

## Kandhara Singh Vs State of Punjab

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** July 23, 2007

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 304A

**Citation:** (2007) 22 CriminalCC 899

**Hon'ble Judges:** A.N. Jindal, J

**Bench:** Single Bench

**Advocate:** R.S. Rai, assisted by Mr. Karan Pathak, for the Appellant; Anter Singh Brar, D.A.G., for the Respondent

**Final Decision:** Allowed

### Judgement

A.N. Jindal, J.

Assailed in this petition is the judgment dated 28.07.1992 passed by Additional Sessions Judge, Patiala dismissing the

appeal of Kandhara accused/ petitioner (hereinafter referred to as the petitioner) against the judgment dated 23.11.1990 passed by Shri

J.R.Singla, Sub-Divisional Judicial Magistrate, Rajpura, convicting him u/s 304-A of the Indian Penal Code (for short IPC) and sentencing him to

undergo rigorous imprisonment for one year and to pay fine of Rs. 1000/- and in default of payment of fine, to undergo further rigorous

imprisonment for three months.

2. The factual matrix of the case, which culminated into trial, as unfolded by the prosecution, is that on 04.05.1987, Nishan Singh and his son

Jaswinder Singh (since deceased) had gone to village Pehar Kalan for distributing the marriage cards. They were on different bicycles and

Jaswinder Singh was going on his left side, followed by Nishan Singh. At about 2.30 P.M., when they reached on Dhakunsu road, a Maruti van

bearing registration No.DBB-7580, driven by the petitioner rashly and negligently crossed him, while striking against the bicycle of Jaswinder

Singh, as a result of which, he fell down and received head injury. The injured was taken to AP Jain Hospital, Rajpura. Kehar Singh, brother of

Nishan Singh, who had also visited the Hospital, also helped him. Due to deteriorating condition of Jaswinder Singh, he was shifted to Rajendra

Hospital, Patiala, where he succumbed to his injuries. Consequently, on the statement of Nishan Singh Ex.PB, the present case was registered u/s

304-A IPC.

3. Investigation was commenced and on its completion, the challan against him was presented in the court. The petitioner was formally charged u/s

304-A IPC, to which he pleaded not guilty and claimed trial.

4. On trial, the prosecution in order to prove its case, examined seven witnesses, namely; Ajit Singh PW1, Balwant Singh - motor mechanic PW2,

Anoop Kumar - photographer PW3, Nishan Singh eye-witness PW4, Kehar Singh PW5, Dr.Harish Tulli PW6 and Head Constable Sham Chand

PW7.

5. In his statement u/s 313 of the Code of Criminal Procedure, the petitioner denied all the incriminating circumstances and pleaded his false

implication in the case. Ultimately, the trial ended in conviction. The appeal was also dismissed. Hence, this revision petition.

6. The argument advanced by Mr.R.S.Rai, learned Senior Advocate is two fold. Firstly, he urged that though, the case is based on the testimony

of the sole eye-witness i.e. Nishan Singh and no doubt, he could not be disbelieved merely for the reason of his relationship with the deceased, but

his testimony, if scrutinised, does not land us anywhere and he is bound to be disbelieved as his testimony does not meet with the following

required standards; (i) He does not describe the manner as to how the petitioner was rash and negligent; (ii) he has failed to establish the identity of

the petitioner. Having examined the testimony of Nishan Singh PW4, I see some substance in his arguments. Nishan Singh PW4 has stated during

his examination that the petitioner was driving the vehicle at a high speed, but he has not specifically stated any-where if he was rash or negligent,

much less he has not testified as to at what speed, he was driving the vehicle. Regarding high speed, it may be observed that the driver may be

driving the vehicle at a high speed, but he cannot be said to be rash or negligent, unless it is explained as to in what manner he was rash or

negligent. It is a matter of common parlance that if a person is driving the vehicle upto 100 km per hour, then the same could not be said to be a

high speed and it could be assessed as high, if he exceeded 100 km per hour. In absence of such categorical statement, the words "high speed"

without further explanation about its rate, could not be termed as a rash or negligent act in the terms of Section 304-A IPC. It is also worthwhile to

mention that Nishan Singh during his examination as PW4 has been changing his stand. As per the First Information Report, the offending vehicle

was a "Maruti Van", which allegedly struck against the deceased, but in his testimony recorded in court Nishan Singh PW4 has stated that the

petitioner was driving the "matador", therefore, this discrepancy leads me to infer that he was not witness to the occurrence. His house is allegedly

situated at about 100 yards from the place of occurrence, therefore, he may have come after hearing the noise of collusion after the occurrence

was over.

7. Now, coming to the second argument of the learned senior counsel regarding doubtful identity of the petitioner. Again, if the statement of Nishan

Singh PW4, sole alleged eye-witness to the occurrence, is scanned, then it comes out that he did not know the petitioner prior to the accident. No

immediate identification parade was got conducted after the accident. The petitioner was not arrested at the spot. Nishan Singh PW4 has stated

that after striking the "matador" against the bicycle, it turned towards Rajpura side. He nowhere stated that after the accident, if the petitioner came

down to see the injured or he in any manner, stayed with the witness for some time. The witness has nowhere stated that as to how he identified

the petitioner. Notwithstanding the fact that if the witness had the opportunity to see the petitioner for sufficient time, then that was sufficient to hold

that the witness could identify him, but in the absence of any such evidence as to how the petitioner was identified, the fact regarding the

identification of the petitioner becomes doubtful. In this regard, I am fortified by the decision of the Apex Court in case Kanan and Others Vs.

State of Kerala, wherein, the witness identified the accused, who was not known to him, in the court for the first time, his evidence was termed

absolutely valueless unless there has been a previous test identification parade to test his powers of observations. The idea of holding Test

Identification Parade u/s 9 of the Indian Evidence Act, 1872 is to test the veracity of the witness on the question of capability to identify an

unknown person whom the witness may have seen only once. If no Test Identification Parade is held then it will be wholly unsafe to rely on his

bare testimony regarding the identification of an accused for the first time in court. Similarly, in the present case also, Nishan Singh PW4 had no

opportunity to identify the petitioner earlier and no Test Identification parade was held by the prosecution, therefore, identification of the petitioner,

for the first time in court, is valueless. Thus, the testimony of such a witness cannot be relied upon.

8. Having scrutinized the judgments passed by the courts below, it transpires that the aforesaid bare facts were not taken into consideration or

discussed in the impugned judgment. As such, the interference has become inevitable in the same.

9. For the above reasons, the revision petition is accepted and the impugned judgment is set aside. The petitioner is extended benefit of doubt and

is acquitted of the charge framed against him. The fine, if deposited, shall be refunded to him.