

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

307

CRR-947-2007 (O&M)

Date of decision: 25.07.2023

Bhir Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. J.S Lalli, Advocate for the petitioner

Mr. H.S Sullar, Sr. DAG Punjab

AMAN CHAUDHARY. J.

1. The present revision petition has been filed against the judgment dated 16.05.2007 passed by learned Additional Sessions Judge, (Ad hoc) Fast Track Court, Gurdaspur whereby appeal preferred against the judgment dated 19.09.2002 passed by the learned JMIC, Batala convicting the petitioner under Section 279 and 304-A IPC was dismissed.

2. Succinctly, the facts of the case are that on 13.11.1996, in a road accident, Shakuntala Devi and other persons, were injured when a bus driven by accused-petitioner had collided with a van in which they were travelling. On receipt of this information, the instant FIR was registered. After the completion of the investigation, challan was presented. Upon which, the accused-petitioner was charge-sheeted under Sections 279/337/338/304-A IPC, to which he pleaded not guilty and claimed trial.

3. To prove its case, prosecution examined a total of 6 PWs. The

statement of the accused-petitioner was recorded under Section 313 Cr.P.C. wherein all the incriminating evidence was put to him, which he denied and stated that in fact he is not responsible for this occurrence.

4. The trial Court concluded that the prosecution had successfully established its case against the accused-petitioner and accordingly convicted him under Sections 279 and 304-A IPC and sentenced him with rigorous imprisonment for a period of 6 months with a fine of Rs. 200 under Section 279 IPC and 2 years under 304-A IPC alongwith a fine of Rs. 500. The sentences were ordered to be run concurrently.

5. Aggrieved convict-petitioner filed an appeal before the Additional Sessions Judge, Fast Track Court, Gurdaspur which was dismissed vide impugned judgment dated 16.05.2007.

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 peculiar facts being that, the incident pertains to the year 1996 and he has faced protracted trial for almost 27 years; has already undergone about 6 months and 4 days out of the sentence awarded; a first offender; has two children, wife and old parents and is the only breadwinner of his family. He is a government employee and on the verge of retirement. An amount of Rs.8,40,000/- was paid by in the MACT to the claimants. The petitioner is however willing to pay an additional amount of Rs.1,50,000/- to them. To buttress his submission, reliance is placed on **Aitha Chander Rao vs. State of A.P.**, 1981 (Supp) SCC 17, **A.P. Raju vs. State of Orissa**, 1995 Supp (2) SCC 385, **Paul George vs State of N.C.T. of Delhi** 2008 (4) SCC 185 and **Tarlochan Singh vs. State of Punjab** 2012(1) RCR

(Criminal) 909.

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. As per the testimony of PW-4, Shakuntla Devi and PW-5, Neelam Devi, the occupants of the van and injured in the said accident, that the bus was being driven at a high speed and in a rash and negligent manner. The plea raised on the other hand by the petitioner by relying on mechanical examination of the bus and the statement of Nand Lal Fitter that the accident had taken place due to loosening of nutt affixed on tyroid end of the bus, which was not accepted by the trial Court inter alia on the ground that the brakes of bus were still functional, which could have been used to avert the accident. The judgment of conviction passed by trial Court as affirmed by lower appellate Court, does not suffer from any infirmity or illegality.

11. In so far as the prayer of the petitioner for releasing him on probation is concerned, it would be gainful to make a reference to the judgments in the cases of **Aitha Chander Rao** (supra), **A.P. Raju** (supra) 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** (supra), 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 vs State of Punjab and another**, CRR-2851-2009, decided on 03.03.2022, wherein the petitioner had been convicted under Sections 304A and 279 IPC, granted probation as he had undergone a sentence of 06 months and 04 days out of 2 years of the sentence and faced the protracted trial for approximately 09 years.

15. In the case of **Paramjit Singh vs. State of Haryana** 2011(2) RCR (Crl.) 855, this Court allowed probation to the appellant, who was a Haryana Govt. servant, remained in custody for 11 days, suffered agony of protracted trial for more than 16 years, was not a previous convict, had not misused the concession of bail, had 5 children, wife and old aged parents to support, with an observation that his service shall not be affected in terms of Section 12 of the Probation of Offenders Act. Likewise, in CRR-444-2019, titled as **Sunil Kumar**

vs. State of Haryana, decided on 22.07.2019, this Court ordered the release of the petitioner on probation of good conduct, in view of the mitigating circumstances, he being not a previous convict had shown substantive improvement in his character after 7 years had passed by, was sole bread earner and a driver in Haryana Roadways, while observing that his probation may not affect his career in terms of Section 12 of the Probation of Offenders Act. In the case of **Umed Singh and Others vs. Azad Singh and another**, CRR-2734-2015 decided on 04.04.2019 also the conviction of the petitioner was upheld and the sentence was modified and the petitioners were directed to be released on probation of 2 years. The accused was held entitled to benefit of probation which may not have an effect on his career in terms of Section 12 of the Probation of Offenders Act.

16. This Court in the case of **Amardeep Singh vs. State of Punjab**, CRR-146-2014, decided on 30.05.2014, had released the petitioner, who was convicted under Sections 337 and 304A IPC on probation by observing that he was a government employee, at the fag end of his service, and otherwise had faced the prolonged trial for almost 9 years. Similarly, in CRR-3241-2012, **Major Jai Rajan vs. State of Punjab**, decided on 31.01.2013, the petitioner, a Major in the Army at the time of incident was ordered to be released on probation on the ground of having an unblemished service of 34 years in the Army and was due for promotion as a Colonel, and had undergone 3 months out of the sentence awarded and compensated the LR's of the deceased in MACT.

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. Sequentially, the present petition stands disposed of with a direction to release the petitioner on probation for a period of one year subject to the deposit Rs.1,50,000/- to be released to the claimants, in additional to the fine already imposed, under Section 357 CrPC and he is entitled to the benefit of Section 12 of the Probation of Offenders Act, 1958, so as to not effect his service career, 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

25.07.2023
M.Kamra

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