

CRR-1857-2009
Decided on : 15.02.2023

..... Petitioner

..... Respondent

Present : Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

Manjari Nehru Kaul, J.(Oral)

The instant revision petition has been preferred against the judgment and order dated 01.11.2007 passed by JMIC, Jalandhar vide which the petitioner was convicted under Sections 279/304-A/337/337/338/339 IPC and sentenced as under:

<i>Sr. No.</i>	<i>Under Section</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default</i>
1	279 IPC	Rigorous imprisonment (RI) for three months	Rs.50/-	RI for five days
2	304-A IPC	RI for one year	Rs.100/-	RI for ten days
3	339 IPC	RI for six months	Rs.100/-	RI for ten days
4	338 IPC	RI for six months	Rs.100/-	RI for ten days
5	337 IPC	RI for three months	Rs.50/-	RI for five days
6	337 IPC	RI for three months	Rs.50/-	RI for five 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.PC) of injured Mangal Singh wherein he stated that on 29.10.1998 after giving meals to his sister Jagir Kaur, he along with his daughter Parminder Kaur and sister-in-law Ranjit Kaur was returning home on motorcycle bearing registration No.PB-08-W-5475 from Beri Hospital, Nakodar Road, Jalandhar. At about 5.00 pm, when they were about to cross Nakodar Road, one bus bearing registration No.HP-20-650 of Himachal Transport Corporation, Una (hereinafter referred to as 'bus') being driven by the petitioner Harminder Singh, came in a rash and negligent manner and struck against the motorcycle. All the three sustained injuries and were removed to the Civil Hospital, Jalandhar. The daughter of the complainant namely Parminder Kaur later succumbed to her injuries.

The prosecution in support of its case examined as many as 13 witnesses including the complainant as PW-2 and Dr. Jasmeet Walia as PW-6, Dr.A.S.Saini, S.M.O.-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/337/337/338, 339 IPC vide judgment dated 01.11.2007. The appeal preferred to impugn the aforesaid judgment was also dismissed by the Appellate Court vide judgment dated 10.07.2009 and hence, the present revision petition.

Learned counsel for the petitioner, at the outset, submits that he would not challenge the findings of conviction recorded by the trial Court on merits and would instead 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 29.10.1998 when the petitioner, while on official duty, was driving the bus. The petitioner had suffered the agony of protracted trial ever since then and it was a matter of record that during the preceding 24 years, he had not been involved in any other criminal case much less a case of similar nature. Further, in the preceding last so many years, the petitioner has been fastened with many responsibilities. As he was a retired government servant, now he would be deprived of his pensionary and other retiral benefits due to this conviction. Learned counsel has made a vehement prayer that a lenient view be taken in the matter of sentence imposed upon the petitioner and he be released on probation for his good conduct else the petitioner, who is now in an advance stage of life, and his family would be gravely affected. Learned counsel still further submits that the learned Motor Accident Claims Tribunal has also recorded a finding of contributory negligence qua the accident in question and the family of the deceased had been adequately compensated under Motor Vehicles Act 1988. In support of his submissions to take a lenient view and release the petitioner on probation, 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 no doubt, the learned Motor Accident Claims Tribunal recorded a finding of contributory negligence but in the accident, one person lost his life and two others suffered injuries, hence, the petitioner 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 01.11.2007 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.

It would be apposite to point out here that the accident in question occurred in October, 1998 and ever since then the petitioner has faced long and protracted criminal proceedings for more than 24 years. It has not been disputed by the State counsel that after the accident in question, the petitioner had not been 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. Further, the petitioner being a retired a government employee would indeed be deprived of his pensionary and other retiral benefits due to his conviction in the present case.

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 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 fulfill the humanizing 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 Hon'ble Supreme Court in *Paul George vs. State of NCT, Delhi, 2008(2) RCR (Crl.) 478* in the similar facts and circumstances 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.”

As an upshot to the above, this Court is of the opinion that ends of justice would be served if instead of sending the petitioner, who is 66 years of age and admittedly, has not been involved in any other criminal case after the accident in question, behind bars at this stage to serve the remaining part of sentence, 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, Jalandhar with an undertaking that he shall keep peace and maintain good conduct.

15.02.2023
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(MANJARI NEHRU KAUL)
JUDGE

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