



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Appeal No. 483 of 2007**  
**Date of Decision: 29.08.2017**

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**Sanjay Kumar**

**.....accused-Appellant**

**Versus**

**State of Himachal Pradesh**

**..... Respondent.**

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**Coram**

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

**Whether approved for reporting? Yes.**

**For the appellant:**

Mr. Lakshay Thakur, Advocate.

**For the respondent:**

Mr. M.L. Chauhan, Additional Advocate General.

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**Sandeep Sharma, J. (Oral)**

Instant criminal appeal is directed against the impugned judgment of conviction dated 23.11.2007, passed by the learned Sessions Judge, Mandi, H.P., whereby learned court below while holding the accused guilty of having committed offences punishable under Section 304-A of the IPC, convicted and sentenced him to undergo rigorous imprisonment for 1½ years with a fine of Rs. 10,000/-. Learned Court below further held that in case of default in payment of fine, accused shall further undergo imprisonment for one month.

**2.** Briefly stated facts as emerge from the record that the complainant namely Shri Rajesh Kumar in his statement recorded under Section 154 of the Cr.PC, stated that on 8.4.2004, he was driving tipper bearing No. HP-29-2413, loaded with bajri and was on his way to

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Whether reporters of the Local papers are allowed to see the judgment?

Jogindernagar from Baijnath. He further alleged that when aforesaid tipper being driven by him reached near the shop of Raju at Suka Bag, a Maruti Van bearing No. HP-01-D-0351, being driven by the accused in a zig zag manner like a snake came from other side at fast speed and hit three boys standing near rain shelter. Complainant further alleged that he took his tipper to his side and accused who was driving Maruti Van also hit tipper after hitting boys standing near rain shelter. As per the complainant, accused also suffered injuries along with the injured boys, who were taken to Baijnath hospital in the vehicle. Complainant further alleged that one person namely Amit Kumar died on the way to the hospital. As per the complainant, smell of liquor was coming from the mouth of the accused at that relevant time. On the basis of aforesaid statement Ext.PA, recorded under Section 154 of the Cr.PC, formal FIR Ext. PK, came to be registered against the accused. After completion of investigation, police presented challan before the Court of Judicial Magistrate, 1<sup>st</sup> Class, Jogindernagar. Since the appellant-accused was charged under Sections 279, 337, 338 and 304AA of the IPC, case later on came to be committed to the Court of learned Sessions Judge, Mandi, H.P., where it was registered as Sessions Trial No. 20 of 2005.

**3.** Learned Sessions Judge, after being satisfied that prima-facie case exists against the appellant accused, framed charges against him under Sections 279, 337, 338 and 304AA of the IPC, to which he pleaded not guilty and claimed trial.

**4.** Learned Sessions Judge, on the basis of evidence adduced on record by the prosecution, held the appellant-accused guilty of having

committed offence punishable under Section 304-A, and accordingly, convicted and sentenced him as per the description given supra, whereas charge framed under Section 304-AA was dropped since prosecution failed to prove intoxication.

5. In the aforesaid background, the appellant being aggrieved and dis-satisfied with the conviction recorded against him under Section 304 A, has approached this Court by way of instant proceedings, seeking therein his acquittal after setting aside the judgment of conviction recorded by the court below.

6. Mr. Lakshay Thakur, learned counsel representing the appellant vehemently argued that the impugned judgment of conviction recorded by the court below is not sustainable in the eye of law as the same is not based upon the correct appreciation of evidence and as such, same deserves to be quashed and set-aside. While inviting attention of this Court to the impugned judgment of conviction recorded by the court below, Mr. Thakur, contended that no finding, if any, has been returned by the court below with regard to the commission of offence, if any, by the appellant under Section 279 of the IPC and as such, by no stretch of imagination, it could be concluded by the court below that vehicle in question was being driven rashly and negligently at that relevant time and as such, conviction recorded by the court below deserves to be quashed and set-aside on this sole ground. While referring to the statements adduced on record by the prosecution, Mr. Lakshay further contended that none of the prosecution witnesses stated something specific with regard to the rashness and negligence, if any, on the part of the

appellant at the time of the alleged incident. Learned counsel further contended that onus was upon the prosecution to prove by leading cogent and convincing evidence that vehicle in question was being driven rashly and negligently that too at high speed by the appellant at that relevant time, as a result of which persons standing near the rain shelter suffered injuries. While inviting attention of this Court to the statement of PW7 Gian Chand (mechanical expert), learned counsel for the appellant contended that mechanical expert i.e. PW7, categorically stated before the court below that suspension rod was found broken and as such, possibility, if any, of accident occurred on account of breakdown of the rod, could not be ruled out and in this regard, benefit of doubt was required to be extended to the appellant by the court below. Learned counsel further contended that the court below placed undue reliance upon the statement of doctor PW16 Dr. Tilak Bhagra, who in his statement stated that smell of liquor was coming from the mouth of the accused, but such statement could not be taken into consideration by the court below while holding appellant-accused guilty of having committed offence under Section 304A of the IPC, especially when no test, as required under the law, was conducted by the prosecution to ascertain the degree of alcohol, if any, in the body of the appellant-accused. Mr. Thakur, also made this Court to travel through the evidence led on record by the prosecution to suggest that there is no consistency at all in the statements of all the prosecution witnesses and as such, no reliance, if any, could be placed by the court below on their versions while holding appellant accused guilty of having committed offence punishable under Section 304-A. Lastly, Mr. Thakur,

contended that though, judgment passed by the learned court below is not sustainable, in view of the arguments having been advanced by him herein above, but in case this Court comes to conclusion that judgment of conviction recorded by the court below is based upon the proper appreciation of the evidence, in that eventuality, sentence as awarded by the court below, deserves to be reduced taking note of the fact that more than 9 years have passed after passing of the said order and 13 years have passed after occurrence of the unfortunate incident and during this period, appellant has already suffered mental agony. Learned counsel further contended that taking note of the age of the appellant i.e. 42 years coupled with the fact that he has a family to support, payer for extension of benefit of probation under Section 4 of the Probation of Offenders Act, may also be considered by this Court. With the aforesaid submissions learned counsel prayed that appellant be acquitted of the charges framed against him after setting aside the judgment of conviction recorded by the court below.

**7.** Per contra, Mr. M.L. Chauhan, learned Additional Advocate General, while refuting the aforesaid submissions having been made by the learned counsel for the appellant-accused, strenuously argued that there is no illegality and infirmity in the judgment of conviction recorded by the court below, rather perusal of the same suggests that each and every aspect of the matter has been dealt with very carefully and meticulously by the court below and as such, there is no scope of interference of this Court. With a view to substantiate his aforesaid argument, learned Additional Advocate General while inviting attention of this Court to the statements of PW1, 3, 4, 6, 9 and 10

contended that prosecution successfully proved its case beyond reasonable doubt that at that relevant time, vehicle in question was being driven rashly and negligently. While referring to the statement of PW7 Gian Chand, learned Additional Advocate General, contended that though mechanical expert in his statement stated that suspension rod was broken but in that eventuality, due care was required to be exercised by the appellant accused while driving the vehicle. While referring to the cross-examination conducted on this witness, Mr. Chauhan, contended that if suspension rod is broken, vehicle will lose its balance, meaning thereby, then there was no occasion as such, for the appellant accused to drive the vehicle in case of break down of suspension of rod. While referring to the medical evidence led on record by the prosecution, to prove the injury allegedly caused to the victims in the alleged accident, learned Additional Advocate General, contended that one Amit Kumar lost his life in the accident due to rash and negligent act of the appellant accused and as such, no leniency, if any, can be shown to the appellant by extending him benefit of Section 4 of the Probation of Offenders Act. While referring to the judgment passed by the Hon'ble Apex Court in **State of Punjab versus Saurabh Bakshi 2015 (5) SCC 182**, learned Additional Advocate General contended that Hon'ble Apex Court has deprecated the practice of awarding compensation to the victim in lieu of the punishment required to be imposed upon the reckless drivers. With the aforesaid submissions, Mr. Chauhan, contended that impugned judgment of conviction deserves to be upheld.

**8.** I have heard the learned counsel for the parties and carefully gone through the record.

**9.** This Court after having carefully perused evidence adduced on record by the respective parties vis-à-vis impugned judgment of acquittal recorded by the court below, is not at all persuaded to agree with the contention of the learned counsel representing the appellant that there is mis-reading, mis-apprehension and mis-construction of evidence by the court below while holding the appellant guilty of having committed offence punishable under Section 304-A of the IPC, rather this Court has no hesitation to conclude that prosecution has successfully proved on record that at that relevant time, vehicle in question was being driven rashly and negligently by the accused under the influence of the liquor, as a result of which some boys suffered injury and one person namely Amit Kumar lost his life on account of unfortunate accident.

**10.** In the case at hand, prosecution with a view to prove its case beyond reasonable doubt, examined as many as seventeen witnesses, whereas accused in his statement recorded under Section 313 of the Cr.PC, denied case of the prosecution in toto and claimed that he has been falsely implicated. However, fact remains that he did not lead any evidence in his defence.

**11.** PW1 Rajesh Kumar and injured witnesses (PW4, PW9 and PW10) categorically stated before the court below that Maruti Van bearing No. HP-01-D-0351, was being driven in a rash and negligent manner by the appellant accused in a zig zag manner like a moving snake, as a result of which, they

suffered injuries. Aforesaid witnesses categorically stated that petitioner accused while driving Maruti van in zig zag manner hit them and thereafter struck his van against tipper bearing No. HP-29-2413. Though, aforesaid witness especially (PW1) Rajesh Kumar and (PW16) Dr. Tilak Bhagra, who had an occasion to see the injured immediately after the accident, categorically stated that smell of alcohol was coming from the mouth of the appellant accused but since no medical test was got conducted by the police to prove the factum with regard to the consumption of liquor by the appellant accused at the time of driving, learned court below acquitted the appellant accused of charge framed against him under Section 304-AA of the IPC.

**12.** It is true that charge under Section 304AA could not be proved by the prosecution against the appellant accused on account of failure on the part of the police to take urine samples of the accused but this Court after having carefully perused the statements of various prosecution witnesses has no hesitation to conclude that appellant accused had consumed liquor at the time of alleged accident. PW1 complainant, who at that relevant time was driving tipper categorically, stated that he saw Maruti van bearing No. HP-01-D-0351 coming from the opposite side in a zig zag manner like snake and thereafter it hit boys standing near the rain shelter. He also stated that after hitting the boys standing in the rain shelter, appellant accused struck his van against his tipper which was parked by him on the side of the road.

**13.** PW10 Sudershan Walia, who was also standing by the side of the rain shelter at Suka Bag, at the time of the accident, categorically, deposed before the court below that he saw a Maruti Van coming in fast speed and it

firstly hit PW-9 Ravinder Kumar and thereafter hit two other boys, who were talking to each other. He categorically stated before the court below that due to aforesaid accident, boys fell on the road and even thereafter Maruti van was still being driven in a zig zag manner, whereafter driver of the Maruti Van hit his car against the loaded tipper parked on the road side.

**14.** This Court after having carefully examined statements of the aforesaid prosecution witnesses, sees no force in the argument of learned counsel for the appellant that no specific evidence, if any, was led on record by the prosecution to prove rashness and negligence on the part of the appellant accused at the time of the accident. All the material PWs, as have been discussed above, have categorically stated that they saw a Maruti Van coming from opposite side in a zig zag manner like snake, coupled with the fact that at that relevant time, smell of liquor was coming from the mouth of the appellant accused and as such, it could be safely inferred/concluded that offending vehicle was being driven rashly and negligently so as to endanger the human life.

**15.** This Court also cannot lose sight of the fact that due to aforesaid accident, one person namely Amit Kumar lost his life. Though, learned counsel for the petitioner while inviting attention of this Court to the mechanical report Ext.PE rendered by PW7 Gian Chand, made an endeavor to persuade this Court to agree with his contention that at that relevant time, there was a mechanical defect in the vehicle and as such, there was no fault if any, on the part of the appellant-accused but aforesaid argument/submission deserve outright rejection in view of the report given by

the PW7, wherein he has simply stated that suspension rod was found to be broken, but there is nothing on record, from where it can be inferred that suspension rod was suddenly broken or technical defect, if any, emerged in the vehicle all of a sudden at the time of the accident. Similarly, there is no evidence on record that suspension rod was already broken much prior to the accident. Even if it is presumed that suspension rod was already broken, in that eventuality, due care and caution was required to be exercised by the appellant-accused while driving the vehicle in question. If argument having been advanced by the learned counsel representing the appellant-accused is accepted that there was a defect in the offending vehicle, there was no occasion, as such, for the appellant-accused to drive the vehicle in question on that relevant date. It clearly emerge from the evidence available on record that persons standing near rain shelter suffered injuries on account of rash and negligent act of the appellant accused. Hence, this Court sees no valid reason to disagree with the findings returned by the learned court below, which otherwise appears to be based upon the proper appreciation of the evidence.

**16.** Faced with this situation, learned counsel for the appellant-accused also prayed that accused may be given the benefit of probation under Section 4(b) of the Probation of Offenders Act, 1958, keeping in view his age and his being first offender. He also stated that mitigating circumstance in this case is that more than 13 years have passed after happening of unfortunate incident and passing of the judgment dated 23.11.2007, whereby the accused was convicted and he has already suffered mental agony

during the pendency of the case in the court of learned Sessions Judge, as well as in High Court of Himachal Pradesh. In support of the aforesaid arguments, Mr. Thakur, also invited attention of this Court to the judgment passed by this Hon'ble Court in **Yudhbir Singh versus State of Himachal Pradesh 1998(1)S.L.J. 58**, wherein it has been held as under:

9. *The only mitigating circumstance that appears to be there is that the time gap of about six years between the date of occurrence as well as the date of decision of this revision petitioner. During this entire period sword of present case looming over the head of the petitioner was always there. That being so, this court is of the view that instead of sending the petitioner to jail as ordered by the courts below, he is given the benefit of Section 4 of the Probation of Offenders Act. Accordingly, it is ordered that he shall furnish personal bond in the sum of Rs. 5,000/- to the satisfaction of the trial Court within a period of four weeks from today to keep peace and to be of good behavior for a period of one year from the date of execution of the bond before the court below as well as not to commit any such offence. In addition to being given benefit of Section 4 of the Probation of Offenders Act, petitioner is further directed to pay a sum of Rs. 3,000/- each to PWs Baldev Singh and Dilbagh Singh injured as compensation. Shri R.K. Gautam submitted that this amount of compensation be deposited with the trial Court on or before 31.8.1997, who will thereafter pay the same to said persons.*

17. Learned counsel also placed reliance on Hon'ble Apex Court judgment **Ramesh Kumar @ Babla versus State of Punjab 2016 AIR (SC) 2858**, wherein it has been held as under:

*"7. Accordingly the appeal is allowed in part by converting appellant's conviction under Section 307 IPC to one under Section 324 IPC. On the question of sentence, it is pertinent to note that the occurrence took place in 1997. In his statement under Section 313 of the code of Criminal Procedure the appellant gave his age in 2002 as 36 years. He claimed that he and others went to the place of occurrence on getting information that his brother Sanjay Kumar was assaulted by Ramesh Kumar (Complainant). He brought his brother to Police Station and lodged a report. As noticed by trial court, parties are involved in civil as well as criminal litigation from before. High Court has noted that appellant, as per custody certificate, is not involved in any other case. In such circumstances, it is not deemed necessary to send the appellant immediately to Jail custody after about 19 years of the occurrence when he appears to be 50 years of age and fully settled in life.*

*8. In view of aforesaid, in our view the ends of justice would be met by granting benefit of Probation of Offenders Act to the appellant. We order accordingly and direct that the appellant be released on executing appropriate bond before the trial court to appear and receive sentence*

*of rigorous imprisonment for 1 (one) year when called upon to do so and in the meantime to keep the peace and be of good behaviour."*

18. Reliance is also placed upon the Hon'ble Apex Court judgment **Hari Kishan and State of Haryana versus Sukhbir Singh 1988 AIR (SC) 2127,**

wherein it has been held as under:

*"8. The question next to be considered is whether the accused are entitled to the benefit of probation of good conduct? We gave our anxious consideration to the contentions urged by counsel. We are of opinion that the High Court has not committed any error in this regard also. Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders, on probation, the Court encourages their own sense of responsibility for their future and protect them from the stigma and possible contamination of prison. In this case, the High Court has observed that there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. These are not showing to be incorrect. We have already said that the accused had no intention to commit murder of any person. Therefore, the extension of benefit of the beneficial legislation applicable to the first offenders cannot be said to be inappropriate.*

*9. This takes us to, the third questions which we have formulated earlier in this judgments. The High Court has directed each of the respondents to pay Rs.2500/- as compensation to Joginder. The High Court has not referred to any provision of law in support of the order of compensation. But that can be traced to section 357 Criminal Procedure Code Section 357, leaving aside the unnecessary, provides:-*

*"357. Order to pay compensation:*

*(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-*

*(a) in defraying the expenses properly incurred in the prosecution;*  
*(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is in the opinion of the Court, recoverable by such person in a civil Court;*

*Xxxxxxxxxxxxxx*

*Xxxxxxxxxxxxxx*

*Xxxxxx*

*(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation. Such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced.*

*(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its power of revision.*

*(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this Section.*

*11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and*

*circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default."*

19. After giving my thoughtful consideration to the submissions as well as law cited by Mr. Lakshay Thakur, Advocate representing the accused in the present case, I am of the view that same cannot be made applicable in the present case for granting the benefit of Section 4 of probation of Offenders Act, 1958 because the Hon'ble Apex Court in case titled **State of Punjab versus Saurabh Bakshi 2015 (5) SCC 182**, has deprecated the practice of courts in settling the matter by awarding compensation or releasing the accused by giving the benefit of Probation of Offenders Act, 1958, while dealing with the accident case. Their lordships in the aforesaid judgment in paras No. 1, 14, 24 and 25 have held as under;

*"1. 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. Cardozo "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.

14. 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* and reproduced two paragraphs which we feel extremely necessary for reproduction:- (*Balwinder Singh case, SCC pp. 186-87, para12*)

"12...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.

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 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." (*Dalbir Singh case, SCC pp. 84—85 & 87, paras 1 & 13*)"

24. 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*

*25. Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a nonchalant 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 law-makers should scrutinize, relook and revisit the sentencing policy in Section 304-A IPC, so with immense anguish."*

**20.** Consequently, in view of the detailed discussion made herein above as well as law laid down by the Hon'ble Apex Court, this Court sees no valid reason to interfere with the well reasoned judgment of conviction recorded by the learned court below, which otherwise appears to be based upon the proper appreciation of evidence adduced on record by the prosecution and as such, judgment of conviction recorded by the court below is upheld.

**21.** However, this Court taking note of the fact that more than 9 years have elapsed after passing of the judgment of conviction recorded by the court below coupled with the fact that during this period, appellant must have suffered mental trauma of pendency of appeal before this Court, deems it fit to consider the prayer of learned counsel representing the appellant for reduction of sentence as imposed by the court below.

**22.** Similarly, this Court cannot lose sight of the fact that the appellant who at the time of the accident was 31 years old, has family to support and in case, sentence awarded by the court below is not

modified/reduced, great hardship would be caused to his family, who are otherwise wholly dependent upon the earnings of the appellant-accused.

**23.** Accordingly, in view of the facts discussed above, this Court deems it fit to reduce the sentence as awarded by the learned court below from 1½ years to three months only, but that would be subject to compensation to the tune of Rs. 50,000/- in addition to the amount already deposited before the court below, to the family of deceased namely Amit Kumar, who lost his life in the unfortunate accident. The judgment of conviction passed by the court below stands modified accordingly. Needless to say, order dated 1.1.2008, passed by this Court, whereby sentence imposed by the Court below was suspended, shall stand vacated automatically. Appellant-accused shall immediately surrender before the learned court below after receipt of copy of the judgment to serve the sentence as imposed by the learned court below, which has been further modified by this Court. Registry to ensure that certified copy of this judgment is made available to the parties forthwith. Bail bonds stand cancelled. Period undergone by the appellant during the investigation/trial of the case, if any, shall be set off. Pending applications, if any, stand disposed of.

**29<sup>th</sup> August, 2017**

*manjit*

**(Sandeep Sharma),  
Judge**