

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.72/2013

Shahzad Ahmed

versus

Zafar Iqbal Johar & another

Appellant by: Syed Imran Ali Gardezi, Advocate.

Respondents by: Raja Aamir Azad, Advocate along with respondent (Zafar Iqbal)

Date of Hearing: 26.08.2020.

JUDGMENT

MOHSIN AKHTAR KAYANI, J: Through this criminal appeal, the appellant has called in question judgment of the learned Addl. Sessions Judge (West), Islamabad, dated 26.04.2013, whereby the judgment of the learned trial Court, dated 03.06.2011, has been set-aside and Respondent No.1 has been acquitted of the charge in case FIR No.467, dated 22.11.2008, under Section 279/320/337-G PPC, P.S. Industrial Area, Islamabad.

2. Brief facts referred in the instant appeal are that Hamza Khan Niazi filed a complaint for registration of FIR against an unknown person/driver on the allegations that he along with his friend Rashid Raza were hit by a Toyota Hiace bearing registration No.AKB-904 at 7-Up Chowk being rashly and negligently driven by an unknown driver, who after the accident had escaped from the place of occurrence. Said Rashid Raza succumbed to injuries while complainant survived injuries. After registration of case FIR No.467/2008, *challan* against Zafar Iqbal Johar (Respondent No.1) was submitted in the Court, on the basis of which charged against Respondent No.1 was framed, to which he pleaded not guilty and claimed trial. The learned trial Court after recording of prosecution

evidence and defence version has convicted and sentenced Respondent No.1 vide judgment dated 03.06.2011 in the following manner:

U/S 279 PPC	<i>Two years Rigorous Imprisonment with fine of Rs.30,000/- In case of default of payment of fine, he shall further undergo one month S.I.</i>
U/S 337-G PPC	<i>Daman of Rs.10,000/- for causing injury to complaint Hamza Khan and two years Rigorous imprisonment.</i>
U/S 320 PPC	<i>He will pay amount of Rs.1,102,680/- as a Diyyat to the legal heirs of the deceased Rashid Raza and two years Rigorous Imprisonment.</i>

Respondent No.1 feeling aggrieved thereof preferred an appeal before the learned Addl. Sessions Judge (West), Islamabad, which was allowed vide impugned judgment dated 26.04.2013 and Respondent No.1 has been acquitted of the charge. Hence, the instant criminal appeal.

3. Learned counsel for appellant contends that the impugned judgment dated 26.04.2013 is a result of mis-reading and non-reading of the evidence produce by the prosecution as the learned Appellate Court has ignored the medical evidence which fully supports the oral evidence; that the prosecution has proved the case against Respondent No.1 beyond any reasonable doubt by producing medical evidence and eyewitnesses' account, which has rightly been appreciated by the learned trial Court, but the learned Appellate Court has erred in law while passing the impugned judgment, therefore, same is liable to be set-aside and judgment of the learned trial Court may be restored.

4. Conversely, learned counsel for Respondent No.1 opposed the filing of instant criminal appeal on the grounds that appellant is not the driver of vehicle in question and has no concern whatsoever with the incident; that the prosecution had not produced any independent witness and learned trial Court has wrongly appreciated the evidence while passing impugned judgment dated 03.06.2011; that the learned Appellate Court appraised the evidence in a proper

manner and rectified the miscalculation of the learned trial Court in passing the judgment dated 03.06.2011, hence, instant appeal may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that Zafar Iqbal Johar (Respondent No.1) has been acquitted by the learned Additional Sessions Judge vide impugned judgment dated 26.04.2013 of criminal case FIR No.467, dated 22.11.2008, under Section 279/320/337-G PPC, P.S. Industrial Area, Islamabad, who was convicted and sentenced by the learned Trial Court vide judgment dated 03.06.2011, as referred in Para-2 of this judgment.

7. The main allegation against Respondent No.1 is that he while rashly driving Hiace (AKB-904) hit the complainant along with his friend Rashid Raza, who were on motorcycle, and left the latter succumbed to injuries on spot while complainant survived injuries, as such, Respondent No.1 escaped from the place of occurrence. After denial of charge by Respondent No.1, the prosecution produced PW-1 Hamza Khan Niazi/Complainant, PW-2 Ghulam Mohy ud Din/S.I., PW-3 Tariq Mehmood/Constable, PW-4 Zafar Iqbal/ASI, PW-5 Aman-ul-Haq/Neurosurgeon, PW-6 Amir Ahmed Khan/I.O. and PW-7 Dr. Farrukh Kamal in order to bring guilt of Respondent No.1 home.

8. I have gone through the evidence of PW-2 Ghulam Mohy ud Din/S.I., who has prepared the site plan and inspection report of the accident, whereby he declared the mistake on the part of Respondent No.1 being driver of Toyota Hiace, but during the course of cross-examination, he acknowledged that the motorcycle of deceased and complainant was crossing the roundabout from wrong side and even the deceased was not wearing the helmet, as such, deceased died due to his head injury caused due to a bang of his head with a nearby pole.

9. The above referred aspect was further confirmed by PW-3 Tariq Mehmood/Constable, who is witness of recovery of Toyota Hiace and

Motorcycle vide Exh.PD and Exh.PC. The head injury was confirmed by PW-5 Aman-ul-Haq/Neurosurgeon with the opinion that deceased succumbed to injuries due to head injury. Amir Ahmad Khan/S.I./I.O. also confirmed the inquest report of deceased as Exh.PJ, who was also confronted regarding crossing of roundabout where alleged incident took place, but he has failed to associate the mistake with either side.

10. On the other hand, perusal of site plan Exh.PB clearly spells out that motorcycle was hit by Hiace when motorcycle was crossing the roundabout from wrong side and came in front of the Hiace. All these aspects clearly establish that the expert opinion of PW-2 Ghulam Mohy ud Din/S.I. being Traffic Inspector was rightly appreciated by the learned Appellate Court in the impugned judgment and as such, no illegality on factual aspect is visible in the judgment of acquittal.

11. Besides the above referred position, it has been observed that instant appeal has been filed with delay of 18 days, and as such, no justified reason has been brought on record, on this score alone the appeal is not maintainable, even otherwise, double presumption of innocence has been achieved by Respondent No.1, which could not be denied at this stage. Reliance is placed upon 2010 YLR 1091 Lahore (Nawab Khan vs. Khuda Bakhsh). Similarly, Section 417(2-A) Cr.P.C. has been referred by the respondent side with the argument that instant appeal is not maintainable as only an aggrieved person can file an appeal against order of acquittal, whereas in this case the appellant is real brother of deceased and being his legal heirs falls within the concept provided in sub-Section 2-A of Section 417 Cr.P.C. Reliance is placed upon PLD 2004 SC 875 (Muhammad Shafi v. Muhammad Asghar), hence the appeal is maintainable.

12. Keeping in view the above position, the instant criminal appeal is meritless as well as time barred, therefore, same is hereby **DISMISSED** along with the C.M.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 8th Sep 2020.

JUDGE

Khalid Z.