

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1534 OF 2009

OM PRAKASH

..APPELLANT(S)

VERSUS

STATE OF HARYANA

..RESPONDENT(S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.47-SB of 1992, dated 21.03.2009.

2. By the impugned judgment and order the High Court has confirmed the order of conviction passed by the Additional Sessions Judge, Faridabad for the offences punishable under Sections 279 and 304-A of the Indian Penal Code, 1860 (for short, "the IPC") but has set aside the order of release of the appellant for probation of good conduct and has restored the sentence imposed by the Trial Court.

3. The brief facts of the prosecution case are that on 31.10.1986 at about 8:15 a.m. the appellant was driving a bus at a very high speed in a rash and negligent manner and hit a bicycle, resulting in the death of the person riding the bicycle. A First Information Report was lodged by an eyewitness to the incident. Upon the completion of investigation, a chargesheet was filed against the appellant.

4. Thereafter, the appellant appeared before the Trial Court and after both sides were heard, charges were framed against the appellant for the offences punishable under Sections 279 and 304-A of the IPC. The charges were read over and explained to the appellant who pleaded not guilty. Accordingly, the case was committed to Trial.

5. In order to substantiate the charges framed against the appellant, the prosecution examined 10 witnesses. After the closure of prosecution evidence,

the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (for short, "the Code"). No evidence was led in defense.

6. Upon detailed consideration of the evidence on record and submissions of the learned counsels for the parties, by judgment and order dated 21.03.1991, the Trial Court found the appellant to be guilty of the offence punishable under Section 279 of the IPC and sentenced him to undergo rigorous imprisonment for a period of two months, along with payment of fine of Rs. 250/-, and in default to undergo rigorous imprisonment for a period of 25 days. Further, the Trial Court convicted the appellant for the offence punishable under Section 304-A of the IPC and sentenced him to undergo rigorous imprisonment for a period of one year, along with payment of fine of Rs.500/-, and in default to undergo rigorous imprisonment for a period of two months.

7. Being aggrieved by the said judgment and order passed by the Trial Court, the appellant preferred an appeal before the Additional Sessions Judge. By judgment and order dated 05.07.1991, the Additional Sessions Judge confirmed the conviction of the appellant under Sections 279 and 304-A of the IPC. However, in view of the observation of the Additional Sessions Judge that there was contributory negligence on part of the deceased victim, and the fact that the appellant was a first time offender and the sole earner of a large family consisting of his wife and four minor children, the Additional Sessions Judge set aside the order of sentence of the Trial Court and directed the appellant to be released on probation of good conduct for a period of two years in accordance with the Probation of Offenders Act, 1958. The appellant was directed to furnish personal and surety bonds of the sum of Rs.5,000/- each, to the effect that during the probation period he shall

keep peace and be of good behaviour, failing which he shall be called to receive sentence. He was further directed to pay compensation of a sum of Rs.8,000/- to the widow of the deceased victim.

8. Being aggrieved by the said order of release on probation of good conduct passed by the Additional Sessions Judge, the respondent-State carried the matter in appeal before the High Court.

9. The learned counsel for the respondent-State would submit before the High Court that in the instant case the appellant had caused the death of a 26-27 year old young man by his rash and negligent driving, and therefore it was not a fit case where the appellant deserved to be released on probation of good conduct. The respondent-State would further submit that the instant case required deterrent punishment to be imposed on the appellant.

10. *Per contra*, the learned counsel for the appellant would submit before the High Court that the appellant had been facing criminal proceedings for more than 22 years, and therefore no ground for awarding substantive sentence was made out after the Additional Sessions Judge had ordered the release of the appellant on probation of good conduct. In the alternative, the learned counsel would pray that mercy be shown to the appellant in the matter of awarding sentence.

11. Upon considering the entire evidence on record including the judgments and orders of the Courts below, and also the submissions of the parties, the High Court was of the considered view that the Additional Sessions Judge had erred in setting aside the substantive sentence imposed on the appellant by the Trial Court. The High Court was of the considered opinion that the circumstances of the case and the nature of the offences did not call for

any expediency to release the appellant on probation of good conduct. The mere fact that the appellant had been facing criminal proceedings for over 22 years by itself was not sufficient ground for taking a lenient view in the matter of determining the sentence for the offence punishable under Section 304-A of the IPC. Therefore, the High Court has confirmed the order of conviction for the offences punishable under Section 279 and 304-A of the IPC and has set aside the order of the Additional Sessions Judge for release of the appellant on probation of good conduct and payment of compensation, and has restored the sentence imposed by the Trial Court.

12. Being aggrieved by the said judgment and order passed by the High Court, the appellant is before us in this appeal.

13. We have heard the learned counsel for the parties to the *lis*.

14. After going through the judgments and orders passed by the High Court as well as the Courts below and the material available on record, we are of the considered opinion that the order passed by the High Court is well reasoned and needs no interference by this Court. Accordingly, the Criminal Appeal is dismissed.

15. We direct the jurisdictional police authorities to take the appellant into custody within a period of one month from today to serve out the remaining period of the sentence.

Ordered accordingly.

.....CJI.  
(H.L. DATTU)

.....J.  
(V.GOPALA GOWDA)

.....J.  
(AMITAVA ROY)

NEW DELHI  
SEPTEMBER 03, 2015.

ITEM NO.13

COURT NO.1

SECTION IIB

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1534/2009

OM PRAKASH

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

Date : 03/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE V. GOPALA GOWDA  
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Mr. S.K. Dubey, Sr. Adv.  
Mr. Rajesh, Adv.  
Mr. Yogesh Tiwari, Adv.

For Respondent(s) Mr. Atul Mangla, AAG, Haryana  
Mr. Sanjeev Tayal, Adv.  
For Dr. Monika Gusain, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the  
signed order.

Pending application, if any, stand  
disposed of.

(Neetu Khajuria)  
Sr.P.A.

(Vinod Kulvi)  
Assistant Registrar

(Signed order is placed on the file.)