

322

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1283-2008
Decided on : 27.01.2023

BISHAN SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Arvind Kashyap, Advocate
 for the petitioner.

 Mr. Kunwarbir Singh, AAG, Punjab.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed to impugn the judgment and order of sentence dated 03.05.2006 passed by JMIC, Gurdaspur vide which petitioner was convicted under Sections 279, 304-A and 337 IPC and was sentenced as under:

<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
279 IPC	Rigorous imprisonment (RI) for three months	Rs.500/-	RI for 15 days
304-A IPC	RI for one year	Rs.2000/-	RI for two months
337 IPC	RI for three months	Rs.500/-	RI for 15 days

The appeal preferred against the impugned judgment and order of sentence was dismissed by Addl. Sessions Judge, Fast Track Court, Guraspur vide judgment dated 12.07.2008.

The prosecution case was set in motion on the statement (Ex.PA) of Kashmir Singh wherein he stated that on 15.10.1999 he was bringing back his nieces namely Sandeep and Randeep, aged about 9 and 8 years respectively and nephew Jasdeep Singh son of Avtar, aged about 8 years on his cycle from their school. At 2.45 pm, when he was about ½ kilometers from Adda Bakshiwal, a white coloured Gypsy bearing registration No.PB-35-A-2786 being driven by the petitioner Bishan Singh came in a rash and negligent manner from the side of Gurdaspur and hit the bicycle of the complainant, as a result of which, Jasdeep Singh died on the spot while his nieces sustained injuries.

The prosecution in support of its case examined as many as 7 witnesses including the complainant as PW-1 and Dr. Gurkhel Singh Kalsi as PW-5 and Dr. Vijay Kumar as PW-7. On the basis of the evidence led and other material on record, the trial Court convicted the accused-petitioner under Sections 279, 304-A and 337 IPC vide judgment dated 03.05.2006. The appeal preferred to impugn the aforesaid judgment was also dismissed by the Lower Appellate Court vide judgment dated 12.07.2008 and hence, the present revision petition.

Learned counsel for the petitioner, at the outset, submits that he does not want to challenge the findings of conviction recorded by the trial Court on merits and would thus, confine his prayer only on the quantum of sentence.

Learned counsel submits that the accident in question took place almost 24 years back when the petitioner while on official duty was driving a gypsy. The petitioner had suffered the agony of protracted trial for the last 24 years and during the preceding so many years, he had not only been fastened with many responsibilities and his career had also been adversely affected as he was dismissed from service on account of his conviction. Learned counsel further submits that the petitioner was released on bail after his arrest and it was a matter of record that during the preceding 23 years, he was not involved in any other criminal case much less a case of similar nature, hence, a lenient view be taken in the matter of sentence imposed upon the petitioner and he be released on probation for his good conduct. Learned counsel in support of his submissions to release the petitioner on probation has relied upon the judgment in case ***Paul George Vs.State of N.C.T. of Delhi, 2008(2) RCR (Criminal) 478***, wherein almost identical facts and circumstances, the Hon'ble Supreme Court of India had ordered the accused to be released on probation under Section 4 of the Probation of Offenders Act, 1958.

Learned State counsel while opposing the prayer made by counsel opposite submits that one person lost his life in the accident in question on account of the rash and negligent driving of the petitioner, hence, he did not deserve any leniency. A prayer, therefore, has been made for dismissal of the appeal.

Heard learned counsel for the parties and perused the judgment dated 03.05.2006 passed by the trial Court as well as the judgment passed by the Lower Appellate Court confirming the conviction of the accused, which does not suffer from any perversity or illegality and is thus, upheld.

Coming to the prayer made by learned counsel for the petitioner for releasing the petitioner on probation, it would be apposite to point out here that the accident in question pertains to October, 1999 and ever since then the petitioner has been facing long and protracted criminal proceedings for more than 23 years. It is not disputed by the State counsel that after the accident in question, the petitioner has not been involved in any other criminal case and as conceded by the State counsel, he has also not misused the concession of bail granted to him during all these preceding years.

In the facts and circumstances, this Court does not deem it appropriate to send the petitioner behind bars at this juncture. No doubt, the accident in question took away one life, however, at the same time, it cannot be overlooked that the ultimate goal of punishment in a modern civilized society is to attempt reformation of the offender. It may not always be necessary in each and every case to incarcerate the offender where he/she has had an opportunity to repent for his/her wrongs. Forgiveness would ensure a better remedy than imprisonment specially in cases like the one in hand where the accident in question could not be said to have been an intentional act.

Hon'ble Supreme Court in *Ved Prakash vs. State of Haryana*, **1981(1) SCC 447** has also observed that “it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant.” It was further observed by the Apex Court “even if the Bar does not help, the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of Offenders Act.

Further, Hon'ble Supreme Court in *Manjappa vs. State of Karnataka*, **2007(3) RCR (Crl.) 216** while considering the scope of Section 361

Cr.PC and the provisions of Probation of Offenders Act held that such a relief should be granted where the offence was not of very grave nature and in some cases where *mens rea* was absent as in cases of rash and negligent driving under Section 279 r/w Section 304-A IPC.

Hon'ble Supreme Court in *State through CBI Anti Corruption Branch, Chandigarh vs. Sanjiv Bhalla and another (Crl. Appeal No.1338-1339/2014) decided on 04.07.2014* while referring to *Manjappa's case*(supra) observed that the Court desired to convey that an offence punishable under Section 279/304-A IPC being a result of an accident was, therefore, not a grave as there was absence of *mens rea*.

The Hon'ble Supreme Court in *Paul George's case*(supra) in the similar facts and circumstances while releasing the accused on probation observed as under:

“9. This litigation has been going on for the last 20 years and has been fought tenaciously through various courts, we are also told that the appellant who has had a good career throughout but for this one aberration has since been dismissed from service on account of his conviction. We, therefore, while dismissing the appeal, feel that the ends of justice would be met if we direct that the appellant be released on probation under Section 4 of the Probation of Offenders Act, 1958 on conditions to be imposed by the Trial Court. The appeal is disposed of in the above terms.”

The Coordinate Benches of this Court in *Vikaram Singh vs. State of Haryana, 2003(3) RCR (Crl.) 191* and *Jai Pal vs. State of Haryana, 1996(3) RCR (Crl.) 282* were also of the opinion that after having faced criminal proceedings for almost 20 years, no useful purpose would be served by sending the accused back to jail, more so, when he was not involved in any other criminal case.

As an upshot to the above, since the petitioner, who was a Government employee on the date of alleged occurrence and after his conviction was dismissed from service, has not been involved in any other criminal case after the accident in question, this Court is of the opinion that the ends of justice would be served if instead of sending the petitioner behind bars at this stage to serve the remaining part of sentence, he is released on probation. Accordingly, the revision petition stands disposed of. While upholding the conviction of the petitioner, the petitioner is ordered to be released on probation for a period of two years on his entering into a bond in the sum of Rs.25,000/- with one surety of like amount, to the satisfaction of CJM, Gurdaspur with an undertaking that he shall keep peace and maintain good conduct.

27.01.2023
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No