

Raj Pal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ravinder Malik, Advocate
for the petitioner

Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 30.11.2009 passed by learned Additional Sessions Judge, Kurukshetra vide which judgment of conviction and order of quantum of sentence dated 14.05.2009 passed by the learned Additional Chief Judicial Magistrate, Kurukshetra in FIR No. 26 dated 27.01.2001 under Sections 279, 304-A of the IPC registered at Police Station Sadar Thanesar, Kurukshetra was upheld. The petitioner was sentenced as under: -

Offence	Sentence
Section 279 IPC	Rigorous imprisonment for 6 months and a fine of Rs. 200/-, in default of which simple imprisonment for 3 months.
Section 304-A IPC	Rigorous imprisonment for 1 year and a fine of Rs. 600/-, in default of which simple imprisonment for 3 months.

FACTUAL BACKGROUND

2. The facts, in brief, are that the complainant was on his cycle along with another person was going to ‘Dera Bajigran’. On their way, they saw the

petitioner/accused driving a tractor, attached to a trolley, at a high-speed. A young boy was sitting on the mud guard of the tractor and since it was being driven in a rash and negligent manner. Unfortunately, he lost control and fell from it. As the tractor couldn't suddenly be brought to a halt, the victim was dragged for a distance, before being run over by the front right tire. Consequently, the boy fell unconscious and later succumbed to his injuries. After recording the statement of the complainant, HC Madan Lal put his endorsement on it and the sent the same to the Police Station, on the basis of which the FIR was registered.

3. On being charged under Sections 279, 304-A of the IPC, vide order dated 01.02.2002 by the learned Additional Chief Judicial Magistrate, Kurukshetra, the petitioner pleaded not guilty and claimed trial.

4. The prosecution examined as many as 10 witnesses to prove its case. Subsequently, the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded, wherein the petitioner pleaded false implication, however, no evidence was led by him in his defence.

5. After taking into account all the material on record, the petitioner was convicted by the learned trial Court vide judgment dated 14.05.2009. Aggrieved by the same, the petitioner preferred an appeal before the Lower Appellate Court, which was dismissed vide judgment dated 30.11.2009.

CONTENTIONS

6. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 14.05.2009 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioner as he has already undergone a

period of 25 days in custody. Furthermore, no other case is pending against him.

7. Learned counsel for the petitioner further submits that the petitioner has reformed and intends to live his life as a law-abiding citizen.

8. Per contra, learned State counsel opposes the prayer of the petitioner as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned Lower Appellate Court, and as such, he does not deserve any leniency.

OBSERVATIONS AND ANALYSIS

9. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

10. 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

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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. 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.

11. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner are tabulated as under: -

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	-
2.	Custody after conviction	30/11/2009 to 24/12/2009	25 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	30/11/2009 to 24/12/2009	25 days
5.	Actual undergone period	30/11/2009 to 24/12/2009	25 days
6.	Earned remission	-	-
7.	Total sentence including remission	30/11/2009 to 24/12/2009	25 days

12. A perusal of the judgment of conviction passed by the trial Court and the Lower Appellate Court indicates no perversity in their finding and the same are based 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

13. The FIR in the present case was lodged on 27.01.2001 and the case was instituted in the trial Court on 26.02.2001. The petitioner has faced the agony of a protracted trial, which has lasted for approximately 23 years. Since his conviction in the present case, the petitioner has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate, there are no other criminal cases pending against him. Out of the total sentence of 1 year under Section 304-A IPC, and 6 months under Section 279 IPC, the petitioner has undergone actual sentence of 25 days. Accordingly, this Court is of the opinion that it would be in the interest of justice if the sentence awarded to the petitioner is reduced to the period already undergone by him.

14. Consequently, the present revision is disposed of in the following terms: -

- i The judgment dated 30.11.2009 passed by the learned Additional Sessions Judge, Kurukshetra confirming the conviction of the petitioner is upheld, however, the order of sentence dated 14.05.2009 is modified to the extent that the sentence of rigorous imprisonment for 1 year under Section 304-A, and 6 months under Section 279 IPC, (to run concurrently) 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. 800/- imposed upon the petitioner by the trial Court is increased to

Rs.10,000/-. The petitioner is directed to deposit the increased amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioner shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

26.02.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No