IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 208 of 2010

Appellant	:	Tariq Mehmood through M/s. Mehmood Alam Rizvi and Jazib Aftab, Advocates.
Respondent	:	The State through Mr. Talib Ali Memon, A.P.G.
Complainant	:	through Syed Amir Hussain, Advocate
Date of hearing	:	19th September, 2022

JUDGMENT

Omar Sial, J.: At about 1:00 a.m. on the night between the 5th and 6th of September, 2007 an accident occurred in which 2 persons riding a motorcycle were hit by a coaster. One of the 2 boys on the motorcycle named Abdul Wahab, who was at that time driving the motorcycle, unfortunately died in this accident whereas the pillion rider, named Khurram Siraj, Wahab's friend, miraculously remained unhurt. The driver of the coaster was the appellant Tariq Mehmood.

2. According to Shahab Salman, the brother of the deceased, he received a call at about 12:45 a.m. from his brother's friend Khurram Siraj who informed him of the accident. Shahab reached the identified place and saw the dead body of his brother covered in a white sheet. A little further was parked the coaster involved in the accident. The police arrived, did its preliminary investigation; arrested the appellant and subsequently F.I.R. No. 156 of 2007 was registered under sections 320 and 427 P.P.C. at the Shah Faisal Town police station at 3:30 a.m. on 05.09.2007.

3. The appellant pleaded not guilty and claimed trial. Shahab Salman, the complainant, was examined as PW-1. Dr. Pardeep Kumar, the doctor who conducted the post mortem, was examined as PW-2. A.S.I. Munawar Abbas, the investigating officer, was examined as PW-3. Khurram Siraj, the pillion rider on the motorcycle, was examined as PW-4. S.I. Mohammad Hassan, was the police

officer who first responded to the information of an accident having occurred, was examined as PW-5. Tanseer Ahmed, claiming to be an eye witness, was examined as PW-6. In his section 342 Cr.P.C. statement, the appellant denied that he made an error that resulted in the crash. The appellant also recorded a statement under section 340(2) Cr.P.C. in which he elaborated upon how the accident occurred. In support of his defence, he produced 2 witnesses. The first witness was Tanveer Iqbal (DW-1), who was the person who had hired the coaster that night and whose family was on board when the accident occurred. The second witness was Ejaz Arshad Mirza (DW-2), who too was one of the persons on board the coaster.

4. At the end of the trial on 06.05.2010, the learned 3rd Additional Sessions Judge, Malir announced her judgment in which she found the appellant guilty of an offence punishable under section 320 P.P.C. The appellant was therefore sentenced to 3 years rigorous imprisonment and payment of Rs. 1,102,680 as diyat to the legal heirs of the deceased. It is this judgment that has been called into question through these proceedings.

5. I have heard the learned counsels for the appellant as well as complainant and the learned APG. The individual arguments of the counsels are not being reproduced but are reflected in my observations and findings below. My observations and findings are as follows.

6. It is not in dispute that an accident occurred between the coaster being driven by the appellant and the motorcycle being driven by Abdul Wahab. Abdul Wahab died due to that accident, is also not disputed. The question that required an answer was as to whether it was the appellant driving his vehicle in a rash and negligent manner or was it the motorcyclist who made a fatal error?

7. What constitutes rash in terms of section 320 P.P.C. cannot be defined according to a pre-set formula. To determine whether a driver was rash, in most cases, will be relative to the entire scenario in which the accident takes place. What could constitute rash and negligent in one set-up may not necessarily be true in another. It is well settled though that speed of the vehicle per se would not automatically mean that a driver was rash or negligent. Neither the word “rash” nor the word “negligent” is defined in the Code. Collin’s Dictionary defines “rash” as acting or tending to act too hastily or without due consideration. A

synonym for “rash” is the word “reckless”. Black’s Law Dictionary defines “reckless driving” as being operation of an automobile manifesting reckless disregard of possible consequences and indifference to others' rights. On the other hand Black’s Law Dictionary defines “negligence” as the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.

8. There are 2 eye witnesses to the accident. One is Khurram Siraj, while the other is Tanseer Ahmed. Khurram was on the motorcycle along with the deceased whereas Tanseer Ahmed was said to be sitting nearby the place of incident where the accident occurred. Both witnesses said that it was the appellant who was driving at 100 km per hour speed whereas the motorcyclists were at a 40 to 50 Km speed. While both projected the appellant as driving at high speed, both also said that the appellant had broken a red signal. It is odd that while the prosecution case is that the motorcyclists were hit and run over by a speeding vehicle, no injury was caused to Khurram Siraj, who was supposed to be sitting at the rear of the motorcycle. The reason he gave for him escaping unhurt was that he had jumped of the motorcycle before the motorcycle collided with the vehicle driven by the appellant. I find this reaction in the circumstances of the case odd as well. However, where Khurram Siraj also went wrong with the facts was that according to him “the driver hit our motorcycle from the driver side”. The motor vehicle inspector report shows no damage to the vehicle from the right side but does indicate a dent in the rear bumper of the vehicle. The position in which the damage on the offending vehicle appears does not reconcile with the ocular version given by Khurram Siraj.

9. Tanseer Ahmed was said to be sitting nearby when the accident occurred. Tanseer admitted that there were barricades on the road near the place of incident and that a vehicle at best could pass from them at a speed of 20 km/hr. He tried to justify his testimony that the offending vehicle was going at a speed of 100 km/h by saying that there was a distance of 200 steps between the barricades and the place where the incident occurred. I find it difficult to believe that the offending vehicle which was ostensibly full of passengers could accelerate from 20 km/h to 100 km/hr in a distance of 200 steps. Tanseer also got the direction in which the offending vehicle was going wrong. The learned

counsel during his arguments demonstrated through a video film the exact location of the accident and the geography of the place of incident. The offending vehicle could simply not be going towards the Hajj Terminal (as stated by Tanseer) if the accident occurred in the manner the prosecution said that it had. It seems Tanseer himself realized that he perhaps had made a mistake and therefore in his cross examination he attempted to justify his error by saying that the offending vehicle had its indicator on and therefore he perceived that it was turning right to go to the Hajj Terminal. He too followed Khurram Siraj's lead by saying that the motorcycle was hit by the right side of the offending vehicle. Once again, as stated above, this was not the case according to the report of the motor vehicle inspector. The fact that Tanseer also admitted that he knew the complainant very well seems an improbable coincidence that he was sitting close to the place of accident at midnight along with his 2 year old daughter. Yet, even knowing the complainant very well, he decided to leave the place of incident immediately after the accident. It is unlikely human behavior. I also find it difficult to believe that Tanseer, sitting on the side of the road, with his 2 year old daughter would so attentively be watching what was happening on the road. The Supreme Court of India, in the case titled Nageshwar Sh. Krishna Ghobe vs State of Maharashtra (AIR 1973 SC 165) has aptly put the likely behavior of a person in a similar position as Tanseer as follows: "when accidents take place on the road, people using the road or who may happen to be in close vicinity would normally be busy in their own pre-occupations and in the normal course their attention would be attracted only by the noise or the disturbance caused by the actual impact resulting from the accident itself. It is only then that they would look towards the direction of the noise and see what had happened. It is seldom – and it is only a matter of coincidence – that a person may already be looking in the direction of the accident and may for that reason be in a position to see and later describe the sequence of events in which the accident occurred. At times it may also happen that after casually witnessing the occurrence those persons may feel disinclined to take any further interest in the matter, whatever be the reason for this disinclination. If, however, they do feel interested in going to the spot in their curiosity to know something more, then what they may happen to see there would lead them to form some opinion or impression as to what in all likelihood must have led to the accident." I doubt that Tanseer Ahmed was an eye witness to the accident.

10. The testimony of the defence witnesses was also important. Tanveer Iqbal and Ejaz Arshad Mirza were both on the vehicle when the accident occurred. Ejaz testified that his son was going abroad and therefore the family, that consisted of 20 people, had hired the vehicle of the appellant to see of his son. Both these witnesses denied that the appellant had broken a red signal or was driving in a rash manner. They both attributed the accident to the negligence of the motorcyclists. These witnesses were natural witnesses and it was not shown at trial that they were in any manner related or connected with the appellant.

11. Very weak investigation was conducted in the case. It appears that the police was the least interested in finding the true facts of the incident. The appellant driving on a road did owe a duty of care to other road users but what was not proved at trial was that he breached that duty, the breach of which led to the fatal accident. Who exactly was negligent was not proven at trial. Similarly, whether the appellant was driving in a rash manner which rashness led to the accident was also not proved beyond reasonable doubt. Looking at the entire evidence holistically, I am of the view that there are two versions to this case. The law directs me to follow the version which is beneficial to the accused.

12. In view of the above, I am of the opinion that the prosecution was unable to prove its case beyond reasonable doubt. The appeal is therefore allowed and the appellant is acquitted of the charge. He is on bail. His bail bonds stand cancelled and surety discharged.

JUDGE