

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Appeal No. 313 of 2025

Appellant : Muhammad Khalid son of Muhammad Ali Haider,  
Through Mr. Muhammad Nasir, advocate.

Respondent : The State  
Through Mr. Tahir Hussain, APG

Date of hearing : 29.05.2025

Date of order : 29.05.2025

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

**KHALID HUSSAIN SHAHANI, J:** -- This Criminal Appeal, filed under Section 410 Cr.P.C, seeks to challenge the judgment and order dated April 16, 2025, passed by the learned XIII Additional Sessions Judge, East at Karachi, in Session Case No. 2342 of 2019 (The State v/s Muhammad Khalid). By the impugned judgment, the appellant, Muhammad Khalid, was convicted for offence under Sections 320 and 322 of PPC and sentenced to undergo five (5) years Rigorous Imprisonment (R.I.). Additionally, the appellant was directed to pay "Diyat" to the legal heirs of the deceased in accordance with the amount fixed and notified by the Government at the time of the occurrence, i.e., August 23, 2019. The benefit of Section 382-B Cr.P.C. was extended to the accused.

2. The genesis of the prosecution case stems from FIR No. 315/2019, lodged by the complainant, Mst. Pari Khan, on August 28, 2019, at Police Station Jamshed Quarters, Karachi. The brief facts, as alleged, are that on August 23, 2019, at about 2000 hours, opposite Iqbal Hotel, near Nishtar Road, Karachi, the appellant, Muhammad Khalid, while driving a motorcycle bearing registration No. KMR-2710, Maker Unique 70, in a rash and negligent manner, hit Zain-ul-Abideen (father of the complainant). As a result of the collision, Zain-ul-Abideen sustained injuries, specifically diffuse swelling over the occipital and right parietal regions. He was admitted to SMBB Trauma Centre/Civil Hospital Karachi, where he was examined by MLO Dr. Noor Ahmed. The injuries ultimately led to his demise. The FIR was lodged by the deceased's daughter, Mst. Pari Khan. Following the investigation, the investigating officer submitted a charge sheet against the appellant for offences punishable under Sections 320/322

PPC, with Section 322 PPC added due to the non-production of a driving license by the accused.

3. Initially, the matter was assigned to the Court of the learned XI Additional Sessions Judge Karachi East, and subsequently transferred to the XIII Additional Sessions Judge. The copies of the documents/statements as required under Section 265-C Cr.P.C. were supplied to the accused. A formal charge was framed against the accused, to which he pleaded not guilty. The prosecution examined seven witnesses, including the complainant Mst. Pari Khan (PW-1), ASI Nisar Hussain (PW-2), Jamshed Khan (PW-3), PC Sultan (PW-4), Muhammad Yasir (PW-5), MLO Dr. Noor Ahmed (PW-6), and I.O. SIP Anwaar Hussain (PW-7). Upon conclusion of the prosecution evidence and recording of the appellant's statement under Section 342 Cr.P.C., the learned Trial Judge, vide judgment dated April 17, 2024, convicted and sentenced the appellant as described above.

4. Aggrieved by the judgment dated April 17, 2024, the appellant preferred Criminal Appeal No. 339 of 2024 before this Court. During the hearing of the said appeal, it was observed that PW-4 PC Sultan had not been subjected to cross-examination, and PW-6 MLO Dr. Noor Ahmed had been examined by the accused in the absence of the defence counsel. Consequently, this Court, vide judgment/order dated October 9, 2024, was pleased to set aside the judgment dated April 17, 2024, and remanded the case to the learned Trial Court for the limited purpose of re-recording the evidence of PW-4 PC Sultan and PW-6 MLO Dr. Noor Ahmed, and thereafter, to pass a fresh judgment.

5. In compliance with the remand order dated October 9, 2024, the learned Trial Judge duly re-recorded the evidence of PW-4 PC Sultan and PW-6 MLO Dr. Noor Ahmed. Subsequent to this, the statement of the appellant under Section 342 Cr.P.C. recorded at Exh. 18. After hearing arguments from all sides, the learned Trial Judge passed the fresh judgment dated April 16, 2025, which is the subject of the present appeal, reiterating the conviction and sentence against the appellant.

6. The learned counsel for the appellant assailed the impugned judgment on various grounds, contending that the learned Trial Court erred in law and on facts. The primary contentions raised were the complainant is

not an eyewitness to the alleged incident, and there is no independent eyewitness. No MLO report under Section 4 Cr.P.C. was produced, nor was any entry made or produced regarding the incident at the time. There was an inordinate delay of five days in the registration of the FIR (lodged on August 28, 2019, for an incident on August 23, 2019). The name of the neighbor who informed the complainant was not disclosed. MLO Dr. Noor Ahmed informed the Jamshed Quarters police on August 27, 2019, about the incident, and ASI Nisar approached the doctor on the same day, but the injured was not in a position to record a statement. The appellant was arrested on September 17, 2019, after being produced by his brother, Muhammad Ali Ahmed, and one Muhammad Yamin, but these individuals were not examined as witnesses. There were discrepancies in the arrest timings (entry of arrest on September 17, 2019, at 0030 hours, while the memo of arrest is at 2345 hours). A contradiction exists regarding the relationship of PW-3 Jamshed Khan, with the complainant stating he is related, while Jamshed Khan denied it. The "Mohalla people" who allegedly apprehended the accused were not named. The medical certificate was erroneously stated to be produced by PW-4 PC Sultan on September 19, 2019. The learned Trial Court erred in shifting the burden of proof onto the appellant. The prosecution story, at best, "may be true" but lacks legal, reliable, and unimpeachable evidence to establish guilt "must be true." The learned Trial Court ignored the cross-examination of prosecution witnesses. There are serious improvements and contradictions in the statements of prosecution witnesses, rendering them unreliable, and thus, the benefit of doubt ought to have been extended to the appellant. The defence plea that the deceased was hit by a bus and the complainant falsely implicated the accused due to political rivalry was not adequately considered. He relied upon case laws cited at 2010 YLR 2509, 2019 P.Cr.L.J 1539, unreported case law in Cr. Appeal No.123/2014 Karachi, 2020 MLD 1580, un-reported case law in Cr. Appeal No. 5906/2020, 2020 MLD 1298, 2012 MLD 611 and 2020 MLD 243.

7. Conversely, the learned Additional APG for the State, supported by the learned counsel for the complainant, vehemently opposed the appeal. They contended that the prosecution had successfully established the charge against the appellant beyond any reasonable doubt. They highlighted that the complainant had specifically nominated the accused in the FIR with a

clear role. The prosecution examined seven witnesses, and the ocular account provided by the eyewitnesses, PW-3 Jamshed Khan and PW-5 Muhammad Yasir, fully implicated the accused, confirming his rash and negligent driving and the resulting collision leading to the deceased's injuries and death. Both eyewitnesses identified the accused in court, and their evidence remained unshattered despite extensive cross-examination. The discrepancy in the date of the incident between the FIR and the charge sheet was a mere typographical error, adequately explained by the I.O. The accused's brother voluntarily produced the accused before the I.O. There was no evidence of previous enmity or ill-will on the part of the complainant to falsely implicate the accused. The direct evidence was fully corroborated by medical evidence, including the ML Certificate and the death certificate, which confirmed the cause of death due to injuries sustained in a road accident. The accused failed to produce a valid driving license, indicating further negligence. They prayed for the dismissal of the appeal and maintenance of the conviction.

8. I have meticulously perused the entire record and proceedings of the case, given due consideration to the elaborate arguments advanced by the learned counsel for the appellant, and the learned Additional Deputy Prosecutor General for the State, ably assisted by the learned counsel for the complainant.

9. The primary thrust of the appellant's argument centers on the alleged weaknesses in the prosecution's case, particularly concerning the absence of the complainant as an eyewitness, the delay in FIR, and purported contradictions and improvements in the prosecution evidence. However, a thorough and dispassionate examination of the learned Trial Court's judgment, read in conjunction with the evidence on record, reveals that these contentions have been adequately addressed and effectively rebutted.

10. It is indeed on record that the complainant, Mst. Pari Khan, was not an eyewitness to the actual collision. However, it is a well-settled principle of criminal jurisprudence that the prosecution's case need not rest solely on the testimony of the complainant as an eyewitness, especially when other credible ocular evidence is available. In the instant case, the prosecution presented two independent and natural eyewitnesses, PW-3 Jamshed Khan and PW-5 Muhammad Yasir. Their presence at the scene of the incident was convincingly established by their respective testimonies; Jamshed

Khan was at Iqbal Hotel taking tea, and Muhammad Yasir ran a mobile shop in the vicinity. Both witnesses unequivocally and consistently deposed that the appellant, Muhammad Khalid, was driving the motorcycle (registration No. KMR-2710) at a high speed and in a rash and negligent manner, resulting in the collision with the deceased, Zain-ul-Abideen. They further identified the accused in court. Crucially, their testimonies remained unshaken despite extensive and rigorous cross-examination by the defence counsel. The defence failed to elicit any material contradiction or to establish any motive for false implication on their part. The mere fact that their names were not explicitly mentioned in the FIR, while often a point of contention, is not fatal to the prosecution's case, particularly when their presence at the spot has been convincingly established and their evidence is otherwise credible and consistent. The alleged minor contradiction regarding Jamshed Khan's relationship with the complainant, as pointed out by the appellant's counsel, was rightly considered by the trial court as insignificant, given the overall consistency and reliability of his testimony and the absence of any established ill-will or motive.

11. The contention regarding the absence of an MLO report under Section 4 Cr.P.C. is misplaced. The record clearly indicates that PW-6 MLO Dr. Noor Ahmed, who examined the injured and subsequently issued the Medico-Legal Certificate (Exh-8/A), duly testified in court. Furthermore, the death certificate (Exh-4/F) was also produced and proved. As for the alleged inordinate delay of five days in lodging the FIR, the learned Trial Court found, and I concur with its finding, that this delay was sufficiently explained by the Investigating Officer (I.O.). The I.O. explicitly stated that the discrepancy in the date of the incident between the FIR and the charge sheet was a mere typographical error, and the FIR itself correctly recorded the incident date as August 23, 2019, which was consistent with other evidence on record. The deceased was taken to the hospital immediately after the incident, and the formal lodging of the FIR naturally occurred subsequent to his unfortunate demise, once the gravity of the situation was fully realized.

12. The sequence of events concerning Dr. Noor Ahmed's report to the police on August 27, 2019, and ASI Nisar's visit to the hospital on the same day, where he found the injured unable to record a statement, is entirely consistent with the prosecution's narrative and does not cast any doubt on

the occurrence of the incident or the subsequent death. These actions demonstrate the promptness of the police in responding to the information received. The appellant's argument that Muhammad Ali Ahmed and Muhammad Yamin, who produced the accused before the police, were not examined as witnesses, does not, in my considered view, vitiate the prosecution's case. The fact of the appellant's production and subsequent identification by the complainant, as clearly testified by the I.O. (PW-7), remains on record. The minor discrepancy in the timing of the arrest entry (0030 hours) and the memo of arrest (2345 hours) on the same date (September 17, 2019) is a trivial procedural aspect that does not affect the substance of the arrest or the overwhelming evidence of guilt. Such minor variations are often encountered in police records and do not, by themselves, warrant the discarding of otherwise reliable evidence.

13. The appellant's counsel's assertion that PW-4 PC Sultan produced the medical certificate on September 19, 2019, is a clear misstatement and a confusion of facts. The record unequivocally shows that PW-4 PC Sultan's testimony pertained to the seizure of the motorcycle (registration No. KMR-2710) on September 19, 2019, after it was produced by the accused's brother. The Medico-Legal Certificate (Exh-8/A) was correctly and duly produced by PW-6 MLO Dr. Noor Ahmed, who was the competent authority to issue such a document. It is pertinent to note that this very case was previously remanded by this Court for the specific purpose of re-examining PW-4 PC Sultan and PW-6 MLO Dr. Noor Ahmed. The learned Trial Court, in strict compliance with this directive, duly re-recorded the evidence of these witnesses. This fact significantly strengthens the current impugned judgment, as it demonstrates that any previous procedural lacunae, which formed the basis of the earlier appeal, were meticulously rectified, and the evidence of these crucial witnesses was properly recorded, subjected to cross-examination, and considered in the fresh judgment. This appellate court cannot be expected to re-open issues already settled through a remand order and its compliance.

14. The contention that the learned Trial Court shifted the burden of proof onto the appellant is unfounded. It is a fundamental and unwavering principle of criminal law that the prosecution must prove its case beyond a reasonable doubt, and this burden never shifts. In the instant case, the prosecution has successfully discharged this onerous burden. The evidence,

comprising direct ocular accounts from two independent eyewitnesses, corroborated by consistent medical evidence (ML Certificate and Death Certificate), and further supported by circumstantial facts (such as the appellant's failure to produce a valid driving license), forms a complete and unbroken chain of events that firmly establishes the appellant's guilt. The argument that the prosecution story "may be true" but not "must be true" is effectively countered by the robust, consistent, and unimpeached evidence on record. The cross-examination, though conducted at length, failed to create any major dent in the credibility or veracity of the prosecution witnesses. The alleged improvements and contradictions highlighted by the defence were minor in nature and did not affect the core facts of the incident or the credibility of the prosecution's narrative. The defence plea that the deceased was hit by a bus and that the complainant falsely implicated the accused due to political rivalry remained unsubstantiated by any credible evidence. The conviction under Sections 320 and 322 PPC is, in my considered opinion, well-founded and fully supported by the evidence. Section 320 PPC deals with Qatl-e-Khata (culpable homicide by mistake), and Section 322 PPC pertains to Qatl-e-Sabab (causing death by a rash or negligent act). The cumulative effect of the evidence clearly establishes that the appellant was driving the motorcycle (KMR-2710) in a "rash and negligent manner." As correctly elucidated by the learned Trial Court, relying on established legal principles, "negligence" implies an omission to do something which a reasonable and prudent person, guided by ordinary considerations, would do, or doing something which such a person would not do. The testimony of both eyewitnesses consistently pointed to the appellant driving at a high speed and hitting the deceased. Furthermore, the appellant's failure to produce a valid driving license, as established during investigation and conceded in his own statement under Section 342 Cr.P.C., is a strong indicator of negligence and a blatant disregard for traffic rules and public safety. The medical evidence unequivocally linked the injuries sustained by the deceased to the road traffic accident, leading to his death from cardio-respiratory failure. The chain of events, from the appellant's negligent driving to the deceased's injuries and subsequent death, has been conclusively proven by the prosecution.

15. In light of the foregoing detailed analysis, I find no legal or factual infirmity in the impugned judgment dated April 16, 2025. The learned Trial Court meticulously appreciated the evidence adduced before it, correctly applied the relevant legal principles, and arrived at a just and well-reasoned conclusion. The prosecution has succeeded in establishing the guilt of the appellant beyond the shadow of any reasonable doubt.

16. For the reasons stated above, the instant Criminal Appeal No. 313 of 2025 is hereby dismissed. The judgment and order dated April 16, 2025, passed by the learned XIII Additional Sessions Judge, East at Karachi, in Session Case No. 2342 of 2019, convicting the appellant Muhammad Khalid S/o Muhammad Ali Haider Siddiqui under Sections 320 and 322 PPC and sentencing him to five (5) years Rigorous Imprisonment with directions to pay Diyat, is maintained in its entirety. The property order previously handed over to Muhammad Ali Ahmed Siddiqui (brother of the accused) on Superdari, shall remain undisturbed.

**J U D G E**