

Reckless Driving

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT
AT HYDERABAD

Cr. Appeal No. **S - 15-** of 2013

Ghulam Rasool S/o Ghulam Nabi
By caste Gaddi Pathan,
Adult, Muslim, at present
Confined at C.P Hyderabad.....Appellant

VERSUS

The State.....Respondent

Crime No. 188/2008
Police Station: Baldia,
U/S: 320, 279 PPC.

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

Cr. Appeal No. S- 15 of 2013

Ghulam Rasool

Versus

The State

Appellant : Ghulam Rasool s/o Ghulam Nabi, though on bail but not present today.	Through M/s. Aijaz Shaikh and Kamran Baig, Advocates.
Respondent : The State	Through Ms. Sana Memon, Assistant Prosecutor General, Sindh
Complainant	None present.
Date of hearing	02.11.2023
Date of judgment	13.11.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This Criminal Appeal is directed against the judgment dated 16.01.2013, passed by the learned 1st Additional Sessions Judge, Hyderabad, in Sessions Case No. 21 of 2009 (re: The State versus Ghulam Rasool), emanating from Crime No.188 of 2008, registered at Police Station Baldia, under sections 279, 320.PPC, whereby the appellant has been convicted u/s 320 PPC and sentenced to suffer RI for 10 years. The appellant was also convicted u/s 337-G PPC and sentenced to suffer RI for 05 years. He was further convicted u/s 279 PPC to suffer RI for 02 years. The appellant was also directed to pay the compensation of Rs.5,00,000/- (Five Lac) to the legal heirs of deceased Misri Khan. All the sentences were ordered to run concurrently.

2. The brief facts of the prosecution case are as under:-

"On 26.12.2008 complainant Irfan s/o Muhammad Ibrahim appeared at Police Station and lodged FIR alleging therein that on said day, he was present in the house and received a phone call from LUMH Hyderabad informing him that an accident of his cousin Misri Khan has taken place at Barrage Colony, on which, he reached at Hospital where he saw that his cousin Misri Khan has been expired and Ramzan alias Kak B/c Kumbhar R/o Kumbhar Paro, Tando Wali Muhammad Hyderabad and Dildar Khokhar presently resident of Malpuri, met with him and one Ramzan alias Kaka informed him that he was going to meet with his relatives behind the Kumbhar Paro Agha Khan Hospital in Mini Bus No.JE-1053 while Dildar Khokhar also informed him that he was coming on his Motorcycle from Qasim Chowk where he saw a Mini Bus towards Barrage Colony was coming from Gharibabad rashly and in negligent manner driven by Driver and after overtaking at 1120 hours, hit from backside to Motorcycle as such the rider of Motorcycle fallen down and sustained injuries on the body and blood started oozing from head, ear and nose. Thereafter he inquired from the driver about his name etc. on which he disclosed his name as Ghulam Rasool s/o Ghulam Gaddi, to whom he asked to shift the injured at Hospital in the said Mini Bus but he went away along with said Bus. Thereafter said Dildar Khokhar shifted the injured to Civil Hospital LUMH Hyderabad as Mini Bus driver due to rash and negligent driving of said Bus by overtaking and hitting on Motorcycle, caused the death of his cousin. Thereafter, complainant after getting free from funeral ceremony, appeared at Police Station and lodged present F.I.R against accused".

3. After usual investigation police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court framed charge against the accused/appellant, to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case has examined 6 witnesses and exhibited numerous documents and other items. The statement of accused was recorded under section 342 Cr.P.C whereby he denied the allegations leveled against him and claimed his false implication by the complainant. However, neither he examined himself on oath nor led any evidence in his defence.

5. Learned trial Court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated earlier in this judgment.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by

the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned advocate for the appellant has contended that the appellant is innocent and has been falsely implicated in this case; that the FIR was lodged after a delay of two delays without explanation; that the appellant was not driving the mini bus at the time of the incident; that the eye witness is a planted witness whose evidence cannot be relied upon; that there was no evidence that the appellant, even if he was driving the mini bus, was driving in a rash or negligent manner and as such for any or all the above reasons the appellant be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Yasir Arafat versus The State and another** [2012 MLD 611], **Hafeez Ahmed versus The State** [2019 P.Cr.L.J Note 55] and, **Zia-Ul-Haq versus The State** [2020 MLD 1298]

8. Learned Assistant Prosecutor General Sindh on behalf of the State, after going through the entire evidence of the prosecution witnesses as well as other record did not support the impugned judgment.

9. I have heard the learned counsel for the appellant as well as learned A.P.G and have perused the material available on record and the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence I find that the prosecution has proved beyond a reasonable doubt that Misri Khan Samoon (the deceased) was killed on account of being hit by a mini bus on 26.12.2008 at about 11.20 hours whilst he was driving a motor bike at Ghareebabad.

11. The questions left before me therefore are (a) was the appellant driving the mini bus which hit the deceased and caused his death at the said time, date and location and (b) was the mini bus being driven rashly and negligently at the said time, date and location when it hit the deceased?

12. After my reassessment of the evidence on record, I find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) That the FIR was lodged after a delay of two days without any explanation which gave time for the complainant to make a false case against the appellant.
- (b) It appears from the cross examination of PW 5 Abdul Razzak that it is admitted that the appellant was driving the mini bus at the time of the incident.
- (c) That the prosecution case rests on the sole eye witness PW 3 Ramzan Ali. According to his evidence on 26.12.08 he was travelling in the mini bus going to Aga Khan Hospital which was being driven rashly and negligently and when the bus reached near barrage colony at 11.20 it hit a motor bike. He got off the bus and saw that the deceased had received injuries. He was told that the drivers name was Ghulam Rasool. Thereafter he hired a rickshaw and shifted the deceased to hospital along with Dildar Khokar who had reached there. He then called the complainant before returning home.

Although it was a day light incident during cross examination it was revealed that this witness was not in a position to see the incident. He is named in the delayed FIR and just happens to be the neighbor of the complainant. He did not state where he was travelling to on the bus and produced no bus ticket. I find him to be a chance witness. He also states in his evidence that he saw that the Misri Khan (deceased) had received injuries. The question arises how he knew the deceased from before? For a passenger on a bus to be involved in an accident and for him to recognize and know the other party in the accident is an extraordinary co-incidence. He had no reason to take the deceased to hospital and he did not even have any blood on his clothes despite the deceased ozzing blood following the accident. For a simple passenger it is quite astonishing that he was able to know the No. of the bus and find out the name of the driver. Keeping in view his relationship with the complainant I find based on the above discussion that he was not present on the bus and was a planted witness and I disbelieve his evidence.

- (d) The other alleged eye witness who is named in the FIR was given up by the prosecution and as such an inference can be drawn under Article 129 (g) Qanoon-e Shahdat Ordinance 1984 that he would not have supported the prosecution case.
- (e) It is also surprising that after such a serious accident when the mini bus was stopped and a person was seriously injured on account of his reckless driving that the driver was not detained by the other persons in the busy area and/or other passengers on the bus as is usually the case in this

country and handed over to the police and arrested on the spot. The appellant did not even run away. Instead he continued to drive the bus. This does not appeal to reason, logic or common sense. Nor does the fact that he was still driving the same mini bus two days later. If he had been involved in a very serious/fatal accident the driver/appellant would either have fled the scene or not turned up for work again on account of fear of arrest.

- (f) Since I have disbelieved the evidence of the sole eye witness who gave evidence there is no other evidence to prove that the appellant was driving in a rash or negligent manner which lead to the accident involving the deceased. Even if the driver/appellant had been driving too fast, for which there is no evidence, this would not amount to rash and negligent driving as supported by the authorities relied on by learned counsel for the appellant as cited earlier in this judgment.

13. Thus for the reasons mentioned above, I find that the prosecution has not proved the charge against the appellant and by extending him the benefit of the doubt, I **allow** the appeal, set aside the impugned judgment and acquit the appellant of the charge. The appellant's bail bonds are cancelled and he is free to go.

Hafiz Fahad

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

Criminal Appeal No.S- 15 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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02.11.2023.

M/s Aijaz Shaikh and Kamran Baig, Advocates for appellant
(though on bail but not present today).

Ms. Sana Memon, A.P.G for State.

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I have heard the learned counsel for appellant and learned
A.P.G for State. Reserved for Judgment.

Tufail