

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Revision No. 38/2019

Muhammad Shafique etc.

Vs.

The State etc.

PETITIONER BY: Rana Kashif Saleem Arfa
RESPONDENT NO.2 BY: Mr. Muhammad Shakeel Abbasi.
STATE BY: Barrister Ayesha Siddique Khan,
State Counsel
DATE OF HEARING: 12.09.2019

MOHSIN AKHTAR KAYANI J. Through this Criminal Revision petition, the petitioners have assailed the judgment dated 06.03.2019, passed by learned Judicial Magistrate, Section 30 (West), Islamabad and judgment dated 09.4.2019, passed by learned Additional Sessions Judge (East), Islamabad, whereby petitioners have been convicted by the Courts below for causing Qatl-e-Khata of deceased Ahmad Ali by causing injuries in road accident. The petitioners have been convicted U/s 319 PPC and sentenced to five (05) years each R.I and they shall pay Diyat amount as referred in Section 323 PPC to the legal heirs of the deceased. The said sentence awarded to the petitioners has been maintained by the Appellate Court of learned Additional Sessions Judge (East), Islamabad.

2. Learned counsel for the petitioners contends that petitioners have been nominated as accused in case F.I.R No. 139/2011 dated 27.03.2011, U/s 279/320 PPC, P.S Koral, Islamabad and later on, the complainant Tahira Sadiq has filed a private complaint and the learned Trial Court while relying upon two sets of evidence recorded as PWs and

CWs, convicted the petitioners without adhering to the legal principles. It was next contended that there is no consistency in the evidence of the witnesses, even no eye-witness was available on record to justify the version of the prosecution. It was further contended that the Bus bearing No. RIR-5859 allegedly used in the occurrence was not produced before the Court, therefore, conviction is not sustainable in the eye of law. It has further been contended that the only witness of occurrence Zeeshan Anwar (CW-2) produced by the complainant side in this case, has given three (03) different statements with two different versions of the same case, therefore, his testimony cannot be believed as true.

3. On the other hand, learned counsel for respondent No.2 contends that both the petitioners have rightly been identified with their specific role of pushing the deceased Ahmad Ali from the Bus, who died due to the act of the petitioners, who are Driver and Conductor of Bus bearing No. RIR-5859 from where the deceased was pushed out on the road. It has further been contended that the Investigation Officer has dishonestly investigated the matter, which persuaded the complainant i.e. mother of the deceased, who filed a private complaint and has not relied upon the evidence of the prosecution witnesses of the said occurrence.

4. Arguments heard, record perused.

5. From the perusal of record, it has been observed that the petitioners Muhammad Shafique, who was a Driver of the Bus bearing No. RIR-5859 and Saeen Zahoor (Petitioner No.2), who was a Conductor of the said Bus, have been convicted by the learned Trial Court and sentenced to five years R.I each alongwith payment of Diyat in terms of Section 320, 279 PPC in case F.I.R No. 139/2011 dated 27.03.2011, U/s 279/320 PPC, P.S Koral, Islamabad. The sentence awarded by the learned Judicial Magistrate through impugned judgment dated

06.03.2019, was upheld by the Appellate Court vide judgment dated 09.04.2019, passed by learned Additional Sessions Judge (East), Islamabad. After submission of challan, the complainant filed the private complaint Ex.C7 against the petitioners mainly on the ground that the Investigation Officer has dishonestly investigated the matter and recorded different statements of the eye-witness in connivance with the accused side. The prosecution in order to prove the case has relied upon the testimony of Complainant (CW-1, Tahira Sadiq), CW-2 (Zeeshan Anwar), CW-3, Dr. Sharjeel CMO, PIMS. Therefore, the most crucial evidence on record is testimony of Zeeshan Anwar, CW-2, who stated before the Court that on 22.03.2011, he was coming from school after his examination and while sitting in Bus bearing No. RIR-5859, another student Ahmed Ali (deceased) was also sitting on the bus, who requested the Conductor to stop the bus as he wanted to get-off the bus near Khanna Pul Stop, but the Conductor refused to acknowledge his request, then Ahmad Ali requested the Driver to stop the bus, whereupon, Driver, the present petitioner No.1 asked the Conductor to push him out of the bus, resultantly, the Conductor has pushed the Ahmad Ali (deceased), who fell down on the road and came beneath the tyres of the bus and died on spot. Zeeshan Anwar (CW-2) stated that the incident took place at about 11:30 a.m, the Driver and Conductor fled away from the scene. During the course of cross-examination, CW-2 Zeeshan Anwar acknowledged that he left the school after March, 2011 and he recorded his statement before the police, which was recorded on spot and when he boarded the bus, Ahmad Ali was sitting on the seat next to the door. He also acknowledges that his statement was recorded U/s 161 Cr.P.C before police as Ex.D2 and he confirms that he has recorded his statement before the Court on 10.01.2013 and met with Tahira Sadiq (Complainant) after 25 days of the occurrence. The other star witness of the case was Dr. Sharjeel, who appeared as

CW-2, has examined the dead body of the deceased on 22.03.2011 at about 01:18 p.m, who stated that he has seen the injuries on the face and head of the deceased and has declared the person as dead, however, during the cross-examination, he had denied the factum of injuries on the head and face of the deceased rather took different stance.

6. The record further reflects that Dr. Sharjeel also appeared in the earlier proceedings, in which he has referred the Outdoor Ticket Ex.C, in which he has referred the Multiple facial, fractures plus facial deformity, but he subsequently changed his stance while appearing in post remand proceedings from his earlier statement recorded in the Court. I have gone through the Ex.C, in which certain tempering is visible.

7. The entire evidence recorded by the Courts below referred the fact that deceased Ahmad Ali was a student who died in a road accident, when Bus bearing No. RIR-5859, driven by Driver Muhammad Shafique, petitioner No.1, run over the head and face of the deceased on 22.03.2011. Zeeshan Anwar, CW-2 is the only witness, whose three different statements are on record in shape of statement recorded by the Court, statement U/s 161 Cr.P.C Ex.DA and third statement C6. As per statement of Zeeshan Anwar, CW-2, the Conductor Saeen Zahoor has pushed the deceased Ahmad Ali out of the bus on the direction of the Driver as the Driver was not willing to stop the bus near Khanna Pul stop despite the request of the deceased. Resultantly, the bus run-over the deceased Ahmad Ali.

8. The prosecution had not produced the Investigation Officer of this case nor he was summoned in Court, Dr. Sharjeel, CMO, PIMS has examined the dead body of the deceased in the PIMS while he was on his official duty through Ex.C1 and has confirmed the crushing head injury, lacerated wound on the left side of scalp bone deep as well as

facial deformity with palpable facial fracture, but after post remand proceedings, he has recorded his version as CW-3, in which he has had denied his stance in the cross-examination in the following words:-

"یہ درست ہے کہ میرے پاس نقش پولیس لے کر آئی تھی اور پولیس نے بتایا تھا کہ روڈ ایکسیڈنٹ کا معاملہ ہے۔ یہ درست ہے کہ متوفی کے ہائیں طرف سر اور منہ پر زخم تھے۔ یہ درست ہے کہ متوفی کے سر اور منہ کی دائیں طرف کوئی زخم یا نشان نہ تھا۔ یہ درست ہے کہ اگر سر کے اوپر سے گاڑی کا ٹائر گزرے تو سر بالکل مسخ ہو جاتا ہے اور قابل شناخت نہیں رہتا۔ یہ درست ہے کہ اگر گاڑی کا ٹائر متوفی احمد علی کے سر کے اوپر سے گزرتا تو اس کے نقش ناقابل شناخت ہوتی۔ یہ درست ہے کہ متوفی احمد علی کے سر کے اوپر سے گاڑی کا ٹائر نہ گزرا ہے۔ یہ درست ہے کہ زخموں کی نوعیت کسی اور طرح کی ہے۔ ٹائر گزرنے کی وجہ سے نہ۔ یہ درست ہے کہ مورخہ 15-9-2014 کو بیان ریکارڈ کیا تھا جس میں میرے میڈیکل ریکارڈ بہت متوفی احمد علی کو جج صاحب نے Ex-C1/A اور میرے دستخطوں کو بطور Ex-C2/A اپنی مسل کا حصہ بنایا تھا۔ یہ درست ہے کہ اگر کوئی شخص گاڑی کی چھت سے ہائیں سائیڈ پر گرے تو بھی متوفی احمد علی والی انجری وقوع پذیر ہو سکتی ہے۔"

9. The evidence recorded by the Courts below discussed above left no other opinion that the deceased Ahmad Ali died in the road accident when bus bearing No. RIR-5859 run over the face and head of the deceased, however, the only question left to be answered is as to whether the Conductor Saeen Zahoor has pushed the deceased out of the bus or not? The consistent stance of Zeeshan Anwar (CW-2) has not been refuted in any manner, in which he in categorical terms stated that the deceased was pushed out by Saeen Zahoor Conductor of the bus, hence, the death was caused due to the act of Saeen Zahoor/petitioner No.2.

10. I have gone through the statement U/s 342 Cr.P.C, whereby both the petitioners have taken the stance that deceased got injured due to his own negligence and carelessness, they relied upon their defence version on the strength of statement of CW-3 Dr. Sharjeel, CMO, PIMS while answering question No. 2. Similarly, Muhammad Shafique, petitioner No.1 has acknowledged that he has taken the Bus bearing No. RIR-5859 on Superdari.

11. I have gone through the findings of the learned trial Court in its judgment dated 09.03.2019 and considered it necessary to reproduce

relevant portion of the same to untangle the situation, which is as under:

"32. The accused persons are charge sheeted U/S 316 PPC, which is the punishment of Qatl Shibh-i-Amd, defined in sec 315 PPC, and reproduced for convenience,

"Whoever, with intent to cause harm to the body or mind of any person causes the death of that or of any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death is said to commit Qatl Shibh-i-Amd."

33. Offence of Qatl-i-Khata, is defined in sec 218 PPC and punishable U/S 319 PPC. Sec PPC, is herein reproduced for convenience;

"Whoever, without any intention to cause the death of, or cause harm to person, causes death of such person, either by mistake of act or by mistake of fact, is said to commit Qatl-i-Khata."

34. As discussed above, the accused persons, (Conductor and Driver), did not stop the bus, to de board the deceased, from the bus, on his destination. The accused conductor push the deceased, from the bus, as a result of which deceased died. While going through the entire stuff or record, I come to the conclusion that, the accused, not intended to cause, harm to the body or mind of deceased. Nevertheless, their act, is rash, negligent and careless, which, shall fall within the meaning of Qatl-i-Khata."

The above referred findings of the learned Trial Court, if seen in the light of charge framed on 17.11.2016, the petitioners have been charged with Qatl-e-Shabh-e-Amd, punishable under Section 316 PPC to which the petitioners pleaded not guilty. Whereas, the learned Trial Court convicted the petitioners under Section 319 PPC for Qatl-e-Khata for their rash and negligent act other than rash and negligent driving, which runs contrary to the charge and as such, the learned Trial Court has not seen the charge while convicting the petitioners in the final judgment. Similarly, the learned first Appellate Court has also upheld the same in terms of Section 320/279 PPC, which is not referred in the charge framed by the learned Trial Court, therefore, both the Courts have not dealt the proposition in accordance with law and applied different provisions of PPC, which were not charged against the petitioners. There is a mark difference between Qatl-e-Shabh-e-Amd under Section 315 PPC punishable under Section 316 PPC and Qatl-e-

Khata in terms of Section 318 punishable under Section 319 PPC, hence both the Courts below have committed illegality while concluding the matter.

12. The entire evidence brought on record by the State as well as by the complainant through his private complaint discloses the negligent conduct of the Conductor, who has caused harm to the deceased by pushing him out of moving bus, which ended on loss of person. Although, in ordinary course of nature such act does not ends with the death of a person, but in this peculiar case Ahmad Ali/deceased died.

13. In order to resolve the controversy, it is necessary to reproduce the relevant provisions of Qatl-e-Shabh-e-Amd and Qatl-e-Khata side by side, which are as under:

<p>Section 315. Qatl Shibh-i-Amd <i>Whoever, with intent to cause harm to the body or mind of any person, causes the death of that or of any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death is said to commit qatl shibh-i-amd.</i></p>	<p>Section 318. Qatl-e-Khata <i>Whoever, without any intention to cause death of, or cause harm to, a person causes death of such person, either by mistake of act or by mistake of fact, is said to commit qatl-i-khata.</i></p>
<p>Section 316. Punishment for Qatl shibh-i-amd: <i>Whoever commits qatl shibh-i-amd shall be liable to diyat and may also be punished with imprisonment of either description for a term which may extend to twenty-five years as ta'zir.</i></p>	<p>Section 319. Punishment for qatl-i-khata: <i>Whoever commits qatl-i-khata shall be liable to diyat: Provided that, where qatl-i-khata is committed by a rash or negligent act, other than rash or negligent driving, the offender may, in addition to diyat, also be punished with imprisonment of either description for a term which may extend to five years as ta'zir.</i></p>

By placing the above referred provisions in juxtaposition, I have no hesitation to hold that the act of Petitioner No.2 namely Saeen

Zahoor/Conductor, who pushed Ahmad Ali/deceased from a moving bus is considered to be the act with intent to cause harm without having knowledge that in ordinary course of nature such act would not cause death, however Ahmad Ali/deceased died because of such fall from the bus, therefore, Qatl-e-Shabh-e-Amd is applicable in terms of Section 315 PPC.

14. On the other hand, there are two different versions on the part of CW-3 Dr. Sharjeel/CMO, who in the first round of proceedings stated that bus bearing No.RIR-5859 run over the face and head of the deceased, while in the post remand proceedings the said has changed the entire medical evidence by stating that:

"یہ درست ہے کہ متوفی احمد علی کے سر کے اوپر سے نہ گزرا ہے۔ یہ درست ہے کہ زخموں کی نوبت کسی اور طرح کی ہے۔ ٹائر گزرنے کی وجہ سے نہ ہے۔"

Such divergent stances reflect serious misconduct on the part of CW-3 Dr. Sharjeel/CMO as also noticed by both the Courts below in the impugned judgments. Even otherwise, such contradictions with the record Exh.C1 are not consumable and the misconduct of the said doctor has to be dealt by the concerned authority of PIMS, Ministry of Health as well as by the PMDC under the relevant laws, therefore, copy of his statements Exh.C1 alongwith copy of this judgment be transmitted to the Executive Director PIMS to take appropriate action against CW-3 Dr. Sharjeel and matter may also be transmitted to the PMDC Disciplinary Committee under the relevant regulations. The Executive Director PIMS is further directed not to engage the services of CW-3 Dr. Sharjeel as CMO in future.

15. Keeping in view the above background and the circumstances, I am of the view that both the Courts below have not exercised their jurisdiction in accordance with law, rather misapplied the law as they have overlooked the charge framed under Sections 315 & 316 against petitioners for Qatl-e-Shabh-e-Amd, but while writing down the

judgment of conviction against the petitioners entered into arena of Qatl-e-Khata, which is not the case in actuality. This Court while exercising the powers U/s 435 read with 439 Cr.P.C. has limited scope to interfere in the concurrent findings of the Courts below, except when a judgment suffers from illegality or when gross miscarriage of justice is to be prevented.

16. The abovementioned illegality committed by both the Courts below is not rectifiable in revisional jurisdiction before this Court as both the Courts below have not applied the correct law in accordance with charge framed and convicted the petitioners in other provisions, which were not part of the charge, even they have not converted the charge from Qatl-e-Shabh-e-Amd to Qatl-e-Khata, therefore, the conviction of petitioners is hereby **SET-ASIDE** and matter is **REMANDED** to the learned Trial Court to rewrite the judgment after hearing the parties without any further evidence, within period of 30 days of receipt of copy of this judgment.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court 03 Oct, 2019.

JUDGE

RAMZAN