incident took place on 16.02.1995 i.e. more than 26 years ago. It appears that appellant was throughout on the bail. The Trial Court after marshalling the evidence has recorded the conviction under Section 279, 338 and awarded sentence of imprisonment of six months and further sentenced to pay a fine of Rs.500/- under Section 337.

11. We do not find any error in conviction recorded by the Trial Court. The conviction of appellant is affirmed, however, looking to the facts and circumstances of the present case specially the fact that 26 years have elapsed from the incident, we are inclined to substitute the sentence of six months imprisonment under Section 279 and 338 into fine. Six months sentence under Section 279 and 338 IPC are

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substituted by fine of Rs.1000/- each whereas sentence of fine under Section 337 IPC is maintained.”

17. On similar lines, recently three Judges Bench of Apex Court in Criminal Appeal No.2719 of 2023 titled as ***“Elangovan vs. State rep. by Inspector of Police***, observed as under:-

“On the basis of materials disclosed, we do not find any reason to interfere with the order of conviction which has been sustained at all levels before the matter reached this Court. The appellant has been convicted for committing offences under Sections 304A and 337 of the Indian penal Code, 1860. We have also taken note of the fact that no involvement of the appellant in any other criminal act has been brought to our notice by the State. There is nothing adverse against his character. Considering the nature of the offence and character of the offender, in our opinion, it would be expedient to release him instead of sentencing him to any punishment but with an admonition. In such circumstances, we sustain the order of conviction under Sections 337 and 304-A of the Indian Penal Code 1860, but set aside the sentence by which he has been directed to undergo imprisonment for a period of three months. We admonish him, requiring him to be alert and careful in future in the discharge of his duties and even otherwise. He shall also pay compensation in terms of our direction in the later part of this order.

We direct him to pay compensation of Rs.3,00,000/- (Rupees three lakhs) to the victim’s kin. A sum of Rs. 2,00,000/- (Rupees two lakh) has already been deposited with the Supreme Court Registry. The said sum shall be released to the kin of the victim upon proper identification and remitted directly to his account. Rest of the compensation of Rs.1,00,000/- (Rupees one lakh) shall be deposited within two months before the Trial Court and the Trial Court shall also remit the same to the bank account of the kin of the victim upon proper identification.

We also make it clear that our order by which we have sustained the conviction, by itself, shall not have any effect on the appellant’s services in the State Transport

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Corporation. We are passing this order in exercise of jurisdiction of this Court under Sections 3, 5 and 11 of the Probation of Offenders Act, 1958.”

18. In the present case, this Court vide order dated 14.12.2022 observed as under:-

“Learned counsel for the petitioner submits that the petitioner is ready to hand over a demand draft of Rs. 80,000/- to the mother of deceased/victim Vivek as compensation.

List again on 09.01.2023.

The Investigating Officer/SHO of the police station concerned is directed to inform the mother of the deceased about the next date of hearing.

19. Thereafter, on 24.01.2023, following order was passed:-

“Learned State counsel submits that mother of the deceased, namely, Rajni was informed telephonically and she stated that she would appear in the Court today but she has not come present.

Let SHO of the concerned police station to send someone to her and inform her in writing about the next date of hearing fixed before this Court and tell her that petitioner wants to give a demand draft of Rs.80,000/- to her, she should come and receive the same. If she does not want to receive the same, then to make statement.

Adjourned to 24.04.2023.”

20. On 21.07.2023, the amount of Rs.80,000/- by way of demand draft was handed over to Rajni-mother of the deceased child. FIR is of the year 2015. The sentence of one year awarded to the petitioner was suspended by this Court on 06.07.2022 observing that he has undergone substantive sentence of about 04 months. Subsequently, the compensation as directed by this Court stands paid to the mother of the deceased who has accepted the same. It is in these circumstances, that this Court finds that it is appropriate to follow the orders passed by

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Apex Court in case of *K. Jagdish and Elangovan (supra)* as the facts in the present case are almost similar to those before the Apex Court.

21. The petitioner is a first time offender having no criminal antecedents. He is not reported to have misused concession of bail/suspension of sentence during the trial and continuation thereof in revision. He has undergone 06 months out of substantive sentence of 01 year and has faced protracted trial for last 08 years.

22. Taking into consideration, cumulative effect of all these circumstances, the sentence awarded to the petitioner is converted. The petitioner is admonished requiring him to be alert and careful in future in discharge of his duties and in case he is found involved in any other offence subsequently, the modification of sentence shall lose its effect and he will be required to undergo the remaining part of sentence.

23. Petition is disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

09.10.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No