

2025:PHHC:030076



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

CRR-953-2008(O&M)

Date of Decision:-04.03.2025

Balwinder Singh.

.....Petitioners.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. Surinder Garg, Advocate for the Petitioner.

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

JASJIT SINGH BEDI, J.(ORAL)

The present revision petition has been filed impugning the judgment dated 19.03.2008 passed by Additional Sessions Judge (Adhoc), Fast Track Court, Muktsar whereby the appeal filed against the judgment of conviction and order of sentence dated 28.04.2007 passed by Chief Judicial Magistrate, Muktsar has been dismissed.

2. The FIR in the present case came to be registered on 14.01.2002. The judgment of conviction was passed on 14.01.2002 by the Chief Judicial Magistrate, Muktsar. The Appeal filed against the order of conviction was dismissed on 19.03.2008 by the Additional Sessions Judge (Adhoc), Fast Track Court, Muktsar. The instant revision petition was filed on 21.05.2008 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 prosecution case are that on 14.01.2002, a police party headed by ASI Kulwant Rai of Police Station Bariwala was coming from village Sarainaga towards Village Warring in connection with checking the arrangements for the Maghi Mela. When the police party reached near the school, in the area of village Warring, it was about 12.30 p.m.. One scooter was going ahead of the Jeep of the police. Three persons were sitting on the scooter. They were going towards Muktsar on their left side. When the scooter reached in front of the school, one Bus bearing No. PB30-A-9505 of People Transport Company, Muktsar came from the opposite side. Accused Balwinder Singh, resident of village Thandewala, was driving the Bus. He was already known to ASI Kulwant Rai. The bus came at a high speed and in a negligent manner. It struck the scooter. All the scooterists fell down and suffered injuries. The accused fled away alongwith the bus. The injured were taken to Civil Hospital, Kotkapura by ASI Kulwant Rai. Two persons succumbed to the injuries on the way to the Hospital. The names of the deceased were later on known as Jugraj Singh alias Jajji son of Veer Singh, resident of Dogar Basti, Faridkot, and Sonu son of Jaswant Singh resident of Talwandi Bhai and the name of the third injured was known as Jaswant Singh son of Arjan Singh, resident of Talwandi Bhai. As per ASI-Kulwant Rai, accused Balwinder Singh caused the accident by his rash and negligent driving of the bus and committed offences punishable under Section 279/304-A/337/338/427 I.P.C. ASI Kulwant Rai drafted the ruqa Ex.PWB/A on the basis of which the formal FIR Ex.PWB/B was registered at Police Station-Sadar Muktsar. During further investigation, the post-mortem examination of the dead bodies was got conducted vide police request Ex. PWB/C and site plan Ex. PWB/D of the place of occurrence was

prepared. The scooter and bus were taken into police possession. The accused was arrested. Statements of witnesses were recorded. After the completion of the investigation, the accused was challaned to face trial in the Court.

4. After perusing the report under Section 173 of Cr.P.C. a prima facie case punishable under Section 304-A/279/337 of IPC was found to be made out against the accused and charges were framed.

5. The prosecution examined PW-1 Jaswant Singh, PW-2 HC Ranjit Singh, PW-3 -ASI Makhan Singh, PW-4 Baljit Singh-Photographer, PW-5 HC Dharam Pal, PW-6 C. Ramesh Kumar, PW-7-Dr. Satish Kumar Jagga, PW-8-Kulwant Rai-ASI, PW-9 Dr. Munish Kumar Goyal, PW-10 Sheetal Singh, and PW-11 Jaswant Singh, Mechanic.

The gist of their discrepancies are as under:-

PW-1 Jaswant Singh was one of the injured and he was scooter driver. He deposed that about two years back prior to the occurrence on Maghi Mela, he was going on his scooter bearing no.8127. His son Sonu and his wife's Sister's husband Jugraj Singh were sitting on pillion seat. When they reached near the school, in the area of village Warring, one bus came from the opposite side and it caused the accident. He deposed that his son Sonu. and Jugraj Singh expired due to this accident.

PW-2 HC Ranjit Singh is a formal witness. He proved the recovery memo Ex. PB by which photographs and negatives were taken into police possession. He also proved recovery memo Ex. PC by which, photocopy of the Registration Certificate of the Bus was taken into police possession.

PW-3 ASI Makhan Singh has partly conducted the investigation of this case. He recorded the statements of Manjit Singh, and Kulbir Singh,

Clerks.

PW-4 Baljit Singh was the photographer. He proved photographs Ex.P.1 to Ex.P.5 and negatives Ex.P.6 to Ex.P.10.

PW-5 HC Dharam Pal is also the formal witness. He proved recovery memo Ex. PW-5/A by which the scooter was taken into police possession. He also proved recovery memo Ex. PW5/B by which the Bus involved in the accident was taken into police possession.

PW-6 C.Ramesh Kumar was the member of the police party of ASI-Kulwant Rai. He was the witness to the occurrence. He has supported the case of the prosecution.

PW.7-Dr. Satish Kumar Jagga conducted the post-mortem examination of the dead body of Jugraj Singh and Sonu. He detailed the injuries found on the person of both the deceased. He also proved copy of post-mortem examination report qua. Jugraj Singh Ex.PW7/A and copy of post-mortem examination report qua Sonu Ex. PW7/B.

PW.8-ASI Kulwant Rai was the eye-witness and the Investigation Officer of this case. He has unfolded the prosecution version as detailed above. He also proved ruqa Ex.PWB/A, formal FIR Ex. PWB/B., Police request for post-mortem examination Ex. PWB/C, rough site plan of the place of occurrence Ex. PWS/D. He also proved the recovery memos Ex. PWS/A and Ex.PW5/B. vide which the scooter and Bus involved in the accident were taken into police possession. This witness also proved recovery memo Ex. PC vide which copy of R.C. route permit and driving licence of the accused were taken into police possession. Copy of R.C. was proved as Ex.P.1, copy of route permit proved as Ex.P2 and copy of driving licence was proved as Ex.P.3.

PW-9 Dr. Munish Kumar Goyal from Dayanand Medical

College & Hospital, Ludhiana deposed that on 14.1.2002, injured Jaswant Singh was admitted in the emergency Ward of D.M.C. Ludhiana. He also proved on record the bed-head ticket of injured Jaswant Singh as Ex. PW9/A.

PW-10 Sheetal Singh from the office of D.T.O. Muktsar deposed that the vehicle bearing no, PB30-A-9505 was registered in the name of Brar Roadways, Muktsar and this bus was registered on 22.2.1996. He also proved copy of the R.C. of the Bus Ex.P.1 and authorization slip Ex.P.2.

PW-11 Jaswant Singh is the mechanic. He mechanically examined the Bus bearing No.PB30-A-9505 and proved his report Ex.PW11/A.

6. After the closure of the prosecution evidence, accused was examined under Section 313 of Cr.P.C. In order to afford him an opportunity to explain the incriminating circumstances appearing against him in the prosecution evidence. The accused denied his complicity in the case and pleaded false implication. No evidence in defence was produced by him.

7. Based on the evidence led, the accused/petitioner came to be convicted and sentenced by the court of Judicial Magistrate Ist Class, Jalandhar vide judgment and order of sentence dated 05.12.2007 as under:-

Offence Section	under	Sentence	Fine	RI/SI in default of payment of fine
Section 304-A IPC	304-A	02 Years	Rs.5,000/-	RI for 03 Months

8. The accused/petitioners preferred an appeal which came to be dismissed by the Court of Additional Sessions Judge (Adhoc), Fast Track Court, Muktsar vide judgment dated 19.03.2008.

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 27.05.2008.

11. The learned counsel for the petitioner contends that the judgments of conviction are based on conjectures and surmises. There is no evidence on the rash and negligent driving of the accused. PW-6 C. Ramesh Kumar has admitted that both the vehicles were on their respective left sides of the road. Jaswant Singh in his cross examination did not prove the prosecution case and identify the accused. He has admitted that the accident had taken place due to their lapse in as much as it was he alongwith the deceased who were triple riding on the scooter no.8127. No test identification parade has been conducted as the accused had not been arrested at the spot. The offending vehicle in question is stated to be of the "People's Bus Service" but was registered in the name of "Brar Roadways". This fact also creates a doubt in the prosecution case. He thus contends that the present petition be allowed and the accused acquitted of the charges framed against him. In the alternate he prays that the accused be granted the benefit of probation or reduction of sentence.

12. The Counsel for the State on the other hand has placed on record the custody certificate dated 26.02.2025. He contends that the offence stands established beyond reasonable doubt. The identification of the accused as driving the offending vehicle in a rash and negligent manner is apparent from the evidence available on record including that of the complainant PW-8 ASI Kulwant Rai. PW-1 Jaswant Singh, an injured witness has also supported the prosecution case in his examination in chief but only took a volte-face in his cross examination. If the evidence of this

witness is considered in its entirety, there is no doubt whatsoever that the offence has been committed by the accused and none else. He therefore, contends that offence stands established beyond doubt and the present petition is liable to be dismissed. As regards the prayer for probation or reduction of sentence, he contends that 02 lives were lost in the occurrence and the accused did not deserve any sympathy.

13. I have heard counsel for the parties.

14. A perusal of the record shows that PW-8 ASI Kulwant Rai is a complainant in this case. He has categorically stated in the court that he had witnessed the occurrence and that he knew the driver Balwinder Singh earlier also. While driving his bus no.PB-30-A 9505 in a rash and negligent manner, the accused struck the scooter, after going on the wrong side of the road. On the similar lines is the testimony of PW-6 C. Ramesh Kumar, who had taken the dead body of Jugraj Singh and Sonu to the hospital. So, his presence on the spot cannot be doubted. This witness has also attributed rash and negligent driving to the accused. Both the abovesaid witnesses saw the accident taking place. PW-1 Jaswant Singh in his examination-in-chief, has categorically stated that the accident in question was caused by the driver of the bus, which was red in colour and belonged to the People Bus Service. So, in view of the entirety of the evidence on record, the accused cannot be said to be innocent only on the basis of the cross examination of PW-1 Jaswant Singh.

15. As regards not holding of a test identification parade it is relevant to note that the complainant ASI Kulwant Rai has categorically stated that he knew the driver of the offending bus earlier also and it was only because of this that he had mentioned the name of the driver and the registration number of the bus categorically in the ruqa sent by him to the

police station. In this regard the Hon'ble Supreme Court in 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]

16. As regards the contention of the accused that as per the prosecution version given by ASI Kulwant Rai, the offending bus belonged to the People Transport Company, whereas PW-10 Sheetal Singh, Clerk DTO Office, Muktsar has proved the registration of the bus in the name of Brar Roadways is concerned, it is discernible from the record that the complainant, ASI Kulwant Rai had mentioned the registration number of the bus in the ruqa itself. Therefore, it makes little difference whether the bus in question belonged to People Bus Service or Brar Roadways. The only relevant fact is that the bus no.PB-30A-9505 was being driven by the accused Balwinder Singh and that the identity of the driver and the bus has been fully established.

17. From the record it is apparent that the accident in question took place at 12.30 pm and Jugraj Singh and Sonu got injured and subsequently died in the said accident because of the rash and negligent driving of the accused. The post mortem of the dead body of these persons was conducted on the next day. The rash and negligent driving of the accused has already been proved by PW-6 Ramesh Kumar and PW-8 ASI Kulwant Rai, as well

as that of PW-1 Jaswant Singh. If the prosecution had relied upon the testimony of PW-1 alone, then, it could have been said that the case against the accused could not be proved beyond doubt. However, when the testimony of PW-6 and PW-8 are on the file, then it can be easily said that the prosecution has fully proved the guilt of the accused under Section 304-A IPC.

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

19. 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 afore said 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.”*

20. It may be reiterated here that 02 persons have lost their lives. However, the custody certificate would reveal that the petitioner does not have criminal antecedents. Therefore, in the peculiar facts and circumstances of the case including the fact that the occurrence pertains to the year 2002 and as many as 22 years have passed ever since then, subject to the payment of the fine as imposed and payment of Rs.1 Lac each as compensation to be paid to the legal heirs of the deceased, the sentence of the accused/petitioner is reduced to a period of 01 year.

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

**(JASJIT SINGH BEDI)
JUDGE**

March 04, 2025

Vinay

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