

JUDGMENT SHEET
THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.383 of 2023

Appellant : Shah Behram, through Mr. Muhammad Sajjad Abbasi, Advocate

Respondent No.1 & 3 : The State, through Mr. Zahoor Ali Shah, Additional Prosecutor General, Sindh

Respondent No.2 : Malik Amir Hussain, through Mr. Muhammad Rashid, Advocate

Date of hearing : 19.09.2025

Date of decision : 28.09.2025

J U D G M E N T

Dr.Syed Fiaz ul Hassan Shah, J.- This Criminal Acquittal Appeal is directed under Section 417 Criminal Procedure Code, 1898 (**Cr.P.C.**) against the Judgment dated 27.05.2023, passed by the learned IVth Additional Sessions Judge, Karachi East (**Trial Court**), in S.C. No.1147 of 2017, (The State versus Malik Amir Hussain), for offence under Sections 320, 279, 322, 114 PPC, registered at Police Station Model Colony, Korangi East, Karachi, whereby, Respondent No.2- Malik Amir Hussain son of Sabir Hussain has been acquitted of the charge, extending him benefit of doubt.

2. According to the contents of the FIR lodged by the complainant, Shah Bahram (uncle of the deceased), at Police Station Model Colony, Karachi on 22.10.2016 at 2200 hours, it is alleged that on 21.10.2016 at approximately 1810 hours, a road traffic accident occurred at Jinnah Avenue near Bajwa Hotel. The incident involved a Trawler that struck a motorcyclist, namely Javed Iqbal (nephew of the complainant), resulting in serious injuries. Upon receiving information, the complainant reached the scene but found that the injured had already been transported to Jinnah Postgraduate Medical Centre (JPMC) by ambulance. The driver of the offending vehicle was apprehended by the public and handed over to the police of Model Colony P.S. The complainant later visited JPMC, where

the injured was undergoing treatment in the operation theatre. Unfortunately, during the course of treatment, Javed Iqbal succumbed to his injuries. Subsequent to completing the requisite legal formalities, ASI Musarrat Hussain handed over the deceased's body to the complainant. The complainant's statement under Section 154 Cr.P.C. was recorded and incorporated into the FIR accordingly.

3. Following the completion of formalities, a formal charge was framed against Respondent No.2 at Ex.4. The Respondent No.2 pleaded 'not guilty' and claimed trial, as reflected at Ex.4/A.
4. During the trial, the prosecution examined the following witnesses:
 - i. PW-1 Choudhry Liaquat Ali (Ex.5)
 - ii. PW-2 ASI Musarrat Hussain (Ex.6), who produced several documents including letters addressed to the MLO for recording the injured's statement and permission to initiate proceedings under Section 174 Cr.P.C., memo of inspection of dead body, inquest report, receipt of dead body, Rahdari certificate, entries No.67 and 52, and a copy of the FIR (Ex.6/A to 6/J)
 - iii. PW-3 ASI Iftikhar Ahmed (Ex.7)
 - iv. PW-4 Complainant Shah Bahram (Ex.8)
 - v. PW-5 PC Hazkiel (Ex.9), who produced the seizure memo of the trawler (Ex.9/A)
 - vi. PW-6 PC Javed Iqbal (Ex.10)
 - vii. PW-7 IO SIP Arshad H. Warsi (Ex.11), who produced Medical Legal Certificate (MLC), cause of death certificate, site inspection memo, photographs of the trawler, and a letter addressed to the Excise Department, District Attock for verification purposes (Ex.11/A to 11/E)
 - viii. PW-8 DSP Farhat Kamal (Ex.13)
 - ix. PW-9 M. Akbar Awan (Ex.14)
 - x. PW-10 Dr. Aijaz Ahmed (Ex.15)
 - xi. PW-11 DSP Tahir Ayub (Ex.16)
 - xii. PW-12 Inspector Pir Abdul Waheed (Ex.17), who produced the Motor Vehicle Inspection (MVI) report (Ex.17/A)
 - xiii. The learned Deputy District Public Prosecutor (DDPP) then closed the prosecution's case as per the statement recorded at Ex.18. After the prosecution's closure, the statement of the Respondent was recorded under Section 342 Cr.P.C. at Ex.19. The Respondent denied all allegations, claimed false implication, professed innocence, and prayed

for justice. The Respondent neither examined himself on oath under Section 340 (2) Cr.P.C., nor called any defence witnesses.

5. Upon conclusion of the trial and hearing the arguments of both parties, the learned trial Court acquitted the Respondent, extending the benefit of doubt, as reflected in the impugned judgment dated 27.05.2023, detailed in paragraph-1 supra. Aggrieved by the acquittal, the complainant Shah Bahram (hereinafter 'the Appellant') has preferred this Criminal Acquittal Appeal.
6. I have heard learned counsel for the parties, learned Additional Prosecutor General Sindh and carefully perused the record.
7. It is a well-established and uncontested fact that on 21.10.2016, within the jurisdiction of Police Station Model Colony, the absconder Zulfiqar was operating the said trawler, which collided with the rear of the motorcycle bearing registration No. KIW-3122, ridden by the deceased Javed Iqbal. This material fact has been consistently and categorically admitted by the prosecution witnesses PW-1 Choudhry Liaquat Ali, PW-2 ASI Musarrat Hussain, PW-3 ASI Iftikhar Ahmed, PW-4 Complainant Shah Bahram, PW-5 PC Hazkiel, PW-6 PC Javed Iqbal, PW-7 IO SIP Arshad H. Warsi, PW-8 DSP Farhat Kamal, PW-9 M. Akbar Awan, PW-10 Dr. Aijaz Ahmed, PW-11 DSP Tahir Ayub, and PW-12 Inspector/MVI Pir Abdul Waheed. The PW-9 deposed that on 21.10.2016 at approximately 6:00 to 6:30 p.m., while traveling from Saddar to his residence in Model Colony on his motorcycle, he observed near Bajwa Hotel, close to the Security Printing Press, Model Colony Karachi, that a trawler bearing registration No. TLZ-726 was proceeding from Malir Halt in a **rash and negligent manner** and struck a motorcycle from the **rear**. Consequently, the motorcycle rider fell and sustained injuries. PW-10 testified that the injured was brought to the Emergency Room and immediately shifted to the Operation Theatre for surgical intervention. The Medical Legal Certificate (MLC) was not completed upon arrival. Unfortunately, **during the surgical procedure, the patient expired**. The death certificate, issued by Dr. Nitu (P.G. Ward No. 2), recorded the cause of death as cardio-pulmonary arrest due to polytrauma and hemorrhagic shock sustained in a road traffic accident. The incident was reported to the Investigating Officer of PS Model Colony vide entry No. 04 and Section 174 Cr.P.C. proceedings were initiated accordingly.

8. These facts have been further corroborated by the inquest report and the statutory proceedings conducted under Section 174 Cr.P.C. Understandingly, the trial Court rightly concluded that there exists no doubt that the death of Javed Iqbal was caused by the injuries inflicted by the trawler, allegedly driven by the absconder Zulfiqar, while holding that the said trawler is the property of Respondent No.2. The Respondent No.2 has not challenged or dislodged this portion of evidence during cross-examination.
9. The learned Trial Court, while acknowledging the loss of Javed Iqbal—nephew of the complainant—as an invaluable life, failed to assign any cogent reasoning for the acquittal of Respondent No.2, the registered owner of the offending vehicle. The findings appear to revolve superficially around secondary procedural lapses, notably the assertion that the Investigating Officer did not record the statement of the Motor Vehicle Inspector (MVI), which is demonstrably contrary to the record.
10. PW-12, PI Pir Abdul Waheed, MVI, unequivocally deposed that he inspected both vehicles involved in the accident—Trawler No. TLZ-726 and Motorcycle No. KIW-3122—and issued a detailed **MVI report (Ex.17/A)**, confirming mechanical fitness and visible damage consistent with a rear-end collision. His testimony directly implicates the trawler and supports the prosecution’s case. The trial court’s finding constitutes a misreading of this material evidence. Furthermore, the trial Court placed reliance upon the SHO’s statement regarding the complainant’s alleged involvement in compromise negotiations and the unavailability of the deceased’s immediate family is wholly irrelevant to the determination of criminal liability. The trial court erroneously drew exculpatory inferences from these peripheral facts while disregarding substantive evidence on record.
11. Now moving to the connection of the Respondent No.2 with the commission of offence, I have noted that the PW-7 in his evidence clearly mentioned that the driving license of the absconder driver Zulfiqar was fake. He deposed that ***“I sent the same license to the Excise Department, District Attock for verification and the department has endorsed that the license was fake/ bogus. I produce such letter at Ex. 11/E and say that it is same, correct and bears my signature.”*** This PW-8 has also confirmed that the Driving license of absconder Accused Zulfiqar was fake. He deposed that ***“during investigation I sent the license of accused to License branch of Attock District, but the same was found fake,***

therefore, I inserted sections 32/468 PPC in the charge sheet and submitted final charge sheet in the court of law. accused present in court is same”.

Critically, the trial court failed to address the testimony of official prosecution witnesses establishing that the absconding accused Zulfiqar was operating the trawler with a forged driving license. This omission constitutes illegality on material evidence. Section 5 of the Ordinance mandates that no person shall drive a transport vehicle unless he holds an effective driving license, and Section 6 read with Section 112 places a corresponding duty upon the owner to verify the credentials of the driver and ensure compliance with licensing and permit requirements.

12. The West Pakistan Motor Vehicles Ordinance, 1965, particularly Sections 5, 6, and 112, imposes a co-extensive responsibility upon the owner to verify the driver’s legal eligibility and the vehicle’s compliance with permit requirements. The failure to do so constitutes negligent entrustment and attracts vicarious liability for any offence as well as tort arising from such unlawful operation.

13. The Respondent No.2, being the owner of a heavy transport vehicle, was under a statutory obligation to ensure that the vehicle was operated only by a qualified, competent, and duly licensed driver, in accordance with the provisions of the West Pakistan Motor Vehicles Ordinance, 1965. Furthermore, **Article 117 – Burden of Proof:** Qanun-e-Shahadat Order, 1984 stipulates that: *“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.”* Therefore, once the prosecution establishes that the vehicle was involved in the accident and was owned by Respondent No.2, the burden shifts to the owner to prove that the vehicle was lawfully entrusted and operated under valid documentation who has failed to discharge his legal burden rather his admission in the statement under section 342 Cr.P.C. before the trial Court that he is owner of the said trawler and he has also obtained the temporary custody of said trawler, has established that Respondent No.2 is, therefore, legally accountable for entrusting the said heavy commercial vehicle to the absconding accused, Zulfiqar son of Abdul Sattar, for **unrestricted and unsupervised** use on public roads.

14. In light of the foregoing discussion, the learned Trial Court, however, misread material evidence, disregarded statutory obligations under the West Pakistan Motor Vehicles Ordinance, 1965, and failed to appreciate the evidentiary burden of proof under Article 133 of the Qanun-e-Shahadat Order, 1984. Its findings

rest upon peripheral considerations and ignore the core issue of negligent entrustment.

15. These were the reasons for my short Order dated 19.09.2025 whereby Criminal Acquittal appeal was allowed and the impugned judgment dated 27.05.2023 is set aside. The matter is remanded to the learned Trial Court with direction to rewrite the judgment in accordance with law and the evidence on record so also the fate of trawler involved in the present case.

16. The instant Criminal Acquittal Appeal stands disposed of. The Deputy Inspector General of Police (DIG) East, Karachi, is directed to ensure the arrest of the absconding accused Driver Zulfiqar son of Abdul Sattar, and submit a compliance report.

JUDGE

asim/PA