

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

CRR-60-2008
Decided on : 23.01.2023

Brij Pal

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Amit Bansal, Advocate
 for the petitioner.

Mr. Surender Singh, AAG, Haryana.

Manjari Nehru Kaul, J.(Oral)

Instant revision petition has been preferred against the judgment of conviction and order of sentence dated 17/18.04.2007 passed by JMIC, Kurukshetra vide which the petitioner was convicted under Sections 279, 337 and 338 IPC and sentenced to undergo rigorous imprisonment for a period of three months under Sections 279 and 337 IPC and rigorous imprisonment for a period of six months along with fine of Rs.200/- under Section 338 IPC and in default of payment of fine, would further undergo simple imprisonment for a period of 15 days. The appeal preferred against the impugned judgment and order was dismissed by the Lower Appellate Court.

The prosecution case was set in motion on the statement (Ex.PA) of complainant-injured Jagjit Singh wherein he stated that on 17.04.1999 he along with his father Sher Singh was going to his village

from Pipli on their motorcycle bearing registration No.HR-05F-6168. At about 6.45 pm, when they were in front of flour mill, Ladwa Road, one truck being driven by the petitioner Brij Pal came in a rash and negligent manner and hit the motorcycle from the back side. The father of the complainant fell down at a distance whereas both the legs of the complainant came under the truck. The driver of the offending vehicle along with the vehicle fled away from the spot after the accident in question. Thereafter, on account of the injuries sustained in the accident in question, the complainant injured was removed to the hospital.

The prosecution in support of its case examined as many as 8 witnesses including the complainant as PW-1 and Sher Singh as PW-2. On the basis of the evidence led and other material on record, the trial Court convicted the accused-petitioner under Sections 279, 337 and 338 IPC vide judgment dated 17.04.2007. The appeal preferred to impugn the aforesaid judgment was also dismissed by the Appellate Court vide judgment dated 07.01.20085 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 more than 24 years back on 17.04.1999 and the petitioner had been suffering the agony of protracted trial ever since then. 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. It has also been submitted that during the preceding so many years, the petitioner has been fastened with many responsibilities and is close to 60 years of age, 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. In support of his submissions, learned counsel has placed reliance on the judgment of this Court in ***Bachna Ram vs. State of Haryana, 2005 (3) RCR (Crl.) 966.***

Learned State counsel while controverting the submissions made by counsel opposite submits that complainant got injured in the accident in question on account of the rash and negligent driving of the petitioner, hence, he does 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 17/18.04.2007 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.

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 April, 1999 and the petitioner has already suffered and faced long and protracted trial for more than 24 years. As not disputed by the State counsel, as well, from the day of accident till today, the petitioner is not involved in any other criminal case and as conceded by the State counsel, he has 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 when he admittedly has been fastened with many liabilities. No doubt, the accident in question took place due to rash and negligent driving, 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 admittedly it 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 grave as there was an absence of mens rea.

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 discussion, 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 one year on his entering into a bond in the sum of Rs.25,000/- with one surety of like amount, to the satisfaction of CJM, Kurukshetra with an undertaking that he shall keep peace and maintain good conduct. The petitioner is further directed to pay an amount of Rs.10,000/- as compensation. It is made clear that in case of non-deposit

of compensation with the trial/successor Court within a period of one month from the date of this order, benefit of release on probation shall not accrue to the petitioner and he will be required to undergo the remaining part of the sentence awarded to him.

(MANJARI NEHRU KAUL)
JUDGE

23.01.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No