

Stall at Kirri Alizai Gate. On the day of occurrence, he was proceeding to his tea Stall in the morning at about 05:30 a.m.

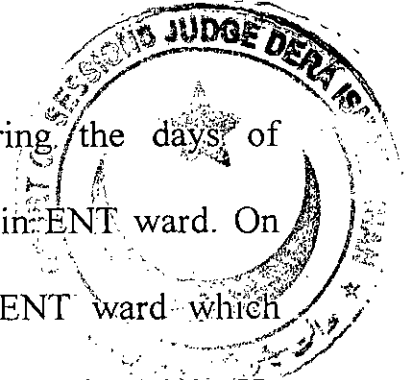
As he came out in the street he noticed that on the corner of their street deceased was lying dead with his motorcycle lying beside him. The helmet of the deceased was also lying there. As he recognized that the deceased was Abdul Khaliq, he informed his relatives about the status of Abdul Khaliq on mobile phone. Thereafter the relatives of deceased came to the spot where-after he left for his tea Stall. His statement U/S. 161 Cr/PC was recorded by police in said respect.

➤ PW-7 is **Muhammad Zeeshan Nasir**, who stated that deceased Abdul Khaliq was his father. He had married thrice, Mumtaz Begum was his first wife who is dead by now, his mother Rehana Begum was his second wife while accused Riyasat Bibi was his 3rd wife. He used to work at the private laboratory of his father. On 21st January 2017 his father had visited their house in the night, at about 07:45 P.M. They took meal together and thereafter his mother and father both left for their duties at civil hospital DIKhan. In the morning he came to know that his father has been killed by someone. His statement U/S.161 Cr.PC was recorded by the police.

➤ PW-8 is **Shamsur Rehman s/o Abdur Rehman**, who stated that he is employee of civil hospital D.I.Khan and posted

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Addl. Distt. & Sessions Judge
Judge Muzer Criminal Trial Court
Dera Ismail Khan
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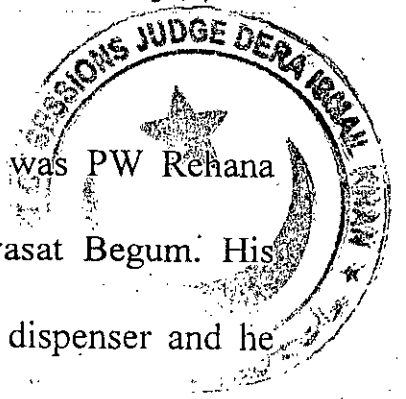


Ward Orderly in the ENT ward. During the days of occurrence he was also performing duty in ENT ward. On 21.07.2017 he had night shift duty at ENT ward which started at 08:00 P.M lasting up to 08:00 A.M. He accordingly came to his Ward for performance of his duty. Abdul Khaliq deceased also attended the Ward for duty as he was Incharge of the shift. They remained busy in duties at the Ward, in the meantime condition of one Hameeda Bibi admitted as patient in the said ward deteriorated due to her throat cancer, for which they arranged to call for the concerned doctor. After the visit of the doctor, the said patient expired at about 01:10 hours. Deceased about Khaliq put his signature on the Chart of the said patient and then informed him that he will stay at the Ward. He therefore, arranged for his bedding. After little while, deceased Abdul Khaliq informed him that he was going out and will return after some time. He then went asleep after about half hour/one hour. In the morning, he came to know through one "Aya" of Orthopedic Ward that Abdul Khaliq had been killed. His statement U/S. 161 Cr.PC was recorded by police.

- PW-9 is complainant Muhammad Suleman Nasir, who stated that deceased Abdul Khaliq was his father. His father had married three ladies. His first wife Mst. Mumtaz Begum

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Addl. Distt. & Sessions Judge
Judge M. of Criminal Trial Court
Dera Ismail Khan



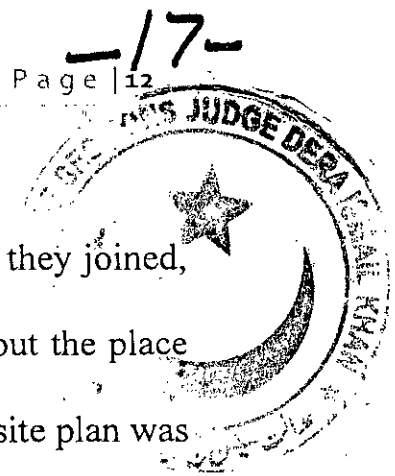
now dead was his mother. Second wife was PW Rehana Begum and third wife was accused Riyasat Begum. His father was employed in civil hospital as dispenser and he used to perform duty at night shift. During the night of occurrence he was asleep in his house at Madina Colony. Early in the morning at about 05:45/06:00 a.m, he got information that his father was lying in the main street. Since he was not wearing his shirt at the time of receiving information, he returned and after wearing the shirt he proceeded to the spot. As soon as he reached the spot he set right my father who was lying on the ground and found that he had died due to firearm injuries. In the meanwhile his uncle PW Abdul Wahid and Abdul Aziz also reached to the spot. Since PW Abdul Wahid is serving in police, he informed the concerned police where-after police came to the spot. He identified the dead body before the police and he then lodged the report before the police which was recorded by them and he has signed the same as token of its correctness which is already Ex.PA. The dead body was then shifted to the hospital at about 06:30 a.m where the PM was conducted which completed at about 07/07:15 a.m and the dead body was delivered to him. He had identified the dead body before the Doctor. After completion of PM report he received the dead body. He alongwith PW Abdul Wahid

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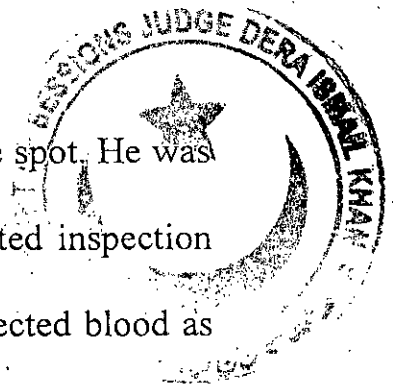


were summoned by the police to the spot which they joined, where he alongwith PW Abdul Wahid pointed out the place of occurrence, depicting relevant points and the site plan was prepared on their pointation. His statement U/S. 161 Cr.PC was recorded by the Police. He was then relived by the police. He charged the accused for the murder of my father.

- **PW-10 is Abdul Wahid son of Abdul Hameed**, who stated that deceased Abdul Khaliq was his elder brother. During the night of occurrence he was sleeping in his house. Early in the morning at about 06:00 a.m, he heard ring as well as knock on the door. Again said that the ring was that of mobile phone, while he was trying to attend the phone, he also proceeded simultaneously towards the door where he found Wahid Ullah, who informed him that your brother was lying on the road. He was rushed to the spot where he found that his nephew Salman was also present there. His brother was lying dead on the ground due to bullets injuries. He then called the local police on mobile phone. In the meanwhile police party came to the spot headed by SHO. The dead body was referred by the SHO to the hospital. He accompanied the dead body to the hospital where Postmortem was conducted. He had identified the dead body as well and had put his signatures on inquest report as well as PM report. After close of PM examination they return to

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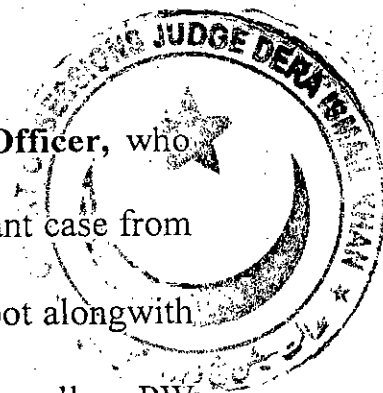
their home and investigation unit arrived at the spot. He was present on the spot. Investigating Officer started inspection of the spot and during spot inspection he collected blood as well as empty shells, helmet and the motorcycle for which seizure memo Ex.PW 10/1 was prepared. The contents of Ex.PW 10/1 are correct which he had signed as token of its correctness. The parcel of the blood so collected is (Ex.P-1), the parcel bearing No.2 regarding twelve number 30 bore empty shell is (Ex.P-2), while blood stained helmet packed into parcel No.3 is (Ex.P-3). He is also marginal witness to memo already Ex.Pw-3/5 according to which one used mobile phone belonging to Mrs Nazeer Ahmad containing Mobilink SIM, 05 SIM Jackets and one broken SIM were seized besides one USB were seized by the police which are (Ex.P-4, Ex.P-5) each contained in packets while the USB is (Ex. P-6). The memo is signed by him in token of correctness. He is also marginal witness to the memo already Ex.PW 3/6 vide which parcel No.5 was prepared respecting the mobile belonging to accused Riyasat Bibi (Ex.P-7) (STO), seized during her personal search through lady constable. The memo is signed by him in token of correctness of its contents. His statements U/S.161 Cr.PC were recorded by police at relevant juncture.

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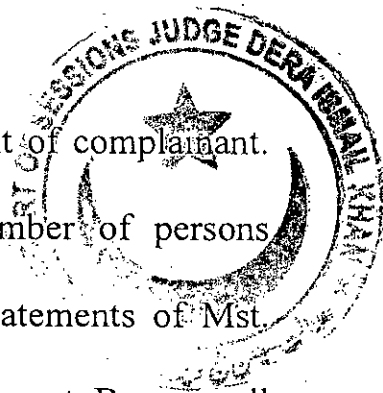


➤ PW-11 is Zakiul Ameen ASI/Investigating Officer, who stated that on receipt of copy of FIR of the instant case from ASHO of Police Station, he proceeded to the spot alongwith police party. he summoned the complainant as well as PW Abdul Wahid and on their pointation he prepared site plan Ex.PB. He collected blood from the place of deceased which was packed and sealed into parcel No.1 (Ex.P-1), he also seized 12 empty shells of 30 bore, packed and sealed into parcel No:2 (Ex. P-2), one blood stained helmet having bullet mark which was packed and sealed into parcel No. 3 (Ex.P-3), besides one motorcycle belonging to deceased (Ex.P-8) and prepared memo already Ex.PW 10/1 to the stated facts. He had also seized blood stained shalwar and Qameez belonging to deceased which was packed and sealed into parcel No.4 (Ex.P-9), vide memo Ex.PW 11/1. The said garments were brought by constable Salah ud Din alongwith Postmortem record including inquest report, PM report and injury sheet which were placed on judicial record. He also prepared list of LRs of deceased and placed the same on judicial record which is Ex.PW 11/2. According to the circumstances of the case that the mobile phone belonging to the deceased were taken away by the accused, he added charge U/S. 404 PPC to the crime and issued information report which is Ex.PW 11/3. He also recorded the statements

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District Judge
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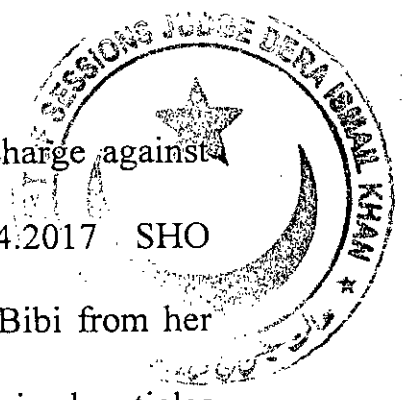


of PWs including supplementary statement of complainant. He also recorded the statements of number of persons belonging to vicinity. He recorded the statements of Mst. Mumtaz Begum, Rehana Begum and Riyasat Begum, all three wives of deceased. On 27.01.2017, he conducted search of the residential room of deceased in order to search for the evidence. He seized one Mobilink SIM contained in mobile phone, already Ex.P-4, 05 SIM Jackets belonging to deceased already Ex.P-5, besides one broken SIM and also one USB and while checking CCTV Camera installed in the vicinity, he found two persons on motorcycle present in the street and calling on mobile phones which footage was taken down and recorded in one USB which was seized and is Ex.P-6. He prepared memo already Ex.PW 3/5. He later got photographs printed from the said recording of the USB and placed on judicial file which are (Ex.P-10, and Ex.P-11) respectively. On 06.02.2017, he arranged Geo-Fencing of the vicinity and placed on record Geo-Fencing report which is Ex.PW 11/4 (10 pages), according to which during the night of occurrence at 00:46:54 hours one Irfan, presently accused facing trial had made a phone call which was later proved to have been connected, belong to accused Akhtar (absconding accused), the time corresponding to that of CCTV recording (Ex.P-11-USB). The statement of

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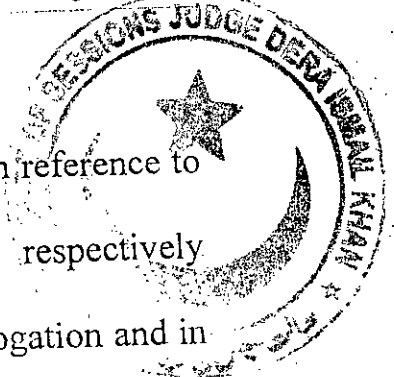


complainant was recorded in respect of his charge against the accused and consequently on 10.04.2017 SHO Muhammad Nawaz arrested accused Riyasat Bibi from her house. During the said proceedings, he seized articles mentioned in memo already Ex.PW 3/6. The parcel to said effect is already Ex.P-7 while the contents of memo Ex.PW 3/6 are correct including one SMS message recorded as "Irfan pliz reply me". The physical custody of the accused Riyasat Bibi was delivered to him by SHO who was interrogated by him. Since, she had admitted commission of crime with her co-accused, he therefore produced her before the magistrate for recording of her confession statement. His application to this effect is Ex.PW11/5. After recording confession statement of accused Riyasat Bibi she was sent to judicial lockup. He conducted house search of accused Muhammad Irfan who was not found there however, later he moved a false application in respect of a motorcycle which was entered in DD register of Police Station Cantt at Serial No.16 dated 13.03.2017, which was assigned to him and according to his investigation Irfan accused had delivered the said motorcycle to the Target Killers. Attested copy of Mad report No.16 is Ex.PW 11/6 while application moved by accused Irfan Ullah is Ex.PW 11/7 and the Motorcycle in respect of which the application was moved was detected

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 Judge Magistrate Criminal Trial Court
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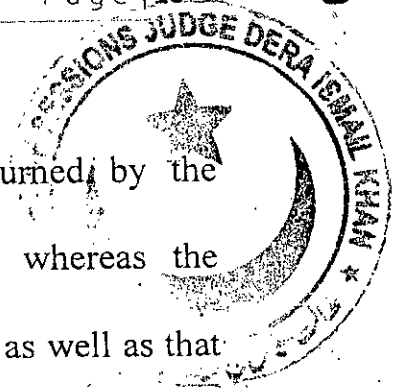
through CCTV footage contained the USB with reference to photographs already (Ex.P-10 and Ex.P-11) respectively shown used by the target killers. During interrogation and in her statement U/S. 161 Cr.PC accused Riyasat Bibi had disclosed that she was burdened with payment of Rupees one lac to the target killers which she had borrowed from her relative PW Ehsan Ullah son of Ameer Muhammad. He then associated said Ehsan Ullah with investigation and recorded his statement who admitted having delivered the sum of Rs.1,00000/- to Riyasat Bibi as loan. He then arranged for recording of statement of complainant U/S. 164 Cr.PC through my application Ex.PW 11/8 and after recording of his statement, he placed the same on judicial file. During the course of investigation, accused Irfan Ullah, Muhammad Bilal Hussain, Akhtar Munir and Touqeer Abbas were traced out as accused in the instant case against whom, he procured warrants of arrest U/S. 204 Cr.PC from the court of local magistrate for which constable Khalid Waheed was deputed to execute. His application to this effect is Ex.PW 11/9. The warrants are Ex.PW 11/10 to Ex.PW 11/13. The constable brought the warrants unexecuted which were placed by him on record and then, he applied for issuance of proclamation notices u/s 87 Cr.PC. His application to this effect is Ex.PW 11/14 and the proclamation notices are Ex.PW 11/15 to

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Ex.PW 11/18 respectively which were returned by the executing constable after due proceedings whereas the reports from the witnesses of the proceedings as well as that of executing constable which he also placed on file. Since it was found that accused Muhammad Bilal Hussain was employee of police department with belt No. 65 and he was found absent from duties therefore, his absence report was recorded as serial No.22 of DD register of Police Station City, certificate copy whereof was obtained and placed on judicial file as Ex.PW 11/19. He had dispatched the crime articles to FSL as well as firearms expert and report received from FSL/firearms expert are Ex.PK and PK/1 respectively. Since the empty shells seized in the case were declared as being used from two different pistols, he therefore, added section 34 PPC to the charge of crime and issued information sheet Ex.PW 11/20 in this respect. In the light of the interrogation of accused, he also added sections 109 and 120-B in the charge and issued information sheet Ex.PW 11/21. He then forwarded the record to the SHO for preparation of challan against accused Riaysat Begum and proceeding U/S. 512 Cr.PC against rest of the absconding accused. He had arranged through his superiors to inform the Revenue staff so that property owned by the Riyasat Begum may not be transferred in the name of anyone else on

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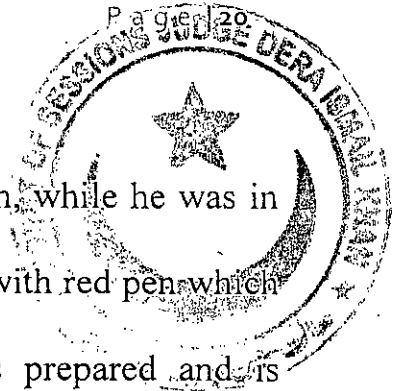
account of her accusation in the present case. The correspondence made in this respect is placed on judicial file and is Ex.PW 11/22 (06 pages). On 21.10.2017 accused Irfan was arrested by the SHO and was handed over to him for investigation. On 22.10.2017 he applied for physical remand through his application Ex.PW 11/23. Two days custody was granted and he interrogated the said accused. During interrogation the said accused admitted having committed the crime and to said effect his statement was recorded. On the pointation of accused Irfan while he was in custody he prepared pointation sketch which is Ex.PW 11/24 and the memo to this effect is Ex.PW 11/25. He then produced him for recording of his confession statement before the JM vide his application Ex.PW 11/26 however, he refused to make any confession before the JM and remanded back to judicial lockup. On 07.02.2018, accused Touqeer Abbas was arrested by SHO CTD in case FIR No. 32 of 2016 and was remanded to judicial lockup. He therefore, applied for his arrest through his application Ex.PW 11/27. He issued card of arrest of accused Touqeer Abbas which is Ex.PW 11/28 and then applied for his physical custody through his application Ex.PW11/29. Three days custody was granted in this respect. During the course of interrogation accused Touqeer Abbas admitted having

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committed the crime and on his pointation, while he was in custody additions were made in site plan with red pen which are Ex.PB/1. Memo to the stated facts prepared and is Ex.PW11/30. His application to the effect of requisitioned of case file is Ex.PW 11/31 while his application for recording of confessional statement of accused Tauqeer Abbas is Ex.PW-11/32. He had also placed on record photographs concerning pointation of place of occurrence by accused Tauqeer Abbas which are Ex.P12 to Ex.P-13 (three photographs). He also placed on record the copy of registration book of the motorcycle belonging to deceased which is Ex.PW11/33 and also placed on record photographs of the scene of occurrence which are Ex.P-14 to Ex.P-22 besides photographs of deceased Ex.P-23 (ten in numbers). He also brought on record photograph of accused Akhtar Munir son of Muhammad Hayat caste Baloch r/o Basti Dewala which was already available in Police Station record in connection with his history sheet and is placed on judicial file and is Ex.P-24. He had also placed on record copy of FIR No.775 dated 24.01.2005 u/s 302/324/34 PPC Police Station Cantt in respect of accused Akhtar Munir (absconding accused), copy of FIR including index are Ex.PW 11/34 (two pages) while history sheet of accused Akhtar Munir is Ex.PW 11/35 (four pages). He also placed

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on record the CDR Data of Abdul Khaliq deceased which is Ex.PW 11/36 (08 pages). (STO). I had recorded the statements of witnesses U/S. 161 Cr.PC at relevant junctures. He had also recorded reports in DD register in respect of different proceedings which are placed on file as Ex.PW 11/37, Ex.PW 11/38, Ex.PW11/39 and Ex.PW 11/40. On close of investigation by him, he presented the record to the SHO for his further action in the case. All the documents exhibited by him are correct and correctly bear his signatures.

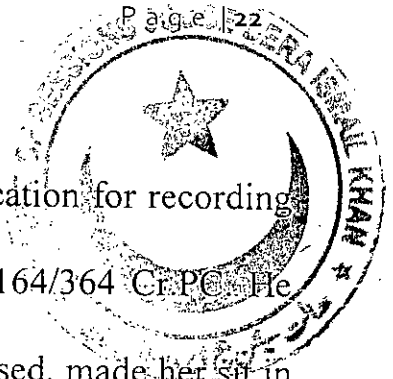
PW-12 is **Said Qamar Khan SI**, who on receipt of Murasila sent by the then SHO Muhammad Nawaz Khan, brought by Constable Aminullah No.7950, correctly incorporated its contents into FIR, which correctly bears his signature and is Ex.PA/1. After registration of FIR, copy of which was given to the investigation staff of the Police Station for further proceedings.

➤ **PW-13** is **Saqib Khan Civil Judge**, who on 10.04.2017 at 12:00 hours while was present in Court for performing judicial work, Investigating Officer Abdul Latif Khan SI alongwith lady constable namely, Humaira Akhtar No. 735 produced accused namely Riyasat Begum wife of Abdul Khaliq Caste Marwat r/o Madina Colony, charged in FIR No.69 dated 22.01.2017. U/S.302/34 404/109/120-B PPC

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Civil Judge
Model Criminal Court
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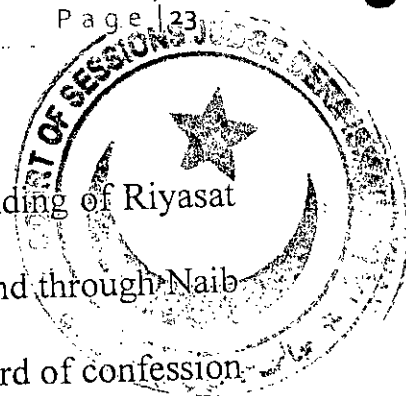


Police Station Cantt and submitted application for recording confessional statement of accused U/S. 164/364 Cr.PC. He ordered removal of handcuffs of the accused, made her sit in the court room and after introduction of himself and the purpose of her production before the court, allowed time to her to relax and think over before making her confessional statement voluntarily and without duress. He also directed at the same time all the police officials including Naib Court and SPP to go outside the Court Room and when after sufficient interval of about half hour he asked the questions recorded in Questionnaire Ex.PW13/1 from the said Mst. Riyasat Begum who was made to understand the same and also recorded her replied to each of the questions in Ex.PW 13/1. Being satisfied that she was making confessional statement voluntarily, he started recording her statement in Urdu which after completion was read over to her and on her acknowledgment of the correctness of recorded statement she put her right thumb impression under her statement which he verified through his own signature and certificate and the same is Ex.PW 13/2. He also issued certificate dating 10.04.2017 to the stated effect wherein he recorded the proceedings so undertaken by him with reference to each time frame and the same is Ex.PW 13/3. He had also endorsed the application moved by the Investigating Officer,

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 Judge of Criminal Court
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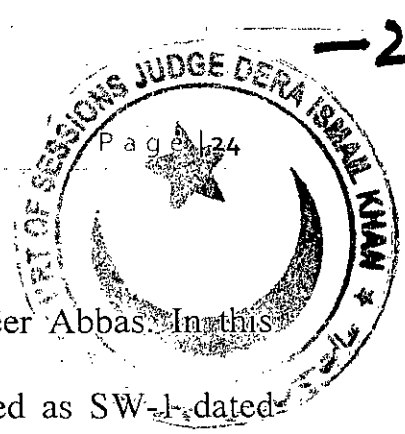
already Ex.PW 11/5 by passing order for sending of Riyasat Bibi to Central Jail DIKhan on judicial remand through Naib Court attached to his court. The original record of confession i.e. Ex.PW 13/1, Ex.PW 13/2 and Ex.PW 13/3 was assigned to the Muharrir of the Court for safe custody. He verify the correctness of Ex.PW 13/1, Ex.PW 13/2 and Ex.PWE 13/3 while also verify the correctness of order dated 10.04.2017 which is Ex.PW 13/4. On 27.04.2017 Investigating Officer of the case also produced PW Muhammad Suleman Nasir before him and sought recording of his statement u/s 164 Cr.PC at the strength of his application Ex.PW11/8. He had recorded statement of said PW Muhammad Suleman Nasir U/S. 164 Cr.PC on 27.04.2017 on his narration and his signatures were obtained in token of correctness duly authenticated by him through his own signature and certificate. The Statement of PW Muhammad Suleman Nasir is Ex.PW 13/5 and the endorsement recorded by him on application of the Investigating Officer is Ex.PW13/6.

- PW-14 is Muhammad Adnan Inspector, who on completion of investigation, submitted supplementary Challan against the accused facing trial Touqeer Abbas, which correctly bears his signature and is Ex.PW14/1.
- PW-15 is Constable Khalid Waheed, who was entrusted with the warrants U/S. 204 Cr.PC issued against the accused

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Irfan Ullah, Muhammad Bilal and Touqeer Abbas. In this respect his statement was already recorded as SW-1 dated 11.11.2017. He searched the accused at their residences as well as in the surrounding areas but could not be arrested. According to the inhabitants of the Illaqa the accused went into hiding and left their abodes at the given addresses and settled in Punjab province, in this respect he recorded their statements on the back of warrants and returned the same with his reports. The warrants are Ex.PW 15/1 to Ex.PW 15/3 while his reports on its back are Ex.PW 15/4 to Ex.PW 15/6 respectively. Similarly, he has also entrusted with the notices U/S. 87 Cr.PC which he processed according to law and returned the same with his reports, the proclamations are Ex.PW 15/7 to Ex.PW 15/9 while his reports on its back are Ex.PW 15/10 to Ex.PW15/12 respectively. All the relevant documents which correctly bear his signatures.

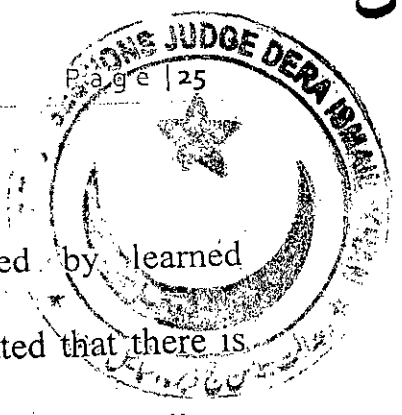
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5. After close of the prosecution evidence, statements of accused facing trial U/S 342 Cr.P.C were recorded wherein they denied the charge and professed their innocence. However, the accused facing trial neither opted to be examined on oath nor wished to produce any evidence in their defense.

6. I have heard the learned Dy.PP for the State assisted by learned counsel for the complainant and learned defence counsels and have thoroughly perused the record.

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7. Learned Dy.PP for the State assisted by learned complainant's counsel opened the case and stated that there is no malafide on the part of the complainant to wrongly implicate the accused for the commission of offence. Accused facing trial are charged by the complainant in his statement U/S. 164 Cr.PC and roles were attributed to each of the accused facing trial for the commission of offence by the complainant. The record prima facie connects the accused with the commission of offence. That the prosecution has fully established the charge against the accused through cogent and convincing evidence, therefore, the accused be convicted. Reliance in this respect was placed on

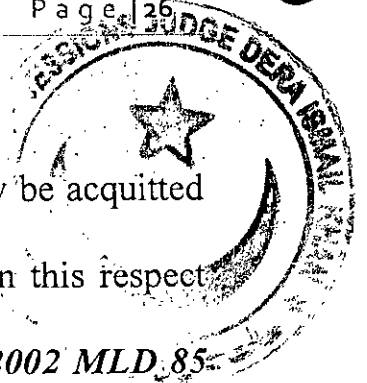
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8. On the other hand, learned counsel for the accused while opposing the arguments of the Prosecution, contended that accused are not directly charged by the complainant in his initial report rather accused are charged by the complainant latterly after consultation and deliberation. No source of satisfaction has been mentioned in his statement U/S. 164 Cr.PC. Complainant and so far produced private witnesses falsely deposed against the accused facing trial. The false motive has been mentioned -which not support by any independent or documentary evidence. There are so many contradictions in the statements of witnesses, which in itself negate the prosecution version, therefore, the case of accused is

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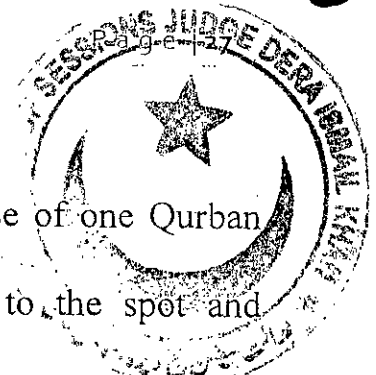
fit for his acquittal. Lastly requested that they may be acquitted of the charges levelled against them. Reliance in this respect placed on *2016 SCMR 274, 1993 SCMR 1822, 2002 MLD 85 (Lahore), 2013 P.Cr.L.J 783 (Sindh), PLJ 2019 SC (Cr.C) 265 (original Jurisdiction), 1991 P.Cr.L.J 723 (Lahore), PLD 2018 Peshawar 157, 2019 P.Cr.L.J 1073 (Peshawar (Bannu Bench), 2011 PLR 26 (D.I.Khan), PLD 2006 SC 538 and PLD 2009 Peshawar 1.*

9. The main case of prosecution is that accused facing trial were charged by the complainant for committing Qatl-e-Amd of deceased Abdul Khaliq by accused Touqeer Abbas and absconding accused Akhtar Munir by firing at him with the conspiracy between accused Riyasat Begum and accused Irfanullah at the abetment of accused Muhammad Bilal in furtherance of common intentions of all the accused facing trial. Hence, the present case vide FIR Ex.PA/1 at the strength of Murasila Ex.PA was registered at PS Cantt, D.I.Khan.

10. FIRST INFORMATION REPORT (FIR)

The contents of FIR based Murasila are that on 22.01.2017 at about 06:30 hours, complainant Muhammad Suleman Nasir alongwith the dead body of his deceased father Abdul Khaliq reported the matter to the local police on the spot that he was sleeping in his house and at 0600 hours received information that his father's dead body was lying in a

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thoroughfare of Madina colony near the house of one Qurban Abbas Shah, on this information, he went to the spot and attended his father who had succumbed to injuries after having been hit with firearm. It has been stated by the complainant that his father was government employee and was working as dispenser in DHQ hospital DIKhan and was performing night duty. After performing his duty, he was coming back to his house when at unknown time, unknown persons fired at him for unknown reasons. They had no enmity with anyone. Initially he charged the unknown accused for the commission of offence. The report of the complainant was reduced into writing in shape of Murasila, subsequently which resulted into registration of instant case. Subsequently, while discovering other facts, complainant charged the present accused facing trial alongwith co- absconding accused for the commission of offence by recording his statement U/S. 164 Cr.PC.

If the contents of FIR are perused, no person was directly charged. Similarly, delay was also occurred, but as the occurrence was un-seen, hence, delay in such situation was natural. However, if statement U/S. 164 Cr.PC of complainant is perused, neither any source of satisfaction nor motive behind the occurrence was mentioned, hence, the FIR seems to be a weak type of evidence and needs mandatory assessment as well as further corroboration through oral evidence.

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Laya Model Command Post Court
Dera Ismail Khan

11. ORAL EVIDENCE

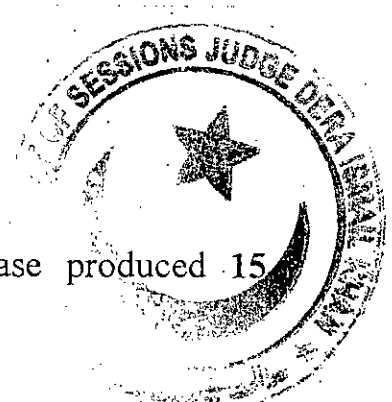
The prosecution in support of its case produced 15 (Fifteen) witnesses.

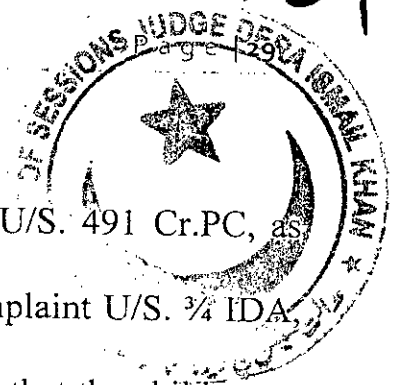
Basically, the case relates to hearsay evidence, as no one had witnessed the occurrence. If the statement of complainant is perused, when he was examined as PW-9, he made some improvements in order to bring the case in-line with prosecution case as he has not stated the duty hours of his father in his report with further that he had received information at 05:45/06:00 hours and the fact regarding information tendered to him regarding the occurrence. On perusal of initial report/ FIR, the occurrence is admittedly unseen one. Complainant made further improvement that PW Abdul Wahid had informed the police with further that PW Abdul Wahid is serving in police department. Complainant further admitted during his Cross-examination that after all investigation conducted at the spot, his report was drafted. From the statement of complainant, one thing was surfaced that accused Mst. Riyasat Begum was falsely implicated in the instant case by the complainant and PW Abdul Wahid in order to grab the property from her as when complainant was Cross-examination he admitted that police had produced the children of Riyasat Bibi before the Court and were handed over to her before the Court. Accused Mst. Riyasat Begum during recording of her statement U/S. 342

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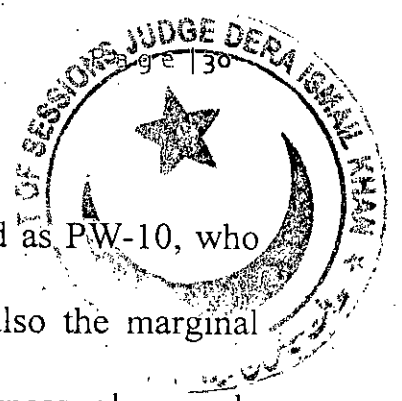


Cr.PC produced and exhibited application U/S. 491 Cr.PC, as well as produced the attested copies of complaint U/S. 3/4 IDA. on perusal of these documents, it reveal that that the children as well as interim possession of the house was handed over by the Court to the accused Mst. Riyasat Begum whereby the respondents are from the complainant party. From all, it could be presumed that the accused facing trial Mst. Riyasat Begum is falsely charged in the instant case by the complainant party in order to grab the property of deceased which is in the name of accused Mst. Riyasat Begum by detaining her children forcibly. It was further mentioned by the complainant in his statement U/S. 164 Cr.PC that he has satisfied himself that original culprits are his step mother Mst. Riyasat Begum on account of having illicit relations with accused Irfanullah, but neither in statement U/S. 164 Cr.PC nor in statement before the Court even a single gist was given that what was the source of his satisfaction and how he satisfied himself. In the absence of any proper source, mere allegations are not sufficient to prove the accused facing trial guilty. Although, from perusal of record as well as from statement of complainant, none had seen the occurrence, and no source of satisfaction has been disclosed by complainant, remaining version is just throwing the stone in the air. It means that the basic source of information is lacking in the instant case.

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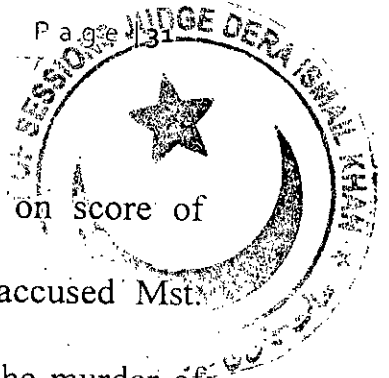
Prosecution produced PW Abdul Wahid as PW-10, who narrated the facts of occurrence as well as also the marginal witness of the Recovery Memos. Said witness also made improvements in order to get in line the case of prosecution. Said witness during Cross-examination admitted that there is no DD is available on the file regarding his departure from the Police Station to the home. From his recorded statement, it reveals that the Investigating Officer conducted the investigation at the behest of said PW being his colleague. PW-10 during Cross-examination admitted that he remained posted in investigation staff of the Police Station Cantt, D.I.Khan. One another surprising fact was admitted by PW-10 during his Cross-examination that he visited Peshawar in order to get geofencing report, the authenticity of the said report also made as doubtful. One fact raised by accused Mst. Riyasat Begum during recording of her statement U/S. 342 Cr.PC that her children were confined by PW Abdul Wahid and complainant, said fact was supported by PW Abdul Wahid as who during Cross-examination admitted that the after the occurrence children of Mst. Riyasat Begum remained with him. Fact of litigations pending in between the accused Mst. Riyasat Begum, PW Abdul Wahid and complainant also admitted by PW Abdul Wahid during his Cross-examination, hence, it could be presumed that accused Mst. Riyasat Begum and other accused

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were falsely charged by the complainant party on score of getting the property and other valuables from accused Mst. Riyasat Begum by the complainant's party after the murder of deceased. PW Abdul Wahid during his Cross-examination further admitted that he is not the eyewitness of the occurrence and he cannot tell the exact time of occurrence. He further admitted that he has not heard the fire shot himself as he admitted in his Cross-examination that the distance between the place of occurrence and his house is about 100 paces. PW Abdul Wahid also stated in his Cross-examination that none of the neighbor heard the fire shots.

Prosecution produced Wahidullah Khan as PW-6, who informed the fact of lying of dead body of deceased at the spot.

Said witness also made improvements in order to get in line the case of prosecution. He is also not the eyewitness of the occurrence.

Prosecution also produced another PWs i.e. PW-7 Muhammad Zeeshan Nasir and Shamsur Rehman as PW-8, but they both are not the eyewitness of the occurrence. Said PWs also made improvements in order to get the case of prosecution in line.

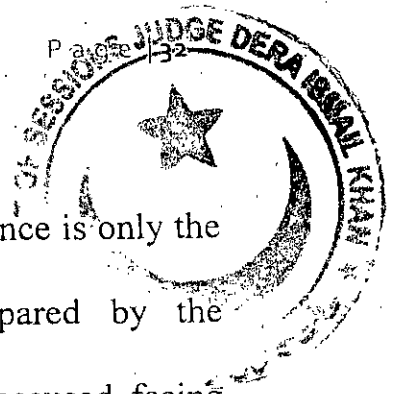
As the case relates to circumstantial evidence, hence, the statement of Investigating Officer is of utmost importance. If the statement of Investigating Officer is perused, besides

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collecting other evidence, material piece of evidence is only the pointation memos which was allegedly prepared by the Investigating Officer on the pointation of the accused facing trial Irfanullah and Touqeer Abbas, but no weapon of offence was recovered. Now, it is to be seen that whether the alleged pointation of accused facing trial in itself is material piece of evidence or not. The accused facing trial namely Irfanullah and Touqeer Abbas have not made confession before any competent forum i.e. competent court of jurisdiction. Under A.38 & 39 any such confession before the police is not admissible in evidence. It is also established fact that during custody of the police there is ample chance of either physical or psychological torture, hence, any created piece of evidence unless supported by proper corroborative independent evidence cannot be relied upon. Main things on which the complainant was relying was telephonic contact with the accused Irfanullah by accused Mst. Riyasat Begum. However, it is evident from the file that no such CDR Data was collected nor the ownership of any SIM was verified or recorded by the Investigating Officer nor any effort by complainant was made in this regard. In the judgment reported as *2017 SD 351*, such kind of defective evidence is discarded and any recovery made without verification has been held as hopeless for prosecution. No such effort was made by the prosecution in this regard, hence, the version of telephonic

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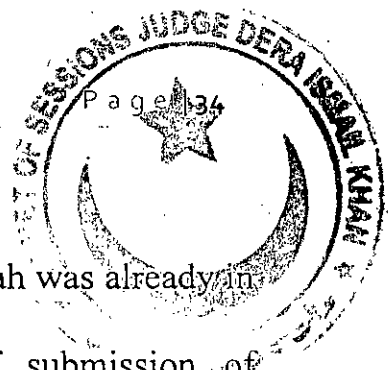
contact cannot be relied upon. The occurrence took place on 22.01.2017 and the articles were received to the FSL on 09.02.2017 after almost more than eighteen days. FSL report are available on the file as Ex.PK and Ex.PK/1. The witness also made custody of the articles as doubtful, as it was received to FSL after more then eighteen days of its alleged recovery. The articles were submitted in Malkhana but no copy of said register No.19 of the Police Station was produced with further admission that he is unable to disclose, the fact that who had taken the said articles to the FSL. On record there is no statement of any Constable who the articles to the laboratory is available on the file. Investigating Officer during his Cross-examination admitted that crime empties were fired from different weapons anyhow no specific number of weapons is mentioned in the report. Investigating Officer in his Cross-examination stated that no private person from the locality was associated with the proceedings of pointation. Investigating Officer also admitted in his Cross-examination that PW Abdul Wahid is also serving police officer and was posted in Police Station Cantt, D.I.Khan during those days. In respect of arrest of accused Irfanullah, Investigating Officer admitted that accused Irfanulah was arrested at Muryali More, however, Investigating Officer was unable to disclose the fact that who pointed out the SHO that said person was the Irfanullah, from

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which it can be presumed that accused Irfanullah was already in illegal custody of the police and fact of submission of application by father of the accused Irfanullah to the local police is seems to be genuine. One another fact was admitted by the Investigating Officer during his Cross-examination regarding presence of police pickets, but he has not examined any of the Constable posted at said pickets during that time on the day of occurrence as they had heard the noise of fire-shots. No case diary is available in this regard and this fact is also admitted by the Investigating Officer.

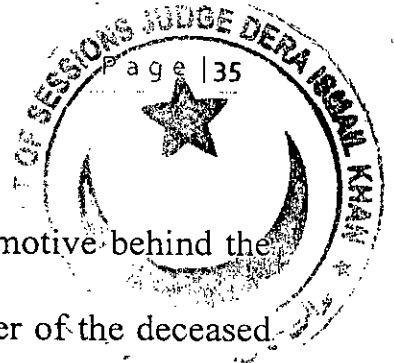
Prosecution produced Said Qamar Khan SI as PW-12, who chalked out the FIR Ex.PA/1. Said witness further admitted in respect of departure of SHO Muhammad Nawaz Khan from the Police Station was recorded, however, no such diary is available on the record.

On perusal of whole record, it is admitted fact that the present occurrence is un-witnessed one, because neither any person was directly charged in FIR, nor the complainant as well as other private witnesses were the eyewitness. As such the statement of the complainant in itself is not sufficient to show any guilt of the accused facing trial, however, reference was made to the statement that whether he has made any justification behind the charge levelled against the accused facing trial. Private witnesses has referred to hearsay evidence,

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but that hearsay evidence is incomplete. No motive behind the occurrence or the purpose resulted into murder of the deceased was explained. The facts remained un-explained by the complainant and as such the statement of the complainant cannot be considered as sound against the accused facing trial.

As it is discussed earlier in detail that no direct evidence was available, hence, reference is consistently made to circumstances. It is to be seen that the circumstances are collected in such manner that whether these are helpful for prosecution case or not.

Remaining witnesses are of formal nature, hence, no need to be brought under discussion. While the available material witnesses i.e. complainant and his private witnesses have fully negated the prosecution version and the chain of facts nowhere remained intact. hence, the conclusion can be drawn that no solid oral evidence was brought against the accused facing trial on record and the available oral evidence is not only defective but is also in contradiction with the available record.

12. DOCUMENTARY EVIDENCE AND LABORATORY REPORT

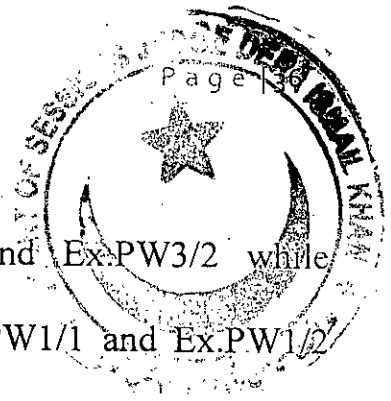
The FIR available on the file is Ex.PA/1 while Murasila as Ex.PA. Site plan is Ex.PB while additions overleaf the site plan as Ex.PB/1. FSL reports as Ex.PK and Ex.PK/1. Injury

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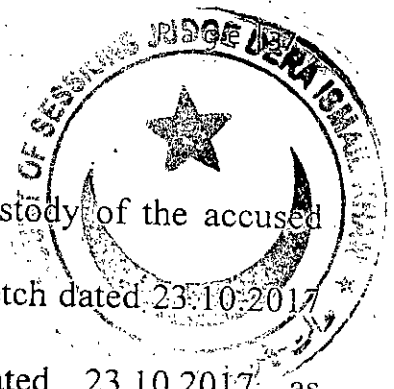


sheet and inquest report Ex.PW3/1 and Ex.PW3/2 while endorsement of Medical Officer as Ex.PW1/1 and Ex.PW1/2 while postmortem report is Ex.PM. Photographs as Ex.P-1 to Ex.P24. Card of arrest of accused Mst. Riyasat Begum as Ex.PW3/3. Card of arrest of accused Muhammad Bilal as Ex.PW3/4. Recovery memos as Ex.PW3/5, Ex.PW3/6, Ex.PW10/1, Ex.PW11/1. Application for recording confessional statement of accused Muhammad Bilal as Ex.PW4/2. Application for further physical custody of the accused Muhammad Bilal as Ex.PW4/1. List of legal heirs of the deceased as Ex.PW11/2. Information memo as Ex.PW11/3. PDR Data as Ex.PW11/4. Application for recording confessional statement of the accused Mst. Riyasat Begum as Ex.PW11/5, while questionnaire, statement and certificate as Ex.PW13/1 to Ex.PW13/3. Application for recording statement of the complainant U/S. 164 Cr.PC as Ex.PW11/8 while statement of complainant U/S. 164 Cr.PC as Ex.PW13/5. Mad report No.16 as Ex.PW11/6 while application to SHO in this respect as Ex.PW11/7. Application for warrant/proclamation notices are Ex.PW11/9 and Ex.PW11/14 while warrants and proclamation notices are Ex.PW15/1 to Ex.PW15/12 respectively. Mad report No.22 as Ex.PW11/19. Information memo dated 17.03.2017 as Ex.PW11/20. Information memo dated 10.04.2017 as Ex.PW11/21. Letter of S.P Investigation as

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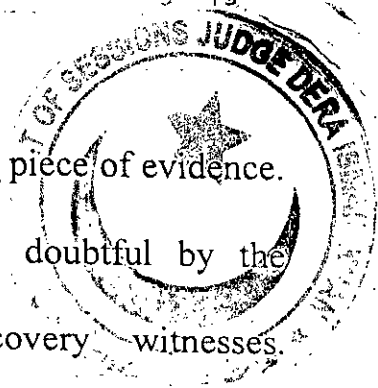
Ex.PW11/22. Application for physical custody of the accused facing trial Irfanullah as Ex.PW11/23. Sketch dated 23.10.2017 as Ex.PW11/24. Pointation memo dated 23.10.2017 as Ex.PW11/25. Application for recording confessional statement of the accused facing trial Irfanullah as Ex.PW11/26. Application for Zamima bay as Ex.PW 11/27. Card of arrest of the accused facing trial Touqeer Abbas as Ex.PW11/28. Application for physical remand of the accused facing trial Touqeer Abbas as Ex.PW11/29. Pointation memo dated 10.02.2018 as Ex.PW11/30. Application for requisitioning of judicial record as Ex.PW11/31. Application for recording confessional statement of accused Touqeer Abbas as Ex.PW11/32. Copy of registration of motorcycle as Ex.PW11/33. Copy of FIR as Ex.PW11/34. History sheet as Ex.PW11/35. CDR Data of the deceased as Ex.PW11/36. Daily diaries of the Police Station as Ex.PW11/37 to Ex.PW11/40. During recording of statement of accused Mst. Riyasat Begum U/S. 342 Cr.PC, she produced and exhibited as Ex.D-1 to Ex.D-7 respectively, while accused Muhammad Bilal also produced the documents and exhibited the same during recording of statement of accused U/S. 342 Cr.PC which are Ex.PJ.

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Initial report of the complainant is against unknown persons, 164 Cr.PC does not disclose any source of verification and the recovery memos allegedly prepared by the Investigating

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Officer have not been established as material piece of evidence. The process of recovery has been made doubtful by the Investigating Officer as well as recovery witnesses. Independent status of investigation also made doubtful as posting of PW Abdul Wahid (brother of the deceased) in investigation staff of the Police Station Cantt, D.I.Khan during the days of occurrence which fact also admitted by the Investigating Officer in his Cross-examination. Status of FSL reports also made doubtful, as the articles were received to FSL with delay and this delay was not explained by the Investigating Officer nor any copy of register No.19 was produced or annexed on record. No weapon of offence was recovered from the possession or at the pointation of any of the accused facing trial.

Hence, the indirect circumstantial evidence collected by the Investigating Officer is not sufficient to be based upon for conviction of accused facing trial.

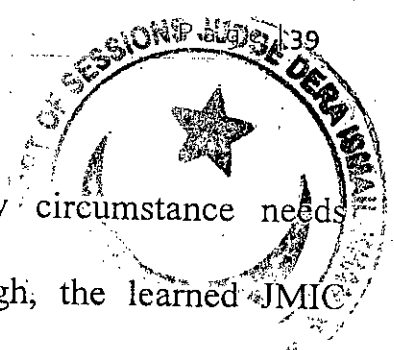
13. CONFESSONAL STATEMENT & ITS ADMISSABILITY

One important fact which was stressed upon by the Prosecution was the alleged confession statement made before the learned Judicial Magistrate. In this regard, statement of learned Judicial Officer was recorded as PW-13. As it has been discussed earlier that the present case depends upon

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circumstances, hence, each and every circumstance needs proper attention of the Court. Although, the learned JMJC during his examination-in-chief recorded as PW-13 supported the proceedings conducted by him, but when deeply scrutinized it was observed shockingly that statement was not recorded independently and the true account of the accused facing trial was not brought on record. PW-13 admitted in his Cross-examination that in respect of identification of accused Mst. Riyasat Begum nothing was mentioned in the certificate. No CNIC of accused Mst. Riyasat Begum was taken by PW-13 at the time of recording her statement. No source of communication has been mentioned by PW-13 in the certificate. The Judicial Magistrate are supposed to work as independent entity and not to play as tools in the hands of law enforcement agency, as when a party is aggrieved of violation of rights by the law enforcement agency unlawfully, public seeks shelter under the shadow of Judicial Officer, hence, his attention as well as much more conscious is needed in such manner, however, regretfully it was not done in present case.

One question No.8 is of worth importance, question is reproduced as under:

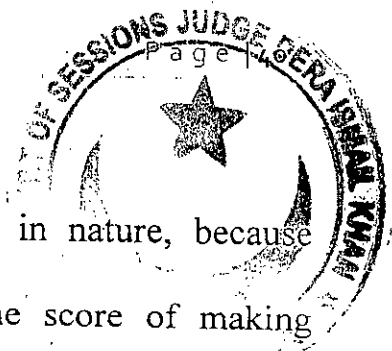
Q.8 Do you know that after making the statement before me you will not be remanded to police custody but will be sent to the judicial lock-up?

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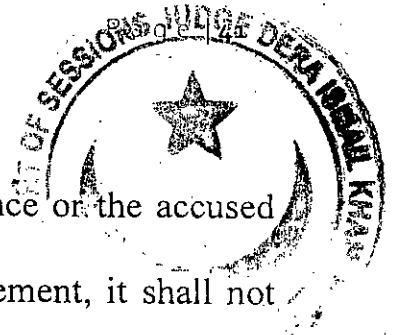


This question in itself is coercive in nature, because judicial lock-up was offered only on the score of making statement and not otherwise. Hence, the question in itself is not as per the directions of Worthy Apex Court of the Country. Guidance in this regard is sought from *2011PLR 26 D.I.Khan*, wherein at Page No.34 same nature of question was condemned; on the score that the question is utterly wrong and it does not dispel the fear of police in the mind of the accused. Same is the fact of present case and only on this score confession in hand can be discredited. Besides this, the statement in itself is exculpatory, as the accused herself has not admitted any active participation rather the version of complainant was repeated therein. In view of discussion under the head of the oral evidence, pressure on behalf of complainant was thoroughly discussed and incomplete confession also refers to same.

In view of abovementioned facts and circumstances the presumption can easily be drawn that whatever the statement was made before the learned JMIC was, but the proper mode and manner was not recorded for recording the same, hence, the alleged confession cannot be considered as material piece of evidence against the accused facing trial. Moreover, in the light of judgments of Worthy Apex Court of the country, if either procedure is not adopted properly by the learned Judicial

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Magistrate at the time of recording of evidence of the accused subsequently retracts from such kind of statement, it shall not be used against him. Reliance in this regard is placed on 2016 SCMR 1617 SC and 2017 SCMR 898 SC.

14 ABSCONSION:

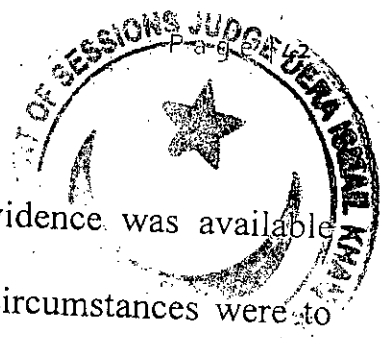
Learned counsel for the complainant stressed over absconson, however, learned counsel for the accused facing trial while referring to the recent versions of Worthy Apex Court of the country explained that when once the prosecution story is found defective, mere absconson is not sufficient to hold the accused guilty for the offence. Reliance was placed on 2016 PLR 246 (Peshawar), 2014 PLR 699 (D.I.Khan), PLD 2008 SC 398 & 2019 PLR 520 (Peshawar). As it is observed during assessment of oral evidence that same is in negation of initial version of the complainant, hence, in the presence of totally defective evidence no benefit of absconson whether intentional or un-intentional can be extended to prosecution.

15. CONCLUSION:

The available record reveals that complainant charged accused facing trial for the murder of his father. In the light of judgment of Apex Court of the country reported as 2017 SCMR 2026 SC, it was the obligatory duty of the Prosecution to

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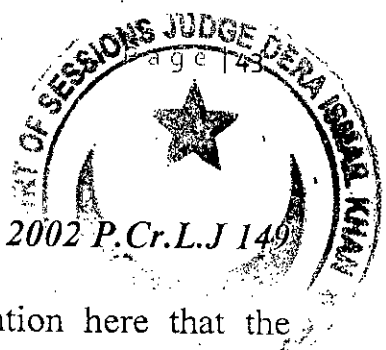
establish chain of facts, as no direct evidence was available with the prosecution, hence, connected circumstances were to be proved mandatorily. In the judgment referred afore, it was also brought under discussion in detail that if apparent circumstances establish any occurrence, still it is to be deeply scrutinized, because fundamental rights of a person depends upon such scrutiny and on the score of deep scrutiny, the accused was acquitted by the Apex Court of the Country.

Context is thoroughly brought under discussion during reference to oral evidence that none was cited as direct witness of the occurrence. Even the alleged hearsay evidence is indirect and is not an admissible piece of evidence. Moreover, although the local police tried to stretch the circumstances towards the accused facing trial, but it was not established. Although, only this fact is not satisfactory, but as no direct evidence is available, hence, for establishing chain of facts it is mandatory. The delay in itself was not properly justified which is also fatal for prosecution version. Reliance in this regard is placed on 2015 YLR 140 (Lahore), 2014 P.Cr.L.J 1123 (Sindh) and 2016 P.Cr.L.J 380 (Lahore). No weapon of offence was recovered from the possession or at the pointation of any of the accused facing trial. Furthermore, the place of alleged pointation or discovery is also put to doubt by the witnesses himself and only these grounds are sufficient for acquittal of the

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accused. Reliance in this regard is placed on *2002 P.Cr.L.J 149 (Peshawar)*. It is further pertinent to mention here that the alleged place was already known to the police party and the accused was at their disposal, hence, the chance of fabrication of evidence or false creation of evidence is evident. In view of Articles 38, 39 and 40 of Qanun-e-Shahadat Order, such proceedings have no legal effect over status of accused facing trial. Reliance in this regard is placed on *PLD 1995 Federal Shariat Court 20*.

One another thing alleged by the complainant and private PWs that accused Mst. Riyasat Begum has illicit relations with accused Irfanullah, but in this regard there is no such independent evidence on record to show that accused Mst. Riyasat Begum has any contact with illicit intentions with accused Irfanullah. Moreover, such act is the personal act of the accused Mst. Riyasat Begum and as accused could be convicted for other offences but not on such personal acts as other forums are available for proper redressal. Besides this, accused Mst. Riyasat Begum herself has not involved in any active participation.

FSL reports are not in conformity with the version of Investigating Officer or in respect of the mode and manner of the recovery. In present case the statements of PWs are full of contradiction, the oral as well as circumstantial evidence are not

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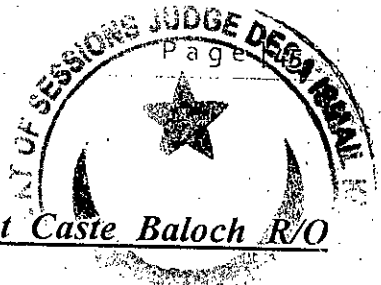
inconformity with each other and the prosecution has not proved the allegations to the extent of accused facing trial beyond any shadow of reasonable doubt. It is well established principle of law that even single benefit of reasonable doubt is sufficient for acquittal of accused, as the prosecution is duty bound to produce evidence of un-impeachable character having no shadow of doubt, while present case suffers from multiple material defects as well as solid contradictions hence, it can be safely presumed that prosecution has not established its version beyond any shadow of doubt. Guidance in this regard is sought from 2016 P.Cr.L.J 114 Peshawar, 2016 P.Cr.L.J 1378 Peshawar and 2016 YLR 2020 Peshawar.

Although, the remaining referred judgments are worthy for the guidance of the court and sufficient to be follow in latter and spirit regarding the dictums as provided by the Hon'ble High Courts, however, are distinguishable due to its own facts and circumstances.

So while extending the benefit of doubt, I am left with no choice but to acquit the accused facing trial namely Mst. Riyasat Begum, Muhammad Bilal, Irfanullah and Touqeer Abbas of the charges leveled against them, by extending benefit of doubt to the accused facing trial. As accused are on bail, hence, their sureties are dissolved from their liabilities of bail bonds.

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USMAN BILAL KHAN
Judge District & Sessions Judge
Dera Ismail Khan
05/10/19



Accused Akhtar Munir s/o Hayat Caste Baloch R/O

Basti Dewala is absconder and as sufficient material against him is available, hence, he is declared as proclaimed offender. His name be entered in the register of POs. DPO as well as SHO concerned be informed accordingly. Perpetual NBWAs be issued against him.

Case property be kept intact till the arrest and trial of absconding accused. File be consigned to the Record Room of learned District & Sessions Judge, D.I.Khan after its necessary completion and compilation.

Pronounced in open court at DIKhan, under my hand and seal of the court this 5th day of October, 2019.

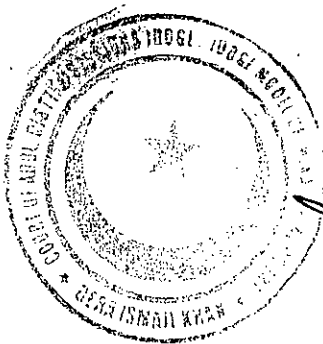
(Usman Wali Khan),
ASJ/Judge Model Criminal Trial,
Court, Dera Ismail Khan.

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CERTIFICATE

Certified that this judgment consists of **45 (Forty Five)**

pages, each page has been read over, corrected wherever it was necessary and signed by me.



(Usman Wali Khan),
ASJ/Judge Model Criminal Trial,
Court, Dera Ismail Khan.

USMAN WALI KHAN
Distt. District & Sessions Judge
Judge Model Criminal Trial Court
Dera Ismail Khan

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Examinee

05/10/19

General No. 11683
Application No. 07-10-19
Date of 08-1-19
Date of 08-1-19
No. of 17000
Quantity of Sarf
Total 08/1/19
Name 08/10/19
Signature of Examiner 08/10/19