

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 209 of 2013

Appellant : Muhammad Arif
through Mr. Nisar Ahmed Chandio, Advocate

Respondent : The State
through Mr. Talib Ali Memon, A.P.G.

Date of hearing : 5th October, 2022

JUDGMENT

Omar Sial, J.: On 16.09.2006, a school van carrying children on it turned turtle resulting in injuries to several children and the death of one child named Mohammad Shah. The van was being driven by the appellant Mohammad Arif, who too sustained injuries in the accident. F.I.R. No. 281 of 2006 was registered under sections 337-G and 320 P.P.C. at the Saeedabad police station against Mohammad Arif on the complaint of the State acting through S.I. Khuda Baksh.

2. At trial the first prosecution witness who was examined was the complainant **S.I. Khuda Baksh**. The second witness was **P.C. Amjad Khan** who witnessed the inspection of the place of incident. **Qadir Shah** the third witness was one of the children in the van when the accident occurred. After the third witness was examined, the charge was amended on 20.03.2012. **Qadir Shah** was re-examined as PW-1. **Faisal Yaqoob**, another boy on the van was examined as the second prosecution witness. **Sakhi Shah**, the third prosecution witness, was ostensibly the owner of the ill-fated van. The fourth prosecution witness, **Mohammad Saleem**, was a friend of the brother of the deceased and had gone to the hospital after the accident. **Javed Ahmed**, an Inspector in the Motor Vehicle Department was examined as the fifth witness. The sixth witness, **Ali Abbas**, was another boy on the van when the accident happened. **Taj Muhammad**, the owner of the school where the children studied, was the seventh prosecution

witness. **Maham**, examined as the eighth witness, was also a child travelling on the van. **Nasir Shah**, the ninth witness, was a brother of Qadir Shah (PW-1). The tenth witness was **Dr. Qarar Ahmed Abbasi**, the doctor who examined the injured children as well as the dead child. The eleventh witness was **A.S.I. Mohammad Yousuf** who was the investigating officer of the case. In his section 342 Cr.P.C. statement the appellant accepted that he was driving the vehicle however the reason for the accident was not his driving rather the fact that there were stones on the road.

3. At the end of the trial the learned Sessions Judge, Karachi West on 27.07.2013 convicted and sentenced the appellant as follows:

- (i) For an offence under section 320 P.P.C. to 10 years in prison and to pay diyat of Rs. 3,155,542.
- (ii) For an offence under section 337-G P.P.C. to 3 years in prison.

4. I have heard the counsel for the appellant as well as the learned APG. A number of notices were issued and served to the legal heirs of the child who died, however, they expressed their inability to join proceedings. The respective arguments of the counsel are not being reproduced, for the sake of brevity, however are reflected in my observations and findings below.

5. The accident occurred on the date and time it was said to and that the accident resulted in injuries to some children and death of one, are facts which are not denied. What the parties are at odds is as to who was responsible for the accident. Three versions came on record. In this regard the most important witnesses were the children who were inside the van when the accident occurred. Qadir Shah, was one such child. According to him, the van was being driven by one of their colleagues, Faraz, when he drove over stones on a road resulting in the van turning turtle. Faisal Yaqoob, another child on the van, also repeated what Qadir Shah's testimony was. The allegation that Faraz was driving the vehicle was not believed by the learned trial court because there was no corroborating evidence, nor do I believe the version. Be that as it may, it is pertinent to note that it was the prosecution itself who produced these children as

witnesses and hence the impact of their testimony would nonetheless be that the prosecution evidence was diluted to some extent. PW-6 Ali Abbas said that the driver was driving fast and that there were stones on the road. Maham, did not know for certain what caused the accident. The investigating officer of the case PW-10 Mohammad Yousuf acknowledged at trial that none of the children of the van who recorded their statements before him i.e. Ali Abbas, Tariq Shah, Mohammad Saleem, Sakhi Shah, Rabia, Aisha, another Rabia, Maham, Mirsika, Faisal, Qadir Shah and another Faisal (some who were examined at trial, others not) had not said in their section 161 Cr.P.C. statements that the appellant was driving the van in a rash and negligent manner.

6. The second version came from prosecution witness PW-3 Sakhi Shah, who testified that the accident happened due to the fact that the tire rod of the van had snapped. This was negated by PW-5 Javed Ahmed, an Inspector in the Motor Vehicle Department, who stated that the van was in a fit condition. He however admitted that he had not specifically mentioned anything about the tire rod nor had he checked the proper functioning of the brakes. He could also not name anybody in whose presence he had inspected the vehicle. I find Javed Shah's testimony unreliable as on the one hand he said that the van was fit and in the next breath stated a long list of items which were damaged.

7. The third version came from the appellant himself. According to him, while he was driving towards the Northern Bypass, all of a sudden an uncarpeted patch of a road appeared with stones on it, which was the cause for the van to overturn. According to him, his speed was commensurate with the condition of the road on which he was driving and that the accident would not have occurred had he not encountered a sudden un-carpeted patch on the road. The learned counsel has argued that neither was the appellant driving in a rash or negligent manner nor did he have any criminal intent nor he knowledge that harm will be caused. According to him, it was an accident that occurred solely as a consequence

of stones suddenly appearing on the road. It was in a bid to take remedial steps by the appellant that the van overturned.

8. The law directs me that when there is more than one interpretation possible, the version that favors the accused must be given preference. I have also kept in mind that even if the appellant was driving his van at a fast speed, that would not necessarily mean that he was driving in a manner which was rash or that would tantamount to criminal negligence. There was perhaps evidence that the appellant was driving fast but not sufficient evidence gathered by the investigating officer to establish rash or negligent driving that would make him criminally liable. It appears that the unfortunate accident occurred for reasons beyond the control of the appellant.

9. The appeal is allowed and the appellant acquitted of the charge. He is on bail. His bail bond stand cancelled and surety discharged, which may be returned to its depositor upon identification.

JUDGE