Ayesha A. Malik, J.- I have read the opinion of the majority as contained in the judgment authored by Mr. Justice Malik Shahzad Ahmad Khan with the concurrence of Mr. Justice Jamal Khan Mandokhail. However, I cannot agree with the reasoning given nor the conclusion drawn therein. Hence, my dissent is based on the following reasons.

2. Basic facts, as reflected in the First Information Report (**FIR**) registered by the Complainant, namely, Col. Abdul Waheed (PW-1), are that on 30.11.2014 at about 06:30 pm, his brother, namely, Javed Akhtar Qazi along with his son, Shoaib Akhtar, were returning from Wah Factory to Rawalpindi through Kashmir Highway, Islamabad, in their Suzuki Mehran bearing registration No. IDN/8363. The said car stopped at the red-light signal on Kashmir Highway Police Line when a rashly driven Land Cruiser bearing registration No.BD/6750 hit their vehicle at its back due to which both received fatal injuries. During this time, the Complainant reached the Emergency Ward of Pakistan Institute of Medical Sciences (**PIMS**) Hospital from where the injured were shifted to Shifa International Hospital where they died on 04.12.2014 and 06.12.2014.

3. The Petitioner faced trial before the Judicial Magistrate Section-30, Islamabad (West) and was convicted and sentenced as under:

> U/s 279 of the Pakistan Penal Code, 1860 (**PPC**), imprisonment for eight months with fine of Rs.3000/- or 10 days simple imprisonment in the event of default;
>
> U/s 427 of the PPC, imprisonment for one year with fine of Rs.100,000/- or 15 days simple imprisonment in the event of default; and
>
> U/s 320 of the PPC, imprisonment for two years with payment of *Diyat* of Rs.4,318,524/- for each deceased (total amounting to Rs.8,637,048/-) and in case of non-payment of *Diyat*, he shall be treated in accordance with subsection (2) of Section 331 of the PPC and shall remain in lock up till payment of *Diyat*.

Sentences were ordered to run concurrently with benefit of Section 382-B of the Code of Criminal Procedure, 1898 (**CrPC**). The Petitioner challenged this decision before the Additional Sessions Judge (West), Islamabad which was maintained vide judgment dated 16.02.2023. The Petitioner filed a criminal revision against the said judgment before the

Islamabad High Court, Islamabad (**High Court**) which too was dismissed vide the impugned judgment dated 17.01.2024.

4. Counsel for the Petitioner contends that he is innocent and that the courts below failed to appreciate the evidence available on record and rendered judgments under an erroneous assumption that the Petitioner rashly drove his vehicle whereas, in fact, the accident was due to unavoidable circumstances. The State Counsel for the ICT, Islamabad assisted by the counsel for the Complainant has defended the impugned judgment.

5. The prosecution in order to prove its case produced six witnesses. The Complainant appeared as PW-1; he is not an eye-witness of the accident, therefore, his statement is relied upon to the extent of reporting the matter to the police. As per his statement, he arrived at PIMS Hospital after receiving information about the accident. Javed Akhtar (PW-2) is an independent eyewitness to the accident; he was present at the traffic signal in his own Suzuki pick-up registration No.IDT/8239 on 30.11.2014 at 6:30 pm when the rashly driven white coloured Land Cruiser hit the Suzuki Mehran; the presence of the said Suzuki pick-up was recorded by Muhammad Yousaf S.I. (PW-5) in his *Rapat* No.50, thus, his presence at the scene of the accident stands established. As per his statement, the Land Cruiser hit the Suzuki Mehran which caused serious injuries to those seated in the vehicle and that the vehicle was badly damaged. He also stated that the accident took place due to negligence of the driver of the Land Cruiser who fled away from the scene. Another important witness is Khan Khawas Khan, Traffic Sergeant (PW-4), who arrived at the scene of the accident. As per his statement, on 30.11.2014 at 06:30 pm, he was on duty at Police Line Chowk, which is close to the signal where the accident took place. Muhammad Yousasf, S.I. (PW-5) on receiving information about the accident reached the place of the accident, dispatched the damaged vehicles to the police station, reached PIMS Hospital, prepared the injury statement of the injured; could not get their statements as the doctor declared them *not fit for statements*. He recorded *Rapat* No.50 dated 30.11.2014 (Ex.PW-5/E) in the *Roznamcha* of Police Station Ramna wherein he has given all the details, such that, after receiving information regarding the accident, he arrived at the place of the accident and found two accidented vehicles i.e. Suzuki Mehran registration No.IDN/8363 as well as Land Cruiser registration

No.BD/6750; a third vehicle was also there being Suzuki pick-up registration No. IDT/8239. After attending the injured persons at PIMS hospital, Muhammad Yousaf, S.I. (PW-5) returned to the place of the accident and shifted both the accident vehicles to the police station. According to him, Khan Khawas Khan S.I./Traffic Sergeant (PW-4), prepared the police report of the traffic accident according to which the accident took place due to the negligence of the driver of vehicle No.BD/6750, being the Petitioner. The police report (Ex.PW-4/A) shows the cause of death as over speeding, rash and negligent driving of the driver of the Land Cruiser.

6. The prosecution's evidence was put to the Petitioner during his examination under Section 342 of the Criminal Procedure Code, 1898 (**CrPC**). He did not deny driving the Land Cruiser nor the accident. He stated that he was driving the vehicle and that there was an accident but, according to him, that accident was beyond his control despite his utmost care and caution. The relevant part of his statement under Section 342 CrPC is as follows:

> [I]t is absolutely incorrect. I am having a valid driving license. I never drive rashly, negligently. The prosecution has badly fail(e)d to prove that I was driving negligently and the accident happened due to my fault. I have no enmity towards the victims, they are not even known to me. I am innocent and have never committed the alleged offences. <u>The accident happened beyond my control despite utmost care and caution on my part.</u>
>
> (**Underlining is ours**)

From this statement, three crucial facts are established. Firstly, the presence of the Petitioner at the scene of the accident is established. Secondly, that he was driving the said Land Cruiser. And most importantly, that the *accident happened* as the vehicle was *beyond the Petitioner's control* resulting in the death of two people. This is clearly an inculpatory statement, which can form the basis of his conviction.[1] This Court in the *Sultan Khan* case has ruled that in the absence of any other evidence, the statement of the accused must either be accepted or rejected as a whole meaning thereby that if the prosecution's case rests solely on the Section 342 CrPC statement then it must be taken in its entirety.[2] As per the *Sultan Khan* case, where other evidence (including witnesses' testimonies, police documents, etc.) corroborates with the statement under Section 342 CrPC that the petitioner was responsible for the death of the deceased, it becomes a strong case for relying upon

[1] Ali Ahmad v. the State (PLD 2020 SC 201) (**Ali Ahmad**).
[2] Sultan Khan v. Sher Khan (PLD 1991 SC 520) (**Sultan Khan**).

his inculpatory statement of Section 342 CrPC. Important to note that the *Sultan Khan* case relied solely on the Section 342 CrPC statement. However, in the present Petition, all three lower *fora* have concurrently considered this statement under Section 342 CrPC as an essential factor for the Petitioner's conviction along with the other corroborative evidence. Furthermore, the record shows that the Petitioner has clearly admitted in the instant Criminal Petition that he was driving at a fast speed because he *harshly applied the emergency brake* and *left long tire marks on the road*. Hence, he himself admits to the accident and the fast speed of his vehicle. Moreover, the Petitioner neither opted to appear as his own witness under Section 340(2) CrPC nor produced any evidence in his defence to show what the unavoidable circumstances were. As per the opinion of the majority, this statement of the accused under Section 342 CrPC cannot be relied upon as the Petitioner has categorically pleaded his innocence and has stated that he was not driving the vehicle rashly or negligently. Hence, in terms of the opinion of the majority, although he admits to the accident, the statement must be taken as a whole. I am of the opinion that by reading the entire statement, the fact of the Petitioner driving the vehicle is not denied nor is the fact of the accident denied. The only issue is the cause of the accident. If the statement under Section 342 CrPC is accepted in totality then the Petitioner's statement is that he was not driving rashly or negligently whereas the prosecution's statement is that he was driving rashly and negligently. Hence, the question is whether it was a case of rash or negligent driving in terms of Section 320 PPC. Consequently, the prosecution had to prove rash and negligent driving and not the identity of the driver.

7. In the *Taus Khan* case, this Court has held, that in order to determine whether the driving was a rash or negligent act, *attending circumstances have to be looked into* and in that case, the Court convicted the accused mainly because the vehicle was heading at high speech, which went out of control hitting an ox that died at the spot and thereafter, collided with a tree with such velocity that a person sitting in the flying coach died immediately and several passengers were injured.[3] In the *Muhammad Ishaque* case, this Court held that the case of rash or negligent driving *depends on its own facts* as in some cases, even a vehicle with modest speed may fall within the ambit of rash or

[3] The State v. Taus Khan (2001 SCMR 1416) (**Taus Khan**).

negligent driving, resulting in grievous hurt and death of the pedestrians.[4] Hence, the facts must be examined in the light of all attending circumstances.

8. In the case in hand, the charge was framed under Section 320 PPC which requires that whoever commits *qatl-e-khata* by rash or negligent driving shall, having regard to the facts and circumstances of the case, in addition of *Diyat,* be punished with imprisonment of either description for a term which may extend to 10 years. The relevant part of this provision of law is that there must be *rash or negligent driving* which is seen from the facts and circumstances of the case. Essentially, the prosecution had to establish that the vehicle should have been at a slower speed on account of the traffic requirements to bring it in the ambit of rash and negligent driving. To establish rash or negligent driving, the prosecution relies on the statements of Javed Akhtar (PW-2) and Khan Khawas Khan, Traffic Sergeant (PW-4). Javed Akhtar (PW-2) is an independent eyewitness to the accident; he was present at the red signal in his own Suzuki pick-up on 30.11.2014 at 6:30 pm on the right side of vehicle of the deceased; he heard the noise of the Land Cruiser hitting the Suzuki Mehran. So he testifies to the fact of the signal (red light) and the fact that the vehicle of the deceased was waiting at the signal. Similarly, Khan Khawas Khan, Traffic Sergeant (PW-4) on 30.11.2014 at 06:30 pm was on duty at Police Line Chowk, which is close to the signal where the accident took place; he arrived at the scene of the accident on hearing the noise of the accident. According to him, the accident took place as the vehicles were standing at the traffic signal which was red. From this ocular account, it is established that the vehicle of the deceased was standing at the traffic signal along with other cars; the Petitioner's vehicle was speeding, hence, he crashed into the vehicle of the deceased. Given that there was a traffic signal and cars were standing at the signal, the Petitioner should have slowed down the speed of his vehicle but he failed to do so. The police report (Ex.PW-4/A) prepared by Khan Khawas Khan, Traffic Sergeant (PW-4) also contains a site plan Ex.PW-4A/1, which depicts that tyre marks of the Petitioner's Land Cruiser left approximately 60 feet long traces which establishes that he was speeding despite the fact that the traffic signal was red and cars were standing at the signal. Hence, the Petitioner clearly violated the traffic rules as he should have slowed

[4] Muhammad Ishaque v. the State (1971 SCMR 616) (**Muhammad Ishaque**).

down the speed of his vehicle as he headed towards the traffic signal. Furthermore, he was driving at a speed which was not justified given the traffic signal and the fact that several cars were standing at the signal. This means that the Petitioner ignored the conditions of the traffic and the road and persisted with his speed with no regard for the prevailing traffic conditions. This in my opinion is rash and negligent driving which is establish from the record.

9. The opinion of the majority also questions the sanctity of the FIR based on a delay of five days in its FIR lodging and non-disclosure of witnesses therein. However, in my view, the matter was reported to the police in a timely manner because *Rapat* No.50 was recorded at 11:10 pm on the same night by Muhammad Yousaf, S.I. (PW-5); according to the said PW, on 30.11.2014, at 6:30 pm, he was present at Police Station Ramna when he received information about the accident; the police station is situated at a distance of 1 and ½ kilometres from the place of accident. In view of these facts, the argument that the matter was reported with a delay of five days is irrelevant as the police *Rapat* clearly states that the accident took place due to the negligence of the driver of vehicle No.BD/6750, being the Petitioner. Similarly, insofar as the non-mentioning of witnesses' names in the FIR, I find that the said *Rapat* is the first prosecution document which records the presence of Javed Akhtar (PW-2) and Khan Khawas Khan, Traffic Sergeant/(PW-4), being witnesses to the accident. The relevance of the police *Rapat* is contained in Rule 22.48 of the Police Rules which directs that the daily diary shall be maintained in accordance with Article 167 of the Police Order, 2002; it shall be in Form 22.48(1) and shall be maintained digitally as well as two copies thereof be made in the same uniform process; one shall remain in the police station in the shape of register and the other shall be dispatched to a Gazetted Officer to be designated by the Superintendent of Police or the Superintendent of Police himself every day at the hours fixed in this behalf. The daily diary is intended to be complete record of all events which take place at the police station; it records not only the movements and activities of all police officers, but also visits of outsiders, whether official or non-official, coming or brought to the police station for any purpose whatsoever.[5] Therefore, veracity of *Rapat* No.50 and contents thereof cannot be overlooked in order to arrive at a just conclusion.

[5] The Police Rules, 1934, Volume III, Chapter XXII (**Police Rules**).

10. For what has been discussed above, it is held that the Petitioner while driving the vehicle in a rash and negligent manner hit the vehicle of the deceased which caused their death. The judgments rendered by all three lower *fora*, being well reasoned, do not call for interference by this Court. This Criminal Petition is dismissed and leave refused.

JUDGE

Islamabad
July 04, 2024
'Approved for Reporting'
Azmat | Kehar Khan Hyder/

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE JAMAL KHAN MANDOKHAIL
MRS. JUSTICE AYESHA A. MALIK
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

Criminal Petition No.134/2024
(Against Order dated 17.01.2024 passed by Islamabad High Court, Islamabad in Crl. Rev. No.35/2023)

Syed Fida Hussain Shah ...*Petitioner*

Versus

The State and another. ...*Respondents*

For the Petitioner	:	Mr. Muhammad Jawad Zafar, ASC.
For the Complainant	:	Mr. Junaid Iftikhar Mirza, ASC.
For the State	:	Mr. Fauuzi Zafar, ASC as State Counsel Islamabad. Inamullah, ASI/IO, PS, Ramna, Islamabad
Date of Hearing	:	04.07.2024

JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J-. Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed judgment dated 17.01.2024 in Criminal Revision No.35/2023, passed by the learned Islamabad High Court, Islamabad, with a prayer to set aside the said judgment and acquit him, in case registered vide FIR No.

464/2014 dated 04.12.2014 under Sections 279, 427 and 320 PPC, at Police Station, Ramna, District Islamabad.

2. Arguments heard and record perused.

3. As per brief allegations levelled by Colonel Abdul Waheed (complainant) in the contents of the FIR, on 30.11.2014 at about 6.30 pm his brother Javed Akhtar Qazi and nephew Shoaib Akhtar were coming from Wah Factory to Islamabad on their Suzuki Mehran car bearing registration No. IDN-8363 and when they reached at the traffic signal of Police Lines, situated at Kashmir Highway, Islamabad, they saw that another car was parked in front of their car on the said road. In the meanwhile, a Parado Jeep bearing registration No. BD-6750 arrived at the spot at a very high speed and hit the above mentioned car of the brother and nephew of the complainant due to which they were severely injured and brought to the PIMS Hospital, Islamabad. The complainant on receiving the information of the occurrence reached at the PIMS Hospital Islamabad, however, due to the serious condition of the injured they were shifted to Shifa Hospital, Islamabad, but his brother and nephew succumbed to the injuries at the Shifa Hospital, hence the above mentioned FIR.

4. The occurrence in this case took place on 30.11.2014 at 6.30 pm, but the FIR was lodged on 04.12.2014 at 6.30 pm and as such there is delay of five (05) days in reporting the matter to the Police. No plausible explanation has been given by the complainant for the above mentioned gross delay in lodging the FIR, therefore, the sanctity of truth cannot be attached to the said delayed FIR.

5. It is further noteworthy that although the FIR was lodged with the delay of five (05) days from the occurrence but even then the name of any eye-witness was not mentioned therein. Admittedly the complainant (PW-1) is not an eye-witness of the occurrence. The prosecution subsequently introduced Javed Akhtar PW-2 and Khan Khawas Khan PW-4 as eyewitnesses in this case but as mentioned earlier the names of said eye-witnesses were not mentioned in the contents of the delayed FIR.

6. It is further noteworthy that even the name of any accused or his description or features were also not mentioned in the above referred delayed FIR. Admittedly, no identification parade of the petitioner has been held in this case.

7. As mentioned earlier, the complainant himself was not an eye witness of the occurrence. So far as, the subsequently introduced eyewitnesses, namely, Javed Akhtar (PW-2) and Khan Khawas Khan (PW-4) are concerned, it is observed at the cost of repetition that the names of said eyewitness were not mentioned in the FIR which was lodged after five days of the occurrence. Javed Akthar (PW-2) stated that on 30.04.2011 at 6.30 pm he was coming from the vegetable market to Islamabad city and when he reached at the signal of the Police Lines situated at Kashmir Highway Islamabad, he noted that Mehran car of Javed Akhtar Qazi deceased was parked on the left side of his vehicle, whereas, a '*Nissan Sunny*' car was parked in front of his own car. In the meanwhile a Parado Land Cruiser hit with the above mentioned Mehran car due to which two persons present in the said car were seriously injured.

In his statement before the learned trial court, he has not mentioned the registration number of the Parado vehicle which hit the vehicle of the deceased. Even he did not name the petitioner in his above referred statement. He did not state that it was Syed Fida Hussain Shah, petitioner who was driving the above mentioned Parado-Land Cruiser which hit the car of the deceased. He further stated that he cannot tell the colours of the vehicles of the deceased or the accused. He also stated that he cannot tell that from which direction the vehicle of the accused came at the spot. He further stated that he did not know the accused or the deceased of this case. The relevant parts of his statement made during cross-examination are reproduced hereunder:

میں ملزمان اور متوفی کے گاڑیوں کا رنگ نہ بتا سکتا ہوں کہ دونوں گاڑیاں کونسی کونسی رنگ کی تھیں۔

مجھے علم نہ ہے کہ ملزم کی گاڑی کس طرف سے آئی تھی۔ میں ملزم یا متوفی کسی کو نہیں جانتا تھا۔

Likewise the name of other eyewitness namely, Khan Khawas Khan, Inspector (PW-4) was also not mentioned in the contents of the delayed FIR. He has also not stated before the learned trial Court that the above mentioned Parado vehicle was driven by Syed Fida Hussain Shah, petitioner. He has not named the petitioner in his examination-in-chief or during his cross-examination. He has categorically conceded during his cross-examination that he had not seen the occurrence though he reached at the spot within few seconds from the occurrence. He further conceded that he has not given any statement at the spot that the occurrence took place due to

rash and negligent driving. He has further conceded that the driver of the Land Cruiser had already fled away from the spot when he reached there and no driver was present inside the Land Cruiser. The relevant parts of his statement are reproduced hereunder for ready reference:

میں نے Accident ہوتے ہوئے نہیں دیکھا۔ میں چند Seconds میں جائے وقوعہ پر پہنچا۔ یہ درست ہے کہ چند seconds جائے وقوعہ سے دور ہونے کے باوجود میں نے وقوعہ آنکھوں سے نہیں دیکھا۔

یہ درست ہے کہ میں نے موقع پر کسی کو یہ بیان نہ دیا ہے کہ غفلت اور لاپرواہی کی وجہ سے یہ واقع ہوا ہے۔

یہ درست ہے کہ Land cruiser کے اندر کوئی بھی موجود نہ تھا اور ڈرائیور موقع سے فرار تھا۔

It is, therefore, evident that both the above-mentioned eye-witnesses of the occurrence produced by the prosecution have not named the petitioner in this case or alleged that the petitioner was driving the vehicle in question which hit the deceased.

8. It is further noteworthy that no site plan of the place of occurrence has been prepared in this case on the pointation of any eye-witness of the case. It is true that Khan Khawas Khan, Inspector (PW-4) has stated that he prepared site plan of the place of occurrence (Exh:PW-4-A) but perusal of the said document shows that the same is not a site plan rather it is written on the said document that the same was a report regarding traffic accident. As mentioned earlier Khan Khawas Khan (PW-4) has conceded that he

was not an eyewitness of the occurrence and the name of any eye-witness, on the pointation of whom the site plan was prepared has not been mentioned in (Exh:PW-4-A). It is case of the prosecution that in fact the car of the deceased persons was parked at the signal of Police Lines situated at Kashmir Highway, Islamabad when a Parado Jeep hit the said car, therefore, it should be presumed that the occurrence took place on account of rash and negligent driving of the driver of the above mentioned Parado Jeep. In this respect, we have noted that no traffic signal has been shown in Exhibit PW-4-A. As no traffic signal has been shown in Exhibit PW-4-A, therefore, it cannot be held that Car of the deceased was parked on the Kashmir Highway, Islamabad due to said traffic signal, waiting for opening of the same, when the vehicle of the accused hit the said Car. We have further noted that it was not put to the petitioner in his statement recorded under Section 342 Cr.P.C. in clear terms that the Car of the deceased was standing on the Kashmir Highway, Islamabad as traffic signal on the said road was closed and at that time the vehicle of the accused hit their vehicle. Under the circumstances, when a piece of prosecution evidence has not been specifically put to the accused/petitioner in his statement recorded under Section 342 Cr.P.C. then the said piece of evidence cannot be used against him. Learned counsel for the complainant next argued that it is so mentioned in (Exh:PW-4-A) that there were marks of friction/rubbing of tyres at the spot which were sixty feet long and it shows that the Parado Jeep was driven by the accused rashly and negligently, but Khan Khawas Khan (PW-4) has not stated before the learned trial court that he was carrying any tool of measurement at the time of preparation of Exhibit PW-4-A to measure the length of marks of

friction/rubbing of tyres on the road. Moreover, admittedly he was performing his duties as a traffic inspector at the time and day of occurrence and he was not an investigating officer in this case, therefore, it was not his duty to carry a tool of measurement with him and prepare a site plan of the place of occurrence, rather the same was the duty of Muhammad Yousaf, SI (PW-5) who was the first investigating officer of this case, but surprisingly he has not prepared any site plan of the place of occurrence.

No prosecution witness has stated that what was the prescribed speed limit of the vehicles on the Kashmir Highway, Islamabad and what was the approximate speed of the Parado Jeep at the time of occurrence which statedly hit the car of the deceased persons. Under the circumstances it is not determinable in this case that as to whether the accident took place due to any fault of the driver of the Parado Jeep or the same took place on account of any mistake of the deceased persons. Moreover, it is by now well settled that merely driving a vehicle at a high speed at the Highway is not an offence, unless it is proved that the driving of the accused was above the prescribed speed limit and the same was also rash and negligent. Furthermore, if the injured or the deceased were themselves responsible of any rash or negligent act then the ingredients of above mentioned offences are not attracted against the driver of the other vehicle. Reference in this context may be made to the cases of Israr Khan v. The State and another (2018 YLR Note 236), Muzaffar Ali alia Nannah v. The State (1999 MLD 567), Muhammad Ashiq v. The State (2018 YLR 2589), Mushtaq v. The State, (1998 P.Cr.L.J. 158), Muhammad Rafique v. The State (2020 P.Cr.L.J. 688), Yasir Arafat v. The State (2012 MLD 611).

In the case of "Israr Khan" (supra) it was observed as under:-

> *"Admittedly deceased and the injured witness of the case were student of 8th class and aged 13/14 years. The deceased had no authority to ride motorcycle without licence. Negligence could be attributed to the deceased himself meeting accident at that time being rash and negligence to invite his own death for a collision with the truck".*

In the case of "Muzaffar Ali alias Nannah" (supra), it was observed as under:-

> *"It is trite and settled law that driving a vehicle at high speed cannot be considered and taken to be rash and negligent act. Modern technology provides for reasonable safeguard of stopping vehicle within no distance and time. For rash and negligent driving, the prosecution is to establish that the driver failed to take proper care by omitting to take some action through which he could have avoided accident".*

Likewise, the relevant findings in a judgment in a road accident case, reported as "Muhammad Ashiq" ibid are reproduced hereunder for ready reference:-

> *"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, driver of the vehicle was found rash and negligent while driving".*

Similar view was taken by the, learned Lahore, Balochistan and Peshawar High Courts in the remaining judgments cited above.

9. Keeping in view all the above-mentioned facts, we have come to this irresistible conclusion that the prosecution has miserably failed to prove that it was the petitioner who was driving the vehicle in question (*Parado*). The prosecution has also not proved through any cogent evidence that it was driver of the parado vehicle, who was responsible for rash and negligent driving, and as such the prosecution failed to discharge its initial burden to prove the case against the petitioner beyond the shadow of doubt.

10. At this stage learned State Counsel assisted by the learned counsel for complainant has vehemently argued that as the petitioner has stated in his statement recorded under section 342

Cr.P.C. that the accident took place beyond his control despite utmost care and caution on his part, therefore, it is proved that the petitioner has admitted the occurrence but as the petitioner could not prove his above mentioned defence plea therefore he has rightly been convicted and sentenced by the courts below. In this respect, we may observe that it is by now well settled that when the prosecution evidence is disbelieved then the statement of an accused is to be accepted or rejected in toto. In such situation, it is legally not permissible to accept the *in-culpatory* part of the statement of an accused and reject the *ex-culpatory* part of the same statement. Moreover, the petitioner has not admitted in his above-mentioned statement that he was driving the vehicle rashly or negligently, therefore, his conviction and sentence, solely on the basis of his said statement for the charges of rash and negligent driving, is not sustainable in the eye of law. The relevant part of the statement of the petitioner recorded under section 342 Cr.P.C. and referred to by the learned State Counsel assisted by learned counsel for the complainant, reads as under:

> *'It is absolutely incorrect. I am having a valid driving license.* ***I never drive rashly, negligently.*** *The prosecution has badly failed to prove that I was driving negligently and the accident happened due to my fault. I have no enmity towards the victims, they are not even known to me.* ***I am innocent and have never committed the alleged offences****. The accident happened beyond my control despite utmost care and caution on my part.'*

[Underlining and bold is supplied for emphasis].

It is, therefore, evident from the perusal of the statement of the petitioner recorded under Section 342 Cr.P.C. that the petitioner has categorically stated that he was innocent and he never committed the alleged occurrence. The petitioner has also stated categorically in his above mentioned statement that he had never driven the vehicle rashly or negligently and he took utmost care and caution at his part while driving the vehicle. It is true that in the last sentence of his statement under Section 342 Cr.P.C, the petitioner has stated that the accident happened beyond his control despite utmost care and caution on his part, but even from this part of the statement of the petitioner, the ingredients of offences of rash and negligent driving are not made or proved. In the case of Muhammad Rafique vs. The State (2020 P.Cr.L.J. 688), it was observed as under:-

> *"No evidence was available on record to show that at what speed the driver was driving the bus, although the appellant in his statement under Section 342, Cr.P.C. admitted that he was driving the vehicle, but denied rashly or negligence. The statement of accused/appellant under Section 342, Cr.P.C. can be taken in toto not in peace meal. The prosecution must prove his case with cogent, confidence inspiring evidence that the appellant was driving negligently which is lacking in the case".*

Likewise, in the case of Muhammad Asghar v. The State (PLD 2008 SC 513), this Court was pleased to observe as under:-

> *"It is settled law by now that a statement of an accused recorded under section 342 Cr.P.C. is to be read in its entirety, is to be accepted or rejected as a whole and reliance should not be placed on that portion of the statement which goes against the accused person. Reference can be made to the cases of Shabbir Ahmad v. The State PLD 1995 SC 343 and The State v. Muhammad Hanif and 5 others 1992 SCMR 2047".*

Similar view was taken by this Court in the cases of Ghulam Qadir v. Esab Khan (1991 SCMR 61) and Sultan Khan v. Sher Khan (PLD 1991 SC 520).

If the above mentioned statement of the petitioner is accepted in toto then no offence of rash and negligent driving on the part of the petitioner is made out in this case. There would have been some force in the argument of learned State Counsel assisted by the learned counsel for the complainant, if the petitioner had stated that the occurrence of this case took place due to his rash and negligent driving but no such statement was made by the petitioner, therefore, the ingredients of offences under Sections 320,427, 279 PPC are not made out in this case against the petitioner on account of his above mentioned statement, wherein, the petitioner categorically stated that

he took utmost caution and care and he never drove the vehicle negligently or rashly, hence, it cannot be held that the petitioner admitted that the occurrence took place due to his rash and negligent driving.

11. In the light of above discussion, by majority of 2:1 (Mrs. Justice Ayesha A. Malik, dissenting), this petition is converted into appeal and allowed. The judgments dated 19.9.2022, 16.02.2023 and 17.01.2024 of the learned Trial Court, Appellate Court and that of the High Court, respectively are hereby set aside. The appellant is acquitted of the charges while extending him the benefit of doubt and he be set at liberty forthwith, if not required to be detained in any other case.

12. These are the detailed reasons of our short order of even date (04.07.2024).

JUDGE

As I disagree, I have
given my dissent opinion
attached herewith.
JUDGE

JUDGE

Islamabad
04.7.2024
NOT APPROVED FOR REPORTING
Sarfraz/-