

2024:PHHC:170302



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

CRR-2549-2009(O&M)

Date of Decision:-18.12.2024

Malkiat Singh.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. Brijender Kaushik, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, AAG Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The present revision petition has been filed impugning the judgment dated 16.09.2009 passed by Additional Sessions Judge, SAS Nagar (Mohali) Ludhiana whereby the appeal filed against the judgment of conviction and order of sentence dated 30.08.2008 passed by Judicial Magistrate Ist Class, Kharar has been dismissed.

2. The FIR in the present case came to be registered on 22.03.2002. The judgment of conviction was passed on 30.08.2008 by the Judicial Magistrate Ist Class, Kharar. The Appeal filed against the order of conviction was dismissed on 16.09.2009 by the Additional Sessions Judge, SAS Nagar, Mohali. The instant revision petition was filed on 24.09.2009 and has come up for final hearing now i.e. after a period of 22 years from the

date of registration of the FIR.

3. The brief facts of the case of prosecution are that on 22.3.2002 S.I Dharampal, Incharge, Police Post Gharuan alongwith other police officials received information with regard to an accident. He reached the place of occurrence. One Gurmit Singh son of Chanan Singh, Driver, Punjab Roadways Depot, Chandigarh, made his statement before him. The complainant Gurmit Singh stated in his statement that he was the driver of Punjab Roadways Depot, Chandigarh on bus bearing registration No. PB-12-C-9072, on 22.3.2002. He had set out from Katra to Chandigarh on the above said bus at 5.00 A.M. and had reached near village Mamupur at about 5.30 PM. Jarnail Singh was the conductor on the bus on that day with him. When the bus driven by him reached near Village Mamupur, one TATA 407 Vehicle bearing registration No. PB-12-B-5036 was coming from the side of Kharar from the front side. Its driver was driving it rashly and negligently and was overtaking the bus proceeding ahead of it. While driving the TATA 407 vehicle, the driver thereof, struck his vehicle against the bus of the complainant while overtaking the bus proceeding ahead of him. On account of his rash and negligent driving, the accident took place as the bus became out of control and descended into the pit on the left side of the road. The passengers travelling in the bus received injuries. People collected there at the spot and the injured were removed to the hospital. The police also arrived at the place of accident. The complainant Gurmit Singh was also removed to Civil Hospital, Kharar where he made his statement before him (S.I. Dharampal). He further stated that Malkiat Singh son of Gurdial Singh, resident of House No. 192, Ward No 2. Chunni Road, Morinda, was driving the above referred offending TATA 407 vehicle rashly and negligently at that time. The accident had taken place due to his rash and negligently

driving of the TATA 407 vehicle. S.I Dharampal recorded the statement of complainant Gurmit Singh and made his endorsement thereupon and sent it to Police Station, Kharar, whereupon the F.I.R of this case was registered. The investigating Officer conducted the investigation in the case. He prepared the rough site plan of the place of accident with correct marginal notes on the demarcation of Jarnail Singh, conductor of the bus. He got the place of accident photographed. He held the inquest on the dead body of Ram Rattan and got his dead body postmortemed during the course of investigation of the case as he died on account of accidental injuries. He took the offending TATA 407 vehicle into police possession, vide a separate memo and took its documents into police possession vide separate memo. He got the vehicles mechanically tested and took the mechanical test reports into police possession. He arrested the accused/petitioner and prepared his personal search memo. On conclusion of investigation of the case, challan was presented against the accused/petitioner by S.H.O Police Station.

4. In order to prove the offences against the accused/petitioner, the prosecution examined PW1 Jarnail Singh, PW2 Gurmit Singh complainant, PW3 Harbhajan Kaur, PW4 Dr. H.S. Oberoi, Medical Officer, PW5 Pardeep Kumar, PW6 Kulbir Kaur, PW7 Dr. Yoginder Bansal, PW8 Gurdial Singh, PW9 S.I. Dharampal, investing officer, PW10 H.C. Mohinder Singh, PW11 Gurcharan Singh, Clerk H.C. Satnam Singh and thereafter the evidence of the prosecution was closed.

5. On conclusion of the prosecution evidence, the accused/petitioner was examined under Section 313 Cr. P.C. He denied the allegations of the prosecution case and pleaded that he had been falsely implicated in this case. He closed his defence evidence in the trial Court without examining any witness in defence.

6. Based on the evidence led, the accused/petitioner came to be convicted and sentenced by the court of Judicial Magistrate Ist Class, Kharar vide judgment and order of sentence dated 30.08.2008 as under:-

Offence Section	under	Sentence RI/SI	Fine	RI/SI in default of payment of fine
279 IPC		RI for 06 Months	Rs.200/-	SI for 15 days
337 IPC		RI for 06 Months	Rs.500/-	SI for 15 days
304-A IPC		RI for 1 Year	Rs.1000/-	SI for 15 days

All the sentences were ordered to run concurrently.

5. The accused/petitioner preferred an appeal which came to be dismissed by the Court of Additional Sessions Judge, SAS Nagar, Mohali vide judgment dated 16.09.2009.

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

7. During the pendency of the instant revision petition, the sentence of the accused/petitioner was suspended vide order dated 30.11.2009.

8. The counsel for the accused/petitioner contends that the judgment of conviction and order of sentence was passed on the basis of conjectures and surmises. The prosecution witnesses were discrepant in material particulars. From the statements of PW-1, PW-2, PW-3 and PW-6, the identity of the petitioner had not been established as per law. Therefore, the present petition was liable to be allowed and the accused/petitioner ought to be acquitted of the charges framed against him. In addition he contends that in case this Court was to come to a finding that the prosecution had established its case beyond reasonable doubt, then keeping in view the fact that the occurrence was of the year 2002 and the case had come up for final hearing now after a gap of 22 years, the accused/petitioner may be released on probation subject to payment of compensation.

9. The Counsel for the State on the other hand has filed a custody certificate of the accused/petitioner dated 17.12.2024 and the same is taken on record. He contends that the evidence on record was sufficient to establish the culpability of the petitioner. The prosecution witnesses had deposed as to the manner in which the occurrence had taken place. There were no discrepancies in their statements as has been sought to be argued. Therefore the present petition was liable to be dismissed.

10. I have heard learned Counsel for the parties and examined the record.

11. The evidence of the prosecution is consistent with the guilt of the accused/petitioner. The manner in which the occurrence took place has been explained in detail by PW-1 Jarnail Singh, PW-2 Gurmit Singh & PW-6 Kulvir Kaur. The site plan Ex.PW-9/A also fortifies the prosecution case. Further from the deposition of the aforementioned PWs the identity of the petitioner also stands established beyond doubt. Therefore, I find no infirmity in the judgments of the Trial Court as well as of the lower Appellate Court. Resultantly, the present revision stands dismissed.

12. As regards the imposition of sentence, it may be pointed out that this Court in **Gurmukh Singh Vs. State of Punjab CRR No.2168-2014** **Decided on 13.12.2023** held as under:-

“ 21. Thus two parallel threads are :

- a. Courts should normally avoid showing undue sympathy to the accused by imposing inadequate sentence as the same is harmful to the justice system ; and*
- b. The Supreme Court has repeatedly considered the fact that ordeal of facing pangs of prolonged trial needs to be considered while deciding adequacy of sentence in the matters pertaining to offence punishable under Section 304-A IPC. Where the accused*

has faced the prolonged trial running into more than a decade before it is finally concluded by the High Court or the Supreme Court and both the Courts found that the victim needs to be compensated adequately, the time spent in the lis by an accused and compensation to the victim can form relevant considerations for reduction in sentence.

22. *In the present case the present revision is pending consideration for last nine years. FIR relates to the year 2007. The petitioner was granted suspension of sentence on 27.10.2014 after he expressed his readiness to compensate the victim by paying Rs.1.00 lac. The aforesaid amount stands paid. The question is, having paid compensation as per the orders of this Court 9 years back, should the petitioner be asked to go back behind bars? It is in these mitigating circumstances that this Court finds it appropriate to follow the orders passed by Apex Court in **K. Jagdish's case** (supra) as the facts in the present case are almost similar to those before the Apex Court. I may hastenly add here that the petitioner is claimed to have paid compensation and neither the State nor the victim has agitated against the order passed by this court asking the petitioner to deposit compensation and granting him suspension of sentence.*
23. *The petitioner is a first time offender and has no past criminal record or antecedents. He is not reported to have ever misused concession of bail/suspension of sentence. He has undergone about 6 months out of substantive sentence of 1 year and has already faced protracted trial for last 16 years.*
24. *Taking into consideration all these facts cumulatively, the substantive sentence of 1 year awarded to the petitioner by the Courts below is reduced to the period already undergone by him.*
25. *Petition is disposed off, accordingly.”*

13. As regards the imposition of sentence, admittedly, the occurrence pertains to the year 2002 and as many as 22 years have passed ever since then. A perusal of his custody certificate would show that he does not have any criminal antecedents and is a first time offender. Therefore, subject to the payment of the fine as imposed and payment of Rs.1 Lac as compensation to be paid to the legal heirs of the deceased, the sentence of

the accused/petitioner is reduced to the period already undergone by him i.e.
02 months and 21 days.

14. The present revision petition stands disposed of in the above
terms.

(JASJIT SINGH BEDI)
JUDGE

December 18, 2024
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>