

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 413 of 2011

Appellant : Muhammad Imran
through Mr. Owais Hameed Baloch, Advocate

Respondent : The State
through Mr. Talib Ali Memon, A.P.G.

Complainant : through Mr. Waqas Ali, Advocate

Date of hearing : 28th September, 2022

JUDGMENT

Omar Sial, J. On 25.10.2007 at 10:15 a.m. a road accident occurred between a bus and a motorcycle, in which the rider of the motorcycle unfortunately lost his life. The driver of the bus, Muhammad Imran, who is the appellant in this appeal, was the driver of the bus, though he denies it. The young man who died was named Muhammad Hussain. F.I.R. No. 311 of 2007 was registered on 25.10.2007 at 1:45 p.m. at the Jamshed Quarters police station under sections 337-G and 427 P.P.C.

2. Muhammad Imran pleaded not guilty and claimed trial. At the conclusion of his trial on 30.09.2011, he was found guilty of an offence under section 320 P.P.C. and sentenced to 5 years in prison as well as pay diyat in the sum of Rs. 754,430. It is this judgment which has been called in question by Muhammad Imran.

3. Notices were issued several times to the legal heirs of the deceased but none effected an appearance. I have heard the learned counsel for the appellant as well as the learned APG, who was assisted by the legal counsel for the complainant.

4. Both counsels as well as the learned APG are in agreement that the only evidence against the appellant is the testimony of **Mohammad Rafiq**, the police constable who appeared as the first prosecution witness. Apart

from Rafiq, the witness of the appellant being arrested i.e. **M. Farooq** was examined as the prosecution's second witness. The third witness examined was **Abdul Khaliq**, who was the complainant. **Dr. Mubarak Ali** who conducted the post mortem of the deceased appeared as the prosecution's fourth witness. **Taseer Bhatti**, the fifth prosecution witness was an official of the motor vehicle department who had examined the bus and the motor cycle involved in the accident. The sixth witness was the investigating officer of the case **S.I. Sarfaraz Alyanna**. For his part, the appellant Mohammad Imran denied that he was even driving the offending bus let alone having caused an accident through rash and negligent driving.

5. I have heard all the counsels present and have also re-appraised the evidence which was produced at trial. My observations and findings are as follows.

6. Counsels are correct that the entire case hinges on the testimony of **PW-1 Muhammad Rafiq**. Rafiq stated at trial that he was on duty on his motorcycle when he saw that hot words were being exchanged between a driver of a bus and a motorcyclist. Rafiq blew the siren on his motorcycle, perhaps with the intention that the flow of traffic should not be blocked by the quarreling persons. On hearing the siren, the bus driver proceeded to move and drive his vehicle. The motorcyclist chased the bus, came in front of the bus and attempted to make the bus stop by coming in front of it. According to the prosecution case, this is when the accident occurred. From what this witness narrated in itself is sufficient to acquit the appellant. It is clear from the testimony that it was the motorcyclist who first chased the bus and then attempted to make it stop by coming in front of it. If the bus even hit is motorcycle in these circumstances it cannot be said with certainty that it was the bus driver who was driving in a rash and negligent manner. To the contrary the testimony suggests that it was the motorcyclist who unfortunately lost his life by reacting belligerently to the squabble that had occurred between him and the bus driver. If he himself came in front of the bus, as the witness recorded, in an attempt to make the bus stop, it appears that it was he who lost his life due to negligence and a fit of road

rage. Rafiq's testimony also becomes doubtful when he declined to accept that the section 161 Cr.P.C. statement on record was actually ever recorded by him.

7. **PW-2 M. Farooq** was a witness to the arrest of the appellant. It is not in dispute that the appellant was arrested. **PW-3 Abdul Khaliq** was the complainant of the case. His testimony regarding the appellant was mere hearsay. He was admittedly not an eye witness and hence how did he know that it was the appellant who was the culprit remained shrouded in mystery. He also did not disclose at trial or in the information he had provided upon which the F.I.R. was registered as to how did he come to know that it was the appellant who was the culprit. I also notice that the learned trial court, incorrectly, asked the appellant to cross examine the witness and therefore he was deprived of his right to a fair trial. Be that as it may, it is not disputed that an F.I.R. was registered against the appellant. **PW-4 Dr. Mubarak Ali** performed the post mortem on the deceased. It is an admitted position that the deceased died in a road accident thus his testimony is not of much importance. **PW-5 Taseer Bhatti** stated at trial that he had inspected the bus and the motorcycle. While the motorcycle was in a bad shape, this witness had noticed the right side bumper of the bus had a dent and the wind screen was broken. **PW-6 S.I. Sarfaraz Alyanna** basically repeated the steps he took in the investigation. Nothing of substance was found in his testimony apart from the fact that he had treated as gospel truth what PW-1 Mohammad Rafiq had told him. This was the entire evidence led at trial. As noted above, the only material witness in the case was PW-1 Muhammad Rafiq and as stated above, his testimony by no stretch of imagination leads to the conclusion that the appellant was either rash or negligent in his driving.

8. The appeal is allowed and the appellant acquitted of the charge. He is on bail. His bail bonds stand cancelled and surety discharged. It may be returned to its depositor upon identification.

JUDGE