JUDGMENT SHEET

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

Cr. Appeal No. S — 65 of 2015.

PRESENT
Mr. Justice Naimatullah Phulpoto

Appellant:	Hafeez Ahmed s/o Rafique Ahmed Bhatti. [In person]
The State:	Through Syed Meeral Shah Bukhari, A.P.G.
Date of Hearing:	27.04.2018.
Date of Judgment:	27.04.2018.

J U D G M E N T

Naimatullah Phulpoto J. Appellant Hafeez Ahmed was tried by learned Additional Sessions Judge Kotri, for offences under sections 320, 279 337-G PPC. On the conclusion of the trial vide Judgment dated 31.03.2015 Appellant was convicted under section 320 PPC and sentenced to 07 years R.I. and to pay the 'Diyat' amount to the legal heirs of the deceased P.C. Muhammad Ramzan, under section 279 to undergo R.I. for 01 year and shall pay fine of Rs.2000. In case of default to pay fine, he shall further undergo S.I. for one month, under section 337-G to undergo R.I. for 03 years as 'Tazir' and shall pay 'Daman' in the sum of Rs.50,000/- to the legal heirs of deceased. All the sentences awarded to the Appellant were ordered to run concurrently. 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 24.5.2010 the complainant ASI Shabeer Ahmed Larik along with his subordinate staff started routine checking of vehicles on the directions of Highway. It was 0840 hours, they noticed a silver colour carry vehicle coming from Karachi side being driven by driver in rash and negligent

manner. P.C. Muhammad Ramzan gave it signal to stop, but the said vehicle in rash and negligent manner dashed to PC Muhammad Ramzan, who had fallen down on the road by hitting his head to road and blood started oozing. The complainant party apprehended the driver along with the vehicle and on enquiry, he disclosed his name Hafeez Ahmed son of Rafique Ahmed Bhatti and he further disclosed that he was in haste, that's why he was in speed. The accused was brought to Chowki No.5 and injured PC Muhammad Ramzan was shifted for treatment through PC Juman and PC Muhammad Sharif to Abbassi Shaheed Hospital Karachi and complainant communicated such information to Police Station Nooriabad. Thereafter complainant received information through phone by PC Muhammad Juman that PC Muhammad Ramzan succumbed to the injuries and died at 1155 hours in the Hospital and necessary formalities were completed by Muhammad Zaman Shah, Incharge PP Shamim Shaheed of PP Nazimabad, Karachi. Thereafter complainant brought the accused and the Suzuki Carry vehicle to Police Station and lodged the F.I.R. vide crime No.59 of 2010 under section 320, 279, 337-G PPC at Police Nooriabad.

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. P.C. Ali Asghar Sand at Ex.4, P.C. Muhammad Shareef at Ex.5, ASI Muhammad Sadiq Lund at Ex.10, I.O. SIP Peer Mumtaz Ahmed at Ex.11, SIP Malik Muhammad Zaman at Ex.12, Medical Officer Dr. Abdul Jabbar Memon at Ex.13 and complainant ASI Shabeer Ahmed Larik at Ex.14. Thereafter, prosecution side was closed.

6. Thereafter, 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

however, he examined himself 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 31.03.2015 convicted the Appellant and sentenced him as stated above. Hence, this appeal.

8. Appellant is present and submits that he had not committed the alleged offence but the deceased hit to another vehicle but driver of said vehicle drove away and police lodged case against him for the malafide reasons.

9. Syed Meeral Shah Bukhari, A.P.G. for the State readout the prosecution evidence for the assistance of the Court and stated that prosecution had failed to examine Motor Vehicle Expert in order to ascertain the speed of the vehicle. He has further submitted that there was nothing on record about the position of the deceased P.C. Muhammad Ramzan standing on the road at the time of incident. He didn't not support the conviction and sentences recorded by the trial Court.

10. I have carefully heard the Appellant in person as well as A.P.G. appearing for the State 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 Suzuki Carry during investigation in order to ascertain its speed or mechanical fault. Strange enough no passenger of the Suzuki Carry has been examined before the trial Court to establish 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 Suzuki Carry was being driven

in violation of traffic rules, which led to incident. Mere, over speed would not constitute alleged offences but there are several other factors which are to be considered for convicting the person for rash and negligent driving. In the prosecution evidence it is not mentioned that where deceased P.C. Muhammad Ramzan was standing at Superhighway. Possibility could not be ruled out regarding the human error on the part of the deceased P.C. at the time of road accident.

12. In 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. Consequently, instant appeal is allowed. The impugned judgment dated 31.03.2015 is set-aside. Appellant is present on bail. His bail bond stands cancelled and surety discharged.

Appeal allowed.

JUDGE

Arif.