

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-462-2021(O&M)

Date of Decision:-18.01.2023

Sandeep.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Sushil Sheoran, Advocate for the Petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

JASJIT SINGH BEDI, J. (ORAL)

The present revision petition has been filed against the judgment dated 10.03.2021 passed by Additional Sessions Judge, Panipat vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 25.08.2017/28.08.2017 passed by the Judicial Magistrate Ist Class, Panipat has been dismissed.

2. The prosecution story as appearing from the final report submitted under Section 173(2) Cr.Pc and other documents appended therewith is that on 02.05.2013 at about 5.00 PM, in the area of P.S. Chandni Bagh, the accused/petitioner drove his vehicle (Truck) bearing R.C. No.HR-61-1033 on a public place/way in a rash and negligent manner so as to endanger human life and personal safety of others and thereby

caused the death of Sandeep and Krishan by way of the said act not amounting to culpable homicide and thereby committed offences punishable under Sections 279 and 304-A IPC. With these averments, the complainant requested to take appropriate legal action against the accused/petitioner. Upon this information, the FIR was registered. Investigation into the case was conducted. The petitioner was arrested during investigation. Rough site plan was prepared. Statement of witnesses were recorded under Section 161 Cr.PC. Post mortem of the dead bodies was got conducted.

3. After completion of investigation, the report under Section 173(2) Cr.PC of Code of Criminal Procedure, 1973 was filed against the accused. The petitioner was supplied copies of the final report as contemplated under Section 207 of Code of Criminal Procedure Code, 1973. On the basis of the report a prima facie case was made out against the accused and as such he was charged under Section 279 and 304-A IPC vide order dated 01.08.2013. He pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined the following witnesses:-

PW-1	:-	SI Ranbir Singh
PW-2	:-	Devi Ram (complainant)
PW-3	:-	Vijay Kumar (pillion rider)
PW-4	:-	Anil
PW-5	:-	ASI Randhir Singh (Motor Mechanic)
PW-6	:-	Parmod
PW-7	:-	ASI Jaipal Singh
PW-8	:-	Dr. Preeti Bhatia
PW-9	:-	ASI Rajbir (IO) (called under Section 311 Cr.PC application)

5. The APP for the State placed on record the following documents:-

Ex. PW1/A	Endorsement
Ex. PW1/B	Formal FIR
Ex. PW2/A	Complaint/Statement
Ex. PW5/A and Ex. PW-5B	Mechanical reports of vehicles involved
Ex. PW7/A	Recovery memos of vehicles involved
Ex. PW7/B	Recovery memo (R.C, Insurance copy of offending vehicle and D.L)
Ex. PW8/B	PMR (Sandeep)
Ex. PW8/C	PMR (Krishan)
Ex. PW9/A	Karwahi Police
Ex. PW9/B	Rough Site Plan
Ex. PW9/C	Death Report (Sandeep)
Ex. PW9/D	Death Report (Krishan)
Ex. PW9/F	Application to MO, GH, Panipat
Ex. PW9/E1 to Ex. PW9/E9	Photographs

6. Thereafter, the evidence of the prosecution was closed by court order dated 15-06-2017. However, an application moved by prosecution u/s/311 Cr.PC was allowed on 04-07-17.

7. The Statement of the accused/petitioner under Section 313 of Criminal Procedure Code 1973 was recorded on 04-07-17 whereby he was apprised of all incriminating evidence appearing against him and the accused denied the allegations and pleaded his innocence and claimed false implication. In defence evidence, Ex.D1 document was produced by the accused/petitioner.

8. In the present case, the prosecution has examined a total of nine witnesses. Not all these witnesses were eye-witness of the alleged accident. Some of them came into picture only after the occurrence had taken place.

SI Ranbir Singh was examined as PW1 and proved on record

Endorsement Ex. PW1/A and Formal FIR Ex. PW1/B .

PW2 Devi Ram (complainant) in his examination-in-chief repeated the contents mentioned in his complaint and supported the version of prosecution. He stated that the driver of the Truck no. HR61- 1033 drove it in a rash and negligent manner and hit the motor-cycle of Krishan from the back side due to which Krishan and Sandeep fell down and the Truck came over them. Both of them died on the spot. In his cross-examination, he testified that Krishan and Sandeep were going on the motor-cycle little ahead of them. The Truck hit them from the back side and they fell down on the road. The tyre did not go over them. However, the Truck went over them. The Truck dragged Krishan to some distance. He had not got recorded in his statement to the police that the tyre of the Truck went over Sandeep and Krishan. He was confronted with Ex. D1 where it was so recorded.

PW3 Vijay Kumar was examined who being the other eyewitness also explained the sequence of this accident in his chief examination. He stated in his cross-examination that the front tyre of the offending Truck had gone over Sandeep and Krishan. The Truck CIS no. 4551/2013 State Vs. Sandeep 8 was loaded with stones. His statement was recorded after 5.30p.m. Statement of his uncle was recorded prior to his statement. The photographer took the photos of the spot.

Thereafter, Anil appeared in the witness box as PW4 and proved on record the identification of the dead body of Sandeep.

PW5 ASI Randhir Singh proved on record mechanical examination reports of the both vehicles involved in the present case which are Ex. PW5/A and Ex. PW5/B.

Thereafter, Parmod who was examined as PW6 proved on record the identification of dead body of Krishan.

ASI Jaipal Singh appeared in the witness box as PW7 and proved on record the arrest of the accused on the same day of the accident and recovery memo Ex. PW7/A and Ex. PW7/B.

PW8 Dr. Preeti Bhatia stepped into the witness box and proved on record PMRs Ex. PW8/B (Sandeep) and Ex. PW8/C (Krishan).

Lastly, PW9, ASI Rajbir (I.O.) in his examination-in-chief detailed and explained various steps of investigation conducted by him. During his cross-examination, he stated that he tried to join other public/spot witnesses but they denied the same.

9. The accused was examined under Section 313 Cr.PC wherein he denied all the prosecution evidence come against him and pleaded innocence. However, no defence evidence was lead.

10. Based on the evidence lead, the petitioner came to be convicted and sentenced as under:-

Name of Convict	Sections	Imprisonment
Sandeep	279 IPC	SI for 06 months
-do-	304-A IPC	SI for 02 Years

11. An appeal was preferred by the petitioner against the judgment of conviction and order of sentence which came to be dismissed vide judgment dated 10.03.2021 passed by Additional Sessions Judge, Panipat.

The aforementioned judgments are under challenge in the present revision petition.

12. The Counsel for the petitioner contends that the eye witnesses of the occurrence did not disclose as to how the accident took place or how the vehicle was being driven in a rash and negligent manner. In fact it was a busy road and the petitioner could not have been driving fast as has been alleged. Even otherwise, the mechanical reports also did not suggest that

the petitioner was driving in a rash and negligent manner. The identification of the petitioner was not established in accordance with law. He thus contends that the judgments of convictions were liable to be set aside and the petitioner ought to be acquitted of the charges framed against him.

13. The Counsel for the State on the other hand contends that the grounds raised by the petitioner/accused have been dealt with comprehensively by the Trial Court as also the lower Appellate Court. From the evidence led it was clear that the petitioner was driving the vehicle in a rash and negligent manner as identification had been duly established in accordance with law. As such no case for interference with the impugned judgments was made out.

14. I have heard learned Counsel for the parties.

15. A perusal of the record would reveal that the place of occurrence has been duly established as per the site plan Ex.PW-9/B, the recovery memos of the vehicles coupled with the mechanical reports Ex.PW-5/A and Ex.PW-5/B would establish that the accident indeed took place in the manner as suggested by the prosecution. The deposition of two eye witnesses PW-2 and PW-3 does not leave any shadow of doubt that the vehicle in question was being driven in a rash and negligent manner by the petitioner. The witnesses had also explained in detail as to how the occurrence took place.

16. With regard to the identification of the accused, the Hon'ble Supreme Court in case of ***Ravi Kapur Vs. 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]

17. PW-2 and PW-3 have duly identified the petitioner in Court. The name of the driver and the RC of the offending vehicle is mentioned by the complainant in his complaint Ex.PW-2/A. The FIR is thus against an identified person. Therefore, the identification of the petitioner is duly established on record.

18. 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.

19. 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)

The Hon'ble Supreme Court in ***State of Punjab Vs. Balwinder Singh & Ors. Criminal Appeal Nos.-47-48 of 2012 Arising Out of SLP (Crl.) Nos.7872-7873-2010) Decided on 06.01.2012*** set aside the judgment of this High Court and imposed a sentence of 06 months RI with a fine of

Rs.5,000/- each in a case where the High Court had reduced the sentence to the period already undergone which was 15 days in the said case despite the fact that there were 05 deaths.

20. In the present case, the petitioner is a first time offender and the occurrence is of the year 2013. Therefore, in view of the aforementioned judgments I modify the sentence and reduced it to a period of 1-1/2 years.

(JASJIT SINGH BEDI)
JUDGE

January 18, 2023
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No