

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

Criminal Appeal No.S- 110 of 1999

Date of Hearing: 16.08.2021
Date of Judgment: 16.08.2021

Appellant: Raza Muhammad s/o Lal Muhammad by caste Dalwani (present on bail) through Mr. Shakir Ali Talpur, Advocate.

The STATE: Through Mr. Nazar Muhammad Memon, Additional P.G.

J U D G M E N T

NAIMATULLAH PHULPOTO, J.- Appellant Raza Muhammad was tried by learned Sessions Judge, Tharparkar at Mithi in Sessions Case No.08/1999, arising out of Crime No.12/1998 registered at P.S. Diplo for offences u/s 279, 320 and 337-G PPC. After regular trial, vide its` judgment dated 20.08.1999, appellant was convicted for offence u/s 320 PPC and sentenced to suffer RI for five (05) years and to pay Diyat in the sum of Rs.100,000/- to the legal heirs of both the deceased at the ratio of Rs.50,000/- to each deceased. Rs.50,000/- to the legal heirs of deceased Ghulam s/o Arab and Rs.50,000/- to the legal heirs of deceased Haji Muhammad s/o Ahmed Rahimoon within a period of one year and in default, he shall be confined in jail until the amount of Diyat is paid. He was also convicted u/s 337-G PPC and sentenced to undergo RI for three (03) years and to pay Arsh to the extent of Rs.20,000/- each to injured Ghulam Nabi s/o Muhammad Raheem Rahimoon and to injured Muhammad Ibrahim s/o Muhammad Tayab Rahimoon and to pay Rs.2000/- to the injured PWs namely Ali Muhammad s/o Allah Rakhio and Rs.1000/- each as Arsh to the remaining injured PWs Missri s/o Ali Muhammad, Muhammad s/o Ali Muhammad, Mubarik s/o Soomar, Bhuro s/o Lalu, Khan Muhammad s/o Ali Muhammad, Bassar s/o Khamiso, Abdul Ghafoor s/o Gahano, Muhammad Hassan

s/o Muhammad Hashim, Mst. Ami w/o Allahdino, Muhammad Moosa s/o Mehar, Ahmed s/o Haji Punhoon and Muhammad Ishaque s/o Muhammad Raheem within a period of one year and in default to be retained in jail until the amount of Arsh to be paid to the injured. He was also convicted u/s 279 PPC to suffer RI for one (1) year. All the sentences were ordered to run concurrently.

2. Brief facts of the prosecution case as mentioned in the impugned judgment are as follows: "The FIR of the incident in the first instance, was lodged by Lakuro s/o Gul Muhammad, the driver of Dotson No.U-3693, on 27.07.1998, at 8-30 a.m, which was recorded by Incharge Head Constable PP Hathrai, in daily Roznamcha, who in this report has alleged that the incident had taken place accidentally due to break of tie-rod of his vehicle (Dotson). The incharge PP Hathrai, after recording the report in daily Roznamcha proceeded to the wardat where he saw the injured were already removed to Civil Hospital Badin. He had seen fourteen injured in the Badin hospital while five were referred to LMCH Hospital Hyderabad. He prepared mashirnama of injuries on the persons of injured in the presence of mashirs Ishaque and Muhammad Hashim. On the same day, he prepared mashirnama of wardat and securance of Dotson. He then proceeded to LMCH Hospital where he prepared mashirnama of injuries of injured Muhammad Ibrahim, Ghulam Nabi, Ghulam, Haji and Mst. Fatima. He recorded 161 Cr.P.C statements of witnesses Jani and Kamal. He then returned back to PP Hathrai where he registered second report of the same incident on 28.07.1998 at 1400 hours, lodged by Gul Muhammad s/o Wali Muhammad, by caste Rahimoon, alleging therein that he is Zamindar and residing near District Badin on his lands. On 26.07.1998, when he was available at `Guni` when he saw one Dotson arrived, in which his grand-son Nale-Mitho was travelling, who on seeing him stopped the vehicle and informed him that he today alongwith his brother`s wife Mst. Fatima, uncle Haji Muhammad, brother Ibrahim, grand-father Ahmad and Mst. Amna, his aunt and Mubarak, boarded the said Dotson from their village for getting treatment. In said Dotson from village Hathrai, Ghulam s/o Arab, Bhuro s/o Lahu, Basar s/o Khamiso Menghwar, Ghulam Nabi s/o Muhammad Rahim, Ishaque s/o Muhammad Rahim, Muhammad s/o Ali Muhammad, r/o village Tobho and other passengers were already available in Dotson. Driver of the Dotson was

Lakuro s/o Gul Muhammad Rahimoon, who after picking passengers from different villages reached on Pacca road, leading to Badin and when they reached near 'Bhanar' on Pacca road, one Bus arrived from behind in fast speed, which was being driven by driver Raza Muhammad Dilwani. The said driver tried to overtake the Dotson and in that process, the Bus collided with Dotson from behind with force, with a result, the Dotson turned into turtle and fell down under a ditch, with the result Muhammad Ibrahim, Ghulam Nabi, Ghulam, Haji Muhammad, Mst. Fatima, Mubarak, Mst. Amna, Ali Muhammad, Khan Muhammad, Ahmad, Ishaque, Muhammad, Bhuromal, Basarmal, Gul Hassan, Abdul Ghafoor Chang, Missri, Mooso Mallah and Muhammad Hassan sustained injuries. The Bus-driver left the Bus and ran away. They had taken the injured to Badin hospital. The complainant has further alleged that he accompanied the injured to Civil Hospital Badin where he got admitted the injured. The Hospital Authorities referred injured Ghulam, Ibrahim, Ghulam Nabi, Haji Muhammad & Mst. Fatima to LMCH Hospital, Hyderabad. He, Jani and Kamal had taken the injured towards LMCH Hospital Hyderabad where he left Kamal and Jani at Hyderabad and on the next day returned back to lodge report. He visited Badin hospital to see the injured and stayed night at Badin from where he left for village and came to know that his cousin Ghulam s/o Arib expired in Hyderabad hospital due to injuries sustained in the accident. He and others brought his dead body in village and then went to PP Hathrai to lodge report that the driver of Bus namely Raza Muhammad, by his rash and negligent driving hit his Bus with Dotson from his back and caused death of his cousin and injured the passengers."

3. I.O proceeded to Badin side to recover the Bus which caused the accident. On 29.07.1998, I.O arrested accused Raza Muhammad near Mirza Sugar Mill, he also secured Bus on the pointation of accused. Investigation was conducted by PW-14, surprisingly vehicle was not got examined from the relevant expert and challan was submitted against accused under the above referred Sections.

4. Trial Court framed charge against accused at Ex.2 to which he pleaded 'not guilty' and claimed trial. At the trial prosecution examined in all 22 witnesses who produced the relevant record. Thereafter prosecution side was closed.

5. Trial court recorded the statement of accused under section 342 Cr.P.C at Ex.36, in which all the incriminating pieces of evidence were put to accused which were denied by him. Appellant did not lead any evidence in his defence and declined to give statement on Oath. Trial court after hearing the learned counsel for the parties and on assessment of evidence convicted and sentenced the appellant, as stated above. Hence, this appeal is filed.

6. Facts of this case in detail as well as evidence find an elaborate mention in the judgment of trial Court, hence, I avoid repetition and duplication.

7. Mr. Shakir Ali Talpur, learned advocate for appellant mainly argued that first entry was lodged by complainant Lakuro at P.S Diplo. It was recorded by HC Mithumal, the same is produced before this court as Ex.5/A in which it is mentioned that the incident was accidental. It is further argued that no passenger sitting in the bus has been examined by prosecution at trial and all the PWs who were sitting in the Dotson have been examined but none has deposed that the speed of bus was rash and negligent. Lastly, it is submitted that trial court has failed to appreciate the evidence in settled principles of law. In support of his contentions, learned counsel has placed reliance upon the case of Malik Muhammad Noor Khan v. The State (2004 P.Cr.L.J 51).

8. Mr. Nazar Muhammad Memon, Additional Prosecutor General, Sindh argued that prosecution has proved its` case against the accused by cogent and confidence inspiring evidence and prayed for dismissal of this appeal.

9. I have carefully heard the learned counsel for the parties and scanned entire evidence available on record.

10. Admittedly, the appellant was driving bus at the time of incident which collided / hit to Dotson at back side which resulted death of two persons and injuries to the several persons travelling in the Dotson at the time of incident. Appellant was charged for rash and negligent driving but first information report / roznamcha entry No.98 as Ex.5/A showed that it was a road accident. The site plan revealed that appellant was driving bus on side but road was narrow which resulted the present

incident as bus hit to Dotson and passengers of Dotson sustained the injuries. No doubt, two persons have lost their lives but episode of the occurrence did not reflect to have been witnessed by the passengers who were sitting in the bus. Prosecution had examined the passengers who were sitting in the Dotson. They have categorically stated that speed of the bus was slow. PW-3 namely Gul Hassan has deposed in cross examination that speed of the bus was slow, the same evidence has been given by other PWs namely Ibrahim, Bhuro, Bassar, Lakuro. Even otherwise, driving of the vehicle at high speed could not be considered and taken as rash and negligent act because modern technology had provided for reasonable safeguard of stopping the same within no distance and time. The factum of rash and negligent driving is not proved by expression of these words or expression of `high speed` alone. The prosecution was supposed to show that when the accident took place, the condition of the traffic or the road was such, which necessitated a slower speed and that the bus was being driven by the appellant in an excessive speed keeping in view the quantum of traffic or the road. The record is also silent regarding the fact that bus was being driven in violation of the traffic rules, which led to the accident. It is very unfortunate that Investigation Officer has also failed to get the vehicle examined mechanically from some expert. The approximate speed at which the bus was being allegedly driven by appellant has not been fixed by any prosecution witness to lead to a reasonable conclusion that the same was on the higher side in view of the quantum of traffic and the nature of the road in question. So many other lacunas have also been pointed out in the prosecution case particularly first entry which was lodged by complainant at Police Station which shows that alleged incident took place because of the breaking of tire-rod of the bus. Unfortunately, the lacunas in the prosecution case which escaped attention of trial court while recording the impugned judgment. Hence, the instant appeal is allowed and conviction and sentences of appellant are set aside. He is acquitted of the charges levelled against him. Appellant is present on bail, his bail bond stands cancelled and surety is hereby discharged.

JUDGE

