

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

G. A. No. 55-D of 2016.

JUDGMENT

Date of hearing 17-08-2017

Appellant-petitioner (Muhammad Ashiq) By:-
Mr. Muhammad Anwar Awan, Advocate.

Respondent (State) By m/s:- Ahsan Bilal Darjash
Advocate & Adnan Ali Khan, Adv.

SHAKEEL AHMAD, J.- Through the instant criminal appeal No. 55-D of 2016 the appellant has assailed the judgment dated 01.6.2016 passed by the learned Additional Sessions Judge- I D.I.Khan, whereby he was convicted and sentenced under section 320 PPC to suffer rigorous imprisonment for three (03) years, besides he is also to pay Diyat to the legal heirs of the deceased amounting to Rs. 16,80270/- and in default thereof he shall remain in the prison till the final realization of the Diyat amount. He was also convicted and sentenced under section 427 PPC to pay Rs. 2400/- to the legal heirs of the deceased on account of damage caused to the motorcycle failing which he is to suffer for three (03) months S.I. The sentences were ordered to be run concurrently.

2. Brief but relevant facts of the case are that on 23.4.2012 at about 1600 hours, the complainant alongwith

his injured son Ehsanullah, reported the matter to the local police in emergency room of Civil Hospital D.I.Khan that he was present in his house, on receipt of information regarding the accident of his son, he rushed to the hospital and found his son in injured and unconscious condition. He came to know that his son was coming on motorcycle from village Marra to his home and about 02:30 pm when he reached Dera-Multan road near Marra, he was hit by the unknown driver of motorcar No. 3228/DGL, due to rash and negligent driving, resultantly his son got injured and become unconscious, besides his motorcycle was also got damaged, his report was incorporated into F.I.R. Later on, the injured was shifted to Nishtar Hospital, Multan where he embraced death on 25.4.2012. Thereafter, the accused was charged in the supplementary statement of the complainant on 25.4.2012 and accordingly he was implicated as an accused in case FIR No. 128 dated 23.4.2012 U/S 320/427/279 PPC of P.S Parova.

3. After completion and investigation, challan was submitted against the accused, he was formally charged to which he pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution examined as many as eleven (11) witnesses whereafter, prosecution closed its evidence and statement of accused facing trial was recorded U/S 342 Cr.P.C wherein he

professed innocence, however, he neither wished to be examined on oath nor produced defence witnesses.

5. At the conclusion of trial accused was convicted and sentenced under section 320 P.P.C to suffer rigorous imprisonment for three (03) years, besides, he was held liable to pay Diyat to the legal heirs of the deceased amounting to Rs. 1680270/- and in default of payment of Diyat amount he shall remain in prison till the final realization of Diyat amount. Section 279 P.P.C stand merged in section 320 P.P.C. The accused was further convicted and sentenced under section 427 P.P.C to pay Rs. 2400/- to the legal heirs of the deceased on account of causing damage to the motorcycle failing which, he is to suffer three (03) months S.I. The sentences were held to be run concurrently vide the judgment dated 01.6.2016 passed by the learned Additional Sessions Judge-I D.I.Khan, hence this appeal.

6. The learned counsel for the appellant argued that it is an un-witnessed crime. He further contended that neither the complainant nor the PW-9 Ashiq Hussain is an eye-witnesses of the alleged occurrence. The sole eye-witness Muhamad Sadiq shown in the site plan was neither examined nor produced as a witness and prayed for acquittal of the accused.

7. As against that the learned counsel appearing on behalf of complainant argued that no doubt that the complainant is not an eye-witness but PW-9 Ashiq Hussain though not named as an eye-witness of the occurrence in the FIR, has given the full details of the occurrence implicating the accused in the instant case. The learned AAG appeared on behalf of state and supported the contentions of the counsel for the complainant.

8. Arguments heard and record perused.

9. Perusal of record reveals that, in the initial report recorded through the Murasila Ex.PA/1, no eye-witness has been cited by the complainant, besides, admittedly, the eye witness Sadiq was shown at point No. 3 in the site plan in Ex. PB, was not examined. PW-9 Ashiq Hussain poses himself to be the eye-witness of the alleged occurrence was not examined even under section 161 Cr.P.C by the I.O. PW-6 Zameer Hussain S.I (investigation) admitted in his cross examination that though many people were present on the spot at the time of occurrence, but admitted that except Sadiq no one has seen the alleged occurrence and he also admitted that people were present at the place of occurrence and he did not record the statement of any of them.

11. Coming to the statement of the sole eye-witness PW-9 Ashiq Hussain, a bare perusal of his cross

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examination reveals that he admitted that he has not been cited as an eye-witness in the site plan. Though, stated in his examination in chief that the injured was taken to the DHQ hospital and informed his father about the sorrowful incident and that he is co-villager of the complainant, but astonishingly, he was neither named as an eye-witness in the initial report Ex. PA/1 nor cited as a witness in the site plan rather the site plan Ex. PB was prepared at the instance abandoned witness Sadiq. He further admitted that the matter was not reported to the local police by him. Perusal of his statement further reveals that he has even not alleged that the accused was driving motorcar in question negligently and rashly.

12. In order to constitute offences under sections 279 and 320 P.P.C. It is necessary for the prosecution to prove that besides over speed driving accused was also guilty of driving rashly and negligently. In case of collusion between two vehicles, the Court had to determine many factors. Where the high speeding could not be made a ground for presumption that driver was responsible for the accident, unless it is established in a reasonable manner that besides, the over speeding driving of the vehicle found rash and negligent while driving.

13. In this respect, reliance can well be made in case Farman Ullah Vs The State (2007PLD page 393 Peshawar).

14. Nowhere it was alleged by PW-9 Ashiq that the vehicle was being driven by the accused rashly and negligently besides, PW-9 was examined in the Court for the first time on 27.10.2015 and the alleged occurrence had taken place on 23.4.2012. It seems that the said witness was introduced at a belated stage, and that he had not seen the alleged occurrence with his own eyes, and was not present on the spot. He should have been examined by the I.O. Even the complainant did not quote him as an eye-witness of the alleged occurrence in his initial report, particularly, when he is the co-villager of the complainant and was present in the hospital. Even the prosecution has failed to conduct identification parade of the accused through PW-9 to connect him with the alleged crime.

13. It is well settled principle of criminal jurisprudence that no one shall be construed into the crime in the absence of legal admissible evidence. There is no scope and space for surmises and conjectures even with high presumptions. Reliance in this respect may be placed on the view taken by the apex Court in the case Miyan Muhammad Latif Vs The State (PLD 966 in the

Supreme Court, page 2001). The view taken by the learned Trial Judge while passing conviction order is based on presumptory evidence, which is illegal.

14. For the above aforementioned reasons, it is held that the prosecution has miserably failed to prove its case against the accused beyond a reasonable doubt, therefore, this appeal is allowed and the appellant is acquitted of all the charges leveled against him. He is on bail and is discharged from the liability of the bail bonds.

Announced.
Dt: 17.08.2017.


JUDGE

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