

CRR-1175-2008 (O & M)

2025:PHHC:018654



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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
(201)

CRR-1175-2008 (O&M)
Date of Decision: 07.02.2025

Bikker Singh

... .Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. M.S. Sachdev, Advocate,
for the petitioner.

Mr. Prabhdeep Singh Dhaliwal, AAG, Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been filed impugning the judgment dated 01.05.2008 passed by Additional Sessions Judge, Jalandhar, whereby the appeal filed against the judgment of conviction and order of sentence dated 16.09.2006 passed by the Sub Divisional Judicial Magistrate, Nakodar, has been dismissed.

2. The FIR in the present case came to be registered on 27.07.2003. The judgment of conviction and order of sentence was passed on 16.09.2006 by the Sub Divisional Judicial Magistrate, Nakodar. The Appeal filed against the judgment of conviction and order of sentence was



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dismissed on 01.05.2008. The instant revision petition was filed on 08.07.2008 and has come up for final hearing now i.e. after a period of 21 years from the date of registration of the FIR.

3. The Prosecution version is that on 17.07.2003 H. C. Harjit Singh was posted at police Post City Nakodar where Sukhdev Mitter Chopra got recorded his statement Ex, PA. He stated that he was a retired employee of the Municipal Council. He had six daughters and all were married. As a routine, he had gone on a morning walk along with his wife Pushpa Chopra. His wife was ahead of him and at about 4.30 a.m., when they reached near the Purani Kanda Octroi. Shanker Road, Nakodar, one truck bearing No. PB. 2J-A-9395 was seen coming at a high speed without blowing any horn. It struck his wife from behind due to which she received grievous injuries and died at the spot. The truck driver ran away from the spot after leaving the truck and he could identify him if produced before him. In the meantime, his son in law Manoj Kumar also came at the spot. He stated that this accident had occurred due to the rash and negligent driving of the truck by its driver. On the basis of this Statement the FIR was registered. The truck was taken into possession by the police. The rough site plan of the place of accident was prepared. Post-mortem of the dead body of Pushpa Chopra was got conducted. The accused was arrested. After completion of investigation, challan against the accused was presented in the Court of the Illaga Magistrate.



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4. On finding a *prima facie* case to be made out against the accused, charge under Sections 279 and 304-A IPC was framed. He pleaded not guilty and claimed trial.

5. To prove its case, the prosecution examined Sukhdev Mitter Chopra (PW-1) who deposed that on 17.07.2003 as a routine, he had gone on a morning walk along with his wife Pushpa Chopra. His wife was ahead of him and at about 4.30 a.m., when they reached near Purani Kanda Octroi. Shanker Road, Nakodar, one truck bearing No. PB-2J-A-9395 was seen coming at a high speed without blowing any horn and hit his wife from behind due to which she received grievous injuries and died at the spot. He identified the accused present in the court. He proved his statement Ex. PA, which was read over and explained to him and after admitting the same as correct he signed the same. He also proved memo Ex. PB, vide which the truck was taken into possession of the police.

Dr. Varinder Pal Jagat (PW2) deposed that on 17.7.2003, he conducted the post mortem examination on the dead body of Pushpa Chopra deceased and found the following injuries: -

1. *Lacerated wound 20 cm x 15 cm over front of left thigh. Under line soft tissue skin muscle were badly lacerated & crushed underline bone was fractured. Clotted blood was present.*
2. *Lacerated wounds 18cm x 12cm over left knee underline soft tissue muscles vessels were badly crushed. Underline bone was fractured. Clotted blood was present.*



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3. *Lacerated wound 30cm x 10cm over front of left lower leg underline soft tissue muscles were badly crushed & lacerated underline bone was crushed. Clotted blood was present.*
4. *Lacerated wound 10cm x 8cm over dorsum of left foot. Soft tissue muscles were lacerated & crushed. Underline bone was fractured.*
5. *Lacerated wound 15cm x 10cm present over right knee. Underline soft tissue muscles vessels were badly lacerated & crushed. Underline bone was fractured.*
6. *Lacerated wound 10cm x 8cm present over dorsum of right foot. Underline soft tissue muscles were lacerated. Underline bones was fractured & lacerated. Clotted blood was present.*
7. *Lacerated wound 8cm x 4cm present over genetia on the section on the section underline soft tissue was lacerated.*
8. *Abrasions 20cm x 10cm present over lower part of front of abdomen on the section under line ruptured. Underline portion of gut was crushed & lacerated abdominal was full of blood.*

He deposed that all the injuries were ante-mortem in nature & cause of death in his opinion was neurogenic & hemorrhagic shock due to the injuries which were sufficient to cause death in the ordinary course of nature. He proved carbon copy of the post Mortem Report Ex. PW/A.

Manoj Kumar (PW3) deposed that on 17.07.2003 when he was going to his shop at village Shankar, he saw his father-in-law near old Octroi Post Shanker Road where the dead body of his mother-in-law Pushpa Chopra was lying. He deposed that his father-in-law told him that the truck driver had caused the accident & there after he left the spot for



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informing the police. He deposed that he identified the dead body and inquest report Ex. PW3/A was also signed by him. He also proved recovery memo Ex. PB vide which the truck was taken into possession by the police.

Amit Kumar (PW4) proved photographs and negatives Ex.P1 to Ex. P4 which were taken into possession of the police vide recovery memo Ex. PW4/A signed by him.

ASI Harjit Singh (PW5) the investigation Officer of the case, deposed that on 17.07.2003 he recorded the statement of Sukhdev Mitter Chopra Ex. PA and after making his endorsement Ex. PW5/A it was sent to the police station on the basis of which formal F.I.R. Ex.PW5/B was recorded. He also prepared the inquest report Ex. PW3/A. He deposed that after the post-mortem of the dead body, parcel containing the clothes of the dead body were taken into possession of the police vide recovery memo Ex. PW5/C. He proved recovery memo Ex. PB vide which the truck was taken into possession of the police and recovery memo Ex. PW5/D vide which driving licence and registration certificate of the truck were taken into possession. He also proved the rough site plan of the place of accident Ex.PW5/E and also identified the signatures of SHO Mandeep Singh on the challan.

Constable Des Raj (PW6) proved the mechanical test report of the truck Ex.PW6/A which bore his signatures. Thereafter, the A.P.P. closed the prosecution evidence after tendering into evidence copy of the driving licence ex. PX and registration certificate of the truck EX.PY.



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6. The statement of the accused was recorded under Section 313 Cr. P.C. in which all the incriminating evidence was put to him. He denied the same and pleaded innocence.
7. Based on the evidence led, the accused/petitioner came to be convicted and sentenced by the court of the Sub Divisional Judicial Magistrate, Nakodar vide judgment of conviction and order of sentence dated 16.09.2006 as under:-

Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
304-A IPC	RI for 02 years	Rs.4,000/-	SI for 01 month
279 IPC	RI for 06 months	Rs.1,000/-	SI for 01 month

8. The accused/petitioner preferred an appeal which came to be dismissed by the Court of Additional Sessions Judge, Jalandhar vide judgment dated 01.05.2008.
9. The aforementioned judgments are under challenge in the present petition.
10. During the pendency of the instant revision petition, the sentence of the accused/petitioner was suspended vide order dated 25.09.2008.
11. The learned counsel for the accused-petitioner contends that the impugned judgments are based on conjectures and surmises. He contends that the identification of the accused-petitioner has not been



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established as per law and the first time identification in the Court has little evidentiary value. There is no evidence of any rash and negligent driving other than the statement of complainant-Sukhdev Mitter Chopra and there is no other independent witness of the occurrence. Therefore, the impugned judgments are liable to be set aside. 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 2003 and the case had come up for final hearing now after a gap of 21 years, the accused-petitioner may be released on probation subject to payment of compensation.

12. The learned counsel for the State, on the other hand, has referred to the custody certificate dated 12.12.2024 of the accused-petitioner, which is already on record. As per the said custody certificate, the accused-petitioner has undergone 06 months and 07 days out of his substantive sentence. While referring to the record, he contends that the prosecution witnesses had deposed consistently 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.

13. I have heard learned counsel for the parties and examined the record.

14. As regards the identification of the accused is concerned, no doubt his name is not mentioned in the statement of the complainant Ex.PA,



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but he has specifically stated that he could identify the driver of the vehicle if produced before him and when he appeared in the witness box as PW1 he again specifically deposed that the accused present in the Court was driving the truck and after leaving the truck, he ran away. When the driver of the offending vehicle fled away from the spot after the accident, but is identified in Court, mere absence of an identification parade would not be fatal to the prosecution case.

15. In the context of an identification parade, 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



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*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.



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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*



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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]

16. Sukhdev Mitter Chopra, the complainant of the case, when appeared in the witness box as PW1 proved the prosecution case that at the time of the accident, the accused was driving the offending vehicle and this accident took place due to his rash and negligent driving. No enmity has been suggested or proved by the accused for his false implication. The very fact that the accused struck the deceased from behind itself shows that he was driving the truck rashly and negligently. In this context, the Hon'ble



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Supreme Court in **Ravi Kapur Versus State of Rajasthan, 2012(4) R.C.R. (Criminal) 245**, held as under:-

“11. ‘Negligence’ means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

12. The Court has to adopt another parameter, i.e., ‘reasonable care’ in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.



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13. *The other principle that is pressed in aid by the courts in such cases is the doctrine of res ipsa loquitur. This doctrine serves two purposes – one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is prima facie evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The courts have also applied the principle of res ipsa loquitur in cases where no direct evidence was brought on record. The Act itself contains a provision which concerns with the consequences of driving dangerously alike the provision in the Indian Penal Code that the vehicle is driven in a manner dangerous to public life. Where a person does such an offence he is punished as per the provisions of Section 184 of the Act. The courts have also taken the concept of ‘culpable rashness’ and ‘culpable negligence’ into consideration in cases of road accidents. ‘Culpable rashness’ is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite consciousness (luxuria). ‘Culpable negligence’ is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a*



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case the mere fact of accident is prima facie evidence of such negligence. This maxim suggests that on the circumstances of a given case the res speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person's negligent conduct. [Ref. Justice Rajesh Tandon's 'An Exhaustive Commentary on Motor Vehicles Act, 1988' (First Edition, 2010)].

17. In view of the above discussion, I find no infirmity in the judgments of the Trial Court as well as of the lower Appellate Court. Resultantly, the present revision petition stands dismissed.

18. 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



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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 sub-



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stantive 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.”

19. Admittedly, the occurrence pertains to the year 2003 and as many as 21 years have passed ever since then. A perusal of the custody certificate of the accused-petitioner 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.1,00,000 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. 06 months and 07 days.

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

21. Pending applications, if any, are also disposed of.

(JASJIT SINGH BEDI)
JUDGE

February 07, 2025

sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:-

Yes/No