

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Criminal Appeal No. 200 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGES
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1. For hearing of case
2. For hearing of MA No.2963/2019

04-05-2023

Mr. M.B. Shakeel, Advocate for appellant.
Mr. Muhammad Ejaz Rajput, Advocate for complainant.
Mr. Talib Ali Memon, A.P.G.

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Omar Sial, J: On 20.04.2016 an accident occurred in which a person by the name of Saeed Ahmed, was hit by a motorcycle while crossing a road. The driver of the motorcycle was the appellant Mohammad Zada. Unfortunately, Saeed Ahmed expired subsequently. F.I.R. No. 103 of 2016 was registered under section 337-G P.P.C. at the Site B police station.

2. The appellant pleaded not guilty and claimed trial. At trial the prosecution examined 3 witnesses. PW-1 Mohammad Imran was the son of the deceased and the person on whose complaint the F.I.R. was registered. PW-2 Mahmood-ul-Hassan was a witness to the inspection of the place of incident. PW-3 S.I. Jahangir Tanoli was the investigating officer of the case. In his section 342 Cr.P.C. statement the appellant professed innocence.

3. At the end of the trial, the learned 10th Additional Sessions Judge, Karachi West convicted the appellant for an offence under section 322 P.P.C. and sentenced him to the payment of diyat.

4. I have heard the learned counsels for the appellant and the complainant as well as the learned APG. My observations and findings are as follows.

5. Quite surprisingly, I do not find even an iota of evidence of rash and negligent driving by the appellant being the cause of death of Saeed Ahmed. The accident is not denied, however, having an accident does not

ipso facto mean that rash and negligent driving was the cause of the accident or the resulting death. It was not even proved that the appellant was at fault. PW-1 was not an eye witness. PW-2's testimony is not useful as he only supports the fact that the place of incident was examined. PW-3 in his entire testimony does not say anything which would impose criminal liability on the appellant apart from the fact that the appellant admitted his guilt, yet the investigation officer did not have a confessional statement recorded. Most reluctantly, the learned APG, after going through the evidence, also seems to be of the view that evidence at trial was not sufficient to convict the appellant for an offence under section 322 P.P.C. The learned counsel for the complainant was given several opportunities to show any piece of evidence upon which a conviction could be based, however, he too was unable to highlight any evidence but did submit that all that the complainant was interested in was receiving diyat.

6. The impugned judgment is set aside and the appellant acquitted of the charge. He is on bail. His bail bonds stand cancelled and surety discharged.

JUDGE