

CRR-2768-2015 (O&M) 1

215 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR-2768-2015 (O&M)  
Date of Decision: December 6, 2023

SURESH KUMAR .....Petitioner

Versus

STATE OF HARYANA .....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Ashit Malik, Advocate  
for the petitioner  
  
Ms. Geeta Sharma, DAG Haryana  
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HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 15.07.2015 passed by learned Additional Sessions Judge, Gurgaon vide which judgment of conviction dated 30.10.2014 passed by Additional Chief Judicial Magistrate, Gurgaon in FIR No. 19 of 22.01.2009 under Section 279/304-A of IPC registered at police station Manesar was upheld and the order of quantum of sentence of the petitioner dated 31.10.2014 was modified as under:-

|                      |                   |                                                       |
|----------------------|-------------------|-------------------------------------------------------|
| Addl. Sessions Judge | Section 279 IPC   | Simple imprisonment of 3 months                       |
|                      | Section 304-A IPC | Rigorous imprisonment of 1 year and fine of Rs 2000/- |

FACTUAL BACKGROUND

2. The facts, in brief, are that the police party was patrolling the area of village Hanumangarh, Milgate Hisar when they saw a ten-tyred truck bearing number HR-55-E-0037, being driven in a rash and negligent manner, striking against a young boy riding motorcycle bearing no. HR-26-AJ-2814

**CRR-2768-2015 (O&M)****2**

make Hero Honda, while trying to overtake. The rear body of the truck hit the motorcyclist causing him to get entangled in the tyres of the truck. The motorcyclist was crushed by the rear tyres of the truck resulting in his death at the spot. Thereafter, the petitioner-accused, driver of the offending truck, fled the spot leaving his vehicle behind.

3. A memo was sent to the police station for registration of an FIR. On completion of the subsequent formalities, the petitioner was charged with commission of offence under Section 279 and 304-A of the IPC vide order dated 09.04.2008. All incriminating evidence was put to the petitioner, which he denied and claimed trial.

4. The prosecution examined as many as 5 witnesses to prove its case. No evidence was led by the petitioner in his defence.

5. Accordingly, the petitioner was convicted by the learned trial Court vide judgment dated 31.10.2014. Aggrieved by the same, the petitioner preferred an appeal before the Additional Sessions Judge, Gurgaon, which was partly allowed vide judgment dated 15.07.2015 and the judgment of conviction was upheld but order of sentence was modified to rigorous imprisonment of one year and a fine of Rs. 2000/- for commission of offence under Section 304-A of the IPC and a period of three months for commission of offence under Section 279 of the IPC.

### **CONTENTIONS**

6. Learned counsel for the petitioners contends that he is not assailing the impugned judgment of conviction dated 30.10.2014 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioner as has already

CRR-2768-2015 (O&amp;M)

3

undergone a period of 04 years and 08 months of actual custody. No other case is pending against him prior to the registration of the present FIR and he has not been involved in any other criminal case after suspension of his sentence in the present case by this Court vide order dated 20.11.2015.

7. Learned counsel for the petitioner further submits that petitioner is 41 years of age. He has reformed and intend to live his life as law-abiding citizen.

8. Per contra, learned State counsel opposes the prayer of the petitioner as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned lower appellate Court. The sentence of the petitioner has already been reduced by the learned appellate Court and as such, in view of the fact that the petitioner has been convicted for causing death of a human being by rashly and negligently driving the truck on a public way, he does not deserve any leniency.

#### **ANALYSIS AND OBSERVATIONS**

9. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

10. 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."*

11. 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."*

12. 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.

13. 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 reformatory.

14. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner are tabulated as under:-

| Sr No. | Particulars                            | Period                   | Duration          |
|--------|----------------------------------------|--------------------------|-------------------|
| 1.     | Custody under trial                    | —                        | 00                |
| 2.     | Custody after conviction               | 15.07.2015 to 22.11.2015 | 04 months 08 days |
| 3.     | Interim bail                           |                          |                   |
| 4.     | Actual custody period after conviction |                          | 04 months 08 days |
| 5.     | Actual undergone period                |                          |                   |
| 6.     | Earned remission                       |                          | 01 month 10 days  |
| 7.     | Total sentence including remission     |                          | 05 months 18 days |

15. A perusal of the judgment of conviction passed by the trial Court and the Lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Counsel for the petitioners has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

16. The FIR in the present case was lodged on 22.01.2009 and since his conviction, the petitioner have grown into law-abiding citizen and desire to live a 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. As per his custody certificate, there are no other criminal case pending against him. Out of the total sentence of 01 year, he has undergone actual sentence of 04 months and 08 days. Accordingly, this Court is of the

CRR-2768-2015 (O&M) 7

opinion that it would be in the interest of justice, if the sentence of 01 year awarded to the petitioner is reduced to the period already undergone by him.

17. Consequently, the present revision is disposed of in the following terms:-

- i The judgment dated 15.07.2015 passed by the Additional Sessions Judge, Gurgaon confirming the conviction of the petitioner is upheld, however, the order of sentence dated 15.07.2015 is modified to the extent that the sentence of rigorous imprisonment for 01 year along with default mechanism 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.1000/- imposed upon the petitioner by the trial Court is increased to Rs.10,000/-. The petitioner is directed to deposit the amount of fine 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 shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

18. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)  
JUDGE

06.12.2023  
Manisha Mehta

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |