

325 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1054-2009
Decided on : 16.01.2023

Sanjiv Pathak

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Jai Parkash Dhull, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

Manjari Nehru Kaul, J.(Oral)

Instant revision petition has been preferred against the judgment and order dated 25.03.2008 passed by JMIC, Anandpur Sahib vide which the petitioner was convicted under Sections 279 and 304-A IPC and sentenced to undergo rigorous imprisonment for a period of two years along with fine of Rs.1,000/- and in default of payment of fine, he would further undergo rigorous imprisonment for a period of two months. 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 Munish Kumar wherein he stated that on 01.05.2002 he along with his father Devi Dayal and mason Suresh Kumar were going to purchase some construction material for his house. Devi Dayal was on his moped bearing registration No.PB-16A-3417 while mason Sunresh Kumar was

pillion riding behind his father. The complainant Munish Kumar was following the moped of Devi Dayal on his scooter. Parveen Kumar, cousin of the complainant, was pillion riding behind the complainant. At about 10.30 am, when Devi Dayal was just 200 yards away from the railway crossing, on seeing with Shingara Singh, who too was going in the same direction on his cycle, Devi Dayal stopped his moped and started conversing with Shingara Singh while standing towards the left side of the road on the kacha portion. In the meantime, a maruti van bearing registration No.HP-20A-0370 being driven by the petitioner Sanjiv Pathak came in a rash and negligent manner and struck against Devi Dayal, Suresh Kumar and Shingara Singh. All the three sustained serious injuries. The three injured were removed to the hospital by the complainant and his cousin Parveen Kumar. It was alleged that the driver of the offending vehicle after leaving it behind, fled away from the spot after the accident in question. On account of the injuries sustained in the accident in question, Suresh Kumar died on the same day whereas the other two Devi Dayal and Shingara Singh succumbed to their injuries soon thereafter.

The prosecution in support of its case examined as many as 8 witnesses including the complainant as PW-1 and Parveen Kumar 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 and 304-A IPC vide judgment dated 25.03.2008. The appeal preferred to impugn the aforesaid judgment was also dismissed by the Appellate Court vide judgment dated 04.04.2009 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 20 years back on 01.05.2002 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 20 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 now at an advance stage of his life, 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 still further submits that the families of the deceased had been duly compensated under Motor Vehicles Act 1988. 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 opposing the prayer made by counsel opposite submits that three people lost their lives 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 25.03.2008 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 May 2002 and ever since then the petitioner has been facing long and protracted criminal proceedings for more than 20 years. It is not disputed by the State counsel as well 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 when he admittedly is at an advanced stage of life. No doubt, the accident in question took away three lives, 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 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, the petitioner who is nearing 60 years of age and admittedly 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, Anandpur Sahib with an undertaking that he shall keep peace and maintain good conduct.

(MANJARI NEHRU KAUL)
JUDGE

16.01.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No