

Hem Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K. Kaushik, Advocate
for the petitioner

Mr. Vikas Bharadwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 08.10.2018 passed by learned Sessions Judge, Panchkula vide which judgment of conviction dated 01.05.2017 and order of sentence dated 02.05.2017 passed by learned Sub Judicial Magistrate, Kalka in FIR No. 15 dated 15.01.2014 filed under Sections 304-A, 279 of the IPC registered at Police Station Pinjore was upheld and the order of quantum of sentence was modified. The petitioner was sentenced as under:-

Offence	Sentence
Section 304-A of the IPC	Rigorous imprisonment of 1 year and a fine of Rs. 500/-, in default of which simple imprisonment of 7 days
Section 279 of the IPC	Rigorous imprisonment of 6 months

FACTUAL BACKGROUND

2. The facts, in brief, are that on 15.01.2014, the petitioner-accused was rashly and negligently driving a tipper bearing no. HR-37-C-9484 and made a right turn without giving any indication and hit a motorcycle, causing the motorcyclist to be mowed down.

3. On finding a prima facie case, charges under Sections 279, 304-A of Indian Penal Code were framed against the accused, to which they pleaded not guilty and claimed trial. The prosecution examined 9 witnesses to prove its case. All incriminating evidence was put to the petitioner-accused in his statement recorded under Section 313 of the Cr.P.C. wherein he pleaded false implication but did not lead any evidence in his defence.

4. On assessing all material available on record, the petitioner was convicted by the learned trial Court vide judgment dated 01.05.2017. Aggrieved by the same, the petitioner preferred an appeal before the lower Appellate Court, which was dismissed vide judgment dated 08.10.2018. The sentence of the petitioner was suspended by this Court during the pendency of the present petition vide order dated 17.12.2018.

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 01.05.2017 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 has already undergone a period of 2 months 12 days of custody and is not involved in any other criminal activity.

6. 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

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

8. In **Deo Narain Mandal v. State 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 of the Hon’ble Supreme Court 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. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner are tabulated as under:-

Sr	Particulars	Period	Duration
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AJAY GOSWAMI

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I attest to the accuracy and integrity of this document

No.			
1.	Custody under trial	-	-
2.	Custody after conviction	08.10.2018 to 19.12.2018	2 months 12 days
3.	Interim bail	-	-
4.	Actual custody period after conviction		2 months 12 days
5.	Actual undergone period		2 months 12 days
6.	Earned remission		-
7.	Total sentence including remission		2 months 12 days

10. A perusal of the judgment of conviction passed by the learned trial Court and the learned lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Learned 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

11. The FIR in the present case was lodged on 15.01.2014 and the petitioner has been suffering the agony of protracted trial since the last 10 years. Since his conviction, the petitioner has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate, he is not involved in any other case and out of the total sentence of 1 year in this case, he has undergone actual sentence of 2 months 12 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of

rigorous imprisonment of 1 year awarded to the petitioner is reduced to the period already undergone by him.

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

- i The judgment dated 08.10.2018 passed by the learned Sessions Judge, Panchkula confirming the conviction of the petitioner is upheld, however, the order of sentence dated 02.05.2017 passed by the learned Sub Judicial Magistrate, Kalka, is modified to the extent that the sentence of rigorous imprisonment for 1 year along with default mechanism 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 learned 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.

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

26.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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