

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

CRR-1816-2022 (O&M)
Date of Decision: 29.05.2023

KAMLESH KUMAR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Deepak Arora, Advocate
for the petitioner.

Mr. Aditya Kapoor, A.A.G., Punjab.

HARSH BUNGER, J.

Petitioner-Kamlesh Kumar, has filed the present criminal revision petition, challenging the judgment of conviction and order of sentencedated 07.12.2018 passed by learned Additional Chief Judicial Magistrate, Gurdaspur; whereby, he was convicted and sentenced for offence under Sections 279,304-A and 427 of the Indian Penal Code (for short`the IPC'). The petitioner has also challenged the judgment dated 04.07.2022 passed by learned Sessions Judge, Gurdaspur; to the extent whereby, his conviction and sentence under Sections 304-A and 279 IPC was affirmed. It is relevant to note that the conviction of the petitioner under Section 427 IPC was set aside by lower Appellate Court.

2. Briefly, the case FIR No.115 dated 03.10.2015 under Sections 304-A, 279 and 427 IPC was registered at Police Station Dhariwal, on the

complaint of one Sudesh Kumar son of Harbans Lal, wherein it was stated that his father (HarbansLal) had retired from BSF and was running a General Store in village Sohal. On 02.10.2015, the complainant along with his family had gone to village Sohal to meet his parents; however, his father (HarbansLal) had gone to Dhariwal for some personal work and while, he was returning back on a Scooter bearing No.PB58-E-347 (make Bajaj Chetak), which was being followed by the complainant on his motorcycle, then at about 2:30 p.m., when his father reached near Adda of village Sohal and was trying to turn towards village Sohal, then a car bearing registration No.CH-04-C-9051 (make 'Chevrolet'), which was being driven by a hindu gentleman (whose name was later on disclosed as Kamlesh son of Ramesh Kumar resident of # 831, New Azad Nagar, SW Road, Amritsar) was coming from the side of Dhariwal towards Gurdaspur and he was driving the car at a very high speed in a rash and negligent manner without blowing horn and he dashed his car into the scooter of his father, as a result of which, his father fell on the road along with scooter; whereupon, he parked his motorcycle and picked up his father, who had suffered multiple injuries on his body. Thereafter, a conveyance was arranged and his father was taken to Civil Hospital, Gurdaspur; from where he was referred to Guru Nanak Dev Hospital, Amritsar and then to Patel Hospital, Jalandhar, where he died due to the injuries suffered in the said accident while undergoing treatment.

3. The learned trial Court, after appreciating the evidence on record, convicted and sentenced the petitioner, vide its judgment dated

07.12.2018 as under :-

<i>Offence u/s</i>	<i>Sentence</i>
304-A IPC	Rigorous imprisonment for two years, and payment of fine of Rs.1000/- and in default thereof, to further undergo rigorous imprisonment for ten days.
279 IPC	Rigorous imprisonment for three months, and payment of fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for five days.
427 IPC	Rigorous imprisonment for one year, and payment of fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for five days.

4. The aforesaid judgment dated 07.12.2018 passed by learned Additional Chief Judicial Magistrate, Gurdaspur was challenged by the petitioner before the Court of Sessions Judge, Gurdaspur, by way of filing an appeal. However, vide judgment dated 04.07.2022 passed by learned Sessions Judge, Gurdaspur, the appeal filed by petitioner was partly allowed to the extent that the conviction and sentence of the petitioner under Section 427 IPC was set aside; however, his conviction and sentence under Sections 304-A and 279 IPC was affirmed.

5. Feeling dis-satisfied, the petitioner has filed the present revision petition before this Court; however, vide order dated 05.09.2022 passed by a coordinate Bench of this Court, the conviction of the petitioner recorded by the trial Court and as affirmed by the lower Appellate Court, was maintained.

6. Accordingly, the revision petition is restricted regarding quantum of sentence only.

7. Learned counsel for the petitioner submits that the petitioner is aged about 35 years and has been blessed with a daughter. It is submitted

that the petitioner is not involved in any other case of rash and negligent driving. It is next submitted that the accident had occurred way back in the year 2015 and the petitioner has suffered the agony of trial as well as the appeal for the last more than seven years. Learned counsel further submitted that as on date, the petitioner has suffered incarceration for almost nine months; accordingly, it is prayed that some lenient view qua the sentence part, as awarded to the petitioner, may be taken.

8. On the other hand, learned State counsel has opposed the aforesaid submissions made by learned counsel for the petitioner and had submitted that in the accident, a life has been lost due to the rash and negligent driving of the petitioner and hence, no leniency is required to be shown towards the petitioner.

9. I have heard learned counsel for the parties and have perused the paper-book as well as custody certificate dated 27.03.2023 of the petitioner filed by learned State counsel.

10. As per the custody certificate handed over by learned State counsel, the actual period undergone by the petitioner is 08 months and 26 days (as on 27.03.2023).

11. The conviction of the petitioner under Sections 304-A and 279 IPC has already been upheld by this Court vide order dated 05.09.2022. So far as the quantum of sentence awarded to the petitioner is concerned, it would be apposite to refer to judgment rendered by the Hon'ble Apex Court in *Hazara Singh vs Raj Kumar (2013)9 SCC 516*, wherein, it was held that it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. It was further held that the legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which

must be exercised with utmost care and caution. It was also held that the punishment awarded should be directly proportionate to the nature and the magnitude of the offence.

12. Still further, a three-Judge Bench of the Hon'ble Supreme Court in the case of ***Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat (2009) 7 SCC 254*** observed as follows :-

“99. ...The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to (sic break the) law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counterproductive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.”

13. In the case of ***State of Himachal Pradesh v. Ramchandra Rabidas (2019) 10 SCC 75***, Hon'ble the Supreme Court emphasized on the need to strictly punish offenders responsible for causing motor vehicle accidents. It was held that with rapidly increasing motorization, India is facing an increasing burden of road traffic injuries and fatalities. The financial loss, emotional and social trauma caused to a family on losing a bread winner, or any other member of the family, or incapacitation of the victim cannot be quantified. It was held that the principle of proportionality between the crime and punishment has to be borne in mind and the principle

of just punishment is the bedrock of sentencing in respect of a criminal offence.

14. In the case of ***State of Punjab v. Saurabh Bakshi (2015) 5 SCC 182***, Hon'ble Supreme Court held as under: -

“17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to

24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months.

18. Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a non-challant attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilised persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, we are bound to observe that the lawmakers should scrutinize, re-look and re-visit the sentencing policy in Section 304A, I.P.C. We say so with immense anguish..."

15. Coming to the case in hand, the learned trial Court passed the following order of sentence :-

"20. ...After hearing arguments and after going through the entire material on record, I have observed that it is not a fit case where convict should be released on probation. So in view of the facts and circumstances of the case and antecedents of convict, he is sentenced

as under :-

<i>Name of accused</i>	<i>Under Section</i>	<i>R.I</i>	<i>Fine</i>	<i>In default of payment of fine to further undergo Rigorous imprisonment</i>
<i>Kamlesh Kumar</i>	<i>304-A IPC</i>	<i>2 years</i>	<i>Rs.1000/-</i>	<i>10 days</i>
	<i>279 IPC</i>	<i>3 months</i>	<i>Rs.500/-</i>	<i>5 days</i>
	<i>427 IPC</i>	<i>1 year</i>	<i>Rs.500/-</i>	<i>5 days</i>

21.All the sentences shall run concurrently and the period for which the convict remained in custody during trial and investigation of this case will be set off from substantive punishment awarded to the convicts today.”

Still further, the lower Appellate Court made the following observations regarding sentence awarded to the petitioner :-

“19. ...So far as the sentence awarded to the appellant/accused by the learned trial Court U/s 304-A and 279 IPC is concerned, this Court is of the considered view that the same is commensurate with the gravity of the offence committed by him. A person has lost his life due to the accident caused by the appellant/accused and, therefore, there is no question of showing any leniency to him. Accordingly, the sentence awarded to the appellant/accused by the learned trial Court U/s 304-A and 279 IPC is affirmed.”

16. Keeping in view the legal position as referred in foregoing paras and upon considering the facts and circumstances of this case, it is observed that in the present case, because of the rash and negligent driving on the part of the petitioner, one innocent person lost his life. Every human life is valuable and more so to his family which may be totally dependent on such person for their sustenance. Sometimes losing a family member can

push a family to face miseries of life and can take years for such families to revive. The provisions of Indian Penal Code are punitive and deterrent in nature and its principal aim and object is to punish offenders for offences committed under IPC. Considering the gravity of offence in this case, there is no question of showing any leniency to the petitioner. The sentence awarded to the petitioner by the learned Sessions Judge, Gurdaspur is upheld.

17. In view of the above discussion, the present Criminal Revision Petition is dismissed. Let the petitioner undergo his remaining sentence.

18. All pending application/s, if any, shall stand closed.

May 29th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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