

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No. S – 120 of 1997

Appellant : Muhammad Anwar
through Mr. Sajjad Ahmed Chandio, Advocate

Respondent : The State
through Ms. Sana Memon, Assistant Prosecutor
General, Sindh

Dates of hearing : 8th & 25th September, 2020

Date of judgment : _____

JUDGMENT

Omar Sial, J: Muhammad Anwar, the appellant, has impugned a judgment dated 10-12-1997 passed by the learned Sessions Judge, Tharparkar at Mithi. In terms of the said judgment, the appellant was convicted and sentenced as follows:

- (i) 3 years R.I. for an offence under section 320 P.P.C.
- (ii) 2 years R.I. for an offence under section 337-G P.P.C.
- (iii) 1 year for an offence under section 279 P.P.C.
- (iv) Diyat in the amount of Rs. 106,967 to the legal heirs of one dead.

2. The State through ASI Ghulam Rasool lodged F.I.R. No. 11 of 1992 on 9.5.1992 reporting an incident that had occurred the previous date i.e. on 8.5.1992 (according to the F.I.R.). However, in the body of the F.I.R. he recorded that he received a message from Dr. Sultan Ahmed that some injured had come to the hospital on 9-5-1992 at 8:30 a.m. When the ASI went to the hospital some of the injured told him that they were travelling in a truck driven fast by the appellant and on a slope the truck toppled. A case was registered against the appellant under sections 279, 320 and 337-G PPC . The appellant was brought to the police station by a “nek mard” on 11.5.1992.

3. Anwar pleaded not guilty to the charge and claimed trial. At trial the prosecution examined 6 witnesses. **Shoukat Ali (PW-1)**, **Mohammad Yousuf Nohri (PW-2)** and **Mohammad Yousuf Samejo (PW-3)** were three of the persons

injured in the accident. **Sono (PW-4)** was the witness to the various memos prepared by the police in this case. **ASI Ghulam Rasool (PW-5)** was the complainant of the case. **Dr. Mohammad Sultan (PW-6)** was the doctor who examined the injured and conducted the post mortem.

4. I have heard the learned counsel for the appellant as well as the learned APG. A number of notices were issued to the injured and the heirs of the deceased in the 23 years that this appeal has been pending but none effected an appearance. My observations are as follows.

5. Sono, the mashir to the memo of injuries sustained by injured Harji, Mohammad yousuf, Moti and Khamiso testified at trial that the police had not checked the injuries of these persons in his presence. He denied the contents of the mashirnama produced at trial. Sono further testified that the police had also not seen the injuries to his daughter, Ratni, as well as Padman, Piaro, Photo, Channo, Shoukat Ali and Mohammad Yousuf. Finally, he also testified that the police had obtained his left thumb impressions on the memos in the hospital and not on the spot as recorded in the said memos. No sanctity can be given to such memos.

6. Dr. Mohammad Sultan testified that the police had brought 12 injured and one dead for post mortem on 10-5-1992. I find this strange that the accident occurred on 8-5-1992 at 1700 hours but the injured and dead were brought to the hospital on 10-5-1992. This fact creates massive doubt in the prosecution case.

7. Four injured, namely, Moti, Khamiso, Jamo and Padman were given up by the prosecution. The reason assigned was that as they had been "won over" by the accused they were not prepared to support the case. Keeping the financial status and influence of the accused, as depicted through the record, I find this difficult to believe. It gives rise to the presumption contained in Article 129 illustration g that had these witnesses testified at trial they would have not supported the prosecution case.

8. One of the injured witnesses, namely, Mohammad Yousuf Samejo testified at trial that the appellant was not driving the truck in a rash and negligent manner but due to a slope in the road where the accident occurred, the axel of

the truck broke which resulted in the accident. The prosecution accepted the testimony of this witness. Another witness, Mohammad Yousuf Nohri testified that the axel of the truck broke causing the accident but it broke because of the high speed in which the truck was driven.

9. It was not explained as to how the witnesses got to know the name of the appellant. After the appellant was handed over to the police by a "nek mard", no identification parade was held for the injured to identify that the man arrested was indeed the man who was driving the vehicle at the time of the accident.

10. Another remarkable thing in this case is that the case was not investigated at all. There was no meaningful investigation. As a matter of fact there appears to be no investigation officer appointed in this case. The "nek mard" who brought the appellant to the police station was not examined; no record as to the ownership of the vehicle was produced at trial; the owner was not examined; no report of the motor vehicle inspector was produced at trial; no meaningful evidence came on record that the vehicle was being driven in a rash and negligent manner.

11. In view of the above observations, the prosecution case was not devoid of doubt. Accordingly, giving the benefit of doubt to the appellant, the appeal is allowed; he is acquitted of the charge. As he is on bail his bail bonds stand cancelled and surety discharged.

JUDGE