

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

**SERVICE APPEAL NO. 1376/2013**

Date of institution ... 27.09.2013

Date of judgment ... 08.04.2019

Khurshid Alam S/o Hassanullah  
R/o Village Esot Kala, PO Ahmad Abad, Tehsil Takht-e-Nasrati,  
District Karak.

... (Appellant)

**VERSUS**

1. Deputy Inspector General of Police, Kohat Region, Kohat.
2. District Police Officer, Karak, District Karak.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST  
THE TERMINATION ORDER DATED 27.03.2010 PASSED BY  
DISTRICT POLICE OFFICER, KARAK AND THAT OF DIG  
KOHAT DIVISION ON REPRESENTATION OF THE  
APPELLANT DATED 13.01.2013.

Mr. Muhammad Asif Yousafzai, Advocate.

.. For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI  
MR. AHMAD HASSAN

.. MEMBER (JUDICIAL)

.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the  
appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the  
respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant  
was serving in Police Department. He was imposed major penalty of dismissal  
from service vide order dated 27.03.2010 on the allegation of absence from  
duty. The appellant filed departmental appeal on 21.01.2013 which was rejected  
on 14.02.2013 hence, the present service appeal on 27.09.2013.

*M. Amin*  
*8.4.2019*

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 27.03.2010 on the allegation of absence from duty. It was further contended that the appellant was also involved in a murder case. It was further contended that the absence of the appellant was not intentional but was due to involvement in the criminal case. It was further contended that the appellant was honourable acquitted by the competent court. It was further contended that the delay in filing the department appeal and service appeal was occurred due to the reason that the appellant was behind the bar and the appellant has also filed an application for condonation of delay. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor any final show-cause notice was issued to the appellant therefore, the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department. It was further contended that the appellant remained absent from duty without permission of the lawful authority. It was further contended that the appellant was imposed major penalty of dismissal from service after observing of all codal formalities. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 27.03.2010 and the appellant filed departmental appeal on 21.01.2013 after sufficient delay. It was further contended that the departmental appeal was rejected on 14.02.2013 and the appellant was required to file service appeal within one month but he has filed

*M. Anam*  
8.4.2019

the present service appeal on 27.09.2013 therefore, the present service appeal is badly time barred and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was imposed major penalty of dismissal from service vide order dated 27.03.2010 on the allegation of absence from duty. The appellant filed departmental appeal on 21.01.2013 which was rejected on 14.02.2013 and thereafter, the appellant filed service appeal on 27.09.2013. Though it was contended by learned counsel for the appellant that the appellant has filed application for condonation of delay wherein it has been mentioned that delay in filing of departmental appeal was occurred as the appellant was behind the bar but the record reveals that the appellant was acquitted in the criminal case in December 2012. Therefore, the appellant was required to file service appeal within one month from the date of rejection of departmental appeal but the record reveals that the departmental appeal of the appellant was rejected on 14.02.2013 and the appellant has filed service appeal on 27.09.2013 after a delay of seven months therefore, the service appeal is badly time barred. As such, without touching the merit of the appeal, the present service appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
08.04.2019

  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

08.04.2019


08.04.2019

Junior in counsel for the appellant present. Advt. Adv. for respondents present. Junior in counsel for the appellant seeks advt. Counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments arguments on 20.04.2019 before D.B. heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file without touching the merit of the appeal the present service appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

08.04.2019

  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER.

11.01.2019

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Muhammad Idrees PSI for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 03.03.2019 before D.B.

  
Member

  
Member

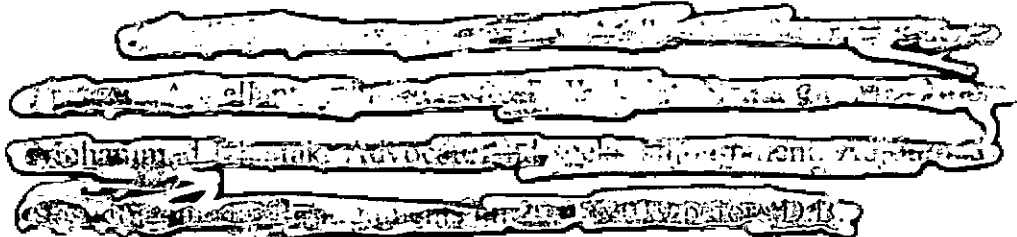
04.03.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 08.04.2019 before D.B.

  
(M. HAMID MUGHAL)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER









30.05.2018

Counsel for the appellant and Addl: AG for respondents present. Appellant is directed to submit Member copy of the instant appeal. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 25.07.2018 before D.B.



(Ahmad Hassan)  
Member



(M. Hamid Mughal)  
Member

25.07.2018

Since 25.07.2018 has been declared as public holiday on account of General Election. Therefore, case is adjourned on 28.08.2018 before D.B



READER

28.08.2018

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 16.10.2018 before D.B.



(Ahmad Hassan)  
Member



(Muhammad Amin Khan Kundi)  
Member

16.10.2018

Junior to counsel for appellant present and seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 21.11.2018 before D.B



Member



Member

02.10.2017

Learned counsel for the appellant present and seeks adjournment. Learned Deputy District Attorney stated that the appellant is absconding criminal case bearing No. F.I.R 226 302/324/34 PS YKS District Karak. In view of statement of Deputy District Attorney appellant be noticed for 04.12.2017 before D.B.

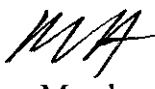
  
Member  
(Executive)

  
Member  
(Judicial)

04.12.2017


Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. Counsel for the appellant is also directed to produce member copy of the instant appeal. To come up for arguments on 29.01.2018 before D.B.

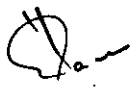
  
Member  
(Executive)

  
Member  
(Judicial)

29.01.2018

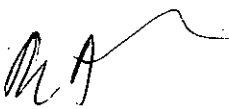
Learned counsel for the appellant and Mr. Riaz Pinda Kheil, learned Assistant Advocate General along with Rehan Ullah S.I for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 28.03.2018 before D.B

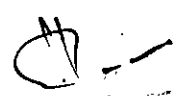
  
(Muhammad Amin Kundi)  
MEMBER

  
(Muhammad Hamid Mughal)  
MEMBER

28.03.2018

Junior to counsel for the appellant and Mr. Riaz Pindakheil, learned Assistant Advocate General alongwith Khurshid Khan S.I for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available. Adjourn. To come up for arguments on 30.05.2018 before D.B

  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

09.01.2017

Counsel for the appellant and Mr. Farmanullah, S.I (Legal) alongwith Assistant A.G for the respondents present. Counsel for the appellant requested for adjournment. To come up for rejoinder and final hearing before D.B on 15.5.2017.

  
Member

  
Chairman

15.05.2017

Counsel for the appellant and Mr. Farmanullah, ASI alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment. Adjourned for arguments to 10.08.2017 before D.B.

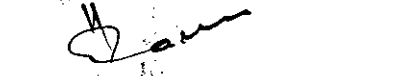
  
(GUL ZEB KHAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

10.08.2017

Junior counsel for the appellant present. Mr. Kabirullah Khattak, Assistant AG for the respondents present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 02.10.2017 before D.B.

  
(Muhammad Amin Khan Kundi)  
Member (J)

  
(Muhammad Hamid Mughal)  
Member (J)



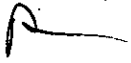
21.03.2016

Appellant in person and Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 11.5.2016 before S.B.

  
Chairman

11.05.2016

Counsel for the appellant and Addl: AG for respondents present. Fresh Wakalatnama on behalf of appellant submitted. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended subject to payment of cost of Rs. 500/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments on 9.9.2016 before S.B.

  
Member

09.09.2016

Counsel for the appellant and Mr. Rehanullah, ASI alongwith Additional AG for respondents present. Written reply on behalf of respondents No. 1 and 2 submitted. Cost of Rs. 500/- also paid and receipt thereof obtained from learned counsel for the appellant. The appeal may be placed before the chairman for assigning the appeal to appropriate D.B for rejoinder and final hearing for 09.01.2017.

  
Member

26.08.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was serving as Constable when charged in four criminal cases of heinous nature and subsequently and finally acquitted vide order dated 20.12.2012. That on the basis of the said cases appellant was behind the Bar when dismissed from service on the allegations of wilful absence from duty vide order dated 27.3.2010 regarding which appellant preferred departmental appeal which was rejected vide order bearing endorsement No. 1130-31/EC dated 14.2.2013 whereafter appellant preferred first service appeal on 14.3.2013 which was withdrawn for certain technical reasons on 16.8.2013 subject to filing of fresh appeal which was filed on 27.9.2013.

Appellant Deposited  
Security & Process Fee



That the appellant was given no opportunity of hearing nor proceedings were conducted in the manners prescribed by the law and as such the impugned order is a nullity in the eye of law.

Points urged need consideration. Admit, subject to all legal objections. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.11.2015 before S.B.

  
Chairman

25.11.2015

Agent of counsel for the appellant and Addl. A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 21.3.2016 before S.B.

  
Chairman

29.06.2015

Agent of counsel for the appellant present. Counsel for the appellant is stated indisposed. Requested for adjournment. Adjourned to 30.7.2015 for preliminary hearing before S.B.

  
Chairman

30.07.2015

Counsel for the appellant present. Seeks adjournment. Adjourned to 12.8.2015 for preliminary hearing before S.B.

  
Chairman

12.08.2015

Agent of counsel for the appellant present. Counsel for the appellant is stated busy at Islamabad. Adjourned to 26.8.2015 for preliminary hearing before S.B.

  
Chairman


23.2.2014

Clerk of counsel for the appellant present and submitted that his senior is busy in the Peshawar High Court, Bannu Bench. He requested for adjournment. To come up for preliminary hearing on 06.4.2015.

  
Member

06.04.2015

None for the appellant present. Notices be issued to appellant/counsel for the appellant. To come up for preliminary hearing on 25.05.2015 before S.B.

  
Member

25.05.2015

Clerk of counsel for the appellant present and requested for adjournment due to general strike of the Bar. To come up for preliminary hearing on 29.06.2015 before S.B.

  
Member

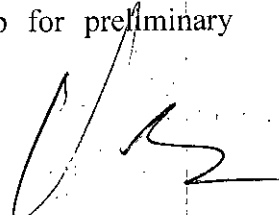
7.  
05.06.2014

Clerk of Counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing on 05.08.2014.

  
Member


8.  
05.08.2014

Counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing on 01.10.2014.

  
Member

9.  
01.10.2014

Clerk of counsel for the appellant present; and requested for adjournment. Request accepted. To come up for preliminary hearing on 10.12.2014.

  
Member

10.  
Reader Note:

10.12.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 23.02.2015 for the same.

  
Reader

09.12.2013

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 23.01.2014.

Member

4.  
23.01.2014

Mr. Hedayat Ullah, Advocate on behalf of counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 03.03.2014.

Member

5.  
03.03.2014

Mr. Hedayat Ullah, Advocate present and filed Wakalat Nama on behalf of the appellant. He requested for adjournment. To come up for preliminary hearing on 22.04.2014.

Member

6.  
22.04.2014



Clerk of counsel for the appellant present and requested for adjournment due to general strike of the Bar. To come up for preliminary hearing on 05.06.2014.

Member

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1376/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	30/09/2013	<p>The appeal of Mr. Khurshid Alam resubmitted today by Mr. Muhammad Rafiq Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	1-10-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>9-12-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Khurshid Alam son of Hassanullah received today i.e. on 27.09.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Copy of departmental appeal having no date be dated.
- 4- Annexures of appeal may be annexed serial wise as mentioned in the memo of appeal.

No. 1359 /S.T,

Dt. 27/9/2013.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Muhammad Rafiq Khattak Adv. Pesh.

*NOTE. Rejection final order attached and date is available .*

*Resubmitted after complication .*

*(M.)  
Khattak Adv*



**BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR**

Service Appeal No. 1376 /2013

Khurshid Alam.....Appellant

**VERSUS**

Deputy Inspector General of Police, Kohat & others...Respondents

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	Service Appeal alongwith affidavit		1-4
2.	Application for condonation of delay alongwith affidavit		5-6
3.	Addresses of Parties		7
4.	Copy of order 16.08.2013	A	8
5.	Copy of order dt.20.12.12 of ATC, Kohat	B	9-35
6.	Copy of order dt.25.07.12 of ASJ, Karak	C	36-51
7.	Copy of order dt.03.12.12 of JMIC Karak	D	52-54
8.	Copy of order dt.27.11.12 of JMIC Karak	E	55-58
9.	Copy of dismissal order & representation	F	59
10.	Copy of representation & rejection order	G	60-62
11.	Wakalat Nama		

*Khurshid*  
Appellant

Through

*h*  
*Muhammad Rafique Khattak*

**Muhammad Rafique Khattak**  
Advocate, Peshawar

Date: 27 / 9 /2013

**BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR**

Service Appeal No. 1376 /2013

~~W.F. Peshawar~~  
~~1413~~  
~~27/9/13~~

Khurshid Alam S/o Hassanullah  
R/o Village Esot Kala, PO Ahmad Abad,  
Tehsil Takht-e-Nasrati, District Karak.....**Appellant**

**V E R S U S**

1. Deputy Inspector General of Police,  
Kohat Region, Kohat
2. District Police Officer, Karak, Distt Karak

.....**Respondents**

*U/S-4 of K.P.K Service Tribunal Act, 74*  
Service appeal against the  
termination order dated 27.03.2010  
passed by District Police Officer,  
Karak and that of DIG Kohat  
Division on representation of the  
appellant dated 13.01.2013.

~~Signature~~  
27/9/13

**Respectfully Sheweth:**

1. That the appellant prior to the instant appeal, filed an appeal in this Honourable Tribunal bearing No.582/13 which was withdrawn on 16.08.2013 for technical reasons with the permission to file a fresh appeal which was granted, hence the appeal in hand. (Copy of the order dated 16.08.2013 is annexed as mark "A").

re-submitted to ~~43~~  
and filed.

~~Signature~~  
30/9/13

2. That the appellant joined service as Constable in the Department of Police in the year 2008.
3. That the appellant qualified the basic course and started rendering his services.
4. That in the year 2009 while the appellant was posted in P.S Hurum, his father fall seriously ill.
5. That the appellant applied for leave, which was granted and his departure report was recorded in the daily Diary No.26 dated 05.12.2009.
6. That the appellant was managing treatment of his father that in the meanwhile the appellant was implicated in a murder case.
7. That a couple of other criminal case were also registered against the appellant.
8. That the appellant was arrested in the above said cases and was put in to trial, the appellant has been acquitted of all the charges leveled against him. (Copies of acquittal order are annexed as mark "B, C, D & E" respectively).
9. That after his acquittal, the appellant went to Police Line, Karak to submit his arrival but was informed

that his services has been dismissed vide order Book No.335 dated 27.03.2010. (Copy of the dismissal from service order is annexed as mark "F").

10. That the appellant moved a department representation to the DIG, Kohat Region, Kohat by the same has been dismissed. (Copy of the same is annexed as mark "G").
11. That the appellant approached this Honourable Court for the re-instatement in service for the following amongst other grounds:

**GROUND S:**

- A. That the appellant behind the bar, which fact was communicated to the respondents and thus the situation was beyond the control of the appellant.
- B. That the appellant has been acquitted in all the cases registered against him.
- C. That the appellant has not wasted anytime in making the departmental representation, which he moved immediately after his release.
- D. That the absence of the appellant was neither willful nor deliberate but because of the circumstances.
- E. That no opportunity of being heard has been provided to the appellant and he has been punished behind his back.

- F. That the punishment so imposed upon the appellant is against the norms and principles of natural justice.
- G. That the appellant may rely upon additional grounds during hearing of this appeal.

In view of the aforesaid submissions, it is humbly prayed that by accepting this appeal, the orders of dismissal from service of the appellant and the orders of DIG Kohat Division on representation of the appellant dated 13.01.2013 may please be set aside and consequently the appellant may please be reinstated in service with all back benefits.

And / or any other relief deemed appropriate in the circumstances of the case may also be granted.

*[Signature]*  
Appellant

Through

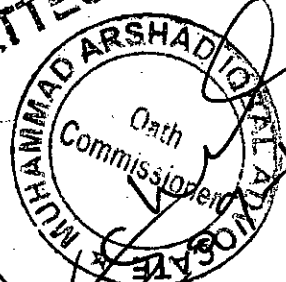
*[Signature]*

**Muhammad Rafique Khattak**  
Advocate, Peshawar

Date: 27/9/2013

**AFFIDAVIT**

I, Muhammad Rafique Khattak Advocate, as per instruction of my client, do hereby solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

**ATTESTED**  


*[Signature]*

**DEPONENT**

*verify by the instructions of my client.*

**BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2013

Khurshid Alam.....**Applicant/ Appellant**

**V E R S U S**

Deputy Inspector General of Police, Kohat & others...**Respondents**

**Application for condonation of delay  
(if any) caused in filing the appeal.**

**Respectfully Sheweth:**

1. That the above titled appeal has been filed in this Honourable Tribunal in which no date of hearing as yet has been fixed.
2. That the applicant seeks condonation of delay (if any) for the following amongst other:

**G R O U N D S:**

- A. That as submitted in appeal the applicant was arrested in a couple of criminal cases and he was behind the bars.
- B. That the circumstances were beyond the control of the applicant, hence the delay.
- C. That the delay is neither willful nor intentional.

تہمت  
10



50681

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

رابطہ نمبر:

بعدالت جناب: سر درسن ٹریڈ ہونٹل لینڈ مار

<p>منجانب: ایبلا ننگ (مور شہد عالم)</p>  <p>مورخہ: 11/11/2013</p> <p>جرم:</p> <p>تھانہ:</p>	<p>دعویٰ: 11/11/2013</p> <p>1376/2013</p> <p>مورخہ: 11/11/2013</p> <p>جرم:</p> <p>تھانہ:</p>
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### بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ  
 ان مقام لینڈ مار کے محمد زکریا صاحب کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وہیں صاحب کو  
 راضی نامہ کرنے و تقریر جان و فیصلہ برصفت دینے جواب دعویٰ اقبال دعویٰ اور درخواست اذہر قسم کی تصدیق  
 زریں پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا تاخیر کی صورت میں یا اہل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اہل نگرانی و نظریاتی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب  
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا سامنے پر داختم منظور و قبول ہوگا دوران مقدمہ  
 میں جو خرچہ ہر جہانہ اتوائے مقدمہ کے نسبت سے ہوگا وہ وکیل کو صوف و قبول کرنے کا اختیار ہوگا کوئی تاریخ پیشی مقام  
 دورہ یا عد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی نہ ہوگا۔ لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم:

العبد \_\_\_\_\_ واہ شد \_\_\_\_\_ العبد \_\_\_\_\_

Accepted & Accepted

کے لئے منظور ہے

مور شہد عالم

- D. That valuable rights of the applicant are involved in the appeal in question, therefore, the appeal needs to be heard and decided on merit.
- E. That natural justice also demands decision of the case on merit.
- F. That the law also favours the decision on merit rather than the dismissal of cases on mere technicalities.
- G. That the applicant may raise additional grounds during hearing of the case.

It is, therefore, most humbly prayed that by accepting this application the delay (if any) caused in filing of the appeal may please be condoned in the interest of justice.

*Kausar*

Applicant/ Appellant

Through


*(b)*  
*Muhammad Rafique Khattak*

**Muhammad Rafique Khattak**  
Advocate, Peshawar

Date: 27/9/2013

**AFFIDAVIT**

I, Muhammad Rafique Khattak Advocate, as per instruction of my client, do hereby solemnly affirm and declare that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

**ATTESTED**  
  
*Muhammad Arshad Iqbal*  
 Oath Commissioner  
 30/9/13

**DEPONENT** *(b)*  
*Muhammad Rafique Khattak*

*verified by the instructions of my client*



**BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2013

Khurshid Alam.....Appellant

**VERSUS**

Deputy Inspector General of Police, Kohat &amp; others...Respondents

**ADDRESSES OF PARTIES****APPELLANT:**

Khurshid Alam S/o Hassanullah  
 R/o Village Esot Kala, PO Ahmad Abad,  
 Tehsil Takht-e-Nasrati, District Karak

**RESPONDENTS**

1. Deputy Inspector General of Police,  
Kohat Region, Kohat
2. District Police Officer, Karak, Distt Karak

*Khurshid*  
 Appellant

Through

*(h.)*  
*Muhammad Rafique Khattak*  
 Muhammad Rafique Khattak  
 Advocate, Peshawar

Date: 27/ 9/2013

BEFORE THE SERVICES TRIBUNAL

PESHAWAR



Service Appeal No. 582 /2013

Case No. 555  
Date 14-3-2013

Khurshid Alam S/o Hassanullah  
R/o Village Esot Kala, PO Ahmad Abad,  
Tehsil Takht-e-Nasrati, District Karak.....Appellant

**V E R S U S**

1. Deputy Inspector General of Police,  
Kohat Region, Kohat
2. District Police Officer, Karak, Distt Karak

.....Respondents

Service appeal against the termination  
order dated 27.03.2010 passed by  
District Police Officer, Karak.

*I request for*  
*withdrawal and filed*  
*for fresh appeal*  
*16.08.2013*  
*m,*  
*Anwarul Haq*

Appellant with counsel present and requested for  
withdrawal of appeal due to some technical reasons with  
permission to file fresh one. Request is accepted. The appeal is  
dismissed as withdrawn with permission to file fresh one subject to  
all legal objections File be consigned to the record.

*sd/-*  
*M. Anwarul Haq*

ANNOUNCED  
16.08.2013

**Certified to be true copy**  
EX. OFFICER  
Khuzdar District Service Tribunal  
Peshawar

IN THE NAME OF ALLAH THE MOST GRACIOUS AND THE MOST MERCIFUL  
BEFORE JUDGE MUHAMMAD ASIM INAM, ANTI-TERRORISM COURT  
KOHAT DIVISION, KOHAT.

CASE NO. 123 OF 2011

The State

Versus.....

1. Khursheed Alam S/O Hassan Ullah  
R/O Zeriwala Banda, District Karak
2. Aminullah S/o Umar Daraz  
R/o Babal Khel, District Karak

Date of Institution	17.10.2011
Date of Decision	20.12.2012

JUDGEMENT:-

The accused named above were charged in case FIR No. 223  
30.06.2011 U/S 365-A/17(3) Haraba/148/149 PPC, of Police Station  
Yaqoob Khan Shaheed, District Karak and faced their trial before this  
court.

Succinct fact of the case are that complainant reported the matter to  
the local police that his brother namely Malik Shah Jehan who is serving at  
Agricultural Development Bank Karak, on 29.6.2011, left his home in his  
Car No.865-KT/Islamabad, for Karak at a bout 11:30 AM, when he  
reached near Babal Khel Bridge, some unknown persons abducted him for  
ransom and hence the present FIR.

Case No.123 of 2011 of Khursheed Alam etc

HEAD OFFICE,  
COPYING AGENCY ANTI-TERRORISM COURT,  
KOHAT



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After completion of the investigation, the investigating agency submitted complete challan for trial, & section 265(c) Cr.PC was complied with, copies were delivered to the accused & counsel, thereafter the charge was framed to which they pleaded not guilty and claimed trial.

The prosecution was allowed to produce their evidence, and they have produced 11 PWs to prove their case against the present accused, the gist of prosecution evidence is as under:

PW 1 is the statement of Dr. Ihsanullah ENT Specialist District Karak, who stated on oath, which is reproduced here: -

*"That during those days I was posted as ENT Specialist in DHQ Hospital Karak. The patient was referred to eye/ENT Specialist by DHQ Hospital Karak. At that time I was present in the hospital and examined the patient and in this regard I gave my opinion that the patient has swollen nose tenderness over bridge of nose. There was no septal hamitona. There was no bleeding from the nose. Black right eye with sub conjuction hemorrhage. He was advised to take X-ray nasal bone lateral view. X-ray shows fracture nasal bone. The same is Ex: PW-1/1. Today I have seen my report which is in my handwriting correct and correctly bears my signature."*

Muhammad Akbar Khan Inspector (Rtd), R/o Rehmat Abad, District Karak, appeared as PW-2, who stated on oath which is reproduced here: -

*"That during the days of occurrence I was posted as Circle Officer PS Teht-e-Nasrati District Karak. I was entrusted the investigation of this case on 30.06.2011. On 01.07.2011, the abductee hand over to me his written statement which I placed on record. The statement is Ex: PW-2/1. On the same day I prepare the site plan at the*

Case No.123 of 2011 of Khushal Alam et al.

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COPYING AGENT  
TERRORISM COURT  
KOHAT

instance of abductee which is Ex PB. As the abductee was injured therefore I prepared his injury sheet which is Ex PW-2/2 and refer him for medical examination and report to medical officer. In view of statement of the abductee I had made addition in section of law in the case. Recovery memo about the recovery of the certificate issued by AP FR Laki Marwat and DSR issued by political Naib Tehsildar, one receipt regarding the handing over of the motorcar to Noor Sali ASI, the certificate is Ex P-1, DSR is Ex P-2 while receipt is Ex P-3, the memo is Ex PW-2/3. I produce the abductee before Illaqa Magistrate where he has charge none in his statement which was recorded u/s 164 Cr. P.C. I also submitted application to DCO Laki Marwat for placing for report, the corresponding regarding the abduction snatching of car which is Ex PW-2/4. I also submitted application for placing on record the record of proceedings which is Ex PW-2/5. The copy of record is Ex PW-2/6 and Ex PW-2/7. I record the statement of Muhammad Sadique regarding the service of employment of the abductee in the bank and his presence in the bank on the day of occurrence. I also initiated the proceeding against the accused u/s 204 and 87 Cr. P.C, namely Khursheed Alam, Zia ur rehman and Aminullah. Vide my application u/s 204 Cr. P.C is Ex PW-2/8 and u/s 87 Cr. P.C is Ex PW-2/9. I also record the statement of search witness u/s 161 Cr. P.C."

20/12

PW 3 is the statement of Haji Rehman SI, Police Line, District Karak, who stated on oath which is reproduce here: -

"That I arrest accused Aminullah and Khurshad Alam and in this regard I prepared card of arrest which is Ex PW-3/1 and Ex PW-3/2 respectively. I submitted complete challan u/s 512 Cr. P.C on 13.7.2011 and also submitted supplementary challan on 25.8.2011. I submitted complete challan u/s 512 Cr. P.C against Mst Rozina on 2.9.2011. I submitted supplementary challan against accused Aminullah on 12.8.2011 and also submitted final report for abatement of dead accused namely Muhammad Jamil on 13.7.2011 which is Ex PW-3/3. I also draft murasila

Case No.123 of 2011 of Khurshid Alam etc

ATTACHED COPY

EXAMINED BY  
PYING AGENCY, FEDERAL BUREAU OF INVESTIGATION, COURT,  
KOHAT.

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on the report of complainant Shaikat Hayat which was read to the complainant as a token of its correctness and the same is Ex PA. Today I have seen the contents of murasila which are in my handwriting correct and correctly bear my signature."

PW 4 is the statement of Shahid Zaman No.581, LHC/DFC PS Yaqoob Khan Shaheed, District, Karak, who stated on oath which is reproduced here: -

"That I am the marginal witness of recovery memo which is Ex PW-4/1 in which the Moharrir of PS Yaqoob Khan presented 30 bore pistol Ex P-1 along with fixed charger and five live rounds of 30 bore Ex P-2 to the I.O in my presence. Today I have the recovery memo which is correct and correctly bear my signature. I was entrusted with warrants u/s 204 Cr. P.C against accused Khurshed Alam, Zia ur Rehman and Aminullah. I searched for the accused in their villages and surrounding areas in order to arrest them but they were avoiding their lawful arrest hence I have returned the warrants Ex PW-4/2 to Ex PW-4/4 unexecuted along with my reports Ex PW-4/5 to Ex PW-4/7. I have seen my reports which are correct and bear my signature. I was also entrusted with the proclamation notice u/s 87 Cr. P.C against the above named accused. I have complied in accordance with law and prescribed procedure. I have returned third copy of each notice along with my reports. The proclamation notices are Ex PW-4/8 to Ex PW-4/10 and my reports at the back of proclamation notice are Ex PW-4/11 to Ex PW-4/13. Today I have seen my reports which are correct and correctly bear my signatures."

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PW 5 is the statement of Javed Iqbal S/o Niaz Gul R/o Karak, who stated on oath which is reproduced here:-

"That I was present on the spot while going to my sister house when accused Khursheed Alam was brought by police in handcuff. Accused Khursheed Alam pointed out the spot and its different places in my presence. The I.O prepared the site plan on the instance of accused Khursheed Alam. The pointation memo is Ex PW-5/1, bears my signature correctly."

Case No.123 of 2011 of Khurshid Alam etc

EXHIBIT  
INVESTIGATING AGENCY, DISTRICT COURT,  
KOHAT

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PW 6 is the statement of Muhammad Sadique Manager Agricultural Development Bank, District Karak who stated on oath which is reproduced here: -

*"During the days of occurrence and even now-a-days Shah Jehan abductee is employee of Zari Tarakiyati Bank as Sale Deposit Officer. On 29.6.2011, he was present on duty at the Bank till 11:00 AM."*

PW 7 is the statement of Mir Shah Jehan SI PS Takht-e-Nasrati, District Karak who stated on oath which is reproduced here: -

*"I am the marginal witness to recovery memo which is Ex PW-7/1 through which the I.O had taken into his possession one letter bearing No.2550-53 dated 30.6.2011 to DCO Lakki Marwat Ex P-1, one certificate which was issued by APA FR Lakki Marwat Ex P-2, one DSR report regarding the occurrence which is Ex P-3 and one receipt Ex P-4, regarding the motorcar No.865-ICT/RC Islamabad. Today I have seen the recovery memo which is already exhibited as Ex PW-2/3, correctly bears my signature."*

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PW 8 is the statement of Mian Zahidullah Jan Judicial Magistrate, Nowshera, who stated on oath which is reproduced here: -

*"That I conducted identification parade of accused Khurshed Alam inside sub Jail Karak on 24.8.2011, on the application of the prosecution submitted to the court of Judge ATC, Kohat which was forwarded to the court of Sessions Judge, Karak and same was entrusted to me.*

*Direction was issued to the Superintendent Sub Jail Karak for arrangement for the identification parade. The abductee Shah Jehan son of Mali*

Case No.123 of 2011 of Khurshed Alam etc

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was present and he was directed to remain inside the office of Superintendent Sub Jail Karak, so the accused and arrangement outside were not visible to the abductee besides the main accused Khursheed Alam some nine other accused of the same stature and appearance confined on the Jail were also brought to participate in the identification parade. The investigation officer was directed to remain outside the jail. The Identification parade of Khursheed Alam was conducted and my report consisting of two pages is Ex PW-8/1, correct and correctly bears my signature."

PW 9 is the statement of Shoukat Hayat S/o Nasir Ali Khan R/o Khujaki Kalay, District Karak who stated on oath which is reproduced here: -

"That my brother Shah Jehan is employee of Zari Tarakiyati Bank posted at Karak. It was about 11:30 AM that my brother mentioned above came from Karak and thereafter, after a while he left his home towards Karak. My brother did not return till 3:00 PM on 30.6.2011. My brother had left his house on 29.6.2011 at 11:30 AM. We searched for him and ultimately I came to know that he has been abducted along with his motorcar No.865-ICT/ Islamabad. I lodged my report at Vath-e-Shari Chowk which falls on Highway to the police. As my brother has been abducted by unknown accused so I lodged the report against unknown accused. The murusila is already exhibited as Ex PA, the same correctly bears my signature."

Noted  
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PW 10 is the statement of Umar Saddique Khan Inspector (Rtd) R/o Metha Khel, District Karak who stated on oath which is reproduced here: -

"That during the days of occurrence as Circle Officer Investigation Takht-e-Nusrati District Karak. Accused Ameenullah was handed over to me on 09.8.2011, by the SHO. I obtained one day custody for the accused, I interrogated him, recorded his statement u/s 161 Cr.P.C and after completion of police custody, the accused was remanded to judicial lockup. After completion of my investigation, the case file was handed over to concerned SHO for submitting challan. On 16.8.2011, accused

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EXAMINER,  
INVESTIGATING AGENCY, ANTI-CORRUPTION COURT,  
KOHAT.



Khursheed Alam was arrested and handed over to me, on the same date and was produced on 17.8.2011, for police custody, one day custody was granted, vide my application, which is Ex PW-9/1 and PW-9/2, respectively. The accused during interrogation disclosed the spot and in this regard pointation memo which is already exhibited as PW-4/1, was prepared. Sketch is Ex PW-9/3. I also recorded the statement of PW's namely Naseer Ahmed and Javed Iqbal u/s 161 Cr.P.C. The statement of accused was also recorded u/s 161 Cr.P.C, in which he disclosed that his wife Mst Rozina was involved and present at the time of occurrence. Mst Rozina is still P.O. The abductee PW Shah Jehan statement recorded u/s 164 and 161 Cr.P.C. Accused Khursheed was sent to the lockup by the order of court, whereas for Mst Rozina warrants 204 and proclamation 87 Cr.P.C were obtained by this court. Statement of Sadique ur Rehman father of Mst Rozina was also recorded u/s 161 Cr.P.C. The recovery is already exhibited PW-4/1 was also prepared regarding the recovery of Pistol of 30 bore and 5 cartridge of the same was also recovered from accused Khursheed Alam. The above pistol was recovered in case FIR No.238, dated 16.8.2011, u/s 400/401 PPC/13-AO PS YKS, Karak. I made an application for ID parade of accused Khursheed Alam, vide my application is Ex PW-9/4. The ID parade was conducted by Judicial Magistrate in District Jail Karak on 24.8.2011. I also recorded the statement of SW u/s 161 Cr.P.C. After completion of my investigation, I sent the case file to concerned SHO, for submitting challan."

PW 11 is the statement of Shah Jehan (Complainant/Abductee) S/o Malik Nasir Ali Khan R/o Khwajaki Kalay, District Karak who stated on oath which is reproduce here: -

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"That on 29.6.2011, I was posted as Deposit Officer at Agriculture Bank Karak. On 29.6.2011, I reached my duty at the bank and deposited Rs.1100000/- in the bank. At about 1045/1100 hours I was asked by my Manager to go for further recovery in the field. It was a hot summer day, I went to my home, collected an amount of Rs.50000/- from house and started my journey back to the bank in my personal vehicle bearing Registration No.ICT-RC-865/Islamabad. When I reached Gardi Banda Stop where I was signaled by two persons accompanied by a female wearing a "Burqa", I stopped for them and got them boarded in my vehicle on humanitarian grounds, who told

Case No.123 of 2011 of Khursheed Alam etc

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JUDICIAL MAGISTRATE COURT,  
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me that they wish to go Ambiri Kalay, which falls on my way to Karak. When we reached Babar Khel Chowk, the person sitting on the back seat, put a pistol on me and directed me to get down on the Kacha road and we started heading towards East while I was driving due to the fear to my life. After covering about two furlong on the same Atgada, another person armed with a pistol, signaled me to stop the vehicle and then I was commanded to sit on the rear seat and the person who stopped the vehicle, took the driving seat and start the journey and we reached a place with trees where again another four persons duly armed were sitting and on our reaching there, they stood up and I tried to scuffled with them in order to get my self free and they beated me and took away 60,000/- rupees and two mobile sets, which were the make of Nokia and I-Phone-IV were taken by them and also took away my service card, ID Card and the documents of the motorcar. Then I was again asked to sit in the car and the two person and the female who had earlier stopped me, deboarded the vehicle and the remaining five sat in the vehicle and started our journey towards West and reached the highway. When we reached in the limits of FR Lakki Marwat and the place named Gaz Baba, they kept on beating me through out the journey, on the way there was Khasadar Force who signaled the vehicle to stop but they did not stop the vehicle and the Levit started firing and resultantly on the accused namely Jamil sitting in the front seat got hit and died. All the accused de-boarded the vehicle and took refuge in the village and surrendered myself to the Levy Police, who took me into safe custody and told them about my ordeal and they handed me to the political authority who contacted my family and I was taken to the DCO Lakki Office at about 2.00/3.00 A.M. Upon reaching of my family, who took me to my home and the vehicle was handed over to the PS KBI, which subsequently handed over to me and afterwards I went to the police who got recorded my statement before the Magistrate and during the investigation of the case, after the arrest of the accused facing trial I also identified him in the ID parade. I am satisfied that the accused facing trial and his wife are involved in my abduction and I charge them for the commission of offence. The present accused is a desperate hardened criminal involved in so many cases of different Police Station of District Karak."

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EXAMINER  
PYING AGENCY, ANTI-TERRORISM COURT,  
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The prosecution abandoned PWs namely Noor Sali Khan, Bakhtiar Ali Political Naib Tehsildar FR Lakki and Nasir Ahmed S/o Janat Noor, being un-necessary.

On closure of prosecution evidence statements of accused U/S 342 Cr.PC were recorded wherein they repudiated the prosecution allegation and professed his innocence, they neither wished to produce defence nor they wanted to give statements on oath as contemplated u/s 340 (2) Cr.PC.


The learned PP for the state assisted by the counsel for the complainant argued that accused are involved in heinous offence and the prosecution has successfully made out the case against accused Khursheed Alam while accused Aminullah is not being charged by the complainant and the abductee. And with testimonies of 11 PWs and prayed for giving exemplary punishment to the accused Khursheed Alam.

*Hei 20/11*

Conversely, the learned counsel for the defence on the other hand stated that the prosecution has miserably failed to prove their case against the accused and argued that no recovery has been effected from the accused, the accused remained in the police custody but he did not make any confession, nor any pointation has been done by the accused. The whole case of the prosecution is shrouded in mystery, it is an unseen occurrence, the statements of all the PWs is full of discrepancies, belying each other statement and the complainant has totally failed to give any specific role to the accused at all during the trial of the case or as for that

Case No. 123 of 2011 of Khursheed Alam etc.

PROSECUTOR GENERAL,

  
PUBLIC PROSECUTOR,  
ROHAT.

matter in his statements u/s 164 Cr.P.C the accused has been charged belatedly and malafidely, the I.D Parade is highly doubtful as the complainant had visited the police station and has seen the accused in the custody of the police, the pointation memo prepared by the I.O is also untrue and the witness has denied it during the course of his testimony and as such the prosecution has failed to prove their case beyond doubt and prayed for acquittal of the accused.

I have heard the learned PP for the State assisted by complainant counsel and learned counsel for the defence and have gone to the record of the case.

The prosecution has come up with the case that the brother of the complainant has been abducted for ransom, who was then recovered near Lakki by the Levy Force and the abductee after his release from the clutches of the abductors made two statements u/s 164 Cr.P.C dated 4.7.2011 and 8.8.2011 and vide his later statement he has charged the present accused and absconding co-accused for the commission of the offence, in order to see whether the prosecution was able to prove their case or otherwise and to extract the truth I feel it pertinent to reproduce the cross of the key witnesses of the case.

W/O  
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None of the accused has been named in the FIR, for the proof of this case, the prosecution has produced (11) witnesses, their statements/cross would be thrashed out to see whether the prosecution was able to prove their case or not.

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EXAMINER,  
COPYING AGENCY, ANTI-TERRORISM COURT,  
KOHAT

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17/06/2011  
Case No. 123 of 2011 of Khushal Alam etc  
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PW-3 Haji Rehman SI, who stated in cross which is reproduced

here for ready reference: -

"XXX..... I have not participated in the investigation of this case. During the days of occurrence I was SHO PS Takht-e-Nusrati District Karak. Nobody has come to PS to make any report regarding this case. I had gone to the place on information. I cannot tell as to who gave me this information but any how I gone there. The place of occurrence is on metalled road on Indus Highway. Indus Highways falls within jurisdiction of our PS from Abad Khel to Riaz Pump and the occurrence had also taken place in the same area. I met Shuakat Hayat on the road and he reported the matter to me. It is correct that nobody has charged in that report. I have sent the same report in the shape of murasila to the PS for registration of case. After the FIR was chalked out on murasila the same was handed over to the I.O for the purpose of investigation. I have not arrest these accused on the direction of the Investigation Officer. When the present accused were arrayed as accused I thereafter arrested them. There is nothing on the record in writing with the direction that the accused facing trial are declared/nominated so I should arrest them. It is incorrect to suggest that first these two persons were arrest by me and on my direction they were nominated as accused in this case. I have submitted four challan in this case. It is correct that when the investigation is completed then the case file was handed over to us for submission of challan. The investigation file never remained with me during the investigation. It is incorrect to suggest that accused Khurhsed was deboarded from a flying coach at Khushal Garh bridge and they handed over to me while the other accused Aminullah surrounded voluntarily. The entire suggestion is incorrect."

15/06/2011

PW-5 Javed Iqbal S/o Niaz Gul, who stated in cross which is reproduced here for ready reference: -

"XXX..... I am neither Numbardar nor Ex-councilor of the area. It was a throughout and I was just walking on that being simple passerby. I voluntarily went myself when I saw the police and the accused. The place where the pointation was made is at some distance from the Abadi but there are trees only on that point. My house will be at a distance of about one and a half KM from the place of pointation. Accused

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30-6-2011

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Khursheed was known to me since my childhood being my co-villager. I was in the knowledge of the occurrence. I cannot tell the time that after how much period after the occurrence the police brought the accused. I do not remember even the date on which the pointation was made. There was another private person along with the police at the time of pointation. His name was Nasir and he was known to me. Nasir came on the motorcycle. Volunteered that when I reached there he was already there with the police. The accused has not given any statement or stated anything during my presence but the police has written something. I do not know what was written by the police on that spot. I am only witness that the accused was brought by the police to that place and I know nothing else except that. It is incorrect to suggest that even my signature was not obtained that but later on I was made witness by the police at the police station."

While PW Mian Zahidullah Jan Judicial Magistrate, who appeared as PW-8 stated this in his cross: -

"XXX.... It is correct that the abductee was not known to me previously. It is correct that the abductee was brought by the police to me telling me that he is abductee. It is also correct that I have not mentioned the ID card number or any mark of identification of the abductee in my report Ex: PW-8/1. It is also correct that I have not mentioned the names of other who was dummy accused, participated in the identification parade. It is wrong to suggest that the abductee was not actual person and this identification parade was conducted by other person."

Handwritten signature and date: 29/12

PW-9 Shoukat Hayat S/o Nasir Ali Khan, who stated in his cross: -

"XXX.... Where I lodged the report is neither PP nor PS. The police personnel were present there by chance. I have not visited to any PS for making the report."

Umar Saddique Khan Inspector, who appeared as PW-10 stated in cross: -

"XXX..... (by counsel for accused Ameenullah)

XXXXX..... by the counsel for accused Khurshheed Alam)

This investigation was handed over to me on 16.8.2011 till completion of the investigation. Prior to me this investigation was held by one Akbar Khan. The place of occurrence was pointed by the accused Khurshheed to me during my investigation. I had not seen the spot (place of occurrence) prior to the pointation of accused Khurshheed. Volunteer that the earlier the case was investigated by Akbar Khan SI. Accused Khurshheed was arrested on 16.8.2011 and on the same day the file was handed over to me for investigation. First Khurshheed was arrested and I received the file for investigation after that. Prior to 16.8.2011, I had participated in the investigation of this, interrogated the accused Ameenullah. After Ameenullah was arrested I became part and parcel of the investigation of this case. Accused Ameenullah was arrested on 09.8.2011, on the same day he was handed over to me. It is correct that I have not seen the spot between 09.8.2011 to 16.8.2011, nor I recorded the statement of any body, except accused Ameenullah, during this period. I inquired from the complainant about accused Ameenullah. It is correct that Ameenullah had neither disclosed about the place of occurrence nor during this period the complainant disclosed us to where the occurrence is taken place. It is correct that both the accused had not confessed their guilt. The pistol mentioned above was recovered in another case. The accused was arrested on 16.8.2011 and on the same day was produced and handed over to me. It is correct that during my period of investigation no eyewitness to the occurrence came forward to record his statement before me. Accused Khurshheed Alam was arrested on 16.8.2011, was produced before the court on 17.8.2011, and one day custody was granted was again produced on 18.8.2011 and was sent to judicial lockup on the 18.8.2011. I got recorded the abductee statement u/s 164 Cr.P.C and also recorded his statement 161 Cr.P.C. volunteered that the said accused was declared P.O in the earlier investigation in this case. It is correct that there is no statement of anyone on the file in which accused Khurshheed was charged for the commission of this offence. I have not seen the earlier investigation file, as to why he (Khurshheed Alam) was declared as P.O by the earlier I.O in the case. It is correct that the abductee is the brother of Malik Qasim who is sitting MPA of PF 41 District

18/8/11  
18/8/11

Accused Ameenullah has not confessed his guilt during investigation. It is also correct that the complainant and abductee had not charge accused Ameenullah in their statements.

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18/8/11  
18/8/11  
18/8/11

Karak. It is incorrect to suggest that the accused namely Khursheed is innocent and has been falsely charged in this case to settle political dispute. I do not know regarding the dispute of the complainant with the villagers of Fateh Sher Banda District Karak. It is incorrect to suggest that the entire case concocted one and on the instructions of MRA and high ups, the accused were involved falsely, simply to harass them and compel them to support to the brother of the abductee. It is also incorrect to suggest that prior to the ID parade the accused were shown to the complainant and identifier."

Shah Jehan S/o Malik Nasir Ali Khan, who is the abductee/complainant and very important witness of prosecution, appeared as PW-11 and stated in his cross which is reproduced here: -

"XXX.... Initially when I got deboarded the three persons, on humanitarian ground, accused Khursheed was not amongst them, volunteered that the wife of Khursheed accused was amongst them. I never knew wife of accused Khursheed before the occurrence but later on upon my getting myself satisfied about her identity and involvement I came to know her. The name of the wife of Khursheed is Rozina. I was not aware of name of Rozina before the occurrence. I came to know about her name after about one month of the occurrence. After fully satisfying myself I charge her in my statement on 18.8.2011. It is correct that till 18.8.2011, I have neither charged Khursheed nor his wife or any body else. I have recorded my statement to the Police once while I made two statements u/s 164 Cr.P.C before the Magistrate. Volunteer that in my earlier statement before Magistrate I did not charge any one. On the following day of my release I got recorded my statement to the police u/s 161 Cr.P.C. Volunteered that I was feeling pain in my eye. It is correct that except my statement recorded on the following day of occurrence I have never been to the PS nor the police had taken me any where during investigation of the case. I came to the Judicial Magistrate on my own for recording my statement. I do not remember the date on which I came to the ATC Court, however, I made an application which was marked to the Judicial Magistrate and then my statement was recorded. I got my statement recorded u/s 164 Cr.P.C dated 18.8.2011, one or two days after my application to ATC Court, however, I do not know the exact date. I was not aware about the arrest of the accused Khursheed, self stated that he was already arrested by the police and I had charged him on the following day of his arrest. When I came to know

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Case No.123 of 2011 of Khursheed Alam etc

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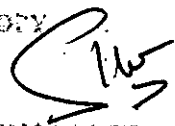
about the arrest of the accused, I charged him. I came to know about the arrest of the accused from public and through Police. Accused Khursheed was not known to me previously. Accused Khursheed belongs to our area and that the way that I came to know about the name of Khursheed. I identified the accused Khursheed at the time of his arrest. For the first time I saw the accused in jail during the ID parade. At the time of charging the accused I saw the accused Khursheed and was satisfied that he is accused Khursheed. Khursheed was not produced before the Judicial Magistrate on 18.8.2011. I came to the Kacheri on 16, 17, and 18 and during this period police did not bring accused Khursheed, volunteered that I did not see him. I have been to the PS on 16, 17 and 18, volunteered that I did not see accused Khursheed there. I remained with the accused from 11:30 AM till 8:30 PM on the same day, when I got released. During this period the accused kept on hurling threats to me and demanded money and also told me to contact my brother namely Malik Qasim Khan (MPA). I have not stated in my statement before the police and my two statements before the Magistrate that any ransom amount was demanded of me for my release, as I had stated before the police in my earlier statement that I was abducted for ransom but since I was released short of that, that's why I did not deem it necessary. It is correct that in none of statement, I stated that I was abducted for ransom. I did not give any application the Police regarding the occurrence, rather I recorded my written statement to the Police. The written statement dated 30.6.2011, placed on judicial file is not given by me nor the same is signed by me. It is correct that my brother contested the Election four years back after provincial assembly, he was supported by me during election campaign and I voted for him. Again stated that I did not participate in this campaign. During the Election of 2008 I was not assigned any election duty. At this point learned counsel for defence confronted the witness with three photograph in which the complainant has been shown armed with repeater with some other armed persons along with a slogan regarding his brother (to which the learned counsel for the complainant objected on the pretext that they are not relevant to this case). The witness admitted that it is he in the picture but volunteered that he has some land dispute with Atta Muhammad and Shoukat Ali of his village. Seven male and one female had participated in my abduction case. Out of seven two accused namely Jamil and Zia ur Rehman are dead while the rest of the accused are not known to me. Accused Jamil died due to the firing of the Levies during the occurrence while the other accused namely Zia ur Rehman was lying dead on the Highway and I saw him and on seeing him I identified him. The police was present on the spot and I told them there that he is one of the accused

Asam  
29/12

Case No. 123 of 2011 of Khursheed Alam etc

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EXAMINER,  
YING AGENCY, ANTI-TERRORISM COURT,  
KOHAT.



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who had abducted me. Zia ur Rehman died about four or five month ago. It is correct that except the dead / arrested accused till today, I do not know as to who were the other accused who had participated in my abduction case. Zia ur Rehman deceased belonged to District Karak and belong to the same constituency of ours. Witness volunteered that it is big constituency (PF41). Till today I have striving to know the names of the other co-accused but with no success. I was blind folded till reaching of the tribal area. When the accused initially boarded with me in the motorcar, I was over powered and then I was blind folded. The mentioning of getting up to Highway is simply my guess as my eyes were blind folded, I remove the cloth with which my eyes were tied, at tribal area. I have not handed over the cloth to the police but to the levy. During the firing I was not blind folded. The firing took place in the tribal area. After 2/3 hours when re-enforcement had also reached there I was taken by levy persons to DCO Office Lakki. I was asked by the DCO Lakki about the occurrence and I narrated the occurrence to the DCO. It is correct after narration of occurrence to the DCO, he did not inform any police. After the sun rise as every body in the knowledge so police official including DCO staff reached Lakki Marwat and from there the police of my district took me to my home as I was ill and was not in the good condition. It is correct that during my stay in Lakki I was examined by the doctor and treatment was also given to me at Lakki. I know this that my brother PW Shoukat had made the report about my abduction. I have gone through that report. After 2/3 days of the occurrence I had gone through the report. It is correct that no body had been charged in the report. It is correct that Jamil who died in the encounter is charged by name in the said murasila. My brother had made the report prior to my release. This fact might be known to Al mighty Allah that my self or my brother are involved in the murder of Jamil and Zia ur Rehman. It is incorrect that the accused is charged falsely due to our political rivalry. Witness volunteered that I have correctly charge the accused. It is correct that one of the sister of accused Khursheed was murder after this occurrence. It is incorrect to suggest that we were involved in the murder of sister of accused Khursheed. I know fully and knows correctly that sister of the accused was murdered. It is correct that prior to this occurrence of my abduction, the sister of the accused was murdered. It is incorrect to suggest that the entire story is concocted one.

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29/12

XXX.....(by the counsel for accused Ameenullah)

EXAMINED  
BY AGENT  
IN CHARGE  
INVESTIGATIVE AGENCY AND PROSECUTOR GENERAL  
COURT,  
KOJAT.

بابت نامہ لکھا گیا ہے۔

A 20

*It is correct that accused Ameenullah is neither charged by me previously nor today I charge him, as he is innocent."*

Here I would like to take a glance over the two 164 Cr.P.C statements dated 4.7.2011 and 8.8.2011 which are reproduced here as: *"Stated that I am Deposit Officer in the Agriculture Bank Karak. On the day of occurrence I was coming to the Karak on the way near 'Gardi Banda' I was stopped by two men and a woman I picked them later on at gunpoint I was kidnapped by the said people. Some time later they took me to the 'Lawager Algada' and another armed man boarded the car. At some distance from that point the car got stuck in the Algada. When we travelled from that spot onwards a kilometre the two men and a woman which I picked earlier deboarded the car. And other five people joined the group and tortured me. Later on they took me through highway to the tribal area of FR Lakky. In the FR Lakky area one person deboarded from the car and another who came by Honda Motorcycle boarded the car. When we reached to the Gaz 'Baba' they deboarded me from the car and two people escorted me while we were passing through the area by walk. When the other people tried to pass the Khasa Dar Force through my car they tried to stop them but the accused sped the car away on this the Force open fire on the car resultantly one kidnapper was shot dead on the spot. When the party which came under the fire of the Khasa Dar Force called on mobile phone to the party which was escorting me by foot they tried to rush to the safe place meanwhile darkness prevailed and taking the advantage of the hilly terrain I dodged them and remain successful in escaping from them. I can identify the accused if they are brought before me. This is my statement."*

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29/12

Then his other statement on 8.8.2011(reproduced here): *"Stated that the statement recorded before learned Judicial Magistrate-I, Takht-e-Nasrati Karak on 04.7.2011 be considered my statement in which unknown persons were charged for the commission of offence. Now I have satisfied my self that Khursheed Alam s/o Hassanullah r/o Zerhi walle District Karak and Mst: Rozeena wife of Khursheed Alam r/o Zerhi Wale have kidnappe me. Mst: Rozeena is the daughter of Sadeccullah r/o Ahmed Abad District Karak. I will charge the remaining co-accused after receiving proper information.*

Case No.1231 of 2011 of Khurshid Alam etc

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EXAMINER,  
COPYING AGENCY, ANTI-TERRORISM COURT  
KOHAT.

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the foremost fundamental requirements of the day then, technicality of law is not to be allowed creating any impediment because such a compromise/compromises always serve as strong redeeming feature in diminishing the gravity of the charge.

To the second accused namely Khursheed Alam, who is being charge by the abductee and has allegedly made pointation that he was subjected to the ID parade by the I.O and the abductee has recognized him to be one of the culprits of the case. Beside this the accused did not made any confession, no incriminating article whatsoever, was recovered or discovered at his pointation, there is no eyewitness of the case.

To recapitulate the case, allegedly this is a case of abduction for ransom, whereby the abductee who is Deposit Officer at Agricultural Development Bank (ADB) posted at Karak. On 29.6.2011, he came home and took Rs.50,000/- from home and on way back to bank he gave lift to two persons and a female on humanitarian grounds, who wanted to go to Ambiri Kalay which fell on his way and his good samatrian deed turned sour and the person sitting in back put pistol on him and forced him to go on kacha road and on the way another person with a pistol boarded and during the journey he was ripped of his money and mobile phone sets, and the abductors kept on beating him and ultimately they reached the Levy

Case No.123 of 2011 of Khursheed Alam etc

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KOHAT

Check point and Khasadar signalled them to stop and the abductors traded fire shot with the Khasadar, in which one of the co-accused Jamil got hit and died on the spot and the remaining accused decamped from the spot and the abductee was taken into safe custody and then produced before D.C.O Lakki and from the said statement it seem to be a case of abduction and robbery as the ingredient of section 365-A PPC are not fulfilled rather that of 392 PPC i.e. robbery and admittedly with one of the accused Aminullah, the complainant party has struck a compromise and did not charge him, as stated earlier while for Khurshid Alam, who is an Ex Police Official, stand charged from what I gather from the evidence is that the abductee has failed to give any specific role to the accused facing trial nor he was able to show with a degree of confidence, that he had recognized the said accused during his ordeal as he himself stated that his eyes were muffled during the incident, which seems untrue as he himself voluntarily gave lift to two men and a woman, no where in the evidence the abductee was able to give any specific role to the accused facing trial nor was a role attributed to him during his statement, neither he said that he recognized the accused facing trial as for that matter. For saying this I draw wisdom from 2008 PCr.LJ Page -831 (Lahore):

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“Identification Parade: Scope and purpose---Holding of identification parade is a check against false implication and it becomes necessary in cases where the culprits are not nominated in the FIR ---

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 Case No.123 of 2011 of Khurshid Alam etc

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 Case No.123 of 2011 of Khurshid Alam etc

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EXAMINER,  
 COPYING AGENCY, ANTI-TERRORISM COURT,  
 KOHAT

Check point and Khasadar signalled them to stop and the abductors traded fire shot with the Khasadar, in which one of the co-accused Jamil got hit and died on the spot and the remaining accused decamped from the spot and the abductee was taken into safe custody and then produced before D.C.O Lakki and from the said statement it seem to be a case of abduction and robbery as the ingredient of section 365-A PPC are not fulfilled rather that of 392 PPC i.e. robbery and admittedly with one of the accused Aminullah, the complainant party has struck a compromise and did not charge him, as stated earlier while for Khurshid Alam, who is an Ex Police Official, stand charged from what I gather from the evidence is that the abductee has failed to give any specific role to the accused facing trial nor he was able to show with a degree of confidence, that he had recognized the said accused during his ordeal as he himself stated that his eyes were muffled during the incident, which seems untrue as he himself voluntarily gave lift to two men and a woman, no where in the evidence the abductee was able to give any specific role to the accused facing trial nor was a role attributed to him during his statement, neither he said that he recognized the accused facing trial as for that matter. For saying this I draw wisdom from 2008 PCr.LJ Page -831 (Lahore):

“Identification Parade: Scope and purpose----Holding of identification parade is a check against false implication and it becomes necessary in cases where the culprits are not nominated in the FIR ---

.....  
Case No.123 of 2011 of Khurshid Alam etc

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EXAMINER,  
SPYING AGENCY, ANTI-TERRORISM COURT,  
KOHAT.

Case No.123 of 2011 of Khurshid Alam etc

--- the Levy

As per 20/12

Identification parade must be held as early as possible after the arrest of the accused, but not later than fifteen days--- Identification parade is always held for two purposes, one to establish identity of the culprit and the second to pin-point the role played by him in the commission of the offence---Even if the identification parade is held, but no role is attributed to the accused during the commission of the offence, the identification parade loses its sanctity."

2008 P.Cr.L.J 1694:

Qanun-e-Shahadat (10 of 1984):

"Identification Parade--- Nature and scope---Question of identification parade arises only where the witness had no opportunity to have a good look at the accused---Identification parade as such is not a requirement of law, it is a method to test the veracity of the witness and is a relevant fact under Art.22 of Qanun-e-Shahadat, 1984--- Fact that a witness identifies the accused at the trial is sufficient unless it is shown that he had no opportunity of having seen the accused before--- Prosecution evidence through identification parade is not substantive piece of evidence, but it has only corroborative value."

As it is clear that the ID parade is not substantive piece of evidence, but it has only corroborative value. That accused was subjected to ID Parade and to this effect the statement of PW-8 was recorded who had not identified the accused nor has given the ID Card number of him, prior to the conduct of ID parade creating doubts and dents in his testimony during the cross while the abductee in cross tried to avoid the answer as to his visit to the PS at the relevant time i.e. arrest of accused and in way tried to make improvements in his statement before court, as it would be natural that during his visit to the PS, he must have seen the accused. One of the

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Case No.123 of 2011 of Khurshid Alam etc

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Case No.123 of 2011 of Khurshid Alam etc

the Levy

EXAMINER,  
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KOHAT.

accused namely Mst Rozina is allegedly the wife of the accused facing trial and the learned counsel for accused vehemently stated at the bar that the accused facing trial is un-married and for this fact no answer from the complainant side is available on the record, for the pointation memo PW-5 suffice to say that after going through his cross that he is included by the I.O in order to fill up the proverbial "Khanapuri" of the police and his relevant cross is reproduced here:

*"Volunteered that when I reached there he was already there with the police. The accused has not given any statement or stated anything during my presence but the police has written something. I do not know what was written by the police on that spot. I am only witness that the accused was brought by the police to that place and I know nothing else except that"*

And the relevant portion of PW-10 the I.O is reproduced here:  
*"Volunteered that the earlier the case was investigated by Akbar Khan SI. Accused Khursheed was arrested on 16.8.2011 and on the same day the file was handed over to me for investigation. First Khursheed was arrested and I received the file for investigation after that. Prior to 16.8.2011, I had participated in the investigation of this, interrogated the accused Ameenullah. After Ameenullah was arrested I became part and parcel of the investigation. Prior to the arrest of accused Ameenullah I was not associated with the investigation of this case. Accused Ameenullah was arrested on 09.8.2011, on the same day he was handed over to me. It is correct that I have not seen the spot between 09.8.2011 to 16.8.2011, nor I recorded the statement of any body, except accused Ameenullah, during this period. I inquired from the complainant about accused Ameenullah. It is correct that Ameenullah had neither disclosed about the place of occurrence nor during this period the complainant disclosed as to where the occurrence is taken place. It is correct that both the accused had not confessed their guilt. The pistol mentioned above was recovered in*

*Asim  
2012*

Case No.123 of 2011 of Khushid Alam etc

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Case No.123 of 2011 of Khushid Alam etc

EXAMINER,  
INVESTIGATING AGENCY, ANTI-TERRORISM COURT,  
KOHAT.

... the Levy



another case. The accused was arrested on 16.8.2011 and on the same day was produced and handed over to me. It is correct that during my period of investigation no eyewitness to the occurrence came forward to record his statement before me. Accused Khursheed Alam was arrested on 16.8.2011, was produced before the court on 17.8.2011, and one day custody was granted was again produced on 18.8.2011 and was sent to judicial lockup on the 18.8.2011. I got recorded the abductee statement u/s 164 Cr.P.C and also recorded his statement 161 Cr.P.C. volunteered that the said accused was declared P.O in the earlier investigation in this case. It is correct that there is no statement of anyone on the file in which accused Khursheed was charged for the commission of this offence. I have not seen the earlier investigation file, as to why he (Khursheed Alam) was declared as P.O by the earlier I.O in the case. It is correct that the abductee is the brother of Malik Qasim who is sitting MPA of PF 41 District Karak. It is incorrect to suggest that the accused namely Khursheed is innocent and has been falsely charged in this case to settle political dispute. I do not know regarding the dispute of the complainant with the villagers of Fateh Sher Banda District Karak. It is incorrect to suggest that the entire case concocted one and on the instructions of MPA and high ups, the accused were involved falsely, simply to harass them and compel them to support to the brother of the abductee. It is also incorrect to suggest that prior to the ID parade the accused were shown to the complainant and identifier."

As per 29/12

It is also in the evidence that the complainant party have some other enmities in the village too and some pictures to this effect were also placed on file. Anyway beside the bald statement of the abductee with out any corroborative confidence inspiring evidence to prove the guilt of the accused, there seems to be, more to the story then being told.

Benefit of doubt it is not necessary that there should be many doubts in the case, but if a single doubt appeared in the evidence then its benefit

Case No. 123 of 2011 of Khursheed Alam etc

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INVESTIGATING AGENCY, ANTI-TERRORISM COURT,  
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Judge

was to be given to the accused, even a single infirmity in the prosecution story would entitle accused to benefit of doubt, not as a matter of grace or concession, but as a matter of right as held in 2005 YLR page 954 (Karachi).

Beside above I while drawing wisdom from following dictums of the Superior Court reported in P L J 2005 Cr.C. (Lahore) Page 451 (DB) & P L J 2002 Cr.C. (Lahore) Page 1134 which is reproduced here as under:-

*"---It is better that ten guilty person be acquitted rather than one innocent person be convicted" saying of Holy Prophet (P.B.U.H) "The mistake of Qazi (Judge) is releasing a criminal is better than his mistake in punishing innocent".*

*"---Whenever possible, save Muslim from punishment---Do it whenever you find any loophole; because it is better for Judge----To err to acquittal than in conviction.*

*Tirmizi sharif.*

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*--Ward off punishment with doubts, i.e. if any doubt arises, avoid conviction.*

*Masood Abi Hanifa.*

*--If there is any possible way to do it, save God's creatures from conviction and punishment. Ibne-e Maaj".*

Resultantly it is concluded that the prosecution miserably failed to prove their case against the accused facing trial beyond any shadow of

Case No.123 of 2011 of Khushal Alam etc

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EXAMINER,  
COPYING AGENCY, ANTI-TERRORISM COURT,  
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doubts, therefore, I while extending the benefit of doubt acquit the accused facing trial of the charges levelled against them, accused Khurshed Alam is in custody and shall be released forthwith if not required in any other criminal case, while accused Aminullah is on bail and his sureties are absolved from the liabilities of bail bonds.

However this Judgment shall have no bearing upon the case of absconding accused. Case property, if any, be kept intact till arrest and trial of absconding co-accused.

While parting with this judgment the learned Public prosecutor is directed to take serious notice to ensure the compliance of Section 19 ATA 1997 and also inform the I O of the implication of Section 27 ATA whereby they could be penalized for the defective investigation, the copy of the order be sent to the I.O for further compliance.

File be consigned to Hon'ble Pesh: High Court Peshawar U/S 25(2)

ATA.

ANNOUNCED  
December, 20<sup>th</sup> 2012.

*(Signature)*  
(MUHAMMAD ASIM IMAM)  
Judge Anti-Terrorism Court,  
Kohat Division, Kohat

Case No.123 of 2011 of Khurshid Alam etc

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*(Signature)*

of Khurshid Alam etc

AGENCY, ANTI-TERRORISM COURT  
KOHAT

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CERTIFICATE

*Certified that this Judgment consist of (26) pages, every page has been signed and corrected by the undersigned whenever necessary.*

*Muhammad Asim Imam*  
20/11/11

(MUHAMMAD ASIM IMAM)  
Judge Anti-Terrorism Court,  
Kohat Division, Kohat

ATTESTED

DATE

*[Signature]*

EXAMINER,  
COPYING AGENCY, ANTI-TERRORISM COURT,  
KOHAT.

Court

Court

B 30

COURT OF ASGHAR SHAH KHILJI, ADDITIONAL SESSIONS JUDGE,  
KARAK AT TAKHT-E-NASRATI.

Session Case File No 11/07 of 2011

Date of Institution ..... 19-1-2011

Date of Decision ..... 25-7-2012

State through Wahidullah son of Mir Sahib Shah resident of Topi Kalla Tehsil, Takht-e-Nasrati, District Karak..... (Complainant)

VERSUS

- 1. Muhammad Sabir son of Sher Daraz / o Shah Qaisar Banda; and
- 2. Khurshid Alam son of Hussainullah n/o Zeri Wala, Tehsil Takht-e-Nasrati, District Karak..... ( Accused Under-Trial)
- 3. Zia ur Rehman son of Gala Maula resident of Ahmad Abad.....(Absconding accused)

Case FIR No.409, dated 05-11-2010 U/S 302/34 PPC, PS Takht-e-Nasrati.

JUDGMENT

1) Facts in brief as per FIR are that complainant, Wahidullah, on 05.11.2010 at 21:30 hours made a report to the local police near Rehmat Slam petrol pump to the effect that on the same date he alongwith his brother Awal Khan, a Police constable was proceeding on the motorcycle to their house from Karak at Esha Vela time, but when reached near the place of occurrence, Awal Khan who was driving the motorcycle stopped the motorcycle and went some distance to answer the call of nature. The complainant further reported that in the meantime indiscriminate firing took place and after some time, he noticed his brother Awal Khan lying murdered in a pool of blood while Mst. Gul Samaro was lying murdered inside her house. The complainant charged unknown persons for the occurrence and the present case was thus registered. During the course of

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investigation, the accused facing trial and absconding co-accused Zia ur Rehman were found to have committed the present crime.

2) After the completion of investigation, Challan was put in court for trial against accused Muhammad Sabir whereas Khursheed Alam and Zia ur Rehman by then were absconding who were proceeded against u/s 512 Cr.P.C per statement of Mir Salim D/C. However, after the arrest of accused Khursheed Alam, supplementary challan was submitted against him. Both the accused were summoned and appeared in custody. Charge was framed against them, to which they pleaded not guilty and claimed trial. Thereafter, PWs were summoned, out of which 15 witnesses appeared and recorded their statements as:

3) Muhammad Anees No.375 HC appeared in the witness box as PW-1 who deposed that he is marginal witness to recovery memo which is EX. PC vide which I.O in his presence collected blood stained earth from the place of deceased Gul Samaro and sealed it into parcel and that the I.O also recovered blood stained earth from place of deceased Awal Khan and sealed it into parcel. He is also marginal witness to recovery memo EX.PC/1 vide which the I.O in his presence collected 19 empties of 7.62 bore lying scattered from the place of accused which were giving fresh smell and the I.O took the aforesaid empties into his possession and sealed them into parcel. The recovery memos are correct and correctly bear his signatures.

4) Doctor Gul Sannat Shah appeared in the witness box as Pw-2 who deposed that on 05.11.2010 at 11.50 p.m, he had conducted the P.M examination on the dead body of deceased Awal Khan aged about 45/46 years son of Mir Sahib Shah resident of Topi Kalla and found the following on his person:-

External

Healthy body with no rigor mortis. Qamees, Banyan, Shalwar with blood stained and corresponding holes handed over to Police.

Wounds.

ACCEPTED  
[Signature]  
20.7.12

A.T.C  
[Signature]

Handwritten initials and date: 25.7.12

B-38

1. 1/2" x 5" graze wound on the left side abdomen.
2. 1/4" x 1/4" F.A.I entry wound left side back of chest making 1/2" x 1/2" F.A.I exit wound on right front of chest.
3. 1/4" x 1/4" F.A.I entry wound on left buttock making 1/2" x 1/2" F.A.I exit wound on right side abdomen (Direction is front below upwards).
4. 1/4" x 1/4" F.A.I entry wound on back of left side chest making exit 1/2" x 1/2" F.A.I on right shoulder joint.
5. 1/4" x 1/2" F.A.I entry wound on left side chest on back making exit 1/2" x 1/2" F.A.I exit wound on top of right shoulder.
6. 1/4" x 1/4" F.A.I entry wound on back of chest making 1/2" x 1/2" F.A.I exit wound on top of left shoulder again the same bullet making graze wound 2" x 10" on left side neck and face (Direction is from below upwards).
7. 1/4" x 1/4" F.A.I entry wound on back, right upper side making 1/2" x 1/2" F.A.I exit wound on left side chest.
8. 1/4" x 1/4" F.A.I entry wound on front right side chest making 1/2" x 1/2" exit wound on top of left shoulder joint.
9. 1/4" x 1/4" F.A.I entry wound on back of left side chest making 1/2" x 1/2" F.A.I exit wound on front of left side chest.

Internal

Abdomen

Walls, peritoneum, small and large intestines were injured. Stomach contained about 30 cc semi digested food.

Thorax.

Walls, ribs and cartilages, Plurae, right and left lungs, pericardium and heart and blood vessels were injured

Muscles, bones, joints.

Left and right humerus bone and ribs were fractured.

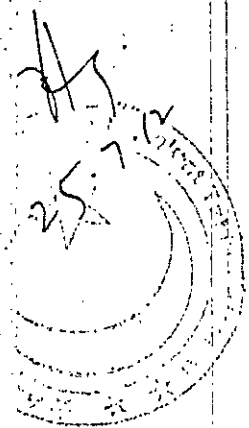
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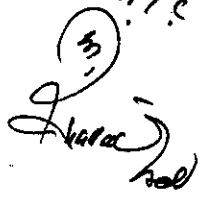
In his opinion, the deceased has been died due to injury to vital organs heart, lungs and blood vessels leading to haemorrhage shock and death.

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Time between injury and death.....within 30 to 40 minutes.

Between death and P.M examination.....within 3 1/2 hours.

He deposed that the P.M report EX PM consisting of five sheets including pictorial is correct and correct and correctly bears his signature. The injury sheet and inquest report also bear his endorsement.

5) Muhammad Riaz Line Officer appeared in the witness box as PW-3 who deposed that on 04.12.2010 he alongwith other police officials recovered one kalashinkove bearing No.66-56#1195123 of folding butt with fixed charger containing 20 rounds of the same bore from the mattresses box lying in the baithak of one, Sikandar Khan on the pointation of accused Muhammad Sabir which is weapon of offence of the case. He prepared recovery memo EX PW 3/1 in presence of marginal witnesses. After completion of investigation, he submitted complete challan in the case.

6) Shahid Zaman LHC No.581 appeared in the witness box as PW 4 who deposed that he is marginal witness to the recovery memo EX W 4/1 through which the I.O in his presence took into his possession the blood stained clothes of deceased Awal Khan consisting of shirt, shalwar and waist (banyan) of white colour having corresponding cut marks which were sent by the Doctor and produced by constable Shah Farooq No.177 to the I.O. The I.O sealed the blood stained clothes of Awal Khan into parcel. Similarly, he is also marginal witness to the recovery memo EX PW 4/2 through which the I.O in his presence took into his possession the blood stained clothes of deceased Mst:Gul Samaro consisting of shirt of black flowery ~~four~~ and shalwar having corresponding cut marks alongwith a phial containing swabs which were sent by the Doctor and produced by constable Mohammad Iqbal to the I.O. The I.O sealed the blood stained clothes of Gul Samaro into parcel and also the phial into a separate parcel. He is also marginal witness to the search memo EX PW 4/3 but neither the accused were available in their houses nor any incriminating articles could be recovered from their houses. He was also entrusted with warrants u/s 204 Cr.P.C issued against accused Zia Ullah, Khursheed and Sabir for execution. He searched for the accused in their village and in the surrounding area but they were not available/traceable,

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District Court  
Faisalabad

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hence, he returned such warrants Ex PW 4/4 to EX PW 4/6 un-executed with his report on its back which is EX PW 4/7 to EXPW 4/9. Similarly, he was also entrusted with proclamation notices u/s 87 Cr.P.C issued against the aforementioned, accused in triplicate which are EX PW 4/10 to EX PW 4/12. He pasted one copy each on the notice board of the issuing Court, second copy each on, the outer doors of the houses of accused and returned the third copy with his report EX PW 4/13 to EX PW 4/15 which are correct and correctly bear his signature.

7) Gul Faraz Khan SI entered the witness box as PW 5 who deposed that he partially investigated the present case. The accused facing trial during course of investigation led the police party to the place of occurrence and pointed out the place of occurrence by making discloser that he committed the murder of deceased at the said place. He prepared the pointation memo to this effect which is Ex PW 5/1. He also made addition with red ink in the site plan, already prepared by Mir Shah Jehan SI, at discloser and pointation by the accused facing trial. He recorded the statements of the PWs u/s 161 Cr.PC.

8) Lady Doctor Nabeela WMO DHQ Hospital Karak appeared in the witness box as PW 6 who deposed that On 15.11.2010 at 2 a.m, I had conducted the P.M examination on the dead body of deceased Mst. Gul Samaro aged about 35 years wife of Ghulam Sarwar and found the following on his person:-

External

Middle aged lady. Rigor mortis not fully developed.

Wounds:

Entry wound:- 2 cm wound on left side just below the left axilla. Burning positive.

Exit wound:- 1 1/2" wound on back slightly to the left of midline at the level of T-11.

Entry wound:- 1.5 cm wound on right flank. Burning positive.

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Exit wound:- 2" wound on abdomen below the xiphisternum.

Entry wound:- 1.5 cm on right upper thigh laterally.

Exit:- 2" wound on mid of right buttock.

1" entry wound on left wrist joint ulnar side.

2 1/2" exit wound on left wrist joint radial side.

Small portion of tip of index finger was absent (lateral border)

Small burn marks on upper chest and face.

Internal

Abdomen

Walls, peritoneum, diaphragm, stomach, small and large intestines, right kidney were injured. OS closed. CX: Tubular. Vaginal swab taken.

Thorax.

Walls, ribs and cartilages (left) Pleurae (left), left lungs, pericardium and blood vessels were injured.

Muscles, bones, joints.

Left wrist joint and left humerus were fractured.

Remarks.

The deceased received injury on vital organs and major blood vessels. She died of haemorrhage shock.

Time between injury and death.....02 to 03 minutes.

Between death and P.M examination.....04 to 05 hours.

The P.M report EX PM consisting of five sheets including pictorial is correct and correctly bears her signature. The injury sheet also bears her endorsement.

9) Wilyat Khan SI entered the witness box as PW-7 who deposed that during the days occurrence, he was posted at Police Station Takht-e-

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Nasrati. On 5.12.2010 he was on patrol duty and complainant Waheedullah made a report to him near Rahmat Salam petrol pump about the present occurrence. He took down the report of complainant in shape of Murasilla EXPA. He read over the contents of report to complainant who after admitting it to be correct then signed the same as a token of its correctness. He prepared the injury sheet and inquest report of deceased Gul Samaro EXPW7/1 and EXPW7/2 respectively. He also prepared the injury sheet and inquest report of deceased Awal Khan EX PW7/2 and EX PW7/4 respectively. He then sent the dead bodies of deceased to Civil hospital Takht-e-Nasrati for PM examination, sent the Murasilla to Police Station for registration of the case. He also took into his possession a motorcycle Yamaha near the place of the occurrence and also recovered a police card in the name of Awal Khan deceased, one NIC in the name of Bostan Khan, one Mobile Nokia having sim No. 03319802661 from the pocket of deceased Awal Khan and prepared the recovery memo EXPW7/5 to this effect. Rest of investigation of the case was conducted by KBI Staff.

Shah Farooq  
 Constable  
 G.H. Takht-e-Nasrati

10) Shah Farooq constable entered the witness box as PW-8 who deposed that during those days he was attached to Police Station Takht-e-Nasrati. He had escorted the dead body of deceased Awal Khan from the spot to Civil Hospital Takht-e-Nasrati. None interfered with the dead body. After the P.M examination, the Doctor handed over to him the blood stained garments of deceased consisting of Qamees, Shalwar and Banyan having corresponding cut marks which he delivered to the I.O on the spot.

11) Muhammad Farid HC No.477 appeared in the witness box as PW-9 who deposed that accused Mohammad Sabir in his presence on 4.12.2010 made disclosure to the I.O about the occurrence and led the Police party to the place of occurrence and on his pointation, the I.O made addition in the site plan already prepared with red ink and thereafter, the I.O prepared the pointation memo EX PW 5/1 which correctly bears his signature as marginal witness. The accused Mohammad Sabir during the course of investigation disclosed to the I.O that after the occurrence, he concealed the Kalashnikov, the crime weapon in the house of his aunt

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and on the disclosure of the accused, the accused led the Police party to the house of his aunt in village Mosakan, entered the baithak of Sikandar Khan, the husband of his aunt and got recovered the Kalashinkove folding butt alongwith fitted magazine containing 20 rounds of 7.62 mm bore from the box. The I.O took the Kalashinkove alongwith the aforesaid ammunition into his possession and prepared the original recovery memo in a case registered u/s 13 A.O against accused Mohammad Sabir and the photo copy of the said recovery memo is EX PW 3/1. The Kalashinkove is P-1 whereas 20 rounds are P-2.

- 12) Mir Shah Jehan SI appeared in the witness box as PW-10 who deposed that after the registration of the case, the copy of FIR was entrusted to him for the purpose of investigation. He proceeded to the spot, but since, it was late in the night and therefore, he postponed the spot inspection. However, Wilayat Khan ASHO was present on the spot and handed him over recovery memo through which the motorcycle, Nokia Mobile set alongwith Sim was taken into possession by him in presence of marginal witnesses. He took the said recovery memo into his possession and he recorded the statements of marginal witnesses on that night i.e 5.11.2011. On the following day i.e 6.11.2011, he again visited the spot and prepared the site plan EX PB at the instance and pointation of complainant. The same is correct with all its foot notes and drawing thereon. During spot inspection, he picked up blood stained earth from the places of deceased Mst:Gul Samaro and Awal Khan and prepared recovery memo Ex PC, in presence of marginal witnesses. Similarly he also recovered and took into his possession 19 empties freshly discharged from the places of accused through recovery memo EX PC/1 in presence of marginal witnesses. He was present on the spot when constable Muhammad Iqbal constable 192 produced before the blood stained garments of deceased Gul Samaro which he took into his possession through recovery memo EX PW 4/2, in presence of marginal witnesses. Similarly, constable Shah Farooq constable produced before the blood stained garments of deceased Awal Khan which he took into his possession through recovery memo EX PW 4/1, in presence of marginal witnesses. He recorded statements of PWs u/s 161 Cr.P.C. He sent the blood stained articles to FSL for analysis

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and the result received thereof is EX PZ which is in positive. Similarly, he also sent the empties recovered from the spot to the Arms Expert and the result received thereof is placed in connected file u/s 13 A.O. During the course of investigation, he nominated accused Zia ur Rehman son of Gale Mula r/o Ahmad Abad, Muhammad Khursheed son of Hassan Khan resident of Zeri Wala and Muhammad Sabir son of Sher Daraz resident of Zeri Wala for the commission of offence. Since, the accused were absconding, therefore, he initiated proceedings u/s 204/87 Cr.P.C against them through his applications EX PW 10/1 and EX PW 10/2 respectively. On 29.11.2010, he formally arrested accused Muhammad Sabir who obtained ad-interim bail from this Hon'ble Court and issued his card of arrest which is on file as EX PW 10/3. After the pre-arrest bail petition of accused Muhammad Sabir was turned down, he again issued his card of arrest which is on file as EX PW 10/4. He produced him before the court for obtaining his police custody through his application EX PW 10/5 and he was granted two days Police custody. On 16.8.2011, after the arrest of accused Muhammad Khursheed by SHO, he was handed over to him for the purpose of interrogation. He produced him before the Magistrate for obtaining his police custody through his application and two days police custody was granted in favour of the accused. He interrogated the accused and during the course of interrogation, the accused confessed his guilt before me and led the police party to the place of occurrence where he pointed out the spot. He prepared the pointation memo to this effect which is on file as EXPW 10/6. He also recorded the statements of marginal witnesses of the pointation memo. Thereafter, he produced the accused Muhammad Khursheed through his application EX PW 10/7 before the Magistrate for recording his confessional statement but the accused did not confess his guilt before the Magistrate and the accused was remanded to judicial lock up. On 23/11/2011, he also recorded the supplementary statement of Wahidullah and also got recorded his statement u/s 164 Cr.P.C in the court of Illaqa Magistrate through application Ex PW 10/8. After completion of investigation, he handed over the case file to SHO for submission of complete challan.

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- (13) Wahid ur Rehman appeared in the witness box as PW-11 who had identified the dead body of deceased Awal Khan before the Police in the Police Station.
- 14) Nadir Munir appeared in the witness box as PW-12 who deposed that he had correctly identified the dead body of deceased Mset:Gul Samaro before the Police as well as before the lady Doctor being his co-villager. On 18.8.2011, he alongwith Rafidullah were present nearby the spot of the present occurrence when the local Police came there in a vehicle. The accused Khursheed Alam pointed out the spot to the I.O. In this respect, the I.O prepared pointation memo EX PW-10/6 to which he is marginal witness. The pointation memo is correct and correctly bears his signature.
- 15) Wahidullah, the complainant appeared as PW-13 in the witness box and deposed that Stated that on 05.11.2010, he alongwith Awal Khan (deceased) were on their way from Karak to their village on motorcycle but when reached the place of occurrence i.e Zari Wala, accused Sabir, Khursheed and Zia ur Rehman were present there. They signalled them to stop and deborded his brother Awal Khan with the assertion that they wanted to murder someone with a bad named female. With this the accused started firing as a result of which, his brother got hit and died on the spot while female by the name of Gul Samaro when was opening the door of her house, was also fired at as a result of which she too was hit and died on the spot. Thereafter, all the accused commanded at him that he would also be murdered if he reported the matter against them. Thereafter, he went to Indus Highway near Ahmad Salam Petrol Pump and contacted the Police on mobile phone. After that the Police arrived there and he reported the matter to Wilayat Khan SHO there at Rehmat Salam Petrol Pump who reduced his report into writing which is correct and correctly bears his signature. There from Rehmat Salam Petrol Pump, the police proceeded to the place of occurrence while he went to Fatch Sheri Chowk and arranged a motorcar and then came to Police Station Takht-e-Nasrati. The dead bodies were also brought by the Police to the Police Station. My brother deceased was shifted to Civil Hospital Takht-e-Nasrati while deceased Gul Samaro was taken to Hospital at Karak. He

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pointed out the spot to the Police on the following morning. Motive for the offence was that his brother was done to death due to his bad relations with Mst:Gul Samaro. Later-on, he also got recorded his statement u/s 161 Cr.P.C thereby charging the accused for the commission of offence.

16) Haroon Gul constable appeared in the witness box as PW-14 who deposed that in his presence, Wilayat Khan ASHO, during the spot inspection, took into his possession one motorcycle Yamaha Model 2009 (Applied For) from near the spot. Similarly, he also recovered one Official Identity Card in the name of deceased Awal Khan, one NIC in the name of Bostan son of Gulistan resident of Ghorzandi, one mobile phone having Sim No.03319802661 from the pocket of deceased. The I.O prepared recovery memo to this effect which is EX PW 7/5. The same is correct and correctly bears his signature. The motorcycle is P-1, mobile phone alongwith Sim is P-2.

17) Mohammad Iqbal constable no 4461 appeared as PW 15 and deposed that he has escorted the dead body of Mst. Gul Samaro from police station Takht-e-nasrati to hospital at Karak and after her post mortem the lady doctor handed over to him the PM documents and garments of the deceased which he delivered to the investigation officer in the police station.

18) Where after, the prosecution closed the prosecution evidence being complete. Thereafter the statement of accused U/S 342 Cr.PC was recorded, but the accused neither produced evidence in defence nor wished to be examined on oath U/S 340 (2) Cr.PC.

19) Arguments heard and record perused.

20) From the arguments and record available on file, it reveals that in the Murasilla EXPA the time of occurrence has been shown as 20:10 hours where as the report was lodged at 21:30 hours and as such there is delay of one hour and twenty minutes in lodging the report despite the fact that the distance between the place of occurrence and Rehmat salara petrol pump where the complainant lodged the report is one furlong as admitted by the IO I Mir Shah Jehan PW10 at page two of his cross examination and

Investigator  
Mir Shah Jehan  
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such distance can be covered at the most in 10 minutes, yet lodging the report with delay of more than a hour have increased the chances of pre-consultation and deliberations in nominating the accused besides the complainant has not explained the said delay in lodging the report.

21) Admittedly the occurrence was committed in the dark night and the site plan EXPB is showing no source of light, yet the identification of accused by the complainant at the time of occurrence attracts doubts to the case of the prosecution. The complainant in his initial report has charged unknown persons for the occurrence and despite the fact that the accused Mohammad Sabir as per his card of arrest EXPW 10/3, was arrested by the local police themselves on 29-11-2011 i.e. after 24 days of the occurrence, yet the complainant has not charged him. The complainant has for the first time charged the accused via his statement under section 164 Cr.P.C on 24-08-2011 i.e. after more than nine month of the occurrence. The complainant in his statement under section 164 Cr.P.C has explained that since the accused have threatened him of murder therefore due to fear he kept mum for such a long period but the same is not a very good explanation of delay in nominating the accused as stated earlier the accused Sabir was in police custody after some days of the occurrence, yet the complainant was unable in nominating the accused for a period of more than nine months.

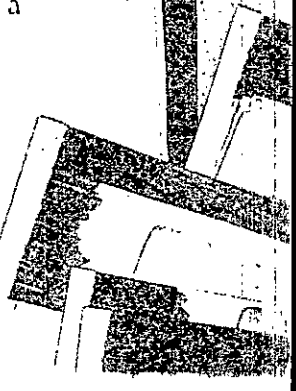
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22) However the brief look to the initial report/ murasilla EXPA, statement of the complainant recorded under section 164 Cr.P.C and the statement of the complainant recorded in the trial as PW 13 would reveal that the same contain contradictions in between and are not supporting each other towards the conviction of the accused facing trail. In the statement under section 164 Cr.P.C the complainant alleged the accused stopped them and disclosed that the sister of co accused Khursheed has been defamed therefore they want to kill her but for the said purpose they need a man to be killed with her and accordingly they fired upon his brother. This deposition is absolutely beyond the understandings of the prudent mind for the reason if the sister of the co-accused Khursheed was defamed and the accused thereby decided to kill her then there was no need to find a

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man for the said purpose in order to further create an enmity for themselves and the said work could be easily done inside their own house without there being any evidence of the same besides if once the accused decided to done away their sister with a man like Awal Khan then there was no need to leave alive the only eye witness Wahidullah i.e. the complainant in order to create an evidence against themselves. In murasilla the complainant has deposed that he along with his brother were going towards their house after Ishtia vela but as PW13 he deposed in cross examination that it was sham vela. Further in murasilla the complainant deposed that his brother stopped the motor cycle and went little ahead to answer the call of nature i.e. the complainant was waiting with the motor cycle but the site plan EXPB would reveal that the motor cycle has been shown at point 3-A situated adjacent to point no 2 where the dead body of deceased Awal Khan was found. It means that the deceased went to the place of occurrence on the motor cycle all alone and after firing at the deceased both the deceased and motor cycle were found near to each other. The presence of the complainant at the spot at the relevant time of occurrence by such deposition also become doubtful as had the complainant was present with motor cycle at the spot then he would not have left the motor cycle at the spot and would have took the same for furnishing information to the local police. Moreover in the murasilla the complainant deposed that at the time of firing the deceased was not on motorcycle as he was busy in answering the call of nature but in his statement under section 164 Cr.P.C he deposed that they were on motor cycle when they were stopped by the accused and then accused made firing at the deceased. Meaning thereby that the murder of deceased was committed on the motor cycle but no blood was found on the motor cycle which negates the version of the complainant adopted in his statement recorded under section 164 Cr.P.C. Moreover as PW13 the complainant once again jumped towards opposite direction by alleging that the accused deborded the deceased Awal Khan from the motor cycle and thereafter killed him. The said contradictions in the statements of the complainant has by no means provided any help to the complainant and rather the same have helped the accused facing trial in creation of

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sufficient doubts towards their alleged act of committing the murders of deceased.

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The complainant as PW13 with regard to deceased Mst. Gul Samaro deposed that by the firing of accused she got hit inside her house when she was opening the door of her house. When the said statement is confronted with the site plan EXPH then it would reveal that the dead body of Mst. Gul Samaro was found at point no 1, which point is situated at a distance of 12 paces from point no 4 assigned to the accused Mohammad Sabir where from he allegedly fired at the deceased Mst. Gul Samaro but the post-mortem report of deceased Mst. Gul Samaro (EXPM) would reveal that burning signs were found around entry wound no 1 and 2 which means that she was shot from a very close range and thus it negates the version of the complainant that she was shot from 12 paces.

24)

With regard to recovery of 19 empties of 7.62 bore from the spot vide recovery memo EXPC/1 and kalashinkove being the weapon of offence at the pointation of accused Mohammad Sabir via recovery memo EXPW 3/1 is concerned in this regard it has to be noted that though its marginal witnesses Mohammad Anees Pw1, and Farid Pw9 besides the IO Mir Shahjehan PW10 supported the said recoveries via their evidence but when the recovered empties and kalashinkoves were sent to the FSL then via their report EXPZ they reported that only seven empties out of nineteen have been fired from the recovered kalashinkove. The PM reports of deceased Awal Khan and Mst. Gul Samaro would reveal that both have 08 and 04 entry wounds by fire arm on their bodies and it do not came to the light as to where the other empties which have been used in the commission of offence have gone. It is also note worthy that the occurrence was committed on 5-11-2010 whereas the 19 empties were recovered on the following day of occurrence on 06-11-2010 besides the kalashinkove was recovered on 04-12-2010 but according to FSL report the case property was received by the FSL on 11.01.2011 i.e. after 37 days of its recovery where as the empties were sent after more than two months of its recovery to the FSL. The report of the FSL shows that the Kalashinkove was having no fixed charger whereas the recovery memo EXPw3/1 would

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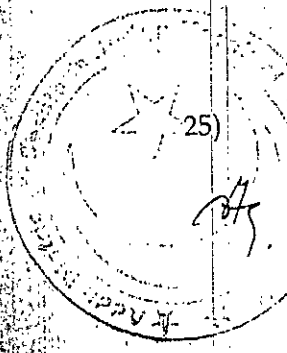
Inspector / Examiner  
FSL, Ferozshahi (Karachi)

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show that the recovered kalshinkove was having affixed charger and this fact was also noted by the present court while recording the statement of the marginal witness of the recovery memo Mohammad Fareed PW9. So it was not clear as to where was the case property lying during the intervening period when the same was allegedly recovered till its sending to FSL and there is no proof that the same was lying safe without being tempered as the delay of 37 days in sending the case property to the FSL has created a doubt and it is not certain that the FSL report is regarding the same case property allegedly recovered at the pointation of the accused facing trial or other wise because the recovery memo EXPW3/1 would reveal that neither the recovered articles have been sealed at the spot as there is no number of the parcel have been mentioned therein. The perusal of the FSL report would reveal that the same bars no emboss mark, hence the same cannot be relied upon at all as an important piece of evidence against the accused facing trial. Another important factor of the case which needs attention is that as per version of the prosecution the recovered kalashinkove was recovered at the pointation of accused Mohammad Sabir from the house of one, Sikandar but the said Sikandar was neither made an accused nor witness to the recovery memo which has fallen the case in to the shadow of further doubts, the benefit of which must be extended in favour of accused.

25-7-12



25) With regard to motive the complainant alleged that motive for the occurrence was the ~~illegal~~ <sup>illicit</sup> relationship between the two deceased but no independent evidence in this regard was produce to support this version of the complainant. Hence the motive alleged would be deemed not established.

26) So the net shell of the above discussion is that the prosecution has failed to prove their case against the accused facing trial beyond any shadow of doubts, the failure on the part of prosecution and complainant to marshal their troops in a right way resulted in creation of sufficient dents in the version of complainant/prosecution. The case of the prosecution is rather full of contradictions, doubts and inconsistence evidence, the benefit of which must be extended in favour of accused. Therefore, the accused

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facing trial Mohammad Sabir Son Of Sheer daraz and Mohammad Khursheed son of Hassan Khan in the light of above stated facts are hereby acquitted of the charges levelled against them via FIR in question. The accused are in custody he be released forthwith, if not required in any other case. However prima facie case exists against absconding accused Zia ur rehman who is here by declared as proclaimed offender, perpetual warrant of arrest be issued against him and the DPO Karak is directed to enlist the name of the said accused in the register of Proclaimed offenders. Case property be kept intact till the arrest of absconding accused.

27) A copy of this order be placed on police/judicial file, while file of this court be consigned to the record room after its completion and compilation.

Announced

25-07-2012

*(Signature)*  
(ASGHAR SHAH KHILJI)  
ADDITIONAL SESSIONS JUDGE,  
KARAK AT TAKHT-E-NASRATI.

CERTIFICATE

25-7-12

Certified that this judgment consist of sixteen (16) pages, and each page has been read, checked, corrected and signed by me where necessary.

25-07-2012

*(Signature)*  
(ASGHAR SHAH KHILJI)  
ADDITIONAL SESSIONS JUDGE,  
KARAK AT TAKHT-E-NASRATI.

25-7-12

ATTESTED

Reader/Examiner  
C.I/JC-1, Takht-e-Nasrati (Karak)

30-7-12

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1406  
List of Identification of Applicants..... 30-7-12  
No of Pages..... 16  
Argent Fee..... Nil  
Total Fee..... 32  
Date of Preparation of Copy..... 02-8-12  
Date of Delivery..... 02-8-12  
Receiving By..... *(Signature)*

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Reader/Examiner  
C.I/JC-1, Takht-e-Nasrati (Karak)

30-7-12

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Order-38  
03.12.2012

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APP for State present. Accused Khurshid Alam and Faiz Ullah in police custody present. Accused Asmat Ullah and Akram Raza on bail present. Attendance of the accused Qasim has been dispensed with as he has been placed in column No.2 of the final report.

By way of present measure, the accused facing trial/petitioners have prayed for their acquittal under section 249-A Cr.P.C. Notice of the application has already been given to the state.

Occasion for lodging the F.I.R by the complainant against the accused per its contents was that on 10-04-2011 at 8.30 am, complainant Muhammad Suleman reported the occurrence in police station, Karak, that on the previous night, he along with his wife, had gone to the house of his brother-in-law Badshah Zada. At about 21.30 hours, when they returned home, his sons Muhammad Awais and Muhammad Shoaib told him that three persons scaled the wall of their house and entered therein, who also threatened them of murder and ordered them to keep mum. They entered in the room and took away the valuable articles. On search, they found one 12 bore rifle, 05 tolas of gold, Rs. 20,000/- cash and one Nokia Mobile stolen. The complainant charged three unknown accused for the commission of the crime in his report, on which F.I.R was registered.

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Examiner Copying Branch  
Karak  
21/1/2013

Investigation ensued as consequence of registration of the crime report. Accused Khurshid Alam, Faiz Ullah, and Akram Raza were found guilty during the investigation while accused Qasim and Asmat



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Ullah were placed in column No.2 of challan. A report under section 173 Cr.P.C was sent to the court requiring the accused to face trial. After the attendance of the accused, provisions of section 241-A Cr.P.C were complied with through delivering to them the copies of statements and documents. By pleading not guilty to indictment, accused facing trial opted to stand this trial.

Prosecution in order to establish its case against the accused facing trial, till this time, produced and examined complainant Muhammad Suleman as PW-1 only. PW-1 in his statement gave complete details regarding the offence committed with him by the accused facing trial.

Thereafter, accused facing trial/petitioners filed instant application under section 249-A Cr.P.C for their acquittal from the charges levelled against them.

I have heard arguments of the learned counsel for the accused/petitioners, APP for the state and has had the opportunity to examine the record with considerable degree of care.

Keeping in view the all significant statement of Muhammad Suleman, the complainant i.e. the PW-1, this court does not feel it essential to make an in-depth discussion of the case. Briefly, as per the record, the accused facing trial were found involved in theft of one shot gun, 05 tolas of gold ornaments, Rs. 20,000/- cash and one Nokia 1200 mobile phone from the house of complainant, hence, the instant F.I.R.

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21/11/2013

As fore-mentioned statement of the PW-1 has such an overwhelming effect that this court does not feel it expedient to discuss everything. It alone damages the prosecution case to an extent where-after conviction of the accused facing trial become improbable. I may refer to some parts of his statement forthcoming from the cross-examination he was subjected to. For example it is admitted by the said PW-1 that the occurrence has taken place at night time. PW-1 also admitted it correct that the occurrence was not witnessed by him nor he knew the accused prior to the occurrence. PW-1 also admitted it correct that nothing has been recovered from the accused in his presence. PW-1 also admitted it correct that he charged the accused for the commission of the offence at the instance of the police after their arrest. PW-1 also admitted it correct that accused fully satisfied him regarding their innocence through the elders of locality. PW-1 further stated that he has also patched up the matter with accused Asmat Ullah and Qasim whose names, later on, were placed in column No. 2 of the challan. PW-1 further stated that he has got no objection if the accused facing this trial are acquitted from the charges levelled against them. Perusal of the case file further throws up that accused facing trial have not been charged in the F.I.R. Nothing has been recovered from the possession of the accused facing trial. No identification parade what so ever of the accused facing trial has been conducted, so the identification of the accused is still a question mark. It is also important to mention here that during the investigation of the case, complainant Muhammad Suleman appeared before the court and recorded his statement under section 164 Cr.P.C wherein he has stated that though initially he has lodged the report for the theft of Rs.20,000/-

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and 05 tolas of gold but now the woman folk in the house told him that they have kept Rs.20,000/- and 05 tolas of gold in safe custody and that his report is only to the extent of theft of one 12 bore shot gun and Nokia 1200 mobile phone. Lastly, the complainant do not charge the accused as evident from his statement as PW-1.

Keeping in view the fore-deposition, this court deems further proceedings in the case as like sheer wastage of time because the ultimate result of the case even if the entire evidence is recorded which is not fore-seen in the near future would be striking down the charges and acquittal of the accused facing trial. As such while accepting the application in hand, the accused facing this trial are hereby acquitted in the instant case from the charges, so levelled against them. They are on bail as such their sureties stand discharged from their liabilities. Case property, if any; be dealt with as per law.

ANNOUNCED:-  
KARAK.  
 Dated; 03.12.2012

*Asif Rashid*  
 Asif Rashid,  
 Senior Civil Judge/Judicial  
 Magistrate, Karak.

6231-07-12  
 600-07-2012  
 12-07-2012  
 12-07-2012  
 21-1-2013  
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 21-1-2013

~~ATTESTED~~  
 21/1/2013

~~ATTESTED~~  
 21/1/2013



Annexure D

56

M/L 05

IN THE COURT OF ABDUL BASIT, JUDICIAL MAGISTRATE CLASS-I, KARAK

Order--44  
27.11.2012

SPP for state and accused Akram Raza on bail present. Accused Faizullah & Khursheed Alam produced from jail in custody.

Through this order I shall dispose of application filed by accused named above under section 249-A CrPC for their acquittal in case FIR No. 89 dated: 14.04.2011 registered under Sections 380 and 457 PPC pertaining to Police Station Karak.

Arguments heard and record perused.

In brief facts of FIR speaks that Naseeb Gul, the complainant, reported that on 04.04.2011 he went to offer Isha prayer, whereas, his wife was at neighbor's house that during this span of time unknown accused have break opened the locks of his room, as well as those of two boxes laying inside it, wherefrom, they have stolen away 8 tolas gold, 12 sewed ladies suits and Pak currency valuing Rs. 17,000/- Complainant also reported that he was searching for the real culprits and now on being convinced and satisfied came to know that said theft was committed by his nephew Faizullah, hence, FIR.

Challan received and notices issued to accused/petitioners, who attended court and provision of section 241-A CrPC complied with, who were later on charge sheeted under section 380 and 457 PPC by my learned predecessor, to which accused/petitioners did not plead their guilt and claimed trial. Resultantly, prosecution was directed to adduce its evidence. Consequently, prosecution recorded the statements of all witnesses excluding the learned judicial officer, who recorded the confessional statement of accused/petitioner Faizullah as accused/petitioners named above filed application for their acquittal as case is allegedly not proved from available record.

In the light of evidence available on file, this is concluded that the actual complainant Naseeb Gul has died as evident from statement of Sher Wali, however, he is represented by his wife Mst. Riáz Bibi, who in her statement recorded as PW4 though correctly mentioned what has been stolen from them, however, she added that when her husband, the complainant, returned from Isha prayer he has seen those three persons, who have committed the theft, whereas, contents of FIR are not only silent about this fact but also speaks that some unknown accused have committed the alleged theft from his house and he is searching/investigating about those,

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Karak  
19/11/2012

Mist. Riáz Bibi in very  
petition with accused  
except accused  
complainant has  
to satisfy  
basis

IN THE COURT OF ABDUL BASIT, JUDICIAL MAGISTRATE  
CLASS-I, KARAK

Contd: 44  
27.11.2012

which is a glaring contradiction. Besides this Mst. Riaz Bibi in very clear words deposed that they have inimical relation with accused Faizullah, whereas, they do not charge other accused except accused Faizullah leading to inference that probably complainant has intentionally involved accused Faizullah in FIR in order to satisfy their nerves, whereas, other two accused were charged on the basis of statement of accused Faizullah. In addition to this, wife of complainant in her statement contended that not a single stolen article has been recovered so far, whereas, recovery memo prepared on pointation of accused Faizullah, Ex-PW 1/5, provides that Rs. 4,000/-, P-5, camera, P-6, and pair of silver anklets, P-7, and Rs. 5,000/- have been recovered from possession of accused Khursheed Aalim, which avails that Mst. Riaz Bibi, PW-4, is deposing false, thus, her statement cannot be considered as true and genuine piece of evidence.

Prosecution also adduced the evidence of Lal Shireen as PW-5, in whose presence accused Faizullah has not only made pointation but recovery sketch, Ex-PW 4/2, was also prepared in his presence. This witness deposed that accused Faizullah has handed over Rs. 11,000/- to local police in his presence, nevertheless, recovery memo, Ex-PW 1/5, suggests that only Rs. 4,000/- have been recovered on pointation of accused Faizullah. In similar manner, this witness deposed that complainant has lodged the FIR one day after the occurrence took place, whereas, wife of complainant alleged registration of FIR on the very day, whereas, contents of FIR clearly provides that occurrence took place on 04.04.2011 and FIR was registered on 14.04.2011, meaning thereby, after ten days of the occurrence, which are wide contradictions in statements of PW-5, PW-6 and contents of FIR and puts serious dents in prosecution stance.

This is important to note that complainant has lodged FIR after ten days of the occurrence and only against Faizullah and that too on his being full satisfaction and contentment that the alleged offence is committed by accused Faizullah, who has stolen away Rs. 17,000/-, 8 tola gold ornaments and 12 ladies suits, however, when accused Faizullah in his statement recorded before local police on

ATTESTED  
Examiner Copying Branch  
Karak

19/11/2012

(DS2)

IN THE COURT OF ABDUL BASIT, JUDICIAL MAGISTRATE  
CLASS-I, KARAK

Contd: 44  
27.11.2012

20.06.2012 deposed that there were two other accused namely Khursheed Aalim and Akram Raza accompanying him at the time of commission of offence, who have jointly stolen Rs. 11,000/-, nose pin, pair of silver anklets, silver bangle, binocular, camera, locket, necklace, small size stick with cock head handle and a wallet having identity card (all valuing Rs. 45,000/-) from complainant's house, then, the complainant appeared before local police and amended his statement on 20.06.2012 and stated what accused Faizullah narrated in his statement in order to bring his case in line with the version of accused so as to get success in his case, which avails that either the report lodged by complainant is not true or what has been stated on 20.06.2012 is false.

There is considerable delay of 10 days in lodging of FIR, whereas, complainant has not disclosed his source of information and satisfaction, which brings case of complainant to weak footings. PW-1 in his cross-examination deposed that recovery was affected on pointation of accused Faizullah, whereas, PW-4 deposed that accused Faizullah has given money to local police himself. Abdul Lateef, PW-5, in his statement admitted that during investigation nothing has been recovered from accused Akram Raza nor any proof is bring on record against him. Besides this there is difference of sketches prepared on pointation of accused Faizullah & Khursheed Aalim since as per sketch, Ex-PW 4/2, the door of complainant's house is shown at east side, whereas, as per sketch, Ex-PW 4/10, entry of house is shown from two sides i.e. east and south. In like manner, accused Faizullah has shown their entry in the house of complainant by climbing the wall from southern side, whereas, accused Khursheed Aalim shown to have climber from western side. There is no ocular witness to occurrence. Recovery is not affected from direct possession of accused Faizullah. Although local police recovered Rs. 5,000/- from direct possession of accused Khursheed Aalim after more than two months of the occurrence, therefore, this recovery also seems to be doubtful since it is not possible that person stealing money shall be carrying with him for more than two months and will not spend it.

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27-11-12

**ATTESTED**  
Examiner Copying Branch  
Karak  
19/11/12



IN THE COURT OF ABDUL BASIT, JUDICIAL MAGISTRATE  
CLASS-I, KARAK

Contd: 44  
27.11.2012

There is no denial to fact that accused Faizullah has also made judicial confession before court, however, he has retracted from said confession at the time of framing of charge, where, he refused to confess his guilt and claimed trial. Besides this, accused Faizullah in his confessional statement only mentioned that he has committed theft and received his share of Rs. 4,000/-, whereas, did not disclose anything about the rests of the articles, showing that such confession was made under pressure. therefore, said confession cannot be considered, therefore, for the above discussed reasons it is held that prosecution case is full of doubts and they have badly failed to prove it by producing cogent and reliable evidence on record, therefore, benefit of doubt is to be extended to accused/petitioners in the wake of settled law, hence, while allowing the application in hands, I hereby acquit all the accused/petitioners from the charges leveled against them under section 380/457 PPC. Sureties of accused Akram Raza are discharge from their liability. Case property so recovered be delivered to complainant party. Accused Faizullah and Khursheed Aalim are behind the bars, therefore, they be released forthwith provided not involved and arrested in any other case.

Case file be consigned to record room after its necessary completion.

Announced  
27.11.2012

*(Signature)*  
(Abdul Basit)  
Judicial Magistrate-I, Karak

**ATTESTED**  
Examiner Copying Branch  
Karak

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19/12/2012

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19.12.2012  
19.12.2012  
19.12.2012

*(Signature)*  
19/12/2012

بین ۴۴  
صفحہ  
8/10



ORDER.

This order is passed on the departmental proceedings initiated against Constable Khurshid Alam No.253 who absented himself from his lawful duty w.e.f. 02.01.2010 till date with out any leave or permission. His pay was stopped to this effect.

Inspector Noor Muhammad Co-Ordination Officer Karak was appointed a Enquiry Officer to proceed against him departmentally. The Enquiry Officer ha submitted his finding report placed on file, and then he was issued Final Show Caus Notice. He failed to submit reply and still absent, beside this a notice for resuming dut was issued in daily News paper "Mashriq" dated 26.02.2010, with the direction to repo for duty within stipulated period but in-vain.

In view of the above it is evident from the entire proceedings that th accused Constable Khurshid Alam No.253 is not interested in resuming his official dut Hence in accordance with the finding and other legal procedure adopted, he dismissed from service from the date of absence. Kit etc be recovered from accuse Constable.

OB No. 335

Dated. 27.03.2010

District Police Officer, Karak

Copy to all concerned.

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ATC  
Handwritten signature and initials in the bottom right corner.

Inspector legal  
Karak

ATC  
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True Copy  
m.  
[Signature]

To

The Deputy Inspector General of Police,  
Kohat Region Kohat

Subject:

REPRESENTATION

Respected Sir,

Appellant knock at the door of your good office by submitting the present representation for the revival and survival of the lost service with following lines:-

FACTS

1. That appellant belongs to poor family and was enrolled in Police in the year 2008. Appellant successfully qualified the basic course and was rendering services to the entire satisfaction of senior and superior officers.
2. That in the year 2009 appellant was posted at Police Station Khurram district Karak and father of appellant suffered from chronic disease and S/O of Police Station directed appellant to manage treatment of his father and departure report was recorded in the daily diary vide serial No. 26 dated 15.12.2009 from CMH Kohat.
3. That appellant left the station and was managing treatment of his father and later on appellant was implicated in false criminal case and was detained in judicial lockup for long period. The trial court recorded acquittal order in the case. Therefore appellant approached Police Lines Karak for submitting arrival but was informed that appellant was dismissed from service vide order Book No. 335 dated 27.03.2010. Hence the present representation on the following grounds.

GROUND

- a. That the impugned order was passed in violation of the law and rules. Appellant was dismissed from service vide without committing any misconduct and negligence in duty. The alleged absence from duty was inevitable as appellant was managing treatment of his father and was later on implicated in false case and was behind the bar in judicial lockup.
- b. That petitioner belongs to poor family and father of petitioner died of that very disease. The expenses of treatment of father plus long trial of criminal case has forced appellant for hunger life. Therefore revival of the service of appellant was necessary for sailing the life boat of appellant and his family.

DA  
21/1-2013

ATC  
m.  
[Signature]

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That the lower authority did not take into account the illness of appellant father and the absence of appellant due to incarceration in judicial lockup. Therefore the absence of appellant was not deliberate rather it was inevitable.

It is therefore requested the impugned orders may please be set aside and appellant may be reinstated in service with all consequential benefits.

Yours truly,

*Khurshid Alam*

(KHURSHID ALAM)

Ex- Constable No.253

Village Esot Killa Post office

Ahmed Abad, Tehsil Takht-e-Nasrati

District Karak

21/1/2013

A.T.C  
(h)

*Khurshid Alam*



ORDER

The appellant, ex: constable Khurshid Alam No. 253 of Karak district was posted at Police Post Bahader Khel absented himself from his lawful duty w.e.f 02.01.2010 vide DD No. 14 dated 02.01.2010 till the disposal of enquiry.

Therefore, the appellant was dealt with departmentally by the competent authority i.e DPO Karak, which resulted in his dismissal from service from the date of absence vide DPO Karak order O.B No. 335 dated 27.03.2010

Feeling aggrieved from the above impugned order he preferred the instant representation before the undersigned received on 21.01.2013, wherein he prayed for his re-instatement in service.

The appellant was called in Orderly Room held on 13.01.2013 and heard in person.

The appellant contended that he absented himself due to domestic problems and falsely implication in criminal cases by his opponents and prayed for re-instatement in service.

I have gone through the available record, which revealed that the appellant deliberately absented himself from lawful duty. The charge sheet was served at his home address through local Police. The mother of the appellant stated that his son (Appellant) had gone abroad for earning livelihood. Hence, the competent authority issued notice in daily newspaper "Mashriq" dated 26.02.2010, but he did not resume his duty. Record further revealed that the appellant remained involve in heinous crimes against persons. The appellant also failed basic recruit course at PTC Hangu.

In view of the above and available record the undersigned came to the conclusion that all codal formalities were fulfilled by the competent authority and seems no justification to interfere in the impugned order. Hence, the deliberate absence from duty of appellant was proved beyond any shadow of doubt. The representation being without any substance, bad in eyes of law as well as badly time barred is hereby **rejected** and the order passed by DPO Karak dated 27.03.2010 is **upheld**.

Announced  
13.01.2013

(MOHAMMAD IMTIAZ SHAH)  
PSP, QPM

Dy: Inspector General of Police,  
Kohat Region, Kohat.

No. 1130-31 /EC Dated Kohat the 14/2 /2013

✓ Copy to District Police Officer, Karak for information and necessary action w/r to his office Memo: No. 1394/EC dated 30.01.2013. Service record of the appellant is returned herewith.

2 Appellant.

AT.c  
m  
Ghanna Aco

(MOHAMMAD IMTIAZ SHAH)  
PSP, QPM


Dy: Inspector General of Police  
Kohat Region, Kohat.

Before KPK Service Tribunal Peshawar

Appeal NO. 1376/2013

Khushheed Alam, U/S Police Deptt.

In the above instant appeal I  
have received Rs:500/-

  
Jamir Ali Khan  
(Adm)

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

Appeal No. 1376/2013.....Titled  
Khurshid Alam s/o Hassan Ullah r/o Esot Kala, PO Ahmad  
Abad, Tehsil Takht-e-Nasrati, District Karak.....(Appellant)

Versus

1. The Regional Police Officer, Kohat Region, Kohat.
2. The District Police Officer, Karak.....(Respondents)

**PARA-WISE COMMENTS/REPLY TO APPEAL ON BEHALF OF  
RESPONDENTS NO. 1 AND 2.**

Respectfully Shiewith,

Para-wise comments/Reply to appeal on behalf  
of Respondents No. 1 & 2 are submitted as below,

**Preliminary objections**

1. The appellant has got no cause of action to file the present appeal.
2. The appellant has not come to this Tribunal with clean hands.
3. The appeal is not maintainable in its present form.
4. The appeal is time barred.
5. The appeal is bad for mis-joinder and non-joinder of necessary parties.

**Facts**

1. Needs no comments.
2. Correct. Pertains to record.
3. Correct to the extent that the appellant has failed the paper of security in recruit course vides Commandant PTC Hangu, result No. 1504-28/S dated 13.07.2009 and this office OB No. 822 dated 22.07.2009.
4. Incorrect. The appellant has remained absent from the entire enquiry proceedings and has failed to provide any documents/proof for his father illness.
5. Incorrect. Instead, the appellant wilfully left his place of duty on 02.01.2010 without permission/leave as noted in daily diary no. 14 dated 02.01.2010; there is no mention of any previous leave.
6. Needs no comments.
7. Correct to the extent that the appellant has remained involved in various criminal cases vide **FIR No. 444** dated 09.12.2013 u/s 7-ATA,3/4 Exp: Sub Act PS Yaqoob Khan Shaheed, **FIR No. 02** dated 14.01.2014 u/s 7-ATA,3/4 Exp: Sub Act, 427 PPC PS Yaqoob Khan Shaheed, **FIR No. 409**

dated 15.11.2010 u/s 302 PPC PS Yaqoob Khan Shaheed, FIR No. 89 dated 14.04.2011 u/s 457,380 PPC PS Yaqoob Khan Shaheed, FIR No. 223 dated 30.06.2011 u/s 365-A,17(3),337-A(5),148,149 PPC PS Yaqoob Khan Shaheed, FIR No. 288 dated 16.08.2011 u/s 400,401 PPC PS Yaqoob Khan Shaheed, FIR No. 209 dated 23.12.2011 u/s 496-A,34 PPC PS Yaqoob Khan Shaheed and FIR No. 169 dated 15.04.2013 u/s 400,401,402 PPC PS Yaqoob Khan Shaheed.


8. Incorrect, the appellant presently at sub-jail Karak is facing trial in case FIR No. 409 dated 15.11.2010 u/s 302 PPC PS Yaqoob Khan Shaheed.
9. Incorrect. The appellant had been discharged for his willful continued absence.
10. Correct.
11. Needs no comments.


**GROUND**

- A. Incorrect. The appellant never appear before the enquiry officer during the whole enquiry process.
- B. Incorrect. Already explained vide above Para-8
- C. Incorrect. The appellant after being discharged from service in the year 2010 filed departmental representation late in the year 2013.
- D. Incorrect. Already explained vide above Para-9.
- E. Incorrect. Already explained vide above ground-A.
- F. Incorrect. The appellant has been departmentally proceeded under rules.
- G. Needs no comments.

In light of the above facts and circumstances, it is requested that the appeal filed by the appellant may very kindly be dismissed being not maintainable.

*Submitted for vetting, please*  
*SZ/ Legal*  
*06/06/16.*

  
Deputy Inspector General of Police,  
Kohat Region, Kohat.  
(Respondent No.1)

  
District Police Officer, Karak  
(Respondent No. 2)

**BEFORE THE KHYBER PAKHUTNKHWA SERVICE TRIBUNAL KP, PESHAWAR**

Appeal No. 1376/2013..... Titled  
Khurshid Alam ..... (Appellant)

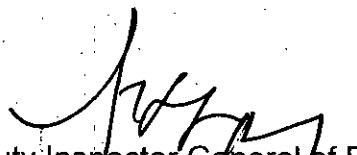
Versus

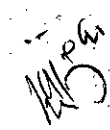
1. The Regional Police Officer Kohat Region Kohat.
2. The District Police Officer, Karak.....(Respondents)

Subject:

**AUTHORITY**

We the respondents do hereby authorize Mr. Muhammad Tariq Usman, SI Legal, Karak to represent us in the above cited service appeal. He is also authorized to submit comments etc on our behalf before the Service Tribunal Khyber Pakhtunkhwa, Peshawar.

  
Deputy Inspector General of Police,  
Kohat Region, Kohat.  
(Respondent No.1)

  
District Police Officer, Karak  
(Respondent No. 2)

**BEFORE THE KHYBER PAKHUTNKHWA SERVICE TRIBUNAL KP, PESHAWAR**

Appeal No. 1376/2013..... Titled

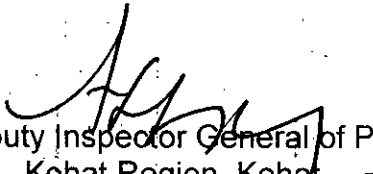
Khurshid Alam ..... (Appellant)


Versus

1. The Regional Police Officer Kohat Region Kohat.
2. The District Police Officer, Karak.....(Respondents)

Subject: **AFFIDAVIT**

We the respondents do hereby affirm on oath that the contents of comments prepared in response to the above titled service appeal are true and correct to best of our knowledge and belief.

  
Deputy Inspector General of Police,  
Kohat Region, Kohat  
(Respondent No.1)

  
District Police Officer, Karak  
(Respondent No. 2)

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 1376/2013

Khurshid Alam

VS

Police Deptt:

.....  
**REJOINDER ON BEHALF OF APPELLANT**  
.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

1. No comments. Endorsed by the department that para 1 of the appeal is correct.
2. Admitted correct by the respondents as the service record is present with the respondent department.
3. Incorrect. The appellant qualified the basic course which was necessary for his duty.
4. Incorrect. While para 4 of the appeal is correct.
5. Incorrect. The appellant has properly applied for leave, which was granted and his departure report was recorded in the daily Diary No.26 dated 5.12.2009.
6. No comments. Endorsed by the department that para 2 of the appeal is correct.
7. It is correct that the appellant has charged in different criminal cases but all those charges are falsely implicated due to which he was acquitted in that cases. Copies of acquittal orders are already attached with the appeal. Moreover the appellant is also acquitted in FIR No.06 dated 14.01.2014 u/s 7-ATA, 3/4 Exp: Sub Act, 427PPC PS Yaqoob Khan Shaheed. Vide order dated 14.2.2017 (Copies of acquittal order 14.2.2017 is attached as annexure-A)

8. Incorrect. The appellant was acquitted in FIR No.409 dated 5.11.2010 u/s 302 PPC PS Yaqoob Khan Shaheed vide order dated 25.7.2011, which is already attached as Annexure- B with the appeal.
9. Incorrect. The appellant was not remained absent deliberately but due to his father illness and for his father treatment he also applied for leave which was granted and in mean time he was falsely charged in criminal in which he was also acquitted and due to these reasons he was compelled to remain absent from his duty.
10. Admitted correct. However the DIG, Kohat Region, Kohat rejected appeal of the appellant without considering the genuine reasons of the absence of the appellant.
11. No comments. Endorsed by the department that para 11 of the appeal is correct.

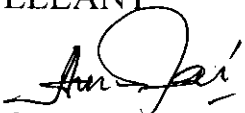

**GROUND:**

- A. Incorrect. While para A of the appeal is correct.
- B. Incorrect. Already explained vide above in para 8.
- C. Incorrect. The acquittal order of the appellant has passed on 13.12.2012 and he filed departmental appeal on 21.1.2013 after his acquittal.
- D. Incorrect. Already explained vide above in para 9.
- E. Incorrect. While para E of the appeal is correct.
- F. Incorrect. While para F of the appeal is correct.
- G. No comments.

It is, therefore, most humbly prayed the appeal of appellant may kindly be accepted as prayed for.

APPELLANT

Through:

  
M.ASIF YOUSAFZAI  
ADVOCATE SUPREME COURT  
&  
  
(TAIMUR ALT KAHN)  
ADVOCATE HIGH COURT



**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



DEPONENT

**ATTESTED**

**Oath Commissioner**  
**Zafloor Khan Advocate**  
Distt: Court Peshawar

15 MAY 2017

IN THE COURT OF MR. MUHAMMAD YOUNAS KHAN JUDGE, ANTI-TERRORISM COURT

KOHAT DIVISION KOHAT.

CASE NO.08 OF 2017

FIR No. 06 date 14.01.2014 u/s 427 PPC/3/4ESA/7ATA

PS: Yaqoob Khan Shaheed, District Karak.

The State

(through Constable Hazrat Ali ..... Complainant)

Versus.....

Khursheed Alam S/o Hassan Ullah R/o Assot Kaley presently Zerri  
Wala, District Karak.

ORDER  
14.02.2017

Senior PP for the State present. Accused Khusheed Alam produced in custody as he is behind the bar in some other case. The Senior PP ATC has submitted an application for the discharge of the accused due to lack of sufficient evidence against the accused. Complainant Hazrat Ali present and his statement recorded as CW-3. Beside the complainant, the respect I.Os have also deposed in support of the plea of discharge of the accused.

I have gone through the record with the assistance of Senior PP.

Brief facts of the case are that a blast was caused in the house of an MPA due to which the southern wall of the kitchen was damaged. Upon the report of the complainant this case was registered against unknown accused.

Perusal of the record would reveal that no body was charged in the FIR and there is no eye witness of the occurrence. The I.O of his own accord came to the conclusion that accused facing trial has got enmity with the Malik Qasim MPA, therefore, he has caused the blast in the house of MPA. This opinion of the I.O is not corroborated by any other evidence on the record. Even no body from the complainant side has come forward to charge the accused or to support his version that they have any enmity with the accused facing trial.

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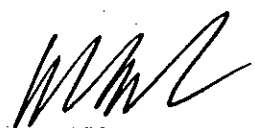
The accused facing trial after his arrest has remained in police custody for sufficient time but nothing incriminating articles have been recovered from his possession or pointation. He has not confessed his guilt before any court of law.

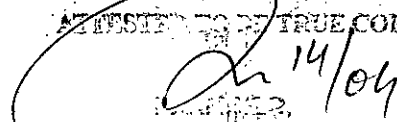
The application of the senior PP of this court for the discharge of the accused also finds support from the fact that there is no sufficient evidence against the accused facing trial to connect him with the commission of offence. Furthermore proforma B is also signed by DPP Karak, SP Investigation Karak, Sr. PP of this court and I.O of this case and they have recommended that it is not a fit case for prosecution.

The nutshell of above discussion is that application filed by Senior PP of this court for the discharge of the accused facing trial namely Khursheed Alam is allowed and he stands discharged from the charges levelled against him. He is on bail and his sureties are relieved from the liabilities of bail bonds.

File be consigned to R/R.

ORDER ANNOUNCED:  
February 14, 2017.

  
(Muhammad Younas Khan)  
Judge, Anti-Terrorism Court,  
Kohat Division, Kohat

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