

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1877-2008(O&M)
Date of Decision: 11.10.2022

RATTAN SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amandeep Singh Manaise, Advocate with
Mr. Sohrab, Advocate for the for the petitioner.

Mr. Jaiteshwar Singh, Asst. A.G., Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 05.08.2008 passed by the learned Additional Sessions Judge, Moga, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 10.04.2007 passed by the learned Sub Divisional Judicial Magistrate, Zira, has been dismissed.

2. The brief facts of the case are that on 29.03.1999 SI Balvir Singh along with other police officials were on patrolling duty on their Government vehicle which was driven by Virsa Singh and they were present at chowk Dharamkot. Then they learned that one truck had caused an accident with a scooter and the injured had been taken to Civil Hospital Kot Ise Khan. Then SI Balvir Singh along with other police officials reached Civil Hospital Kot Ise Khan where the Investigating Officer further came to know that the injured has been referred to Civil Hospital Moga. Then the Investigating Officer along with police officials reached there where the attending doctor gave the opinion that injured was fit to make statement. The statement of injured Gurtej Singh was

recorded. In the said statement Gurtej Singh stated that he was a resident of Dharamkot and doing the work of farming. Gurdip Singh son of Gurmail Singh resident of Pakhi Kalan, Police Station Faridkot is their relative. On 28.03.1999, he had come to meet them. Today he (complainant) along with said Gurdip Singh were going on their scooter No.PB-29/1556 towards their field. The scooter was driven by Gurdip Singh. At some distance behind them Raj Singh son of Nihal Singh resident of Lohgarh Road, Dharamkot was also coming. The complainant further stated that when they reached near the Dhaba of Sham Singh, it was about 4/5 PM, when from the front side one truck No.PB-13G/3056 in which some passengers were travelling came at a high speed. The truck driver hit his truck into their scooter. Due to the said accident the scooter fell down on the ground and they also fell down on ground. The truck after hitting the scooter also turned towards one side and passengers travelling in the said truck also suffered injuries. The name of the truck driver came to be known later on as Rattan Singh @ Pehalwan (petitioner) resident of Jalalabad (W), District Ferozepur. The complainant further stated that the above said truck driver while driving his truck at a high speed in a negligent way without blowing the horn had caused the accident. While Gurdip Singh died at the spot, he (complainant) also suffered injuries. He was first taken to Civil Hospital Kot Ise Khan from where he was further referred to Civil Hospital, Moga. The truck driver after the accident ran away from the place of occurrence.

3. On the above said statement of the complainant, SI Balvir Singh made his endorsement and sent a *ruqa* and got lodged the FIR. The investigation began and the inquest report of the dead body of Gurdip Singh was

prepared and the postmortem of the dead body was got conducted. The site plan of the place of occurrence was prepared. The statements of other witnesses were recorded. The vehicle involved in the accident i.e. truck and scooter were taken into police custody. Photographs of the place of occurrence were taken. Arrest of the accused was got effected on 14.04.1999. His driving licence along with other papers of the truck were taken into police custody. After completion of investigation and other formalities, the challan was filed in the Court against the petitioner.

4. Finding a *prima facie* case against the accused/petitioner under Section 304-A IPC, charges were framed against him. He pleaded not guilty and claimed trial.

5. At the trial the prosecution examined PW1-Dr. Mahesh Chander Markan, PW2-Onkar Singh, Head Mechanic, PW3-Chamkaur Singh, Photographer, PW4-Gurtej Singh complainant/eye-witness, PW6-SI Balvir Singh and thereafter, the prosecution closed its evidence.

6. After closure of prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded. The incriminating circumstances in the prosecution evidence were put to him. He denied the same stating it to be false and claimed himself to be innocent. However, no defence evidence was adduced by the accused/petitioner.

7. The prosecution to prove its case levelled against the petitioner examined six witnesses. PW1-Dr. Mahesh Chander Markan, Medical Officer in his statement stated that on 30.03.1999, he was posted at Civil Hospital, Zira as medical officer. On that day he was on emergency and postmortem duty. On that day he conducted the postmortem on the dead body of Gurdip Singh son of

Harmandeep Singh, resident of Pakhi Kalan, District Faridkot. The dead body was brought by HC Resham Singh and PHG Nachhattar Singh and identified by Atma Singh son of Sucha Singh, PW1- further stated that he found four injuries as mentioned in his report on the dead body. The cause of death in his opinion was due to haemorrhage and shock caused by injury to the chest and underlying vital organs which was sufficient to cause death in the ordinary course of nature. He handed over to police the sutured dead body along with its belonging and carbon copy of the postmortem report and police papers duly signed by him. Probable times between injury and death was immediate and between death and postmortem was within 24 hours. He further proved the carbon copy of the postmortem report Ex.PW1, pictorial diagram showing seats of injuries Ex.P2 and his signatures Ex.P3 on the application.

8. PW2-Onkar Singh is also a formal witness. He is a mechanic and conducted the mechanical testing of the vehicle involved in the accident. He in his deposition stated that on 13.04.1999 he was called at Police Station Dharamkot where he conducted the mechanical testing and the report is Ex.P4. On the same day he also conducted mechanical testing of the scooter make Bajaj Chetak having No.PB-29/1556 and its mechanical testing report is Ex.P5. PW3-Chamakaur Singh the photographer in his statement stated that on 29.03.1999, the police called him at the place of occurrence. He took photographs of the place of occurrence. He handed over photographs along with negatives to the police which were Ex.P6 to Ex.P13.

9. PW4-Gurtej Singh is a material witness of the prosecution. He is the complainant/eye-witness of the occurrence. He in his statement while supporting the case of the prosecution stated that on 28.03.1999 Gurdip Singh

their relative had come to meet them. On 29.03.1999 he along with the said Gurdip Singh were going on their scooter No.PB-29/1556 towards their field. The scooter was being driven by Gurdip Singh PW4, he was sitting on the pillion seat. At some distance behind them Raj Singh son of Nihal Singh resident of Lohgarh Road, Dharamkot was also coming. He further stated that when they reached near the Dhaba of Sham Singh at about 4/5 PM, then from the front side one truck bearing No.PB-13G/3057 came at a high speed. PW4 further identified the said truck by stating that same was standing outside the Court complex. He further stated that the accused/petitioner present in the Court namely, Rattan Singh while driving the said truck at a high speed in a rash and negligent manner struck their scooter. Due to the said accident their scooter fell down on the ground. They also fell down on the ground. The truck also turned over after causing the accident. The passengers travelling in the said truck also suffered injuries. Gurdip Singh died at the spot. PW-4 further stated that he also suffered injuries. The occurrence was witnessed by Raj Singh. He made arrangement of the vehicle and took him to Civil Hospital Kot Ise Khan from where he was further taken to the Moga Hospital. He further stated that the accused after causing the accident fled away from the place of occurrence. He further while supporting the case of the prosecution categorically stated that his statement Ex.PW4/A was recorded at about 08.00 PM by SI Balvir Singh at Civil Hospital, Moga. It was read over to him and after admitting the same, he affixed his thumb impression. From the Moga Hospital he was later on referred to CMC Ludhiana where he remained under treatment for about ten days. PW5- Raj Singh son of Nihal Singh another eye-witness of the occurrence as per case of the prosecution supported and corroborated the version of PW-4 on all

particulars of the occurrence i.e. time place and manner of the accident. PW-5 categorically stated that the accused while driving his truck No.RJ-13G/3057 in a rash and negligent manner caused the accident by hitting his truck with the scooter of Gurdip Singh near Sham Singh Dhaba. Gurdip Singh died at the spot. Gurtej Singh who suffered injuries was got admitted firstly at Civil Hospital Kot Ise Khan from where he was sent to a Hospital at Moga. The police prepared the site plan of the occurrence place at 09.00 PM in his presence. The truck involved in the accident was taken into police custody vide recovery memo Ex.PW5/A. The scooter involved in the accident was taken into police custody vide recovery memo Ex.PW4/B. The accused after the accident ran away from the occurrence place. Photographs of the occurrence place were also taken in his presence. His statement was also recorded by the Police.

10. PW6-SI Balvir Singh, Investigating Office in his testimony also fully supported the case of the prosecution by deposing that on 29.03.1999 he was on patrolling duty along with other police officials and came to know about the accident near Dhaba Sham Singh. He further came to know that the injured was sent to Civil Hospital Kot Ise Khan. He visited Civil Hospital Kot Ise Khan from where he learned that the injured had been taken to Civil Hospital, Moga. Then he reached at Civil Hospital, Moga and got recorded the statement of injured. Then he reached Civil Hospital Moga and got recorded the statement of the injured Ex.PW4/A on which he made his endorsement Ex.PW6/A and got lodged the FIR copy of which is Ex.PW6/B. He started the investigation and prepared the site plan of the spot which is Ex.PW6/C. He took into police custody vehicles involved in the accident. Inquest report of the deceased Gurdip Singh Ex.PW6/G was prepared at the spot. Postmortem on the dead body was

got conducted. Photographs of the occurrence place were taken by the photographer. The arrest of the accused was effected on 14.04.1999.

11. The accused in his statement made under Section 313 Cr.P.C. denied the prosecution evidence and claimed himself to be innocent. His defence version was that he had not caused any accident. He had been falsely implicated in the case. About 2/3 days prior to the occurrence ASI Fauja Singh had demanded his truck on “Vangar” but he refused to give his truck. ASI Fauja Singh kept this matter in his mind and in this way he got him involved in the case. No defence evidence was adduced by the accused.

12. In view of the aforementioned facts, the accused came to be convicted and sentenced vide judgment and order of sentence dated 10.04.2007 as under:-

Name of Convict	Under Section	Sentence	Fine imposed	Default
Rattan Singh son of Bachan Singh	304-A IPC	RI for 01 year	Rs.1000/-	RI 02 years

13. Aggrieved by the judgment and order of sentence dated 10.04.2007 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 Sub Additional Sessions Judge, Moga leading to the filing of the present revision petition against the aforementioned two orders.

14. The learned counsel for the petitioner contends that the prosecution had totally failed to prove the truck allegedly involved in the accident. In the FIR, the registration number of the truck has been given as RJ-13G/3056 and the truck which was taken into possession vide a recovery memo Ex.PW5/A also bears the same registration number. However, when the witnesses appeared

during the trial, the registration number of the truck was stated to be RJ-13G/3057. This fact had not been properly appreciated before the Courts below. He contends that the ownership of the alleged truck involved in the accident had also not been proved on the record. The Trial Court had failed to appreciate the fact that no medical evidence of PW-4 the alleged injured/eye-witness was brought on record to prove that the witness was injured in the alleged accident. In the statement of the witnesses, the name of the deceased had been written as Gurdip Singh son of Gurmail Singh, whereas in the memo prepared by the police on the spot, the name of the deceased was written as Gurdip Singh alias Harmandeep Singh which also showed that the witnesses were not present at the time of the occurrence. He further contends that the identification of the petitioner took place first time in the Court because the prosecution had not conducted any test identification parade during investigation. This was stated to be fatal to the prosecution case.

15. On the other hand, the learned State counsel contends that the grounds raised by the petitioner have been dealt with conclusively by the Trial Court as well as the Lower Appellate Court. It is stated that the witnesses had duly identified the petitioner and the discrepancy in the vehicle number did not affect the case of the prosecution. Keeping in view the entirety of the evidence led, it is thus contended that the present revision petition ought to be dismissed and the conviction of the petitioner upheld.

16. I have heard the learned counsel for the parties.

17. PW4-Gurtej Singh/complainant an eye-witness and PW5-Raj Singh the other eyewitness have fully supported the prosecution case and stated that the petitioner was driving the truck in a rash and negligent manner, struck

the scooter driven by Gurdip Singh causing the accident. Both the witnesses categorically stated that the number of the truck was RJ-13G/3057. This truck was brought to the Court on the day when the statements of these PWs was recorded and was identified at the time. Undoubtedly, the complaint Ex.PW4/A refers to the truck No.RJ-13G/3056 but from the testimony of the witnesses, the photographs taken at the spot and the mechanical testing report it is clearly established that the truck in question bore the No.RJ-13G/3057 and it was only a typographical error that the number of the truck was mistakenly written as RJ-13G/3056.

18. So far as the identification of the accused is concerned, PW-4 and PW-5 have categorically stated that after the accident the truck had turned turtle which was borne out from the photographs taken by the photographer. Both the witnesses stated that after the accident the driver of the truck came near them and admitted his fault and prayed for forgiveness while standing with them for 15-20 minutes. In this context, the petitioner was properly identified at that time. In fact, the FIR had also been lodged against the petitioner/accused by name. The suggestion that the Investigating Officer Fauja Singh was inimical to the petitioner is not borne out from the record and in fact, the cross-examination of the witness reveals that the accused admits his presence at the place of the accident as a suggestion in this regard has been given to PW6/Investigating Officer.

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]

19. PW-4 in his testimony has also categorically stated that he suffered injuries in the accident, he was admitted in Hospital and from the Police request Ex.PW6/E made to the doctor at Civil Hospital, Moga, it is evident that Gurtej Singh son of Makhan Singh (PW4) was got admitted in hospital and was declared fit to make a statement. Therefore his presence at the time of the accident cannot be doubted even though the nature of injuries suffered by him is not clear.

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

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

22. 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 then 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)

23. Since the occurrence pertains to the year 1999 the petitioner is a first-time offender and the occurrence is 23 years old, I modify the sentence and reduce it to a period of 06 months. The quantum of fine and sentence in default shall however remain intact.

(JASJIT SINGH BEDI)
JUDGE

11.10.2022

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No