

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**Cr. Appeal No.98/2004**

Date \_\_\_\_\_ Order with signature of Judge \_\_\_\_\_

# JUDGEMENT

Appellant : Muhammad Aslam  
Through Mr. Nadeem-ul-Haq,  
advocate

Respondent : The State  
Through Ms. Rahat Ahsan, D.P.G.

Date of hearing : 28.03.2017

Date of announcement : 05.04.2017

NAZAR AKBAR, J. The appellant through this Criminal Appeal has challenged his conviction order dated **21.02.2004** passed by IV Additional Sessions Judge, Central Karachi, in Sessions Case No.302/2002 in crime No.118/2002 under Section 320 P.P.C dated **13.10.2002** registered at P.S F.B. Industrial Area, to undergo R.I for ten years and to pay an amount of Rs.2,75,000/- to the legal heirs of the deceased and further convicted the appellant for offence under Section 427 PPC to suffer R.I for 06 months and shall also pay fine of Rs.5,000/- and in case of default in payment of fine he shall further suffer R.1 for two months.

2. The brief facts of the case are that on **13.10.2002** ASI Shahid Ahmed was present at Police Station as Duty Officer and he received a phone call from Police Control Room that MLO Dr. Mehmood-ul-Hassan of Abbasi Shaheed Hospital has informed the Police Control Room about arrival of dead body of an unknown person who died in traffic accident in front of Edhi Centre, Sohrab Goth Karachi. He made such entry No.23 and proceeded to Abbasi Shaheed Hospital, where he completed proceeding under Section 174 Cr.P.C and inspected the dead body and referred the same for Post Mortem examination. Since there was no legal heir of the deceased, he kept the dead

body in the cold storage of Edhi Home. Thereafter he went to the place of incident and on the pointation of ASI Muhammad Iqbal he inspected the place of incident. He went to Police Station where from secured the cycle of the deceased and Suzuki bearing Registration KF-0147, which driven by appellant Muhammad Aslam who was arrested on the spot and Suzuki was impounded by ASI Muhammad Iqbal ASI Muhammad Iqbal was on patrolling duty and he has informed him that Suzuki No.KF-0147 was driven by Accused Muhammad Aslam in rash and negligent manner which hit the cycle and cycle rider fell down and died on the spot. Thereafter the appellant/accused Muhammad Aslam was apprehended at the place of incident.

3. On **20.03.2003** charge against the accused was framed to which he pleaded not guilty and claimed trial. The Prosecution examined as many as six witnesses and sufficient evidence has come on record that the appellant Muhammad Aslam on **13.10.2002** was driving Suzuki bearing Reg. No.KF-0147 rashly and negligently which resulted in the death of a person as mentioned above. The trial court convicted the appellant to undergo 10 years R.I for an offence under Section 320 PPC and under Section 427 PPC to suffer R.I. for 06 months. The appellant has preferred this appeal.

4. I have heard the learned counsel for the appellant and the State counsel, and perused record.

5. Learned counsel for the appellant has argued that there are contradictions in the evidence of eye witnesses of the incident and such contradictions were ignored by the trial Court. He further contended that prosecution has failed to brought the detail regarding speed of vehicle or the distance and time in question. He further contended that accused was arrested by police not from the place of incident but he has falsely been implicated in

present case on non-payment of illegal gratification to them. Learned counsel further contended that the vehicle was inspected by the MVI after a delay of 06 days which also create doubt in the prosecution case. He has further contended that no direct evidence of rash and negligent driving came on record. He further contended that prosecution had failed to prove its case against the accused and the accused is liable to be acquitted.

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 Suzuki, and ran over the body of victim. The witnesses have clearly stated that the appellant/accused was rashly and negligently driving Suzuki in high speed and the negligence of the present appellant is established from the undisputed fact that he has vehicle ran over the body of the victim.

7. I have given anxious consideration to the arguments advanced by the counsel for the appellant and the State. It has come on record that the appellant was guilty of crushing the victim under his Suzuki as he was rashly and negligently driving the Suzuki at the time of accident. Beside the evidence of two eye witnesses P.W-1 and P.W-2, who are independent eye witnesses of the incident inconsonance with each other as they both have stated that the vehicle was being driven by the accused rashly and negligently which hit a boy who was going on bi-cycle. He received total injuries and died. The evidence of these eye witnesses has also been corroborated by the Medical evidence and the evidence of Investigating Officer as well as by the evidence of P.W.7, M.V.I Raja Arshad. The evidence of eye witnesses could not be shattered in cross-examination and the Medico Legal Officer, who conducted Post Mortem examination over the dead body of the deceased noticed following injuries on the person of deceased as follow:-

- i. Crushed wound with deformity of head and face, with imprint of vehicular wheels on the face and multiple fractures of facial bones and skull bone. Brain substance oozing out, architecture is present from right side, blood from mouth and nostrils oozing out.
- ii. Deformity of right arm with shaft of hummers bone.
- iii. Deformity of chest, bony cage is pressed with fracture of multiple ribs and imprints of vehicular wheels on the chest wall.

He further stated in evidence that the injuries and death was instantaneously. The nature of injuries clearly suggests that Suzuki pickup driven by the appellant hit the victim. There is no evidence that the appellant has even applied break to possibly safe the life of the victim.

8. The other aspect of the case is that the accused / appellant has not denied that the victim was not hit by Suzuki pickup driven by him nor he has stated on oath anything to disproof the allegations of rash and negligent driving resulting in the death of the victim. In the above circumstances, the cause of death could not be attributed to any external factors besides rash and negligent driving of the vehicle by the appellant. Therefore, the contention of the appellant that there was no evidence towards rash and negligent driving against the accused/appellant is contrary to the record. There was ample evidence and just the failure of the accused to apply his break is more than enough that he was negligent in the given facts of the case, which are not controverted by the appellant. The scene of accident from the narration of the story clearly suggest that the appellant neither attempted to safe the victim nor even control its speed while driving. He had enough time to apply the brakes. In reply to the question whether he wants to say anything he has not even taken the plea that he had made effort to control the Suzuki pickup.

9. In view of the above facts and the evidence, the rash and negligent driving of Suzuki pickup by appellant resulting in the death of victim was

established and therefore, the appellant deserved conviction. However, the intensity of conviction whereby in addition to the payment of Diyat amounting to Rs.2,75,000/- to the legal heirs of the victim the appellant was convicted to undergo 10 years imprisonment and other imprisonments on defaults were excessive and out of proportion. Therefore, before modifying the conviction order repeated chances were given to the appellant to locate the legal heirs of the victim with a view to either compound the offence with them or pay at least only the Diyat amount. In this regard order of the Court dated **24.11.2016** is very material. It is reproduced below:-

“As a matter of last chance, to come up in the first week after winter vacation and by that date if appellant fails to locate the legal heirs of deceased this case will be decided without any further order. He should give proof of his efforts of locating legal heirs of deceased.

I have gone through the file, legal heirs of deceased can comfortably be located from the evidence on record.”

However, the appellant seems to have avoided the opportunity and no efforts were made by the appellant to locate legal heirs of victim. The record shows the delay in disposal of appeal was mostly on account of the appellant. Consequently this appeal is dismissed. However, the order of punishment of imprisonment is modified and the appellant is to remain in Central prison till the payment of diyat in the office of the Nazir of this Court. The Nazir should locate the legal heirs of the deceased through the police concerned and help of NADRA authorities for payment of “Diyat” to them in accordance with law. The accused present in court is on bail, he is arrested and remanded to jail custody till the payment of Diyat. Bail bond stand discharged.