

CRR-277-2021 (O&M)

235 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-277-2021 (O&M)
Date of Decision: 09.01.2024

GOVIND SINGH

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ajay Ghangas, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The present revision petition has been preferred against the judgment dated 17.02.2021 passed by learned Sessions Judge, Panipat upholding the judgment of conviction and order of sentence dated 10.05.2017 passed by learned Additional Chief Judicial Magistrate, Panipat, 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- Simple imprisonment of three months; and under Section 304-A IPC rigorous imprisonment for 1 ½ year and to pay a fine of Rs. 500/- with default mechanism.

FACTUAL BACKGROUND

2. Brief facts of the case relevant for the purpose of disposal of this revision petition are that on 23.10.2013, a VT was received from Control Room, Panipat regarding an accident having taken place between a Trolly and motor-cycle near Kashigiri temple, Panipat. On receipt of this information, ASI Sultan Singh alongwith other police officials reached at the spot where complainant Sharif met him and got recorded his statement

to the effect that he was running a barber shop at Bapoli and in front of his shop, there was an electronics shop of Anil Kumar. On that day, at about 8.00 pm, he alongwith Anil Kumar proceeded towards Panipat from Bapoli on his motor-cycle bearing registration no.HR-60D- 4786 for purchasing the articles for the shop. He was driving the motor- cycle while Anil was sitting as a pillion rider. When they reached near Kashigiri temple at Sanoli Road, Panipat, suddenly a trolla came from behind. Its driver was driving the same rashly, negligently and at a high speed and without blowing any horn and the said trolla directly hit their motor-cycle, due to which he fell down towards the left side of the road, while Anil Kumar fell down towards the right side of the road and came under the left side front wheel of the trolla and as a result of which, Anil Kumar succumbed to his injuries on the spot. It was further alleged that he noticed the registration number of the trolla and the same was RJ- 14GF-0355. The driver of the trolla tried to flee from the spot, but he was stopped by Umesh Kumar. Many persons had gathered at the spot and on finding an opportunity, driver of the trolla fled from away the spot. The complainant alleged that he too had sustained injuries in the accident. On the basis of this statement, a case under Sections 279 and 304-A of IPC was registered. Investigation proceedings were initiated. Inquest proceedings and post-mortem examination on the dead body of victim Anil Kumar was conducted. The accused was arrested on 25.10.2013. The offending vehicle and the motor-cycle were taken into custody by the police. Both the vehicles were got mechanically examined. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court for trial of the accused.

CONTENTIONS

Mr. Ajay Ghangas, Advocate appearing for the petitioner contends

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that he is not assailing the impugned judgment of conviction dated 10.05.2017 on merits and restricts his prayer to modification of the order dated 10.05.2017 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 awarded substantive sentence of rigorous imprisonment for a period of 1 ½ years. 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 trolly bearing registration No. RJ- 14GF-0355 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 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	Period	Years	Months	Days
1.	Custody as Undertrial		00	00	00
2.	Custody after conviction	17/02/2021 to 03.11.2021	00	08	17
3.	Bail Period, if any	Nil	00	00	00
4.	Parole Aailed (-)	20 weeks and 02 days	00	04	22
5.	Detail of overstay/absent from parole/furlough (-)	Nil	00	00	00
6.	Actual custody period after conviction [S. No. 2-(4&5)]		00	03	25
7.	Actual undergone period including custody as undertrial (S. No. 1+6)		00	03	25
8.	Earned Remission+ GR (+)		00	00	10
9.	Total Sentence including remission (S. No. 7+8)		00	04	05
** 10.	UT Period served during conviction in other cases		00	00	00
** 11.	Custody served after deduction of undertrial period served during conviction in other cases [S. No. 9-10]		00	04	05

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 is based

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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 23.10.2013 and the petitioner has suffered the agony of trial for more than 10 years. After his 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 substantive sentence of 1 ½ years, petitioner has already undergone actual sentence of more than 04 months. Accordingly, this Court is of the opinion that it would be in the interest of justice if substantive sentence of rigorous imprisonment for 1 ½ 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 10.05.2017 passed by the Additional Chief Judicial Magistrate, Panipat convicting the petitioner and the judgment dated 17.02.2021 passed by Additional Sessions Judge, Panipat is upheld, however, the order of sentence dated 10.05.2017 is modified to the extent that the substantive sentence of rigorous imprisonment for 1 ½ years 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 shall remain intact. 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

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default of payment of fine, the petitioner be liable to be taken into custody and made to undergo simple imprisonment for one month.

14. Bail bonds and surety bonds of the petitioner stand discharged.
15. Pending miscellaneous application(s), if any, shall also stand disposed of.

09.01.2024

Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No