

(105) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-285-2022(O&M)

Date of Decision:26.04.2022

Sumer Singh

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 13.01.2022 passed by the learned Additional District and Sessions Judge-I, Sirsa, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 12.04.2018 passed by learned Judicial Magistrate, 1st Class, Sirsa, has been dismissed.

2. The prosecution in the present case had been launched upon a written complaint Ex.PW2/A of one Kapil *inter alia* with the allegation that on 03.11.2012 he along with his uncle Sahab Ram, Surender and Kuldeep were going to get repaired one pick-up bearing registration No.HR575886 which was out of order, by dragging it with the help of another pick-up bearing registration No.HR99MH(T)7410 from village Badopal at 1:00 PM. Sahab Ram and Kuldeep were in one vehicle, and he and Surender were in another vehicle. Vehicle No.HR57-5886 was dragged with the help of vehicle No.HR99MH(T) 7410. At around 4:00 PM, when they reached near Khatu Shyam Petrol Pump of village Bhavdin they stopped their vehicle to ease themselves. At that very moment, one Canter which was driven by its driver in a rash and negligent

manner and at a very fast speed, which was coming from Fatehabad came and directly smashed into the Vehicle No.HR57-5886. Due to the impact, this vehicle over-turned and the vehicle which was ahead of it, was thrown into the pit. The complainant alleged that due to the impact, all of them received injuries and Sahab Ram died at the spot, while Surrender died later on. When he saw the number of the canter, it was found to be HR-57-5501. The driver of the canter ran away from the spot. The injured were taken to hospital in ambulance. Action against the unknown driver was sought and consequently, the present FIR No.171 was registered on 03.11.2012.

3. Pursuant to the registration of the FIR, the investigation began and the accused was formally arrested after completion of the investigation, a final report under Section 173 Cr.P.C. was presented before the Court and the accused was charge-sheeted under Sections 279, 337 and 304-A IPC.

4. In order to prove the guilt of the accused, the prosecution examined C-Ram Kumar as PW-1 who deposed that after receipt of information of accident on 03.11.2012, he reached at the place of occurrence, where he met Kapil and recorded his statement. Proceeding under Section 174 Cr.P.C. of Sahab Ram were conducted. He took all the three vehicles into police possession vide memo Ex.P1/A. He witnessed this recovery.

5. Prosecution further examined ASI Rajesh Kumar as PW-2 who deposed that on 03.11.2012 after receipt of information of accident, he reached at the place of occurrence where Kapil gave his statement Ex.PW2/A. He sent information Ex.PW2/B upon which FIR Ex.PW2/C was registered. He conducted proceeding under Section 174 Cr.P.C. which is Ex.PW2/D. He prepared site plan Ex.PW2/E and took the accidented vehicle in police

possession vide memo Ex.PW1/A. He deposed to prove photographs Ex.PW2/F1 to Ex.PW2/F17. He recorded statement of witnesses, reached GH Sirsa, moved application Ex.PW2/G wherein Kuldeep and Surrender were stated to be referred to Rohtak PGI. He moved an application Ex.PW2/H upon which postmortem of deceased-Sahab Ram was conducted on the next day. Thereafter on 04.11.2012 after receipt of information of the death of Surrender he along with Bal Krishan reached CMC Hisar and got his postmortem conducted. He arrested the accused on 26.11.2012 and got the accidented vehicle mechanically examined and after completion of the investigation, the final report was forwarded by SI Chand Singh. He identified his signatures.

6. PW-3 Kapil while deposing before the Court stated more or less in the same manner as alleged by him in his statement Ex.PW2/A. He identified the accused present in the Court and further stated that Surrender also died due to the injuries received in the accident.

7. PW-4 Ram Kumar while deposing before the Court deposed to prove that after receipt of information of accident he reached at the place of occurrence and saw that Sahab Ram had died at the spot. They reached GH Sirsa with his dead body and got its postmortem done. He identified the dead body.

8. PW-5 Ramesh Kumar after narrating the incident, what he got to know through telephone, deposed to prove that he identified the dead body of Surrender Kumar vide Ex.PW5/A.

9. PW-6 EASI Amrik Singh deposed to prove the report Ex.PW6/A, Ex.PW6/B and Ex.PW6/C of mechanical examination of the accidented vehicles.

10. PW-7 Vishesh Kumar while deposing before the court did not support the prosecution and stated that although he is owner of canter No.HR-57-5501 but he never kept the accused as his driver.

11. PW-8 Dr. Vipul Gupta while deposing before the Court tendered his duly sworn affidavit Ex.PW8/A and proved postmortem report of deceased Sahab Ram as Ex.PW8/B.

12. PW-9 Dr. Ramesh Kumar Jain deposed to prove Ex.PW9/A i.e. original record regarding treatment given to Surender S/o Zile Singh on 03.11.2012. He further deposed to prove that on 04.11.2012 one application was moved by police regarding injured Kuldeep and he declared him fit for statement vide Ex.PW9/B. Kuldeep had received doubtful fracture of back.

13. PW-10 Dr. Manoj Aggarwal, deposed to prove that on 03.11.2012 Surender was admitted to CMC Hospital, Hisar and he sent ruqa Ex.PW10/B. He got conducted CT Scan Ex.PW10/C, Ex.PW10/D and Ex.PW10/E. He further deposed to prove treatment chart Ex.PW10/F of injured and on 04.11.2012 Surender expired at 7:15 AM. He sent ruqa Ex.PW10/G in that behalf.

14. PW-11 Subash while deposing before the Court stated that vide Ex.PW11/A he had handed over the RC of vehicle No.HR-57-5886 to police.

15. PW-12 Dhan Raj while deposing before the Court stated that vide Ex.PW12/A, he had handed over the RC of vehicle No.HR-57-6402 to police.

16. PW-13 EHC Rishal Singh deposed to prove memo Ex.PW2/L vide which RC DL and fitness certificate and one canter was taken into police possession. His statement was recorded by the police.

17. PW-14 Dr. G.R. Gupta while deposing before the Court stated that on 04.11.2012 he conducted the pathological test of Surrender as Ex.PW14/A to Ex.PW14/D. He proved these documents.

18. PW-15 Dr. Soonia Jood while deposing before the Court tendered her duly sworn affidavit Ex.PW15/B in her evidence and further deposed to prove application Ex.PW2/K upon which she conducted postmortem of Surrender Singh and its report is Ex.PW15/A.

19. Thereafter, the statement of the accused under Section 313 Cr.P.C. was recorded, wherein he has denied all the allegations leveled against him and pleaded false implication in the present case. However, no defence evidence was adduced.

20. The first ingredient which was required to be proved by the prosecution was the factum of the unnatural death of Sahab Ram and Surrender. In order to prove the same, PW8-Dr. Vipul Gupta and PW15-Dr. Sonia Jood were examined from their testimony and those of other PWs, it becomes apparent that both the deceased died in an accident. In fact, PW3-Kapil, the complainant was the eye-witness of the occurrence and has vividly described the same. Thus, it was proved beyond doubt that the death of both these persons namely Sahab Ram and Surrender occurred in a roadside accident with a bearing Registration No.HR-57-5501.

21. Regarding the identification of the accused, the complainant-PW3-Kapil categorically identified the accused to be the same, who committed the accident on that day. An examination of the prosecution case would show that the accident took place at 04.00 PM and the complainant had the occasion to see the accused when he fled away from the site of the accident. The question of the

complainant identifying wrong person in place of the real driver would not arise. In fact, PW7-Vishesh Kumar, the owner of offending canter bearing Registration No.HR-57-5501 had got recorded his statement that Sumer Singh-petitioner was employed by him as a driver on the canter and he knew him personally. When his statement was recorded in Court as PW-7, he resiled from his earlier statement for obvious reasons given the fact that the said driver was his employee. However, he categorically admitted his signatures on Ex.PW7/A. The argument of the accused that the first time identification in Court was valueless was not accepted by the trial Court, since, the complainant had ample opportunity to identify the accused when he was running away from the canter.

22. So far as, the issue of the accident being caused by the petitioner, who was driving in a rash and negligent manner was concerned, the prosecution version was that the vehicles of the complainant party had stopped near Khatu Shyam Petrol Pump and when the deceased were checking the connecting wire between the two vehicles, the offending canter came and smashed into the vehicle, which was tied to it in front. The two deceased who were between these two vehicles got crushed leading to their deaths. PW5-Ramesh Kumar categorically stated in his deposition that the canter smashed the vehicle from behind at a very fast speed and it was being driven by his driver in a rash and negligent manner. He further deposed that while the canter smashed into the vehicle, the said vehicle was parked on the left side of the road. This factum was corroborated by photographs taken at that time and a perusal of the same would show that the canter smashed into the parked vehicle behind from which was clearly evident of the negligence on the part of the accused.

23. In view of the aforementioned facts, the accused came to be convicted and sentenced vide judgment and order of sentence dated 12.04.2018 as under:-

Name of Convict	Under Section	Sentence	Fine imposed
Sumer Singh S/o Ishar Singh	279 IPC	06 months RI	Rs.1000/-
	304-A IPC	1 ½ year RI	Rs.2000/-

24. Aggrieved by the judgment and order of sentence dated 12.04.2018 passed by the Trial Court, the appellant preferred an appeal, where similar grounds were raised, which came to be dismissed by the Court of learned Judicial Magistrate, 1st Class, Sirsa leading to the filing of the present revision petition.

25. The learned counsel for the petitioner has firstly argued that a perusal of the mechanic's report shows damage to the left side of the canter and therefore, it cannot be said that the accident took place in the manner as suggested by the complainant, which is that the canter hit the parked vehicles straight on. He further argued that the first time identification in Court is valueless. His last submission was regarding the reduction of sentence given the fact that the accused is a poor person.

26. I have heard the learned counsel for the petitioner at length.

27. A perusal of the mechanic's report would show that there is a damage to the left side of the canter while it was standing at the site of the accident. In view of the categorical statement of the eye-witnesses to the occurrence as to the manner in which the accident had taken place, merely because the left side of the canter was more damaged does not falsify the case of the prosecution as to the manner in which, the accident took place, which was

on account of rash and negligent driving as the offending vehicle driven by the petitioner had smashed into standing vehicles thereby causing the death of two persons. The fact that the offending vehicle struck standing vehicles is in itself sufficient to establish rashness and negligence.

The Hon'ble Supreme Court in **Ravi Kapur Versus State of Rajasthan, 2012(4) R.C.R. (Criminal) 245**, held as under:-

“11. ‘Negligence’ means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

12. The Court has to adopt another parameter, i.e., ‘reasonable care’ in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either

vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.

13. The other principle that is pressed in aid by the courts in such cases is the doctrine of res ipsa loquitur. This doctrine serves two purposes – one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is prima facie evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The courts have also applied the principle of res ipsa loquitur in cases where no direct evidence was brought on record. The Act itself contains a provision which concerns with the consequences of driving dangerously alike the provision in the Indian Penal Code that the vehicle is driven in a manner dangerous to public life. Where a person does such an offence he is punished as per the provisions of Section 184 of the Act. The courts have also taken the concept of ‘culpable rashness’ and ‘culpable negligence’ into consideration in cases of road accidents. ‘Culpable rashness’ is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite consciousness (luxuria). ‘Culpable negligence’ is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a case the mere fact of accident is prima facie evidence of such negligence. This maxim suggests that on the

circumstances of a given case the res speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person's negligent conduct. [Ref. Justice Rajesh Tandon's 'An Exhaustive Commentary on Motor Vehicles Act, 1988' (First Edition, 2010)].

28. So far as, the identification of the petitioner is concerned, it has been dealt with at length by the learned trial Court. It may be reiterated here that the petitioner was duly identified by the complainant at that spot when he fled away leaving the damaged canter there. Further, the owner of the canter had also got recorded his statement under Section 161 Cr.P.C. that the petitioner was the driver of the offending canter, though, he has since resiled from his statement while deposing in Court. On the other hand, the petitioner has offered absolutely no explanation whatsoever as to why he has been falsely implicated or that he was not present at that spot and was in fact present elsewhere. Further, it is not possible for the complainant to have falsely identified the petitioner as the accused.

The Hon'ble Supreme Court in **Ravi Kapur Versus State of Rajasthan, 2012(4) R.C.R. (Criminal) 245**, held as under:-

“32. In the present case, the accused had been seen by PW2 and PW4. In addition, they had also stated that the passersby had informed them that the accused was driving the bus and, in fact, he was the owner of the bus. One fact of this statement is established that the bus in question was given on superdari to the accused. It is also stated by these persons that after they had seen the accused, he had run away from the place where he parked the vehicle. These witnesses also identified the accused in the Court. It is not

the case of the accused before us that he had been shown to the witnesses prior to his being identified in the Court. The Court identification itself is a good identification in the eyes of law. It is not always necessary that it must be preceded by the test identification parade. It will always depend upon the facts and circumstances of a given case. In one case, it may not even be necessary to hold the test identification parade while in the other, it may be essential to do so. Thus, no straightjacket formula can be stated in this regard. We may refer to a judgment of this Court in the case of **Shyamal Ghosh v. State of West Bengal [2012 (6) SCALE 381]** wherein this Court has held that the Code of Criminal Procedure, 1973 (for short "Criminal Procedure Code) does not oblige the investigating agency to necessarily hold the test identification parade without exception. The Court held as under :

"55. On behalf of accused Shyamal, it was also contended that despite the identification parade being held, he was not identified by the witnesses and also that the identification parade had been held after undue delay and even when details about the incident had already been telecasted on the television. Thus, the Court should not rely upon the identification of the accused persons as the persons involved in the commission of the crime and they should be given the benefit of doubt.

56. The whole idea of a Test Identification Parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first

impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

*57. It is equally correct that the Criminal Procedure Code does not oblige the investigating agency to necessarily hold the Test Identification Parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the court for the first time. One of the views taken is that identification in court for the first time alone may not form the basis of conviction, but this is not an absolute rule. The purpose of the Test Identification Parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence is, however subjected to exceptions. Reference can be made to **Munshi Singh Gautam v. State of M.P. 2005(1) RCR (Criminal) 361: 2005(1) Apex Criminal 202:[(2005)9 SCC 631]**, **Sheo Shankar Singh v State of Jharkhand and Anr., 2011 (2) RCR (Criminal) 634 : 2011(2) Recent Apex Judgments (R.A.J.) 452: [(2011)3 SCC 654]**.*

58. Identification Parade is a tool of investigation and is used primarily to strengthen the case of the prosecution on the one hand and to make doubly sure that persons named accused in the case are actually the culprits. The Identification Parade primarily

belongs to the stage of investigation by the police. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in court. Thus, it is only a relevant consideration which may be examined by the court in view of other attendant circumstances and corroborative evidence with reference to the facts of a given case.”

33. In our considered view, it was not necessary to hold the test identification parade of the appellant for two reasons. Firstly, the appellant was already known to the passersby who had recognized him while driving the bus and had stated his name and, secondly, he was duly seen, though for a short but reasonable period, when after parking the bus, he got down from the bus and ran away.

[Emphasis supplied]

29. Keeping in view the aforesaid facts, it's stands proved without any doubt whatsoever that the death of the two persons was caused on account of the rash and negligent driving of the petitioner and he has been duly and properly identified by the witnesses.

30. Regarding reduction of sentence, it may be pointed out that it is a case of two deaths and the benefit of reduced sentence has already been accorded to the petitioner. Therefore, further reduction in the sentence is not warranted.

31. Having examined the facts and circumstances and after examining the record, I am of the considered view that there is no merit in this revision petition. Hence, while upholding the impugned judgment of conviction and order of sentence dated 12.04.2018 passed by the Trial Court and order dated

13.01.2022 passed by the Lower Appellate Court, the present revision petition is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

26.04.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No