

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

CRR-412-2022(O&M)
Date of Decision: 30.05.2022

Jasvir Singh

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. S.S. Sandhu, Advocate for the petitioner.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 15.11.2021 passed by the learned Additional Sessions Judge, Patiala, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 10.01.2018 passed by learned Judicial Magistrate, 1st Class, Patiala, has been dismissed.

2. In brief, the prosecution story is that on 15.10.2013 one telephonic message was received from Rajindera Hospital, Patiala that the dead body of Rahul Jolly has been admitted in the mortuary of the hospital with the history of a road side accident. On receiving this information, ASI Simarjit Singh along with the police party reached the hospital, where he met the complainant-Raj Kumar father of the complainant. Complainant-Raj Kumar suffered a statement to the effect that he has two sons, the elder one namely, Rahul Jolly and the younger one was Rohit Jolly. On that day at about 3.00 PM they were going to Sangrur to meet their relatives on two vehicles. Rahul Jolly was riding a motorcycle bearing No.PB11-ZB(T)-6272 whereas, the complainant-Raj Kumar

along with his younger son Rohit Jolly were on Aactiva Honda bearing No.PB11BE-3609. When they reached near Badungar Chowk, they saw that all the traffic was diverted on one road going from Patiala to Sangrur. The deceased-Rahul Jolly was riding his motorcycle just ahead of them. One bus being driven in a rash and negligent manner and at a high speed came from the opposite side and hit the motorcycle of Rahul Jolly and dragged him along with his motorcycle to a distance. The complainant-Raj Kumar along with his son Rohit Jolly took out the motorcycle and Rahul Jolly from under the bus but he succumbed to his injuries suffered by him in the accident and died at the spot. The driver of the said bus fled from the spot. The dead body was taken to Rajindera Hospital, Patiala for the postmortem. After recording the statement, a ruqa was sent to the police station on the basis of which the FIR was registered against the unknown driver of the bus bearing registration No.PB03R-3625. Accused/petitioner Jasvir Singh was arrested in the present case later.

3. After completion of the investigation and other attending formalities, the report under Section 173 Cr.P.C. was presented against the accused Jasvir Singh, under Sections 279, 304-A, 427 IPC.

4. Finding a prima facie case against the accused-Jasvir Singh, he was charge-sheeted under Sections 279, 304-A IPC, to which he pleaded not guilty and claimed trial.

5. In order to substantiate the charges framed against the accused, the prosecution examined the following witnesses:-

Sr. No.	PWs
1	PW1 Raj Kumar
2	PW2 Rohit Jolly

Sr. No.	PWs
3	PW3 HC Jasbir Singh
4	PW4 ASI Simarjit Singh
5	PW5 Pappu Ram
6	PW6 Ajit Singh
7	PW7 Jaspreet Singh
8	PW8 Dr. Kulbhushan Garg
9	PW9 ASI Rajinder Singh

6. Pursuant thereto, the accused/petitioner came to be convicted and sentenced vide judgment and order of sentence dated 10.01.2018 passed by the Court of Judicial Magistrate, 1st Class, Patiala as under:-

Name of convict	Section	Sentence	Fine imposed	In default
Jasvir Singh	279 IPC	06 months RI	---	--
	304-A IPC	02 years RI	Rs.500/-	Imprisonment for 10 days

7. Aggrieved by the judgment and order of sentence dated 10.01.2018 passed by the Trial Court, the petitioner preferred an appeal, where more or less similar grounds were raised. After examining the evidence and the record, the appeal came to be dismissed by the Court of Additional Sessions Judge, Patiala vide judgment dated 15.11.2021 leading to the filing of the present revision petition.

8. The learned counsel for the petitioner contends that the accused was not driving the bus on that day and has been falsely implicated in the present case. In fact, the accident took place due to heavy traffic and not due to rashness and negligence on the part of the petitioner. No test identification parade was held and there is a discrepancy in the number of the vehicle as disclosed by the witnesses. He thus, contends that the conviction recorded by the

learned Magistrate and confirmed by the learned Additional Sessions Judge, Patiala ought to be set aside.

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

10. No doubt, in the present case, the accused had run away from the spot but both the prosecution witnesses namely, PW1-Raj Kumar-complainant and PW2-Rohit Jolly eyewitness of the occurrence stated that they saw the accused after he boarded down the bus before he ran away from the spot. Further they have identified the accused in Court and therefore it cannot be said that the identification of the petitioner was not proper.

With regard to identification of an 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]

11. Further, PW-6 Ajit Singh, who was the Adda Incharge of Dabwali Transport company has proved that the petitioner-accused-Jasvir Singh was driving the bus on 15.10.2013. He has proved the RC of the bus bearing registration No.PB03R-3625 as Ex.PW5/A and its insurance certificate Ex.PW6/A. He has also stated that the said bus had met with an accident and the driver of the bus was Jasvir Singh. So, he is a material witness examined by the prosecution to establish that the petitioner-accused-Jasvir Singh was indeed driving the offending bus, which had caused the accident.

12. The evidence of the witnesses PW1 and PW2 clearly establishes that the bus was being driven in a rash and negligent manner and the unnatural death in an accident has been duly proved by PW8-Dr. Kulbhushan Garg who conducted the postmortem.

13. Thus, it is clearly established from the evidence on record that it was indeed the petitioner who was driving the offending vehicle in a rash and negligent manner causing the death of the deceased-Rahul Jolly.

14. Further, the discrepancy in the vehicle number does not in any manner demolish the case of the prosecution. PW1 disclosed the number of the bus as PB03A-3625 while the actual number was PB03R-3625. PW2-Rohit Jolly however, gave the correct number of the bus and the recovery memo Ex.PW3/C also pertains to the offending bus, so there is no doubt about the identity of the offending vehicle.

15. In view of the discussion above, I find no reason to interfere with the well-reasoned judgments of the Trial Court and the learned Lower Appellate Court. Hence this revision petition is hereby dismissed.

16. With regard to the imposition of sentence, the Hon'ble Supreme Court in **State of Punjab Versus Saurabh Bakshi, 2015(2) RCR (Criminal) 495**, held as under:-

“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 than 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."

(Emphasis supplied)

Similarly, this Court in **Jaswant Singh Versus State of Punjab**

2020(1) RCR (Criminal) 163, held as under:-

"12. As noticed above, the petitioner has already undergone 4 months and 27 days out of the total substantive sentence imposed upon him. Though, there is a shortfall of one month and three days so as to make the said sentence as six months, yet keeping in view the fact that the deficient period is very short, I deem it appropriate to treat the same as six months."

13. In view of the above, while upholding the conviction of the petitioner under Sections 304-A and 283 IPC, the substantive sentence imposed upon the petitioner is reduced to the one already undergone by him, but subject to payment of Rs.25,000/- as fine to be paid as compensation to the legal heirs of the deceased –Varinder Kumar. The said amount shall be deposited by the petitioner before the Chief Judicial Magistrate concerned within a period of two months from today, failing which the revision petition shall stand dismissed automatically. Once, such amount is deposited before the learned Chief Judicial Magistrate, the same shall be disbursed to the legal heirs of deceased-Varinder Kumar.”

(Emphasis supplied)

17. In the present case, the petitioner is a first-time offender and the occurrence is almost 09 years old, therefore, in view of the aforesaid judgments, I modify the sentence and reduce it to a period of 1 ½ years. The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

30.05.2022

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No