

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

326

CRR-1554-2009 (O&M)

Date of decision: 04.08.2023

Nirbhai Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sandeep Bokolia, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

1. Challenge in the instant revision petition is to the judgment dated 06.11.2007 passed by the JMIC, Moga convicting the petitioner under Sections 304-A and 279 IPC and judgment dated 27.05.2009 passed by Additional Sessions Judge, Moga convicting the petitioner.

2. Concisely, the facts of the case are that on 09.11.2000, one Gurtej Singh, along with Bikkar Singh and his wife, were going to Chandigarh in a car, when struck by a tractor driven by petitioner. FIR was registered and after investigation, final report was prepared and presented in the Court. Upon which charges under Sections 279, 304A, 338, 337 IPC were framed against the accused-petitioner, to which he pleaded not guilty and claimed trial.

3. In order to prove its case, the prosecution examined as many as 9 prosecution witnesses. Thereafter, the statement of the accused-petitioner was recorded under Section 313 Cr.P.C. by putting incriminating evidence to him, which he denied and pleaded false implication.

4. The trial Court came to the conclusion that the prosecution has proved its case, and accordingly convicted the petitioner-accused under Sections 279 and 304-A IPC and sentenced him for a period of 02 years.

5. Aggrieved convict-petitioner filed an appeal before the Additional Sessions Judge, Moga which was dismissed vide impugned judgment dated 27.05.2009.

6. Hence, the present revision petition.

7. Learned counsel at the outset would submit that the petitioner does not wish to challenge his conviction and prays for his release on probation in view of the mitigating circumstances being that, the incident pertains to the year 2000; he has already undergone about 1 month and 13 days out of the sentence awarded; had deposited the fine as directed by this Court order dated 06.11.2007; is a first offender and the only breadwinner of his family. Reliance is placed on the judgment in cases of **Ajaib Singh vs. State of Punjab**, CRR-2851-2019, decided on 03.03.2022, **State of Punjab vs. Paramjit Singh** 2013(2) RCR (Criminal) 1039 and **Ashok Kumar vs. State of Punjab**, 2008(27) RCR (Criminal) 136.

8. Learned State counsel would submit that the Courts below have rightly convicted the accused-petitioner on the evidence produced by the prosecution. However, on the above-stated grounds has no objection if the prayer made by the learned counsel for the petitioner is allowed.

9. Heard and perused.

10. The accident was proved by the testimony of PW-2, Gurtej Singh, a co-passenger of the deceased-Bikkar Singh and duly corroborated by PW-3, Gurdev Kaur, who was also an eye witness. The identity of the petitioner stood proved, as he was identified by the said witnesses. This Court finds there to be no

infirmity or illegality in the judgment of conviction as affirmed by the Appellate Court.

11. Regarding the prayer made by the petitioner for releasing him on probation, it would be profitable to make a reference to the judgments in the cases of **Aitha Chander Rao vs. State of A.P.**, 1981 (Supp) SCC 17, **A.P. Raju vs. State of Orissa**, 1995 Supp (2) SCC 385 and **Om Prakash vs. State of Haryana**, (2001) 10 SCC 477, and **State of Karnataka vs. Muddappa** 1999 SCC (Cri) 1046, wherein Hon'ble The Supreme Court extended the humanizing principle to a conviction where *mens rea* remains absent as in a case of rash and negligent driving under Section 279 read with Section 304-A IPC and convict is first-time offender, who has faced protracted trial, no purpose would be served to suffer the sentence imposed.

12. This Court in **Bishan Singh vs. State of Punjab**, CRM-M-1283-2008, decided on 27.01.2023, had released the petitioner on probation by observing the fact that after having faced criminal proceedings for more than 23 years, no useful purpose would be served by sending him back to jail, more so, when he was not involved in any other criminal case.

13. In **Paul George vs State of N.C.T. of Delhi** 2008 (4) SCC 185, the appellant, who was Head Constable Driver, had come-face on the incoming traffic, which was the factor that caused the accident, Hon'ble The Supreme Court though found that it was clearly not a matter within the colour of duty, thus he was not be covered by Section 140 of Delhi Police Act, however, observed that ends of justice would be met, if he is directed to be released on probation, he having faced and fought the litigation tenaciously that lasted for 20 years and throughout had good service career, but for this one aberration.

14. This Court also in the case of **Ajaib Singh** (supra), wherein the petitioner had been convicted under Sections 304-A and 279 and 427 IPC, granted probation as he had undergone a sentence of 3 months and 06 days out of 2 years of the sentence and faced the protracted trial for approximately 09 years.

15. In the case of **Shivani Sharma vs. State (NCT of Delhi)**, 2021(222) AIC 445, the conviction of the accused under Sections 304A and 279 IPC, was upheld but the sentence was modified and she was directed to be released for probation of 1 year, considering the fact that she has a clean record otherwise and litigation has been going on for more than 7 years. Likewise, in **Harendra Singh vs. State of Uttarakhand**, 2021 (114) ACrC 52, the revisionist convicted for the offence punishable under Sections 279, 304A, 337 and 338 IPC, being a first time offender, was released on probation to reform himself after having faced the trial for almost 11 years.

16. This Court in **Paramjit Singh** (supra) acquittal of the petitioner was set aside, and conviction under Sections 279, 338, 304A IPC, awarded by trial Court was upheld, whereby he was released on probation on the ground that he was a government employee, who had suffered the trial for about 21 years, and had unmarried daughters to support. Similarly, in **Ashok Kumar** (supra) the petitioner was granted probation after a conviction under Sections 279, 337, 304A IPC, by observing that he was the sole bread earner of the family, with 5 daughters to support in addition to the fact that he was a first offender, who had faced the trial for almost 6 years.

17. Reverting to the facts of the present case as regards the prayer made on behalf of the petitioner is concerned, this Court considering the mitigating circumstances and the judgments referred to above, finds that the ends of justice

would be adequately met if the petitioner is granted the benefit of probation of good conduct.

18. As a corollary to above, the present revision petition is hereby disposed of with a direction to grant probation to the petitioner for a period of one year, subject to the deposit of the fine as imposed by the trial Court, which shall be released to the LRs as compensation under Section 357 of CrPC, on the following conditions:

- (1) He shall execute a bond for good behaviour with two solvent sureties in a sum of Rs.25,000/- which shall be executed before the trial Court within a period of one month from today.
- (2) The said bond shall be in force for a period of one year.
- (3) He shall be subject to the supervision of the Probation Officer and subject to the conditions laid down in the Probation of Offenders Act.

(AMAN CHAUDHARY)
JUDGE

04.08.2023
M.Kamra

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