

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-420-2022 (O & M)
Date of decision: 25.04.2022

Vikram Singh Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. D.K. Sharma, Advocate,
for the petitioners.

Mr. Karan Sharma, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The present revision petition has been filed against the judgement dated 12.07.2021 passed by the Sessions Judge, Panchkula, vide which the appeal preferred by the petitioner against the judgement of conviction and order of sentence dated 17.08.2018 passed by the Judicial Magistrate Ist Class, Panchkula, has been dismissed.

2. The brief facts of the prosecution case are that on 24.08.2015, an information was received by the police that Shambhu Patel had died in PGI, Chandigarh due to the injuries sustained in a road side accident. On that information, SI Amarjeet Singh, along with HC Yashpal, reached at PGI, Chandigarh where Kishan Patel complainant-brother of the deceased met him and made a complaint, alleging therein that, on 23.08.2015, he and his brother Shambhu Patel, were going to their house at Peer Muchhala by riding their separate cycles after completion of their work at Sector 8,

Chandigarh. Shambhu Patel was going ahead of the complainant. At about 5.30 PM, when they reached on the road near flyover, Sector 12-A, then in the meantime, a truck bearing registration No.HR-65-6124, being driven by its driver, rashly, negligently and at a high speed, came from the side of Zirakpur and struck against his brother Shambhu Patel. Due to that impact, Shambhu Patel fell down on the road and sustained grievous and multiple injuries. The driver of the truck also stopped for a while and fled away after leaving his truck at the spot. The injured was taken to hospital, where he succumbed to his injuries. It was requested that necessary action be taken against the accused.

3. Based on the above-mentioned complaint, the formal FIR was registered, investigation conducted, leading to the filing of the report under Section 173 Cr.P.C.

4. On being satisfied that, a prima-facie case punishable under Section 279/304-A IPC was made out against accused, the accused was charge-sheeted, accordingly, on 05.01.2016 by the Court of Ms. Diksha Dass Ranga, the then Judicial Magistrate Ist Class, Panchkula, to which accused did not plead guilty and claimed trial. Thereafter, the prosecution was called upon to lead its evidence.

5. In order to prove its case against accused, the prosecution has examined the following witnesses:-

- PW-1 - EHC, Rampal
- PW-2 - HC, Yashpal Singh
- PW-3 - Mohd. Imam Hasan, eye-witness
- PW-4 - SI, Amarjit Singh, IO

PW-5 - HC Kaptan Singh
PW-6 - Ravinder Singh
PW-7 - Sukhdev Patel
PW-8 - Kishan Patel, complainant
PW-9 - Dr. Shikha Gupta
PW-10 - Dr. Sohan

6. Prosecution has also relied upon the following documents:-

Ex. PW-1/A - Mechanic report of truck in question
Ex. PW-2/A - Police proceeding
Ex. PW-2/B - FIR
Ex. PW-2/C - Endorsement about FIR
Ex. PW-3/A - Receipt of dead body
Ex. PW-3/B - Recovery of memo of cycle
Ex. PW-4/A - Medical Rukka
Ex. PW-4/B - Complaint
Ex. PW-4/C - Inquest report
Ex. PW-4/D - Application dated 24.08.2015
Ex. PW-4/E - Application for post mortem
Ex. PW-4/F - Medical certificate for cause of death
Ex. PW-4/F - Rough site plan of place of occurrence
Ex. PW-4/G - Recovery memo of truck in question its RC, Insurance and DL of accused
Ex. PW-4/H - Challan from under MV Act
Ex. PW-4/I - Disclosure statement of accused Vikram
Ex. PW-4/J - Memo of demarcation
Ex. PW6/A - Statement of Ravinder Singh
Ex. PW6/B - Memo of personal search of accused
Ex. PW6/C - Memo of arrest of accused
Ex. PW9/A - PMR of Shambhu Patel
Ex. PW10/A - MLR of Shambhu Patel

Ex.P1	-	RC of truck in question
Ex.P2	-	Insurance policy of tractor in question
Ex.P3	-	Fitness certificate of truck in question
Ex.P4	-	DL of accused
Mark A	-	Copy of DDR No.20, dated 16.05.2013

Thereafter, evidence of the prosecution was closed on 26.01.2018 by learned PP for the State.

7. When confronting with incriminating evidence against accused, the accused in his statement under Section 313 Cr.P.C. pleaded false implication and claimed innocence. Accused did not lead any evidence in his defence.

8. The learned PP for the State argued that the identification of the accused-petitioner had been established beyond reasonable doubt as also the fact that the accident had taken place due to rash and negligent driving of the said accused, and as such, the offence was well-proved against the petitioner-accused.

9. The learned defence counsel, on the other hand, contended that the prosecution had failed to establish the identity of the accused. There was no evidence on record to suggest that the death of Shambhu Patel had occurred due to rash and negligent driving of the accused and that the alleged eye-witnesses of the occurrence had failed to establish the identity of the accused. He, thus, argued that no such accident had taken place on account of the rash and negligent driving of the accused.

10. The learned Trial Court came to the conclusion that the complainant/eye-witness PW-8/Krishan Patel had fully supported the prosecution case. Similarly, an another eye-witness i.e. PW-3- Mohd. Imam

On the other hand, the accused had not been able to produce any evidence to suggest that he was not working as a driver on truck bearing No. HR-65-6124 on the day of occurrence or that the cyclist Shambhu Patel was at fault and the accident was caused due to negligence of Shambhu Patel. Thus, the Court came to the conclusion that the identity of the accused had been established, it had also been established that the accused was driving the truck in a rash and negligent manner and the evidence of the doctor would clearly suggest that the deceased had received grievous and multiple injuries in a road-side accident.

11. Based on the above said findings, the accused-petitioner was convicted and sentenced by the Judicial Magistrate Ist Class Panchkula vide judgement and order dated 17.08.2018 as under:-

Offence under Sections	Sentence RI	Compensation amount to be paid to the complainant under Section 357(3) Cr.P.C.	RI in default of payment of compensation
279 IPC	Three Months	Rs.200/-	--
304-A IPC	One Year	Rs.300/-	Two Months

12. The accused-petitioner preferred an appeal against the aforesaid judgement of conviction and the grounds taken were similar to those agitated before the Trial Court. It was argued that no test-identification parade had been held and the evidence of PWs-3 & 8 could not be relied upon as they were interested witnesses. The learned Lower Appellate Court considered the arguments of the appellant therein (present petitioner) and dismissed the

appeal vide judgement dated 12.07.2021, leading to the filing of the present revision petition.

13. The learned counsel for the petitioner has once again raised almost similar grounds as raised before the Trial Court and the Lower Appellate Court. It is firstly contended that no identification parade was conducted by the police and therefore, the prosecution story was liable to be rejected. It was further contended that the prosecution had failed to prove that the driver of the offending vehicle was driving in a rash and negligent manner and a presumption of the same cannot be raised in the absence of a definite evidence. He lastly argued that the sentence awarded to the petitioner was excessive and that he was entitled to the benefit of probation being a first-time offence and also having one minor child to take care of.

14. The learned State counsel, on the other hand, has while relying upon the findings recorded by the Trial Court and the Lower Appellate Court argued that the identification of the petitioner was established in accordance with the law and there was sufficient evidence to suggest that the petitioner had been driving in a rash and negligent manner, and thus, prayed that the present revision petition be dismissed.

15. I have heard the learned counsel for both the parties.

16. A perusal of the testimony of the witness i.e. eye-witness/complainant-PW-8 Kishan Patel would clearly show the manner in which the accident took place and how the offending truck came from the side of Zirakpur being driven in a rash and negligent manner at a high speed and struck against the cycle of Shambhu Patel, causing numerous injuries and subsequent death. PW-3 Kishan Patel has also noted the registration number

of the truck at the spot itself and had seen the driver, who fled away from the spot. Despite cross-examination, nothing concrete could be elicited by the defence counsel. There is no reason to disbelieve the testimony of PW-8 regarding the identity of the accused because even in his statement PW-4/B made to the police, he clearly stated that he could identify the truck driver when produced before him. It is to be noted that the occurrence took place at about 5.50 PM in the month of August i.e. in a broad day light and the truck driver fled away after leaving the truck at the spot. PW-8/Kishan Patel was in position to see the face of the truck driver.

PW-3, namely, Mohd. Imam Hasan has also deposed as to the manner of the accident and the identity of the accused. His signatures also appear in the MLR which shows his presence at the time to the accident, thus, corroborating his early testimony. Therefore, identification of the accused-petitioner is clearly established.

17. With regard to the issue of identification, 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]

18. A perusal of the testimony of PW-8 Kishan Patel would also clearly establish that the petitioner-accused was driving in a rash and negligent manner, which is further established from the fact that the cycle of the deceased-Shambhu Patel was struck from behind by the vehicle driven by the petitioner. This fact itself would be sufficient to establish rash and negligent driving of the accused-petitioner.

19. So far as the last argument of the petitioner regarding imposition of excessive sentence is concerned, the Hon’ble Supreme Court in a case titled as **‘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 he 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 eveloping 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.”

20. A similar view has been taken by this Court in various judgements passed in the cases titled as '*Jarnail Singh @ Bittu versus State of Punjab, (CRR-144-2019 decided on 25.11.2019); Raghbir Singh versus State of Punjab (CRR-3663-2018 decided on 26.10.2021) and Jagtar Singh versus State of Punjab (CRR-3478-2019 decided on 09.11.2021)*'.

21. A perusal of the custody certificate dated 18.04.2022 placed on record by the learned State counsel would reveal that the accused-petitioner has already undergone a total custody period 07 months 01 day out of his substantive sentence. In view of the law laid down by the Hon'ble Supreme Court in the case of *Saurabh Bakshi's case (supra)*, the prayer of the learned counsel for reducing the petitioner's sentence can be considered and allowed.

22. Thus, while upholding the conviction of the petitioner under Sections 279 and 304-A IPC, the substantive sentence imposed upon the petitioner is reduced to a period of 09 months. The fine imposed upon the petitioner along with its default clause, under the aforesaid section is maintained.

23. The revision petition is disposed of in the above terms.

April 25, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No