

**ORDER SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD**  
**(JUDICIAL DEPARTMENT)**

**Criminal Appeal. No.35/2019**

Sheikh Tariq Mehboob  
Versus  
The State, etc

Appellant by:	Mr. Sajjad Haider Malik and Ms.Ambreen Anwar, Advocates.
Respondent Nos. 2 & 3 by:	Mr. Muhammad Shakeel Abbasi, Advocate alongwith respondents.
State by:	Mr. Zohaib Hassan Gondal, State Counsel alongwith Azhar, Sub-Inspector.
Date of hearing:	24.02.2021

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**GHULAM AZAM QAMBRANI, J.:-** This appeal has been directed against the judgment dated 08.09.2018, (hereinafter be referred to as “**impugned Judgment**”) passed by the learned Judicial Magistrate Section 30, Islamabad-West, in case F.I.R No.70, dated 10.05.2011, under Sections 279, 320, 322 & 427 PPC, registered at Police Station Secretariat, Islamabad, whereby respondents No.2 & 3 (hereinafter be referred to as “**respondents**”) were acquitted of the case.

2. Briefly stated, facts of the instant appeal as narrated by the complainant (Sheikh Tariq Mehboob) in his complaint Ex.P-A are that on 09.05.2011, at 11:05 p.m., his brother namely Nadeem Ahmad Sheikh alongwith his brother-in-law namely Muhammad Usman were riding on motorcycle bearing registration No. IDD-2851 and were about to take a U-turn near Margallah Town, Islamabad, when the accused persons namely Muhammad Jameel and Muhammad Khurram, while driving wagons bearing registration Nos.LWC-7965 and LES-8829 respectively while driving rashly and negligently hit the motorcycle of his brother, consequently both after receiving serious injuries passed away, hence the above said F.I.R.

3. After completion of investigation, challan under Section 173 Cr.PC was submitted against the respondents before the learned Trial Court. After fulfilling codal formalities, charge was framed against the respondents and on their denial, the prosecution in order to prove its case produced the witnesses namely Sheikh Tariq Mehmood as PW.1, Muhammad Asif 6686/C as PW.2, Sheikh Waseem Ahmad as PW.3, Qaiser Niaz Gillani Inspector-Incharge Security Branch, Islamabad as PW.4, Bilal Ahmad 2241/C Police Station Secretariat as PW.5, Muhammad Tahir A.S.I, Police Line as PW.6 and Muhammad Irshad A.S.I as PW.7.

4. After closure of the prosecution evidence, statement of respondents / accused was recorded under Section 342 Cr.P.C. Both the respondents admitted that they were driving the offending wagons bearing No. LWC-7965 and LES-8829 respectively, but stated that when they reached at Murree Road near U-turn Margalla Town, Islamabad, two persons on motorcycle, going to left side of the road, suddenly they turned their motorcycle on right side, due to taking of wrong U-turn they firstly hit with wagon No.LES-8829 and thereafter with Wagon No. LWC-7965 and the incident took place due to taking of wrong U-turn by the above-mentioned motorcycle and claimed innocence; however, they did not opt to record their statements under Section 340 (2) Cr.P.C and also did not produce any evidence in their defence.

5. On completion of the trial and after hearing arguments of the learned counsel for the parties, the learned Trial Court vide judgment dated 08.09.2018 acquitted the respondents by giving them benefit of doubt. Feeling aggrieved against the acquittal of respondents, the appellant has filed the instant appeal.

6. Learned counsel for the appellant has contended that the impugned judgment dated 08.09.2018 passed by the learned Trial Court is illegal and against the facts; that the accident took place due to negligence of respondents, as they were driving the wagons rashly and negligently; that the respondents have not denied that they were driving the above mentioned wagons, which collided with the motorcycle of the deceased persons; that the prosecution proved the case against the respondents by producing reliable

witnesses, but the learned Trial Court failed to properly appreciate the evidence and erred in law while passing the impugned judgment, therefore, the same is liable to be set aside; that the case of prosecution is proved against the respondents, therefore, they may be punished in accordance with law.

7. Conversely, learned counsel for the accused/respondents has opposed the contentions raised by the learned counsel for the appellant and contended that the accident took place due to negligence of deceased, who was driving the motorcycle at the time of accident; that the motorcycle was running from left side of the wagon and abruptly it took a U-turn towards right side and collided with one wagon and also hit to another wagon, which were being driven by the respondents; that there is no evidence on record that the respondents were driving the wagons negligently and rashly; that it is evident from the statement of PW.6 Muhammad Tahir, who prepared the site map, has clearly stated that the accident took place due to taking of wrong U-turn by the motorcycle rider and that the wagons were running in their correct direction. Learned counsel further contended that there is nothing on record, which may establish that the respondents were driving the offending wagons in a rash and negligent manner or failed to take reasonable care. Further contended that there is no eyewitness of the alleged occurrence. Lastly, urged for dismissal of the instant appeal.

8. I have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

9. After hearing the learned counsel for the parties and having gone through the available record, I am of the considered opinion that the prosecution has failed to prove its case against the respondents beyond any shadow of doubt. Perusal of the record reveals that the respondents have admitted the accident and have also admitted that they were driving the offending wagons. The only aspect, which has to be examined, is that whether the respondents/accused persons were driving the offending wagons in a rash or negligent manner. It was the duty of prosecution to prove

the allegation and to bring on record standard and reliable evidence for proving the allegation leveled against the respondents.

10. A careful perusal of record shows that the case of prosecution was set into motion on the report of appellant/PW.1 who is not an eyewitness of the alleged occurrence, therefore, his statement cannot be relied upon that the drivers of the wagons were in competition or driving the wagons in high speed. He has admitted that at the time of occurrence he was at home, he has also not disclosed his source of information while lodging the F.I.R. It is very strange that when he has not seen the accident and was not present at the place of occurrence, then how he could say that the accident took place due to negligence and carelessness of the respondents and the motorcycle of the deceased persons was hit from the backside. There must be some independent evidence to establish that the respondents were driving the offending wagons in a rash and negligent manner.

11. It is important to mention that PW.6 Muhammad Tahir was the first person who was performing his duty as Inspector Traffic Police and reached at the place of occurrence, prepared site map Ex.PH. According to his statement, the accident took place due to taking of wrong U-turn by the motorcycle rider and further that the wagons were running in their correct direction. According to site map, Ex.PH, point No.1 shows that the motorcycle hit with Wagon No. LES-8829 from its left side and point No.2 shows that after colliding with the above-mentioned wagon, the motorcycle was hit by Wagon No. LWC-7965. It has been mentioned in Point No. 5 that both the wagons were running in high speed towards Faizabad, but nowhere it has been mentioned that the wagons were being driven by the respondents rashly or negligently or beyond the prescribed speed limit. Perusal of the site map further confirms that for the first time, the motorcycle of the deceased person was collided with left side of the Wagon No. LES-8829, which further strengthens the stance of respondents that the motorcycle was running from the left side of the wagons and it abruptly took a U-turn towards right side, which resulted into

unfortunate accident, therefore, the respondents cannot be held liable for the death of deceased persons.

12. The record is silent about recording statement of any passengers of the wagons or any other person from the locality because it was thickly populated area. During the investigation, both the wagons were not examined by the Motor Vehicle Examiner to ascertain whether the wagons were in high speed. The case against the respondents is of no evidence with regard to rash and negligent driving. The question of rashness and negligence in driving can be gathered from the surrounding circumstances and the act played by the drivers of the wagons at the time of accident, therefore, under the legal parlance negligence has been defined as an omission of some act, which a reasonable and prudent person guided by the consideration, which ordinarily regulate the human affairs would do or doing something, which such like prudent person by similar consideration would not do so. No mathematical formula is available to measure negligence, therefore, the negligence can be judged upon the attending, surrounding facts and circumstances. The allegation that a vehicle was running at fast speed would not constitute rashness and negligence. It can safely be concluded that speed does not matter in case of accident rather the rashness and negligence are condition precedents to prove the offence under Section 320 P.P.C. It is evident from the record that the alleged offending wagons were running straight in their direction while the motorcycle of the deceased persons was running from left side of the wagons towards the same direction, but it abruptly took a U-turn towards Margallah U-Turn point near Murree Road, Islamabad, when both the wagons were running in their direction which resulted into collusion of the motorcycle with one wagon and then it collided with the next coming wagon. In such circumstances, the respondents, who were driving their wagons, cannot be held responsible for the accident took place at Margallah U-turn point. There is no denial of the fact that two persons lost their lives in the said accident in a populated area, but no person have witnessed the occurrence even the passengers of the wagons have not witnessed that the respondents were driving

negligently. Even not a single witness comes forth to witness that the accident took place due to negligence or rash driving or carelessness of the respondents. Mere driving of a vehicle at a high speed could not be considered and taken as a rash and negligent act. The fact of rash and negligent driving is not proved by expression of high speed alone. The prosecution was supposed to bring on record evidence that where the accident took place, what should be the speed of wagons and the respondents acceded the speed limit or the wagons were being driven in violation of the traffic rules, which led to the accident from where it could be inferred that the respondents were driving negligently and rashly.

13. Keeping in view the facts, circumstances and the evidence brought on record it can safely be gathered that the prosecution failed to bring on record any confidence inspiring evidence to prove that the accident took place due to negligence or rash driving of the respondents rather it came forth that the incident took place due to negligence of the motorcycle riders themselves, as while running from the left side of the one of the wagons, it abruptly turned towards right side and collided with one of the wagons and then with the other offending wagon, therefore, the learned Trial Court has rightly concluded that the prosecution has failed to prove its case beyond any reasonable shadow of doubt against the respondents and acquitted them from the charge.

14. The interference of this Court would be warranted, if the reasoning of the learned trial Court in acquitting an accused is perverse, artificial or ridiculous. It is only in an exceptional case that this Court will interfere by setting aside the acquittal of an accused. In the case in hand, the learned trial Court after proper appraisal of the evidence available on record has acquitted the accused/respondents through a well-reasoned judgment. The learned counsel for the appellant has also not been able to show that there has been any misreading or non-reading of evidence. Reliance is placed on the cases titled as “Muhammad Zaman versus The State and others” [2014 SCMR 749], “Muhammad Rafique versus Muhabbat Khan and others” [2008 SCMR 715], “Jehangir versus Amin Ullah and others” [2010 SCMR 491], “Mst. Askar Jan and

others versus Muhammad Daud and others” [2010 SCMR 1604] and “Mst. Sughra Begum and another versus Qaiser Pervez and others” [2015 SCMR 1142].

15. It is important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, as presumption of double innocence is attached, in the latter case. In this regard I am fortified by the law laid by the Hon’ble Supreme Court of Pakistan in the case reported as “Raja Khurram Ali Khan and 2 others Vs. Tayyaba Bibi and another” (PLD 2020 Supreme Court 146) wherein it has been held as under:-

*“In appeals against acquittal, the accused has a double presumption of innocence; the first when he was charged and tried and, the second arising on his acquittal. Thus, dislodging the same should be sparingly exercised by the Appellate Court, and that too, if the conclusion drawn is not based on fair reading of evidence, perverse, arbitrary or wholly unreasonable.”*

16. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence, no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the Court will not exercise jurisdiction under section 417 Cr.P.C.

17. For the foregoing reasons, the instant appeal having no force, is hereby, **dismissed**.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

*Announced in open Court on 26.02.2021.*

**JUDGE**