

been secured. Thereafter, he obtained approval from superior police official and submitted charge sheet in the Court of law.

3. The trial court on 08.9.1998 framed charge to which accused Iqbal Khan pleaded not guilty. Prosecution examined the following witnesses.

- i. PW-1 Rifaqat Shah, Ex.4
- ii. PW-2 Tilawat Khan, Ex.6
- iii. PW-3 Al-Khafuddin Ex.7
- iv. PW-4 Muhammad Arif ASI of PS SITE, Ex.11
- i. PW-5 S.M. Saleh Jaffary P.A to Police Surgeon. He produced postmortem report Ex.18/A. Ex.18
- vii. PW-6 Muhammad Jameel Ahmed. He produced report of MVI as Ex.20

The prosecution closed their side for evidence. Then Appellant statement under section 342 as Ex.22 examined himself Ex.23 on oath but he did not produce anyone in defense, and closed his side as Ex.24.

4. The trial court after hearing convicted the appellant to undergo RI for five years and pay Diyat amount of Rs.2,80,000/- to the legal heirs of deceased in ten equal installments and in default in payment of Diyat amount to be kept in prison till payment of Diyat or furnishing surety in equal amount as described under section 323 PPC. The appellant has preferred this appeal.

5. Learned counsel for the appellant has argued that the appellant has been convicted on insufficient evidence. His other contention was that appellant was not driving the coach on 3.1.1998 at 6:30 a.m when accident took place at Esta Avenue Road and he has been falsely implicated in this case. He was arrested from his house and not from the place of incident and denied the version of eye witnesses that appellant was driving the coach. He has further contended that evidence of rash and negligent driving was attributed to the appellant falsely to implicate the appellant.

6. Ms. Rahat Ahsan, D.P.G while supporting the impugned order has contended that there was unimpeachable evidence to the effect that the appellant was rashly and negligently driving coach and hit the victim. The witnesses have clearly stated that the appellant/accused was rashly and negligently driving coach in high speed and the negligence of the present appellant is established from the undisputed fact that he has hit the victim.

7. I have given anxious consideration to the arguments advanced by the counsel for the appellant and the State. The prosecution examined two eye witnesses PW-1 Rifaqat Shah s/o Miskeen Shah vide Ex.4 and PW-2 Tilawat Khan son of Dilawar Khan vide Ex.6 and they have deposed that driver of coach PE-3192 was driving the coach in high speed and had even overtaken them as they were going in Suzuki.

PW-1, an eye witness, Rifaqat Shah, deposed that;

“When we returning back and were at Jahania Masjid one coach whose number I do not know came there in speed and hit one cyclist that cyclist fell down and then said coach crossed over body of said person in my presence”....“I had seen driver of that coach and had recognized the same driver made escape good from place of incident”.... “Police inspected place in my presence and prepared such memo. I produce such memo as Ex.5.

PW-2 another eye witness, Tilawat Khan deposed that;

“One coach bearing No.PE-3192 crossed to our vehicle in very speed, said coach hit one cyclist and then at near distance it turned down. Driver of said coach escape from place of incident...I had seen driver of coach at place of incident and can recognize him. Accused present in court is same driver of said coach”.

P.W-I Rifaqat Shah and P.W-2 Tilawat Khan are natural witnesses as they were coming in Suzuki from Sabzi Mandi after purchasing vegetable at about 6:30 a.m in the morning and when they were near Jama Masjid, they saw he coach hit one cyclist and the coach passed over the body of cyclist. They also saw the driver of the coach escape from the place of accident. Both the said

prosecution witnesses took the injured to Abbasi Shaheed Hospital, and both of them later identified the driver of the coach Iqbal Khan and are masheers of memo of place of incident Ex.5. P.W Rifaqat Shah admitted his thumb impression and Tilawat Khan admitted his signature on Ex.5. No material contradiction had been brought on record during their cross-examination by learned defense counsel. P.W-1 Rifaqat Shah during cross examination denied the suggestion that there was rush of traffic on the road at the time of accident, and specifically deposed that accident took place at about 6.30 a.m and they reached at Abbasi Shaheed hospital at about 7.00 and on 7:30 a.m deposed that place of incident was inspected at 12:00 in the noon on the same day P.W-2 Tilawat Khan specifically deposed that he had seen the driver of the coach at the time of accident and specifically deposed that he can recognize the driver and identified accused Iqbal Khan in court to be the driver of the said coach. He corroborated the version of P.W-1 that police inspected the place of incident at 12:00 noon and they accompanied the police from hospital to the place of accident and in cross examination to learned defense counsel he deposed that the accident took place after the coach had over taken their Suzuki and the accident took place near them, and denied the suggestion that there was other traffic on the road also at that time, and deposed that he was sitting on the front seat of the vehicle.

8. In the above circumstances, the cause of death could not be attributed to any other factor besides rash and negligent driving of the vehicle by the appellant, which hit the victim. In fact the appellant has taken an plea of **alibi** but this plea was halfhearted and incomplete since the appellant while denying his presence at the scene of incident at 6:30 a.m on the day of accident, he did not disclose that where was he at the actual time of accident. He has not produced evidence to show his presence elsewhere at the time of incident. He

was arrested through memo of arrest Ex.14 and in cross-examination there was hardly any suggestion to any of the witnesses that the witnesses had any personal enmity with the accused to implicate him. Rash and negligent driving was established from the sketch of the place of incident that after hitting the victim and the coach ran over the body of the deceased. The coach has gone off the road and was found between two roads. The postmortem report has confirmed that death was occurred due to injuries suffered in road accident. The prosecution has established the guilt of rash and negligent driving of the coach by the appellant which resulted in the death of the victim Amin Shah.

9. In view of the above facts and the evidence, the rash and negligent driving of coach by appellant resulting in the death of victim was established and therefore, the accused has rightly been convicted by the trial court. Consequently this appeal is dismissed and the order of conviction and payment of diyat is maintained. However, the order of trial court to pay “diyat” in ten installment is modified is to be paid in one go. After almost 14 years of conviction, the appellant should pay the diyat at once. The accused is present on bail, he is arrested and remanded to jail. Bail bond stand discharged.

JUDGE

Karachi
Dated: _____

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