

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.2963 of 2022
Reserved on 11.09.2023
Date of Decision: 19.09.2023

Avtar Singh
Vs.
The State of Punjab

.....Petitioner
.....Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Kulwant Singh, Advocate for the petitioner.

Mr. P.S. Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

Petitioner was tried by the Court of learned Sub Divisional Judicial Magistrate, Phillaur in a case arising out of FIR No.15 dated 11.01.2013 registered at Police Station Phillaur, District Jalandhar under Section 279, 337, 338, 427 and 304-A IPC. After conclusion of trial, petitioner was convicted vide judgment dated 17.11.2017 under Sections 304-A, 279, 337 and 338 IPC. Vide a separate order of the even date, he was sentenced as under: -

U/s	Sentence	RI	Fine	In Default
279 IPC	06 months	—	—	—
337 IPC	06 months	—	—	—
338 IPC	01 year		Rs.500/-	20 days
304-A IPC	02 years		Rs.1000/-	01 month

sentence, petitioner preferred appeal but the same was dismissed by the Court of learned Additional Sessions Judge, NRI Cases, Jalandhar on 04.04.2022.

3. It is against the afore-said concurrent finding of conviction that petitioner has filed this revision.

4. As per prosecution case, on 11.01.2013, complainant – Paramjit Singh had gone to drop his sister Rajwinder Kaur, who is working as a teacher in S.S.N. Senior Secondary School, Bhar Singh Pura, to school on his motor-cycle. School Van bearing registration No. PB-13-U-6495 of the afore-said school was going ahead of him being driven by Parminder Singh alias Rinku, occupied by 12/13 students of the school. At about 08:00 a.m., as they reached ahead of Bhar Singh Pura Petrol Pump, a Tata Vehicle bearing No. PB-10-DC-1276 came from the side of Phillaur being driven by its driver negligently, at a high speed and without blowing any horn, struck towards the driver side of the school van by coming from the wrong side of the road and then sped away. He (complainant) Paramjit Singh stopped the motor-cycle and found the children of the school van crying. Manpreet Kaur, Jaspreet Kaur and Sarabjit Kaur had received serious injuries; whereas Simranjit Kaur and Paramvir Singh had died. A number of persons assembled there and the injured children were sent to Phillaur hospital. Name of the driver of offending Tata-407 vehicle was later on known as Avtar Singh- petitioner, who had sped away with the vehicle after causing the accident.

5. On the statement made by Paramjit Singh to the Police,

Formal FIR was registered. Dead body of Paramvir Singh and Simranjit

Kaur were sent for post mortem examination. On 12.01.2013, injured Sarabjit Kaur also succumbed to the injuries. Accused was arrested. Vehicles involved in the accident were taken into possession. After concluding investigation, final report under Section 173 Cr.p.C was presented in the Court.

6. Accused was charge-sheeted under Sections 279, 337, 338, 427 and 304-A IPC, to which he pleaded not guilty and claimed trial. Prosecution examined as many as 22 witnesses to prove the charges. All the incriminating material appearing in the evidence was confronted to the accused in his statement recorded under Section 313 Cr.P.C but he controverted the same and pleaded false implication. However, no evidence in defence was led by him. After hearing both the sides, learned trial Court recorded conviction and sentenced the petitioner vide impugned judgment dated 17.11.2017 and the appeal against that judgment has been dismissed on 04.04.2022, as stated earlier.

7. It is contended by learned counsel that as per prosecution allegations, petitioner was driving TATA-407 bearing No. PB10-DC-1276 and he caused the accident with school van bearing No. PB-13-U-6495, resulting in death of three school children on 11.01.2013. It is contended that petitioner is alleged to have caused the accident with School Van bearing No. PB-13-U-6495 owned by S.S.N. Senior Secondary School, Bhar Singh Pura, which was also taken into possession but in fact No. PB-13-U-6495 is the registered number of a motor-cycle owned by one Karamjit Singh son of Darshan Singh and

PB13-H-6495. Learned counsel further contends that said fact establishes that accident was not caused by TATA-407 bearing N: PB-10-DC-1276 with the school van. Learned counsel further contends that various lacunas and shortcomings in the story of prosecution have been ignored. None of the prosecution witnesses are reliable. The identity of the petitioner to be the driver of the offending vehicle was not established nor any independent witness was examined and so, in all these circumstances, both the Courts below fell in error in recording the conviction.

8. In the alternative, learned counsel for the petitioner has also submitted that petitioner has already undergone custody period of 09 months and 11 days as per the custody certificate and considering the fact that accident took place more than 10 years back and petitioner has undergone agony for a long period, he may be sentenced for the period already undergone by him.

9. Learned State Counsel has strongly opposed both the prayers. It has been argued that impugned judgment of conviction recorded by the trial Court is based on cogent and convincing evidence, which could not be shattered by the defence in any manner. The identity of the accused- petitioner and rash and negligent driving on his part are duly established by the statements of eye witnesses. Simply because a wrong number plate PB-13-U-6495 was put on the school van, cannot be a reason to give any benefit to the petitioner. Still further, it is argued that rash and negligent driving on the part of the petitioner resulted in death of three innocent children and that

Instead of helping the injured to be taken to the hospital, petitioner

sped away from the spot and so, in these circumstances, he neither deserve the benefit of probation nor the imposition of lesser sentence and that he deserves to undergo the complete sentence as awarded by the Courts below.

10. I have considered submissions of both the sides and have appraised the record.

11. As noticed by the First Appellate Court, as many as five eye witnesses were examined by the prosecution, who fully supported the prosecution version. PW1 Paramjit Singh is the complainant and the eye witness of the accident, who supporting the prosecution version, deposed the manner in which the accident was caused due to rash and negligent driving of the accused- petitioner, who came from the wrong side while driving Tata Vehicle bearing No. PB-10-DC-1276 and dashed against the school van from the driver side and sped away. He established the identity of the accused to be the driver of the offending vehicle. PW2 Rajwinder Kaur was pillion rider on the motor-cycle of Paramjit Singh, when the accident took place. She too established the identity of the accused to be the driver of the offending vehicle. PW3 Manpreet Kaur and PW12 Jaspreet Kaur are the injured children, who were travelling in the school van at the relevant time. PW3 has also deposed about the rash and negligent driving of the Tata Vehicle No. PB-10-DC-1276 and proved that the same was driven by the accused. Statement of PW6 Parvinder Singh is quite material, as he being the driver of the school van, was certainly in a position to see the face of the accused driving the offending vehicle and he has fully supported the prosecution case.

12. Apart from the eye witness account, the post mortem report of the three deceased and the MLRs of the injured school children are well proved on record.

13. The contention of learned counsel for the petitioner to the effect that identity of petitioner is not established to be driver of offending vehicle due to non-holding of test identification parade, has no merit, as holding of test identification parade is not a sine quo non, so as to establish the identity of the offender. It is only a step in the investigation. It depends upon facts and circumstances of each case that whether the police, during investigation should have taken steps to conduct test identification parade or not. It is not the law that in the absence of test identification parade, identification of the accused in the Court by the witness cannot be believed. Reliance can be placed on **Ravi Kapur Versus State of Rajasthan 2012(4) R.C.R. (Criminal) 245**, wherein it was held by Hon'ble Supreme Court:

(i) 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.

(ii) It will depend upon the facts of each 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 straight-jacket formula can be stated in this regard.

(iii) The Criminal Procedure Code does not oblige the investigating agency to necessarily hold the test identification parade without exception. 2012(6) SCALE 381, relied.

14. Besides above, in **State of Himachal Pradesh Vs. Lekhraj 2000(1) 247**, it was observed by Hon'ble Supreme Court that test identification parade is only corroborative piece of evidence

and that not holding of the same does not affect the prosecution case, when it is otherwise proved by the witnesses.

15. Similarly, in **Kulwinder Singh Versus State of Punjab 2015(6) SCC 674**, Hon'ble Apex Court re-iterated the law under Section 9 of Evidence Act, 1872, regarding Test identification parade, as under:

(i) Identification test does not constitute substantive evidence and it is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines. 1971(2) SCC 75, relied.

(ii) Identification can only be used as corroborative of the statement in Court. 1973(2) SCC 406, relied.

(iii) The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade - Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. 2003(3) RCR (CrL) 550, relied.

(iv) Many a time, crimes are committed under the cover of darkness when none is able to identify the accused - The commission of a crime can be proved also by circumstantial evidence. 2003(3) RCR (CrL) 1, relied.

16. In the present case, accident took place in day light and so, the witnesses were in position to see the face of the driver of the offending vehicle, particularly PW6 Paramjit, driver of the offending vehicle. Apart from this, the complainant has also established the identity of the accused. None of these witnesses examined by the prosecution had any enmity with the accused and so there was no reason for them to falsely implicate the accused.

17. Proceedings further, Ex.PW16/A and Ex.PW16/C are the photographs of the spot revealing the registration number of school

van to be PB-13-U-6495, which had met with an accident. However, as per the certificate of registration EX.PW18/A, the registration number of the van is PB-13-H-6495. Simply because a wrong number plate i.e., PB-13-U-6495 had been affixed by the school authorities on the van instead of PB13-H-6495, no benefit can be given to the petitioner. It is established from the evidence on record that when the offending vehicle being driven by the accused hit the school van, that time school van was bearing number plate PB-13-U-6495, which is also visible from the photographs.

18 No other point was urged.

19. Consequent to the above discussion, conviction as recorded by the Courts below is upheld, as no illegality can be found in the findings recorded by the trial Court and affirmed by the Appellate Court in this regard.

20. As far as quantum of sentence is concerned, the petitioner has been sentenced to undergo rigorous imprisonment for a period of two years for committing offence under Section 304-A IPC. Though, he has also been sentenced for varying imprisonments under other Sections but all those sentences are to run concurrently with this maximum sentence of two years. Learned trial Court has rightly observed that rash and negligent driving of the petitioner resulted in death of three innocent children, namely, Simranjit Kaur, Paramvir Singh and Sarabjit Kaur besides simple and grievous injuries on the person of Manpreet Kaur and Jaspreet Kaur. Not only this, as per the evidence on record, after causing the accident, petitioner fled away

from the spot instead of shifting the injured to the hospital. In such

circumstances, petitioner does not deserve any leniency. Consequently, the impugned order of sentence passed by the trial Court and as affirmed by the Appellate Court, is hereby maintained and the present revision stands dismissed. Pending applications, if any, stands disposed of.

21. Petitioner is directed to surrender before the Court of learned Chief Judicial Magistrate concerned within a period of 15 days from today so as to undergo the remaining sentence.

22. A copy of this judgment be also sent to the Court of learned Chief Judicial Magistrate for necessary compliance. Trial court record be sent back.

September 19, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No