

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

Criminal Revision No.584 of 1992

Date of Decision: January 31, 2007

Sukh Raj @ Raj Singh

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.B.S.Bhullar, Advocate,
for the petitioner.

Mr.Sidharth Sarup, AAG, Haryana,
for the State.

This revision is directed against the order convicting the petitioner for offences punishable under Sections 279/336/337/304-A IPC. After conviction, the petitioner was sentenced to undergone as under:-

- i) to undergo R.I. for 3 months and a fine of Rs.200/- for offence u/s 279 IPC and in default of payment of fine to further undergo S.I.for seven days;
- ii) to undergo R.I. for one months and a fine of Rs.100/- for offence

u/s 336 IPC and in default of payment of fine, to further undergo S.I. for 7 days;

iii) to undergo R.I. for 3 months and to a fine of Rs.300/- for offence u/s 337 IPC and in default of payment of fine to further undergo S.I. for 15 days;

iv) to undergo R.I. for one year and to a fine of Rs.900/- for offence u/s 304-A IPC and in default of payment of fine, to undergo further S.I. for one month.

The facts, in brief, are that truck No.DEL-5363, driven by the petitioner, met with an accident with another truck No.HRH-2641, driven by Sher Singh (PW-1) at about 6.30 P.M. on 2.7.1988. As per the prosecution story, the truck driven by Sher Sigh PW-1 was taking the labour force and as a result of the impact, Ram Bhagat and Hanuman, sitting in the body of the truck, fell down and breathed their last. The petitioner was accordingly charged and prosecuted, leading to the award of the sentence, as afore-mentioned. He remained un-successful in his appeal and accordingly is before this court by way of present revision petition.

The counsel for the petitioner has submitted that the incident is of the year 1988 and the petitioner had faced trial for a period of four years and thereafter had filed the present revision in this court, which is pending since 1992. He accordingly prays that at this belated stage, it would be rather unfair to make the petitioner to undergo this sentence. He has thus prayed that he would not make submissions on merits, but would pray that petitioner be released on probation. Mr.Berry has also pointed out that though the aspect of release of the petitioner on probation was considered by the trial

court, but no special reason in this regard was recorded. Appellate Court, however, did not consider this aspect. In support of his contention, the counsel has drawn my attention to Gobind Ram Vs. The State of Haryana, 1978 C.L.R. 255 and Prem Singh Vs. The State of Punjab, 1980 C.L.R.235.

It cannot be denied that this incident is rather old. The petitioner would suffer the consequences of a sentence, which has been awarded to him due to an incident, which is more than 18 years old. I see reason and justification in the prayer made by the counsel for the petitioner that if conviction and sentence are allowed to stand, it may affect the petitioner and his family. The petitioner has apparently suffered enough because this conviction and sentence must be weighing in his mind for all these years. Nothing has been pointed out before me by the learned State counsel, which could stand in the way of the petitioner for grant of his release on probation. A prayer for release of the petitioner on probation was made before the trial Magistrate, which, however, was declined, but the Appellate Court did not take this aspect into consideration at all. The Hon'ble Supreme Court in the case of Chandreshwar Sharma Vs. State of Bihar, JT 2000(2) SC 36 has held that reading of Section 361 and 360 of the Code together would indicate that in any case where the courts have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of said provision then it shall record in its judgment the specific reasons for not doing so. This apparently has not been done by the Appellate Court and thus the court has over looked the provisions of Sections 360 and 361 Cr.P.C. It can be said that the Appellate Court did not perform its

mandatory duty.

Taking all these aspects into consideration, I am of the view that the submission made by the counsel for the petitioner would need acceptance. Accordingly, while disposing of this petition, I am inclined to direct that the petitioner be released on probation for a good conduct instead of sentencing him and he be directed to enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for this period shall be executed before the Chief Judicial Magistrate, Bhiwani within one month of this order.

The present revision petition is accordingly disposed of.

January 24, 2007
ramesh

(RANJIT SINGH)
JUDGE