

IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.A. No.647-P/2014

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- This appeal is directed against the judgment dated 27.11.2014, rendered by learned Additional Sessions Judge-V, Charsadda, whereby appellant Saeedullah has been convicted and sentenced as under:-

Under sections 322 PPC:- To pay Diyat to LRs of deceased Ashfaq.

Under section 337-G PPC: To undergo imprisonment for 01 year as Tazir and to pay Daman amounting to Rs.5000/- to injured Asfandyar.

The appellant shall be kept in jail till payment of diyat and Daman.

2. The prosecution case is on 24.08.2012 complainant-injured Asfandyar reported to local police in DHQ hospital Charsadda that on the fateful day he

alongwith Ashfaq deceased while riding on a motorbike were hit by a flying coach bearing registration No.4175-LOK, being driven rashly and negligently by the appellant on Kuladher Mardan road, as a result, they sustained injuries while their motorcycle was damaged. Later on, injured Ashfaq succumbed to the injuries, hence, case FIR No.1090 dated 24.08.2012 was registered against the appellant under sections 279/322/337-G/427 PPC, in Police Station Charsadda.

3. On completion of investigation challan was submitted against the appellant before the learned Trial Court, where he was tried and ultimately convicted and sentenced as mentioned above, hence, this appeal.

4. I heard the exhaustive arguments of learned counsel for the parties and learned AAG for the State. Record available on file perused with their able assistance.

5. Without dilating upon the merits of the case in light of the available evidence, lest it may prejudice the case of either side, I have observed that firstly a wrong section of law i.e. 322 PPC was inserted in the FIR by the police and, secondly, the learned Trial Court by not advertng to the facts and circumstances of the case and the law on the subject, misled the appellant in his defence by not confronting him with correct charge. From the

accusations levelled in the FIR it is a clear cut case of ‘qatl-i-khata by rash or negligent driving’, punishment of which has been provided under section 320 PPC, but the appellant has not been charge sheeted under section 320 PPC, rather he has been confronted with the charge of “Qatl-bis-Sabab” under section 322 PPC. There is difference between ‘qatl-i-khata by rash or negligent driving’ and ‘Qatl-bis-Sabab’. Besides, despite that the appellant has not been charge sheeted separately under section 337-G PPC but has been convicted and sentenced under the said section of law thereby causing prejudice to the appellant in his defence. It is well settled principle of law that charge against accused shall be specific, fair and clear in all respects to provide an opportunity to the accused to defend himself/herself in due course of trial. The charge shall be clear and by no means, confused to prejudice the accused. The prime object and the principle of framing charge shall be to make aware the accused of the substantive accusations which are to be proved by the prosecution with clear intention and with unambiguous description of the offence so as to enable the accused to defend himself/herself. Section 232 of the Cr.P.C. empowers the appellate Court that in case it is found that on account of omissions of particulars in framing charge,

the accused has been prejudiced and has not been provided an opportunity of clear understanding of the charge to defend him, it may direct a fresh trial or even quash the conviction. As per obligatory provisions contained in S.233 Cr.P.C. for every distinct offence, a separate charge shall be framed in order to enable the accused to defend the accusation leveled against him. S.235 Cr.P.C. provides a proper mechanism for trial of an accused, charged for more than one offence, but the learned Trial Court while charge-sheeting the appellant has not adverted to the law on the subject discussed above.

6. In view of the above, the impugned judgment of the learned Trial Court being not sustainable in the eye of law, is hereby set aside and the case is remanded to the learned Trial Court for trial de novo right from the stage of formulation of correct charge against the appellant in light of observations in the judgment. The learned Trial Court on receipt of the record, after summoning the parties shall proceed with the trial and conclude the same as early as possible, but not later than two months, avoiding unnecessary adjournments except on cogent and plausible ground, period of which too, shall not exceed four days. During pendency of the trial, the appellant shall remain on bail on the already existing bail bonds. Office is directed to

send the record to the learned Trial Court within two days, without fail.

7. The appeal is disposed of accordingly in light of the above observations.

8. The Additional Registrar (Judicial) of this Court is directed to send copy of this judgment to the learned Sessions Judge, Charsadda, who shall further circulate its copy among the Additional Sessions Judges of the District, with intimation to this court.

Announced
21.12.2015

J U D G E