Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.520 OF 2015
[Arising out of S.L.P. (Crl.) No. 5825 of 2014]

State of Punjab ... Appellant

Versus

Saurabh Bakshi ... Respondent

J U D G M E N T

Dipak Misra, J.

Long back, an eminent thinker and author, Sophocles, had to say:

"Law can never be enforced unless fear
supports them."

Though the aforesaid statement was made centuries back, it has its pertinence, in a way, with the enormous vigour, in today's society. It is the duty of every right-thinking citizen to show veneration to law so that an

orderly, civilized and peaceful society emerges. It has to be borne in mind that law is averse to any kind of chaos. It is totally intolerant of anarchy. If any one defies law, he has to face the wrath of law, depending on the concept of proportionality that the law recognizes. It can never be forgotten that the purpose of criminal law legislated by the competent legislatures, subject to judicial scrutiny within constitutionally established parameters, is to protect the collective interest and save every individual that forms a constituent of the collective from unwarranted hazards. It is sometimes said in an egocentric and uncivilised manner that law cannot bind the individual actions which are perceived as flaws by the large body of people, but, the truth is and has to be that when the law withstands the test of the constitutional scrutiny in a democracy, the individual notions are to be ignored. At times certain crimes assume more accent and gravity depending on the nature and impact of the crime on the society. No court should ignore the same being swayed by passion of mercy. It is the obligation of the court to constantly remind itself that the right of the victim, and be it

said, on certain occasions the person aggrieved as well as the society at large can be victims, never be marginalised. In this context one may recapitulate the saying of *Justice Benjamin N. Cardizo* "Justice, though due to the accused, is due to the accuser too". And, therefore, the requisite norm has to be the established principles laid down in precedents. It is neither to be guided by a sense of sentimentality nor to be governed by prejudices. We are constrained to commence with this prologue because we are required to deal with the concept of adequacy of quantum of sentence imposed by the High Court under Section 304A of the Indian Penal Code (IPC) after maintaining the conviction of the respondent of the said offence as the prosecution has proven the charge that the respondent has caused death of two persons by rash and negligent driving of a motor vehicle.

2. The facts which are necessitous to be stated are that on 14.6.2007 Jagdish Ram and his nephew, Shavinder Kumar @ Tinku, sister's son, had proceeded from Sangrur to Patiala in their Maruti car bearing registration PB-11-M-8050. The said vehicle was also followed by Ramesh Chand in another Maruti

car bearing registration no. PB-09-C-6292. Be it noted that all of them had gone to house of one Des Raj at Sangrur in connection with matrimonial alliance of Shavinder Kumar alias Tinku. The vehicle that was driven by Tinku was ahead of Ramesh's at a distance of 25/30 kadams. After they reached some distance ahead of the bus stand village Mehmadpur about 2.00 p.m. an Indica car bearing registration no. HR-02-6800 came from the opposite side at a very high speed and the driver of the said car hit straightaway the car of Jagdish and dragged it to a considerable distance as a result of which it fell in the ditches. Ramesh Chand, who was following in his car, witnessed that his brother-in-law and nephew had sustained number of injuries and their condition was critical. A police ambulance came to the spot and the injured persons were taken to Rajindra Hospital, Patiala where Jagdish and Shavinder Kumar succumbed to injuries. In view of the said incident as FIR was lodged by Ramesh Chand, brother-in-law of Jagdish and accordingly a crime under Section 279/304A was registered against the respondent for rash and negligent driving. The

learned trial Magistrate, Patiala framed charges for the offences punishable under Section 279/304A IPC to which the respondent pleaded not guilty and claimed to be tried. The prosecution in order to prove its case examined six witnesses. The learned Addl. Chief Judicial Magistrate, Patiala vide judgment and order dated 23.4.2012 convicted the respondent for the offences punishable under Section 304A IPC and sentenced him to undergo rigorous imprisonment for a period of one year and pay a fine of Rs.2000/- with a default clause. On an appeal being preferred, the learned Addl. Sessions Judge, Patiala dismissed the appeal by judgment and order dated 6.9.2013.

3. As the factual matrix would unveil the respondent being grieved by the aforesaid conviction and the sentence preferred Criminal Revision No. 2955 of 2013 and the High Court while disposing off the Criminal Revision addressed to the quantum of sentence and in that context observed that:-

> "...the legal heirs of Jagdish Ram have been awarded a sum of Rs.7,30,000/- as compensation by the MACT and Rs.12,07,206/- to the legal heirs of Swinder Kumar @ Tinku by the MACT. The FAO Nos. 5329 and 5330 are pending in this Court. In compliance of order

> dated 19.9.2013, the petitioner has deposited Rs.85,000/- before the trial court as compensation to be paid to the LRs of deceased Jagdish Ram and Swinder Kumar @ Tinku. The compensation shall be divided as Rs.50,000/- to the LRs of Swinder Kumar @ Tinku and Rs.35,000/- to the LRs of Jagdish Ram. The receipt is taken on record. As per custody certificate petitioner Saurabh Bakshi has undergone 24 days as on 30.9.2013 out of one year."

Being of this view the High Court upheld the conviction and reduced the sentence, as has been stated before, to the period already undergone. Hence, the State is in appeal.

4. At this juncture, it is essential to state that the respondent who had initially wanted to argue the matter in-person had agreed to be assisted by a counsel and accordingly this court had appointed Ms. Meenakshi Arora, learned senior counsel to assist the court in the matter.

5. We have heard Mr. V. Madhukar, learned Additional Advocate General and Ms. Meenakshi Arora, learned senior counsel for the respondent.

6. It is submitted by Mr. Madhukar that when the prosecution had been able to establish the charges leveled against the respondent and both the trial court and the

appellant court had maintained the sentence there was no justification on the part of the High Court to reduce the sentence to the period already undergone solely on the basis that the respondent had paid some compensation. It is his further submission that keeping in view the gravity of the offence that two deaths had occurred the High Court should have kept itself alive to the nature of the crime and should have been well advised not to interfere with the quantum of sentence. He has commended us to the decisions in ***State of Punjab v. Balwinder Singh and Others***[1] and ***Guru Basavaraj Alias Benne Settappa v. State of Karnataka***[2]**.**

7. Ms. Meenakshi, learned senior counsel, per contra, has contended that the respondent was quite young at the time the accident took place and it may be an act of negligence, but the contributory facet by the Maruti car driver cannot be ruled out. That apart, there are mitigating circumstances for reduction of the sentence and in the obtaining factual matrix the High Court has appositely adopted corrective machinery which also reflects the concept of proportionality. The learned senior counsel would also submit that when the High

[1] (2012) 2 SCC 182
[2] (2012) 8 SCC 734

Court has exercised the discretion which is permissible under Section 304A this court should be slow to interfere. It is urged by her that when the compensation had been paid, the High Court has kept in view the aspect of rehabilitation of the victim and when that purpose have been sub-served the reduction of sentence should not be interfered with. The learned senior counsel has drawn inspiration from ***Gopal Singh v. State of Uttarakhand***[3] and a recent judgment in Criminal Appeal No. 290 of 2015 titled ***State of M.P. v. Mehtaab***[4]**.**

8. At the outset, it is essential to note that the respondent stood convicted by the trial court as well by the appellate court. The findings recorded by the said two courts are neither perverse nor did they call for interference in exercise of the revisional jurisdiction. The High Court as we notice has been persuaded by the factum of payment of compensation by the respondent herein, amounting to Rs.85,000/- to the LRs of deceased Jagdish Ram and his nephew and the said compensation had been directed to be paid by virtue of the order dated 19.9.2013 passed by the

[3] (2013) 7 SCC 545
[4] 2015 (2) SCALE 386

High Court. It is submitted by Ms. Arora that apart from the young age of the respondent at the time of occurrence the aforesaid aspect would constitute the mitigating factor. In ***Mehtaab's*** case a two-Judge Bench was dealing with the case under Section 304A IPC wherein the respondent was convicted under Section 304A IPC and 337 IPC and sentenced to undergo one year and three months rigorous imprisonment respectively. The High Court had reduced the sentence to 10 days. It is apt to note here that in that case the deceased had received injuries due to shock of electric current. The court took note of the submission of the learned counsel for the State and proceeded to opine as follows:-

> "7. Learned Counsel for the State submitted that the accused Respondent had installed a transformer in his field and left the electric wires naked which was a negligent act. The deceased Sushila Bai died on account of the said naked wire which had high voltage and was not visible in the dark. The offence having been fully proved by the evidence on record, the High Court was not justified in reducing the sentence to 10 days which was not just and fair. Even if liberal view on sentence of imprisonment was to be taken, the High Court ought to have enhanced the sentence of fine and awarded a reasonable compensation as a condition for reduction of sentence.

> 8. We find force in the submission. It is the duty of the Court to award just sentence to a convict against whom charge is proved. While every mitigating or aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and the society. It is also the duty of the court to duly consider the aspect of rehabilitating the victim. Unfortunately, these factors are missing in the impugned order. No cogent reason has been assigned for imposing only 10 days sentence when an innocent life has been lost."

After so stating the court referred to the decision in ***Suresh v. State of Haryana***[5] and enhanced the compensation taking note of the financial capacity of the accused respondent therein, and directed as follows:-

> "10. As already observed, the Respondent having been found guilty of causing death by his negligence, the High Court was not justified in reducing the sentence of imprisonment to 10 days without awarding any compensation to the heirs of the deceased. We are of the view that in the facts and circumstances of the case, the order of the High Court can be upheld only with the modification that the accused will pay compensation of Rs. 2 lakhs to the heirs of the deceased within six months. In default, he will undergo RI for six months. The compensation of Rs. 2 lakhs is being fixed having regard to the limited financial resources of the accused but the said compensation may not be adequate for the heirs of the deceased. In such

[5] Crl Appeal No. 420 of 2012, decided on 28.11.2014

> situation, in addition to the compensation to be paid by the accused, the State can be required to pay compensation Under Section 357-A. As per judgment of this Court in Suresh (supra), the scheme adopted by the State of Kerala is applicable to all the States and the said scheme provides for compensation upto Rs. 5 lakhs in the case of death. In the present case, it will be appropriate, in the interests of justice, to award interim compensation of Rs. 3 lakhs Under Section 357-A payable out of the funds available/to be made available by the State of Madhya Pradesh with the District Legal Services, Authority, Guna. In case, the accused does not pay the compensation awarded as above, the State of Madhya Pradesh will pay the entire amount of compensation of Rs. 5 lakhs within three months after expiry of the time granted to the accused."

9. In our considered view the decision in the said case has to be confined to the facts of that case. It cannot be said as a proposition of law that whenever an accused offers acceptable compensation for rehabilitation of a victim, regardless of the gravity of the crime under Section 304A, there can be reduction of sentence.

10. In this context, we may refer with profit to the decision in ***Balwinder Singh*** (supra) wherein the High Court had allowed the revision and reduced the quantum of sentence awarded by the Judicial Magistrate, First Class, for the

offences punishable under Section 304A, 337, 279 of IPC by reducing the sentence of imprisonment already undergone that is 15 days. The court referred to the decision in ***Dalbir Singh v. State of Haryana***[6] and reproduced two paragraphs which we feel extremely necessary for reproduction:-

> "*1*. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.
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> *13*. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of

[6] (2000) 5 SCC 82

> the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for .causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

11. In ***B. Nagabhushanam v. State of Karnataka***[7] the appellant was directed to undergo simple imprisonment for six months for the offences punishable under Section 304A IPC. The two-Judge Bench referred to ***Dalbir Singh*** (supra) and declined to interfere with the quantum of sentence. Be it stated, in the said case a passage from ***Ratan Singh v. State of Punjab***[8] was quoted:-

> "Nevertheless, sentencing must have a policy of correction. This driver, if he has to become a

[7] (2008) 5 SCC 730
[8] (1979) 4 SCC719

> good driver, must have a better training in traffic laws and moral responsibility, with special reference to the potential injury to human life and limb. Punishment in this area must, therefore, be accompanied by these components. The State, we hope, will attach a course for better driving together with a livelier sense of responsibility, when the punishment is for driving offences. Maybe, the State may consider, in case of men with poor families, occasional parole and reformatory courses on appropriate application, without the rigour of the old rules which are subject to Government discretion."

12. In ***Guru Basavaraj*** (supra) the appellant was found guilty for the offences punishable under Sections 337, 338, 279 and 304A IPC and sentenced to suffer simple imprisonment of six months and to pay a fine of Rs.2000/- and in default to suffer simple imprisonment of 45 days. The two-Judge Bench after placing reliance on ***State of Karnataka v. Krishna***[9]***, Sevaka Perumal v. State of T.N.***[10]***, Jashubha Bharatsinh Gohil v. State of Gujarat***[11]***, State of Karnataka v. Sharanappa Basanagouda Aregoudar***[12] and ***State of M.P. v. Saleem***[13] opined that there is a constant concern of the court on imposition of

[9] (1987) 1 SCC 538
[10] (1991) 3 SCC 471
[11] (19940 4 SCC 353
[12] (2002) 3 SCC 738
[13] (2005) 5 SCC 554

adequate sentence in respect of commission of offences regard being had to the nature of the offence and demand of the conscience of the society. There has been emphasis on the concern to impose adequate sentence for the offence punishable under Section 304A IPC. The Court has observed that it is worthy to note that in certain circumstances, the mitigating factors have been taken into consideration but the said aspect is dependent on the facts of each case. As the trend of authorities would show, the proficiency in professional driving is emphasised upon and deviation therefrom that results in rash and negligent driving and causes accident has been condemned. In a motor accident, when a number of people sustain injuries and a death occurs, it creates a stir in the society; sense of fear prevails all around. The negligence of one shatters the tranquility of the collective. When such an accident occurs, it has the effect potentiality of making victims in many a layer and creating a concavity in the social fabric. The agony and anguish of the affected persons, both direct and vicarious, can have nightmarish effect. It has its impact on the society and the

impact is felt more when accidents take place quite often because of rash driving by drunken, negligent or, for that matter, adventurous drivers who have, in a way, no concern for others. Be it noted, grant of compensation under the provisions of the Motor Vehicles Act, 1988 is in a different sphere altogether. Grant of compensation under Section 357(3) CrPC with a direction that the same should be paid to the person who has suffered any loss or injury by reason of the act for which the accused has been sentenced has a different contour and the same is not to be regarded as a substitute in all circumstances for adequate sentence. Thereafter, the Court proceeded to observe:-

> "32. We may note with profit that an appropriate punishment works as an eye-opener for the persons who are not careful while driving vehicles on the road and exhibit a careless attitude possibly harbouring the notion that they would be shown indulgence or lives of others are like "flies to the wanton boys". They totally forget that the lives of many are in their hands, and the sublimity of safety of a human being is given an indecent burial by their rash and negligent act.
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> 33. There can hardly be any cavil that there has to be a proportion between the crime and the punishment. It is the duty of the court to see that appropriate sentence is imposed regard

> being had to the commission of the crime and its impact on the social order. The cry of the collective for justice .which includes adequate punishment cannot be lightly ignored."

Being of this view, the Court declined to interfere.

13. In Siriya v. State of M.P.[14] it has been held as follows:-

> "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."

14. In ***Alister Anthony Pareira v. State of Maharashtra***[15]

while emphasizing on the inherent danger the Court observed thus:-

> "**39.** Like Section 304-A, Sections 279, 336, 337 and 338 IPC are attracted for only the negligent or rash act. The scheme of Sections 279, 304-A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge

[14] (2008) 8 SCC 72
[15] (2012) 2 SCC 648

> or intention to produce the result and irrespective of the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life."

15. While dealing with the policy of sentencing in ***Gopal Singh*** (supra) the two-Judge Bench quoted a paragraph from ***Shailesh Jasvantbhai v. State of Gujarat***[16] which is as follows:-

> "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

[16] (2006) 2 SCC 359

> 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."

In the said case it has been laid as follows:-

> "18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect — propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be

> dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

16. In **Shyam Narain v. State (NCT of Delhi)** [17] though in a different context while dealing with the issue of sentencing it has been stated that primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just

[17] (2013) 7 SCC 77

punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that .the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The protagonists, as we perceive, have lost all respect for law.

A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse then death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is “the crowning glory”, “the sovereign

mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months.

18. Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a non-challant attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, we are bound to observe that the lawmakers should scrutinize, re-look and re-visit the sentencing policy in Section 304A, IPC. We say so with immense anguish.

19. Resultantly, the appeal is allowed to the extent indicated above and the respondent be taken into custody forthwith to suffer the remaining period of sentence.

.....J.
[DIPAK MISRA]

.....J.
[PRAFULLA C. PANT]

NEW DELHI
MARCH 30, 2015.