

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-40 of 2010.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For regular hearing.

Date of hearing: 18 .09.2017.

Date of judgment: 18.09.2017.

Appellants: Through Mr. Nandan A. Kella, Advocate

The State: Through Mr. Syed Meeral Shah DPG

Madad Ali Bouk (son of deceased) is present.

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J U D G M E N T :-

ABDUL MAALIK GADDI, J :- By means of this criminal Appeal, appellant Ghulam Yaseen assailed the legality and propriety of the judgment dated 29.01.2010 passed by the learned Additional Sessions Judge, Sehwan in Sessions Case No.321 of 2004, (Re:Ghulam Yaseen Rajput), whereby the learned trial court after full-dressed trial convicted and sentenced the appellant as stated in the findings of the impugned judgment in Point No.03 which reads as under:-

“ From my findings with reasons arrived at point No.2, I have come to the conclusion that prosecution has successfully proved the charge u/s 320, 279, 427 PPC against the accused beyond any shadow of reasonable doubt, I, therefore, convict the accused u/s 265-H(2) Cr.P.C for offence u/s 320 PPC and sentenced him to suffer S.I for two years and to pay Diyat amount of Rs.3,00,000/-(Rupees three lac only) in lump sum to the legal heirs of deceased Allah

Bachayo Bouk. I further convict the accused for offence u/s 279 PPC and sentenced him to pay fine of Rs.3000/-or in case of default in payment to suffer S.I for three months. I further convict the accused for offence u/s 427 PPC and sentenced him to pay fine of Rs.10,000/- or in case of default in payment to suffer S.I for three months. All the sentences shall run concurrently. The benefit of section 382-B Cr.P.C is extended in favour of accused. Accused is present on bail, he is taken into custody and remanded to Central Prison, Hyderabad, with conviction warrant to serve out his sentences. His bail bond stands cancelled and surety discharged. ”

2. Brief facts of the prosecution case are that on 20.3.2004 at 1030 hours, complainant HC Ghulam Abbas Babar lodged FIR bearing crime No.01/2004, u/s 320 QDO, 279, 427 PPC on behalf of State at P.S Amri, stated therein that on said date, he alongwith PC Piaro Khan, PC Badaruddin, left P.S under daily diary No.4 at 0900 hours, on the orders of superior officer for performing duty at Amri Bus stop, Indus Highway road, while they were performing their duty, SIP/SHO PS Amir namely Allah Bachayo Bouk, proceeded on official motorcycle bearing No.CG-303 from Bus stop for patrol duty and checking of pickets. After some time they saw SIP Allah Bachayo was coming on motorcycle towards Amri Bus stop, at around 1020 hours, when reached at Amri Bus stop, Shaheen Coach bearing registration No.PA-0297 coming from Hyderabad side very rashly and negligently and hit the motorcycle and thrown it in a ditch. They saw SIP Allah Bachayo having injuries on head and other parts of body and was lying dead and the official motorcycle was also damaged and coach also fell in the ditch and the passengers have also received minor injuries. It is further

stated that they arrested driver, who on enquiries disclosed his name to be Ghulam Yaseen. Thereafter, leaving the above named police constables over the dead body he brought the accused at P.S and lodged instant FIR.

3. It is stated by the learned counsel for the appellant that on merits though the appellant has a good case for his acquittal on the ground that case of the prosecution is false and the evidence of the prosecution witnesses are on record, is contradictory to each other. He further submits that the appellant is facing agony of protracted trial since 2004 without his fault. According to him this appeal has been filed in the year 2010 and appellant is appearing in Court for the last 07 years, therefore, he would be satisfied and shall not press this appeal on merit, if the sentence awarded to the appellant by the learned trial court is reduced to the period which he has remained in jail. Per learned counsel appellant has remained in jail for a considerable time. Thereafter, the appellant was granted bail by this Court under section 426 Cr.P.C vide order dated 01.03.2010 and since then appellant is attending this Court regularly and the appellant is very old aged person having no past criminal history. The appellant is only source for earning of his family.

4. Learned D.P.G after going through the record tenders no objection to above proposal.

5. I have thoroughly examined the record with the able assistance of learned D.P.G and Counsel for the appellant. In view of the record, I

am of the opinion that the conviction of the appellant is based on cogent reasons. The appellant is first offender. No past criminal history against him is placed on record. He is very old aged person, who remained in jail for a considerable time, therefore, in the present scenario of the case, the appellant has been sufficiently punished. Under these circumstances, he needs to be given chance in his life to rehabilitate himself.

6. Consequently, in view of above, the appellant deserve leniency. While taking lenient view, I dismiss this appeal on merits; however, reduce the sentence to one already undergone by the appellant. It is pertinent to mention here that the widow of deceased Allah Bachayo namely Mst. Ghulam Husna Khatoon as well as the son of deceased namely Madad Ali have filed their affidavits, stating therein that the appellant is known to them and he is innocent as such he has falsely been roped in this case by the police, hence, they have exonerated / excused him, therefore looking to such circumstances, the Diyat amount so imposed by the trial court against the appellant is hereby remitted. Appellant is present on bail, his bail bonds stand cancelled and surety discharged.

JUDGE

