

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1303/2018

Date of Institution ... 11.10.2018

Date of Decision ... 10.01.2019

Naeem Khan son of Zahir Shah R/O Quli Khel, Tehsil and District Bannu Ex-SET Teacher GHS Habibullah, FR Bannu. ... (Appellant)

VERSUS

District Education Officer (Ex-Agency Education Officer) F.R Bannu and others. ... (Respondents)

MR. GOHAR ALI,
Advocate.

... For appellant

MR. HAMID FAROOQ DURRANI,

... CHAIRMAN

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

Through the appeal in hand the appellant has assailed a purported order of dismissal from service passed against him. It is stated in the memorandum that the appellant was appointed as SET (BPS-15) in Education Department on 02.10.1989 and was posted in GHSS Angori, F.R Kurram. His last place of posting was GHSS Habibullah F.R Bannu. Owing to a property dispute with another teacher the appellant was under threat of dire consequences, therefore, was unable to attend to his duty. In the wake of said threat he requested for his transfer to another school on 22.09.1997. An FIR was lodged against the appellant on account of death of Muhammad Jalil, therefore, also the appellant was held back from performance of the duty since 08.05.2016. He was, thereafter, acquitted from the charge in criminal case on 31.05.2018 and after his acquittal, the appellant attempted to report at the place of his duty where he came to know that he was already dismissed from service.

2. At the outset, when learned counsel for the appellant was asked to refer to the impugned order of dismissal of appellant it was stated that there was no such order in black and white and the fact was verbally communicated to the appellant by Agency Education Officer.

On the other hand, section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 provides that any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within 30 days of the communication of such order to him, or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal to the Tribunal having jurisdiction in the matter....”

Averments in the memorandum of appeal, while seen in juxtaposition to the above provision of law, suggest that no order made against the appellant regarding dismissal from service had ever seen light of the day.

3. In view of the above, the appeal in hand is found bereft of merits warranting its admission for regular hearing. The same is, therefore dismissed in limine. Needless to note that the appellant shall not be precluded, due to instant dismissal, from seeking remedy under the law upon issuance of any order of his dismissal from service. File be consigned to the record room.



(HAMID FAROOQ DURRANI)
CHAIRMAN

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1303/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/10/2018	<p>The appeal of Mr. Naeem Jan resubmitted today by Mr. Ghar Ali Kheshgi Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2-	17-10-18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21-11-2018</u></p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>
	21-11-2018	<p>Since 21ST November has been declared as Public holiday on account of 12TH Rabiul awwal therefore the case is adjourned to come up for the same on 10-1-2019</p> <p style="text-align: right;"><i>[Signature]</i> Reader</p>

The appeal of Mr. Naeem Khan son of Zahir Shah Ex-SET, GHS Habibullah FR Bannu received today i.e. on 11.10.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copy of impugned termination/dismissal order is not attached with the appeal which may be placed on it.

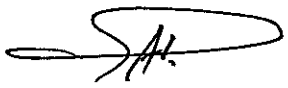
No. 2057 /S.T,

Dt. 12-10 /2018.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Gohar Ali Adv. Pesh.

R/Sir,
That in reply it is stated that impugned order is not given to the appellant which is already stated in para no. 7 of the facts of the appeal. resubmitted for further proceeding please.


Gohar Ali Bhoobgi
Advocate Peshawar
15/10/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1303 /2018

Naeem Khan.....(Appellant)

V E R S U S

District Education Officer, FR Bannu and
others.....(Respondents)

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-6
2.	Application with Affidavit		7-9
3.	Addresses of the parties		10
4.	Copy of appointment letter/ personal file	A	11-14
5.	Copy of application of applicant	B	15
6.	Copy of order dated 31/05/2018 and judgment of the Court	C	16-39
7.	Copy of Departmental Appeal	D	40-42
8.	Wakalat Nama		43

Through

Dated: 24/09/2018

Appellant

Gohar Ali Khashgi
Gohar Ali Khashgi
Advocate High Court
Peshawar

Gohar Ali Khashgi
Advocate High Court,
Peshawar.
Cell No. 0345-9082942

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1303 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1526

Dated 11-10-2018

Naeem Khan S/o Zahir Shah R/o Quli Khel, Tehsil and
District Bannu, Ex-SET Teacher (Science Teacher)
Government High School Habibullah FR Bannu...(Appellant)

V E R S U S

1. District Education Officer, (Ex-Agency Education Officer) FR
Bannu.
2. Director of Education (FATA), FATA Secretariat, Warsak
Road, Peshawar.
3. Director Education Khyber Pakhtunkhwa, G.T. Road,
Peshawar.
4. The Principal/Headmaster Government Higher, Secondary
School, Habibullah, FR Bannu.
5. The Government of Khyber Pakhtunkhwa through Secretary
Education, Civil Secretariat, Peshawar.....(Respondents)

Filed to-day

[Signature]
Registrar

11/10/18

APPEAL U/S 4 OF KHYBER

PAKHTUNKHWA SERVICE TRIBUNAL,

1974, FOR REINSTATEMENT OF THE

APPELLANT IN SERVICE WITH ALL BACK

BENEFITS.

Re-submitted to-day
and filed.

[Signature]
Registrar

15/10/18

Respectfully Sheweth:

The facts giving rise to the following Appeal of the appellant are as under:

1. That the appellant was appointed as Senior English Teacher in education department, BPS-15 Posted in Government High School Angori, FR, Kurran dated 02/10/1989 as person file of the appellant as annexure "A".
2. That the appellant was transferred to Government High School Habib Ullah FR Bannu as his last posting place of the appellant.
3. That appellant was competent employee of the education department with M.Sc (Geology from Peshawar University with first division with best record of progress.
4. That appellant has unblemished record, spotless life and performance of duty with the entire satisfaction of his seniors.

5. That unfortunately a dispute of property was created with one teacher of the same school, Habib Ullah, FR Bannu, namely Mr. Akram Pur who instigated his friend, owner of the property on which the school was built namely Atlas Khan who restrained and precluded me to enter the school premises for duty. With threat of dire consequences, so the appellant was unable to attend the duty, then soon after creation of situation, the appellant submitted an application to Agency Education Officer FR Bannu for redressal of his grievances dated 22/09/1997 to transfer the appellant to any other school for safe life or any other alternative arrangement, but he slept over it as annexure "B".

6. That soon after a few days of the situation, Mr. Akram Pur created a dispute of property with ~~Mr. Kram Pur~~^{Noor}, Noor Alam Khan S/o Atlas Khan Resulted in blood feud enmity who lodged FIR of the death of his son Mr. Mohammad Jalil, lodged FIR against the appellant and then due to being high approachable and dangerous personal attitude of Mr. Akram Pur, the appellant was absented from

duty since 08/05/2016 while then surrendered before law dated 05/08/2016 and after conducting trial, in the Court of criminal jurisdiction the appellant was honorably acquitted on merit dated 31/05/2018, as judgment of the trial Court as annexure "C".

7. That just after acquittal the appellant attended the duty place came to know that appellant was dismissed from service and it was confirmed from agency education officer verbally and no order or record is given to the appellant.
8. That appellant soon after filed a departmental appeal to Secretary Education Khyber Pakhtunkhwa who slept over it and 90 days, have been elapsed, hence this appeal to Hon'ble Service Tribunal as annexure "D" inter alia on the following grounds:

GROUND:

- A. That the action of the department is unlawful needs to set aside.

- B. That the treatment of the department/ respondents has no legal footing to stand on.
- C. That department/ respondents ex-parte proceeded against the appellant, no charge sheet, no enquiry and no show cause is served upon the appellant and no proclamation issued against the appellant, condemned unheard.
- D. That the appellant requested time and again to the high-up's for documents but respondents refused, which is also violation of the appellant's right.
- E. That for the reason of Hon'ble acquittal and service rendered about 10 years with unblemished record ex-parte proceeding up, no chance of hearing, condemned undead is against the law, rules and norms of justice.
- F. That the appellant may also be allowed to relay on additional grounds at the time of arguments please.

G. That condonation of delay application has been filed if any.

It is, therefore, prayed that on acceptance of this appeal, the appellant may please be re-instated in service with all back benefits.



Appellant

Through

Gohar Ali Kheshti
Advocate
Peshawar

Dated: 24/09/2018

Gohar Ali Kheshti
Advocate High Court,
Peshawar.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

C.M. No. ____/2018

In

Service Appeal No. ____/2018

Naeem Khan.....(Appellant)

V E R S U S

District Education Officer, FR Bannu and
others.....(Respondents)

APPLICATION FOR CONDONATION

OF DELAY IF ANY.

Respectfully Sheweth:

The appellant submits as under:

1. That appellant has filed appeal before this Hon'ble Tribunal in which no date has yet been fixed.
2. That submitting of appeal if late is not intentionally but due to the enmity and restraining to resume duty of the appellant by other person and threat of dying consequences.

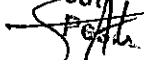
3. That the case is fit on merit it should not be discarded on limitation.

It is, therefore, most humbly prayed that on acceptance of this application, the delay if any may kindly be condoned.



Appellant

Through

Gohar Ali Khesghi
Advocate


Dated: 24/09/2018

Gohar Ali Khesghi
Advocate High Court,
Peshawar.

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

C.M. No. _____/2018

In

Service Appeal No. _____/2018

Naeem Khan.....(Appellant)

V E R S U S

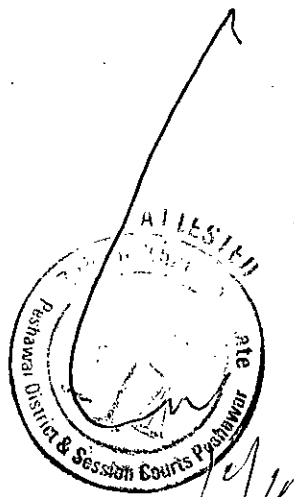
District Education Officer, FR Bannu and
others.....(Respondents)

AFFIDAVIT

I, Naeem Khan S/o Zahir Shah R/o Quli Khel, Tehsil
and District Bannu, Ex-SET Teacher (Science Teacher)
Government High School Habibullah FR Bannu., do hereby
solemnly affirm and declare that all the contents of the
accompanying **Service Appeal and application** are true
and correct to the best of my knowledge and belief and
nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

CNIC-11101-4656958-7



10 9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2018

Naeem Khan.....(Appellant)

V E R S U S

District Education Officer, FR Bannu and
others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

Naeem Khan S/o Zahir Shah R/o Quli Khel, Tehsil and
District Bannu, Ex-SET Teacher (Science Teacher)
Government High School Habibullah FR Bannu.

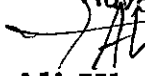
RESPONDENTS:

1. District Education Officer, (Ex-Agency Education Officer) FR Bannu.
2. Director of Education (FATA), FATA Secretariat, Warsak Road, Peshawar.
3. Director Education Khyber Pakhtunkhwa, G.T. Road, Peshawar.
4. The Principal/Headmaster Government Higher, Secondary School, Habibullah, FR Bannu.
5. The Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.


Appellant

Through

Dated: 24/09/2018


Gohar Ali Khashgi
Advocate High Court
Peshawar
Gohar Ali Khashgi
Advocate High Court,
Peshawar.

Plan-drawing	
Finger print	
Drill instructing	
Court duties	
Reserve duties	
Urdu	
Pashtu	
English	<p>obtaining 529/1200 marks Hona Bazarwan Urdu (General) Passed CT Examination Gen (General) Govt High School Muzir Kotriam Agency 971 on 14.11.1982 Qualifications</p>
B. L. or B. A.	
Leadership examination	
Training School Final examination	
Other qualifications	

Gonar Ali Kheshti
 Advocate
 Court

Handwritten signature
 M. M. Khan
 P. B.

453/250 marks in 1st Division
 on 19.7.89 from Pashtun University obtaining
 Pass-on MSc. English marks 120/120
 Verification Roll No. [blank]

- ① Passed Urdu Examination (1st Division) marks 111/120
- ② Passed Urdu Examination (1st Division) marks 111/120
- ③ Passed B.Sc. from University D. I. Khan obtaining marks 370/400
- ④ Passed B.Sc. from [blank] University marks 876
- ⑤ Passed Urdu Examination (1st Division) marks 111/120
- ⑥ Passed Urdu Examination (1st Division) marks 111/120
- ⑦ Passed Urdu Examination (1st Division) marks 111/120
- ⑧ Passed Urdu Examination (1st Division) marks 111/120

(For use in Police Department only)

The entries in this page should be renewed or re-attested at least every five years and the signature in lines 9 and 10 should be dated

1. Name *Yaseen Khan*

2. Race *Wazir*

3. Residence *Lakha teja P.R. Bannu.*

4. Father's name and residence *Zaher Shah - 160 village Quli Khail Pesh Bannu.*

5. Date of birth by Christian era as nearly as can be ascertained *18.6.1964*

6. Exact height by measurement *6-6*

7. Personal marks for identification *Mole on right Arm.*

8. Left hand thumb and finger impression of (non-gazetted) officer

Little Finger. Ring Finger.

Middle Finger. Fore Finger.

Thumb.

9. Signature of Government servant *[Signature]*

10. Signature and designation of the Head of the Office, or other Attesting Officer. *[Signature]*

Attested
[Signature]

M.A. G.H.S
Habibullah Street
Peshawar

Ghaffar Ali Kheshgi
Advocate High Court
Peshawar

1 Name of post	2 Whether substan- tive or officiating and whether permanent or temporary	3 If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C. S. R.	4 Pay in substantive post	5 Additional Pay for officiating	6 Other emolument falling under the term "Pay"	7 Date of appointment	8 Signature of Government servant
G. H. S. Angore E. R. Humam S. E. T.	H/ sub.	B. P. S. No. 15	1165	-71 - 2544		2-10-89	[Signature]
do	do		1165			1-12-90 (11)	[Signature]
do	do		1168			1-12-90	[Signature]
<p>Revised Pay Scale Scale. Remission of Pay B. P. S. No. 1620-131-3585.</p>							
Do			1620			16	[Signature]
S.E.T post GHS nichal	T000/sub.		1620			14/11/91	[Signature]
do	do		1620	1/1		7/1	[Signature]
do	do		1620	1/1		12/12	[Signature]
<p>Gohar Ali Khesghi Advocate High Court L. Khawa</p>							
<p>Attested [Signature]</p>							
<p>E. R. G. H. S. Sobidullah Khan P. B. Bannu</p>							
S.E.T. post						17/1/93	

10 Date of termination of appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc)	12 Signature of the head of the office or other attesting officer	13 Signature and date of leave taken	14 Leave Duration of period of leave on account of pay upto last month for which leave liability is attributable to another Government	15 Reference to any recorded punishment or censure, or reward or praise of the Government Servant
Head Master G.H.S. Angora Kurram Agency 30/11/89	30/11/90			Government to which debitable	Head Master G.H.S. Angora Kurram Agency
31/5/91	Asoriz pay				Service verified w.o.f 1/12/90 to 31/5/91 from the office record.
13/11/91	T-26123 Drawn from (Pay) 22/12	Ocellullah			Service verified w.o.f 1.5.91 to 22.10.91 from the office record.
30/11/93	BPS-16 w.o.f 1/91 to 30/11/93	Total Rs. 9945/-	DAC		Ocellullah
11/1/93	Fausps 1/91 to 11-1-1993 (FN)	Service verified from 1/91 to 11-1-1993 (FN)			Service verified w.o.f 14/11/91 to 30/11/93 from the office record and other office record.
11/1/93					Ocellullah
11/1/93					Attest Gohar Ali Khesghi Advocate High Court

Attest
Gohar Ali Khesghi
Advocate High Court

H. M. S. P. S
Habibullah
P. B. Kurram

سٹی ٹیبلنگ سٹ 545

32/9
22/9/1997

میرزا محمد علی صاحب

میرزا محمد علی صاحب

میرزا محمد علی صاحب

میرزا محمد علی صاحب

میرزا محمد علی صاحب

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میرزا محمد علی صاحب

میرزا محمد علی صاحب

اعلیٰ عدالت عظمیٰ پاکستان
 ایڈیشن 16
 پٹنہ ایڈیشن 16
 ایڈیشن 16
 ایڈیشن 16

کیس عنوان: سرکار بڈ
 رول نمبر: 125/5
 تاریخ: 23-7-16
 فیصلہ: 31-5-78

نمبر	تقریرات	نمبر	اوراق
1	ایڈیشن اور کوڈیشن کے بارے میں چارج بیانوں کی تقریریں	49	49
2	ججٹے، 190 پروکارم، پیٹھ جالون، کارڈ ٹرنڈاوا، ورائٹ ڈاکٹ	27	76
3	متفرق دستاویزات، وکالت نامے، درخواست جے	27	103
4	نوٹس، پیٹھ جالون، ایڈیشن اور کوڈیشن	24	127

کل اوراق: (27)

صدر: ASST/J

certified

certified That the index has been prepared in accordance with rules is in good condition.

ATTESTED

20.6.18

Amjad Hussain
 Addl. D & SJ-III / Spl. Judge
 Bannu

657/18
 361/18
 1999

Gonay Ali Kheshgi
 Advocate High Court
 Peshawar

17

(J3)

IN THE COURT OF AMJAD HUSSAIN, ADDITIONAL SESSIONS JUDGE-III,
BANNU.

22864
/18

Case File No. 125 of 2016.
Date of Institution: 23.07.2016.
Date of Decision: 31/05/2018.

Represented By:

- ☞ Mr. Yousif Jamal, Learned APP for the State
- ☞ Mr. Javed Khan Wazir, Advocate (For the complainant)
- ☞ Mr. Sakhi Ullah Khan Wazir, advocate (For the Accused)

The State through Damsaz Khan son of Mashal Khan caste wazir Hati Khel r/o Qooli Khel Domel District Bannu.
..... (Complainant)

V E R S U S

Naeem Khan son of Zahir Shah cate wazir Hati Khel r/o Qooli Khel Domel District Bannu..... (ACCUSED)

Case FIR No. 20 dated 28/01/1998; Under Section 302/324/34 PPC of PS Domel, District Bannu.

J U D G M E N T

1. Accused Naeem Khan faced trial in above referred case FIR No. 20 dated 28/01/1998; Under Section 302/324/34 PPC of PS Domel, District Bannu.

2. Briefly stated facts of prosecution case as unfolded in FIR are that complainant Damsaz Khan on 28-01-1998 at about 15:45 hours, while present with the dead body of deceased Muhammad Jalil Khan at RHC Domel, reported the matter to Bashir Khan Retired SHO (PW8) of PS Domel, District Bannu, to the effect that on the said day he alongwith PW Sher Jan and Muhammad Jalil

ATTESTED

20-6-2018

05/2018
AD HUSSAIN
& Sjt-III: Spt: Judge
Bannu

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deceased then alive, were proceeding in a vacant ground towards Agricultural Bank. At about 15:30 hours, when they reached near the house of Walayat Khan, there accused facing trial Naeem Khan duly armed with Kalakov, co-accused Noor Ayum Khan armed with 3x3 bore Rifle Mark- 4, Sher Ajam Khan armed with *Bandoq DBBL.12 bore*, and Atlas Khan armed with *Bandoq DBBL 12 bore*, appeared in front of them. When accused reached near the complainant party, co-accused Atlas Khan commanded his companion (co-accused and accused facing trial) to fire at complainant party. On this, co-accused Noor Ayum Khan fired with his 3x3 bore rifle at deceased Muhammad Jalil, as result of which, he got injured and fell on the ground. In the meanwhile, accused facing trial Naeem Khan and co-accused Sher Ajam Khan also made firing at Muhammad Jalil Khan with their respective weapons. Due to the firing of accused party, complainant and PW Sher Jan luckily escaped unhurt. Having been empty handed, complainant and PW Sher Jan could not resist the attack. Accused party after the occurrence decamped from the spot. The complainant and PW Sher Jan shifted injured Muhammad Jail to RHC Domel for treatment, however, the latter succumbed to the injuries in the way to hospital. Motive for the occurrence was stated to have had dispute over property. The report of complainant was reduced into writing in the shape of *Murāsila* EX PW -8/1

Ayub
31/05/2018
MAJAD HUSSAIN
SP-III / Sp. Judge
Bannu

ATTESTED
Copies
District & Sessions Judge
Bannu
20-6-18

52 19
which was sent to the PS where it culminated into the registration of the FIR. Hence, the present case.

3. The scribe of Murasila (PW8) prepared injury sheet and inquest report of the deceased and sent dead body for PM examination. On 28-01-1998 at 04:00 PM, Dr. Qadir Dad (Rtd) SMO (PW-1), conducted autopsy on the dead body of deceased Muhammad Jalil S/O Akram Pur, identified by Akram Pur and Jahangir Khan, brought by Constable Kiramat Ullah No.775. The report of the doctor is as under:-

4. Condition of subject: Stout. PM staining Nil.

Wounds:

- 1- FA injury on left side chest postero-laterally size 1/6x1/6".
- 2- FA exit wound on right side chest postero-laterally size 1/2x1/2 inch. Wound is related to NO.1.
- 3- FA inlet wound on lateral aspect of right thigh size 1/6x1/6". One bullet was recovered from the medial aspect of right thigh.
- 4- FA graze wound on postero aspect of right shoulder joint.
- 5- FA inlet wound on postero aspect of right shoulder joint size 1/2x1/2"
- 6- FA exit wound on the right axiliary line. size 4x3". Wound is related to wound NO. 5.

Cranium and spinal cord: Healthy.

Thorax:

Larynx, trachea, pericardium and heart healthy rest injured.

ATTESTED

Gopyeet
District & Sessions Judge
Bannu

20.6.18

Amjad

31/05/2018
AMJAD KHAN
Addl: D & S J-II / Spl: Judge
Bannu

Abdomen: Healthy while stomach was empty.

Muscle bon joints: Muscle injured at the site of injury. Two fracture on right side chest.

Remarks:

In his opinion, the deceased died due to FA injuries, injuring the vital organs like pleura, right and left lungs and blood vessels leading to severe hemorrhage shock and death.

Probable time between injury and death: 05 to 15 minutes.

Probable time between death and Postmortem: 05 to 10 minutes.

5. After completion of investigation, complete challan U/S 512 Cr.PC was submitted against accused facing trial and co-accused (1) Noor Alam alias Noor Ayum, (2) Sher Ajam Khan and (3) Atlas Khan.

6. After recording of the prosecution evidence in absentia, perpetual non bailable warrants of arrest were issued against accused facing trial and co-accused.

7. After arrest and preliminary investigation of co-accused Noor Alam Khan alias Noor Ayum and Atlas Khan, supplementary challan against them was submitted however, the complainant party entered into compromise with them whereby they were acquitted from the charges leveled against them on the basis of compromise vide order dated 15-05-2009, passed by the then learned Additional Sessions Judge-V, Bannu.

ATTESTED

Copyist
District & Sessions Judge
Bannu

20.6.18

7.

Amjad

31/05/2018

AMJAD HUSSAIN
Addl. D & S-Judge
Bannu

18

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8. Accused facing trial Naeem Khan was arrested on 08-05-2016. After his arrest, supplementary challan against him was submitted. Accused facing trial was in custody, therefore, on summoning through *Zamima Bay*, he was produced in custody from Central prison, Bannu. On his production, copies of the relevant record were provided to the accused facing trial in compliance of provisions of section 265-C Cr.P.C. Charge U/S 302/324/34 PPC was framed against him to which he pleaded not guilty and claimed trial.

9. Prosecution in order to prove its case produced as many as **Nine (09)** witnesses. The brief resume of Prosecution evidence is as under:-

(PW-1) was Dr. Qadir Dad (Rtd) SMO, his statement has already been discussed in paragraphs 3 & 4, therefore, there is no need to reproduce it. He prepared PM report, EX:PW-1/1 and affirmed his endorsement on the injury sheet EX:PW-1/2 as well as on the inquest report EX:PW-1/3.

(PW-2) was Habib Khan (Rtd) ASI, who on receipt of Murasila, correctly incorporated its contents into FIR EX:PA. He sent copy of FIR to SHO through constable Arsala Khan.

(PW-3) Saeed Nawaz Khan No.530/FC has completed proceedings in pursuance of warrants and proclamation notices issued against the accused facing trial Muhammad Naeem, absconding accused Sher Ajam and acquitted co-accused Atlas Khan, and Noor Alam alias Noor Ayum under sections 204 and 87 Cr.P.C respectively.

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(PW-4) Murad Ali Shah Inspector, on 12-05-2016, submitted supplementary challan against accused facing trial Naeem Khan.

(PW-5) Ghulam Rasool FC/791 is marginal witness to the recovery memo EX:PW-5/1 vide which the SHO Bashir Khan took into his possession blood stained earth EX:P-1 from the place of deceased Muhammad Jalil Khan and sealed the same into parcel No.1. Likewise, he is also the marginal witness to the recovery memo EX:PW-5/2 vide which the SHO/IO, during spot inspection took into his possession two empties of 222 bore EX:P-2, one empty of 3 x 3 bore EX:P-3, two empties of 12 bore EX:P-4 from the places of accused lying in scattered condition. Similarly, through the said recovery memo SHO/IO, also took into his possession 04 pellets EX:P-5, one bullet (Sikka Goli) EX:P-6 and sealed the same into parcel No.3. All the above articles were sealed into separate parcels. Similarly through the said memo in his presence the SHO/IO, recovered and took into possession one spent bullet (Sikka Goli) from the wall through knife and sealed the same into parcel No.4. Likewise, he is also the marginal witness to the recovery memo EX:PW-5/3 vide which the SHO, took into his possession one Qameez EX:P-7; Shalwar EX P-8, one Chaddar EX:P-9 and one Bunyan EX:P-10 stained with blood having corresponding marks belonging to deceased Muhammad Jalil Khan. Similarly upon the said memo the SHO also took into possession one phial containing one bullet (Sikka Goli) EX:P-11 alongwith PM papers brought by constable Kiramat Ullah No.755 sent by the doctor concerned. The above mentioned blood stained garments were sealed into parcel No.5 while the phial containing bullet (Sikka Goli) was sealed into parcel No.6. PW-5 affirmed to have signed all the recovery memos referred to above. He also affirmed to have been examined by the I.O U/S 161 Cr.PC.

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(PW-6) Jahangir Khan had identified the dead body of deceased Muhammad Jalil before the doctor as well as before the local police on 28-01-1998. He affirmed to have been examined by the I.O U/S 161 Cr.PC.

(PW-7) Farid Khan ASI affirmed to have interrogated the accused after he had been arrested by SHO Ghulam Muhammad Khan PS Township. He affirmed to have produced the accused before the concerned Judicial Magistrate vide his application EX:PW-7/1 and obtained his two days police custody. He interrogated the accused and on expiry of period of two days police custody, he again produced the accused vide application EX:PW-7/2 before the Court concerned and accused facing trial was sent to judicial lockup. He has also recorded statement of the accused U/S 161 Cr.PC and after completion of investigation, handed over case file to the ASHO Murad Ali Shah who submitted supplementary challan EX:PW-7/3 in the instant case.

(PW-8) Bashir Ahmad (Rtd) SHO, is scribe of murasila and has also carried out investigation. As per his deposition, he was on patrolling when received information regarding the occurrence, on which he went to RHC Domail, where the complainant reported the matter which he recorded in shape of Murasila EX:PW-8/1. After reading it over to the complainant, the latter signed it as token of its correctness. PW Sher Jan Khan also thumb impressed the Murasila/ report as rider. He affirmed to have prepared the injury sheet of deceased Muhammad Jalil EX:PW-1/2 and inquest report EX:PW-1/3 and handed over the same to the doctor. He sent Murasila to the P.S for registration of the case. Thereafter, he went to the spot alongwith complainant and eye witness and prepared site plan EX:PW-8/2 on their pointation. During spot inspection, he took into his possession blood stained earth EX:P-1 from the place of deceased, sealed it into parcel No.1

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vide recovery memo EX:PW-5/1. Similarly, vide recovery memo EX:PW-5/2, he took into possession two empties of 222 bore EX:P-2, one empty of 3x3 bore EX:P-3 and two empties of 12 bore EX:P-4, from the places of accused lying in scattered position. Similarly, through said recovery memo, he also took into possession 04 pallets EX:P-5, a discharge bullet EX:P-6 and sealed into parcel No.3. Similarly, vide recovery memo EX:PW-5/3, he also took into possession blood stained shirt EX:P-7, Qameez EX:P-8, one Chaddar EX:P-9 and one Bunyan EX:P-10 of deceased, having cut marks, one phial containing bullet EX:P-11 sent by the doctor through constable, which were also packed and sealed into parcel No.5 and Parcel No.6 respectively. He also placed on file post mortem papers EX:PW-1/1, sent by the doctor through escorting constable. He sent blood stained articles to the FSL and placed on file the said report EX:P-8/3. He also conducted house search of the accused Noor Alam and Atlas through house search memo EX:PW-8/4. Similarly, he has also conducted house search of accused Sher Ajam and accused facing trial Naeem Khan vide house search memo EX:PW-8/5. He submitted application EX:PW-8/6 for recording statement of PW Sher Jan U/S 164 Cr.PC and after recording of the said statement, he placed it on the judicial record. He also placed on file the copies of FIR No.139 dated 25-07-1994, FIR No.140 of the even date, FIR No.141 and FIR No.118 EX:PW-8/7, EX:PW-8/8, EX:PW-8/9 and EX:PW-8/10, as proof of motive between the parties. He initiated proceedings u/s 204 Cr.PC and 87 Cr.PC vide his applications EX:PW-8/12 and EX:PW-8/12. After completion of investigation, he submitted complete challan U/S 512 Cr.PC, EX:PW-8/13 against all the accused. He affirmed his signatures on all the documents referred to above, prepared by him.

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(PW-9) Damsaz Khan is complainant of the instant case he reiterated his report recorded in the shape of Murasila EXPW-8/1. He narrated the same facts as mentioned in Para No.2 of the instant judgment, therefore, there is no need of reproducing the same. He affirmed endorsement of PW Sher Jan Khan on his report as rider. The complainant charged accused facing trial for the murder of deceased Muhammad Jalil.

10. PW Sher Jan eye witness was abroad, therefore, the learned counsel for complainant submitted an application for transposition of his statement recorded u/s 512 Cr.PC proceeding in the light of article 47 of Qanun-e-Shahadat Order 1984. The learned defense counsel did not object to the transposition of statement of PW Sher Jan, therefore, on acceptance of application, statement of PW Sher Jan recorded during 512 Cr.PC proceeding as PW-6 was transposed to the present case file vide order sheet No.17 dated 14-03-2017. According to the transposed statement of PW Sher Jan

"At the relevant time of occurrence, he alongwith Damsaz Khan and Mohd Jalil, were going in a vacant place towards the Agricultural Bank. When they reached near the house of Wilayat Khan, it was about 1530 hours, in the meanwhile acquitted co-accused Noor Ayum armed with 3 x 3 bore Rifle, Atlas Khan armed with DB shotgun, absconding co-accused Sher Ajam having DB shotgun and accused facing trial Naeem Khan armed with Kalashnikov, came there. Atlas Khan, accused ordered/commanded his companions to fire at Muhammad Jalil, whereupon accused Noor Ayum fired with his 3 x 3 bore rifle at Muhammad Jalil, while accused Naeem Khan and Sher Ajam also fired at him, due to which he got injured and fell on the ground. He alongwith Damsaz Khan, complainant escaped unhurt. Muhammad Jalil was then taken by them to the hospital however, he died on the way. Damsaz Khan made report of the occurrence in RHC Domel.

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Motive for the offence is a dispute over land. The site plan was prepared by the I.O at their instance".

11. Thereafter, prosecution closed its evidence while abandoning rest of PWs mentioned in the list of witnesses. Statement of accused was recorded U/S 342 Cr.P.C on 18/01/2018 who professed his innocence and false implication. He termed all PWs highly interested and procured, however, neither did he wish to be examined on oath U/S 340 (2) Cr.P.C nor opted to produce defense evidence.

12. The case was then fixed for final arguments, however, during that course learned APP for the State submitted an application dated 21/02/2018 for sending recovered empties to the FSL for firearm expert report. My learned predecessor after giving notice of the application to the defense and hearing arguments, accepted the application. Accordingly the empties were sent to the FSL in a sealed parcel, the report whereof was received which was placed on file as EX PZ. After receipt of FSL report, the accused was re-examined u/s 342 Cr.PC on 08/05/2018 wherein he abjured the allegations however, this time he requested for his examination on Oath u/s 340 (2) Cr.PC. The statement of accused was therefore, recorded on Oath on 14/05/2018 wherein he pleaded his innocence while deposing that he had no concern with the murder of deceased Muhammad Jalil. He was cross examined by the learned complainant's counsel.

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13. Since, accused did not opt for producing any defense evidence, therefore, after recording of statement of accused u/s 340 (2) Cr.PC, arguments of learned counsel for the parties and that of APP for the State were heard at length and available record was meticulously perused with their valuable assistance.

14. Mr. Yousaf Jamal, Learned APP for the state assisted by private counsel for the complainant Mr. Javed Khan Wazir Advocate argued that accused facing trial is directly charged by the complainant for the commission of offence, that he has committed the murder of the deceased Muhammad Jalil Khan by firing at him with firearm weapons. That he has remained absconder for sufficient time for which no explanation has been advanced; that medical as well as circumstantial evidence in shape of recovery of blood stained earth supports the prosecution version; while FSL positive report, speaking, about blood of human origin further strengthens the prosecution case. Similarly, all PWs remained consistent and coherent in their deposition made regarding the occurrence; that no major or minor contradiction could be extracted from their mouths. It was added the motive has been proved against accused facing trial. It was lastly argued that prosecution has successfully proved its case against accused facing trial beyond shadow of doubt and prayed was made for conviction of the accused.

15. Conversely, learned defense counsels Mr. Sakhi Ullah Advocate argued that accused facing trial is innocent and has falsely been charged in the instant case; that complainant is not eye witness of the

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occurrence; that occurrence has not taken place in the mode and manner as narrated by the complainant and PW Sher Jan rather medical evidence, site plan as well as circumstantial evidence do not support the ocular account; that all the PWs are highly interested, procured witnesses who never remained consistent and coherent in their deposition against the accused and their testimony is suffering from major discrepancies and contradictions, hence, prosecution has failed to prove charge against accused facing trial beyond any shadow of doubt. While concluding his arguments, learned defense counsel prayed for acquittal of the accused. Arguments advanced from both sides were heard at length and available record was perused minutely.

16. The prosecution in a criminal trial is burdened with heavy duty to establish guilt of the accused through confidence inspiring evidence, beyond reasonable doubts. Any single doubt if found reasonable in the prosecution case, it would be considered sufficient to discredit the prosecution story and benefit of the same will go in favour of accused and he would be entitled to earn acquittal.

17. While appreciating the evidence, if it is found to be confidence inspiring, consistent and coherent then according to the established legal canons of the criminal justice system no particular number of witnesses is required to prove the prosecution story and conviction of an accused can safely be recorded on the basis of single eye witness, as so enunciated by the august Supreme Court of Pakistan in the

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cases of Riaz Hussain VS The State
2001 SCMR 177, Farooq Khan VS The State 2008 SCMR 917
 and by the Lahore High Court 2015 P.Cr.L.J 678. It is the quality of
 evidence which matters and not the quantity, nor relationship of the
 witness with the victim or the complainant would be a valid reason for
 disbelieving and discrediting such witness, as so guided by the August
 Supreme Court of Pakistan in the case of Ashfaq Ahmed VS The State
2007 SCMR 641.

18. Keeping in view the ratio decidendi laid down by the
 Apex Courts in the above referred judgments, the prosecution evidence is
 discussed as hereunder.

19. In the present case ocular account was furnished by Damsaz
 Khan (complainant) and PW Sher Jan. Both the prosecution witnesses
 have claimed to have witnessed the occurrence while accompanying
 deceased Mohammad Jalil on the unfortunate day and time of incident.
 Damsaz Khan, complainant appeared during trial as PW-7. whereas PW
 Sher Jan did not appear as he was reportedly abroad, therefore, on the
 application of complainant's counsel, his statement recorded during 512
 Cr.PC proceedings as PW-6, was transposed to the present case file. PW
 Sher-Jan has also verified report of complainant by endorsing his thumb
 impression as rider. According to the initial report, recorded in the shape
 of Murasila, complainant alongwith PW Sher Jan and deceased
 Muhammad Jalil were proceeding in vacant plot towards Agricultural
 Bank when in the meanwhile accused facing trial alongwith absconding

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accused Sher Ajam and two acquitted co-accused Noor Ayum and Atlas while duly armed, appeared and on the command of Atlas Khan acquitted co-accused, Noor Ayum Khan, fired at Mohammad Jalil, as a result whereof Mohammad Jalil got injured and fell down on the ground. In the meantime, accused facing trial and absconding co-accused Sher Ajam also made firing. Complainant and PW Sher Jan luckily escaped unhurt. Complainant and PW Sher Jan arranged vehicle (dotsun) via which Mohammad Jalil was shifted in injured condition to RHC Dornel, Bannu, however, on the way he succumbed to the injuries. Complainant when appeared in the witness box, reiterated his initial report. According to the initial report recorded in the shape of murasila, complainant and PW Sher Jan shifted Mohammad Jalil in injured condition from the spot to RHC Dornel. Complainant neither in his initial report nor during his examination in chief has stated anything regarding the fact that who lifted Mohammad Jalil in injured condition to the Datsun, however, during his cross examination he improved his statement and deposed that Mohammad Jalil was lifted to the dotsun by some unknown people. Murasila based on initial report of complainant is totally silent regarding this fact. Similarly transposed statement of PW Sher Jan also reflects that he alongwith complainant shifted Mohammad Jalil to RHC Dornel whereas he has nowhere mentioned that Mohammad Jalil was put by some other people in the dotsun. If the improved version of complainant is believed to be true, then question arises as to who had put Muhammad Jalil in Datsun. Investigation is totally silent regarding this aspect of the

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case. If the complainant version was true then examination of those persons who had lifted Muhammad Jalil to the dotsun, could have provided strong corroboration to the ocular testimony advanced by complainant. Furthermore, according to the ocular testimony of complainant and PW Sher Jan they shifted Muhammad Jalil to RHC Domel where complainant lodged report, further thumbed impressed by PW Sher Jan as rider, however, it is surprising that in inquest report as well as in Postmortem report they are not identifiers of the dead body rather Akram Pur, father and Muhammad Jehangir Khan, brother of deceased have been cited as identifiers in the relevant columns of inquest report and PM report. It further creates doubt regarding presence of complainant and PW Sher Jan. Had they shifted the dead body of deceased to the hospital and were present at the time of report, they would have stood as body identifiers. Such omission on the prosecution part further makes doubtful presence of alleged eye witnesses on the spot. It has further been observed that neither complainant nor PW Sher Jan has shown their purpose of visit to the spot. Complainant during cross examination affirmed that he resides at a distance of 4/5 kilometer from Domel bazar. Similarly, he also affirmed that PW Sher Jan resides at a distance of 14 kilometer from Domel bazar. Both the PWs have not advanced any reason of their visit to the spot on the eventful day. Both were required to have advanced cogent reason for their presence at the spot as neither they were resident of the said place nor they carry any business there. It is not their plea that in ordinary course of business they

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visit the spot. Defense has specifically put question to the complainant during cross examination that neither he nor PW Sher Jan has mentioned their purpose of visit to the spot. To which the reply of complainant was in affirmative. As such both complainant and PW Sher Jan fall within the definition of chance witnesses. In legal parlance chance witness is one who claims his presence on the spot at the eventful time, albeit, his presence on the spot is a sheer chance, as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resided, carried on business or run day to day affairs. Testimony of a chance witness, in such context, is ordinarily not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time as in normal courses. Presumption under the law that would operate, would be that such witness was absent from the crime spot. In rare cases statement of a chance witness can be relied upon, provided some convincing explanation appealing to a prudent mind exists otherwise his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt. Wisdom can be derived from the judgment of the Apex Court in case titled "Mst. Sughra Begum and another Vs Qaiser Pervaz and others" (2015 SCMR 1142).

20. The complainant and PW Sher Jan being chance witnesses could not establish their presence on the spot through physical circumstances, hence their testimony is not worthy of credence. It has further been observed that the ocular testimony advanced by complainant

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and PW Sher Jan is not consistent rather contradict each other regarding mode of occurrence.

21. According to the complainant, accused Atlas Khan commanded his companion to fire at Muhammad Jalil in consequence whereof acquitted co-accused Noor Ayum fired at Muhammad Jalil, resultantly he sustained injuries and fell down on the ground. In the meanwhile accused facing trial and absconding co-accused Sher Ajam also made firing at deceased. The report of complainant is totally silent as to whether firing of accused facing trial and absconding co-accused Sher Jan had resulted into any injury to the deceased. Contrary to this, PW Sher Jan's statement reflects that on the command of accused Atlas Khan all accused made firing due to which Muhammad Jalil got injured and fell down on the ground. Furthermore Complainant has claimed that he alongwith PW Sher Jan and deceased were proceeding in vacant plot towards agricultural bank whereas during his cross examination he deposed that he alongwith deceased Mohammad Jalil when reached Domail Bazar from the village, PW Sher Jan was already present there and had accompanied them from Domel bazar. Statement of PW Sher Jan is totally silent in this regard. PW Sher Jan's transposed statement depicts that he alongwith complainant and deceased were proceeding in a vacant ground towards Agricultural Bank. PW Sher Jan has nowhere stated that he joined complainant and deceased from Domail bazar. Complainant has tried to make dishonest improvement during his testimony in order to make his statement believable, however, improvement made by him has

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created serious doubt in the prosecution case which has made the mode and manner of the occurrence highly doubtful.

22. It has also been observed that medical evidence is not compatible with ocular account. According to complainant's testimony accused fired at deceased from close distance. During his cross examination complainant deposed that accused party and deceased were in front of each other whereas according to PM report FAI wound (injury no 1) is located on left side chest postero laterally and its exit (wound no 2) is on right side chest postero laterally. Likewise injury no 3 is graze wound on postero aspect of right shoulder joint. Similarly injury no 5 FA inlet wound is located on postero aspect of right shoulder joint and its exit is wound no 6, is on the right axillary line. The Doctor (PW-1) has also admitted that injury no 5 was caused from back side and its direction is from upward to downward.

23. Another aspect of the case which creates serious doubt in the prosecution version is that according to the prosecution case the occurrence took place on 28/01/1998 at 15.30 hours and was reported at 15.45 hours. According to complainant, deceased Muhammad Jalil succumbed to the injuries on the way to RHC Domel which means that Muhammad Jalil was dead at the time of report recorded at 15.45 hours whereas PM examination of deceased Muhammad Jalil was conducted at 04.00 PM. According to PM report, probable time between death and postmortem is 5 to 10 minutes. If according to the opinion of doctor, minimum time of 05 minutes is considered between death and

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postmortem, the one favorable to the accused, then deceased expired at 03.55 PM which means that deceased was alive till 03.55 PM and was present in the hospital whereas complainant had deposed that deceased met to death on the way. Hence, complainant's testimony is conflict with the medical evidence. It clearly suggests that the dead body was shifted to the hospital by some unknown persons thereafter complainant and PW Sher Jan were procured and arrayed as eyewitnesses. Furthermore, according to the complainant and PW Sher Jan, they had remained unhurt during the occurrence. According to the site plan, bullet marks were observed on the wall behind the deceased. However, no bullet mark was observed on the wall behind complainant and PW Sher Jan. If the accused had made firing at complainant and PW Sher Jan who had allegedly been present there as shown in the site plan, there must have been found bullet marks behind them on the wall of house of one Zarwali which is shown in the site plan behind their position. This fact has further made presence of complainant and PW Sher Jan on venue of occurrence highly doubtful.

24. So for as motive is concerned, the prosecution has alleged that there was dispute over land. The prosecution has also brought on the record copies of FIRs. However, the motive would not be sufficient alone to bring home guilt against the accused, as it is a double-edged weapon and can cut either way. Even otherwise, the burden to prove a charge against the accused lies on the prosecution and accused is not required to prove his innocence beyond reasonable doubt, rather the prosecution has to prove its

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case meticulously on all positive hypothesis, which lead only and only to the guilt of accused.

25. As regards positive FSL report of crime empties, admittedly weapon of offence has not been recovered. Furthermore recoveries are corroborative piece of evidence which are always taken into consideration alongwith direct evidence. Similarly, positive serologist report qua blood stained articles as well as autopsy report of deceased can only prove unnatural death of deceased with firearm on a particular place but by whom it never tells the name/names of culprit/culprits. Since direct evidence furnished by ocular account is disbelieved, therefore; these corroborative piece of evidence by no mean would be sufficient to bring home the guilt of the accused. Reliance is placed on Riaz Ahmad's case (2010 SCMR 846). It has been held by the Hon'ble Supreme Court of Pakistan in "Ijaz Ahmad's case (1997 SCMR 1279) and Asadullah's case (PLD 1971 SC 541), that corroborative evidence is meant to test the veraity of ocular account. Both ocular and corroborative evidence is to be read together and not in isolation. Similarly, it has also been held in the case law titled as "Saifullah Vs the State (1985 SCMR 1730) that when the eyewitnesses are not relied upon, there is nothing which can be corroborated by the recoveries.

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26. So for as abscondence of accused facing trial is concerned, it is well entrenched principle of criminal justice system that abscondence alone cannot be a substitute for real

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evidence. Wisdom is derived from the case law titled as Farman Ali and another Vs The State, (PLD 1980, SC 201). In absence of any credible evidence to support the prosecution version, accused cannot be convicted merely on the ground of abscondence. Reliance is placed on case laws titled as Samiullah and others Vs The State (2015 P Cr. LJ 416), Mohammad Vs Pesham Khan (1986 SCMR 823). When the ocular account is disbelieved, accused cannot be held guilty of the offence on the sole ground of abscondence. Accused facing trial after his arrest has remained in police custody however, neither anything incriminating was recovered either from his possession or upon his pointation nor has he made any confession before a competent court of law.

27. From the above, narration of facts, it is abundantly clear that neither the complainant nor PW Sher Jan was present on the spot at the time of alleged occurrence. The ocular testimony relied upon by the prosecution is neither confidence, inspiring nor trustworthy. They have remained unable to establish their presence on the spot at the relevant time of occurrence through reliable and unimpeached physical circumstances.

28. So far as the factum of death of the deceased Muhammad Jalil is concerned, no doubt that he had met an unfortunate death through fire arm injuries but who had done him

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to death is a fact which shrouds in mystery. The offence with which the accused facing trial is charged, carries capital punishment, therefore the prosecution is burdened with heavy duty to prove charge against accused facing trial through reliable, cogent and confidence inspiring evidence free from all reasonable doubts.

29. Needless to emphasis that an accused in criminal case is entitled to be extended benefit of doubt in his favor as matter of right. In the present case there are many circumstances which created doubts in the prosecution case. Even an accused cannot be deprived from the benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution story. In the case reported as Tariq Parvez VS the State 1995 SCMR-1345, the Hon'ble Supreme Court of Pakistan has held as under:

"The concept of benefit of doubt is deep rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt an a prudent mind about the guilt of accused, then the accused will be entitled to the benefit of doubt not a matter of grace and concession but as matter of right".

30. The prosecution evidence, was scrutinized with great caution and care which led this court to hold that the prosecution has remained unsuccessful to discharge its prime duty. In other words the

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prosecution has remained unable to prove the charge against accused facing trial.

31. The testimony produced by the prosecution is neither believable nor confidence inspiring. It is as such deficient to secure conviction. Recording conviction on the basis of given set of evidence would imply miscarriage of justice and would not be judicious in the circumstances.

32. For the foregoing reasons, while extending benefit of doubt in his favour, accused facing trial Naeem Khan is, hereby acquitted from the charges leveled against him. He is in custody, be released forthwith, if not required in any other case. Case property, if any, be kept intact till arrest of absconding accused. File be consigned to the record room after necessary completion and compilation.

Announced
31/05/2018

Amjad

(AMJAD HUSSAIN)

Additional Sessions Judge-III, Bannu.

CERTIFICATE:-

Certified that this judgment consists of twenty-three (23) pages. Each page has been read, checked, corrected and signed by me where necessary.

Amjad

(AMJAD HUSSAIN)

Additional Sessions Judge-III, Bannu

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To,

The Honourable Secretary,
Education Department Khyber,
Pakhtunkhwa Secretariat,
Peshawar.

Subject Departmental Appeal For Re-Instatement
Against Dismissal Order, Verbally
Communicated To The Appellant

Respect Sir,

The appellant submits as under

1. That the appellant was appointed as SET senior English teacher BPS (Science Teacher) at Govt High School Angori FR. Kurram Dated 02/10/1989.
2. That the appellant was transferred to Govt high school Habibullah FR. Bannu as SET BPS -16 and is still up to date considered as last posting place of duty of the appellant .
3. That the appellant as competent employ of education with M.SC (Geology) from Peshawar University with first division with best record of progress.
4. That appellant has un blemish record, spotless life and performed duty with the entire satisfaction of his seniors.

Gohar Ali Khattak
Admin. Officer
Peshawar
High Court

5. That unfortunately a dispute of property was created with one teacher of the same school Habib Ullah FR. Bannu namely MR. Akram pur who instigated his friend, owner of the property on which the school is built namely Mr. Atlas Khan who restrained^r precluded me to enter the school with the^yater of dying consequence so the appellant was unable to attend the duty then soon after the creation of such situation the appellant submitted an appeal to agency education officer for redressal of his grievances dated 22/09/1997 to transfer the appellant to other scholar^{or} any alternative arrangements but he slept over it.

6. That soon after a few days of the situation with owner of the land of school the appoⁿant dispute of property with Mr. Akram pur resulted in blood feud enmity who lodged FIR of the death of his relative, Mohammad Jalil FIR lodged against the appellant and then due to highly approachable and dangerous enemy, the appellant was absented since 28/01/1998 and then surrendered before law. Dated 05/08/2016 and after conducting trial in court of criminal jurisdiction who was acquitted on merit with honours dated 31/05/2018.

7. That just after acquittal, the appellant attended the duty place came to know that appellant is dismissed from service and it was confirmed from Agency education officer verbally.

Gohar Ali Khesghi
Advocate High Court
Faisalabad

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8. That ex-parte proceed by department against the appellant, no charge sheet No enquiry and no show cause notice served upon the appellant and no proclamation issued against him.
9. That no document is produced to the appellant even repeatedly requested.
10. That for the reason of honourable acquitted and service rendered about 10 years with unblemish had record and expartee proceeding up, no chance of hearing is given to the appellant who was condemned unheard.

Therefore, it is requested that on acceptance of this appeal, the appellant may please be re-instated in service with all back benefits please

Dated 22/06/2018

Gohar Ali Kheshgi
Advocate High Court
Peshawar

MR. Naeem Khan S/o Zahir Shah
R/o Qully Khel P.O tehsil Domail District Bannue SET Govt high School Habibullah
FR. Bannu
CNIC No. 11101-4656958-7

Appellant
[Signature]

قیمت
50 روپے



41902

ایڈوکیٹ: گوہر علی ایڈووکیٹس لڈ

بار کونسل ایسوسی ایشن نمبر: 144874

رابطہ نمبر: 03459082942

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سر ایس ڈی بیٹون صاحب محترم خواہ لڈ

مخانب: اسپلرنٹ	دعوی:
لغیم صاحب (اسپلرنٹ)	علت نمبر:
بنام	مورخہ:
اطمینہ سیکورٹیز کمپنی لمیٹڈ (رسٹریٹڈ کمپنی)	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام لڈ کے کیلئے گوہر علی ایڈووکیٹس لڈ کو وکیل مقرر

کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعوی اقبال دعوی اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 24 ستمبر 2018

المقام لڈ کے واسطے

Attested & accepted
کے لیے منظور ہے

نوٹ: اس وکالت نامہ کی فوٹو کاپی نام قابل قبول ہوگی۔