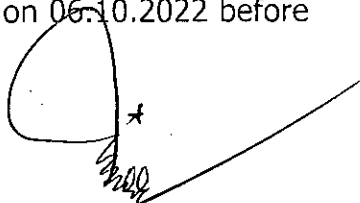


08.09.2022

Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Saleem Javed, Litigation Officer for the respondents present.

Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments. Last opportunity is extended subject to cost of Rs. 2000/-. Adjourned. To come up for reply/comments on 06.10.2022 before S.B at Camp Court Swat.


(Mian Muhammad)
Member (E)
Camp Court Swat

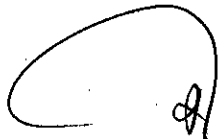
06.10.2022

Appellant present through counsel.

Riaz Khan Paindakhel, learned Assistant Advocate General present. Nemo for respondents.

Despite the fact that last opportunity was extended subject to payment of cost of Rs.2000/-, neither cost was deposited nor written reply was submitted, therefore, all the respondents are placed ex-parte. To come up for arguments on 06.12.2022 before D.B at Camp Court, Swat.

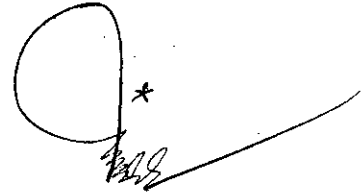
SCANNED
KPST
Peshawar


(Rozina Rehman)
Member (J)
Camp Court Swat

09.06.2022

Appellant in person present. Mr. Kabirullah Khattak,
Additional Advocate General for the respondents present.

Written reply/comments on behalf of respondents not
submitted. Learned AAG requested for time to submit written
reply/comments. Granted: To come up for reply/comments on
07.07.2022 before S.B




(Mian Muhammad)
Member (E)
Camp Court Swat

07.07.2022

Counsel for the appellant. Mr. Noor Zaman, District
Attorney for respondents present.

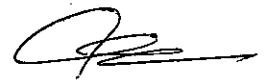
Written reply/comments not submitted. Learned
District Attorney requested for time to file written
reply/comments. Request accepted by way of last chance. To
come up for written reply/comments on 04.08.2022 before S.B
at Camp Court, Swat.


(Fareeha Paul)
Member (E)

Camp Court, Swat

4.8.22

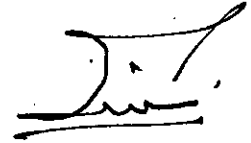
*Due to summons
vacated the case is adjourned
for 8.9.22 for the same.*



07.04.2022

Nemo for the appellant.

Previous date was changed on Reader Note, therefore, notices for prosecution of the appeal be issued to the appellant as well as his counsel through registered post and to come up for further proceedings on 06.06.2022 before the S.B at Camp Court Swat.

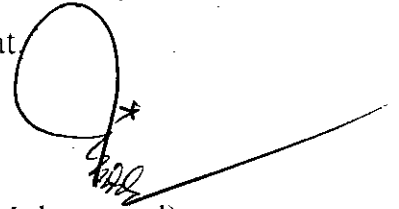


(Salah-Ud-Din)
Member (J)
Camp Court Swat

06.06.2022

None for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

On the call of Khyber Pakhtunkhwa Bar Council, District Bar Association is observing strike today, therefore, learned counsel for the appellant did not appear before the court. Adjourned. To come up for written reply/comments on 09.06.2022 before the D.B at camp court Swat



(Mian Muhammad)
Member(E)
Camp Court Swat

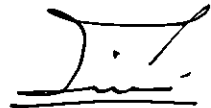
05.01.2022

Mr. Imdad Ullah, Advocate, for the appellant present.
Preliminary arguments heard.

Points raised need consideration, therefore, the appeal in hand is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, where-after notices be issued to the respondents for submission of written reply/comments on 10.02.2022 before the S.B at Camp Court Swat.

Appellant Deposited
Security & Process Fee

10/1/22



(Salah-Ud-Din)
Member (J)
Camp Court Swat

10.02.2022

Tour is hereby canceled. Therefore, the case is adjourned to 07.04.2022 for the same as before at Camp Court Swat.



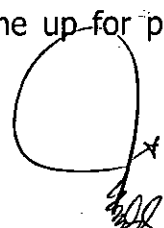

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7353 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/08/2021	<p>The appeal of Mr. Wazir presented today by Mr. Imdadullah 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>
2-		<p>This case is entrusted to S. Bench at Peshawar. Notices be issued to the appellants/counsel for preliminary hearing to be put up there on <u>22/10/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	22.10.2021	<p>Appellant in person present.</p> <p>Appellant requests for adjournment on the ground that his counsel is not available. Adjourned. To come up for preliminary hearing before the S.B on 17.12.2021.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p>

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST

Case Title: Wazir vs DG Health Services KPK

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Wazir</u>		
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 paged?	✓	
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:

Imdad Ullah

Signature:

Imdad

Dated:

30/08/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SCANNED
KPST
Peshawar,

Service Appeal No. _____ of 2021

Wazir S/o Muhammad Rahim Ex-Ward Orderly THQ Hospital, Samarbagh, Dir
Lower.

7353

...Appellant

VERSUS

The Director General Health Services Government of Khyber Pakhtunkhwa,
Peshawar and Another.

...Respondents

INDEX

S. No.	Description of documents	Annexure	Pages
1.	Memo of Appeal	1-5
2.	Affidavit	6
3.	Addresses of the parties	7
4.	Copy of the Order dated 14-12-2012	A	8
5.	Copy of the FIR	B	9
6.	Copy of the Jail Warrant	C	10
7.	Copy of the Judgment dated 29-06-2021	D	11-29
8.	Copy of the Order dated 10-07-2019	E	30
9.	Copy of the Departmental Appeal/Application	F	31
10.	Copy of the Order dated 16-08-2021	G	32
11.	Vakalat Nama	33

Appellant Through

Imdad

Imdad Ullah

Advocate Swat

Office: Khan Plaza, Gulshone Chowk,
Mingora Swat, Cell 0333 929 7746

(1)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2021

Wazir S/o Muhammad Rahim Ex-Ward Orderly THQ
Hospital, Samarbagh, Dir Lower.

...Appellant

VERSUS

1. The Director General Health Services Government of Khyber Pakhtunkhwa, Peshawar.
2. The District Health Officer, Dir Lower.

...Respondents

APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER NO. 3906 DATED 10-07-2019
WHEREBY THE SERVICE OF THE
APPELLANT WAS TERMINATED
AGAINST THE LAW, RULES AND
FACTS AND IS LIABLE TO BE SET
ASIDE, FEELING AGGRIEVED OF THE
SAME THE APPELLANT PREFERRED A
DEPARTMENTAL APPEAL, BUT THE
SAME WAS ALSO DISMISSED IN A
VERY SUMMARY MANNER IN UTTER
NEGATION OF THE LAW AND RULES
ON THE SUBJECT VIDE ORDER NO.
5288/W.O DATED 16-08-2021, WHICH IS
ALSO LIABLE TO BE SET ASIDE.

Prayer:

That on acceptance of this service appeal both the orders impugned may very kindly be set aside being against the law, rules and facts and reinstate the appellant back into service with all back/ consequential benefits.

Respectfully Sheweth:

Facts:

- i. That the appellant was appointed as Ward Orderly vide order No. 5534 dated 14-12-2012 and since then performed his duties without any complaints of any sort either by the authorities or the public. Copy of the order dated 14-12-2012 is enclosed as Annexure "A".*
- ii. That in the year the appellant was falsely inducted in criminal case FIR No. 494 dated 08-08-2014 under sections 302, 324, 148, 149, 337D, 337F(iii). Copy of the FIR is enclosed as Annexure "B".*
- iii. That the appellant was on bail, but was again remanded to judicial lock up upon cancellation of bail on 16-05-2016 and since then was in judicial lockup till his acquittal. Copy of the jail warrant is enclosed as Annexure "C".*
- iv. That the learned Session Judge convicted the appellant along with other accused vide judgment dated 22-05-2019.*

- v. That feeling aggrieved of the same the appellant along with others filed a criminal appeal before the August Peshawar High Court, Mingora Bench, Dar-ul-Qaza swat bearing No. Cr.A No. 245-M of 2019.
- vi. That the said criminal appeal was allowed and the appellant was acquitted of the charges vide judgment dated 29-06-2021. Copy of the judgment dated 29-06-2021 is enclosed as Annexure "D".
- vii. That after his release from judicial lockup the appellant when reported for duty so to his astonishment he was informed that his service has been terminated vide order No. 3906 dated 10-07-2019. Copy of the order dated 10-07-2019 is enclosed as Annexure "E".
- viii. That order was passed in utter violation of the law and rules on the subject, thus feeling aggrieved of the same the appellant preferred a departmental appeal through proper channel. Copy of the appeal is enclosed as Annexure "F".
- ix. That strange enough the respondent No. 2 instead of forwarding the appeal to the next authority decided the same himself vide No. 5288/W.O dated 16-08-2021 in utter negation of the law and rules. Copy of the order dated 16-08-2021 is enclosed as Annexure "G".

- x. *That still feeling aggrieved and having no other option this Honourable Tribunal is approached for the redressal of the grievances on the following grounds.*

Grounds:


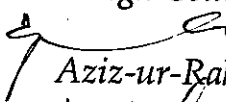

- a. *That before imposing the major penalty of dismissal all the codal formalities are mandatorily to be adopted under the law and rules in due course, but in the case of the appellant the same has not been done to the utter detriment of the appellant and thus has not been treated in accordance with the law.*
- b. *That appellant has been condemned as unheard. Neither has any inquiry ever been conducted nor any chance of self defence been afforded to the appellant.*
- c. *That the order of termination is being under the law that is repealed ages ago, which makes the order impugned void ab initio.*
- d. *That the departmental appeal of the appellant is decided by the same authority who made the order impugned, which also makes the order void and liable to set aside.*
- e. *That this is a classic case of its kind wherein the colourful, fanciful, arbitrary and parochial use of authority is exercised even not vested, which act is time and again depreciated by the Apex Supreme*

Court of Pakistan in plethora of judgment, rather is by now a settled principal of law.

f. That the absence of the appellant was never willful rather was due to circumstances beyond the control of the appellant.

It is, therefore, very respectfully prayed that on acceptance of this appeal both the orders impugned may very set aside being against the law and rules on one hand and void ab initio on the other, and reinstated the appellant back into service with all back / consequential benefits.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Appellant

Wazir
Through Counsels,

Aziz-ur-Rahman

Imdad Ullah
Advocates Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2021

Wazir S/o Muhammad Rahim Ex-Ward Orderly THQ
Hospital, Samarbagh, Dir Lower.

...Appellant

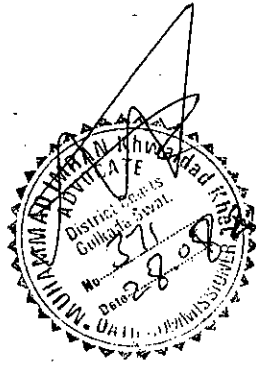
VERSUS

The Director General Health Services Government of
Khyber Pakhtunkhwa, Peshawar and Another.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this service appeal are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.



Deponent
Wazir

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2021

Wazir S/o Muhammad Rahim Ex-Ward Orderly THQ
Hospital, Samarbagh, Dir Lower.

...Appellant

VERSUS

The Director General Health Services Government of
Khyber Pakhtunkhwa, Peshawar and Another.

...Respondents

ADDRESSES OF THE PARTIES

Appellant:

Wazir S/o Muhammad Rahim Ex-Ward Orderly THQ
Hospital, Samarbagh, Dir Lower.

Respondents:

1. The Director General Health Services Government
of Khyber Pakhtunkhwa, Peshawar.
2. The District Health Officer, Dir Lower.

Appellant
Through Counsel,
Imdad
Imdad Ullah
Advocate Swat

OFFICE OF THE
EXECUTIVE DISTRICT OFFICER (HEALTH)
DIR LOWER

No. 5534 / Dated. 14/12 / 2012.

Phone No. 0945-9250098.

To,

Mr. Wazir S/O Mohammad Rahim Khan,
Village Kambat P.O & Tehsil Samarbagh,
Dir Lower.

Annexure Ac

(8)

Subject:
Memo:-

APPOINTMENT

Reference your application for the post of Ward Orderly.

You are hereby offered a post of Ward Orderly BPS-02 (Rs. 4900-170-10000) plus usual allowances as admissible under the rules on regular contract basis against the vacant post of Ward Orderly at THQ Hospital Samarbagh Dir Lower on the following terms & conditions.

TERMS & CONDITIONS.

1. Your appointment will be on regular contract basis.
2. You will not be entitled for pension and gratuity benefits.
3. You will not contribute to GP Fund.
4. You will avail the benefit of Contributory Provident Fund (CPF) through 10% contribution of minimum of her pay and 10% contribution to be made by the Government.
5. Your appointment will take place subject to provision of Health & age certificate from the Medical Superintendent DHQ Hospital Timergara.
6. If you accepts offer for appointment as Ward Orderly with the above terms and conditions, you should report to the Incharge THQ Hospital Samarbagh Dir Lower within 15 days, otherwise offer will be considered automatically as cancelled.

Executive District Officer,
(Health) Dir Lower.

No. _____ /

Copy forwarded to:-

1. The District Accounts Officer Dir Lower.
2. The Incharge THQ Hospital Samarbagh Dir Lower
3. The Accounts Clerk of this office

For information and necessary action please.

Attested
Advocate
Advocate

Executive District Officer,
(Health) Dir Lower

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردفعہ 154 مجموعہ ضابطہ فوجداری

تھانہ: شرباغ

ضلع: دیرپور

علت نمبر: 494

تاریخ و وقت وقوعہ: 08/08/2014 وقت 15:30 بجہ

1	تاریخ و وقت رپورٹ	بوقت 18:30 بجہ چاکیڈگی پرچہ 15:30 بجہ
2	نام و سکونت اطلاع دہندہ و مستغیث	بارواللہ خان ولد امانی ملک قوم علی دتھیل عمر تقریباً 57، 55 سال ساکن ٹامبٹ
3	مختصر کیفیت جرم (مجدفعہ) حال اگر کچھ لیا گیا ہو۔	337/A (iii) 337/F (iii) 149/148/324/302 PPC
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت	راستہ عام فرنٹ خانہ اقبال واقع دیہ کامبٹ فاصلہ 3/4 شمال
5	کارروائی جو تفتیش کے متعلق کی گئی۔ اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو۔	برسیدگی مر اسلہ مقدر مذہب درج رجسٹر کیا جاتا ہے۔
6	نام و سکونت ملزم	(۱) عبدالرشید (۲) محمد رشید (۳) محمد نعیم خان (۴) زین اللہ خان پسران محمد رحیم خان ساکن ٹامبٹ
7	تھانہ سے روانگی کی تاریخ و وقت	بطور سپیشل رپورٹ

ابتدائی اطلاع نیچے درج کرو:

ایک تحریری مر اسلہ منجانب نوشیر ایس ایس او کنٹھیل

حمید اللہ 1697 موصول ہو کر حرف بہ حرف ذیل ہے۔ بخدمت آفسر تھانہ شرباغ ایک اطلاع دہندہ کامبٹ آکر مستغیث بالا خانہ نے یوں رپورٹ کرتا ہوں۔ طارق ولد اقبال نواسہ عام بازار کامبٹ آرہا تھا جو نہی وہ عبدالرشید کے گھر نزدیک آپہنچا تو اسی دوران عمران اور زین اللہ ساکن دیہ عام میں اسے پکڑ کر اس پر گزرات کیے طارق جو نہی گھر آیا تو ہمیں بتایا کہ زین اللہ اور عمران میرے ساتھ جھگڑا کیا میں اور کفایت اللہ ولد محمد قبول، عبدالشکور ولد بارواللہ پسران عام شفیع اللہ ولد بارواللہ گلہ شکوے کی خاطر اپنے گھر سے نکلے تاکہ فریق مخالف کو شکوہ کرے جو نہی جائے وقوعہ آئے تو مسیان عبدالرشید، محمد رشید، محمد نعیم خان، زین اللہ، خان پسران محمد رحیم خان، علی عمر عمران پسران عبدالرشید ابراہیم ولد محمد رشید سعید سید، طارق شاہ، نوید، پسران حضرت سید محمد نصیب خان، ولد باور خان عصمت، اسماعیل پسران محمد نصیب خان ساکن دیہ عام جو پہلے سے خاک میں بیٹھے اسلحہ آتشین سے اندھا دھند فائرنگ شروع کی اور نتیجے کے طور پر خورشید اللہ، مجید اللہ ولد شاہ بہادر، قادر، ولد بہادر خان، بھتیجا گان لگ کر اور خورشید اللہ، ولد شکور جبکہ مجید اللہ ہسپتال لے جاتے ہوئے جان بحق ہوا اسی طرح نلزمان سے فرمان اللہ ولد نصر اللہ اقبال ولد پاتمل خان طارق ولد اقبال شکور ساکنان دیہ رشتہ داران عام بھی بدن کے مطابق جگہوں پر وقوعہ ہذا مجروحین اور ہمایان عام کفایت اللہ عبدالشکور، شفیع اللہ، کا چشم دید ہیں وجہ عناد آج کی جھگڑے کے علاوہ تنازعہ جائیداد ہے۔

ابتدائی اطلاع پورٹ

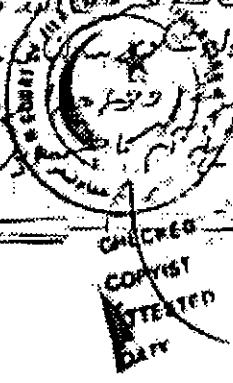
انعامی اطلاع کے لئے جو کہ اس وقت تک جاری رہا ہے اس کے بارے میں اطلاع دینا چاہیے

#B

(9)

نمبر	494	تاریخ	18/30
نمبر	51	تاریخ	18/30
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نمبر	88	تاریخ	18/30
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نمبر	100	تاریخ	18/30

وقت طہرہ کے کیا ہے؟ ابتدائی اطلاع کے ذریعہ کہہ دوں گا۔ دوام ممانعت اور تشریح و تفسیر کے وقت
 کماحقہ ہجرت 1971ء کے دوران ہجرت کے وقت میں۔ خدمت اعلیٰ حضرت کے قیام کے وقت
 صبر اللہ و صبر الہامی کے ساتھ ساتھ ہجرت کے وقت میں ملاقاتی اور کرمیوں کے ساتھ ساتھ ہجرت کے وقت میں
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 تو میں دوران ہجرت اور دوران ہجرت کے وقت میں ہجرت کے وقت میں ہجرت کے وقت میں ہجرت کے وقت میں ہجرت کے وقت میں
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 میر گناہت اللہ ولد محمد قبول، عبدالشکور ولد بارہ اللہ خان، عبدالغنی ولد بارہ اللہ خان، عبدالغنی ولد بارہ اللہ خان
 میر آرم گلہ کوہ کے خاطر میں ہجرت کے وقت میں ہجرت کے وقت میں ہجرت کے وقت میں ہجرت کے وقت میں ہجرت کے وقت میں
 ضم جائے ہوئے آئے۔ تو میں 1) عبدالرشید 2) عبدالرشید 3) عبدالرشید 4) عبدالرشید 5) عبدالرشید 6) عبدالرشید
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مقامہ صدر لیاقت اسٹیشن سینٹر جگہ ما گیا یہاں سے نیر جہاں سے
میں کو سب سے آگے اور شہر اللہ اور قیام آگے جہاں سے کہ قتل کرنے اور صدر القادر
اقبال حسینا گمان طاقتا، شاہراہ لڑا سے گمان خرواں شہر شہزادہ آگے کہ قزوق
کا بہ ظرافت ہر تیرے گمان سے کہہ بالا دھرم ہار ہوں۔ ریلوے کو گنا سے، غزہ ہوتی
ریشا دار گفت کہ وہاں کے رہنے۔ جسے گنتہ سنگین ریلوے جہاں سے مرفا در صدر ہوں کہ
شہر کے شاہیا سیا یا گیا۔ دست تسلیم کہ زہر ریلوے قندہ بلگوتی نسبت ہی حکایت
تقدیر کرتا ہوں۔ مقتولین اور توہین لڑن لوشادہ اور مالا آ عالمی مثال
شہر ماننے سے مانے گئے ہیں۔ نئے مزد صورت مال۔ امت گنا کہ ریشا دار کہ گنتہ
صدر لیاقت خان ASI صاحب کو حاضر کیا گیا ہے۔ معجون ریلوے سے صورت ہم مالا مانا
طاہر دریں ہم ہم مالا ضبط کر رہیں بیکر لکھنؤ سبٹیل ریلوے دست کا سبٹیل لکھنؤ گنتہ
ارسال ہقا ہے۔ التوجہ کی کشتن طاقت کو مامور لکھنؤ کیا طاقت۔ ہر مامور لکھنؤ
ہے، دستخطا رنگر پزیرا نویسہ وہ لکھنؤ 337D اور 337F کیڈوائی گنا ہوں
دریں ہر طرف جو خا در ہر صدر ہوں کہ میرے ہم مالا ہیک کیا گیا، قتل ہر ہی ہر ہر
بغرض لکھنؤ عالم ایازہ التوجہ کی کشتن کیا جاتی ہے۔ آج سے ہر مالا کو لکھنؤ سبٹیل لکھنؤ
اطلاع دیا جا رہا ہے۔ ہر مالا گنا ہے

ایضاً

توجہ لیاقت

صاحب حالی

337D 337F

سخت تک قزوقہ ہر مالا گنا ہے ہر مالا گنا ہے ہر مالا گنا ہے
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جیل وارنٹ

بعدالت جناب حسین علی صاحب جوڈیشل مجسٹریٹ علاقہ قاضی شرباغ ضلع دیرپائین

وزیر عرف زین اللہ ولد محمد رحیم ساکن کامبٹ

بنام

سرکار

مورخہ 08/08/2014 جرم 302/324/148

مقدمہ علت نمبر: 494

(ii) /337A (iii) /337D/337/F 149 تھانہ شرباغ

سپرٹنڈنٹ جیل تیمگرہ

مقدمہ عنوان بالا میں ملزم بالا کو حوالات جوڈیشل میں رکھا جا کر مورخہ 16/05/2016 کو عدالت ہذا میں پیش کریں۔

حسین علی

جوڈیشل مجسٹریٹ / علاقہ قاضی شمر

باغ دیرپائین

04-05-2016

جیل وارنٹ

بعدالت جناب ڈسٹرکٹ اسٹنٹ کمشنر صاحب ثمر باغ دیر لوئیر

فرد کا نام ڈوزیر عرف زین اللہ ولد محمد رحیم ساکن کامیٹ ثمر باغ

جرم: 107/151 تھانہ ثمر باغ

سپرٹنڈنٹ ڈسٹرکٹ تیمر گره

جرم بالا میں ملزم کو بعد اذخالی ضمانت جوڈیشل حوالات میں رکھا جا کر آئندہ

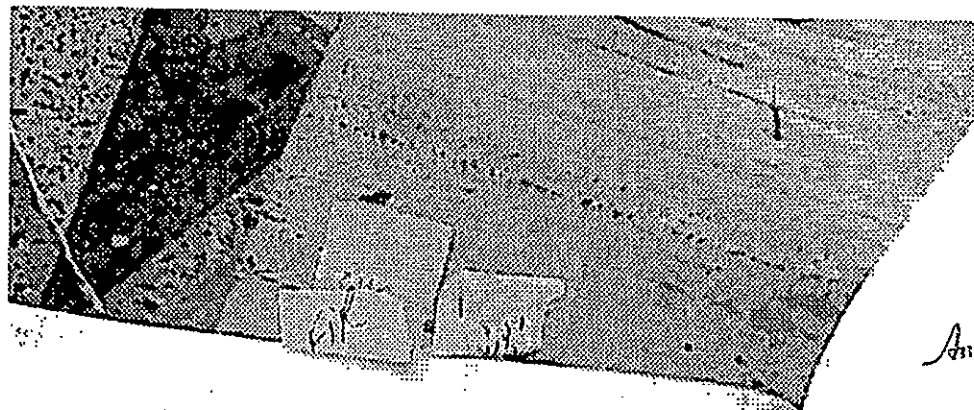
مورخہ 16/05/2016 کو عدالت ہذا میں پیش کیا جائے۔

اسٹنٹ کمشنر جنرل ثمر باغ

04-05-2016

NC
Annexure

10



ذیل وارث
بہدات بناب اسٹیکٹیشن کٹر صاحب و نذول شریاغ دیوانہ

وزیر عساف زین الازر وار خجور رحیم ساکن کامیٹ ٹمیر باغ

157/151
ٹمیر باغ

پہلے وقت زمین تیر گروہ
پرم ہا میں ٹرم ہا اگر ہدم او نال ممانت نوہ پیش و االت میں روگنا باکر آئندہ دورہ
گاندہ است خدائیں و نال کیا جائے۔
16-05-016

کٹر صاحب
کٹر صاحب
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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.A No.245-M/2019

Naveed Khan and 08 others.

(Appellants)

Versus

The State and another

(Respondents)

Present:

Mr. Sher Muhammad Khan, Advocate for the Appellants.

Mr. Razauddin Khan, A.A.G for the State.

Mr. Ikramullah Khan, Advocate for Respondent No.2.

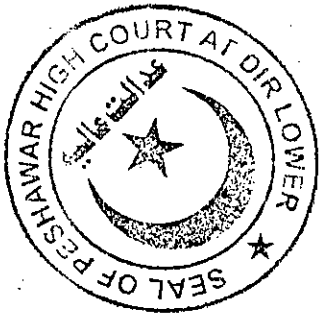
Date of hearing: 29.06.2021

JUDGMENT

ISHTIAQ IBRAHIM, J.- Through this criminal appeal, the appellants have challenged judgment 22.05.2019 rendered by the learned Sessions Judge/M.C.T.C, Dir Lower, in case F.I.R No.494 dated 08.08.2014 registered under sections 302/324/148/149/337D/337 F(iii) P.P.C at Police Station *Samarbagh*, District Dir Lower, whereby they were convicted & sentenced u/s;

1. 302 (b) PPC to life imprisonment each, with directions to pay compensation of Rs.200,000/- (rupees two hundred thousand) each to the legal heirs of the deceased, within the meaning of section 544-A Cr.P.C, or in default each appellant/convict shall undergo six months S.I; and
2. 324 PPC to two (02) years R.I each with directions to pay Rs.50,000/- each as compensation to the injured/victims.

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Advocate

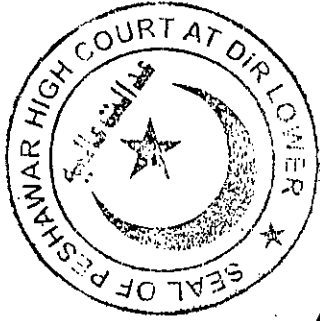


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EXAMINER
Peshawar High Court Bench
Mingora Dar-ul-Qaza Swat.
Sub-Registry Dir (L)

The benefit of section 382-B Cr.P.C was given to the appellants.

The complainant-party has also filed connected Cr.R No.61-M/2019 'Shakoor Khan etc Vs. Muhammad Nasib Khan etc' for enhancement of the above sentence awarded to appellants/convicts. They have also filed connected Cr.A No.310-M/2019 'Shakoor Khan and 14 others Vs. Muhammad Nasib Khan and 10 Others' against acquittal of co-accused Muhammad Nasib Khan in the case as well as against acquittal of the present appellants of the charges under sections 337-D/337-F (iii) P.P.C.



Since, all three matters being the outcome of one and the same impugned judgment of the learned trial Court, therefore, same are decided together through this single judgment.

2. On 08.08.2014 at 18:30 hours, complainant Barullah Khan reported the matter before the police to the effect that on the eventful day, his grandson namely Tariq who was coming to *Kambat* Bazar, reaching near the house of Abdur Rashid, accused Imran and Zainullah after catching hold of him has beaten him. The complainant alongwith PWs Kifayatullah, Abdul Shakoor and Shafiullah whiling going behind the accused party to complain them about said act of the

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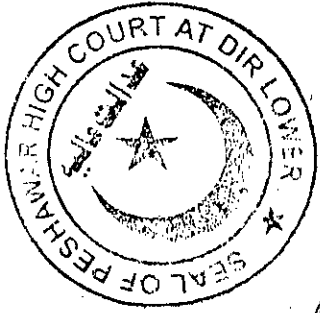
EXAMINER

Peshawar High Court Bench
Mingara Dai-ul-Qaza Swat,
Sub-Registry Dir (L)

Attested

Advocate

accused, when reached the spot i.e. thoroughfare in front of house of Iqbal, there accused namely (1) Abdur Rasheed (2) Muhammad Rashid (3) Muhammad Naeem Khan (4) Zainullah Khan (5) Ali Umar (6) Imran (7) Ibrahim (8) Saeed Said (9) Tariq Shah (10) Naveed (11) Muhammad Nasib Khan (12) Ismail and (13) Asmatullah, who were already waiting duly armed, started indiscriminate firing at them, as a result of which, Khurshidullah, Majeedullah, Abdul Qadar, Iqbal, Farmanullah, Tariq and Shahidullah sustained injuries, out of whom, Khurshidullah died on the spot, Majeedullah succumbed to his injuries on the way to hospital. The injured persons and their companions namely Kifayatullah, Abdul Shakoor and Shafiullah were cited as eyewitnesses to the occurrence. Besides the alleged quarrel, dispute over landed property between the parties was also disclosed as a motive behind the occurrence. Report of the complainant was reduced in shape of *murasila* Ex.PW7/1, the contents whereof were subsequently incorporated into F.I.R Ex.PA.



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EXAMINER
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Sub-Registry Dir (L)

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Advocate

3. Injury sheets of the deceased and injured persons were prepared. Inquest reports of the deceased were also prepared. Thereafter, autopsy on the dead bodies of the deceased Khurshid Ullah and

Majeedullah were conducted in the hospital. The injured persons were also medically examined by the doctors in the hospital. On the following day i.e. 09.08.2014, injured Shahidullah succumbed to his injuries at K.T.H, Peshawar. His inquest report was prepared and his post-mortem was also conducted vide report Ex.PW24/1. Site plan Ex.PW23/4 was drawn on pointation of the eyewitnesses. During spot inspection, blood through cotton was picked up from places of deceased and injured persons through recovery memo Ex.PW1/1. Six empties of 7.62 bore and an empty of 30 bore were recovered from the spot vide recovery memo Ex.PW1/2. Blood stained garments of the deceased and injured persons were also taken into possession. Statements of the PWs were also recorded. On different dates, the appellants and acquitted co-accused Muhammad Nasib Khan were arrested. Remaining three accused namely Abdur Rashid, Imran and Tariq Shah were absconding and accordingly the Investigating Officer applied for issuance of proclamation and warrants against them.



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Advocate

4. After completion of investigation, *challans* against the appellants and acquitted co-accused Muhammad Nasib Khan were submitted for trial in the learned trial Court. After the compliance of the provision of section 256 (c) Cr.P.C, they were charged

sheeted to which they pleaded not guilty and claimed trial.

5. In order to substantiate its allegations against the accused, the prosecution examined as many as twenty seven (27) witnesses, followed by the statements of the accused recorded u/s 342 Cr.P.C, wherein they claimed innocence, however, they neither wished to be examined on oath nor desired to produce evidence in defence.

6. On conclusion of trial, the appellants were convicted and sentenced in the manner mentioned above while co-accused Muhammad Nasib Khan was acquitted of the charges by the learned trial Court vide judgment dated 22.05.2019, hence, this criminal appeal and the connected matters.

7. Arguments heard and record of the case perused.

8. Case of prosecution against the appellants is that they alongwith acquitted co-accused Muhammad Nasib Khan and three absconding co-accused have committed murders of Khurshidullah, Majeedullah and Shahidullah besides causing injuries to the PWs through firing. The eyewitnesses namely Muhammad Iqbal, Abdul Qadar, Tariq Iqbal, Kifayatullah, Shafiullah and



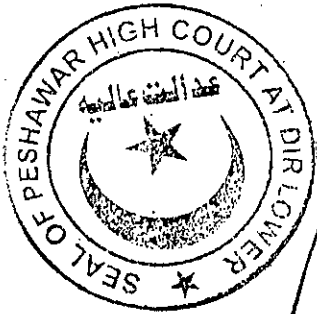
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EXAMINER
Peshawar High Court Bench
Mingara Dar-ul-Qaza Swat.
Sub-Registry Dir (L)

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Advocate

Inayatullah have been examined by the prosecution before the learned trial Court as PW-17, PW-18, PW-19, PW-19A, PW-20 & PW-21, respectively. PW-17, PW-18 & PW-19 have allegedly sustained firearm injuries in the incident. Injured PW Farmanullah has not been produced by the prosecution while eyewitnesses Kifayatullah (PW-19A), Shafiullah (PW-20) & Inayatullah (PW-21) have not sustained any injury in the occurrence. According to the prosecution version, the complainant-party has allegedly been fired at by the accused party when they were moving towards the accused for complaining them qua beating injured Tariq (PW-19) by the accused Imran and Zainullah just prior to the instant occurrence. As per prosecution' stance, all the deceased, injured persons, unhurt PWs and complainant were members of the said complaining group. The site plan Ex.PW23/4 has been prepared on pointation of the alleged eyewitness namely Inayatullah (PW-21), however, his name does not figures in the F.I.R/*murasila* as eyewitness of the incident. Similarly, no point of presence has been assigned to the complainant in the site plan. Injured Tariq Iqbal (PW-18) during his cross examination states that:

ہم اپنے گھروں سے بچر شکوہ کیلئے روانہ ہوئے تھے۔ ہمارے ساتھیوں میں سے بعض ہمارے گھر سے نکلے تھے اور بعض نکلنے والے تھے کہ اس دوران اندھا حد فارینگ شروع ہوئی۔



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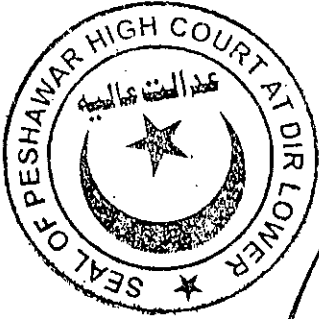
EXAMINER
Peshawar High Court Bench
Mingara Dar-ul-Qaza Swat.
Sub-Registry Dir (L)

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Advocate

While eyewitness Shafiullah (PW-20) states that:

بچوں نے مذکورہ اطلاع دی کہ طارق کو مارا گیا ہے۔ جس پر میں، ہمراہ والد ام
بہر اللہ، شکور و کفایت اللہ مگر شکوہ کیلئے جانا چاہا۔ جب ہم گھر خود سے نکلے تو کچے
میں اکٹھے ہوئے تو اس دوران پانچ افراد نیچے کچے میں، سات افراد اوپر کچے میں
اور ایک فرد صحت پر کھڑا تھا۔

PW-20 admits that he had not disclosed in his statement before the police regarding beating of Tariq by said two persons. He also admits to have not disclosed the purpose of their presence before the occurrence.



Injured PW-17 states that the firing would have hardly continued for one or two minutes whereas PW-18 negates it by stating that firing have continued for a minute or 1 ½ minute. Injured Tariq (PW-18) confirms that when he sustained injuries, he was fully conscious. According to prosecution version, deceased Khurshidullah has died on the spot while deceased Majeedullah succumbed to the injuries on the way to Timergara Hospital but even this injured (PW-18) states that;

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EXAMINER
Peshawar High Court Bench
Mingara Dar-ul-Qaza Swat.
Sub-Registry Dir (L)

مجید اللہ اور خورشید اللہ کے وفات کے متعلق مجھے میرے چچا نامرنے بمطابق
DHQ ہسپتال تیرگرہ بتایا گیا جبکہ شاہد اللہ کے راستے میں تاب نالائے اور
راستے میں مرنے کی نسبت جاوید نے بتایا۔

According to the record, on the next day of the occurrence i.e. 09.8.2014, injured Shahidullah has succumbed to injuries at K.T.H Peshawar. Moreso, the

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Advocate

Investigating Officer (PW-23) states to have recorded statement of eyewitness namely Inayatullah on 08.08.2014, on the spot but said Inayatullah (PW-21) himself states that at the time of recording his statement by the I.O, he was alone in *bhaitak*. All the eyewitnesses (PW-17 to PW-21) are unanimous that they have stated nothing in their police statements recorded u/s 161 Cr.P.C during investigation qua sustaining injuries by injured PW Farmanullah in the occurrence. In this regard, the I.O (PW-23) also categorically admits that;



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یہ درست ہے کہ فرمان اللہ کے مطابق روز وقوعہ وہ علاج معالجہ کے خاطر دیہ خود کامیٹ سے شریاب ہسپتال امیر جنسی وارڈ جا کر موجود تھا۔ ”اس کے کہنے کے مطابق کسی نے مدعی مقدمہ بہرہ اللہ کو اطلاع دی کہ وہ اس وقوعہ میں زخمی ہو چکا ہے حالانکہ اسکے کہنے کے مطابق وہ اپنے علاج معالجہ کی خاطر ہسپتال کے امیر جنسی وارڈ میں موجود تھا۔ وقوعہ پر موجود نہ تھا اور نہ ہی وقوعہ میں زخمی ہو چکا تھا۔ مزید اس پر کسی نے ٹارگٹ نہیں کی ہے“

Though, said Farmanullah has been shown to have sustained firearm injuries in the incident, however, such assertion of the prosecution gets no support from the entire evidence. In this respect, neither said Farmanullah nor the concerned doctor was examined by the prosecution during trial. Thus, the alleged presence of said eyewitness namely Farmanullah on the spot at the relevant time is doubtful. Presence of Inayatullah, the alleged eyewitness (PW-21) has been shown at point No.11 of the site plan

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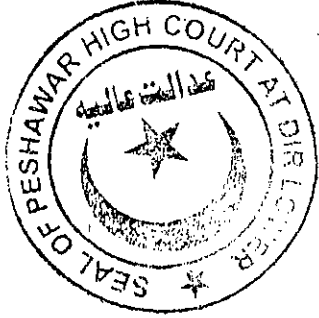
Ex.PW23/4 and according to the I.O (PW-23) from said point No.11, the accused were not visible to him. For ready reference, the relevant portion of the statement of I.O is reproduced here.

مذہب جن مقامات پر دکھائے گئے ہیں۔ اُن کے درمیان میں خالی مکان ملزم عبدالرشید کے دیوار کا کونہ حائل ہے اور یہی حالت مقام نمبر 11 کا ہے۔

Crime empties have allegedly been recovered from point D, which according to the I.O (PW-23) is situated in between points No.10,11 and points No.13 to 16. Presence of eyewitnesses has been shown at points No.10 & 11 while that of the accused has been shown at points No.13 to 16. PW-7, the scribe of *murasila* also admits that;

یہ درست ہے کہ رپورٹ / امر اسلہ میں عنایت اللہ کا نام گواہان چشمدید کے زمرہ میں درج ہے اور اسی طرح ان کا نام تائید کنندہ میں بھی ہے۔

PW-21 Inayatullah has been shown at point No.11. It may be observed here that escaping unhurt from alleged indiscriminate firing of 13 persons keeping in mind the places ascribed to them in site plan quite near to the deceased and injured PWs is not appealable to a prudent mind. Moreover, there is no justification in the testimonies of any of the alleged eyewitnesses, which could show that accused were visible from the points where the eyewitnesses were shown present at the relevant time of the occurrence. Even the



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testimonies of the injured eyewitnesses (PW-17 to 19) are not consistent on the material points qua involvement of the present accused in commission of offence. The quantity of evidence produced by the prosecution does not contain the required quality. Furthermore, mere sustaining of injuries by said PWs in the occurrence would also not ipso facto establishes presence or vicarious liability of accused in the commission of offence unless harmonized, trustworthy and corroboratory evidence is brought on record, which is missing here. Reference in this regard may be made to the judgment of this Court rendered in the case of 'Iqbal Khan and 07 others Vs. Inayatullah Khan and another' (2012 PCr.LJ 1139), wherein it has been observed that;

“---Injuries of a prosecution witness would only indicate his presence at the spot and not his credibility and truthfulness.”

Neither the complainant nor the alleged unhurt eyewitnesses have accompanied the deceased or injured persons to the hospital. Furthermore, the statements of the alleged eyewitnesses are full of dishonest improvements, for instance during their cross examination when they were confronted by the defence with their police statements recorded during investigation, wherein they have not disclosed the time of occurrence, beating of injured Tariq by the accused



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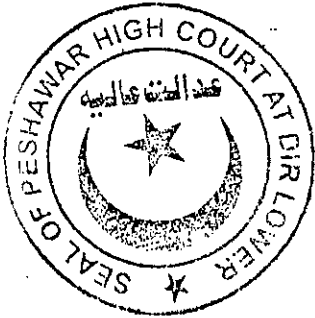
Peshawar High Court Bench
Mingara Dar-ul-Qaza Swat.
Sub-Registry Dir (L)

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Advocate

and reason for quarrel, disclosure of injured Farmanullah in the incident and presence of accused on rooftop etc but in their Court statements they have made certain disclosures that too with contradictions, therefore, all the subsequent disclosures, in absence of any reliable justification, would be termed as dishonest improvements for strengthening the prosecution case. It is a settled law that improvements once are found unjustified, deliberate and dishonest in testimony of a witness, the same would cast serious doubts upon the veracity of such witness. In this respect, reliance is placed on the case of 'Akhtar Ali and others Vs. The State' (2008 SCMR 6), wherein the apex Court has held that;

"When a witness improves his version to strengthen the prosecution case, his improved statement subsequently made cannot be relied upon as the witness has improved his statement dishonestly, therefore, his credibility becomes doubtful on the well-known principle of criminal jurisprudence that improvements once found deliberate and dishonest cast serious doubt on the veracity of such witness."

9. The occurrence has allegedly taken place on 08.08.2014 at 15:30 hours while report has been lodged by the complainant at 18:30 hours. As per statement of Nowsherwan Khan (Rtd) Inspector, he after hearing fire shots and getting information, within 30 minutes, attracted to the complainant's *bhaitak*.



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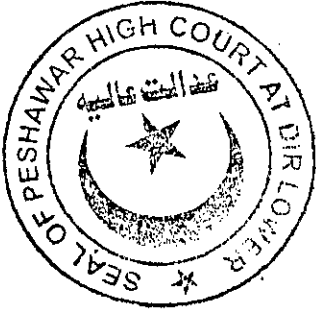
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Advocate

22

where he made report in shape of *murasila*. No plausible explanation has been offered by the prosecution for such a delay of about 03 hours in reporting the matter, thus, the unnatural delay caused in reporting the matter is fatal to the prosecution case. In this regard, reliance is placed on the case of Mst. Asia Bibi Vs. The State' (PLD 2019 SC 64), wherein the august Supreme Court of Pakistan has held that:



"In absence of any plausible explanation, the Supreme Court had always considered the delay in lodging of FIR to be fatal and it casted a suspicion on the prosecution story, extending the benefit of doubt to the accused. If there was any delay in lodging of FIR and commencement of investigation, it gave rise to a doubt, which, could not be extended to anyone else except to the accused."

It is also astonishing to note that as per the testimonies of injured PWs, they were in full senses and were taken to the hospital, even then the report has not been lodged by them in the hospital rather same has been lodged by the complainant in the *bhaitak* of complainant who according to the PW-7, the author of report/*murasila* is not an eyewitness of the occurrence.

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PW-7 states that;

مستنیث کے کہنے کے مطابق کفایت اللہ، عبداللہ، عبداللہ و شیخ اللہ موقع کے چشم دید

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Thus, the probabilities of consultation and deliberation to falsely charge the accused for the

commission of offence could not be ruled out, in the circumstances.

10. The prosecution alleges that just prior to the occurrence, accused Imran and Zainullah has beaten injured Tariq, the grandson of the complainant. In order to establish this motive, no independent eyewitness was produced by the prosecution and the present PWs have failed to establish the same in the alleged mode and manner. In this regard, the I.O (PW-23) states that;

میں نے وجہ عناد کے متعلق ماسوائے طارق کے کسی اور کا بیان بدیں غرض نہیں لی ہے کہ
اسکو نگران زمین اللہ و عمران نے مارا تھا۔

In addition to that the motive of dispute over landed property has also been alleged by the prosecution. In this respect too, the I.O states that:

میں نے صفحہ مسل پر جائیداد تنازعہ کے متعلق کوئی شہادت نہیں لایا ہے۔

In the circumstances, the alleged motive is not proved on record and same appears to have been set up by the prosecution afterthought.

11. Testimonies of the PWs would also make it crystal clear that the occurrence has not taken place in the alleged mode and manner rather in light of the above referred contradictions and improvements in the prosecution evidence, it appears that real facts have been suppressed by the prosecution and thus the mode



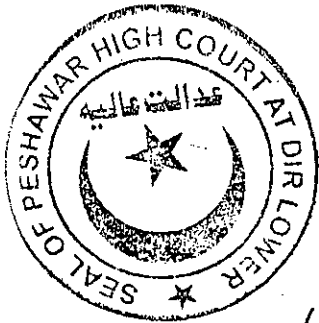
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Sub-Registry Dir (L)

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Advocate

and manner of the occurrence alleged by the prosecution is doubtful, which in our firm view, would react on genuineness of the entire prosecution version, presence of the eyewitnesses on the spot at the relevant time and culpability of the accused. It is pertinent to highlight here that almost all accused belong to one and same family besides some are brothers inter-se, therefore, in such circumstances, the exaggeration on part of the prosecution for false implication of innocents persons by throwing a wide net cannot be ruled out. Per tendency of social set up of this Country too, at times, people do charge innocents person of the family amongst the guilty persons for different reasons. By no viewpoint, the ocular, circumstantial as well as the medical evidence would suggest that the crime was doing of all 13 accused. In this regard, reliance is placed on the case of 'Sohni Vs. Bahaduri etc (PLD 1965 SC 111)', wherein the august Supreme Court of Pakistan has held that;



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EXAMINER

Peshawar High Court Bench
Mingara Dar-ul-Qaza Swat.
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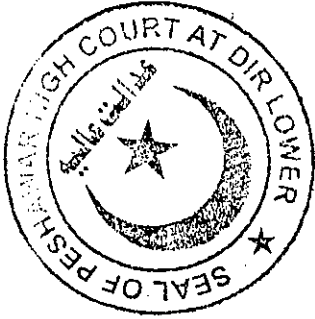
"In this case the village where the occurrence took place was torn by faction and therefore, false implication of innocent persons cannot be altogether ruled out. Furthermore, according to Doctor Muhammad Yamin Khan out of the 9 injuries found one Mauilo deceased 2 were contused wounds, 1 incised wound, 1 was abrasion and the rest were contusions. Death was due to the shock and compression of brain caused by blood clots due to fracture of skull which was caused by injuries Nos. 1 and 2 that were found on the deceased. Most of the remaining injuries were on the leg of the deceased. In view of the

Subz Ali/* DD: HON'BLE MR. JUSTICE ISHTIAQ IBRAHIM
HON'BLE MR. JUSTICE MOBAR AHMAD

Subz Ali/* DD: HON'BLE MR. JUSTICE ISHTIAQ IBRAHIM
HON'BLE MR. JUSTICE MOBAR AHMAD

number and nature of injuries one may legitimately ask whether this could possibly have been the result of assault by 6 accused persons or that they could have been easily caused by two or three persons. Viewing all the circumstances we are satisfied that the High Court was right in insisting on some corroboration of the evidence of the eye-witnesses connecting the accused with the crime. As such corroboration was lacking, the High Court was justified in giving the benefit of doubt to the accused persons.

Needless to say that because of the exaggerated number of culprits in the case and attributing them same role of indiscriminate firing at complainant-party, the available prosecution evidence would not be sufficient to identify the guilty persons by separating the innocents while the prosecution has failed to discharge its burden of proving the case against all accused in the alleged mode and manner. In other words, finding of truth is impossible in circumstances of the case and therefore the famous legal maxim relating to the criminal justice would well fit here that *'it is better that ten guilty persons be acquitted rather than one innocent persons be convicted'*. Hon'ble Supreme Court of Pakistan in the case of *'Muhammad Zaman Vs. The State and another'* (2014 SCMR 749) has acquitted accused Muhammad Zaman who alongwith 16 persons were charged for murder of two deceased persons besides causing injuries to PWs. Relevant portion of said judgment reads as follows:



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Peshawar High Court Bench
Mingara Dar-ul-Qaza Swat.
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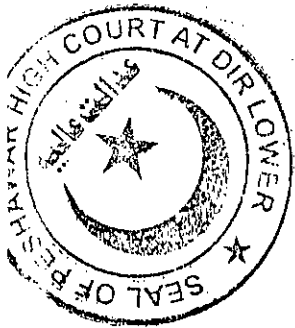
"...The number of assailants in the circumstances of the case appears to have been exaggerated. It seems that most of the persons including the respondents have been charged because of previous enmity. The tragedy may have been enacted by Mukhtar who has gone into hiding or Munawar who has been acquitted because the deceased Shabbir was alleged to have illicit relations with their sister, but many who have no visible nexus with this part of the story have also been roped in. It is so because it is customary in this part of the country to throw wide the net of implication to rope in all those who could possibly pursue the case or do something to save the skin of the one who is innocent or who is actually responsible for the commission of the crime. The Court, therefore, is required to exercise much greater care and circumspection while appraising evidence."

This Court too through judgment rendered in the case of 'Malak Amir Sultan and two others Vs. The State and another' (2018 MLD 1635, Peshawar) has acquitted three real brothers who were charged for murder of a single deceased by holding that:

"...It reflects that it is the job of one person but in order to throw the net wide, the number of accused has been exaggerated as three brothers and two unknown accused have been charged...."

It is a cardinal principle criminal justice that the benefit of even a slight doubt is to be extended in favour of the accused. In this regard reliance is placed on the case of 'Fazal Muhammad Vs. Zia ul Haq and another' [2016 PCr.LJ Note 30 (Peshawar)], wherein it has been held by this Court that;

"Prosecution was bound to prove its case beyond any reasonable shadow of doubt; if



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Peshawar High Court Bench
Mingara Dar-ul-Baza Swat.
Sub-Registry Dir (L)

Attested

Advocate

any reasonable doubt would arise in the prosecution case, benefit of the same must be extended to accused, not as a grace or concession, but as a matter of right. Better to acquit hundred culprits, than convicting one innocent soul. Acquitting by error, would be better than conviction by error."

12. According to the I.O, none of the accused has made pointation of the spot nor supplementary statement of any of the PWs including complainant have been recorded during investigation. In this case, the circumstantial evidence is also very weak, therefore, same could not be given preference over the ocular account, which has already been disbelieved by us. Some appellants have been arrested from their house and some have absconded for a considerable period, however, it is by now settled that mere abscondence is not sufficient for holding an accused guilty unless the same is supported by the other trustworthy, unimpeachable and confidence inspiring evidence, which is missing here in this case. Wisdom in this regard is derived from the case of 'Rohtas Khan Vs. The State' (2010 SCMR 655), wherein the august Supreme Court of Pakistan has held that:

"Abscondence of accused, no doubt, is a relevant fact, but it can be used as a corroborative piece of evidence, which cannot be read in isolation but has to be read alongwith substantive piece of evidence."



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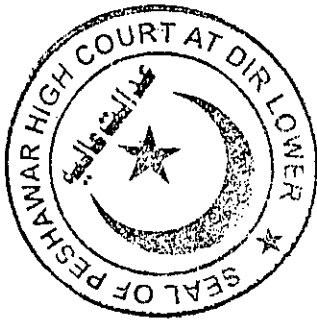
EXAMINER

Peshawar High Court Bench
Mingara Dar-ul-Qaza Swat.
Sub-Registry Dir (L)

Attested

Advocate

13. The medical evidence brought by the prosecution through doctors (PW-8 & PW-26) though establishes unnatural death of the three deceased and sustaining firearm injuries by the PWs, however, in absence of essential corroboration, the present accused could not be held responsible for commission of the offence.



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14. In view of the above, we hold that the prosecution case is full of suspicions and doubts qua involvement of the accused in the commission of the offence, the benefits of which are to be extended in favour of the accused. Resultantly, this appeal is allowed, the impugned judgment dated 22.05.2019 rendered by the learned trial Court is set aside and the appellants/convicts are acquitted of the charges. They be released forthwith from jail if not required in any other case.

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EXAMINER

Peshawar High Court Bench
Mingara Dar-ul-Qaza Swat.
Sub-Registry Dir (L)

15. Almost same role has been attributed to the appellants and acquitted co-accused Muhammad Nasib Khan. He has been acquitted by the learned trial Court through same evidence and the reasons given in the impugned judgment are based on correct appreciation of evidence. Therefore, the impugned acquittal of the co-accused Muhammad Nasib warrants no interference of

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this Court. The same is therefore upheld and connected Cr.A No.310-M/2019, being meritless, is accordingly dismissed.

16. Consequently, connected Cr.R No.61-M/2019 filed for enhancement of the sentence of the appellants has become infructuous and same is accordingly dismissed.

17. Above are the reasons of our short orders of the even date.



Announced.
Di: 29.06.2021

Certified to be true copy

EXAMINER
Peshawar High Court,
Mingora/Dar-ul-Qazza, Swat
Authorised Under Article 87 of
Qanoon-e-Shahadat Order 1984
Sub-Registry Dir (L)

21/08/2021

JUDGE
JUDGE

S.No 1801-
Name of Applicant Reza Khan
Date of Presentation of Applicant 21/08/2021
Date of Completion of Copies 21/08/2021
No of Copies 18 Pgs
Urgent Fee ✓
Fee Charged Nil
Date of Delivery of Copies 21/08/2021

Office
16/7/2021
WR

Attested
[Signature]
Advocate



OFFICE OF THE DISTRICT HEALTH OFFICER
DIR LOWER AT TIMERGARA.

Office Ph. 0945 9250098 Fax 0945 9250176

Annexure "E"

30

To,

No. 3906 / Dated. 10/07/2019

Mr. Wazir S/O Muhammad Rahim Khan
Village Kambat PO & Tehsil Samarbagh Dir Lower

WHEREAS, You had been appointed as Ward Orderly (BS-04) at Category-C Hospital Samarbagh Dir Lower and were deemed to perform your duties regularly and punctually as in line with the rules and regulations laid down by the Govt: of Khyber Pakhtunkhwa Health Department.

WHEREAS, The undersigned has noticed that you were absent from your official duties and the same was reported by the Incharge of your respective Hospital vide No. 815/THQ, dated 13-06-2019. The same was endorsed by multiple complaints lodged by the community members.

WHEREAS, the undersigned issued a Show Cause Notice to you vide this office letter No. 3691, dated 01-07-2019, seeking your reply within 03 working days for the willful absence from the Govt: duties, to which you did not respond and remained absent as usual.

NOW THEREFORE, office of the undersigned in exercise of the power as conferred upon, by the Govt: of Khyber Pakhtunkhwa Removal from Services, (Special Power Ordinance 2011), hereby terminate you from Govt: service with immediate effect.

District Health Officer
Dir Lower

No. 3907-09

Copy to:-

1. P.S to Secretary to Govt: of Khyber Pakhtunkhwa Health Department Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. Deputy Commissioner Dir Lower.
4. District Accounts Officer Dir Lower.
5. Incharge Cat-C Hospital Samarbagh
6. Accounts Clerk of this office.

District Health Officer
Dir Lower

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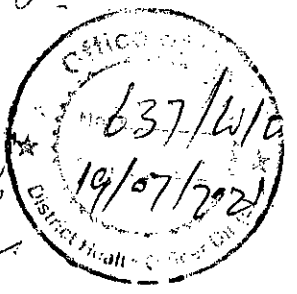
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Advocate

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خدمت جناب ڈسٹرکٹ ہیلتھ آفیسر وزیر لوہیرا ایسٹ ڈسٹرکٹ
عنوان : درخواست برائے بحالی نوکری

جناب عالی !

مؤدبانہ گزارش کی جاتی ہے کہ سبزہ کو شک کے بنا پر
ایک مقررے میں پھنسا کر جیل جانا پڑا اور معاملہ عدالت
کے زیر سماعت رہا اور اللہ سبحانہ و تعالیٰ کے فضل و کرم سے سبز
عدالت سے باخترت بری ہو کر رہا ہوا۔



چونکہ سبزہ شریخ ہسپتال میں وارد آرڈر کی حیثیت
سے سرکاری نوکری کر رہا تھا۔ جبکہ اس دوران انہوں نے کئی دفع
آپ صاحبان سے چھٹی لی لیکن جب جیل منتقل ہوا تو آپ صاحبان
نے مجھے یا حقانی کو سے بغیر میرے خلاف بلز طرف فیصلہ صادر کر
مجھے نوکری سے برخواست کر کے سیاسی بنیادوں پر اسے کھردرایا۔
مجھے اس دوران آپ کی طرف سے کوئی شکر گزار ٹوٹس ملا نہ میں
سے فرار ہوا بلکہ اسی وطن عزیز کے ایک جیل میں قید رہا۔
بے گناہی عدالت نے ثابت کر دی (فیصلہ ایچ پی)۔

Attested
Advocate

لہذا آپ صاحبان سے التجا ہے کہ عدالت سے باخترت بری ہو
کے بغیر مجھے اپنے پوسٹ پر بحال کر کے میرے بقایا جات ادارہ
کے احکامات صادر فرمائیں۔

سورج والا والا 19-07-2019

المحاصرین

آپ کا تابعہ راجہ وزیر وارڈ آرڈر کی شریخ ہسپتال

OFFICE OF THE DISTRICT HEALTH OFFICER
Dir Lower at Timergara

DHODIRLOWER
Ph: 0945-9250098

Fax: 0945-9250176

@DHODIRLOWER
Email: dhodirl@gmail.com

To,

No. 5288 /W.O Dated: 16/08/2021.

Mr. Wazir S/O Mohammad Rahim Khan,
Village Kambat PO. & Tehsil Samarbagh Dir Lower.

Annexure ¹⁹
32

Subject: APPLICATION FOR RE-INSTATEMENT
Memo:

With reference to your application for re-instatement on dated 19-07-2021, it is hereby submitted that:

- WHEREAS**, the Incharge THQ Hospital Samarbagh had reported several times about you absence from Govt: duties without any application/prior approval.
- WHEREAS**, on 13-06-2021 the Incharge THQ Hospital Samarbagh reiterated that you are absent from Govt: duties since long.
- WHEREAS**, this office issued a Show Cause Notice to you, vide this office letter No. 3691/W.O dated 01-07-2019 mentioning that you are absent from Govt: duties and you were directed to Show Cause for your absence from Govt: duties, why not to take strict disciplinary action against you and terminate you in exigency of Power as conferred upon by the Govt: of Khyber Pakhtunkhwa Efficiency & Discipline Rules 2011.
- WHEREAS**, the same Show Cause Notice was received in original by your 1st degree relative Mr. Shafiullah S/O Muhammad Naseeb Khan on 03-07-2019 at 11:30 AM (Acknowledgement of the same is Annex-A)
- WHEREAS**, No response has been received to this office from your side and this office issued you Termination order from Govt: Service under the Khyber Pakhtunkhwa Removal from Services, (Special Power Ordinance 2011).

It is astonishing that after a span of more than 02 years, your application is received to this office for re-instatement.

It is pertinent to mention that the post after becoming vacant due to your termination has also been filled and at present No vacant post of Ward Orderly is available under the control of this office.

The aforementioned is submitted for your kind information.

original letter along with enclosure mentioned as Annex-A at para 34 received by Asmat Khan
S/O Muhammad Naseeb Khan

[Signature]
District Health Officer,
Dir Lower

[Signature]
16/08/2021

Attested
[Signature]
Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In matter of:-

33

Wazir

Appellant

VERSUS

The DG Health Services
K.P. & Another

Respondents

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

AZIZ-UR-RAHMAN and IMDAD ULLAH
Advocates High Court

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To act, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 24 day of 08 2021.

(Signature or thumb impression)

(Signature or thumb impression)

(Signature or thumb impression)

Accepted subject to terms regarding fees

(AZIZ-UR-RAHMAN)

Advocate High Court
Office: Khan Plaza, Gulshone Chowk
G.T. Road Mingora, District Swat.
Cell No. 0300 907 0671

(IMDAD ULLAH)

Advocate High Court
Office: Khan Plaza, Gulshone Chowk,
G.T. Road, Mingora, District Swat
Cell No. 0333 929 7746.

"A"

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

No. *Regd*

TB Swat

APPEAL No. *7353* of 20 *21*

Wazir

Appellant/Petitioner

Versus

DG Health Services Pesh
RESPONDENT(S)

Notice to Appellant/Petitioner

Wazir S/O M. Rubim
Ex Ward orderly THQ Hospital
Samar bagh Dir Lower

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal

on *6-6-22* at *8:00 AM,*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

At camp Court
Swat

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

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

No. *7 egd*

TB Swat

APPEAL No. *7353* of 20 *21*

Wazir

Appellant/Petitioner

Versus

DG Health Services Pesh

RESPONDENT(S)

Notice to Appellant/Petitioner

Counsel

Imdad Ullah (Advocate)

*Office Khan Plaza Gulshone Chowk
Minger Swat*

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *6-6-22* at *Buz AA*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

*at camp court
Swat*

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Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.