

16.03.2022

Due to retirement of the Hon'able Chairman, the Tribunal is defunct, therefore, the case is adjourned for the same before on 18.05.2022



Reader

18.05 2022

Counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant AG alongwith Mr. Gul Shehzad, SI for the respondents present.

Written reply/comments on behalf of respondents not submitted. Learned AAG for the respondents sought time to submit the same on the fix date. Last opportunity is granted. To come for the same before S.B at camp court Abbottabad on 14.06.2022.



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

14.06.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Gul Shehzad, SI for the respondents present.

Reply on behalf of respondents submitted which is placed on file. Copy of the same is handed over to the learned counsel for the appellant. To come up for rejoinder if any or arguments on 18.08.2022 before D.B at Camp Court Abbottabad.



(Fareeha Paul)
Member (E)
Camp Court A/Abad

30.12.2021

Counsel for the appellant present. Preliminary arguments have been heard.

The appellant has challenged his dismissal from service under NWFP Removal from Service (Special Power) Ordinance, 2000 w.e.f. the date of his absence i.e 06.04.2008. The reason given in the impugned order includes that the appellant absented himself from duty w.e.f 06.04.2008 and on the same date his involvement into a criminal case registered vide FIR No. 259 of even date has been shown. No doubt the appellant has challenged the order of his dismissal with an extra-ordinary delay but there are arguable points for determination whether the impugned order is a void order or not, when no provision under the said Act was there to cover the ground for disciplinary action as taken into consideration against the appellant. In view of this arguable point, this appeal is admitted for regular hearing subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 16.03.2022 before S.B at camp court, Abbottabad.

Appellant Deposited
Security Process Fee

21/1/22



Chairman
Camp Court, A/Abad

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7877/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/12/2021	<p>The appeal of Mr. Haroon Shah presented today by Mr. Mohammad Aslam Tanoli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to touring S. Bench at Abbottabad for preliminary hearing to be put there on <u>30/12/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST**

Case Title: Habees Shah vs KPR Peshawar

S.#	Contents	Yes	No
1.	This appeal has been presented by: _____		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly pagged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?		✓
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?		
24.	Whether Security and Process Fee deposited? on _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on _____	✓	
26.	Whether copies of comments/reply/rejoinder submitted? on _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Mohammed Aqlan Tamkh
Admitted

Signature: M. Aqlan

Dated: 16-12-2027

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No. 7877/2021

Haroon Shah S/O Rasool Shah EX-Constable No. 625 of District Police Mansehra R/O Village Bandi P.O. Morbaffa Tehsil and District Mansehra.....(**Appellant**)

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.....(**Respondents**)


SERVICE APPEAL

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4.	Judgment/acquittal order dated 2-10-2021	"C"	11-44
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Through

Appellant


(Mohammad Aslam Tanoli)
Advocate High Court
at Haripur

Dated: 16-12-2021

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**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No.....7877/21.....

Haroon Shah S/O Rasool Shah EX-Constable No. 625 of District Police Mansehra R/O Village Bandi P.O. Morbaffa Tehsil and District Mansehra.....(**Appellant**)

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.....(**Respondents**)

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST ORDER DATED 14-05-2008 OF THE DISTRICT POLICE OFFICER MANSEHRA WHEREBY THE APPELLANT HAS BEEN "DISMISSED FROM SERVICE" AND ORDER DATED 08-11-2021 (DELIVERED ON 24-11-2021) OF THE REGIONAL POLICE OFFICER HAZARA REGION ABBOTTABAD WHEREBY APPELLANT'S DEPARTMENTAL APPEAL HAS BEEN FILED.

PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL BOTH THE IMPUGNED ORDERS DATED 14-05-2008 AND 08-11-2021 OF THE RESPONDENTS MAY GRACIOUSLY BE SET ASIDE AND APPELLANT BE RE-INSTATED IN SERVICE FROM THE DATE OF DISMISSAL WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

I

Respectfully Sheweth:

1. That appellant while posted as Constable closed to Police Lines Mansehra was falsely involved in FIR No. 259 dated 06-04-2008 U/S-302/324 PPC registered at Police Station City Mansehra whereupon he intimating his Incharge Police Lines Mansehra started struggling for saving his own as well as the lives of his family members because opponent party was strong, very cruel and influential one. Appellant, therefore, shifted his family from his native

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village to a far flung safe area. Appellant neither absented himself from duty nor resorted to willful absence. Rather there was a fear and threat to the life of apellant's family and due to this he has to inform his In-charge and shift his family to a safe place which took a few days but in the meanwhile has been dismissed from service and he could not return to his duties. **(Copy of FIR dated 06-04-2008 is attached at Annexure-"A")**.

2. That the appellant was dismissed from service vide District Police Officer Mansehra order dated 14-05-2008 with in only 38 days of the registration of FIR in question. **(Copy of order dated 14-05-2008 is attached at Annexure-"B")**.
3. That appellant was arrested and prosecuted and ultimately acquitted of the charge against him vide judgment and decision dated 02-10-2021 of the Additional Sessions Judge-I Mansehra. **(Copy of the judgment dated 02-10-2021 is attached herewith as Annexure-"C")**.
4. That after release on acquittal from Jail the appellant preferred a departmental appeal dated 28-10-2021 for his re-instatement in service before the Regional Police Officer, Hazard Region, Abbottabad. **(Copy of departmental appeal dated 28-10-2021 is attached as Annexure-"D")**.
5. That the appellant was totally innocent and had wrongly and falsely been implicated in the criminal case due to grudge over family despute. Even then no heed was given to appellant's request and had been awarded with

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major penalty of dismissal from service by departmental authorities without waiting and receiving decision of criminal case from the court of law and that too without any cause and justification.

6. That no proper departmental inquiry was conducted. No Charge Sheet or Show Cause Notice was issued. Copy of inquiry report, if any, was also not provided to him. Even opportunity of personal hearing was not afforded to the appellant and he was condemned unheard.
7. That on acquittal and release from the Jail the above mentioned order of the DPO Mansehra was appealed against on 28-10-2021 before the Regional Police Officer Hazara Region Abbottabad but the same had been **filed** vide order dated 08-11-2021 and that too without giving any consideration to the grounds taken by appellant in the memo of appeal and copy of the order was issued on 24-11-2021. **(Copy of appeal rejection order 08-11-2021 is attached as Annexure-"E")**, hence instant service appeal, inter alia, on the following amongst other:-

GROUND:

- a) That both the orders dated 14-05-2008 and 08-11-2021 of respondents are illegal, unlawful, against the departmental rules & regulation, issued in a cursory, whimsical and arbitrary manner, hence are liable to be set aside.
- b) That no proper departmental inquiry was conducted.

No Charge Sheet and Show Cause Notice was issued. Copy of inquiry report, if any, was also not provided to him. Even opportunity of personal hearing was not afforded to the appellant and he was condemned unheard.

- c) That according to law/verdicts of apex courts and departmental rules, the District Police Officer Mansehra was legally bound to have waited the decision of appellant's criminal case from the Trial Court with regard to his innocence or guiltiness before passing impugned punishment order. Appellant has been penalized in a cursory and arbitrary manner without adhering to rules & procedure laid down by law for dispensation of justice at preliminary stages of departmental inquiries; hence impugned orders are liable to be turned down straightaway.
- d) That the appellate authority has also failed to abide by the law and even did not take into consideration the grounds taken in the memo of appeal. Thus the impugned order of appellate authority is contrary to the law as laid down in Police Rules read with section 24-A of General Clause Act 1897 and Article 10A of the Constitution of Islamic Republic of Pakistan 1973.
- e) That through out the period when appellant remained out of service was jobless and had no source of income.
- f) That appellant absence of not willful absence rather he

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had been dismissed from service by the departmental authorities after about 38 days of registration of false FIR wherein he has been acquitted by the honorable criminal court, thus the charge which was based for appellant's departmental punishment has vanished away.

- g) That instant service appeal is well within time and this honorable Service Tribunal has got every jurisdiction to entertain & adjudicate upon the lis.

PRAYER:

It is, therefore, humbly prayed that on acceptance of instant Service appeal order dated 14-05-2008 and 08-11-2021 of respondents may graciously be set aside and the appellant be reinstated in his service from the date of dismissal with all consequential service back benefits. Any other relief which this Honorable Tribunal deems fit and proper in circumstances of the case may also be granted.

Appellant

Through:

(Mohammad Aslam Tanoli)
Advocate High Court
At Haripur

Dated -12-2021

VERIFICATION

It is verified that the contents of instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed thereof.

Dated -12-2021

Appellant

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**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Haroon Shah S/O Rasool Shah EX-Constable No. 625 of District
Police Mansehra R/O Village Bandi P.O. Morbaffa Tehsil and
District Mansehra.....**(Appellant)**

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.....**(Respondents)**

SERVICE APPEAL

AFFIDAVIT:

I, Haroon Shah, appellant do hereby solemnly declare and
affirm on oath that the contents of the instant Service
Appeal are true and correct to the best of my knowledge
and belief and nothing has been suppressed from this
Honorable Service Tribunal.

Deponent/Appellant

Dated: 16 -12-2021

Identified By:

M. Aslam

Mohammad Aslam Tanoli
Advocate High Court
At Haripur



Appellant

(7)

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Haroon Shah S/O Rasool Shah EX-Constable No. 625 of District Police Mansehra R/O Village Bandi P.O. Morbaffa Tehsil and District Mansehra.....(**Appellant**)

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.....(**Respondents**)

SERVICE APPEAL

CERTIFICATE

It is certified that no such Appeal on the subject has ever been filed in this Honorable Service Tribunal or any other court prior to instant one.

APPELLANT

Dated: 16 -12-2021



BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Haroon Shah S/O Rasool Shah EX-Constable No. 625 of District Police Mansehra
R/O Village Bandi P.O. Morbaffa Tehsil and District Mansehra.....(**Appellant**)

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.....(**Respondents**)

APPLICATION FOR CONDONATION OF DELAY IN FILING SERVICE APPEAL BEFORE
THIS HONOURABLE SERVICE TRIBUNAL.


Respectfully Sheweth:

1. That applicant/appellant has filed today Service Appeal, which may be considered as part and parcel of this application, against order dated 14-05-2008 and 08-11-2021 passed by respondents whereby departmental authorities have awarded appellant with the penalty of dismissal from service and his appeal rejected.
2. That as the orders have been passed in violation and derogation of the statutory provisions of law, rules and regulations governing the terms and condition of service of the appellant, therefore causing a recurring cause of action to the applicant/appellant can be challenged and questioned irrespective of a time frame.
3. That impugned order was passed by the respondents on 14-05-2008 and 08-11-2021 were never delivered to appellant well in time. The applicant/appellant had filed departmental as well as service well in time his service appeal well in time and has rigorously pursuing his case. The delay, if any, in filing departmental as well as service appeal needs to be condoned.
4. That instant application is being filed as an abundant caution for the condonation of delay, if any. The impugned orders are liable to be set aside in the interest of justice.

It is, therefore, respectfully prayed that on acceptance of the instant application the delay, if any, in filing of above titled appeal may graciously be condoned.

Through:

Applicant/Appellant


(Mohammad Aslam Tanoli)
Advocate High Court
At Haripur

Dated: 16-12-2021

VERIFICATION:

It is verified that the contents of the instant application/appeal are true and correct to the best of my knowledge & belief & nothing has been suppressed.

Dated: 16-12-2021

Applicant/Appellant

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Annex-B

ORDER

This order disposes off departmental enquiry against Constable Haroon Shah No.625. The charges levelled against the defaulting constable were that vide DD No. 24 dated 06-04-2008 Police Lines Manshra, he absented himself from duty and during absence he involved himself in case FIR No. 259 dated 06-04-2008 U/S 302/34 PPC PS City.

The enquiry officer i.e. Mr. Abdur Rashid PDSP Manshra after conducting departmental proceedings has submitted his report stating therein that Constable Haroon Shah No. 625 was summoned at his home address but it was reported that the constable has went into hiding after the commission of alleged murder. Therefore, the Enquiry officer proceeded against Constable Haroon Shah No. 625 expart and has recommended him for major punishment.

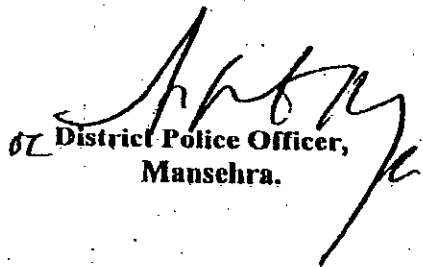
A final show cause notice alongwith copy of findings of the Enquiry officer was also sent to the constable at his home address through the local police of PS Saddar which was received back with the report that constable Haroon Shah No. 625 involved in case FIR No. 259 dated 06-04-2008 U/S 302/34 PPC PS City is not present at his home and still absconding.

I am agree with the report of the enquiry officer and came to the conclusion that constable Haroon Shah No.625 is deliberately avoiding arrest and not presenting himself before law. Therefore, I, the District Police Officer, Manshra taking expart action against the defaulting constable, order his dismissal from service under NWFP Removal from Service (Special Powers) Ordinance 2000 with effect from the date of his absence i.e. 06-04-2008.

Order announced in absentia.

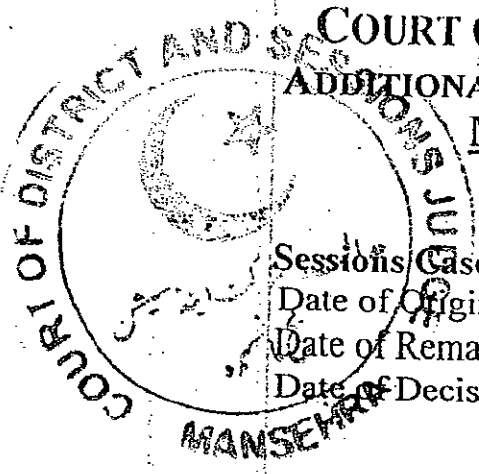
OB No 75

14/05/08


District Police Officer,
Manshra.

Annex-C

(11)



**COURT OF AJMAL TAHIR,
ADDITIONAL SESSIONS JUDGE-I,
MANSEHRA**

Sessions Case No.....01/07 of 2017
Date of Original Institution.....04.01.2017
Date of Remand.....09.03.2021
Date of Decision.....02.10.2021

The State through Syed Furqan Shah son of Syed Rasool Shah caste Syed resident of Dab#1, Mansehra.
..... Complainant

Versus

Haroon Shah son of Rasool Shah caste Syed resident of Bandi Morbaffa Tehsil and District Mansehra.
..... Accused facing trial

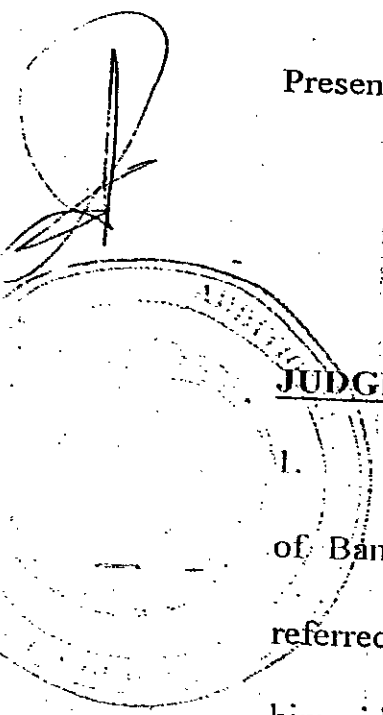
**Case FIR No. 259 Dated 06.11.2008
Under sections 302/324 PPC
Police Station City, Mansehra**

Present: **Mr. Saeed-ur-Rehman** advocate, Counsel for the Complainant.
Miss Bushra Zeb, APP for the State.
Mr. Shad Muhammad Khan advocate, Counsel for the accused .

JUDGMENT:

1. Haroon Shah son of Rasool Shah caste Syed resident of Bandi Morbaffa Tehsil and District Mansehra, (herein after referred to as "accused") is facing trial in a case registered against him vide FIR No.259 dated 06.11.2008 under sections 302/324/109 PPC read with section 15AA KP registered at Police Station City, Mansehra.

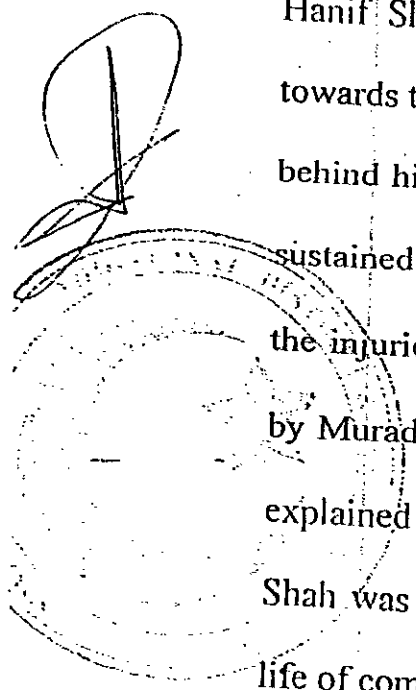
Mr
ATTESTED
Examiner Session Court Mansehra
14 OCT 2021



(12)

2. The local police upon receipt of information regarding the occurrence, on 06.04.2008, rushed to DHQ Hospital, Mansehra where complainant Syed Furqan Ali Shah son of Syed Rasool Shah caste Syed resident of Dab#1, Mansehra, in injured condition alongside dead body of deceased Haneef Shah reported the matter to local police contending therein that, he alongwith Hanif Shah went to attend the funeral of mother of Mubarik Shah in Mohallah Jalal Abad, Mansehra and after performing the funeral ceremony, he and Hanif Shah (deceased) were about to sit in Taxi car bearing registration No.T-5257-Karachi, owned by Hanif Shah, when in the meanwhile, accused Haroon Shah armed with pistol 30 bore arrived there, started altercation with Hanif Shah followed by firing at deceased with the intention to kill him, in consequence whereof, Hanif Shah fell on the driving seat of Taxi while he ran away towards the graveyard to save his life but accused Haroon Shah went behind him and fired in his back to kill him, as a result whereof he sustained injury while accused Hanif Shah could not succumbed to the injuries and died. The occurrence was reported to be witnessed by Murad Shah and common people present at the spot. Motive as explained was a dispute over a family matter. The accused Haroon Shah was charged for murder of Hanif Shah and attempting at the life of complainant/injured. Hence, this case.

3. Earlier, the complete challan was submitted against the co-accused Habib Shah while present accused facing trial namely



AB

ATTESTED
 District Session Court Mansehra
 14 OCT 2021
 Signature

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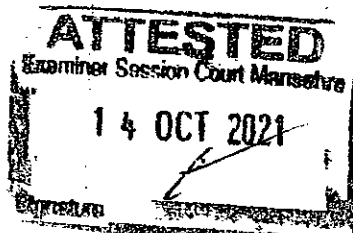
(13)

Haroon Shah became fugitive from law and challan u/s 512 CrPC was submitted. Accused Haroon Shah was declared as Proclaimed Offender, vide order dated 25.11.2010. Needless to mention here that co-accused Habib Shah was acquitted under section 265-K Cr.PC, during the trial vide order dated 06.06.2009. Subsequently, the accused facing trial was arrested, challan was forwarded to this Court for trial against accused Haroon Shah on 04.01.2017.

Provision of section 265-C, Cr.PC complied with. Formal charge was framed under sections 302/324 PPC against the accused facing trial to which he pleaded not guilty and claimed trial. Prosecution was asked to produce its evidence and statements of thirteen (13) PWs were recorded by abandoning rest of the PWs. Prosecution closed its evidence.

4. Statement of accused was recorded under section 342 Cr.PC wherein all the pieces of evidence were placed before him in the question form and his reply to each question was accurately recorded. Accused was asked as to whether he wished to record his statement on oath as his own witness in disproof of the allegations or whether he wants to produce defence evidence in the light of provisions of section 340(2) Cr.PC, however, accused refused to record his statement on oath and did not opt to produce defense evidence.

5. After hearing, the arguments, the then learned Additional Sessions Judge-I, Mansehra (my learned predecessor-



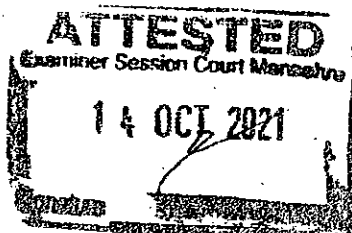
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(14)

in-office) vide his judgment dated 31.10.2018 (wrongly mentioned as 02.11.2018 with the date of its announcement), hold the accused facing trial guilty for commission of murder of Hanif Shah and attempting at the life of Furqan Shah and convicted him as follows:-

- (a) The convict Haroon Shah is sentenced to 'imprisonment for life' u/s 302 (b) of PPC. The convict Haroon Shah is also directed to pay compensation of Rs: 2,00,000/- to the legal heirs of the deceased as provided under Section 544-A of the Code of Criminal Procedure, 1898; and in default thereof, he shall further undergo simple imprisonment for six months;
- (b) The convict Haroon Shah is also sentenced to five (05) years rigorous imprisonment u/s 324 PPC for attempting at life of Furqan Shah (complainant) and shall also be liable to fine in tune of Rs: 50,000/-, and hold that as he had caused hurt to Furqan Shah (complainant) by such fire-shot and its case is culpable u/s 337-L (i) of PPC, the convict is also liable to imprisonment for two (02) years and considering the sufferings of the injured also liable to 'daman' in tune of Rs: 100,000/- to the injured Furqan Shah for the hurt, which shall be paid in lump sum. The sentence be dealt under section 337-Y (2) read with 337-Z of PPC.
- (c) The benefit of Section 382-B of the Code of Criminal Procedure, 1898 is extended to the convict and ordered that the sentences shall run concurrently.

6. Feeling aggrieved from the judgment, the convict/appellant approached august Peshawar High Court, Abbottabad Bench, through Criminal Appeal No.225-A of 2018. The august Peshawar High Court, Abbottabad Bench, vide order dated 24.02.2021, set aside the judgment and the case was

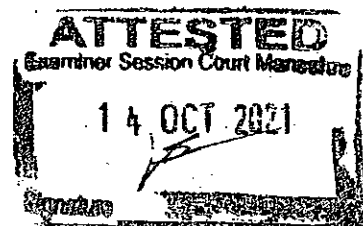


(15)

remanded back to this Court for *denovo* trial with the directions to reframe the charge and thereafter put relevant questions upon the accused and if the accused desires not to produce further evidence, then after hearing the learned counsel for the parties announce the judgment.

7. Upon receipt of case file, accused was summoned. On his appearance and charge was re-framed under sections 302/324/337-L(i) PPC. On 21.06.2021, Mr. Saeed Awan advocate, counsel for the complainant as well as learned APP for the State, got recorded their separate statements by stating that they rely upon already recorded evidence in the case and do not want to produce further evidence. Statement of the accused was re-recorded under section 342 Cr.PC after addition of some questions, wherein all the pieces of evidence were re-placed before him in the question form and his reply to each question was accurately recorded. Accused was asked as to whether he wish to record his statement on oath as his own witness in disproof of the allegations or whether he wants to produce defence evidence in the light of provisions of section 340(2) Cr.PC, however, accused refused to record his statement on oath and did not opt to produce defense evidence.

8. Statement of Fiaz Ahmad S.I/OII was recorded as PW-1. He chalked out FIR (Ex.PA) on receipt of murasila on 06.04.2008, through Constable Khuram No. 889.

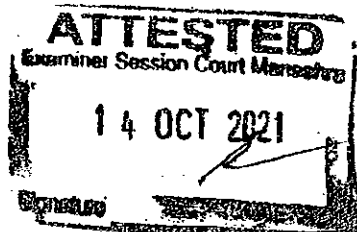


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9. Statement of Saeed Khan SHO was recorded as PW-2. He submitted complete supplementary challan against the accused.

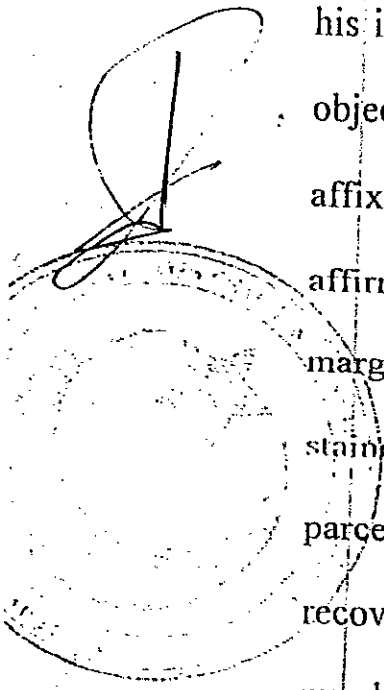
10. Statement of Abdur Rasheed S.I, CTD, Mansehra was recorded as PW-3. He scribed the murasila (Ex.PA). He deposed that on 06.04.2008, at 16:45 hours, the report was lodged by the injured complainant Furqan Ali Shah alongside dead body of Hanif Shah reported the matter to him in DHQ Hospital, Mansehra. He deposed that the murasila (Ex.PA) was read over to the complainant, who by admitting it correct signed the same as a token of its correctness. He sent the murasila to the P.S through Khuram Mushtaq FC. He testified its correctness. PW-3 also prepared the injury sheet (Ex.PW-3/1) of injured complainant Furqan Shah and also drafted injury sheet of deceased (Ex.PW-3/2) and inquest report (Ex.PW-3/3) and verified the correctness of the same and also sending the injured and dead body of deceased to the doctor for medical examinations.

11. Statement of Sabir Shamall DFC No. 393 was recorded as PW-3. He was entrusted with the warrant u/s 204 Cr.PC (Ex.PW-4/1) and proclamation u/s 87 Cr.PC (and Ex.PW-4/2) issued by learned Judicial Magistrate, Mansehra against accused Haroon Shah s/o Rasool Shah Caste Syed r/o Bandi Muneer. He affirmed the execution of the warrant in native village



of the accused and vicinity and testified its return unexecuted. He verified the correctness of his report (Ex.PW-4/3). He testified the affixation of one copy of proclamation on the notice board of issuing court, as well as second copy on the door of house of accused, whereas the third copy along with his report (Ex.PW-4/4), returned to the issuing court.

12. Statement of Lal Khan s/o Ali Mardan was recorded as PW-5. He was marginal witness to recovery memo (Ex.PW-5/1) whereby the IO, during the spot inspection, took into possession blood with cotton from the place of deceased and sealed in parcel No. 01. He added that the IO also took into possession, from the scene of murder, two empties of .30 bore lying in scattered condition and one live round; and the IO affixed his initials on body of the empties and live round with a pointed object and sealed the same into parcel No.2. He stated that the IO affixed 3X3 seals of monogram of 'MP' on each parcel. He affirmed preparation of the memo under his attestation and other marginal witness. He testified the recovery and seizure blood-stained earth from the place of complainant and its sealing in the parcel No.3 vide recovery memo (Ex.PW-5/2) and also the recovery one empty of .30 bore pistol from the scene of attempt of murder, affixation of the initial on the same with pointed object by the IO and its sealing into parcel No.4 affixing 3 seals of monogram of MP on each parcel. He affirmed preparation of the



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memo to that effect. Similarly, he testified the seizure of Mehran Taxi Registration No. T-5257, being ownership of deceased Hanif Shah, from the place of occurrence vide recovery memo (Ex.PW-5/3) on the same day i.e 06.04.2008. He deposed that there was a bullet hole on front door of the Taxi. He testified that on the same day, the IO took into possession P.M Report and garments of the deceased consisting of shalwar, Qameez (blood stained) Naswari color having corresponding cut marks sent by the doctor after P.M. Examination brought by constable Khuram No. 889, the same were sealed into parcel No. 5 and affixed six seals of monogram of MP on the parcel; and affirmed the drafting of the memo. He testified all the above memos.

13. Statement of Syed Shah Nawaz was recorded as PW-6. He is marginal witness to the recovery memo ExPW6/1. He stated that Ghazi Shah produced one blood stained Kameez of grey colour having correspondence bullet mark and one seal phial containing spent bullet which was handed over to the I.O and stated that this Kameez was worn by the deceased at the time of occurrence and spent bullet was handed over to him by the doctor of CMH, Abbottabad for opinion. The same were sealed into parcels No.6 and 7. The recovery memo correctly bears his signature.

14. Statement of Syed Muhammad Shah was recorded as PW-7. He stated that he along with his son Syed Waqar Shah and

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deceased brother Hanif Shah had gone to attend the funeral ceremony of their relative and aunt of accused facing trial. After performing the funeral, his brother Hanif Shah was ahead of them, and sat in his Taxi bearing No. T-5257 and in the mean time, accused Haroon Shah came armed with pistol and fired upon Hanif Shah, resultantly, Hanif Shah sustained injuries and died at the spot while accused Haroon shah ran away from the spot towards the graveyard through a street. He stated that they lifted the dead body of Hanif Shah and carried the same to DHQ, Hospital Mansehra, where on the arrival of injured Furqan Shah, the police lodged his report. He stated that on arrival of police at the spot, the site plan was prepared at his instance as well as on the pointation of his son and Lal Khan. He charged the accused facing trial for murder of his brother. He contended that the motive behind the occurrence was a family dispute of Haroon Shah accused facing trial whose wife happened to be his niece as well as the niece of his deceased brother. He stated that his statement was recorded by the police u/s 161 Cr.PC as well as during proceedings under sections 512 Cr.PC, in the court.

15. Statement of Syed Waqar Muhammad Shah was recorded as PW-8. He stated that on 06.04.2008, he alongwith his father and deceased went to participate in the funeral ceremony at Jalal Abad and after performing the funeral, Hanif Shah, was ahead of them to turn the vehicle while he and his father were



waiting for the family, when in the meanwhile, accused Haroon Shah arrived and started firing upon Hanif Shah. They made hue and cry and accused ran away in a street towards the graveyard. He stated that on receipt of fire shots made by the accused, Hanif Shah, died on the spot and they lifted the dead body and carried to the hospital. On the arrival of the police, they were taken to the spot and site plan was prepared at their instance. He charged the accused for the murder of his uncle Hanif Shah. His statement was recorded by the police u/s 161 Cr.PC and he was also examined during proceedings u/s 512 Cr.PC, in the court.

16. Statement of Syed Furqan Ali Shah s/o Syed Rasool Shah was recorded as PW-9. He is the complainant of the case. He stated that on 06.04.2008, he and Murad Shah went to attend the funeral of mother of Mubarik shah who also paternal aunt of Haroon Shah at Mohallah Jilal Abad. After performing the funeral, they stayed there for burial of the deceased and while standing at the graveyard, he heard a blast and suddenly felt that someone fired in his back. He fell down and after some moment, when he got up, he was unable to stand, thus, sat down and saw Haroon Shah accused equipped with pistol was running away and was looking back-ward. He stated that Murad Shah and Akbar Shah (now dead), lifted and carried him in white color Mehran Motorcar to the hospital. He stated that after giving him first aid, police party headed by Zulfiqar Jadoon SHO arrived and recorded

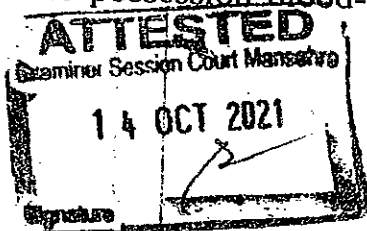
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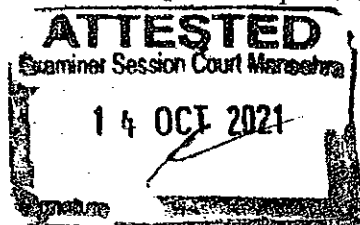
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his statement but he disowned the murasila read over to him and stated that it is not his report rather written by the police on its own. The witness disowned the contents of the Murasila to the extent of boarding the deceased in the Taxi and witnessing the murder of Hanif Shah deceased, however, verified rest of the contents of the murasila as correct. He denied his signature on the available murasila. *(At this stage APP assisted by counsel for the complainant requested for declaring the witness as hostile having deposed contrary to the earlier stance of the prosecution; allowed as per the order sheet).* He went on saying that he remained hospitalized due to injury at CMH for 20/22 days and operated there, whereby the spent bullet was removed but he remained paralyzed for about fourteen (14) months. He deposed that the motive for the occurrence was the apprehension of the accused facing trial regarding the involvement/aid of the complainant to the mother-in-law of accused facing trial for making applications/complaints in respect of the matrimonial/family dispute with the accused.

17. Statement of Rizwan Khan DSP was recorded as PW-10. He conducted the investigation in the instant case. He deposed that on the day of entrustment of investigation to him, he visited the spot and prepared the site plan (Ex.PW-10/1) on the pointation of eye witnesses. He deposed that during the spot inspection, he took into possession blood-stained earth (P1) from



the place shown for the presence of deceased, which was sealed and packed into parcel No.1. He added that during the course of spot inspection, he also recovered two empties and one live cartridge of .30 bore from the place shown for the presence of accused Haroon Shah, which were seized and initial were affixed with pointed object on the empties and on the live cartridge and sealed into parcel No.2 (P2). PW-10 deposed that he affixed 3x3 seals of monogram of 'MP' on both the parcels and prepared recovery memo (Ex.PW-2/2) in the presence of marginal witnesses. He took into possession blood stained-earth from the place shown for the presence of injured complainant, which was packed and sealed into parcel No. 3 (P3) and he affixed three seals of monogram of 'MP', on the same. Similarly, from the place shown for the presence of accused Haroon Shah at the time of occurrence, from the right side and at a distance of four feet, one empty of .30 bore pistol was recovered. He made initial on the same with pointed object and packed and sealed into parcel No.4 (P4) and affixed three seals of MP on each parcel. He prepared the recovery memo (Ex.PW-10/3). He also prepared recovery memo (Ex.PW-10/4) in respect of recovery of Taxi Car No. T-5257 which was ownership of deceased Hanif Shah at the time of occurrence, the deceased was sitting in. He observed that due to the firing by the accused, the front left side door of the said car was damaged with hole. He deposed that on the same day, Constable 889 Khuram presented inquest report and injury sheet



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along with clothes of the deceased consisting upon one trouser and one blood-stained shirt to the I.O which were sent by the doctor after PM Examination of the deceased. He deposed that the blood stained clothes i.e trouser and shirt of brown color having corresponding cut marks were packed and sealed into parcel No. 5 (P-5) vide recovery memo (Ex.PW-10/5) in the presence of marginal witnesses. On 07.04.2008, vide application (Ex.PW-10/6), PW-10 sent parcels No. 1, 3 and 5 for Chemical Analysis. He deposed that he inquired about the motive part of the story and found two FIRs No. 163/94 and 164/94 of P.S Saddar, Mansehra in between the parties, which were placed on the record. On his transfer, the remaining investigation was entrusted to Gul Muhammad Khan S.I.

18. Statement of Dr. Riaz Ahmed KATH Mansehra was recorded as PW-11. He stated that on 06.04.2008, at 05:00 PM, he medically examined injured Syed Furqan Shah brought by Zulfiqar Jadoon SHO Police Station City, Mansehra and found the following.

Two entry wounds of bullets on back of size 1/4" x 1/4" each.

Injury cause by firearm.

Duration. Within one hour approximately.

Advised. X-ray and referred to Ayub Medical Complex Abbottabad for further management.

Nature of injury: After X-ray and surgical opinion.

MLC No.318 is in his handwriting and is ExPW11/1/ On the same day at 05:30 PM, he conducted autopsy on the dead body of



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deceased Syed Hanif Shah brought by Khuram FC No.889, dead body was identified by Ali Asghar and Sultan Shah and found the following.

External Appearance.

Mark of ligature on neck and dissection, etc.
Nil.

Condition of subject:

A dead body of spout young.

Wounds.

1. An entry wound of bullet size $\frac{1}{4}$ " x $\frac{1}{4}$ " on right side of neck.
2. An exit wound bullet size $\frac{1}{4}$ " x $\frac{1}{4}$ " inside on left posterior scapular region.
3. An entry wound of bullet size $\frac{1}{4}$ " x $\frac{1}{4}$ " on posterior right scapular region.
4. An exit wound bullet size $\frac{1}{2}$ " x $\frac{1}{2}$ " on upper part of sternum interiorly.
5. An entry wound of bullet on right scapular region 1" medial to wound No.3 of size $\frac{1}{4}$ " x $\frac{1}{4}$ ".
6. An exit wound of bullet size $\frac{1}{2}$ " x $\frac{1}{2}$ ", on sternum middle party.

Cranium and spinal cord.

Nil.

Thorax:

Walls, ribs, cartilages fractured. Rest all injured except pericardium and heart.

Abdomen:

Not damaged

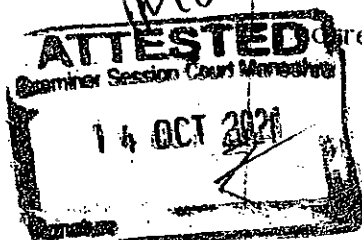
Muscles, bones and joints.

Ribs fractured.

Remarks

In his opinion, accused died due to firearm injuries which causes damage to vital organs, lungs, hemorrhage, shock and death.

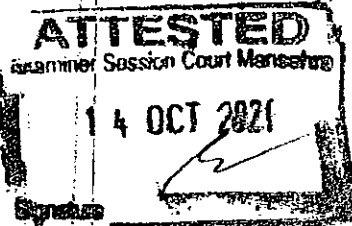
PW-11 stated that the P.M report ExPW11/2 consisting of six sheets including pictorials is correct and correctly bears his signature. After PM, he handed over



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blood stained clothes having holes corresponding to injuries
alongwith all copies of P.M report to the police.

19. Statement of Gul Muhammad S.I (Rtd) was recorded as PW-12. He conducted the investigation. Vide application (Ex.PW-12/1), he obtained warrant u/s 204 Cr.PC and entrusted to DFC for execution. He recorded the supplementary statement of Syed Muhammad Shah. He inserted section 109 PPC vide addition memo (Ex.PW-12/2) and prepared the list of legal heirs of deceased Hanif Shah (Ex.PW-12/3) and conducted investigation in respect of accused Habib Shah. He deposed that on receipt of Chemical Report (Ex.PW-12/7) regarding blood stained clothes, he placed it on the file, which was in positive. He, vide recovery memo (Ex.PW-06/1) took into possession one shirt (grey color) blood stained having corresponding bullet marks on the back side of last-worn shirt of the injured and one phial containing spent bullet, handed over to him by the Doctor of CMH. He packed and sealed the shirt into parcel No. 6 (PA), whereas phial containing spent bullet into parcel No. 7(P-B) by affixing 4x4 seals of 'GM' on both the parcels and in this regard, he prepared the recovery memo (Ex.PW-6/1). Vide his application (Ex.PW-12/8), he sent parcel No. 6 containing blood and shirt of Furqan Shah to the Chemical Expert to match with the blood already sent to the Chemical Expert in parcel No. 3. He on 22.05.2008, vide application (Ex.PW-12/9), sought publication u/s



87 Cr.PC against the accused Haroon Shah and on obtaining proclamation, and entrusted it to DFC Sabir Shamall for execution. He recorded his statement. He also received the Chemical Report (Ex.PW-12/10) which was in positive and was placed on the file. PW-12, during his second posting as S.I/OII in P.S City Mansehra, conducted the investigation after the arrest of accused facing trial and issued his card of arrest (Ex.PW-12/11). Vide application (Ex.PW-12/12), he secured police custody and during the interrogation, accused disclosed to produce the weapon of offence concealed in the room of house of his brother Habib Shah situated at Batdarian and made pointation of the place of occurrence. He recorded statement of accused and conducted the recovery of weapon of offence on pointation of accused, from his residential room situated in the house of Habib Shah where he got recovered one .30 bore pistol without number local made, from the trunk and produced to the I.O as crime weapon. He affixed initial with pointed nail on it and packed and sealed the same into parcel No. 8 (P-C). He affixed 3x3 seals of 'GM' on the parcel and prepared the recovery memo (Ex.PW-12/13) under testimony of the marginal witnesses. Since, no valid license was produced, hence, inserted section 15-AA. He also prepared the site plan of the place of recovery of the pistol (Ex.PW-12/14). He issued addition memo (Ex.PW-12/15). The accused led to the place of occurrence situated at Mohallah Jalal Abad and made pointation of the places shown for his presence as well as for the presence of

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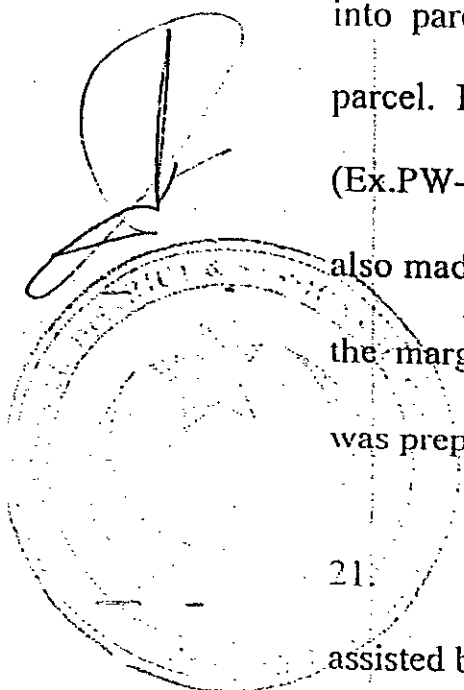
Magistrate Session Court Mansehra

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deceased and injured. He prepared the pointation memo (Ex.PW-12/16) in the presence of PWs. Vide application (Ex.PW-12/18), sent the pistol along with the crime empties to the Arms Expert and received the report which is (Ex.PW-12/19). He also recorded the statements of the PWs.

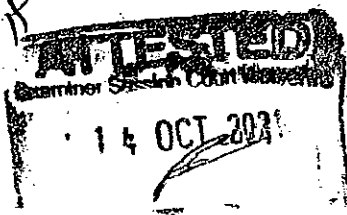
20. Statement of Mushtaq Khan ASI was recorded as PW-13. He is the marginal witness to recovery memo (Ex.PW-12/13) dated 20.10.2016, vide which the crime pistol was recovered on pointation of accused Haroon Shah. He testified the pointation of the place of recovery by accused and recovery proceedings done at village Batdarian in the house of Habib Shah. PW-13 testified that putting of initial by IO and sealing the same into parcel No. 8 (PC) by affixing 3x3 seals of 'GM' on the parcel. He testified that IO also prepared the recovery sketch (Ex.PW-12/14). He added that accused while in police custody also made pointation of the scene of occurrence in the presence of the marginal witnesses and to that effect memo (Ex.PW-12/16) was prepared by the IO. This PW also verified the memos.

21. Arguments of learned Assistant Public Prosecutor assisted by learned counsel for the complainant as well as arguments of learned defense counsel heard. I have gone through the case record, carefully.



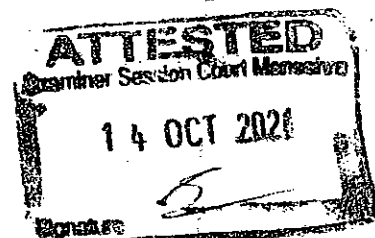
22. Learned APP for the State assisted by learned counsel for the complainant argued that the case of prosecution is based on consistent, coherent, and cogent ocular as well as circumstantial evidence, led the predecessor of this Court to convict the accused facing trial. They argued that it was a daylight occurrence and the question of mistaken identity does not arise. They went on arguing that the parties have a family dispute, which constituted motive for instant murder of Hanif Shah and causing injuries to the complainant. That the accused facing trial was specifically assigned active and effective role of firing at deceased and attempting at the life of injured complainant, fully corroborated by prosecution witnesses absolutely consistent in their narration regarding the occurrence and smoothly passed the test of cross-examinations. They further added that unexplained abscondence of accused for about 08 years is sufficient to corroborate his involvement in the commission of offences. They contended that the prosecution case is proved beyond reasonable doubt through direct impeccable evidence corroborated by the circumstantial evidence without any material contradiction. They prayed for conviction of accused facing trial for the murder of Hanif Shah deceased as well as for attempting at the life of Syed Furqan Shah complainant and causing him injury in his back.

23. Conversely, learned defense counsel rebutted the prosecution contention on the ground that the false and concocted



case has been registered against the accused facing trial and he was roped on the basis of previous animosity. He contended that the FIR was lodged with the inordinate delay after consultation and deliberation. He agitated that the complainant disowned the FIR and shattered the very base of the prosecution case. That the PWs are highly interested and procured witnesses, who badly failed to establish their presence on the spot at the time of incident and their testimony is suffering from material contradictions and discrepancies creating serious doubts and dents in the prosecution case. He added that the ocular account of prosecution, due to their interested status and material inconsistencies, failed to establish the allegations beyond reasonable doubt. He vehemently assailed the veracity of alleged recoveries and contended that the abscondance was never willful but due to the fear of false charge and argued that the legal formalities against the accused were not duly complied with. He argued that the previous judgment of this court has been set aside, therefore, cannot be relied upon and prayed for acquittal of the accused facing trial.

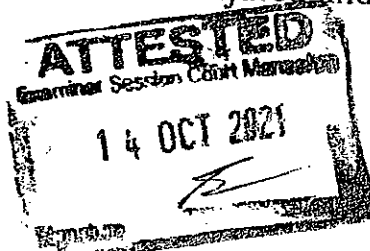
24. The moot question for determination before this court is that whether the accused facing trial has committed the murder of Haneef Shah, as well as attempted at the life of complainant, with firearms on the date, time, and place of occurrence and as to whether the complainant and other witnesses of prosecution were present at the scene of occurrence?.



25. From the Prosecution's point of view, this is a case of direct evidence supported by circumstantial evidence in the form of recovery of empties from the spot, weapon of offence on the pointation of accused, FSL report and PM examination report etc.

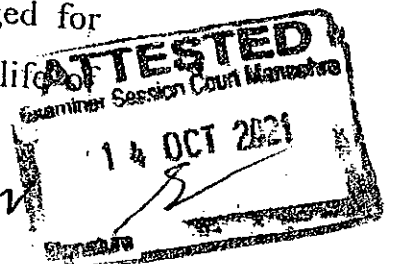
26. It is well settled principal of law that in a criminal case, arriving at a just conclusion about the guilt of an accused charged with the commission of a crime, strong and corroborative evidence of unimpeachable character is required and the findings of guilt must not be based on probabilities to be inferred from evidence, rather, it must rest firmly on trustworthy and confidence inspiring evidence. A witness who claims himself to be the eyewitness of the occurrence, must prove his presence on the spot and shall satisfy the mind of the Court qua his presence through some physical circumstances or corroborative evidence.

27. Perusal of record would show that Syed Furqan Shah PW-9 is the complainant as well as star eye witness of the prosecution having sustained injuries, allegedly, at the hands of accused facing trial, as per FIR while PW-7 and PW-8 offered the eye witness account of occurrence after the registration of the case. The prosecution side relied upon the ocular testimony of all the above three witnesses followed by medical evidence, recoveries of empties, blood stained earth and blood-smearred garments of the deceased as well as of the injured and the motive



behind the occurrence. The report in the shape of murasila has been attributed to the complainant which reads as under:

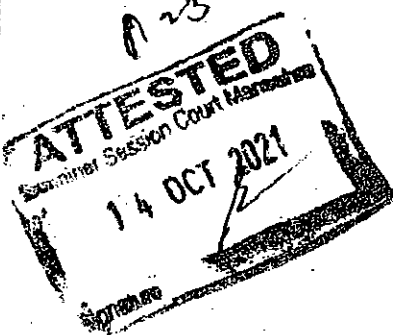
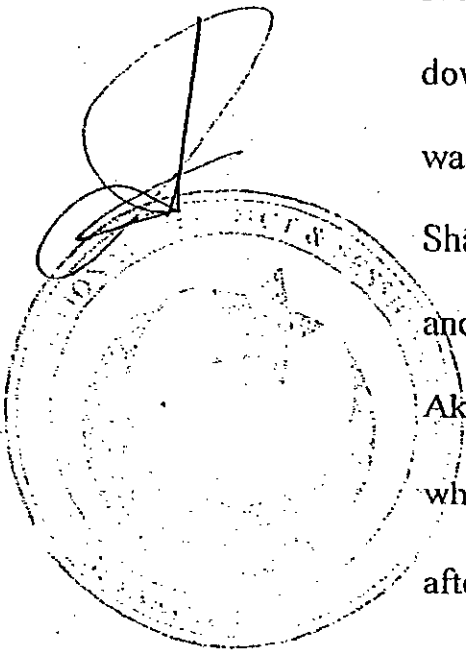
"The local police upon receipt of information regarding the occurrence, on 06.04.2008, reached to DHQ Hospital, Mansehra where complainant Syed Furqan Ali Shah son of Syed Rasool Shah caste Syed resident of Dab#1, Mansehra, in injured condition alongwith dead body of deceased Haneef Shah reported the matter to local police contending therein that, on the day of occurrence, he alongwith Hanif Shah went to attend the funeral of mother of Mubarik Shah (Paternal aunt of Haroon Shah accused facing trial) in Mohallah Jalal Abad, Mansehra and after performing the funeral ceremony, he and Hanif Shah (deceased) were about to sit in Taxi bearing registration No.T-5257-Karachi, owned by deceased Hanif Shah, when in the meanwhile, accused Haroon Shah armed with pistol .30 bore arrived there, started altercation with Hanif Shah followed by firing at deceased with the intention to kill him, in consequence whereof, Hanif Shah fell on the driving seat of Taxi while he ran away towards the graveyard to save his life but accused Haroon Shah went behind him and fired a single shot to kill him, as a result whereof he sustained injury on his back while accused Hanif Shah could not succumbed to the injuries and died. The occurrence was reported to be witnessed by Murad Shah and common people present at the spot. Motive as explained was a dispute over a family matter. The accused Haroon Shah was charged for murder of Hanif Shah and attempting at the life of complainant".



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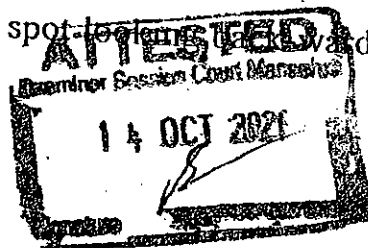
Syed Furqan Ali Shah, complainant/injured when appeared as PW-9 has negated the version of murasila attributed to him and has altogether denied his presence at the scene of murder. His examination-in-chief is reproduced herein below for ready reference:-

"PW-9 stated that on 06.04.2008, he and Murad Shah went to attend the funeral of mother of Mubarik Shah (paternal aunt of Haroon Shah accused) at Mohallah Jalal Abad; after performing the funeral, they stayed there for burial of the deceased; he was standing there, when in the meanwhile, he heard a blast and suddenly felt that someone fired in his back; he fell down and after some moment, when he got up but he was unable to stand, thus, sat down and saw Haroon Shah accused equipped with pistol was running away and was looking back-ward; that Murad Shah and Akbar Shah (now dead), lifted and carried him, in white color Mehran Motorcar, to the hospital; that after giving him first aid, police party headed by Zulfiqar Jadoon SHO arrived and recorded his statement but he disowned the murasila read over to him and stated that it is not his report rather written by the police on its own. The witness disowned the



contents of the Murasila to the extent of boarding the deceased in the Taxi and witnessing the murder of Hanif Shah deceased, however, verified rest of the contents of the murasila as correct. He denied his signature on the available murasila".

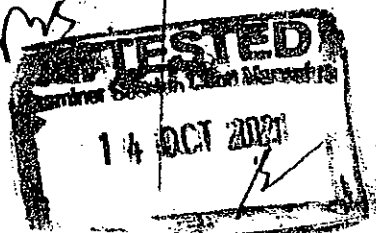
28. It is worth mentioning that the complainant/injured is not denied his presence for the first time where Haneef Shah was done to death rather his statement recorded during the trial under sections 512 Cr.PC as PW-4 on 06.06.2009, he had categorically stated that he was present in the graveyard at the time of burial of Mst. Hussan Jan Bibi, when in the meanwhile, someone fired in his back, he fell down on the ground and saw accused Haroon Shah having pistol in his right hand, was decamping from the spot. It worth's here to mention that this statement of the complainant/injured has never been challenged by the legal heirs of the deceased and the local police has neither been apprised by them nor the local police necessitated to investigate this aspect of the matter. Complainant/injured has never owned the presence attributed to him at the site of murder, as is mentioned in the murasila and this time too, he remained silent about his presence at the scene of murder and has categorically stated that he was present in the graveyard when someone fired on his back and he fell down on the ground and saw accused Haroon Shah equipped with pistol was decamping from the spot towards the wards. The



prosecution requested to declare him hostile which was allowed and he was put to cross examination by the prosecution as well as by the learned defense counsel. PW-9 has out-rightly denied his presence at the scene of murder and the prosecution has blamed him for resiling from his report due to threats extended to him by the accused facing trial but the complainant denied the allegation and stated that his report in original recorded by the police was to the extent of his injury being replaced with the present one by putting his fake signature. PW-9 has termed the report available on the record in shape of murasila as fake, containing his fake signature.

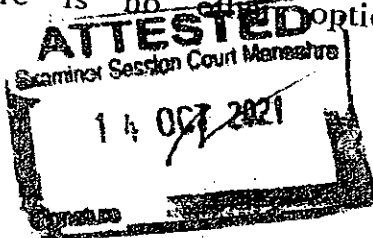
29. The arguments that the complainant by disowning the murasila, resiled from his report followed by declaring him hostile becomes incredible, whose statement cannot be relied upon and is sufficient for acquittal of accused facing trial or the contrary arguments that he favoured the accused due to threats extended to him, do not carry any weight and this court has to see as to whether the witness is honest, truthful and his statement is natural or otherwise. The statement of the complainant recorded as PW-9 does not suggest by any stretch of imagination that he is either frightened, pressurized, bribed or has favoured the accused for any such reason.

30. According to the case of prosecution, Haneef Shah was done to death when he was about to sit in the taxi car whereas



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the complainant ran away from the spot towards the graveyard and the accused facing trial went behind him and hit him in his back. It is humanely impossible for an injured person, after sustaining fire arm injury in his back, to take care of someone else, therefore, question arises as to how could the complainant were able to carry the dead body to the hospital and standing by his side at the time of lodging the report despite sustaining fire arm injuries in his back that too on point No.5A for away and hidden from scene of murder. According to the statements of complainant as well as the PWs, the complainant/injured and the deceased were carried to the hospital in different vehicles by different people and they reached there at different times where the postmortem of the dead body was conducted while the injured was given first aid. It appears from record that the site plan was prepared at the pointation of PWs 7 & 8 and the complainant/injured remained under treatment for 20/22 days at CMH. PWs 7 & 8 have though made pointation of the place of presence of complainant/injured at the scene of murder but stated nothing about the presence of complainant/ injured at the scene of murder while recording their statements before the court. The statement of complainant discloses the true account of facts corroborated by the circumstantial evidence, available on record and it seems that complainant/injured has been shown at the scene of murder to strengthen the case of prosecution. Gathering all these facts, there is no other option to hold that the



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complainant/injured was not present at the scene of murder and the report as well as the site plan showing him present there are wrong to the extent but it alone is insufficient to disbelieve the case of prosecution and this court has to see as if the prosecution proves the presence of other witnesses (PW-7 and PW-8) at the scene of murder or otherwise, beyond reasonable doubt.

31. Subtracting the presence of complainant/injured from the scene of murder, there remain two witnesses namely Syed Muhammad Shah (PW-7) and Waqar Shah (PW-8) shown in the site plan upon their offer to have seen the occurrence. Both these PWs are father and son respectively. Beside the fact that PW-7 is the real brother of the deceased and PW-8 is the nephew of deceased, their names do not appear in the murasila and I.O has stated that they both appeared before him at about 18:10 hours whereas the occurrence allegedly took place at 16:30 hours. Ignoring the factum of their being interested witnesses and their belated appearance before the I.O, this court is to see as to whether their presence at the scene of murder is proved beyond reasonable doubt, in light of the available evidence or otherwise.

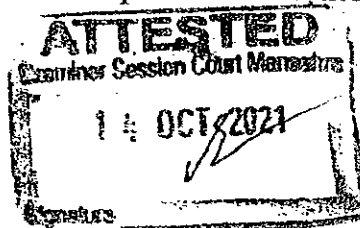
32. PW-7 and PW-8 have stated that they were on the way back to home after participation in the funeral and the deceased was ahead of them to sit in the taxi car, when in the meanwhile, accused arrived and started firing upon him. This led the I.O to prepare site plan ExPW10/1 at their instance and

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 District Court, Lahore
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pointation wherein the complainant/injured has been shown at point No.5 but both the PWs when recorded their statements as PW-7 and PW-8, stated nothing about the presence of complainant/injured at the scene of murder, his running from the spot and chasing by the accused facing trial which not only affirms the stance of the complainant/injured that he was not present at the scene of murder but also doubts the presence of PWs there. According to the statements of PWs 7 and 8, the accused facing trial fired four shots upon the deceased whereas the medico-legal report observed three entry wounds at the time of PM examination followed by the recovery of two empties and one live bullet. According to PW-8, they shifted the dead body to the hospital in 15/20 minutes and the police arrived there after about 45 minutes to one hour whereas the time of report as mentioned in the FIR is 16:45 hours (after fifteen minutes of the alleged occurrence). PW-8 has stated that the report by the complainant /injured was lodged in the hospital but not in their presence. Similarly, PW-7, has stated that the occurrence was witnessed by common people but they have not pointed out the place of availability of common people to the I.O, at the time of preparation of site plan. In short, the statements of PW-7 and PW-8 are contradicting the case of prosecution on material points which create serious doubts in a prudent mind regarding their availability at the scene of murder. Their presence in the funeral ceremony is insufficient to prove their presence at the scene of



crime and in absence of concrete proof in light of the available evidence, their belated appearance and being close relatives of the deceased further strengthen the contention of defense that it is an un-seen occurrence. It is important to refer that sister of deceased Mst. Razia Bibi had appeared during the trial under section 512 Cr.PC and stated that she too witnessed the occurrence but she has not been given any point in the site plan prepared at the instance of PWs 7 & 8. Had they been present at the scene of murder, the situation would have been different; the assailant could have no courage to attack the deceased, if not so, the PWs could have been attacked at or at least the PWs could have chase and caught hold of him. Had they been present, lifted and carried the dead body to the hospital, in a separate vehicle without accompanying the injured, the would have lodged the report or at least they could have been shown associating/carrying the dead body or the receivers of the dead body from the hospital. Showing the presence of complainant/injured in the site-plan but stating nothing in their statements about his presence at such, failing to point out the presence of Mst. Razia and common people to the I.O, attributing four fire shots to the accused as against three entry wounds observed during the post mortem examination, contending the carrying of dead-body but neither made any report nor received the dead body, belated offer to have seen the occurrence and others contradictions in the statements of PW-7 and PW-8 are

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Examiner Session Court Manjerwa
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sufficient to hold that they being interested witness have never seen the occurrence and have been introduced subsequently.

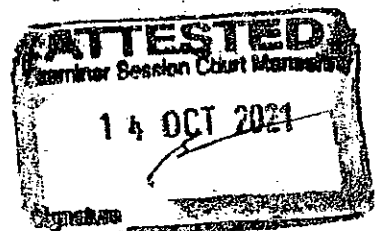
33. The case of prosecution is two-fold i.e. murder of Haneef Shah at point No.1 and attempt at the life of complainant/injured at point No.5A. Both the scenes of occurrences are different, at distance and hidden from each other. The complainant/injured has denied his presence at the scene of murder and after declaring him hostile followed by cross examination, his statement as available is worth considering, reliable and true accounts of facts and it seems that the local police merged both the occurrences by introducing PW-7 and PW-8 as eye witnesses to the case, to strengthen it but it really damaged the case of prosecution. The prosecution has miserably failed to prove that the occurrence at the scene of murder has taken place in the mode and manner as narrated in the FIR. The complainant/injured has termed his signature as fake on the murasila ExPA and this factum has never been challenged by anyone so as to sent the case to FSL for analysis and report. PWs have though pointed out the place of presence of complainant/injured in the site plan but remained mum about his presence during their statements recorded before the court. Moreover, the PWs have attributed four fire shots made by the accused but PM report observed three entry wounds whereas the I.O PW-10 has recovered two empties and one live bullet. Furthermore, PW-7



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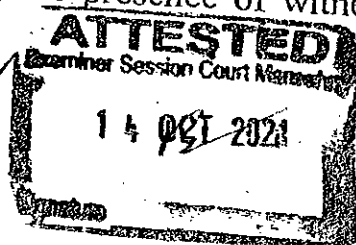
and PW-8 have neither identified nor received the dead body in the hospital which further negates their presence at the scene of crime as well as attending the dead body in the hospital. Last but not the least, PW-7 and PW-8 are neither mentioned witnesses in the murasila nor they could establish their presence at the scene of murder through trustworthy evidence which strengthen the argument of learned defense counsel that none of the eye-witnesses (PW-7 & PW-8) were present at the scene of murder.

34. The second part of the case is an attempt at the life of complainant/injured (PW-9) which though has allegedly been witnessed by Murad Shah and the common people available in the graveyard at the time of burial of Mst. Hussan Jan but neither Murad Shah nor anyone from the public has come forward to appear and record his statement on behalf of prosecution. This Court is left with the statement of complainant/injured alone and his statement has been recorded as PW-9. PW-9 has stated that someone has shot a fire in his back, he fell down, after some moment, he got up, but was unable to stand, thus sat down and saw accused Haroon Shah accused facing trial equipped with pistol was running away and looking back-ward as well. There is no specification as to which direction the accused was decamping from the spot, so as to ascertain the fact that he was seen by the injured/complainant ignoring his physical condition to do so. From the contents of murasila, it appears that the complainant/



injured stated about receiving single fire shot injury in his back whereas medico-legal report ExPW13/1 shows two entry wounds of bullets on back with no exit wound. ExPW6/1 reveals that the shirt contains single cut of bullet and a single pellet was produced to the police followed by the recovery of single bullet shell from the scene of occurrence. The doctor appeared as PW-11 and again stated that he observed two entry wounds of bullets on back caused by fire arm and his statement has neither been challenged nor sufficient explanation has been sought so as to clarify the number of fire shots. Similarly, the report of the doctor with regard to the nature of injury has been kept pending for want of X-ray and Surgical opinion but nothing as such has been placed before him so as to confirm the nature of injury. The record is silent about the seat of injury and placement of pellet in the body of complainant/injured. It is admitted on record that the complainant has not seen any one firing in his back and the PWs who have allegedly witnessed the occurrence never appeared before the court to support the case of prosecution.

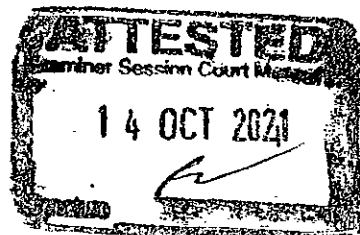
35. The ocular account of the case of prosecution is full of doubts and dents, thus is insufficient to record the conviction of accused facing trial either for the murder of Haneef Shah or attempting at the life of complainant/injured. Disowning the report as well as his signature and his presence at the scene of murder by the complainant/injured; the presence of witnesses at



(92)

the scene of murder, un-supported by fraction of evidence, contradictions in the statements of PWs with the case of prosecution regarding the number of bullets, carrying the dead body to the hospital, their presence there with the dead body and their pointation regarding the presence of complainant/injured at the scene of murder, conflict in recovery of empties and the medico legal report, non-appearance of Murad Shah or any one else from the public as witness etc are sufficient grounds to doubt the involvement of the accused facing trial in the commission of offence.

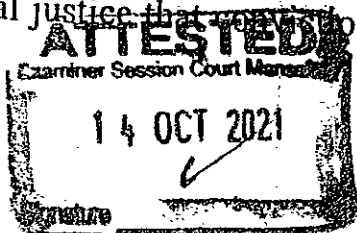
36. The weapon of offence was allegedly recovered at the pointation of accused facing trial after about 08 years of the occurrence, which when sent to the FSL and examined there, it blasted and expert could not form any opinion about its use in the commission of offence. Similarly, the taxi car, in which the deceased fell after the receiving of the injuries, has neither been produced during the trial nor any blood has been recovered from it, so as to confirm the contention of prosecution that the deceased had fallen inside the taxi car after sustaining injuries, allegedly at the hands of accused facing trial. Similarly, accused facing trial remained absconder for more than eight years, but mere abscondence is of no avail especially when the prosecution has failed to bring home the guilt of accused beyond reasonable doubt.



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37. No doubt, there is a post mortem report, medico legal report, recovery of empties and weapon of offence, recovery of blood stained earth and garments followed by report of FSL, available on record but are unreliable in view of the above discussion exposing the contradictions with the ocular account as well as contradictions inter-se.

38. For what has been discussed above, the ocular account as well as circumstantial evidence is untrustworthy being full of contradictions to be relied upon so as to record the conviction of accused facing trial. The scene of murder is unseen while independent evidence of the scene of attempt has been withheld. Consequent upon, it is held that the case of prosecution is full of doubts and dents, the benefit of which must go to the accused. It is not necessary that there should be many circumstances creating doubts, even a single doubt, if found reasonable, is sufficient to warrant the acquittal of the accused not as a matter of grace and concession but as a matter of right. Similarly, no justification, much less plausible, has been furnished by the prosecution to convince the mind of court about the involvement of the accused facing trial in the commission of offence. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. It is fundamental principle of administration of criminal justice that conviction can only be recorded where the



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prosecution proves a charge beyond reasonable doubt. While keeping this fundamental principle in mind, the benefit of doubt is extended in favour of the accused facing trial. Consequently, accused facing trial namely Haroon Shah son of Rasool Shah caste Syed resident of Bandi Morbaffa Tehsil and District Mansehra, is acquitted from the charge. Accused is in custody, he shall be released from the custody, forthwith, if not required to be confined in any other case. Case property be dealt with in accordance with law. File be consigned to the record after its completion and compilation.

Announced
02.10.2021

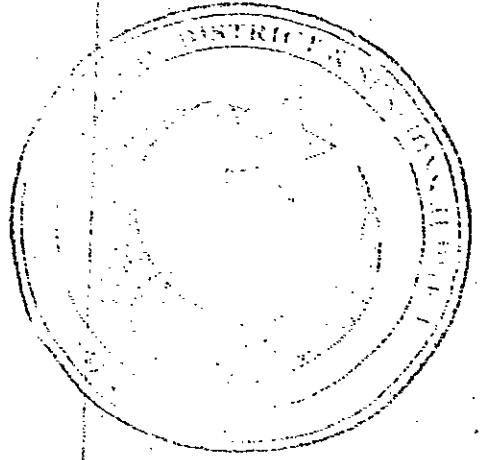
(AJMAL TAHIR),
ADDITIONAL SESSIONS JUDGE-I,
MANSEHRA.

Certificate:

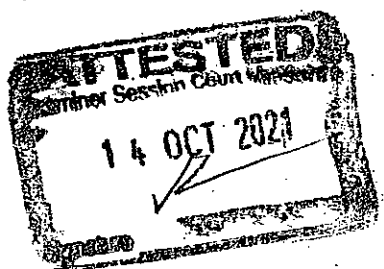
Certified that this judgment consists upon thirty four (34) pages and every page has been checked, corrected and signed by me.

DATED: 02.10.2021

(AJMAL TAHIR),
ADDITIONAL SESSIONS JUDGE-I,
MANSEHRA.



P35



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Annex D

BEFORE THE DIG HARAZA RANGE
ABBOTTABAD

APPEAL AGAINST THE ORDER OF DPO
MANSEHRA DATED 14.05.2008 VIDE
WHICH THE APPELLANT WAS DISMISSED
FROM SERVICE

Respected Sir,

The brief facts leading to the instant appeal are arrayed as follows: -

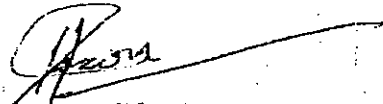
- 1) That, the appellant was posted as FC in PS Shinkhari. The appellant received an information about an accused namely Chan Badshah who was arrested by the petitioner. The appellant handed over the said Chan Badshah to constable and himself followed them. When the appellant reached PS Shinkhari, the appellant came to know that the said Chan Badshah had made escape good from the constables. Thereafter the case was registered under section 302PPC against the appellant in PS City Mansehra. The entire inquiries were conducted at the back of appellant. He was never provided any opportunity to defend himself nor his explanation was sought by the authorities. The appellant was arrested who was prosecuted and he was convicted by the trial court, but on acceptance of his appeal the case was remanded and the appellant was acquitted by the court of Addl. Sessions Judge-I, Mansehra.
- 2) That, the very foundation which led to the impugned order stood vanished away by extending benefit of doubt to him. The said allegations in the departmental inquiry were made the foundations of his dismissal from service, now when he has been judicially acquitted by the competent court therefore the very allegations on the face of record carries no worth nor any credence.

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- 3) That, except the mere bald allegations there is absolutely no evidence nor the same was trusted through cross examination.

It is therefore most humbly prayed and requested that on acceptance of appeal the impugned order of dismissal may kindly be set aside and the appellant may kindly be reinstated in the light of the judgment of Addl. Sessions Judge-I, Mansehra.

Dated 28/10/2021



Haroon Shah
Ex-Constable No. 625
District Police
(Mansehra)



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Annex-E

OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

0992-9310021-22

0992-9310023

r.rpohazara@gmail.com

0345-9560687

NO: 25509 /PA DATED 08/11/2021

ORDER

The competent authority has examined and *filed* the appeal submitted by Ex. Constable Haroon Shah No.625 of district Manshera against the punishment of dismissal from service awarded by District Police Officer, Manshera vide OB No. 75 dated 14.05.2008 being badly time barred.

[Signature]
Office Superintendent

For REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

No. 25505/- /PA, dated Abbottabad the
CC.

/2021.

The District Police Officer, Manshera for information and necessary action.

Attested

[Signature]


OS
24/11/2021

وکالت نامہ

قیمتی

کورٹ فیس

بعدالت جناب محترم جج جسٹس ڈاکٹر سید سید علی شاہ اور
 منجانب محترمہ عائشہ بیگم

عنوان محترمہ عائشہ بیگم  vs M/s. H. H. Khan et al

دعویٰ یا جرم سید علی شاہ

باعث تحریر آفیکہ

مندرج بالا عنوان میں اپنی طرف سے پیروی و جوابدہی مقام ایڈووکیٹ آف ریکارڈ

محترمہ عائشہ بیگم ایڈووکیٹ بدیں شرط وکیل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص روبرو عدالت حاضر ہوتا ہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہوں گا۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی اور جگہ یا کچہری کے مقرر اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام کچہری کے کسی اور جگہ سماعت ہونے پر یا بروز کچہری کے اوقات کے آگیا یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے رابطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پر داختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرنے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپروٹاشی و راضی نامہ و فیصلہ برخلاف کرنے اقبال دعوے کا اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یک طرفہ درخواست حکم اتقاعی یا ڈگری قبل از فیصلہ اجرائے ڈگری بھی صاحب موصوف کو بشرط ادا کیگی علیحدہ پیروی مختار نامہ کرینا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو۔ پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سندر ہے مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

Areeb M. Akh

مورخہ 16/12/2021ء

السید عبد العزیز
 ۴ رمضان

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

TJB

Appeal No. *7877* of 20 *22*

Muzammar Shah Appellant/Petitioner

Versus.

P. P. S. 15, 211, Pesh. Respondent

Respondent No. *2*

Notice to:

Regional Police Office Hazara
Region Abbottabad

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on *14-3-2022* at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this *11/3*

Day of *Jan* 20 *22*

at Court House Peshawar

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD ^{DB}
PESHAWAR.

No.

77
Appeal No. *Haroon Djal* of 20

..... Appellant/Petitioner
P.P.O. G.P. Pesh:
Versus *P.O.S.H.:*

..... Respondent

Dist. Peshawar Respondent No. *M.A. Bakhsh*

Notice to: —

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No..... dated.....

Given under my hand and the seal of this Court, at Peshawar this.....

Day of..... 20

at Camp Court Peshawar

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

113

No.

Appeal No. *1877* of 20*21*

Muhammad Shah Appellant/Petitioner

Versus

I.P.C. 1877 Respondent

Respondent No.

Provisional Judge (Peshawar)

Notice to:

1877 Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on *16-3-2022* at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement along with any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this *11/3*

Day of *Jan* 20 *22*

at Camp Court Road

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

- Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.