

**IN THE HIGH COURT OF SINDH AT KARACHI****Criminal Appeal No. 48 of 2000**

**Appellant** : **Muhammad Tanveer**  
**through Mr. Suleman Badshah, Advocate**

**Respondent** : **The State**  
**through Mr. Zahoor Shah, DPG**

**JUDGMENT**

**Omar Sial, J.:** Muhammad Tanveer, the appellant, has impugned a judgment dated 3.3.2000 passed by the learned 2<sup>nd</sup> Additional Sessions Judge, Karachi (East). In terms of the said judgment, the appellant was convicted for an offence under sections 320 P.P.C. and sentenced to suffer five years rigorous imprisonment as well as pay Diyat equal to the market value of 30,630 grams of silver.

2. The allegation against the appellant was that he was driving his mini bus in a fast and negligent manner which caused the death of one passenger namely Tariq Zaman.

3. An F.I.R. bearing No.69/1998 was registered on 23-2-1998 under sections 320 and 427 P.P.C. at Soldier Bazar police station in Karachi.

4. The charge against the appellant was framed on 29-9-1998 to which he pleaded not guilty and claimed the trial.

5. In order to prove its case, the prosecution examined Muhammad Nasir Bhatti as its first witness. He was a motor vehicle inspector who inspected the mini bus after the incident. The second prosecution witness was Khalid Hussain Minhas who was accompanying S.I. Asif Munawar of P.S. Soldier Bazar, Karachi when S.I. Asif was informed about the accident. Third prosecution witness was Atiq-ur-Rehman Swati who was said to be a witness to the arrest of the appellant. Javed Hasan Zai was examined by the prosecution as its fourth witness who was also said to be a witness to the arrest of the appellant. The fifth prosecution witness was S.I. Asif Munawar who was the complainant in this case as well as its investigating officer. Sixth prosecution witness was Abdul Rehman Afghani who was said to be an eye witness to the incident. Rashid Mehmood Farooqui was the seventh prosecution witness who was a doctor at Holy Family hospital where the deceased taken first in an injured condition. Dr. Muhammad Hanif Shaikh who conducted the postmortem of the deceased was examined as the eighth prosecution witness.

6. The appellant recorded his statement under section 342 Cr.P.C. on 16-11-1999 and professed his innocence. He recorded that he had been falsely implicated in this case. He produced Raj Muhammad and Munir Ahmed Shaikh in his defence who testified as to his innocence.

7. I have heard the learned counsel for the appellant as well as the learned D.P.G and examined the record. My observations are as follows.

8. PW-2 Khalid Hussain, testified that on 23.2.1998 while he was on patrol duty with PW S.I. Asif Munawar they were informed at 1:45 a.m. by PW Abdul Rehman that an accident had occurred on Bunder Road. Both S.I. Asif and Khalid Hussain then reached the spot where Asif prepared a memo of inspection of the place of incident and the memo of seizure of the vehicle. His testimony is in conflict with that of S.I. Asif Munawar who recorded at trial that he was in the police station as duty officer on 23.2.1998 when he was informed of an injured having being brought to the Holy Family Hospital. He then proceeded to the Holy Family Hospital and after preparing the memo of inspection of the dead body; the inquest report and handing over the body to the relatives of the deceased, he proceeded to the place of incident. One of the two prosecution witnesses was not telling the truth. Such an untruth by at least one of the witness creates a doubt as to their credibility.

9. S.I. Asif Munawar testified that when he reached the place of incident he was informed by the people as to the circumstances in which the accident had occurred. He hence became the complainant of the case. This would have made some sense if he was not being accompanied by PW Abdur Rehman, when he was inspecting the place of incident, who claimed that he was sitting inside the vehicle when the accident occurred. PW Abdur Rehman and S.I. Asif Munawar admittedly being friends casts suspicion on whether the incident and its aftermath have been correctly reported by the witnesses. It is not out of place to mention that though S.I. Asif Munawar and PW Khalid Hussain said that PW Abdur Rehman had accompanied them to the place of incident; PW Abdul Rehman recorded that the police had not inspected the place of incident in his presence. Surprisingly the memo of inspection has PW Abdul Rehman as one of the witnesses. Once again, the credibility of the prosecution witnesses becomes doubtful. .

10. PW-Atique ur Rehman and PW-Javed Hasan Zai who were cited as witnesses to the arrest of the appellant, both denied that the appellant was arrested in their presence as claimed by the police. Both testified that they were made to sign blank papers by the police. While PW-Attique ur Rehman was declared hostile by the prosecution, the testimony of PW-Javed Hasan Zai was accepted. PW-Attique ur Rehman was not confronted with his statement under section 161 Cr.P.C. to determine

whether he was telling the truth at trial or not. The memo of arrest has no date on it. To make matters worse, S.I. Asif Munawar recorded at trial that he had arrested the appellant in the presence of H.C. Allah Ditta and H.C. Tanveer. The memo of arrest on record however shows that it was prepared in the presence of PW-Attique ur Rehman and PW-Javed Hasan Zai . The denial of both the witnesses to memo of arrest coupled with the inconsistency in the testimony of S.I. Asif Munawar casts a negative light on the prosecution case and creates doubt on the credibility of the investigating officer and the entire investigation conducted by him.

11. Different versions of how the deceased got injured have been given. In the Inquest Report which was prepared by PW S.I. Asif Munawar he recorded that the deceased was sitting inside the mini bus in the rear portion and that the door of the mini bus fell on him. In column 3 of the F.I.R. it was reported that the mini van had hit the deceased. In the body of the F.I.R. the story had reverted back to the story in the Inquest Report. PW Abdur Rehman on the other hand recorded that the gear of the mini van had fallen out and that he along with the deceased and two other passengers were injured. The court in the section 342 Cr.P.C. statement of the appellant, on the other hand, asked the appellant whether he had hit the deceased, who was travelling in another bus. No evidence was led at trial to show that there had been any other injury to any other person. S.I. Asif Munawar in his testimony also recorded that he was unaware whether any other person had been injured. No record was produced at trial to show that PW Abdur Rehman had sustained injuries. I find it strange that one passenger, the deceased, received such a serious and violent injury whereas none other in the mini van even received a scratch. This lends credence to the defence version that the deceased had fallen of the vehicle. PW Abdur Rehman testified that a taxi and an ambulance had reached the spot at the time of the accident. In such a situation I find it unnatural that the deceased was shifted to the hospital in a taxi and not in the ambulance whereas the appellant, who was not even injured, was said to have gone in the ambulance to the hospital. Even PW Abdur Rehman testified that S.I. Asif Munawar had obtained his signatures on blank pieces of paper.

12. The inconsistencies amongst the testimonies of the prosecution witnesses; conflict between the oral and documentary evidence and the ostensibly dishonest investigation conducted by S.I. Asif Munawar, casts doubt on the prosecution case, the benefit of which doubt should have gone to the appellant, in accordance with the well established principles of law. Accordingly, the appeal is allowed and the appellant is acquitted of the charge. He is on bail. His bail bonds stand cancelled and surety discharged.

JUDGE

