

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrIA(AS) No. 3/2020
CrIM No. 444/2020
CrIM No. 443/2020

Union Territory Through Police Station
Kokernag.

...Appellant(s)

Through: Mr. Zahid Qais Noor, GA

Vs.

Mohammad Altaf Sheikh

...Respondent(s)

Through: Mr. Bilal Ahmad Khan, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.

JUDGMENT

27.03.2025

Oral:

01. This appeal has been directed against judgment dated 31st July 2018, passed by learned Principal Sessions Judge, Anantnag, [*“the appellate court”*], in a Criminal Conviction Appeal titled ‘*Mohammad Altaf Sheikh Vs State*’, vide which, conviction of the respondent recorded by learned Judicial Magistrate, Vailoo, [*“the trial court”*], came to be set aside and he came to be acquitted for offences under Sections 279/304-A RPC and 3/181/39/66/192/190 (2) of Motor Vehicles Act [*“MV Act”*].

02. Before a closer look at the grounds urged in the memo of appeal, it shall be expedient and appropriate to have an overview of the background facts.

03. The prosecution case lies in a narrow compass. On 1st March, 2009, Police Post, Larnoo, received information that a vehicle on its way from Anantnag to Lessu, bearing Registration No. JK03/2790, being driven by its driver in a rash and negligent manner met with an accident and injured a minor child. On the receipt of this report, FIR No. 16/2009 for offences under Sections 279/337 RPC came to be registered and the investigation commenced. Since the injured died during his treatment in the hospital offence under Section 304-A RPC came to be incorporated. The investigation culminated in the presentation of Charge Sheet before the competent court.

04. The respondent was charged by the trial court for the aforesaid offences, whereby he pleaded innocence and claimed trial, prompting the trial court to ask for the prosecution evidence.

05. The prosecution examined 13 witnesses out of 16 cited in the case, a brief resume whereof is as under:-

06. PW-1, Mohd Jabbar Mir, in chief examination, has stated that on 1st March, 2009, while he was standing on the road, all of a sudden, a bus came to the spot and the passengers started coming out of it. The bus driver was talking with, one, Mohammad Maqbool and thereafter when it started, a boy, who was standing on the road, was hit by the door of the bus. It is alleged by the witness that driver was driving fast, as a result the boy was injured, who was evacuated to the hospital, where he died. In cross-examination, the witness has admitted that he reached the spot after hearing the noise.

07. PW-2, Mohd Rafiq Mir, has stated that in March, 2009 at 6:30 PM, while he was present in his shop, he witnessed the passengers de-boarding from a vehicle and when the said vehicle started running, there was noise that someone had died. He went to the spot and took the child to the hospital in the vehicle of the accused, wherefrom the victim was referred to Anantnag Hospital and later he died. The registration number of the vehicle was 2790. The child was hit by the door of the vehicle. In cross-examination, he has stated that driver was driving slowly at the time of occurrence
08. PW-3, Imitiyaz Ahmad sheikh, in chief examination, has stated that on 1st March, 2009 at 6:30 PM, he was walking on the road. A bus came from Anantnag, which was being driven by the accused. The door of the bus was open and driver was talking with Mohd Maqbool. A child was hit by the door of the vehicle and he fell down. The child was evacuated to the hospital in the bus of the accused, but he died in the hospital. The witness in his cross examination has stated that on the day of occurrence, he was at his home. The witness has denied the suggestion that he was not on the spot at the time of occurrence and that the child died due to sickness. The witness has reiterated in cross-examination that he had seen the occurrence and child was injured by the door of the vehicle.
09. PW-4, Bashir Ahmad Mir, is father of the deceased. He has stated that his seven years old son was injured on 1st March, 2009. He reached the spot after hearing the noise. The child was taken to Larnoo Hospital, wherefrom he was referred to Anantnag Hospital

where he died. The accident was caused by the vehicle bearing Registration No. JK03/2790. In cross-examination, the witness has admitted that he had not seen the occurrence. He also stated that Police took his signature on one document, but he was not aware what was written there.

10. PW-5, Bashir Ahmad Matoo, in his examination, has stated that on 1st March, 2009, he was in his house and all of a sudden heard some noise. He reached the spot and saw the injured child on the road. The child was hit by the vehicle and was taken to the Hospital in the same vehicle. He also went to the hospital, where the child died. He is witness to the receipt of the dead body of the deceased and has admitted the receipt of the same. He has admitted in cross-examination that he has not seen the occurrence and he heard about it.

11. PW-6, Nazir Ahmad Matoo, though mentioned about registration number of the vehicle as also the injuries to the deceased in his chief examination, but in his cross-examination he has stated that he has not seen the occurrence and he is illiterate.

12. PW-7, Ajaz Ahmad Paddar, is a witness to the seizure memo EXPW-8 and dead body EXPW-8/1 respectively. He has also admitted in his cross-examination that he reached the spot after the accident.

13. PW-8, Ghulam Nabi Dar, is witness to the Superdnama of the offending bus and has admitted in his cross-examination that he has no knowledge about the occurrence.

14. PW-9, Shabir Ahmad Paddar, is witness to the Superdnnama of the bus, EXPW-10.
15. PW-10, Abdul Rashid, is witness to the seizure memo of the offending bus EXPW-12.
16. PW-11, Dr. Kowsar Ahmad, in his cross-examination, has stated that on 1st March, 2009, he examined Sameer Ahmad Mir brought by the police at 6:40 PM. He was unconscious and there was no external injury on his face. He was unable to stand on his right leg. There was no vomiting or blood coming from his mouth or ear. He referred the child to District Hospital Anantnag and at about 8:15 AM, he was telephonically informed by constable Nisar Ahmad that he had died. He tendered his opinion on the basis of death certificate received from District Hospital Anantnag. In cross-examination, he has stated that he did not examine the dead body and had given anti-mortem history of the deceased. He was told by the attendant of the deceased that he met with an accident. He could not say whether deceased suffered any injury or not.
17. PW-12, Abdul Rashid ASI, is Investigating Officer of the case. He has stated that he received a complaint that accused was driving the bus towards Lessu Brinnad, where he hit a child, namely, Sameer Ahmad Mir. He conducted investigation and offences under Sections 279,304-A RPC and 39/192/66/192 and 190 MV Act were established against the accused. In cross-examination, he has admitted that there was no external injury to the child. The accused himself surrendered before the police.

18. PW-13, Mohd Akbar is SHO of Police Station Anantnag, who assigned investigation to ASI, Abdul Rashid PW-12.

19. This is the crux of the prosecution evidence. The appellant in his examination under Section 342 Cr.P.C. denied the incriminating evidence against him and chose to enter the defense. The appellant has examined a solitary witness in defence, which is as under:-

20. DW, Zahoor Ahmad, in his examination, has stated that on 1st March, 2009, the accused was driving bus No. JK03/2790 from Anantnag to Lessu Brinnad and he was also travelling in the same bus. Two boys were running behind the bus and one of them fell down due to snow. The injured boy was shifted to hospital in the same bus.

21. Learned trial court having analyzed the evidence arrived at a conclusion that prosecution had succeeded to establish guilt of the respondent for the offences he was charged with. As a result, he came to be convicted and sentenced to simple imprisonment for a period of two years and pay fine of Rs. 2500/- for offence under Section 304- RPC. He was also convicted and fined for offences under the MV Act.

22. Aggrieved of the trial Court verdict of conviction, the respondent preferred an appeal and learned appellate court, analysed the prosecution evidence, to conclude that trial court had failed to appreciate material contradictions in the testimonies of prosecution witnesses. As a consequence, the appeal preferred by the respondent was allowed and he came to be acquitted.

23. Aggrieved of the aforesaid judgment passed by learned appellate court, the Union Territory of Jammu and Kashmir has preferred the present appeal, primarily, on the ground that learned appellate court has failed to appreciate material aspects of the case. Three prosecution witnesses; PWs' Mohd Jabar Mir, Mohd Rafiq Mir and Imtiyaz Ahmad Sheikh have categorically deposed in favour of the prosecution and prosecution had successfully established guilt of the respondent. According to the appellant, the judgment passed by learned trial court is well reasoned and based on correct appreciation of law and facts and, therefore, impugned judgment is liable to be set aside.

24. Heard learned counsel for the parties and perused the record.

25. A perusal of the prosecution evidence reveals that though PW-2 Mohammad Rafiq Mir in chief examination has supported the prosecution case, but in his cross-examination he has stated that driver was driving slowly. A perusal of the trial court record reveals that he also stated in his cross-examination that he had given three statements to the Police and he was not aware that what was written in his statement under Section 161 Cr.P.C. He also admitted that accused was neither guilty nor was driving negligently. Similarly, PW-1, Mohd Jabar Mir, though maintained in his cross-examination that driver was driving fast, as a result of which, deceased was injured, but he admitted the suggestion in his cross-examination that he reached the spot after hearing the noise only. He has also stated in his cross-examination that passengers were alighting from the vehicle and driver was not talking to

anybody. PW-4, Bashir Ahmad Mir is father of the deceased. He has clearly admitted in cross-examination that he has not seen the occurrence. PW-5, Bashir Ahmad Matta is witness to the receipt of the dead body and he has also stated in cross-examination that he has not seen the occurrence. PW-6, Nazir Ahmad Matta has also stated in the cross-examination that he has not seen the occurrence. PW-7, Ajaz Ahmad Paddar is witness to the seizure memo and PW-8 is witness to the Suprdnama. PW-9 is also witness to the Suprdnama. PW-10, Abdul Rashid is also witness to the same. Rest of the prosecution witnesses are the investigating officer and the medical officer who examined the deceased and referred him to the hospital.

26. In the aforesaid backdrop, the entire prosecution case hinges upon the testimonial potency of PW-3, Imtiyaz Ahmad Sheikh, who has stated in chief examination that on 1st March, 2009 while he was working on the road, a bus came from Anantnag, which was being driven by the accused. The door of the bus was open and while driver was talking with Mohammad Maqbool, the deceased was hit by the door of the bus. He was evacuated to the hospital, where he died. PW-3 has denied the suggestion in cross-examination that he was not present on the spot at the time of occurrence. However, the witness in chief examination also stated that on the day of occurrence he was at his home.

27. A careful analysis of the prosecution evidence discussed above reveals that most of the prosecution witnesses have admitted in unequivocal terms that they reached the spot after the occurrence

and are not the witnesses to the accident. Though PW-3, Imtiyaz Ahmad Sheikh has made an endeavour to support the prosecution case and maintained his version during cross examination, but there is admission on his part in chief examination that at the time of occurrence he was at his home. Therefore, statement of the PW-3 does not inspire confidence to sustain conviction, pertinently in view of the fact that rest of witnesses have not supported the prosecution case.

28. Another aspect of the matter, which needs attention, is that prosecution has also failed to examine the Medical Officer who conducted autopsy on the dead body of the deceased. True it is, that postmortem report is not sole determinant of a case and does not automatically prevent conviction in an accident case because testimonies of eye witnesses and other medical evidence available on record, in given facts and circumstances of a case, may be suffice to establish guilt of an accused and sustain conviction. Courts are obliged to consider all the available material, including the absence of postmortem report, before it embarks to make a determination. However, postmortem report is a crucial piece of evidence, especially in determining the cause of death in an accident case.

29. In the present case, postmortem report of the deceased assumes significance in view of statement of PW-11, Dr. Kowsar Ahmad, who has testified that though the deceased at the time of his examination was unconscious and was unable to stand on his right leg but there was no external injury on his face. He also deposed

that he had not examined the dead body and had tendered anti mortem history of the deceased. The Medical Officer, PW-11 Dr. Kowsar has also stated that he could not say whether deceased had suffered any injury or not. In the circumstances the absence of postmortem report in the present case proves fatal to the prosecution.

30. The appellant has also been convicted by the trial court for various offences under the MV Act. However, a perusal of the record, in particular, the prosecution evidence would reveal that prosecution witnesses have not been examined on this aspect of the case, therefore, finding of learned trial court on this aspect is perverse and is liable to be set aside.

31. Having regard to what has been discussed above, I do not find any illegality or impropriety in the impugned judgment of the appellate court, whereby conviction of the respondent recorded by the trial court came to be set aside. Hence the present appeal is **dismissed** and impugned judgment is upheld.

32. Records of courts below be sent back.

(RAJESH SEKHRI)
JUDGE

SRINAGAR:

27.03.2025

"Shabroz Ahimad"

Whether the Judgment is speaking? Yes
Whether the Judgment is reportable? No