

355 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.598 of 2009 (O&M)

Reserved on : 27.09.2022

Pronounced on : 18.10.2022

Roshan Singh

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Ish Puneet Singh, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

PANKAJ JAIN, J.

Challenge in the present petition is to the judgment dated 06.02.2009 passed by Sessions Judge, Patiala whereby judgment of conviction passed by Sub Divisional Judicial magistrate, Rajpura dated 10.01.2006 holding petitioner guilty for offence punishable under Section 304-A IPC and the order of sentence whereby he has been awarded sentence of 1 ½ years along with fine of Rs.1,000/- has been affirmed.

As per the case of prosecution on 28.01.2000, FIR was registered on the complaint made by Arjan Singh who stated that while he was returning to his village after work he saw that a truck bearing registration No.HR-37-4289 came from back side at a high speed in a rash and negligent manner and struck cycles of his brother Mohinder Singh and Paramjit Khan who were going ahead of him. The truck turned turtle and fell on the cycles resulting in death of both Mohinder

Singh and Paramjit Khan. Petitioner faced trial. The petitioner was held guilty for offence punishable under Section 304-A IPC by the trial Court vide judgment dated 10.01.2006 and was awarded sentence as under :-

Convicted u/s	Sentence imposed (RI)	Fine	In default of payment of fine (RI)
304 A IPC	1 ½ years	Rs.1,000/-	RI for 15 days

Aggrieved by the judgment of conviction the petitioner approached Appellate Court. The Appellate Court affirmed the judgment passed by the trial Court and dismissed the appeal being without merit. Hence this revision petition.

During the pendency of the revision petition the sentence of the petitioner was ordered to be suspended. Custody certificate dated 12.09.2022 by way of affidavit of Gurcharan Singh Dhaliwal, PPS, Additional Superintendent, Central Jail, Patiala on behalf of State has been filed. The same is taken on record. As per the custody certificate the petitioner has undergone actual custody of 1 month and 7 days only out of the sentence awarded by the Trial Court.

Counsel for the petitioner submits that the identity of the petitioner could not be established on record. He asserts that petitioner is not owner of the offending vehicle. Owner thereof has not been associated with the investigation. He submits that owner would have been in the best position to disclose the identity of the driver on the fateful day. While referring to the statement made by complainant Arjan Singh, who appeared as PW1 counsel for the petitioner asserts that the first time the complainant identified him, he was in the dock. He refers

to cross-examination of PW1 wherein he admitted that in the statement made to the police during investigation he categorically stated that the driver fled away from the spot. He submits that the two facts stated by the alleged eye witness PW1 Arjan Singh are self contradictory and thus it cannot be said that the identity of the petitioner stands established on record. He further refers to the cross examination of PW1 where he submitted that he never knew the name of the driver but was told so by the mob gathered on the spot. Counsel for the petitioner submits that neither the vehicle nor the driver were local and thus there was no reason for the crowd gathered at the spot to know the name of the petitioner.

Counsel for the petitioner further submits that apart from alleging that the petitioner was negligent, nothing has been attributed to him. He submits that such a bald and vague allegation cannot amount to negligence sufficient enough to convict the petitioner for offence punishable under Section 304-A IPC.

Per contra, learned State counsel submits that it is established principle of law that the Court identification itself is a good identification in the eyes of law. It is not always necessary that the same be preceded by the test identification parade. Reliance is being placed upon law laid down by Apex Court in ***Ravi Kapur Vs. State of Rajasthan (2012) 9 SCC 284.***

I have heard learned counsel for the parties and have gone through the records of the case.

It is a case of eye witness account. PW1 Arjan Singh is eye witness to the accident. He has given eye account detail of the accident.

So far as negligence of the petitioner is concerned the argument raised by the counsel for the petitioner is mis-conceived. As per settled law doctrine of *res ipsa loquitur* is a recognized principle which is applicable to the cases of accidents. Apex Court has held that the principle can equally be extended to criminal cases provided the attendant circumstances and basic facts are proved. In the present case truck driven by the petitioner struck the cycles of the deceased from behind. It turned turtle and fell on the vehicles. Thus it is a situation where doctrine of *res ipsa loquitur* can safely be invoked and the burden shifts onto the person who was in control of the offending vehicle to establish that the accident did not happen on account of any negligence on his part. Thus to contend that the negligence was not proved is fallacious. Negligence and rashness on the part of the offending vehicle is written large on the record.

Coming on to the second limb of the argument raised by the counsel for the petitioner with respect to the identity of the accused, admittedly Arjan Singh identified him in the Court. Trite it is that the Court identification itself is a good identification in the eyes of law. As held by Apex Court in ***Shyamal Ghosh Vs. State of West Bengal, 2012 (6) SCALE 381*** Code of Criminal Procedure, 1973 does not oblige the investigating agency to necessarily hold the test identification parade without exception. Reference can be made to para 57 and 58 of judgment in ***Shyamal Ghosh's case (supra)***, which reads as under :-

“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.”

The aforesaid principle when applied to the present case and testimony of PW1 Arjan Singh is found to be trustworthy. He has withstood lengthy cross-examination. Merely because test identification parade was not conducted it does not affect the identification of the petitioner by eye-witness Arjan Singh in Court.

Thus no fault can be found with the findings recorded by Courts below in the aforesaid facts and circumstances.

Consequently, the present revision petition is dismissed being without merit.

(PANKAJ JAIN)
JUDGE

18.10.2022
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No