

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S-203 of 2010

Appellant: Rehmatullah Junejo present in person.  
Respondent: The State through Mr. Abdul Waheed Bijarani A.P.G. Sindh.  
Complainant: None present.  
Date of hearing: 05.09.2022.  
Date of Decision: 05.09.2022.

**J U D G M E N T**

**AMJAD ALI SAHITO, J.** Through the captioned Criminal Appeal, the appellant has challenged the judgment dated 31.05.2010, passed by learned Additional Sessions Judge, Sehwan in Sessions Case No.14 of 2005, Crime No.02 of 2000 registered at PS Chhachar, for the offence under section 320, 279, 427, 337-G, 337-H PPC, whereby the appellant was convicted and sentenced as under:-

“For offences under section 320 PPC appellant is convicted and sentenced to suffer S.I. for two years and to pay Diyat amount of Rs.3,00,000/- [rupees three hundred thousand] in lump sum to the legal heirs of deceased Syed Muhib Shah. For the offence under section 279 PPC sentenced to pay fine of Rs.3000/- or in case of default in payment to suffer S.I. for three months; for the offence under section 337-G PPC sentenced to pay Daman of Rs.10,000/- to injured Muhammad Ishaque and to undergo S.I. for one year; for the offence under section 427 PPC sentenced to pay fine of Rs.5000/- or in case of default in payment to suffer S.I. for three months more. All the sentences were ordered to run concurrently. The benefit of section 382-B Cr.P.C. is also extended”

**2.** Brief facts of the prosecution case as depicted are that on 12.02.2000 complainant Khamiso Khan lodged FIR reporting therein that he is Darogo in Irrigation Department at Shah Awais Canal and also Incharge of Sann Rest House. On the

fateful day he along with Syed Muhib Shah and driver Muhammad Ishaque, at 1615 hours went to Sann Petrol Pump to get fill the petrol in Suzuki Jeep bearing Registration No.BA-2450. He alighted from the Jeep and was standing at Sann Chowk while Ishaque and Muhib Shah were crossing the Indus Highway road from old Sann Chowk to Sann town for filling petrol; suddenly at 1630 hours they saw a green colour Coaster coming from Sehwan, which was driven by the driver very rashly and negligently and he collided with the Jeep on wrong side, due to which Jeep fell down in a ditch on the eastern side of the road, thereafter, he saw Syed Muhib Shah was lying dead due to injuries and driver Muhammad Ishaque had received injuries on his legs and other parts of body. It is further stated that the driver stopped his Coaster and they noted its number to be R-0773-Hyderabad and driver ran away while leaving his Bus. Thereafter, complainant took injured driver Ishaque and deceased Muhib Shah and leaving them at Sann hospital lodged instant case at PS Chhachar.

**3.** After observing all formalities including recording of evidence of complainant Khamiso, PWs Ishaque Khaskheli, I.O. / SHO Muhammad Sadiq, mashir Muhammad Khan, Inspector Altaf Hussain and Medical Officer Dr. Nabi Bux as well as statement of accused under section 342 Cr.P.C., the learned trial Court convicted and sentenced the appellant / accused in the manner as stated above.

**4.** The appellant present in person has stated that he is innocent and has been falsely implicated. He has also stated that the prosecution witnesses are not in line with each other. He has pointed out that had he was involved in the commission of crime, he must have been arrested at spot when the Coaster which dashed the deceased caused injuries to injured but nothing is available on record in this respect. He, therefore, prayed for his acquittal.

5. On the other hand, learned Assistant Prosecutor General Sindh appearing for the State has supported the impugned judgment; however, he has admitted that the appellant was not arrested at the spot. On a query of Court that when the accused was not nominated in the FIR by the complainant as to whether the complainant has given description of accused in his report or later on identification parade was made, to which he replied it is admitted fact that no portrayal had been given in the FIR nor identification parade was conducted.

6. I have heard the appellant in person, learned A.P.G. Sindh for the State and have minutely gone through the material available on record with their able assistance. No doubt the deceased expired and injuries received to the injured due to accident of Jeep and Coaster, which is duly supported by the ocular and medical evidence; however, it is obvious after perusal of the FIR that the complainant has stated that the driver of the Coaster by driving it rashly and negligently dashed the deceased Muhib Shah and caused injuries to injured Muhammad Ishaque Khaskheli; nevertheless, no name of driver is mentioned in the FIR. The complainant during course of cross-examination has also admitted that ***“It is fact that I have not given the features of driver or his name in the FIR. The name of driver was disclosed by owner of the Bus.”*** Similar story in this respect is narrated by the witnesses of the case. It has also come in the evidence that the driver of Coaster succeeded to run away. However, the complainant himself admitted in his cross-examination that ***“It is fact that there is police post in sann.”*** PW / injured Ishaque also admitted during course of cross-examination that ***“It is fact that the place of incident is busy place and the people, buses and Suzukis are use to stop there.”*** Therefore, when there is availability of police and private persons despite this fact, there appears nothing in the evidence as to whether the complainant party / the persons present there or police tried to apprehend the accused, who admittedly leaving the said Coaster ran away. Yet there is a question, if the accused

was nominated by the prosecution, thereafter, it was duty of Investigating Officer that after knowing the name of appellant to be culprit of the offence, he must had got arranged the identification parade in order to identify the real culprit of the offence by the eye witnesses but not.

**7.** Further, it is very surprising to note here that when the complainant does not know the driver of Coaster even his description was not given in the FIR; the appellant had been involved on the ground that the owner of Coaster has narrated that he was driver of Coaster but said owner of Coaster had not been examined by the prosecution in order to confirm that the appellant was the real culprit of incident. It is the duty of prosecution to establish its case from all four corners especially when the complainant party does not know the identity of accused like in the instant case, as such, it was mandatory to validate the involvement of accused by examining the person who implicates the accused as involvement of the accused is based on such narration.

**8.** In view of above circumstances and careful scrutiny of the prosecution evidence, it appears that the prosecution has failed to establish its case beyond shadow of doubt, which is full of doubts and it is well settled principle of law that when a single reasonable doubt appears in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. In this respect, reliance can be placed upon the case of **MOHAMMAD MANSHA v. The STATE (2018 SCMR 772)**, in which the Hon'ble Supreme Court of Pakistan has held as under:-

**4. “Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be**

***convicted". Reliance in this behalf can be made upon the cases of Tariq Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."***

**9.** The learned Trial Court has failed to appreciate the evidence and material brought by the prosecution against appellant. In these circumstances, I while giving the benefit of the doubt acquit him from the charge. Resultantly instant was allowed; impugned judgment was set-aside and appellant was acquitted from the charge. His bail bonds were cancelled, surety discharged and surety papers were ordered to be returned to the surety in person after proper verification and identification as per rules and law. These are the reason for my short order dated 05.09.2022.

**JUDGE**