

No ID of bus driver

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Criminal Appeal No.S-- 78 of 2013.

Appellant: Jan Muhammad alias Faqero Sadhayo
through Mr.Anwar Ali Janvri, Advocate.

Respondent: The State through Mr.Ali Anwar Kandhro,
Addl: P.G.

Date of hearing: 18.01.2021.

Date of judgment: 22.01.2021

J U D G M E N T

Mohammad Karim Khan Agha -J:- Through this criminal appeal appellant Jan Muhammad alias Faeroe Sadhayo has assailed impugned judgment dated 26.10.2013 passed by learned IInd Additional Sessions Judge, Larkana in Sessions Case No.46 of 2010 re: State v. Jan Muhammad @ Faqero Sadhayo arising out of Crime No.64 of 2010 of P.S Dhamrah registered for an offence under Sections 279, 320, 427 PPC whereby the appellant has been convicted for offence under Section 320 PPC and sentenced to suffer R.I for ten years and pay diyat amount of Rs.14,65,163/- to the heirs of the victims and appellant is also convicted for offence under Section 427 PPC and sentenced to suffer R.I for 2 years and pay fine of Rs.200,000/-, in case of default in payment thereof he shall suffer six months more imprisonment and accused is also directed to pay compensation to the tune of Rs.500,000/= in terms of Section 544-A Cr.PC to the legal heirs of both the deceased namely Muhammad Ali and Zahoor Ahmed in equal amount, which shall be recovered as land revenue arrears and in case of default in payment thereof he shall undergo imprisonment for six months more. All the sentences awarded to the appellant are

directed to run concurrently and accused has been extended benefit of section 382(b) Cr.P.C.

2. The prosecution case as unfolded in the FIR is that:

"On behalf of state complaint is that, today I alongwith staff namely PC/2554 Mushtaq Ahmed, PC/2456 Allah Wadhayo, uniformed and armed with service weapons vide roznamcha entry No.13/14.12.2010 at 1815 hours in a Govt. Vehicle No.SP-6312 alongwith driver HC/3178 Nabi Bux departed for patrolling duty, at the same time PC/2656 Mohammad Ali and PC/2217 Zahoor Ahmed having G-3 rifles, uniformed on a private motorcycle No.SKL-4793 proceeded towards Hameer Wah Picket for duty. We proceeded through Larkana road and crossed Jara Wah bridge and parked our Govt. vehicle, alighted alongwith staff, in the meantime at 1845 hours PC/Mohammad Ali, who was driving motorcycle and PC/Zahoor Ahmed was sitting behind him on motorcycle, were going with normal speed, then one coach driver with high speed and roughly driving it came from Larkana side when PC/Ahmed Ali and PC/Zahoor Ahmed reached at Jara Wah bridge, on our sight coach driver hit the coach directly with motorcycle at wrong side, resultantly both PCs and motorcycle lied under the coach and they were dragged alongwith coach and coach was stopped at eastern path of road, we conveyed the message through control/wireless and rushed towards coach alongwith staff and saw PC/Mohammad Ali and PC/Zahoor Ahmed were fixed up into front side of coach, we got them out with help of above staff, passengers of coach and way passers, we saw to PC/Mohammad Ali, his left arm elbow and upper part of arm was broken and right leg knee was broken and had punctured wound at thigh and leg was broken, right elbow and upper part of arm were broken, being received hit on back side of head. It was bleeding and he was dead, we saw PC/Zahoor Ahmed, his right leg was broken at thigh part was punctured, was bleeding, had injuries on right hand fingers, was bleeding and he was dead. We looked at driving seat, no body was available at driving seat and driver was slipped away alongwith passengers, I and my staff had seen him properly on the head lights and bulbs glowing inside the coach, would be identified if seen again. We secured G-3 Rifle No.98049 of PC/Mohammad Ali, its body and butt were pressed and damaged, was taken in custody alongwith magazine, G-3 rifle No.30159 of PC/Zahoor Ahmed was taken and checked out, its body and butt were also pressed and damaged, there was a bag of bullets hanged with shoulder of PC/Zahoor Ahmed, we checked it was carrying four magazines contained bullets, out of which two magazines were broken and one was missing. The rifles and magazines were taken in custody, we saw motorcycle of PC/Mohammad Ali was crushed and damaged. We prepared

inquest report of dead body of PC/Zahoor Ahmed and sent for postmortem through PC/Mushtaq Ahmed. Dead body of PC/Mohammad Ali after preparing inquest report was sent through PC/Allah Wadhayo for postmortem. In the meantime higher officers and other staff of police station arrived there, in presence of HC/Qurban Ali and HC/Inayatullah we saw the registration number of coach, was JB-6886, on front side and rear side was written Haji Muzafar Coach. Thereafter we left HC/Qurban and HC/Inayatullah over coach and motorcycle at the place of incident, now I am here at police station lodging FIR on behalf of state that the escaped driver of coach No.JB-6886 by driving the coach roughly and speedily and coming at wrong side of the road hit the motorcycle of PC/Mohammad Ali and PC/Zahoor Ahmed, they were going for performing duty, by hitting them with coach committed their murder and caused loss to their motorcycle and rifle, I am complainant may investigation be held."

3. On conclusion of usual investigation, case was challaned under charge sheet showing name of present appellant as on bail. Charge was framed against the accused to which he pleaded not guilty and claimed trial.

4. To prove its case the prosecution examined 6 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statement of the accused was recorded u/s 342 Cr.PC wherein he denied all the allegations and claimed his innocence. The appellant did not examine himself on oath and did not call any DW in support of his defense case.

5. learned IIInd Additional Sessions Judge, Larkana after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 26.10.2013, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 26.10.2013 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for appellant has contended that this appeal revolves around the correct identification of the appellant as the driver of the coach when it crashed into two police officers on a motor bike whilst being recklessly driven and that the prosecution has not been able to prove beyond a reasonable doubt that the appellant was driving the bus when the crash occurred and as such based on the benefit of the doubt the appellant should be acquitted of the charge.

8. On the other hand learned Addl. Prosecutor General has fully supported the impugned judgment and contended that the three police eye witnesses all correctly identified the appellant as the driver of the bus in court who they saw at the time of the incident and as such the prosecution has proved beyond a reasonable doubt that the appellant was the driver of the coach when it was being recklessly driven and crashed into the motorbike which the police officers were riding which caused their death and as such the conviction should be upheld and the appeal dismissed.

9. I have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel, the impugned judgment with their able assistance and have considered the relevant law.

10. Based on my reassessment of the evidence of the PW's, especially the eye witnesses, other police PW's, MLO and post mortem report, recovery of damaged G3 rifles, recovery of damaged motor bike and damaged coach, blood stained earth at the scene which lead to a positive chemical report I find that the prosecution has proved beyond a reasonable doubt that on 14.12.2010 at about 1845 hours a coach bearing No.JB-6886 which was being recklessly driven crashed into a motorbike being ridden by PC's Zahoor Ahmed and Muhammed Ali which crash lead to the death of both of the police officers whilst the coach was proceeding from Larkana to Rotodero near Jara Wah.

11. The only question left before me therefore is whether the appellant has been correctly identified as the person who drove the coach recklessly which crashed into the two police officers on their motorbike which lead to their death on that day and time.

12. Recklessly and dangerously driven buses, coaches, lorries, trucks and other vehicles way beyond the safe speed limit which have crashed into other vehicles causing a needless loss of precious lives and injuries is a curse which has become a routine on the roads in Sindh especially high ways and even throughout Pakistan where due to such recklessness so many families have been traumatized and made to suffer due to their loved ones being killed in such a senseless and unnecessary fashion as reported daily in the media and brings both anger and sorrow to all our hearts so much so that in many case where the driver is captured by the public he is often badly beaten or even killed. That said, in a legal case I must be guided by the law and the law only and not my feelings and emotions and be satisfied that the prosecution has proved its case beyond a reasonable doubt in such cases of death being caused by reckless driving.

13. After my reassessment of the evidence I find that the prosecution has **NOT** proved beyond a reasonable doubt that the appellant has been correctly identified as the driver of the coach on the fateful night which whilst being driven recklessly crashed into the two police men riding on a motorbike and caused their death for the following reasons;

(a) The FIR in respect of the incident was lodged within two hours of the incident and such prompt filing of the FIR rules out the possibility of the complainant concocting a false case against the appellant especially as the complainant did not have any enmity with the appellant however the FIR specifically states that the bus driver had slipped away after the accident and was therefore not arrested on the spot and was unnamed.

(b) Admittedly it is stated in the FIR that the complainant and the staff had seen the driver properly on the headlights and bulbs glowing inside the coach however none of these bulbs were recovered and one eye witness claims that the head lights of the coach were smashed.



(c) That none of the eye witnesses knew or had seen the appellant before.

(d) That none of the eye witnesses gave any hulia of the appellant in their S.161 Cr.PC statements or even in the FIR.

(e) That at 18.45 in the month of December it would have been dark and potentially foggy and there is no indication in the evidence as to how far away the police eye witnesses were when they allegedly saw the driver of the coach which could have been any thing up to 50 feet away or even further. That the police eye witnesses only got a fleeting glimpse at the driver as quite naturally they were busy assisting their injured/dead colleagues who were trapped under the bus and arranging to send them to hospital.

(f) That no identification parade was held to identify the appellant as the person who was driving the coach at the time of the crash. Identification in court has been deprecated by the Supreme Court on numerous occasions.

(g) That no passenger on the coach at the time of the crash was called to identify the driver and it appears that no attempt was even made to trace out the passengers for this purpose.

(h) That no PW was brought to give evidence that the appellant worked for that particular coach company and that he was driving the coach at that date and time. Likewise no other evidence was exhibited to show that the appellant was driving the coach at the time of the crash e.g. log book, company record or any other work chart showing that the appellant was assigned to drive that particular coach at that particular time.

(i) That the appellant was arrested on spy information but this does not prove that he was the driver of the coach as the spy could have picked out any person and assigned him that role.

(j) That admittedly the appellant did not give evidence on oath or call any DW in support of his defense case and simply claimed his innocence in his S.342 Cr.PC statement but this lack of defense does not relieve the prosecution of its burden to prove the case against the accused beyond a reasonable doubt.

(k) Based on the discussion above it cannot be said with any degree of certainty that the appellant was actually driving the coach on the fateful night keeping in view that mistaken identity is one of the main causes of miscarriages of justice and that identification evidence must be scrutinized with a great deal of care and caution.

14. Thus, based on the above discussion since in my view the prosecution has not been able to prove beyond a reasonable doubt that the appellant was the person who drove the coach on the fateful night of the

crash I hereby acquit him of the charge, the impugned judgment is set aside and the appellant who is on bail his bail bonds stand discharged.

15. This appeal stands disposed of in the above terms.