

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Jail Appeal No.747 of 2019

Date	Order with signature of Judge
------	-------------------------------

1. For orders on M.A No.5059/2020.
2. For hearing of case.

02.07.2020

Mr. Hassan Ali Sheikh, Advocate for the appellant.
Ms. Seema Zaidi, Additional P.G.
Rao Aslam, SSP Investigation, District West, Karachi a/w
ASI Zafar Iqbal/I.O of the case.
Ms. Anjum Faridi, Advocate for the owner of the vehicle.
Owner of vehicle, Muhammad Naeem is also present.

NAZAR AKBAR, J.- Precisely the facts of this case are that the appellant/accused Muhammad Ramzan was driving a water tanker bearing registration No.LCA-200 negligently and rashly and when he reached at Main Road near Islam Chowk, PSO Petrol Pump, Sector 11^{1/2}, Orangi Town, Karachi, he hit to a unknown lady aged about 45/50 years old, who received severe injuries and expired on the spot. Therefore, FIR No.151/2017 was registered against him and after trial he was convicted and sentenced to pay Diyat amount to the legal heirs of deceased under prevailing and notified gazette rate. In case of failure he was ordered to be remained in jail till he pay same amount and in addition to that he was also convicted and sentenced to serve simple imprisonment for three years. Therefore, the appellant filed the instant appeal against the said order of trial Court.

2. The record shows that the prosecution in this very case has been very faulty, however, because of the medical evidence the offence of committing death by accident has been established through the eye witnesses. To check connivance of police with owner

of vehicle involved in the case, on **22.06.2020** following order was passed by this Court:-

The record shows that ASI Zafar Iqbal was Investigating Officer of the offence committed on **09.5.2017** and he was assigned investigation on the same day. He instead of taking the case property in his custody, handed over the same to the owner of vehicle i.e Water Tanker, registration No.LCA-200, Maker ISUSU, Model 1993, Engine No.1824086, Chasis No.3600004 on simple superdaginama dated **20.06.2017** without any Court order, even without any surety for its production. As Investigating Officer he has purely exercised the powers of the Court to decide the fate of the custody of the vehicle involved in the accident. However, in view of order of this Court dated **10.06.2020** and **16.06.2020** he has informed that the water tanker has been impounded and parked in P.S Pakistan Bazar premises. He is directed to hand over the same to the Nazir of this Court to be kept in High Court premises as case property pending this appeal.

On enquiry, the **I.O informed that during three years since he was assigned the investigation he has not inquired from the owner of the Water Tanker that whether the vehicle was insured or not.** It means not only prior to accident even after the accident the Water Tanker was again on the road without mandatory insurance as required under Motor Vehicles Act, 1938. He has confirmed and impugned judgment also shows that the appellant was driving the Water Tanker without license. However, despite such information he has not taken any action against the owner of Water Tanker who is responsible for plying of the said Tanker on the road for commercial purpose without insurance and by the appellant without driving license.

In view of the last order, Mr. Tariq Abbas, Incharge, SSP Investigation, West Karachi is present concedes that the Investigating Officer had no authority to handover the vehicle involved in the accident to the owner. **Learned SSP states that he will definitely take action against the owner of the vehicle for allowing the Water Tanker to be driven by appellant without driving license and for not getting it insured as required under the Motor Vehicles Act, 1938** and also against the I.O for faulty investigation and unlawfully handing over of the case property to the owner without court orders. The SSP, Investigation has also assured that he will ensure that legal heirs of the deceased will be located by police.

To come up on **02.07.2020**. In the meanwhile, whatever action is to be taken by the SSP Investigation, he should initiate the same and submit report of whatever action he has taken by next date.

The vehicle involved in the accident is owned by Muhammad Naeem and the vehicle/ water tanker is a commercial vehicle and on verification of appellant's driving licence No.42501-8769506-9#774 it was found fake and bogus. It has been the duty of the investigating officer to have included the owner of the vehicle in the investigation as co-accused for allowing the vehicle to be driven by a person who was not having a valid licence or whose licence was not genuine.

3. Learned SSP, Investigation pursuant to the above orders is present in Court concedes that when it has come to the notice of the investigating officer that the driving licence was fake, the owner of the vehicle should have been challaned along with appellant/accused who has already been convicted. Learned SSP further states that action against the owner present in Court shall be taken according to law. In this context to help the prosecution I may refer to a judgment of this Court in the case of Atta Muhammad vs. The State reported in **2005 P.Cr.L.J 1648** Karachi wherein the Hon'ble Mr. Justice Rahmat Hussain Jafferri (as he then was) has observed that in the case of vehicle being driven by a person without driving licence and an offence under **Section 320 PPC** is committed by such person, the owner of the vehicle is abettor in terms of **Section 107 PPC** and his case will fall under **Section 114 PPC**. The relevant observations from para-7, 11 and 14 to 17 from the said judgment are reproduced below:-

7. Under section 3 of the Motor Vehicles Ordinance, 1965 (hereinafter referred to as the "Ordinance, 1965"), a person is entitled to drive any motor vehicle or public service vehicle if

he holds an effective licence authorizing him to drive such vehicle. The said section reads as under:-

"3. Prohibition on driving without licence.---

(1) No person shall drive a Motor Vehicle in any public place unless he holds an effective licence authorizing him to drive the vehicle; and no person shall so drive a Motor Vehicle as paid employees or shall so drive a public service vehicle unless his licence specially entitles him so to do:

Provided that a person receiving instruction in driving a Motor Vehicle may, subject to such conditions as may be prescribed by Government in this behalf, drive a Motor Vehicle in any public place.

(2) No person shall drive a motor vehicle in any public place unless he had in his possession his own copy of the most recent version of the Pakistan Highway Code published by the Federal Government."

Thus, for driving any vehicle, the driver should have an effective licence authorizing him to drive such vehicle.

11. From the above provisions of law it is clear that under section 3 of the Ordinance, 1965, the applicant was authorized to drive on effective licence only. After it has ceased to be effective then his driving of public service transport vehicle became unlawful, therefore, his case would fall within the definition of unlawful as mentioned in section 321, P.P.C. Thus, the applicant appears to have committed an offence punishable under section 322, P.P.C.

14. It will be noticed that the offences of accidents are increasing day by day and particularly from the hands of drivers, who ply transport vehicles: If the person is holding a valid licence and due to accident the offence is committed then he is required to be released on bail **but if a person who is driving a vehicle without a licence or an effective licence then he will be driving the vehicle unlawfully**. As such the cases of such person should be examined differently from the cases of persons whose actions are lawful and accidentally without any intention the offence is committed.

15. In order to curb the driving of a person who does not hold the licence or an effective licence the **Ordinance, 1965, has made the owner or person incharge of a motor vehicle responsible by directing such persons that they should not permit such drivers to drive the vehicle in public place**. The said provision is available in section 5 of the Ordinance, 1965, which reads as under:-

"5. Owners of Motor Vehicles not to permit contravention of section 3 or section 4.---

No owner or person incharge of a Motor

Vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle."

16. From the facts of the case it appears that owner of the Bus bearing No.JA-7070 had allowed and permitted the applicant to drive the vehicle in contravention of section 3 of the Ordinance, 1965, as the applicant was not holding effective driving licence to drive the bus at public place, therefore, it appears that the owner has abetted the crime as defined in section 107, P.P.C. which reads as under:--

"107 Abetment of a thing. A person abets the doing of a thing, who---First. Instigates any person to do that thing; or

Secondly. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. Intentionally aids, by any act or illegal omission, the doing of that thing."

17. The case of the owner or person in charge of the vehicle of such type of cases would fall under third category of section 107, P.P.C. therefore, the owner or person in charge of vehicle is also equally responsible for the offence committed by the applicant and his case would fall under section 114, P.P.C.

4. In view of the above legal position pending this appeal the Investigating Officer present in Court is directed to forthwith take action against the owner of the vehicle present in Court in accordance with law and the observations of this Court in the reported judgment reproduced above and submit report before the relevant trial Court for logical conclusion of willful and **illegal omission** of the **owner** of the vehicle involved in the accident bearing registration No.LCA-200, Maker ISUSU, Model 1993, Engine No.1824086, Chasis No.3600004.

5. The vehicle produced in Court will remain in the custody of the Nazir of this Court pending action/proceedings against its owner. The prosecution is directed to complete the trial against the owner as co-

accused preferably within three months. The instant appeal is, therefore, adjourned pending action against the owner of the vehicle in view of the judgment of Hon'ble Mr. Justice Rahmat Hussain Jafferri referred above is completed. Even learned counsel for the appellant has not advanced arguments today.

6. Before parting with the order, learned SSP Investigation, District West Karachi is directed that he should examine all the pending cases under **Section 320 PPC** in his district and in the pending cases in which either the licence of the driver at the time of accident was expired, not renewed or found fake in all such cases owners of vehicles should also be prosecuted as co-accused and requisite action/proceedings be filed in Court in accordance with the requirement of law as well as the reported judgment of this Court reproduced above.

7. Copy of this order be sent to all the DPPs in Sindh through Prosecutor General, Sindh to ensure strict compliance of the directions contained in the reported judgment referred in this order in all pending cases under **Section 320 PPC**. The learned P.G, Sindh should inform this Court regarding the number of pending cases in which directions contained herein may be complied with through a report within 30 days for perusal in Chamber through MIT-II.

JUDGE

Ayaz Gul