

2024:PHHC:169173



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

CRR-1863-2008(O&M)

Date of Decision:-17.12.2024

Alisher.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. H.S. Randhawa, Advocate
Amicus Curiae for the Petitioner.

Mr. Ashok Chaudhary, Addl. Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The present revision petition has been filed impugning the judgment dated 20.08.2008 passed by Additional Sessions Judge, Gurgaon whereby the appeal filed against the judgment of conviction and order of sentence dated 17.03.2008 & 19.03.2008 passed by Sub Divisional Judicial Magistrate, Mobile Court at Indana, Ferozepur Jhirka was partly accepted.

2. The FIR in the present case came to be registered on 18.09.2001. The judgment of conviction was passed on 17/19.03.2008 by Sub Divisional Judicial Magistrate, Mobile Court at Indana, Ferozepur Jhirka. The appeal filed against the order of conviction was partly accepted on 20.08.2008 by the Additional Sessions Judge, Gurgaon. The instant

revision petition was filed on 15.09.2008 and has come up for final hearing now i.e. after a period of 23 years from the date of registration of the FIR.

3. The brief facts of the prosecution case are that on 18.09.2001 at about 1.50 pm, a police party headed by ASI Subash Chand was present near Syndicate Bank Punhana, when Rashid met them and made a statement to the effect that on the fateful day, he along with Khuda Bux were traveling on one motor cycle, while Sapat was driving another motorcycle with Farrukh sitting on the pillion seat. At about 12.30 PM, when they reached near Jurhera turning, as Sapat tried to overtake a tractor which was being driven in a rash and negligent manner, the tractor driver struck his motor cycle against his motor cycle, as a result of which, Sapat and Farrukh fell on the road. While Sapat died on the spot due to the injuries suffered by him, Farrukh was immediately shifted to the Hospital. The tractor make Escort 435 was being driven by Alisher. The tractor was stopped at some distance and Farrukh was shifted to the Hospital on the same tractor. On the basis of the information a case under section 279, 337,304-A of IPC was registered and investigation was started.

4. During investigation a site plan was prepared, recovery memo were prepared, photographs were taken, statements of prosecution witnesses were recorded under Section 161 Cr.PC and after completion of all other usual formalities of investigation, the accused was sent up for trial.

5. Based on the evidence led, the accused came to be convicted and sentenced by the court of Sub Divisional Judicial Magistrate, Ferozepur Jhirka vide judgment and order of sentence dated 19.03.2008 as under:-

Offence Section	under	Sentence RI/SI	Fine	RI/SI in default of payment of fine
279 IPC		RI for 06 Months	-	-
337 IPC		RI for 03 Months	-	-
304-A IPC		RI for 1 Years	-	-

All the aforesaid sentences were ordered to run concurrently.

5. The accused/petitioner preferred an appeal which came to be partly allowed by the Court of Additional Sessions Judge, Gurgaon vide judgment dated 20.08.2008 whereby the petitioner was acquitted of the charges leveled against him under Section 337 IPC while upholding his conviction and sentence under Section 279/304-A IPC.

6. The aforementioned judgments are under challenge in the present petition.

7. During the pendency of the instant revision petition, the sentence of the petitioner was suspended vide order dated 30.09.2008.

8. The counsel for the petitioner contends that the judgment of conviction and order of sentence was passed on the basis of conjectures and surmises. The prosecution witnesses were discrepant in material particulars. Therefore, the present petition was liable to be allowed and the petitioner ought to be acquitted of the charges framed against him. In addition he contends that in case this Court was to come to a finding that the prosecution had established its case beyond reasonable doubt, then keeping in view the fact that the occurrence was of the year 2001 and the case had come up for final hearing now after a gap of 23 years, the petitioner may be released on probation subject to payment of compensation.

9. The Counsel for the State on the other hand has filed a custody certificate of the petitioner dated 10.12.2024 and the same is taken on record. He contends that the evidence on record was sufficient to establish the culpability of the petitioner. The prosecution witnesses had deposed as to the manner in which the occurrence had taken place. There were no discrepancies in their statements as has been sought to be argued. Therefore the present petition was liable to be dismissed.

10. I have heard learned Counsel for the parties and examined the record.

11. The evidence of the prosecution is consistent with the guilt of the petitioner. The manner in which the occurrence took place has been explained in detail. Merely, because the witnesses were related to the deceased is no ground to disbelieve them as no enmity has been established with the petitioner. Therefore, I find no infirmity in the judgments of the Trial Court as well as of the lower Appellate Court. Resultantly, the present revision stands dismissed.

12. As regards the imposition of sentence, it may be pointed out that this Court in **Gurmukh Singh Vs. State of Punjab CRR No.2168-2014** **Decided on 13.12.2023** held as under:-

“ 21. Thus two parallel threads are :

- a. Courts should normally avoid showing undue sympathy to the accused by imposing inadequate sentence as the same is harmful to the justice system ; and
 - b. The Supreme Court has repeatedly considered the fact that ordeal of facing pangs of prolonged trial needs to be considered while deciding adequacy of sentence in the matters pertaining to offence punishable under Section 304-A IPC. Where the accused has faced the prolonged trial running into more than a decade before it is finally concluded by the High Court or the Supreme Court and both the Courts found that the victim needs to be compensated adequately, the time spent in the lis by an accused and compensation to the victim can form relevant considerations for reduction in sentence.
22. In the present case the present revision is pending consideration for last nine years. FIR relates to the year 2007. The petitioner was granted suspension of sentence on 27.10.2014 after he expressed his readiness to compensate the victim by paying Rs.1.00 lac. The aforesaid amount stands paid. The question is, having paid compensation as per the orders of this Court 9 years back, should the petitioner be asked to go back behind bars? It is in these mitigating circumstances that this Court finds it appropriate to follow the orders passed by Apex Court in **K. Jagdish's case** (supra) as the facts in the present case are almost similar to those before the Apex Court. I may hastenly add here that the petitioner is claimed to

have paid compensation and neither the State nor the victim has agitated against the order passed by this court asking the petitioner to deposit compensation and granting him suspension of sentence.

- 23. *The petitioner is a first time offender and has no past criminal record or antecedents. He is not reported to have ever misused concession of bail/suspension of sentence. He has undergone about 06 months out of substantive sentence of 1 year and has already faced protracted trial for last 16 years.*
- 24. *Taking into consideration all these facts cumulatively, the substantive sentence of 1 year awarded to the petitioner by the Courts below is reduced to the period already undergone by him.*
- 25. *Petition is disposed off, accordingly.”*

13. As regards the imposition of sentence, admittedly, the occurrence pertains to the year 2001 and as many as 23 years have passed ever since then. A perusal of his custody certificate would show that he does not have any criminal antecedents and is a first time offender. Therefore, subject to the payment of the fine as imposed and payment of Rs.1 Lac as compensation to be paid to the legal heirs of the deceased, the sentence of the petitioner is reduced to the period already undergone by him i.e. 01 month and 19 days.

14. The present revision petition stands disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

December 17, 2024
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>