

CRR-2508-2009 (O&M)

226 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-2508-2009 (O&M)
Date of Decision: 30.11.2023

RAJ KUMAR

...Petitioner

V/S

STATE OF UT CHANDIGARH

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Davinder Lubana, Advocate
for the petitioner.

Mr. Rajiv Vij, Addl. PP U.T. Chandigarh.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition has been preferred against the judgment dated 07.09.2009 passed by learned Additional Sessions Judge, Chandigarh upholding the judgment of conviction and order of sentence dated 17.05.2005 passed by learned Additional Chief Judicial Magistrate, Chandigarh, whereby the petitioner/accused has been convicted for the commission of offences punishable under Sections 279 and 304-A of IPC and has been awarded sentence as under:-

Section 279 IPC- Payment of Fine of Rs. 500/- and in default of making payment of fine, shall undergo Rigorous imprisonment for a period of one month and under Section 304-A IPC has been awarded rigorous imprisonment for one year.

FACTUAL BACKGROUND

2. Brief facts of the prosecution case are that on 30.1.2000 ASI Gurmail Singh received a wireless message from control room that an accident occurred near TPT light point. On receiving this information, ASI Gurmail Singh alongwith police party reached at the spot, from where he

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came to know that the injured has been removed to PGI. ASI Gurmail Singh left Constable Ajay Kumar at the spot and he alongwith Constable Ashok Kumar and Pankaj Kumar went to PGI, where the doctor declared the injured dead. At PGI, HC Rajinder Parsad No. 645 met him and got recorded his statement Where in he stated that on 30.1.2000. He was posted as HC control room, industrial Area, being on deputation and he was on duty on 30.1.2000 on ECO-9 with gypsy No. CH01-G-9762 as Incharge from 8.00 PM to 8.00 AM. He was on location at TPT light point sector-26, from 12.00 AM to 5.00 A.M. at about 12.55 AM. They were standing at TPT light point chowk, one three wheeler No. CHO1-B- 2439 was coming from grain market, sector 26 side and going towards railway station side. At that time one TATA-709 No. HR-38-BG-4178 was coming from Tribune chowk and going towards transport area was coming at very high speed and hit the three wheeler straight away. He even did not blow any horn. The name of the driver lateron came to be known as Raj Kumar son of Sumer Singh r/o House No. 354, Phase-I, BDC, Sector-26, Chandigarh. TATA-709 dragged the three wheeler towards Bapu Dham side at some distance. As a result of hitting the three wheeler driver whose name lateron came to be known as Phollo, fell on the road and the Tata-709 was also turned from lower to upper side at some distance. The driver of three wheeler received injuries due to this accident. They rushed towards the driver of the three wheeler and took him to the hospital where he was declared as dead by the doctor. The accident caused due to rash and negligent driving of the driver of Tata-709. On this Complaint ASI Gurmail Singh made endorsement and sent ruqa to police station through Constable Ashok Kumar for registration of FIR. Thereafter he went to the spot alongwith HC Rajinder parsad and

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prepared rough site plan. The spot was got photographed from Constable Rajesh Kumar, who took photographs. personally searched. The accused arrested was and During course of investigation statements of witnesses were recorded. After completion of investigation challan against the accused was presented in the Court on 29.5.2000.

CONTENTIONS

3. Mr. Davinder Lubana, Advocate appearing for the petitioner contends that he is not assailing the impugned judgment of conviction dated 17.05.2005 on merits and restricts his prayer to modification of the order dated 17.05.2005 on quantum of sentence to that of the sentence already undergone by the petitioner. The petitioner was convicted under Sections 279 and 304-A IPC and sentenced to undergo rigorous imprisonment for a period of one year. He has already undergone more than four months of custody. No other case is pending against him prior to the registration of the present FIR nor was he involved in any other criminal case after suspension of his sentence in the present case.

4. Learned counsel for the petitioner further contends that petitioner has reformed and intend to live a fruitful and peaceful life. It is also contended by counsel for the petitioner that there is no minimum sentence provided under Section 279 and 304-A IPC and therefore, prays that order of sentence of the petitioner be modified to that of already undergone

5. Per contra, learned State counsel opposes the prayer of the petitioner for modification of the order of sentence to that of already undergone on the ground that the petitioner has been convicted for causing death of the human being by rashly and negligently driving the Tata-709 No. HR-38-BG-4178 on a public way, as such, he does not deserve any leniency. It is also contended that the learned trial Court has passed a well

reasoned judgment based on correct appreciation of evidence available on record.

ANALYSIS AND OBSERVATION

6. A two Judge Bench of the Hon'ble Supreme Court in **State of Haryana Vs. Janak Singh AIR 2013 SC 3246** has dealt with the power of this Court to reduce the sentence as to the one already undergone in cases where the accused is convicted for an offence for which a minimum sentence is prescribed by law. Speaking through Justice Ranjana Prakash Desai, the Hon'ble Supreme Court observed as under:-

“10.....It was open for the respondents to press the appeals on merits and pray for acquittal. Had the case been argued on merits, the High Court could have acquitted the respondents if it felt that the prosecution had not proved its case beyond reasonable doubt. Assuming the respondents did not press the appeals, the High Court had to still consider whether the concession made by the counsel was proper because it is the duty of the court to see whether conviction is legal. But, once the respondents stated that they did not want to press the appeals and the High Court was convinced that conviction must follow, then, ordinarily it could not have reduced the sentence to the sentence already undergone by the respondents which is below the minimum prescribed by law. The High Court could have done so only if it felt that there were extenuating circumstances by giving reasons therefor. While reducing the sentence, the High Court has merely stated that it was “just and expedient” to do so. These are not the reasons contemplated by the proviso to Section 376(1) of the Indian Penal Code. Reasons must contain extenuating circumstances which prompted the High Court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like

rape. Besides, at the cost of repetition, it must be stated that such a course would be against the mandate of Section 376(1) of the IPC.”

A two Judge Bench of the Hon’ble Supreme Court in **State of Rajasthan Vs. Dhool Singh (2004) 12 SCC 546** speaking through Justice N. Santosh Hegde, has held as under:-

“18. Before concluding, we must refer to a disturbing tendency noticed by us very often in some of the judgments impugned before this Court. As in this case in some appeals, we find the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. Therefore, there is a need for the courts to apply its mind while imposing sentence.”

7. A two Judge Bench of the Hon’ble Supreme Court in **Ajmer Singh Vs. State of Punjab (2005) 6 SCC 633** has observed as under:-

“10. We have noticed in several judgments of the High Courts which have come up for consideration before us that while reducing the sentence to the period already undergone, no notice is taken of the actual sentence undergone by the accused. There is nothing on record to indicate the period of sentence already undergone by the accused. We, therefore, consider it appropriate to observe that whenever a court reduces the sentence of an accused to the period already undergone, it should categorically notice and state the period actually undergone by the accused.”

A two Judge Bench of the Hon'ble Supreme Court in **Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926**, speaking through Justice V.R. Krishna Iyer, has observed as under:-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to antisocial behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

8. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence

should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

9. A perusal of the ratio decidendi culled out in the above-mentioned judgments of the Hon’ble Supreme Court indicates that in order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

10. As per the custody certificates produced by the learned State counsel, details of custody period of the petitioner is tabulated as under:-

Detail of custody period in this case				
Sr. No.	Particulars of period undergone	Years	Months	Days
1.	07.09.2009 to 13.01.2010 (Conviction period)	00	04	07
2.	Actual Sentence	00	04	07
3.	Earned Remission (+)	00	00	12
4.	Parole availed (-) Nil	00	00	00
5.	Total Sentence	00	04	19

11. A perusal of the judgment of conviction passed by the trial court indicates no perversity in the findings of the trial court and the same are based on correct appreciation of evidence available on record. Counsel for the petitioner has not assailed the judgment of conviction on merits, rather he has

restricted his prayer only qua quantum of sentence.

CONCLUSION

12. The FIR in the present case was lodged on 30.01.2000 and the petitioner has suffered the agony of trial for more than 09 years. After their conviction, he has grown into law abiding citizen with a desire to live a fruitful and peaceful life. He is not involved in any other criminal activity after his conviction in the present case and during the pendency of the present revision petition. There are no other criminal cases pending against him. Out of total sentence of 01 year, petitioner has already undergone actual sentence of more than 04 months out of the substantive sentence awarded to him. Accordingly, this Court is of the opinion that it would be in the interest of justice if sentence of rigorous imprisonment for 01 year awarded to the petitioner is reduced to the period already undergone by them.

13. Consequently, the present appeal is disposed of in the following terms:-

(i) The judgment dated 17.05.2005 passed by the Additional Chief Judicial Magistrate, Chandigarh convicting the petitioner and the judgment dated 07.09.2009 passed by learned Additional Sessions Judge, Chandigarh is upheld, however, the order of sentence dated 17.05.2005 is modified to the extent that the sentence of rigorous imprisonment for 01 year awarded to the petitioner is reduced to the period of sentence already undergone by him.

(ii) The sentence of fine of an amount of Rs.500/- imposed upon the petitioner by the trial Court is enhanced to Rs. 20,000/-. The petitioner is directed to deposit the amount of fine, if not already paid, in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioner be liable to be taken into custody and made to undergo rigorous imprisonment for three months.

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14. Bail bonds and surety bonds of the petitioner stand discharged.
15. Pending miscellaneous application(s), if any, shall also stand disposed of.
16. The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the revision petition. Record of the case be sent back to the Court below.

30.11.2023

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

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