JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Cr. Appeal No. S — 375 of 2010.

PRESENT
Mr. Justice Naimatullah Phulpoto

Appellant:	Ameer Khan Niazi s/o Haq Nawaz. Through Mr. Shabbir Hussain Memon, Advocate.
The State:	Through Syed Meeral Shah Bukhari, D.P.G.
Date of Hearing:	06.04.2018.
Date of Judgment:	06.04.2018.

J U D G M E N T

Naimatullah Phulpoto J. Appellant Ameer Khan was tried by learned Sessions Judge Jamshoro at Kotri, for offences under sections 320, 279 PPC. On the conclusion of the trial vide Judgment dated 29.09.2010 Appellant was convicted under section 320 PPC and sentenced to 07 years R.I. and to pay the 'Diyat' amount of Rs.1102680/- to the legal heirs of the deceased P.C. Abbass Ali. Appellant was extended benefit of Section 382-B Cr.P.C.

2. Brief facts of the prosecution case as disclosed in the F.I.R. are that on 11.10.2006 at 18-00 hours SIP Muhammad Younis Baloach, ASI Liaquat Ali Leghari, PCs Abbass Ali and others left Police Station Nooriabad for patrolling on the Superhighway. During patrolling/checking it is alleged that a Coach appeared from Karachi towards Hyderabad. It is alleged that police party was busy in checking at the road. At 2030 hours Coach/Bus hit to P.C. Abbass Ali who was performing duty. It is alleged that Coach/bus was in high speed and it was being driven rashly and negligently. Coach was stopped, Appellant/accused Ameer Khan was

driving Coach at that time. P.C. Abbass Ali succumbed to the injuries at spot. His dead body was dispatched to the L.M.C.H. Jamshoro F.I.R. of the incident was lodged on 11.10.2006 at P.S. Nooriabad for offence under sections 320, 279 PPC

3. After usual investigation challan was submitted against the accused under above referred sections.

4. Trial Court framed the charge against the Appellant at Ex.02. Accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined P.Ws. ASI Liaquat Ali at Ex.11, ASI Abdul Rehman at Ex.15, ASI Mushtaque at Ex.18, Ali Gohar at Ex.19, Dr. Waqar Ahmed at Ex.23 and HC Mitho Khan at Ex.24. Thereafter, prosecution side was closed.

6. Statement of the accused was recorded under section 342 Cr.P.C. in which accused claimed false implication in this case and denied the prosecution allegations. Accused did not lead any defence and declined to give statement on oath in disproof of prosecution evidence.

7. Trial court after hearing the learned counsel for the parties and assessment of the evidence by Judgment dated 29.09.2010 convicted the Appellant under section 320 PPC and sentenced to 07 years R.I. as stated above. Hence, this appeal.

8. Learned advocate for the appellant has mainly contended that Appellant was charged under section 320 PPC but the ingredients of the offence were not satisfied at the trial. He has further contended that there was no evidence that vehicle was being driven rashly and negligently. Lastly, it is contended that vehicle was not examined by the expert during investigation to ascertain the speed of the vehicle. In support of his contentions, he has relied upon the case of ***YASIR ARAFAT v. THE STATE and another*** ***[2012 M.L.D. 611].***

9. Syed Meeral Shah Bukhari, A.P.G. for the State argued that ASI Liaquat Ali has deposed that accused was driving the Coach rashly and negligently which resulted the death of P.C. Abbass Ali. However, learned

A.P.G. concedes that no expert had examined the vehicle during investigation, to ascertain its speed mechanical fault at the time of incident.

10. I have carefully heard learned counsel for the parties and scanned the entire evidence.

11. To constitute an offence under section 279 PPC it is necessary for the prosecution to prove that besides over speeding, the driver was also guilty of driving rashly and negligently. No such evidence is available on record. Prosecution has failed to prove the rash and negligent driving at trial. No vehicle expert had examined the said Coach during investigation in order to ascertain its speed or mechanical fault. Strange enough no passenger of the Coach has been examined before the trial Court for deposing regarding rash and negligent driving of the accused. Mere fact that a vehicle was in fast speed would not prove rash and negligent driving. It is also not the case of the prosecution that driver had no licence. Ocular evidence was interested and all the P.Ws were police officials. No independent person/passenger sitting in the vehicle was examined at trial. Record is silent regarding the fact that the Coach/Bus was being driven in violation of traffic rules, which led to incident.

12. Learned counsel for the Appellant has rightly relied upon the case of ***YASIR ARAFAT v. THE STATE and another*** ***[2012 M.L.D. 611 Peshawar]***, relevant portion is reproduced as under:-

> **"7. Admittedly, the appellant was proceeding from Peshawar Saddar to his house in a motorcar bearing Registration No.LOE/1030 and when reached the place of occurrence, he struck the deceased on his head, who thereafter succumbed to the injuries at the hospital. The appellant was charged for rash and negligent driving but this fact has neither been mentioned in the murasila nor in the first report. The site plan reveals that the appellant was proceeding in the vehicle on his side and when the deceased was crossing the road, he was hit due to which he sustained injuries and became unconscious. No doubt, the deceased has lost his life**

in the episode but the occurrence did not appear to have been witnessed by any body. Moreso, driving of vehicle at high speed could not be considered and taken as a rash and negligent act because modern technology had provided for reasonable safeguard of stopping the same within no distance and time. The factum of rash and negligent driving is not proved by expression of these words or expression of 'high speed' alone. The prosecution was supposed to show that when the accident took place, the condition of the traffic or the road was such, which necessitated a slower speed and that the motor car was being driven in an excessive speed keeping in view the quantum of traffic or the road. The record is also silent regarding the fact that the motor car was being driven in violation of the traffic rules, which led to the accident, therefore, could be equated with rashness and negligence. The approximate speed at which the motor car was being allegedly driven by appellant has not been fixed by any prosecution witness to lead to a reasonable conclusion that the same was on the higher side in view of the quantum of traffic and the nature of the road in question."

13. There are so many infirmities in the prosecution case as highlighted above, which created doubt in the prosecution case. It is settled principle of the law that for extending benefit of doubt multiple circumstances are not required. A single circumstance which creates reasonable doubt in the prosecution case is sufficient for extending benefit of doubt for recording the acquittal. In the case of ***TARIQ PERVEZ v THE STATE*** ***[1995 SCMR 1345],*** the Honourable Supreme Court has observed as follows:-

> ***"It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."***

14. For the above stated reasons I have come to the conclusion that prosecution failed to establish its case against the Appellant in view of the infirmities in the prosecution case hence the instant appeal was allowed,

by short order dated 06.04.2018 the impugned judgment dated 29.09.2010 was set-aside.

Learned counsel for the Appellant submits that Appellant is on bail but he couldn't appear today due to his illness. His absence for today's date is excused. His bail bonds stand cancelled and surety discharged.

Appeal allowed.

JUDGE

Arif.