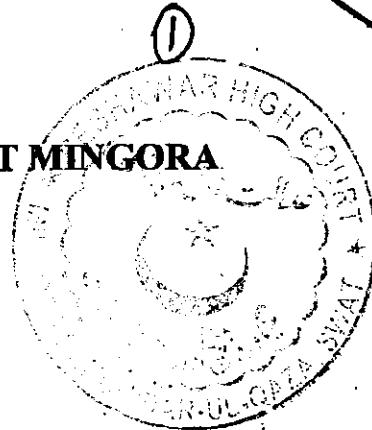


**BEFORE THE PESHAWAR HIGH COURT MINGORA
BENCH/ DARUL QAZA**

Cr.A No. 192 of 2014



Israr Khan son of Sakhawat Shah R/O Piran Dag Baisod, Pabbi Tehsil and District Noshera presently at District Jail Temergara Dir Lower.

Appellant

VERSUS

1. The State.
 2. Ismail Jan S/O Sher Afzal R/O Ningolai Kabal District Swat.
- Respondents

FILED TODAY
17/8/14
Additional Registrar
04 AUG 2014

CRIMINAL APPEAL UNDER SECTION 410 OF THE CODE OF CRIMINAL PROCEDURE 1898 READ WITH PHARAGRAPH 10 SUB PARAGRAPH 8 OF NIZAM I ADAL REGULATION, 2009 AGAISNT THE ORDER AND JUDGMENT OF ADDITIONAL SESSIONS JUDGE/ IZAFI ZILLA QAZI KABAL DATED 24.07.2014 VIDE WHICH THE APPELLANT WAS CONVICTED IN CASE FIR No.358 DATED 26.06.2013 UNDER SECTION 279/ 337-G/ 320/ 427 PPC OF POLICE STATION KANJU, SWAT AND WAS SENTENCED UNDER SECTION 279 ONE YEAR R.I AND TO PAY FINE OF Rs.3000- AND IN DEFAULT TO SUFFER ONE MONTH S.I. UNDER SECTION 320 PPC IMPRESENMENT FOR TWO YEARS R.I AND DIYAT IN LUMP SUM TO THE LEGAL HEIRS OF THE DECEASED, UNDER SECTION 337-G PPC IMPRESENMENT FOR TWO YEARS AND TO PAY DAMAN TO THE TUNE OF Rs.50'000 TO THE INJURED AND UNDER SECTION 427 PPC TO PAY COMPENSATION OF Rs.34'400- TO THE LEGAL HEIRS OF THE DECEASED. ALL THE SENTENCES WERE DIRECTED TO RUN CONCURRENTLY WITH BENEFIT OF SECTION 382-B Cr.PC.

PRAYER IN APPEAL:

By accepting the instant Criminal Appeal, the conviction and sentences awarded to the appellant/ convict may graciously be set aside and the appellant be acquitted of the charges leveled against him. Any other relief that is just and proper may also graciously be granted.

Judgment Sheet

PESHAWAR HIGH COURT, MINGORA

BENCH/

DAR UL QAZA, SWAT

JUDICIAL DEPARTMENT

J U D G M E N T

Cr.A. No. 192-M/2014.

Date of hearing 08.11.2017.

Appellant: (Israr Khan) by Mr. Amir Gulab Khan, Advocate.

Respondents: (The State & 1 another) by Barrister Asad Hameed-ur-Rehman State counsel and Sardar Zulfiqar, Advocate.

MOHAMMAD IBRAHIM KHAN, J-..

In line up of the asservations against the accused/Appellant Israr Khan, a driver of Truck bearing No. SWAT C-8267 resident of Piran Dag Baisod Pabbi Tehsil & District Nowshera, while he was coming from Matta approaching towards Kanju is said to have met an accident, rashly driving with high speed when reached in front of BHU Barabandi hit motorcycle bearing No. AKK-1309 causing death of Idress Khan on the spot and his companion Ubaidullah sustained multiple injuries. Due to head on

Naewab (S.B.) Hon'ble Mr. Justice Mohammad Ibrahim Khan

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collision the motorcycle got damaged, therefore, also committed the offence of mischief, who being formally charge-sheeted by the Court of learned Additional Sessions Judge/Izafi Zila Qazi Swat at Kabal on 09.09.2013 and by re-framed charge by the said learned Court again on 24.07.2014. The convict/Appellant realizing utmost care while driving truck did not take responsibility and claimed trial.

2. In order to bring home charges, the prosecution examined Ismail Jan as PW-1, Qareebullah as PW-2, Alamgir as PW-3, Lal Sher Khan as PW-4, Noor Rehman as PW-5, Muhammad Ibrahim Constable as PW-6, Aurangzeb Khan SI as PW-7, Zia-ur-Rehman as PW-8, Amjad Ali Khan SHO as PW-9, Muhammad Rasool Khan Constable as PW-10, Muhammad Amin as PW-11, Ibrahim as PW-12, Aziz Ahmad Constable as PW-13, Usman Ali ASI as PW-14, Shahab-ud-Din Constable as PW-15, Ijaz Khan as PW-16, Rasool Khan ASI as PW-17, Dr. Hidayatullah SMO Matta

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Exhibitor

Per [Signature] Bench
Magistrate, District Swat

Hospital as PW-18, Muhammad Ikram Khan MVE as PW-19, Qabla Alam as PW-20, Ubaidullah as PW-21, Rasool Khan ASI as PW-22, Sahib Gul Khan ASI as PW-23 and Dr. Iqbal as PW-24. The prosecution closed its evidence. Thereafter, the accused facing trial was examined under section 342 of the Code of Criminal Procedure wherein he denied the charge, posed innocence and stated to have falsely been implicated in the case. He, however, wished neither to produce defence, nor to examine himself on oath as required under section 340(2), Cr.P.C.

3. Then by the judgment contained in Sessions Case No. 25/7 of the year 2013, found the accused/Appellant to be responsible because of his rash and negligent driving, his such act taking life of Idress Khan and caused multiple injuries to his companion Ubaidullah, the following sentences were passed:-

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 District Court, Faisalabad
 10/05/2013

- (a) U/S 279 to one year RI alongwith fine of Rs. 3,000/- or in default thereof to suffer 01 month SI.
- (b) U/S 320 PPC to 2 years RI and to pay Diyat in lump sum to the LRs of deceased Idress Khan.
- (c) U/S 337-G PPC to 2 years RI and to pay Daman of Rs. 50,000 in lump sum to the injured Ubaidullah.
- (d) U/S 427 PPC to pay Rs. 34,400/- as compensation to the LRs of the deceased in respect of damage caused to the motorcycle.
- (e) The accused/Appellant shall be kept in jail and dealt with in same manner as if sentence to simple imprisonment till payment of Diyat and Daman in toto. However, benefit of Section 382-B Cr.P.C was also extended to him.

4. This is a Criminal Appeal under section 410 of the Code of Criminal Procedure 1898 read with Paragraph 10 Sub-Paragraph (8) of Sharia Nizam-i-Adl Regulation 2009 with

the following prayer:-

"By accepting the instant Criminal Appeal, the conviction and sentence awarded to the appellant/convict may graciously be set aside and the appellant be acquitted of the charges levelled

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By: Nawab (S.B.) Court Bench
Jalalabad, Swat.

against him. Any other relief that is just and proper may also graciously be granted."

5. Having heard arguments of learned counsel for the accused/Appellant, learned counsel for the complainant and learned A.A.G for the State, record delved deep into with their able assistance.

6. Learned counsel for the accused/Appellant referred to 2013 SCMR 480 " Ravi Kapur vs State of Pakistan and 2010 MLD 937 (Karachi) " Imad Ali vs The State", 2013 YLR 570 (Lahore), thereby prayed for acceptance of the appeal by way of granting permanent liberty to the convict/Appellant. On other hand, learned counsel for the complainant duly assisted by learned A.A.G placed reliance on 2006 YLR 519 (Lahore) "Ghulam Rasool vs Allah Bakshah Khan", 1995 MLD 1775 (Peshawar) "Taus Khan vs The State and (2) others", 2009 P Cr. LJ 292 (Karachi) " Bakht Zada vs The State", 2001 SCMR 1416 " The State vs Taus Khan and 2 others", 1998 SCMR 1778 " Abdur Rehman vs the State"

and 2009 SD 374 " Ghulam Rasool Shah vs

The State". In the light of referred dictums of the Hon'ble superior Courts prayed for utter dismissal of the present appeal.

7. While examining the prosecution witnesses as many as 24 in number amongst them, PW-1 Ismail Jan who has apparent himself as witness to the brief time period when this accident took place by sighting his presence at the spot. He is close relative of the deceased Idress Khan. While narrating the occurrence he has perceived truck bearing No. SWAT C-8267, whereby, by the time he was unaware as to who was driving it while it was coming at such a high speed. The truck hit the motorcyclist Idress Khan and Ubaidullah and dragged them up to 60 paces. While searching for the evidence to constitute the act of negligence for punishment award of *Qatl-i-khata* by rash and negligent driving where he may gone through either in his examination-in-chief or cross-examination has remained silent that ever the driver was attributing the negligent

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Peshwar Bench Court Bench
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act to constitute the offence. He while facing the Truck was going towards Matta and only observed the motorcyclist Idress and his companion Ubaidullah to have been there on extreme right side of the road or else were on the left side of the road. The Truck and the motorcycle according to the site plan Ex. PW-17/1 have however been shown on the extreme left side of the road where the truck is stated overtaking another truck but the site plan does not ostend the overtaking. This important eyewitness has also admitted that the truck although was over speeding but could not notice with such high speed from any distance. The relevant part of his cross-examination is reproduced as under:-

” میں یہ درست طور پر نہیں بتا سکتا کہ میں نے کتنے فاصلے سے ٹرک
 حذر کرہ کو تیزی سے آتے ہوئے دیکھا تھا۔ از خود کہا کہ موٹر سائیکل میر
 ے پیچھے طرف سے آ رہی تھی۔ میں نہ نہیں بتا سکتا کہ موٹر سائیکل کس
 طرف جا رہے تھے۔ کیونکہ وہ میرے پیچھے کے طرف سے آ رہے تھے۔

For proving the offence within the meaning of section 320 PPC the prosecution is required to prove that accused was required to

drive the vehicle and the accused driving the vehicle in a rash and negligent manner. Here there is no one who has seen this accused Truck driver either driving or else at a high speed driving negligently or in a rash manner. Mere driving even a truck with high speed on a highway would not constitute the offence. If besides the language of section 320 PPC judgments of superior Courts are required to be cited. The reported judgment in 1999 MLD 567 "Muzaffar Ali alias Nannah vs The State", PLD 1997 Peshawar 13 "Aziz Khan vs The State" are referred to.

8. If statement of PW-1 Ismail Jan would further corroborate by all those prosecution witnesses, prominent witness would be PW-21 Ubaidullah, who was seated on the rear seat of the motorcycle and sustained multiple injuries. Where identification of the accused/Appellant would require consideration to be the truck driver this witness has learnt the name of truck driver as Israr from his grandfather Muhammad Amin. While searching

for the evidence to the effect that he could be the driver Israr the accused/Appellant driving the truck or else all the witnesses of the prosecution including the Investigation Officer have by their surmises and conjectures named him without holding of an identification parade which was utmost necessary. The accused/Appellant was arrested on the following day. He was required to have been produced before Judicial Magistrate for his identification parade. Failure to do so rendered the investigation whimsical. Reference can be had of 2013 YLR 1659 "Mairaj-ud-Din vs The State".

9. PW Ubaidullah has admitted that the motorcycle belongs to father of the deceased Idress Khan and it was under the use of the deceased Idress for many years stated to have been 4/5 years prior to this accident. It has also come under an admission that the deceased Idress and the injured witness at the time of accident were students of 8th class, where ordinarily students studying in 8th class are of

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 Examined
 by the Bench
 on 12/12/2013

Nawab (S.B.) Hon'ble Mr. Justice Mohammad Ibrahim Khan

the ages of 13/14 years. It is to be taken to cast responsibility to shoulder upon father of deceased as to who even prior to reaching age of his son by 13/14 years had allowed him to ride on motorcycle at busy road as earlier for 5 years when presumed to be of the age of 8/9 years. There require sufficient evidence to find the guilt of the accused/Appellant even if he was driving the truck at such high speed when hit motorcyclist of the age of 13/14 years. The deceased had no authority to ride motorcycle without license. Negligence can be attributed to the deceased Idress himself meeting an accident at that time being was rash and negligent to invite his own death for a collision with the truck.

10. The gist of the whole discussion is that the prosecution case is pregnant with doubts. It is settled principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as a matter of right and not of grace. It was observed by

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the apex Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.

11. In the above backdrop, absolutely the prosecution failed to prove its case against the accused/Appellant beyond any shadow of doubt; therefore, his conviction cannot be maintained, ergo, while extending the benefit of doubt, this appeal is accepted setting aside his conviction and sentences recorded through the impugned judgment by the learned trial Court and acquit him of the charges

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President's High Court Bench
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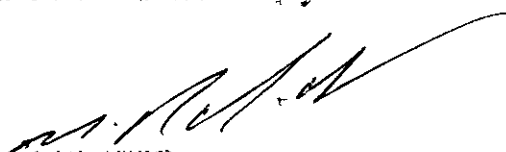
levelled against him. He is set free forthwith. However, since accused-Appellant has already been released on bail by this Court within the meaning of section 426 Cr.P.C, therefore, his sureties are discharged from the liability of bail bonds.

Announced.
Dt. 08.11.2017


JUDGE

Certified to be true copy

07/11/17
09/12/17
W/R


OFFICER
Postmaster (M.A.) ... Shab-ul-Qaza, Swat
Swat District Jail ... Swat District Jail, Swat

13/11/18