

CRR-3803-2012 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

235

2025:PHHC:162528



CRR-3803-2012 (O&M)
Date of Decision: 20.11.2025

Pawan Kumar

...Petitioner(s)

VERSUS

State of U.T. Chandigarh

...Respondent(s)

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

Present :- Ms. Ritam Aggarwal, Advocate, (Legal-Aid-Counsel),
for the petitioner(s).

Mr. Alankrit Bhardwaj, Addl. P.P. U.T. Chandigarh.

VINOD S. BHARDWAJ, J.(Oral)

1. The present criminal revision petition has been preferred against the judgment of conviction and order of sentence dated 06.05.2010 passed by the Court of Learned Additional Chief Judicial Magistrate, Chandigarh, whereby the revisionist- petitioner has been convicted for the commission of offences punishable under Sections 279 and 304-A of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") in case arising out of FIR No.100

dated 06.04.2006, under Sections 279 and 304-A IPC, registered at Police Station Sector 26, Chandigarh, as well as judgment dated 21.08.2012 passed by the Court of learned Additional Sessions Judge, Chandigarh, vide which appeal filed by the revisionist-petitioner bearing Criminal Appeal No. RBT 203 dated 21.05.2010/24.04.2012 has been dismissed and the revisionist-petitioner has been sentenced as under:-

Offence under Section	Sentence
279 IPC	Convict shall undergo rigorous imprisonment for a period of six months and fine of Rs.1,000/-. In default of payment of fine to undergo rigorous imprisonment for one month.
304-A IPC	Convict shall undergo rigorous imprisonment for a period of one year six months and fine of Rs.1,000/-. In default of payment of fine to undergo rigorous imprisonment for two months.

Both the sentences were ordered to run concurrently.

2. The case had been registered on the statement given to the police by one Rikhi Ram who was working as cleaner on truck bearing No. HR-38-D-6497. The said truck was owned by one Moti Lal, who also used to drive the said truck himself. On 06.04.2006, both Moti Lal and Rikhi Ram had come from Hamirpur to Chandigarh for unloading and loading of goods. After unloading the truck, both of them came to Transport area, Billing Roadlines, plot no. 14 to load goods. Since goods were to be loaded the next morning, they both parked the truck in the parking opposite to plot no. 13. At about 10:00 PM, after taking their meals, Moti Lal, Rikhi Ram and their other

companion driver Mohinder Kumar were going to sleep in their truck. Moti Lal was walking ahead of his other two companions. When they reached near J.B. Union, one vehicle of mark TATA-1109, being driven in a rash and negligent manner, came from behind from the side of plot no. 13 and hit Moti Lal from the backside. Due to this, Moti Lal fell on the ground. Thereafter, the said offending vehicle ran over of the head of Moti Lal. The vehicle then stopped after some distance. The vehicle was bearing registration no. PB-12-G-4752. The driver of the said offending vehicle alighted from the vehicle and came towards Rikhi Ram and Mohinder Kumar. They found that the head of Moti Lal was crushed and he died at the spot. On enquiry, the driver of the offending truck disclosed his name as Pawan Kumar son of Rattan Chand, resident of Hamirpur.

3. On receipt of information about the accident, Assistant Sub-Inspector Gurdial Singh of Police Post Sector 26, Chandigarh came to the spot and found the dead body of Moti Lal, whose head had been crushed, lying in the vacant space opposite to plot no. 13. Complainant Rikhi Ram met Assistant Sub Inspector Gurdial Singh and got recorded his statement to the above effect, which led to the registration of the First Information Report. Rough site plan of the place of occurrence was also prepared. After completion of inquest proceedings, the dead body was sent for post-mortem examination, which was carried out at Government Medical College and Hospital, Sector 32, Chandigarh. The offending vehicle bearing no. PB-12-G-4752 was taken into police possession. The accused was arrested. The matter was thoroughly investigated and statement of the witnesses were recorded.

After completion of investigation, challan was presented in the learned Court for trial.

4. Upon appearance, complete copies of challan as envisaged under section 207 Cr. P.C. were supplied to the accused/petitioner.

5. From the material placed on the record, a *prima facie* case punishable under Sections 279, 304-A IPC was found to have been made out and accordingly charges were framed against the accused/petitioner to which he pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined the following six witnesses, and closed its evidence vide order dated 28.01.2010:

PW-1	Rikhi Ram (Complainant)
PW-2	Head Constable Shiv Kumar
PW-3	Des Raj (Father of Deceased)
PW-4	Sub-Inspector Gurdial Singh (Investigating Officer)
PW-5	Harleen Puri, Junior Assistant, Office of DTO Ropar
PW-6	Dr. Rakhi, Senior Resident, PGI

7. 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. However, no witness was examined by the petitioner in his defence.

8. After hearing the case and considering the arguments advanced by both sides, the testimonies of witnesses and the evidence placed on record,

the learned Trial Court, vide judgment dated 06.05.2010, held the petitioner guilty of offences punishable under Sections 279 and 304-A and vide order on quantum of sentence dated 06.05.2010, accordingly sentenced him as stated above.

9. Aggrieved by the aforesaid judgment of conviction and order on quantum of sentence, the petitioner preferred Criminal Appeal No. RBT 203 dated 21.05.2010/24.04.2012 before the Court of the learned Additional Sessions Judge, Chandigarh. However, vide judgment dated 21.08.2012, the said appeal was dismissed, thereby affirming the conviction and sentence. Hence, aggrieved by the same, the present revision petition has been preferred.

10. There is no representation on behalf of the petitioner. The instant appeal pertains to the year 2012, further wait is unjustified. Hence, it is deemed appropriate to appoint a legal aid counsel to assist this Court on behalf of the petitioner. Accordingly, Ms. Ritam Aggarwal, Advocate, who is present in the Court is nominated as legal-aid-counsel to represent the petitioner in the present case and to assist this Court after going through the Court file.

11. Legal Aid Counsel has gone through the case file. She submits that both the learned Courts have erred in not appreciating the discrepancies emerging from the testimonies of the prosecution witnesses. She further submits that the accident in question had taken place in the parking area and, as such, rash and negligent driving of the offending vehicle by the petitioner is highly improbable. It is further submitted by the learned Legal Aid Counsel that the deceased was under the influence of liquor and death was caused as a

result of his falling on his own. The counsel submits that the both the learned Courts have wrongly relied upon the evidence led by the prosecution as careful scrutiny of the testimonies of the witnesses do not inspire any confidence.

12. On the other hand, the learned State counsel contends that evidence led before the learned Trial Court has already been considered by it as well as by the learned Appellate Court and that finding on conviction has been upheld by both the learned Courts below.

13. I have heard learned counsel appearing on behalf of the parties and have also gone through the judgments passed by both the learned Courts below.

14. Before proceeding further into the matter, it is apposite to make a reference to the findings recorded by the learned Appellate Court. The relevant part thereof reads thus:-

“10. The counsel for the appellant-accused has argued that the accident had taken place in the parking in the transport area and it would not be possible to drive the vehicle in a rash manner at such a place. It is also argued that there were pits in the area and deceased fell down in one of such pits while being under the influence of liquor and was run over by his own truck or some other vehicle as there was no question of offending vehicle running over the head of deceased being coming from behind. It is also argued that there is solitary statement made by Rikhi Ram, who has stated that they had come to the spot after taking meals from a dhabha, which means that the deceased had taken liquor and under the influence of liquor he fell down.

11. *The deceased was owner as well as driver of truck No. HR-38-D-6496. PW-1 Rikhi Ram was working as a cleaner on said truck. The truck was parked in front of plot NO.14 in the transport area. PW-1 has stated that at about 9.40 pm, he alongwith Moti Lal and Mohinder Singh had gone for taking dinner at some distance and after half an hour, they were going back, when Moti Lal was ahead of them at a distance of 20-25 feet. The offending truck came from behind being driven in a rash negligent manner and said truck hit against Moti Lal from his backside and as a result thereof Moti Lal fell down and was run over by said truck due to which head of Moti Lal was totally crushed. The witness identified the accused to be the person, who was driving the offending truck and stated that accused had disclosed his name at the spot as Pawan Kumar.*

12. *In cross-examination, he stated that they had taken dinner at a temporary dhaba, which did not bear any specific name and they had been regularly visiting said dhaba as and when they come to Chandigarh. The witness further stated that they did not take liquor on the date of accident though they used to take liquor earlier. He also stated that Moti Lal was going ahead by 25 feet as the witness was paying the money for food. He also stated that there was no proper light at the place, where the accident took place. The speed of the truck was 30-40 kmph and stated that it was an open area for the parking of the vehicles, where the accident had occurred. He also stated that the deceased was run over by the front tyre of the truck and stated that there was a pit, where the deceased fell and also accident took place. He further stated that after hitting of the truck, deceased was pushed to the pit. He also stated that when he saw the offending truck having*

jumped, he ran towards the place of occurrence to see what had happened.

13. The statement as made by PW-1 inspires confidence that witness has given truthful version. Simply because the deceased fell down in a pit after hitting with the truck, it cannot be said that he was not hit by the offending truck or was run over by some other truck. No such evidence has come on file that any other truck was involved in causing the accident. No such defence has been led by the accused. Even no suggestion was put to PW-1 that the deceased was run over by some other truck.

14. There is no evidence that the deceased was under the influence of liquor. As per postmortem report, there was a crush injury present over the face and head with multiple skull bones fractured. The brain substance was found protruding out through fractured areas. Right eye was completely crushed and left eye was partially crushed. Multiple nasal bone fractures were found. Upper and lower jaw bones found fractured at multiple places. This injury could be caused only if the deceased was run over by a heavy substance, which in the present case was the offending truck. The cause of death is given as cranio-cerebral damage consequent upon blunt force impact to the body. PW-6 Dr. Rakhi had conducted the postmortem examination, who has stated in cross-examination that blood samples of the deceased were not taken for further examination to see whether there were any alcoholic contents in the blood or not.

15. There is specific evidence that the deceased had been hit from behind by the offending truck and its front side had hit against the deceased, who fell down and was run over by the truck. There

is no reason to disbelieve the statement made by PW-1. The photographs of the place of occurrence, the offending truck and the dead body have been proved on record as Exhibit PW4/1 to PW4/8. Exhibit PW4/8, the offending truck is seen standing/parked at some distance from the dead body. There are blood stains on the ground in the direction of the offending vehicle. Blood had also fallen on the tyre of the vehicle as visible in photograph Exhibit PW4/7. There was heavy bleeding of blood from the head of the deceased, which was totally crushed in the accident, as visible in photographs Exhibit PW4/2, PW4/5 and PW4/6. Keeping in view the nature of the injury, falling of blood on the tyre of the offending truck cannot be ruled out.

16. In view of the discussion made above, it is held that there is no merit in the appeal. The charge stood duly proved against the appellant-accused and there is no reason to differ with the findings as recorded by the learned trial Court. The conviction and sentence order passed against appellant/accused are accordingly upheld. The appeal is dismissed. The accused is ordered to be taken in custody to undergo the sentence awarded to him by the learned trial Court. The record of the learned trial Court be sent back. Appeal file be consigned to the record room.”

15. It is thus evident from the aforestated findings that the submissions made by the learned Legal Aid Counsel on behalf of the petitioner have already been taken into consideration by the learned Appellate Court and dealt with on the strength of the evidence already on record. It has also been specifically recorded by the learned Appellate Court that no evidence has been led by the accused/petitioner on record to show that the

deceased was under the influence of liquor. It has been clearly established from the postmortem examination report, proved on record as PW4/E, that there was crush injury present over the face and head of the deceased with multiple skull bones fractured. It has also been noticed that the deceased had been hit from behind by the offending truck and its front side had hit against the deceased, who fell down and was run over by the truck. There are blood stains on the ground in the direction of the offending vehicle.

16. Statement made by the complainant as PW-1 inspires confidence that the witness has given a truthful account of the incident in question. It has also been observed that simply because the deceased fell down in a pit after hitting with the offending vehicle, it cannot be said that he was not hit by the offending truck or was run over by some other truck. Further, there is also no dispute with regard to the identity of the petitioner being driver of the offending vehicle as it has come in the evidence that Rikhi Ram (PW-1) identified the petitioner to be the person who was driving the offending truck and it has also been stated by the said witness that the accused had himself disclosed his name at the spot as Pawan Kumar.

17. The learned Legal aid counsel for the petitioner has not been able to point out any illegality and perversity in the findings recorded by both the learned Courts after appreciation of evidence. Hence, in the absence of the conclusions drawn by both the Courts being misplaced or misconceived or not based upon evidence, such finding would not ordinarily be interfered with, only because some other view may also be possible. It is settled principle of law that High Court should not re-examine the entire evidence and re-start the

trial while exercising powers under its revisional jurisdiction. Furthermore, no illegality, perversity, impropriety or misappreciation of evidence has been pointed out by the Legal Aid Counsel in the judgments passed by both the learned Courts below.

18. Faced with this situation, Counsel submits that case of the petitioner be considered on the quantum of sentence. The following mitigating circumstances are pointed out by him on behalf of the petitioner:

- (i) That the incident in question occurred in the year 2006, and more than nineteen years have since elapsed. The petitioner has hence endured the ordeal of a prolonged criminal trial spanning over nineteen years.
- (ii) That the petitioner is not shown to have committed any other criminal offence either prior to the above accident or thereafter.
- (iii) That the incident in question took place without any intention or deliberate act on the part of the petitioner. The same was compounded under the corrective circumstances i.e. the area being without light, limited vision due to parking of vehicles and deep pits in the same.
- (iv) That the petitioner is a poor person and has four children. His children are now at crucial stages of their career. Directing the petitioner to undergo his remaining sentence at this stage would have devastating consequences for the family.
- (v) That the petitioner had already undergone an actual sentence of 05 months and 10 days, out of the total sentence of 1½ years

awarded to him, at the time when his sentence was suspended by this Court and as is reflected in order dated 10.01.2013 passed by this Court.

- (vi) That even thereafter i.e. after a lapse of more than 12 years, the petitioner is not shown to have committed any offence.

19. 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.

20. 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 Dhananjay 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.'

21. 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.

22. Keeping the aforesaid principles in mind, the instant case at hand is yet another where interest of justice would warrant a reformatory approach in precedence to a punitive or retributive approach. It is not the function of the judges to seek the transformation of human nature itself, but rather to shape the framework within which individuals perceive that adherence to the law aligns with their own best interests.

23. I find that 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 as well as the legal principles reproduced above are sufficient mitigating circumstances to reduce the quantum of sentence awarded to the petitioner.

24. The present petition is accordingly partly allowed. While the judgment of conviction dated 06.05.2010, passed by the learned Additional Chief Judicial Magistrate, Chandigarh, as well as the judgment passed by the learned Additional Sessions Judge, Chandigarh, dated 21.08.2012, dismissing the appeal preferred by the petitioner are affirmed, however, the order on quantum of sentence dated 06.05.2010 is modified and the sentence awarded

to the petitioner is reduced to the period already undergone by him. However, the sentence regarding fine and punishment in default thereof is maintained.

25. The present revision petition stands partly allowed accordingly.

26. Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

November 20, 2025.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*