

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

Crl. Rev. No.08 of 2020

Abid Rehman

Versus

Farooq Umar Bhoja and others

Petitioner by : Mr. Omer Farouk Adam, ASC.

Respondents by : M/s Adil Aziz Qazi and Syed Wasif
Hussain Kazmi, Advocates for respondent
No.1.
Mr. Sajid-ur-Rehman Mashwani, Advocate
for respondents 2 & 3.
Mr. Babar Mumtaz, Advocate for
respondents 4,5,6,8,10,12
Mr. Nabeel Javed Kahloon, Advocate for
respondent No.7.
Mr. Sohail Khursheed State Counsel with
Fakhar Abbas SI.

Date of hearing: 08.02.2022

ARBAB MUHAMMAD TAHIR, J: The instant revision petition is arising out of order dated 12.11.2019, passed by the learned Additional Sessions Judge-IV, Islamabad (East) whereby it is held that, *prima facie*, offence under Section 322 PPC is attracted instead of Section 302 PPC.

2. The relevant facts are that on the fateful day (20.04.2012), a passenger flight, B4-213-Bhoja crashed within the territorial limits of Police Station Koral, Islamabad. The passengers on board including the crew, 127 in numbers, have lost their lives. May Allah S.W.T. rest the departed souls in eternal peace? The sad incident led to registration of two FIRs i.e. FIR No.138 registered on the same day i.e. 20.04.2012 under Sections 302, 287, 286, 427, 120-B and 109 PPC, Police Station Koral, Islamabad, and the other under the directions of learned Ex-officio Justice of Peace bearing

No. 278, on 11.11.2017 under Sections 302, 427, 120-B, 286, 287 and 109 PPC at the same Police Station.

3. After due investigation, reports in terms of Section 173 Cr.P.C. were submitted for trial where before framing the charge, the learned Trial Court opted to decide the question with respect to the applicability of section 302 PPC. After hearing the arguments, the learned Trial Court via order dated 12.11.2019 (impugned herein), opined that, prima facie, charge against the accused is made out, about the offence defined under Section 321 PPC as "Qatl-bis-sabab", punishable under Section 322 PPC. Being dissatisfied with the opinion of the learned trial court, the complainant of second FIR namely Abid Rehman filed the instant criminal revision petition.

4. Learned counsel for the parties addressed lengthy arguments. From the petitioner's side, written arguments were tendered while respondent No. 7 (Capt. Nadeem Khan Yousafzai), former Director General, Pakistan Civil Aviation Authority also filed written synopsis.

5. The learned counsel for the petitioner argued that the learned Magistrate after submission of challan by the investigation officer under section 190 Cr.P.C and on examination of the record, found the case tri-able by the Court of Sessions and after due application of mind, sent it to the learned Sessions Judge concerned for trial; that after determining the illegalities committed by the respondents, there was no justification to send the case back to the Magistrate under Section 30 Cr.P.C for its trial under Section 322 PPC; that the incident, on the face of it, attracts section 302 PPC, as it being falling within the third part of Section 300 PPC which comprises "*the knowledge that his act is so imminently dangerous that it must in all probability caused death*"; that to proceed with the trial under Section 302 PPC does not restrict the court to inflict lesser punishment, if on the basis of evidence recorded, an offence other than 302 PPC having less punishment is made out and the course can be adopted in terms of

Section 238 (2) Cr.P.C. The learned counsel was of the view that a Magistrate is not bestowed with such authority to award conviction in an offence, not tri-able by it.

6. In addition, the learned counsel surveyed the criminal prosecution regarding plane crash incident in foreign jurisdiction i.e. "British Airways & Inex Adria Aviopromet (1976 Lufthansa DC-9 & Trident 3B), Kuybyshev Airport, Russia (1986 Tupolev TU-134A), Tunisian Tuniter Italy (2005Tuninter ATR 72), Garuda Indonesia (B737-400), Linate Airport disaster Italy 2001, and Shoreham Air Crash. The learned counsel asserted that in identical eventualities, the accused were charged for offence of negligence and manslaughter.

7. The learned counsel also placed reliance upon case law reported as **1985 SCMR 1314, 1981 SCMR 267, 2007 MLD 935 (Karachi), 2002 YLR 234 and 2001 YLR 269.**

8. On the other hand, the learned counsels representing the respondents/accused supported the impugned order by addressing respective arguments, circumference of which is to the effect that pursuant to the trial under criminal charge, only the liability of negligence is to be determined, while the element of ill-intention, in the attending circumstances of the case including the report of the learned Commission, is not made out.

9. The learned counsel for respondent No.7 while referring written arguments contended that the said respondent had never been a part of any sale, purchase, certification and training of the airline crew and the aircraft; that he had never been at the roll of the Aviation Authority at the time of incident; that no offence is made out against the said respondent and that in none of the investigations, he was declared as an accused.

10. Heard, record examined.

11. The underlying principle respecting judicious dispensation of a *lis* is that the opinion should be based on valid reasons and the reasons should be rational with the facts and the attending

circumstances, being made basis to form said opinion. An opinion without reasons with reference to the facts, in estimation of this Court, cannot be termed to be a judicious dispensation which, of course, effects right of either party. The very structure of any opinion should flow from the facts and the material, made basis to draw said opinion.

12. It is significant to note that the learned Trial Court after mentioning the findings of the Judicial Commission in its report dated 16.09.2014, rendered its opinion in following terms:-

“So far as the offence under Section 302 PPC is concerned, keeping in view the above findings of the Hon’ble Judicial Commission, report under Section 173 Cr.P.C. and other documents and statements filed by the prosecution, the Court is of the opinion that prima facie charge against the accused is made out about the offence defined under Section 321 PPC as Qatl-bis-Sabab, which is punishable under Section 322 PPC. The above said offence is triable by Magistrate Section-30, hence, parties are directed to appear before the Court of Magistrate Section-30 on 28.11.2019.”

13. It is obvious from the order that no reasons whatsoever have been given to form opinion with regard to application of Section 321 PPC instead of Section 302 PPC, inserted by the prosecution in report under Section 173 Cr.P.C. There is no mention as to how the findings of the Judicial Commission, report under Section 173 Cr.P.C. or for that matter, the statements of the witnesses and other documents led to draw the above opinion with regard to application of Section 321 PPC instead of Section 302 PPC.

14. On the other hand, findings of the Judicial Commission reflect illegality on the part of the Airline, Civil Aviation Authority, the Captain and the First Officer. For instance, the Report held the Airline responsible for using the Aircraft for passengers operation without having any appropriate airworthiness certificate, which resulted in putting lives and property at peril, in addition, it was also mentioned that the Airline was responsible for continuing its flight operation beyond 20.04.2012, the day of crash when it did not fulfill the requirement of A.O.C. The Civil Aviation Authority

was held responsible in failure to provide adequate monitoring and Supervision of Training need Assessment and Training Syllabi of the Airline. In addition, the Captain was held responsible to continue to approach for runway despite having correctly assessed presence of active thunderstorm in Aero-plane flight path while First Officer was held responsible in failing to act boldly to take over the control and execute **a go around**, when he found the action of Captain as slackness that led to put at risk the safety of flights.

15. Adverting to the application of Section 302 PPC it is incumbent to go through Section 300 PPC, which reads as under:-

“300. Qatl-e-amd.—Whoever, with the intention of causing death **or** with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, **or** with the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-i-amd”. [Emphasis added]

16. It is, therefore, indispensable while forming opinion with respect to non-application of Section 302 PPC, that the learned Trial Court should advance reasons viz-a-viz the material put forth in support of the allegations by the prosecution particularly the report of the Commission wherein the Airline held responsible for putting lives and property of the passengers at peril.

17. It had been the consistent view of the Hon’ble Apex Court that for judicial dispensation, the points for determination, decision thereupon and the reasons for decision are essential having binding status. The trace of the principle is ancient. In the case of **“Ch. Abdul Kabeer v. Mian Abdul Wahid & others, (1968 SCMR 464)**, 3 Member Bench of the Hon’ble apex Court headed by C.J. A.R. Cornelius, graciously observed “it may, however, be pointed out that from judgment of single judge of the High Court a Letter Patent Appeal could be entertained and when important questions of law are in issue it would be all the more necessary that the Appellate Court must state points for determination, the decision thereon and the reasons for the decision.”

18. Similarly, in the decision rendered by the 5 member Bench of the Hon'ble apex Court headed by C.J. S.A. Rahman, in the case of **Mollah Ejahar Ali v. Government of East Pakistan and others** (PLD 1970 S.C. 173), it was held that:-

"To deal with the second contention first, there is no doubt that the High Court's order which is unfortunately perfunctory gives the impression of a hasty off-hand decision which, although found to be correct in its result, is most deficient in its content. If a summary order of rejection can be made in such terms, there is no reason why a similar order of acceptance saying "there is considerable in the substance in the petition which is accepted", should not be equally blessed. This will reduce the whole judicial process to authoritarian decree without the need for logic and reasoning which have always been the traditional pillars of judicial pronouncement investing them with their primary excellence of propriety and judicial balance. Litigants who bring their disputes to the law Courts with the incidental hardship and expenses involved do expect a patient and judicious treatment of their cases and their determination by proper orders. A judicial order must be a speaking order manifesting by itself that the Court has applied its mind to the resolution of the issues involve for their proper adjudication. The ultimate result may be reached by a laborious efforts, but if the final order does not bear an imprint of that efforts and on the contrary discloses arbitrariness of the thought and action, the feeling with the painful results, that justice has niether been done nor seems to have been done is inescapable. When the order of a lower Court contains no reasons, the appellate Court is deprived of the benefit of the views of the lower Court and is unable to appreciate the processes by which the decision had reached."

19. In the case of **Raja Muhammad Afzal v. Ch. Muhammad Altaf Hussain and others** (1986 SCMR 1736), 5 member Bench held that *the detailed reasons necessarily include the law and the grounds on which the decision is founded, apart from the reasons appearing from the case set out by the parties*".

20. As per the ratio set in the case of Hyderabad Development Authority through **"M.D. Civic Centre Hyderabad v Abdul Majeed & other** (PLD 2002 S.C. 84), it was held that *"judicial pronouncement (judgment) by a Judicial Officer should be based on the evidence/material available on record and the reasons must be outcome of the evidence available on record and on the basis of such reasons conclusion should be drawn and if the order lacks of these ingredients it cannot be termed to be a judicial verdict (judgment) in stricto sensu and at the best such pronouncement can be termed to*

be an administrative order incapable to settle controversy judicially between the parties."

21. In an identical situation, in the case of **Government of Sindh through Land Acquisition Officer & others v. Muhammad Juman & another** (2009 SCMR 1407), it was held that :-

"5. As regards merits of the case. We upon deeper examination of the impugned judgment find that the learned High Court after narrating the facts of the case and recording respective contentions raised by learned counsel of both the parties without assigning any reasons abruptly dismissed appellants' appeal, inasmuch as, no findings were rendered by the learned Single Judge. This Court in the cases reported as Gouranga Mohan Sikdar v. The Controller of Import and Export PLD 1970 SC 158 and Mollah Ejahar Ali v. Government of East Pakistan PLD 1970 SC 173, held that the Court must pass a speaking judicial order manifesting by itself that the Court applied its mind to the issues involved in the case. Even section 24-A of the General Clauses Act requires an executive authority to pass the order reasonably, fairly, justly and by rendering reasons. Learned counsel for the respondents, when confronted with the afore-noted legal position, has nothing to say much. Additionally, we find that the learned High Court while deciding the matter neither referred to evidence nor any other material available on record justifying dismissal of appellant's appeal. Although learned counsel for the parties have raised other contentions, yet we have restrained ourselves from giving any findings on the said contentions, lest it may prejudice cause of any of the parties in post remand proceedings. However, the parties are at liberty to raise the pleas available to them under the law before the learned High Court."

22. In addition, guidance can also be taken from the dictum reported as **"Iqbal Ahmad v. The State** (2013 SCMR 271), **The State through Mehmood Ahmad Butt v. Sharaf ud Din Sheikh and another** (2013 SCMR 565), **M/S MFMY Industries Limited & others v. Federation of Pakistan through Ministry of Commerce and others** (2015 SCMR 1550) and **Muzaffar Ali & 5 others v. The Collector Land Acquisition, Mirpur and 16 others** (2020 YLR 451).

23. After going through the record and having examined the impugned order, the impugned order on the face of it, is Short of reasons essential to justify the opinion rendered by the learned trial Court, therefore, is not legally sustainable. It is accordingly set-aside. The learned Trial Court shall decide the issue afresh strictly

in accordance with law on the subject without being influenced by the observations rendered herein above after giving due audience to the parties.

24. The instant criminal revision stands **allowed** in the above terms. The observations made herein above are restricted to appreciate the rationality and adequacy of the impugned order and will have no impact upon the proceedings, to be conducted by the learned Trial Court and shall also have no impact upon case of either side.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on 20.05.2022.

JUDGE

ISLAMABAD | 16.05.2022
APPROVED FOR REPORTING

****//Kamran//****