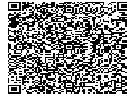


2025:PHHC:025511



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

Date of Decision:-21.02.2025

CRR-2203-2008(O&M)

Harvinder Singh.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Ms. Shubhreet Kaur Saron, Advocate
Amicus Curiae for the Petitioner.

Mr. Harkanwar Jeet Singh, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been filed impugning the judgment dated 02.09.2008 passed by Additional Sessions Judge, Ferozepur whereby the appeal filed against the judgment of conviction and order of sentence dated 02.11.2006 passed by Judicial Magistrate Ist Class, Zira has been dismissed.

2. The FIR in the present case came to be registered on 10.05.1998. The judgment of conviction was passed on 02.11.2006 by the Judicial Magistrate Ist Class, Zira. The instant revision was filed on 22.10.2008 and have come up for final hearing now i.e. after a period of 26 years from the date of registration of the FIR.

3. The prosecution version is to the effect that on 10.5.98 one intimation was received from police post Behak Pacharian to the effect that a canter bearing no.RJ-14G/3492 had caused an accident near the bus stand of Behak Pacharian. SI/IO Sukhwinder Singh alongwith other police officials reached at the spot. Statement of LC Gurbagh Singh, an eye witness of the occurrence was got recorded, on the basis of which an FIR of present case was lodged. The complainant Gurbagh Singh in his statement stated that he had been deputed on general duty at police post Behak Pacharian. On the occurrence day i.e. on 10.5.98 at about 2-30 pm he alongwith C.Kulwant Singh, C. Nishan Singh were on patrolling duty and were present near bus stand Behak Pacharian. Then from the side of Zira one canter bearing no.RJ-14G/3492 came at a high speed in a unsteady manner (swaying movement). Due to high speed and negligent driving he drove the canter truck into a pit. Then the complainant alongwith other police officials run to the place of occurrence. They enquired about the driver who disclosed his name as Babu Singh, Majhbi r/o The Qalander. Public person rescued the injured passengers and got them admitted at Civil Hospital Zira. In the meantime the driver of the canter managed to slip away. Complainant further stated that two children who were aged about 4-5 years and one person who was aged about 35/40 years died at the spot. The complainant further stated that canter was coming from Fazilka on the way to Amritsar in connection with marriage ceremony of one C.Balvir Singh r/o Radha Swamoy Colony, Fazilka which was to be held on 11.5.98 at Amritsar. The investigating officer after making endorsement on the above said statement of complainant, sent a ruqa for lodging the FIR. The investigation began. The inquest report of the dead bodies of the deceased Mohinder Pal, Kulwinder Singh and Silky Rani was got conducted. The post mortem on the said dead

bodies was got conducted from Civil Hospital Zira. The site plan of the place of occurrence was prepared. The statement of witnesses was recorded. The Canter along with its initial RC and new RC which was found in the vehicle was taken into possession. The arrest of the accused was got effected on 19.5.98 as he was produced by Sandip Kumar. Thereafter, on completion of investigation and other formalities, the challan was filed against the accused.

4. Finding a prima facie case against the accused u/s 304-A/279/337 IPC, charges were framed to which he pleaded not guilty and claimed trial.

5. In evidence prosecution examined PW-1 Dr.Jaswant Singh, Medical Officer who conducted the post mortem examination on the dead bodies of Mohinder Pal, Kulwinder Singh and Silky Rani. He proved post mortem reports and pictorial diagrams showing seats of injuries Ex.P1 to Ex.P8, police requests Ex.P9 to Ex. P11 for conducting post mortem examination of the deceased and Ex.P12 intimation sent by him with regard to admission of other injured in hospital. PW-2 Ashok Kumar, HC conducted the mechanical testing of the vehicle i.e. canter. He proved his test report Ex. P13. PW-3 Jagsir Singh s/o Jagjit Singh was an eye witness of the occurrence. As per case of the prosecution he was travelling in the said canter at the relevant time. PW-4 Sohraf Afij Khan, Clerk from the office of RTO, Jaipur brought the record pertaining to the registration of the canter. PW-5 SI Sukhwinder Singh, who was the investigating officer proved other material documents of the prosecution. PW-6 LC Gurbagh Singh was the complainant/ eye witness of the occurrence. PW-7 Balvir Singh son of Swaran Singh was an eye witness of the occurrence.

6. After closing of the prosecution evidence the statement of the

accused was recorded u/s 313 Cr.P.C. wherein the incriminating circumstance in the prosecution evidence were put to the accused. He denied the allegations and claimed false implication stating that he was not driving the vehicle at the relevant time.

7. Based on the evidence led, the accused came to be convicted and sentenced by the Judicial Magistrate Ist Class, Zira vide judgment and order of sentence dated 02.11.2006 as under:-

Offence Section	under	Sentence RI/SI	Fine	RI/SI in default of payment of fine
304-A IPC		1-1/2 Years	Rs.2000/-	RI for 03 Months
337 IPC		06 Months	Rs.250/-	RI for 01 Month
279 IPC		06 Months	Rs.250/-	RI for 01 Month

All the aforesaid sentences were ordered to run concurrently.

8. The accused/petitioner preferred an appeal which came to be dismissed by the Court of Additional Sessions Judge, Ferozepur vide judgment dated 02.09.2008.

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

10. During the pendency of the instant revision, the sentence of the accused/petitioner was suspended vide order dated 12.01.2009.

11. The learned Amicus Curiae for the petitioner very articulately contends that there is no evidence of rash and negligent driving on the part of the accused. PW-7 Balvir Singh was not eye witness to the occurrence but has been set up as one. No test identification parade was conducted and the identification of the accused for the first time in the court has little evidentiary value. As per the prosecution case, the accused had fled away from the spot and was produced later on by Sandeep who had not been examined as a PW. This missing link evidence is fatal to the prosecution case. She therefore contends that the impugned judgments were liable to be

set aside and the accused be acquitted of the charges framed against him.

12. The Counsel for the State on the other hand has filed a custody certificate of the accused/petitioner dated 01.12.2024 in the Court today, which is taken on record. He contends that the prosecution has established the guilt of the accused beyond reasonable doubt. The evidence of the witnesses are consistent in material particulars and minor discrepancies cannot shatter the case of the prosecution. Therefore, the present revision petition is liable to be dismissed.

13. I have heard Counsel for the parties.

14. As per the prosecution case the accused was driving the canter carrying 20/22 passengers at a high speed. While negotiating a turn he could not control the canter and it fell into a ditch on the side of the road despite the fact that the road was quite wide. There is no denying the fact that some residue of wheat may be lying on the road which could prove to be slippery while negotiating turn but the fact remained that not only this vehicle but many other vehicles were being plied on the same road and were taking that turn without any mishap. It is only vehicle that is said to have slipped and gone out of control. Had the canter not been driven at a high speed and in a rash and negligent manner, the occurrence would not have taken place

15. Balvir Singh was examined as PW7 and stated in a categorical manner that on 10.5.1998 he along with others traveled in the Canter to attend the marriage of his daughter at Amritsar which was going to be held on 11.5.1998. All the passengers of the Canter were his close relations. This witness has been cross examined at great length but nothing there from could be inferred that he was not a member of the marriage party which was going to attend the marriage on 11.5.1998. A single line in the statement of Jagsir Singh that Balvir Singh had gone there earlier cannot be of any help to

the accused create a doubt qua the presence of Balvir Singh in the said canter. On account of the rash and negligent driving of the Canter by the accused three persons including two children died. The question of any of the injured PWs including this PWs falsely implicating the accused in order to protect someone else does not arise.

16. As regards the identification of an accused for the first time in court 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 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. In the instant case multiple passengers were travelling in the canter being driven by the deceased. They suffered injuries in the accident and three persons lost their lives. The witnesses namely PW-3 Jagsir Singh who himself is an injured witness and PW-7 Balvir Singh had ample opportunities to see the accused during their journey. Further the complainant/PW-1 LC Gurlabh Singh witnessed the occurrence and saw the accused causing the accident and duly identified him. Therefore, mere non holding of a test identification parade would be of little significance.

18. As regards non examination of Sandeep who is stated to have produced the accused before the police, it would be relevant to mention here that he had a very limited role to play and he not being examined as prosecution witness cannot prejudice the prosecution case materially.

19. In view of the above discussion, I find no merit in the petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

February 21, 2025
Vinay

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