

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

CRR-1342-2018 (O&M)
Date of Decision: 11.01.2023

LABH SINGH @ LADDI

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. H.S. Randhawa, Legal Aid Counsel
for the petitioner.

Mr. Harjinder S. Sidhu, A.A.G., Punjab.

HARSH BUNGER, J.

Challenge in the present revision petition is to the judgment of conviction and order of sentence dated 21.09.2017 passed by the learned Additional Chief Judicial Magistrate, Patiala vide which the petitioner has been convicted for one year under Section 338 of the Indian Penal Code (for short 'IPC') and for six months each under Sections 279 and 337 IPC. The petitioner has further challenged the judgment dated 17.02.2018 passed by the learned Additional Sessions Judge, Patiala vide which the appeal filed by him was dismissed and the sentence imposed upon him was upheld.

Briefly stated, an FIR came to be registered on the statement of complainant- Rajan Kumar Modi S/O Mangat Rai Modi, who had stated that on 26.06.2011, he alongwith his uncle Hardev Singh son of Sukhdev Singh

and his mother Joginder Kaur w/o Sukhdev Singh were going in his Innova vehicle bearing No. PB-11-AF-1015 from Patiala to Sangrur and he was driving the vehicle, whereas, his uncle Hardev Singh was sitting on front seat and his mother Joginder Kaur was sitting on back seat. It is stated that when they reached at Bus Stand, Village Bhedpura on Patiala-Sangrur road at about 10:30 a.m., a canter No.PB-05-E/8586 came from front side, which was being driven by its driver at a very high speed and in rash and negligent manner, struck in his vehicle from front side, due to which, his uncle Hardev Singh and his mother Joginder Kaur suffered injuries and he himself suffered internal injuries. Tanker driver alighted from the same and told his name Labh Singh S/o Jarnail Singh R/o Village Kammo Majra Khurd, District Sangrur. In the interregnum, patrolling vehicle of police reached at the spot and took Joginder Singh and Hardev Kaur to Rajindra Hospital, Patiala in their vehicle and after treatment, they were discharged. Tanker driver Labh Singh and owner of the tanker entered into negotiations for compromise with them but they refused to compensate him for the damages caused to his vehicle. He further prayed for taking action against the said accused.

Investigation was conducted in the FIR and after completion of investigation, final report under Section 173(2) of Cr.P.C. against the accused was presented in trial Court. Upon finding a *prima facie* case, the trial Court framed charges against accused under Sections 279, 337, 338 and 427 IPC, to which the accused pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined PW1- Rajan Kumar Modi, PW2 - Hardev Singh (eye witness-cum-injured), PW3 - HC Rajinder Kumar Mechanic, PW4 – Dr. Harmeet Kaur, Senior

Resident, SDRD Medical College, Amritsar, PW5 – Surjit Singh and PW6 – Joginder Kaur (injured).

Statement of the petitioner-accused was recorded under Section 313 Cr.P.C. and accused opted to lead evidence in defence but did not examine any witness.

Complainant Rajan Kumar Modi - PW1 supported the case of prosecution by proving his statement Ex. P1 recorded by police and identified the accused present in Court. PW2 Hardev Singh injured witness also supported the prosecution case and also identified the accused.

After considering the material/evidence available on record, the learned trial Court returned the following findings :-

17. “xxx xxx I am of the considered opinion that the prosecution has been able to bring home the guilt of the accused beyond shadow of reasonable doubt. Case of the prosecution has been assailed by the learned defence counsel mainly on the ground that prosecution has failed to establish the identity of the accused as driver of the offending vehicle, especially when no test identification parade of the accused was got conducted and it is claimed that the accused was identified as driver of offending vehicle for the first time in the Court. Testimony of PW2 Hardev Singh in his cross-examination is being relied upon in this regard. In his cross-examination, it has come on record that he had met the accused for the first time in Police Station, though he also stated that he met the accused in the Court for the first time. The correct interpretation of said version of Hardev Singh PW2 is that his meeting with the accused in the Court was his first meeting so far the Court was concerned and prior to that he had not met the accused in the

*Court, however, he had met him in the Police Station. It cannot be said that the accused has been identified by the complainant and eye witness first time in the Court. As per version of prosecution after the accident truck driver had alighted from the truck and had disclosed his name as Labh Singh s/o Jarnail Singh r/o village Kammo Majra Khurd, District Sangrur. Further, in the case law **Ravi Kapur vs. State of Rajasthan 2012(4) RCR (Criminal) 245 (SC)** it is held that the Court identification itself is a good identification in the eyes of law and the Criminal Procedure Code does not oblige the investigating agency to necessarily hold the test identification parade without exception.*

xxx xxx From the testimonies of the complainant Rajan Kumar Modi PW1 and injured witness Hardev Singh PW2, it has been duly proved on record that the offending Canter PB-05-E/8586, was being driven rashly and negligently by the accused and he caused accident in question which resulted into simple as well as grievous hurts to Hardev Singh as well as Joginder Kaur. Thus, the accused omitted to take necessary care while driving the Canter PB-05-E/8586, which a prudent and reasonable man guided by similar considerations would not do.

18. There is no reason to disbelieve the versions of the complainant Rajan Kumar Modi PW1 and injured witness Hardev Singh PW2 as there was no motive for them to involve the accused in the present case falsely. It is neither alleged, nor proved that the complainant or eye witness had any previous enmity with the accused, which might have resulted into his false implication in the present case.

19 and 20. xxx xxx xxx

21. xxx xxx During his statement in the Court, complainant Rajan Kumar Modi PW1 reiterated his version and stated that they waited for compromise. In his cross-examination, this witness again stated that he did not record the statement to the police on the day of accident because the accused had asked for compromise and had requested that statement be not recorded by him. It is further observed that though the prosecution has not been able to examine IO of the present case, but version of the complainant and injured witness on record, which also stood corroborated from medical evidence led on record, is found to be sufficient to establish the involvement of the accused in the accident in question being driver of the offending vehicle.

xxx xxx Further, the accused is not shown to have submitted any written representation to the higher police authorities regarding his alleged false implication in this case. If he had been roped in wrongly, he would not have kept quiet with the demo clean sword of conviction hanging over his head. His silence and inaction in the matter goes to show that he had nothing to say in that regard and his plea of false implication lacks merits.

22. Hence, as a sequel of discussion made above and in the totality of facts and circumstances discussed above, this Court is of the considered opinion that the prosecution has been able to prove the charges framed against the accused in this case, beyond shadow of reasonable doubt, for having committed the offences punishable under Sections 279, 337, 338 and 427 IPC. Accordingly, the accused is held guilty and stands convicted for the offences punishable under Sections 279, 337, 338 and 427 IPC. Let the accused be heard on the quantum of sentence.”

Thus, vide judgment of conviction and order of sentence dated 21.09.2017, the learned Additional Chief Judicial Magistrate, Patiala convicted and sentenced the petitioner for offence under Sections 279, 337, 338 and 427 IPC.

The appeal filed by the present petitioner came to be dismissed by the Court of learned Additional Sessions Judge, Patiala vide its judgment dated 17.02.2018 and the sentence imposed upon him was upheld.

Hence, the petitioner has filed the present revision petition before this Court.

At the very outset, learned counsel for the petitioner stated that he does not propose to challenge the impugned judgment and order on its merits, however, he prayed for modification of the order of sentence for the period already undergone by the petitioner.

In this regard, it has been submitted that the FIR for the alleged accident was lodged in the year 2011 and the petitioner has suffered the agony of trial/appeal/revision for all these years. It is further submitted that the petitioner was granted bail/suspension of sentence and he has never misused the said concession. It is further submitted that the petitioner is about 44 years of age and is the sole bread winner of his family. It is further submitted that as per custody certificate dated 21.12.2022, the petitioner has already undergone total sentence of 03 months and 13 days out of total sentence of one year and he is not involved in any other case.

On the other hand, learned counsel for the respondent- State of Punjab has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on record. However, the fact with respect to the

custody of the petitioner as well as having never misused the concession of bail/suspension of sentence has not been disputed by the learned State counsel.

I have heard learned counsel for the parties and perused the entire material available on record, as well as judgment of the trial Court and lower Appellate Court.

Perusal of the judgments passed by the learned Courts below show that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Sections 279, 337, 338 and 427 IPC. The Appellate Court has also rightly dismissed the appeal filed by petitioner. There is no illegality or perversity in the findings returned by both the Courts below, which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, the learned counsel for the petitioner has not assailed the judgments of conviction and has rather restricted his arguments qua the quantum of sentence only. Therefore, the conviction of the petitioner is upheld.

Vide separate order dated 21.09.2017 passed by the learned Additional Chief Judicial Magistrate, Patiala, the petitioner has been sentenced as under: -

<i>Sr. No.</i>	<i>Offence under Section</i>	<i>Punishment</i>
1.	279 IPC	Rigorous imprisonment for a period of six months with fine of Rs.200/- and in default thereof, further undergo simple imprisonment for a period of 7 days.
2.	337 IPC	Rigorous imprisonment for a period of six months with fine of Rs.200/- and in default thereof, further undergo simple imprisonment for a period of 7 days.
3.	338 IPC	Rigorous imprisonment for a period of one year with fine of Rs.200/- and in default thereof, further undergo simple imprisonment for a period of 7 days.
4.	427 IPC	Fine of Rs.500/- and in default thereof, to undergo simple imprisonment for a period of 7 days.

It was ordered that all the substantive sentences of imprisonment shall run concurrently.

Before considering the submissions of the learned counsel for the petitioner on the issue on quantum of sentence, it is apposite to refer to judgment of Hon'ble the Apex Court in ***Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926***, explaining rehabilitary and reformatory aspects in sentencing, whereby, it has been 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 ante-social 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."

In ***Deo Narain Mandal Vs. State of UP 2004(7) SCC 257***, the term "Proper Sentence" was explained by observing that sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the Court should bear in mind the principle of proportionately. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should

be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically.

In *Shyam Narain vs State (NCT of Delhi)*, 2013(7) SCC 77, it was pointed out that sentencing for any offence has a social goal. Sentence is to be imposed with regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is that the society may not suffer again by such crime. The principle of proportionality between the crime committed and the penalty imposed are to be kept in mind. The impact on the society as a whole has to be seen.

Considering the above-stated position of law and also the facts and circumstances of this case, since the FIR in question was lodged in 2011; the petitioner has suffered the agony of trial/appeal/revision for more than 11 years; the petitioner is about 44 years of age and is the sole bread winner of his family; as per custody certificate dated 21.12.2022, the petitioner has already undergone total sentence of 03 months and 13 days out of total sentence of one year and he is not involved in any other case, accordingly, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioner is reduced to the period already undergone by him.

Accordingly, the present revision petition is partly allowed. The conviction of the petitioner is upheld. However, the order of sentence dated 21.09.2017 passed by the learned Additional Chief Judicial Magistrate, Patiala, as upheld by the learned Additional Sessions Judge, Patiala vide

judgment dated 17.02.2018 is modified and the sentence of one year rigorous imprisonment awarded to the petitioner is reduced to the period of sentence already undergone by him. The bail bonds of the petitioner shall stand discharged.

This petition is disposed of in above-said terms.

Pending miscellaneous application/s, if any, shall also stands disposed of, in view of the above-said order.

January 11, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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