

Cr. Appeal No.342/2004

JUDGEMENT

2. The brief facts of the case are that on **23.3.1997** when the appellant was driving coach No.PE-3841 rashly and negligently hit a water tanker registration No.JP-0449, on main Hub River Road near Pakistan Hotel Karachi and as a result of accident six persons died on the spot and several others were injured. The police registered FIR against both the driver of water tanker namely Jameel Afzal and the driver of passenger coach namely Muhammad Yaseen, the present appellant. Charge sheet was submitted by the prosecution before the Court of Sessions Judge on **12.4.1997** and the court has framed charge against both the accused under Section 320/337/427 PPC for causing death of six persons namely (1) Mst. Rabia w/o Allah Bux, (2) Ghous Bux s/o Noor Muhammad, (3) Ahmed Khan s/o Azizullah Khan, (4) Zoor Shamim Shah s/o Sabir Khan, (5) Faiz Muhammad s/o Muhammad Hafeez and one unknown and injury to others namely (1) Jelad Khan s/o Haji Abdul Ghaffar (2) Asgher Ali s/o Ahmed Ali, (3) Akhter Islam s/o Ghulam Mohammad, (4) Haji Allah Bux s/o Lal Khan, (5) Abdul Khaliq s/o Ahmed

Khan, (6) Shista Khan s/o Mangal Khan, (7) Maruaf Khan s/o (8) Karim Khan, Yasin s/o Khuda Bux, (9) Mst. Mah Khatoon w/o Murad Bux (10) Noor Bibi w/o Muhammad Hussan, (11) Samina Bibi D/o Khuda Bux, (12) Ghulam Hussain s/o Murad Ali, (13) Baran Gul s/o Qadir Khan and (14) Abdul Wahid s/o Abdul Ali. Prosecution examined four witnesses and sufficient evidence has come on record that the appellant Muhammad Yaseen on **23.3.1997** at 1400 hours was driving coach PE-3841 rashly and negligently which resulted in the death of six persons and injuries to many others as mentioned above. The trial court convicted the appellant to undergo 5 years R.I for an offence under Section 320/337 PPC and the accused Jamil Afzal, water tanker driver was acquitted. The appellant has preferred this appeal.

3. I heard the learned counsel for the appellant on several dates and it was noticed during the hearing that punishment awarded was not inconsonance with the requirement of **section 320 PPC** as payment of “diyyat” was not mentioned in the punishment though the punishment of imprisonment for 05 years was supposed to be in addition to “diyyat” amount. The punishment awarded by the trial court was only 5 years R.I and there was no reference to the award of “diyyat” to the legal heirs of the deceased victims. Therefore, on **15.2.2016** the appellant in presence of his counsel was put on notice that why the punishment should not be enhanced to meet the requirement of Section 320 PPC which reads as under:-

320 Punishment for qatl-i-khata by rash or negligent driving.
Whoever commits qatl-i-khata by rash or negligent driving shall, having regard to the facts and circumstances of the case, in addition to diyat, be punished with imprisonment of either description for a term which may extend to ten years.

The purpose was to ensure that in case appeal is be dismissed, the mandatory punishment of “diyyat” should be added to the punishment of R.I of 5 years

awarded by the trial court. Learned counsel for appellant sought time to prerpape the case in the light of notice. He was given time till **22.2.2016** and again to **3.3.2016** and ultimately this appeal was heard today i.e 10.3.2016.

4. Learned counsel for the appellant has argued that the appellant has been convicted on insufficient evidence. Evidence of two ladies was not sufficient to convict the appellant. However, he has not referred to any provision of Qanun-e-Shahdat. He has also attempted to shift blame on the water tanker driver and claimed that the negligence was on the part of the water tanker driver who had hit the coach of the appellant but the trial court has acquitted the driver of water tanker. There is no evidence against the appellant. He has referred only to one sentence from the statement of PW-3 Maha Khatoon that she could not say who hit as a result of which accident took place whether driver of the coach or the tanker.

5. State counsel Ms. Akhter Rehana, A.P.G while supporting the impugned order has contended that there was unimpeachable evidence of disinterested witnesses to the effect that the appellant was rashly and negligently driving coach. Two of the witnesses namely PW-3 & 4 were even victim of rash and negligent driving as they were injured as a result of accident. While traveling in the coach PW-3, Maha Khatoon in her examination-in-chief stated that the bus driver was driving fast and all the passengers were asking the bus driver to slowdown but the vehicle was not slowed down. She further stated that when coach struck the water tanker she received injuries on her leg and fall unconscious and teeth of another passenger were broken and she had also received injury on her hand and they were taken to Murshid Hospital by police. Pw-4 Noor Bibi also confirmed that when going towards Hub alongwith her sister-in-law Maha

Khatoon the coach was fast and the driver was asked by all the passenger to drive slowly but the driver did not slow the coach. She had fallen unconscious on receiving injury on head and her face and lost her four front teeth. Therefore, the court has rightly convicted the appellant. She further pointed out that punishment of payment of diyyat is compulsory in case of death by rash and negligent driving. The language of **section 320 PPC** is such that punishment of diyyat is must and the imprisonment of either description for term which may extend for 10 years is in addition to “diyat” can be awarded. Therefore, to meet the mandatory requirement of payment of “diyyat” to the legal heirs of deceased by modifying the conviction awarded by trial court the “diyyat may also be awarded and the appellant be directed to pay “diyyat” to the legal heirs of the victims.

6. 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 rash and negligent driving at the time of accident and it has not been denied by the appellant. It is pertinent to mention here that despite opportunity given none of the witnesses were cross-examined by the counsel for appellant. Beside the injured passengers the other independent witnesses namely PW-2 Adam Qureshi also corroborated the story of incident and he was also not cross-examined by any of the counsel who were representing the appellant before the trial court. The contention of the counsel for appellant that evidence of two women to convict the appellant was not enough has no force for two reasons; Firstly, it was not the case of conviction solely on the basis of evidence of two women as one male witness namely PW-2 Adam Qureshi was also examined by prosecution and the defence did not cross examined him too, secondly, if the learned counsel was referring to **Article 17** of the Qanun-e-Shahdat Order, 1984, then too, it was

misconceived. The court was not dealing with the law relating to the enforcement of Hudood, and therefore, the case of appellant was covered by **clause (b) of sub-Article (2) of Article 17** of Qanun-e-Shahdat Order, 1984, which reads as follow:-

17. Competence and number of witnesses.—(1)
.....

(2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other Special Law.

(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and

(b) in all other matters, the Court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.

As rightly pointed out by the learned State counsel the appellant in order to disproof allegation of rash and negligent driving should have made an statement on oath under **Section 340(2) Cr.P.C.** In his statement under **Section 342 Cr.P.C** the accused was unable to make any explanation as to why the evidence has come on record against him. To the question whether he wants to be examined on oath his reply was in negative. Learned counsel for the appellant has extended many excuses to prove innocence of his client. But in the face of evidence of eye witnesses/victims that the appellant was driving rashly and negligently any excuse, which even otherwise has no value since it was not advance under oath by the appellant before the trial court, can be accepted as strong enough to consider a dent in the prosecution story.

7. The appellant as stated in para-3 above was given due notice in terms of **section 439(1) & (6) Cr.P.C** about the intention of this court to enhance the sentence awarded by the trial court to bring it in conformity with **Section 320 PPC**, however, the counsel for the appellant has not contested the proposition

that “diyat” should have been awarded once the trial court on the basis of evidence has formed the opinion that the appellant was guilty of “qatl-i-khata by rash or negligent driving”.

8. The learned trial court while rightly convicting the appellant ought to have added the punishment of payment of “diyyat” to the legal heirs of each of the deceased. The trial court in view of the use of the word **shall** in **section 320 PPC** had no option to avoid awarding “Diyat” to the legal heirs of deceased while convicting the appellant. Diyat has been defined in **section 299(e) PPC** which reads as follow:-

299(e) “diyat” means the compensation specified in section 323 payable to the heirs of the victim;

9. In view of above factual and legal position while dismissing the appeal and modifying the impugned conviction order to include the *diyyat* to be paid by the appellant, the sentence awarded by the trial court stand modified as follows:-

I therefore, convict the accused Muhammad Yaseen son of Subzal U/s. 320 PPC and 337 PPC and sentenced him to undergo Rigorous Imprisonment for five 5 years and also to pay “**diyyat**” amount to the legal heirs of each of the deceased persons namely (1) Mst. Rabia w/o Allah Bux, (2) Ghous Bux s/o Noor Muhammad, (3) Ahmed Khan s/o Azizullah Khan, (4) Zoor Shamim Shah s/o Sabir Khan, (5) Faiz Muhammad s/o Muhammad Hafeez. The “diyyat” shall be payable at the rate / value on the date of conviction i.e **23.8.2004**. In case of failure to pay “diyyat” the accused/appellant should continue to undergo simple imprisonment until the amount of diyyat is deposited by the appellant with the Nazir of this Court.

10. The duty of the court is not only to impose *diyyat* rather it is also duty of the court that it should reach to the heirs of the victims. Therefore, the Nazir of this court is directed that once the *diyyat* is deposited by the appellant, the Nazir should invest the same in profit bearing Government Scheme pending

his effort to locate heirs of the deceased victim through the police and by way of sending direct notices, if possible, to them specifying the purpose of calling them in office of Nazir of this court. In this context, the services of NADRA may be employed by the Nazir after collecting basic information of deceased victims.

11. Copy of this order must be sent to the Superintendent Central Prison Karachi and his acknowledgment may be kept in the court file while handing over the same to the Nazir for the purpose of locating the heirs and distributing the *diyat* amount if deposited by the appellant.

JUDGE

Karachi
Dated:03.11.2016

SM