



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

251

CRR- 2901-2016

Date of decision: 17.11.2025

BIR SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

....Respondents

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

Present: Mr. Deepanshu Grover, Advocate
(Legal Aid Counsel)
for the appellant.

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

Mr. Pranav Arora, Advocate
(Legal Aid Counsel)
for respondent No.2-complainant.

VINOD S. BHARDWAJ. J.(Oral)

The present revision petition has been preferred against the judgment of conviction dated 03.12.2015 and order of sentence dated 07.12.2015 passed by the Sub Divisional Judicial Magistrate, Hodal in case bearing FIR No.81 dated 07.03.2010 registered under Sections 279 and 304-A of the IPC at Police Station, Hodal, District Palwal as well as against the judgment dated

04.08.2016 passed by the Sessions Judge, Palwal whereby the appeal filed by the petitioner against the judgment of Sub Divisional Judicial Magistrate, Hodal, has been dismissed. The petitioner has been sentenced as under:-

Offence under Section	Sentence
279 IPC	Convict shall undergo simple imprisonment for a period of three months.
304-A IPC	Convict shall undergo simple imprisonment for a period of one year.

2. Briefly summarized, the facts of the present case are that on 07.03.2010, a telephonic information was received from Taj Bhattha Sevli that a boy Rahul, aged about 13-14 years, had expired in an accident. The concerned officials reached Taj Bhattha Sevli and recorded the statement of the complainant Udai Singh. According to the version given by Udai Singh, at about 12:30 PM, his son Rahul had been bringing drinking water for him from the Jhuggi. However, one Tractor filled with Reti, negligently came at a high speed, struck his son Rahul from behind and as a result thereof, Rahul got pinned down under the tyre of the Tractor and passed away on the spot. Subsequently, the driver (petitioner herein) was apprehended and an FIR was registered against him. After completion of all other necessary formalities of investigation, a challan under Section 173 Cr.P.C. was submitted in the Court.

3. On completion of the procedural compliances, the parties led their respective evidence. In order to substantiate its case, the prosecution examined the following six witnesses and closed its evidence:

PW-1	Head Constable Vijay Pal
PW-2	Constable Mahi Pal
PW-3	Dr.J.P.Parshad
PW-4	Udai Singh (Complainant)
PW-5	Constable Ashok
PW-6	Vishnu s/o Ram Singh

The entire evidence was put to the petitioner and his statement under Section 313 Cr. P.C. was recorded. He denied the charges but led no evidence in defence.

4. After hearing the arguments by the counsel for the parties and considering the evidence on record, the Sub Divisional Judicial Magistrate, Hodal, convicted the petitioner vide judgment dated 03.12.2015 and sentenced him for offences under Sections 279 and 304-A of IPC. Appeal against the judgment of conviction & sentence was also dismissed by the Sessions Judge, Palwal vide judgment dated 04.08.2016. Hence, the present petition.

5. Learned Legal Aid counsel for the petitioner contends that he does not wish to challenge the conviction and confines his prayer only to the quantum of sentence. Hence, the factual matrix and merits of the case are not being examined at this stage. He submits that the present

matter pertains to the year 2010 and that no other criminal case has been registered against the petitioner. Counsel further submits that the incident occurred in 2010 and that the petitioner has faced the agony of a protracted trial for nearly 15 years. Accordingly, it is prayed that the sentence imposed upon the petitioner be reduced to the custody period already undergone.

6. On the other hand, the learned State counsel as well as Mr. Pranav Arora, Advocate, the Legal Aid Counsel on behalf of the respondent-complainant, opposed the submissions advanced on behalf of the petitioner, and argued that the prosecution had successfully established the guilt of the petitioner through cogent, reliable, and convincing evidence brought on record during the trial. It is further contended that the offence committed by the petitioner is of a serious nature and, therefore, calls for the imposition of a stringent sentence. The counsel submit that leniency in such cases would send a wrong signal to society and undermine the administration of criminal justice. Hence, it is imperative that adequate and deterrent punishment be imposed to ensure that such acts do not recur and to maintain public confidence in the rule of law.

7. I have heard learned counsel representing the parties and have gone through the case record.

8. Since conviction is not being challenged by the Legal Aid Counsel for the petitioner, hence, the merits of the case are not being adverted to. In order to appreciate the arguments of the petitioner on the issue of punishment, the jurisprudence & legal philosophy behind sentencing needs to be examined.

9. 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 Dhananjay 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.

xxx

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.'*

10. 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.

11. The fundamental purpose of imposition of sentence is based upon making an accused realize the consequences of the crime committed by him and the creation of a dent in the life of the victims and also the social fabric. The same by itself does not oblige the Court to extend an opportunity to a convict for reforming himself. The principles of proportionality have to be balanced and the impact of the offence on the society as a whole and its ramifications on the victim and the immediate collectives also have to be examined.

12. A nine judge bench of the Supreme Court of the United States, in *Dennis CouncleMcGautha v. State of California* reported as 402 U.S. 183 (1971), observed that the criteria governing sentencing neither furnish an exhaustive list of relevant considerations nor indicate how various circumstances should influence the decision-making process. In essence, these standards merely suggest broad areas for consideration and underscore the inherent difficulty in formulating uniform sentencing principles, particularly in matters of grave offences. The Court further cautioned against rigidly prescribing or mandating uniform standards for sentencing, emphasizing that the principles governing punishment must depend upon the facts and circumstances of each individual case, and that no straightjacket formula can be universally applied.

13. In the aforesaid legal backdrop, and keeping in view the established legal principles governing sentencing, it becomes imperative to evaluate the mitigating circumstances relied upon by the petitioner and relevant to the present case. The same are, therefore, extracted as under:—

- i. The incident in question pertains to the year 2010, and nearly 15 years have elapsed since then. The petitioner has already suffered the ordeal and anguish of protracted criminal proceedings spanning nearly fifteen years against a sentence of 3 months simple imprisonment for an offence under Section 279 and a sentence of 01 year simple imprisonment

for the commission of an offence under Section 304-A of the IPC.

- ii. The petitioner has shown potential of reform and has not misused the concession extended in his favour.
- iii. The petitioner is nearly 50 years of age at the time of conviction in the year 2015 and would now be in his 60s with a settled family life and children. An order to undergo the remaining sentence is likely to impact the future prospects of children and cause grave hardship to the family. Besides, he has already undergone nearly 04 months and 03 days of actual sentence.
- iv. The revival of penal consequences, in such circumstances, deserve to be moderated to ensure a balance of equities and more so when the offender has exhibited genuine reformatory conduct. The sentence, therefore, warrants suitable modification to reflect recognition and encouragement of such good behaviour.
- v. It is well settled that the object of punishment is not merely to deter but also to reform, and where an offender demonstrates sincere remorse, the emphasis must shift from retribution to reintegration into society.

14. Taking into consideration the facts noticed above and that the petitioner has faced the rigor of criminal prosecution for nearly 15 years since the registration of the FIR, I deem it appropriate to partly allow the petition. While maintaining the judgment of conviction passed by both the Courts i.e Sub Divisional Judicial Magistrate, Hodal as well as the Sessions Judge, Palwal, the order of sentence passed is modified. The sentence awarded by the Trial Court and as affirmed by the Sessions Judge, Palwal vide judgment dated 04.08.2016, is modified and reduced to the period already undergone.

15. All the pending miscellaneous application(s), if any, are also disposed of.

16. A copy of this order be sent to the High Court Legal Service Committee for information and necessary action.

NOVEMBER 17, 2025
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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