

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

247

2025.PHHC.161046



CRR-2308-2015 (O&M).
Decided on: November 17, 2025.

RAJU

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

PRESENT: Ms. Kritika, Legal Aid Counsel for the petitioner(s).

Mr. Vivek Chauhan, Addl. A.G. Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

This revision petition has been preferred against the judgment of conviction and order of sentence dated 12.02.2015, passed by the Judicial Magistrate First Class, Gurgaon, in case arising out of FIR No.143 dated 29.05.2013, under Sections 279 and 304-A of the Indian Penal Code, 1860, registered at Police Station Rajendra Park, Gurgaon whereby the petitioner had been sentenced to undergo rigorous imprisonment for a period of six months under Section 279 of the IPC with fine of Rs.1,000/- and in default of payment of fine to undergo simple

imprisonment for 15 days and one year simple imprisonment for offence under Section 304-A IPC. Both the sentences were ordered to run concurrently.

2. Further challenge is also to the judgment dated 30.05.2015, passed by the Additional Sessions Judge, Gurgaon, whereby Criminal Appeal No.21 of 23.02.2015, preferred by the petitioners against the aforesaid judgment of conviction and order of sentence has been dismissed and prayer for the grant of probation was also declined.

3. It is noticed by this Court that out of the last 12 occasions when the matter was taken up for hearing, counsel for the petitioner had not appeared on 10 occasions. On the two occasions where he appeared, even on those dates, he made a request for an adjournment. The matter pertains to the year 2015 and already a period of more than 10 years has elapsed since then. Adjudication of the matter cannot be prolonged for want of appearance of the counsel for the petitioner, hence, it is deemed appropriate to take up the matter for consideration on merits by appointment of a legal-aid-counsel.

4 Accordingly, Ms. Kritika who is present in the court is appointed as a Legal Aid Counsel to assist this court on behalf of petitioner(s).

5 A copy of the paper book has been supplied to the legal-aid-counsel. She has gone through the same and made her submissions.

FACTS IN BRIEF

6 The FIR in the present case was registered on the statement of Devraj, son of Shri Ram Kishan, who stated that he is a property dealer by profession. He alleged that on 29.05.2013, while travelling from his office in Sector-57, Gurgaon to his residence in Padwala in his Alto car (No. DL-9CQ-3847), he observed a motorcyclist ahead of him near the Daultabad flyover. When they reached near JPM Company, a HYWA truck, being driven in a rash and negligent manner, came from behind and struck the motorcycle. The motorcyclist fell on the roadside, and the motorcycle came under the front tyre of the HYWA, which dragged him for about 15–20 steps before stopping. On alighting from his vehicle, the complainant identified the motorcyclist as his nephew, Sunil Kumar, son of Randhir Singh, resident of Padwala, P.S. Khurd, New Delhi, who had died on the spot due to the injuries sustained. A crowd gathered at the place of occurrence, the HYWA driver fled, abandoning the vehicle, bearing registration No. HR-55G-5981. The complainant, accordingly, sought appropriate action against the accused.

7. On the statement of complainant, the FIR was registered. During investigation statements of witnesses was recorded, medical evidence was collected, rough site plan was prepared and on completion of investigation, challan against the above petitioner-accused was presented before the court.

8. On finding a prima facie case against the accused, he was charged for offences under Section 279 and 304A of IPC.

9. To prove its case, prosecution examined 9 witnesses whereafter prosecution evidence was closed on 09.02.2015.

10. The statement of the accused/petitioner was recorded under Section 313 of the Code of Criminal Procedure, wherein all incriminating circumstances and evidence appearing on record were put to him. The petitioner denied the same and claimed himself to be innocent. Defence evidence was closed on 12.2.2015. No evidence was however led by him.

11. After hearing the counsel and considering the arguments advanced by both sides, the testimonies of witnesses and the evidence placed on record, the Trial Court, vide judgment dated 12.2.2015, held the petitioner guilty of offences punishable under Sections 279 and 304-A and sentenced him as stated above.

12. Aggrieved of the same, the petitioner preferred Criminal Appeal No. 21 dated 23.02.2015 before the Court of the learned Additional Sessions Judge, Gurgaon. However, vide judgment dated 30.05.2015, the said appeal was also dismissed. Hence, the present revision petition has been preferred.

ARGUMENTS BY PETITIONER

13. Learned legal-aid-counsel contends that perusal of the evidence as well as the orders passed by both the Courts shows that there are a number of discrepancies that have gone unnoticed by Courts. She submits that no independent witness was joined by the prosecution despite PW-1 SI Gian Chand, who is the investigating officer of the case specifically admitting that there were about 40-50 people who were

present at the spot. Further, no test identification parade of the accused was got conducted. The said fact has been admitted by the prosecution witnesses namely SI Gian Chand as well as the complainant Dev Raj. She contends that even site plan was not prepared to scale and is not a correct description of the place of occurrence.

14 Learned legal aid counsel has been confronted that the above are questions of fact that have already been gone into by both the Courts and the same would not be re-examined only on a probability of any other conclusion as well. The same would amount to the High Court supplanting its own opinion for that of both the Courts. The scope of the revisional jurisdiction would not be extended solely for any difference of opinion by equating the same to an illegality, perversity or impropriety in the appreciation of evidence. Against the same, counsel contends that in such an eventuality, the prayer of the petitioner on the quantum of sentence be considered.

15 She submits that the petitioner is a driver by profession. He is married and is having children and had no criminal antecedents at the time when he was convicted. He was the sole bread earner of the family. The incident in question had taken place in the year 2013 and more than 12 years have elapsed since then. The petitioner has undergone an actual sentence of 02 months and 08 days out of the total sentence that was awarded to him. The petitioner was aged 30 years at the time of his conviction in the year 2013. Hence, he is currently around 45. His children would be at advance stages of their career. In case, the petitioner is confined in custody to undergo the remaining sentence, the same is likely

to seriously jeopardize the future and career of the children. The petitioner being not involved in any other case at the time of his conviction and even thereafter having not indulged in any criminal offence, after suspension of sentence, is a good reason to consider his case for sentencing him to the period already undergone.

RESPONDENTS ARGUMENTS

16 State counsel contends that the both the Courts have concurrently examined the evidence and have returned finding of conviction on the case having been proved. No illegality, perversity or impropriety in the judgment has been pointed out. Hence, the same need not be interfered with. However, he submits that he has no objection in case the prayer is considered to the extent of quantum of sentence only.

17 No other argument has been raised or judgment cited by either of the counsel appearing.

CONSIDERATION

18 I have heard the learned counsel for the parties and have gone through the documents available on record.

19 In so far as the arguments on merit advanced by the counsel for the petitioner is concerned, the discussion on the argument by the Appellate Court reads thus: -

“In the present case. PW3 Dev Raj who was the eye witness of the occurrence identified the accused in the court. He specifically pointed out towards the accused-appellant and stated that it was the same person who was driving the dumper (offending vehicle) on the date of accident

The driver of offending vehicle HIWA No. HR-55G-5981 had left the vehicle at the spot as stated by PW3 Dev Raj and also recorded in statement Ex.PWI A on the basis of which the FIR was registered. It has been stated by PW1 SI Gian Chand investigating officer that the said offending vehicle was recovered from the spot vide Ex.PWI D.

The accused-appellant was produced before the police by the owner of HIWA No. HR-55G-5981 i.e. PW2 Ram Kishan S o Sardar Singh and produced the driving licence, registration certificate and insurance of the said vehicle as per recovery memo Ex.PW.I G. The said recovery memo was signed by PW2 Ram Kishan at point 'P'. Though, PW2 Ram Kishan was declared hostile on his statement that he had not produced the accused before the police nor produced the documents but during his cross-examination he was confronted with his previous statement. He admitted in his cross-examination that he knew the accused present in the court who was working with him as driver for the last 3-4 years. He admitted that on the date of accident, the appellant-accused was working as driver with him on the date of accident.

It also needs to be noted that it is not the stand of the accused-appellant in his statement U/s 313 Cr.P.C. or the cross-examination of the witnesses that the investigating officer or the eye witnesses had any axe to grind against him.

The aforesaid cogent and convincing evidence on record leave no doubt that it was the appellant only who caused the death of Sunil while driving the said vehicle on the date of accident

13. The manner of the accident clearly suggest the rash and negligent act on the part of the appellant as he directly hit his vehicle (HIWA) to the motorcycle of the deceased from behind. It has been stated by the eye witness PW3 Dev Raj

that the appellant-accused was driving his vehicle at fast speed, rashly and negligently.

14. Once, the case against the accused-appellant is proved beyond reasonable doubt from the other cogent and reliable evidence appearing on record the non joining of the independent witness does not effect the merits of the prosecution case.

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16. It has been argued by the learned counsel for the appellant that there are material contradictions in the statements of witnesses

It has been contended that PW3 Dev Raj deposed that he signed on Ex.PW1 A at about 11.00 p.m., whereas PW1 A shows that he had signed the said statement at 10.00 p.m. Also, that PW3 Dev Raj the occurrence (complainant) is stated to be the eye witness of the occurrence but he was not present at the time of identification of the dead body as revealed from Ex.PW1/E. It has further been contended that the statement of PW9 constable Surender does not show that PW3 Dev Raj is the eye witness of the occurrence.

As far as the time of recording the statement of PW3 is concerned, such contradiction is minor in nature. The non-presence of PW3 in Ex.PW1/E cannot lead to any conclusion that he did not witness the accident. PW.9 Surender has only stated that investigating officer had called the relatives at the spot and the relatives of the deceased has got recorded the statement EX.PW1/A. This also does not lead to any conclusion that the accident was not witnessed by PW3. It has been stated by PW.3 Dev Raj in his cross-examination that he did not inform anyone regarding the accident as battery of his phone has gone dead. PW.4 Narender and PW5 Anil have stated that they had received information on telephone. It may be there that the other relatives were

informed by the investigating officer from his phone but again it cannot lead to conclusion that PW.3 did not witness the accident in question.”

20 The above shows that the arguments of the petitioner have been considered in light of the evidence brought before the Court. The conclusions drawn by both the Courts cannot thus be said to be without any basis. The said arguments thus deserve to be rejected in light of the limitation on the revisional jurisdiction. The challenge on merits thus deserves to be dismissed.

21 The same next leads to the issue of sentencing.

22 The object of punishment is not only to punish but also to rehabilitate the offenders in society. Where an accused reflects a strong possibility of improvement and reformative behaviour, the process of law should come to the aid of such an accused so as to ensure his reintegration into society.

23 The Hon'ble Supreme Court has laid down certain principles to govern the Courts in the matter of sentencing. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the matter of **State of Punjab Vs. Prem Sagar & Ors (2008) 7 SCC 550**. The relevant extract of the said judgment is reproduced hereinbelow: -

5. 'Whether the Court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstances of each case. While doing so, however, the nature of the offence said to have been committed by the accused

plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

6. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice-delivery system. Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of Section 235, sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.

9. What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come

across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.

10. In Dhananjoy Chatterjee Alias Dhana v. State of W.B. [(1994) 2 SCC 220], this Court held:

"15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime..."

11. Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjoy Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges.

12. In a recent decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], this Court opined:

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the

sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of 'order' should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be--as it should be--a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

Relying upon the decision of this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471], this Court furthermore held that it was the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

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18. Don M. Gottfredson in his essay on "Sentencing Guidelines" in "Sentencing by Hyman Gross and Andrew von Hirsch" opines:

"It is a common claim in the literature of criminal justice and indeed in the popular press that there is considerable "disparity" in sentencing. The word "disparity" has become a prerogative and the concept of "sentencing disparity" now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase "unwarranted disparity" may be preferred; not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly justified, beneficial and proper, so long as the variable qualities are carefully monitored for consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment- that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate."

[Emphasis supplied]

The learned author further opines:

"In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima,

leaving a broad range of discretion, as to the length of sentence."

19. Kevin R. Reitz in Encyclopedia of Crime and Justice, Second edition "Sentencing guidelines" states:

"All guideline jurisdictions have found it necessary to create rules that identify the factual issues at sentencing that must be resolved under the guidelines, those that are potentially relevant to a sentencing decision, and those viewed as forbidden considerations that may not be taken into account by sentencing courts. One heated controversy, addressed differently across jurisdictions, is whether the guideline sentence should be based exclusively on crimes for which offenders have been convicted ("conviction offenses"), or whether a guideline sentence should also reflect additional alleged criminal conduct for which formal convictions have not been obtained ("non-conviction offenses").

Another difficult issue of fact-finding at sentence for guideline designers has been the degree to which trial judges should be permitted to consider the personal characteristics of offenders as mitigating factors when imposing sentence. For example: Is the defendant a single parent with young children at home? Is the defendant a drug addict but a good candidate for drug treatment? Has the defendant struggled to overcome conditions of economic, social or educational deprivation prior to the offense? Was the defendant's criminal behavior explicable in part by youth, inexperience, or an unformed ability to resist peer pressure? Most guideline states, once again including all jurisdictions with voluntary guidelines, allow trial courts latitude to sentence outside of the guideline ranges based on the Judge's assessment of such

offender characteristics. Some states, fearing that race or class disparities might be exacerbated by unguided consideration of such factors, have placed limits on the list of eligible concerns. (However, such factors may indirectly affect the sentence, since judges are permitted to base departures on the offender's particular 'amenability' to probation (Frase, 1997).)"

20. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

- 1. What interests are violated or threatened by the standard case of the crime- physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.*
- 2. Effect of violating those interests on the living standards of a typical victim- minimum well-being, adequate well-being, significant enhancement*
- 3. Culpability of the offender*
- 4. Remoteness of the actual harm as seen by a reasonable man."*

24 The Hon'ble Supreme Court in the matter of **Pramod Kumar Mishra Vs. State of UP (2023) 9 SCC 810**, observed that punishment must not be viewed as an act of vengeance but as a means of reformation and reintegration of the offender into society. It was further held that an appropriate sentence must be determined by considering a range of factors, including the nature and circumstances of the offence, the offender's background, age, mental and emotional condition, potential for rehabilitation, prior criminal record, and the deterrent needs of the

community. Sentencing, the Court noted, involves a delicate exercise of judicial discretion where multiple social, psychological, and moral factors must be balanced to ensure that justice serves both societal protection and individual redemption.

CONCLUSION

25 Keeping the aforesaid principles in mind, it is evident that the offence in question was not an offence against society at large or opposed to public order. It was also not an offence in the nature as would be dangerous to national integrity or shocking to the public conscience.

26 Undisputedly, the offence in question took place in the year 2013 and a period of nearly 12 years has elapsed since then. Much water has flown since then. The petitioner is not involved in criminal cases and his family circumstances have materially altered. Any change in his status would have a cascading effect on his family as well. I find that such a prolonged incarceration, the protracted criminal trial and the consequent agony faced by the petitioner, the actual sentence out of total sentence already undergone by the petitioner, the reformatory tendency shown by the petitioner by not indulging in any other offence, the age of the petitioner at the time of the incident as well as the legal principles reproduced above together constitute mitigating circumstances.

27 The present petition is accordingly partly allowed. While the judgment of conviction dated 12.02.2015, passed by the Judicial Magistrate First Class, Gurgaon, and judgment dated 30.05.2015, passed by the Additional Sessions Judge, Gurgaon, dismissing the appeal preferred by the petitioner are affirmed, however, the order of sentence

dated 12.02.2015 is modified and the sentence awarded to the petitioner is reduced to the period already undergone by him. However, the sentence regarding fine is maintained.

November 17, 2025.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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