

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

In Re:
Service Appeal No. 7903/2021

Khyber Pakhtunkhwa
Service Tribunal
No. 3995
Dated 2/3/2023

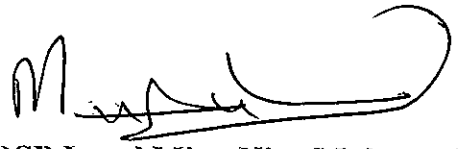
Waqar Ahmad (Ex- FC Elite Force).....Appellant

Versus

Inspector General of Police KPK and others..... Respondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Written Reply	-	1-4
2.	Affidavit	-	5
3.	Copy of Authority letter	-	6
4.	Copy of FIR	A	7-8
5.	Copy of Charge Sheet	B	9
6.	Copy of Summary of allegations	C	10
7.	Copy of Conviction order	D	11-34
8.	Copy of Dismissal Order	E	35
9.	Copy of final show cause	F	36
10.	Copy of Reply of Appellant	G	37
11.	Copy of Enquiry Report	H	38-42


DSP Legal Mian Niaz Muhamad,
Elite Force, Peshawar

(2)

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHWAR

In Re:

Service Appeal No. 7903/2021

Waqar Ahmad (Ex-FC Elite Force)Appellant

Versus

Inspector General of Police KPK and othersRespondent

PARAWISE COMMENTS OF BEHALF

RESPONDENTS NO. 1 TO 3

FACTS:-

S #	Para of the Facts	Reply of the Facts with Annexure
1.	<p>That the Appellant was enlisted as constable time-seale on three year probation on the recommendation of the competent Authority on 26.07.2007 and was allotted constabulary No 1256.</p> <p>(The enlisting order is attached as Annexure A).</p>	<p>Pertains to service record of the appellant.</p>
2.	<p>That the Appellant served with dedication and with all his fairness but was unlucky that due to strain relation of his family with the opponent they falsely involved him in FIR No-59 dated 23.04.2014 under section 302/324/148/149 Police Station Akbar Pura District Nowshera and the Deputy Commandant through order No 5406-12/EF dated 02.05.214 suspended the Appellant from service as per CSR and closed him to Elite Head Quarter.</p> <p>(The Order dated 02.05.2014 is attached as Annexure B).</p>	<p>Pertains to record, however appellant was involved in case FIR No. 59 dated 23.04.2014 under Section under Section 302, 324, 148, 147 PPc Police Station Akbar Pura District Nowshera, he was suspended charge sheet summary of allegations were issued to him also inquiry Conducted but in the meanwhile trial court convicted the accused in the mentioned case (awarding death penalty with fine Rs: 5,00,000/-), hence, dismissed the accused official from service (Copy of FIR is Annexure A, copy of Charge Sheet is Annexure B, copy of summary of allegation is Annexure C, copy of conviction order Annexure D, while dismissal order is Annexure E, Finding Report at Annexure F).</p>
3.	<p>That the Court of Additional Session Judge Nowshera, convicted the Appellant on dated 07.03.2016 in the criminal case, awarded him death sentence with a fine of Rs 500000/-.</p>	<p>Pertain to record. Moreover, being a member of the disciplined force involved in a murder case is a gross misconduct and liable to be dismissed from service.</p>
4.	<p>That the Deputy Commandant through impugned Order No. 5388-95/EF dated 21.03.2017 dismissed the Appellant from service with immediate effect despite the fact that the Appellant right to appeal before the High Court and that of the Supreme Court of Pakistan was still intact.</p> <p>(Copy of the impugned order is attached as Annexure C).</p>	<p>Incorrect departmental enquiry and judicial trial are two separate entities that can run parallel to each other without affecting each other. Hence, appellant was rightfully dismissed in accordance with rules and procedure.</p>

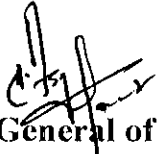
5. That before it the Appellant was suspended as CSR 194-A and was receiving a salary till 31.12.2016 and his dismissal the salary is stopped from date onward. (Copy of CSR-194-A and pay slip is attached as Annexure D).	Correct to the extent of suspension while rest of para is incorrect, hence, denied.
6. That the Appellant filed a criminal appeal against the judgment of the Session Judge Nowshera in the Peshawar High Court Peshawar and the Honorable High Court partially accepting his Appeal set aside the sentence granted by the Court of Session Judge and remanded the case back to the court for retrial.	Pertain Honorable Peshawar High Court needs no comments.
7. That the Appellant filed an appeal on 11.04.2019 before the Deputy Commandant from prison with a prayer that he is not finally convicted but his appeal was not entertained as considered already dismissed. So the Appellant filed an Appeal before the Service tribunal but it was dismissed as the Appellant was convicted though it was against the law but the appellant waited for the justice. (Copy of Judgment is attached as Annexure E).	Correct to the extent of his departmental appeal which was devoid of merit and time barred, therefore, was rejected accordingly.
8. That the trial Court Nowshera again convicted the Appellant in consequence thereof the appellant filed an Appeal before the Peshawar High Court Peshawar which is accepted and the Appellant is acquitted with honour. (Copy of the Judgment is attached as Annexure F).	Correct to the extent of his conviction by learned trial court Nowshera vide order dated 17.10.2020 (copy enclosed) and acquitted by Peshawar High Court, Peshawar vide judgment dated 05.10.2022 needs no comments (Copy of the Judgment attached).
9. That now the appellant is acquitted with honour and was dismissed from service due to the FIR registered against him so with new cause of action he filed another departmental appeal due to the emerging circumstance but it is rejected. (Copy of Appeal is attached as Annexure G).	Correct to the extent of honourable acquittal of the appellant while rest of the para is denied on the following grounds.


GROUNDS:-

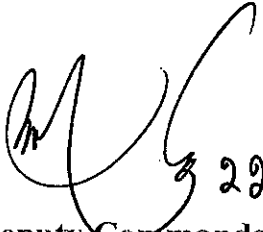
S. #	Para of the Grounds	Reply of the Grounds with Annexure
A.	That the impugned order is against the law and is against CSR 194-A as the criminal proceeding against the Appellant was not yet final and the Appellant had a right to Appeal and his right to appeal at two high forums was still intact and that the Honorable Peshawar High Court Peshawar decided that the Appellant was innocent and was falsely involved by the opponents which is a tradition in the entire Pakhtunkhwa, therefore, the impugned order requires your interference in the light of ESTACODE. Under the Code the accused is to be suspended so when acquitted shall be reinstated.	Incorrect, the dismissal order of the appellant is according to Rule and Regulations and being a member of discipline force involvement in a murder case is a gross misconduct. Furthermore, departmental enquiry and judicial trial are two separate entities that can run parallel to each other without affecting each other. Hence, appellant was rightfully dismissed in accordance with rules and procedure.
B.	That the Deputy Commandant has passed the impugned order in hurry without waiting for the final order of the last court of competent jurisdiction and has acted against the Police rules as the reason given were not final and for enquiry he has not followed the Police Rule 1975 and the Efficiency and Discipline Rules, therefore the order is void <i>abi initio</i> . (Copy of Police Rules is attached as Annexure H).	Incorrect, respondents are doing every act in within the limits of law, no injustice or illegality has been done with the appellant. He was convicted by Additional Session Judge Nowshera-III, issue Final Show Cause Notice. rely, however reply was found unsatisfactory, hence dismissed. (Copy of Final Show Cause is Annexure F, copy of Reply of appellant is Annexure G and copy of enquiry report is Annexure H).
C.	That the Appellant is dismissed from service on his conviction but the order of his conviction is not sustained in the eyes of law and with perusal of the Rules Police and Efficiency and Discipline his conduct does not come within the definition of misconduct.	Incorrect, as already explained in above paras of facts).
D.	The propriety and the Principle of law demand that Appellant is to be restored to that position i.e. where he was and all back benefits shall be granted to him as he felt victim to vendetta and suffered no sin of his own.	Incorrect, as already explained in the preceding paras, however, appellant stance is devoid of Law, therefore, departmental action of the department of dismissal against the appellant is in accordance with law/rules.
E.	That Article 4 of the Constitution of Pakistan reveals that every person shall be treated in accordance with law and no action detrimental to his right, property and reputation shall be taken without due process of law.	Para is related to constitution of Pakistan. Needs no comments. But no violation of articles of the constitution exists on the part of respondents.
F.	That the impugned order is arbitrary, non sustainable in the eyes of law and void - <i>abi- initio</i> hence be set aside in the best interest of justice.	Incorrect, impugned order is lawful, legal and in accordance with rules & procedure hence maintainable in the eyes of law.

PRAYER:

Keeping in view of the above stated facts, it is humbly prayed that the instant appeal may be decided on merit please.


Inspector General of Police,
Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)


Addl: IGP / Commandant,
Elite Force Khyber Pakhtunkhwa
Peshawar
(Respondent No. 2)


22/02/23
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar
(Respondent No. 3)

(5)

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

In Re:
Service Appeal No. 7903/2021

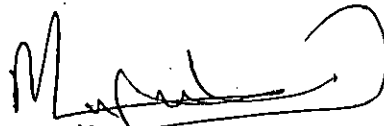
Waqar Ahmad (Ex- FC Elite Force).....Appellant

Versus

Inspector General of Police KPK and others..... Respondents

AFFIDAVIT

I Mian Niaz Muhammad (ADSP Legal) Elite Force, Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm that the contents of this **Para Wise Comments on behalf of respondent No. 1, 2 & 3** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



DEPONENT

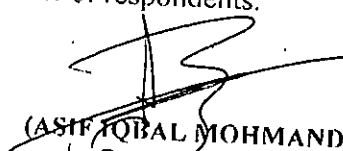
CNIC: 17301-1519386-1

Cell # 0300-5899631

Identified by:

AUTHORITY LETTER.

The undersigned is hereby authorized to nominate Mr. Mian Niaz Muhammad Acting DSP/Legal Elite Force to submit the replies and attend the Honorable High Court/Supreme Court on behalf of respondents.


(ASIF IQBAL MOHMAND) PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

DEPUTY COMMANDANT,
Elite Force Khyber Pakhtunkhwa
Peshawar

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مشافہ کیا جائے۔ دستاویزوں پر مبنی اور
 قضاہ آئندہ قدموں میں اسے ابھریں۔ عدویہ این این این دوست پریشن اور
 سرکے واکٹر چندر قادر نے اسٹیٹمنٹ دی۔ وہ اسے صرف خیر فائدہ دینے والا ہے اور کسی اور
 جانب کو نہیں۔ جیسا کہ 540 علاقہ 3 وقت پر ہے۔ انکو اور اس کے ساتھ لکھنؤ کے
 جی این ایچ کے اطلاع دی جاتی ہے۔ نقول پر مشتمل اسے دیا جائے۔ یہ سب کچھ اردن ہے۔
 حاکم عبدالرؤف صاحب اور انور سید صاحب کو اسے دیا جائے۔

2014 11:41
 23.4.14

اطلاع کے لئے اطلاع دینا کہ اس کے بارے میں اس کے اطلاع کا کوئی اور تعلق ہوگا۔ وقت الفبا
 ایک لوم یا سٹیپر علی المرتضیٰ والے اس کے بارے میں اس کے اطلاع دینا کہ اس کے اطلاع کا کوئی اور تعلق ہوگا۔ وقت الفبا

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CHARGE SHEET

I, Sajid Khan Momand, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, hereby charge you Constable Waqar No. 679, Platoon No. 19 of Elite Force as follows;

You are allegedly involved in case FIR No. 59, dated 23.04.2014 U/S 302/324/148/147 PPC, Police Station Akbarpura District Nowshera.


2. By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27th January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.

3. You are therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.

4. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.


(SAJID KHAN MOMAND)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar. ↓

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SUMMARY OF ALLEGATIONS

I, Sajid Khan Momand, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, competent authority, am of the opinion that Constable Waqar No. 679, Platoon No. [redacted] himself liable to be proceeded against as he has committed the following [redacted] in the meaning of Police Rules (amended vide NWFP gazette, 27th January [redacted])

SUMMARY OF ALLEGATIONS

He is allegedly involved in case FIR No. 59, dated 23.04.2014 U/S 302/324/148/147 PPC Police Station Akbarpura District Nowshera.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Mr. Javed Iqbal Khan Acting Deputy Superintendent of Police, Elite Force Headquarters is appointed as Enquiry Officer.

3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.

4. The accused shall join the proceedings on the date, time, and place fixed by the Enquiry Officer.


(SAJID KHAN MOMAND)
Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar.

No. 5413-17 /EF, dated Peshawar the 02/05/2014.

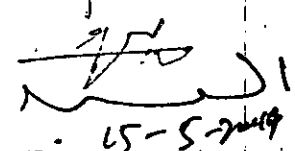
Copy of the above is forwarded to the:-

1. Acting Deputy Superintendent of Police, Elite Force Headquarters.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
4. SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
5. FC Waqar No. 679, of Elite through reader A/DSP Elite Force HQrs.


(SAJID KHAN MOMAND)
Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar

میں نے اپنا چار منٹ بعد صبری الیکٹر
وصول کیا


45-5-2014

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IN THE COURT OF ABDUL JABBAR KHAN,
ADDITIONAL SESSIONS JUDGE-III, NOWSHERA

Sessions Case No. 627 of the year 2014

- Date of Institution..... 09.06.2014
- Date of Decision07.03.2016

STATE through Ibn-e-Amin son of Rafiq
Muhammad resident of Zakhai Qabristan
Akbarpura, District Nowshera...
(Complainant)

VERSUS

- 1) Waqar,
- 2) Mukhtiar sons of Yar Muhammad,
- 3) Aizaz son of Mukhtiar residents of Zakhai
Qabristan Akbarpura, District Nowshera
..... (Accused facing
trial).

- i) Mukhtaj,
- ii) Shafique sons of Yar Muhammad
residents of Zakhai Qabristan
District Nowshera.
.....(Absconding co-accused).

Charged under Sections 302/324/148/149 PPC, vide case FIR No.59, dated
23.04.2014, registered at Police Station Akbarpura District Nowshera.

JUDGMENT
07.03.2016

Accused named above, charged in the captioned case, are
facing trial before this Court.

2. Brief but relevant facts of the case as per contents of FIR, are
that on 23.04.2014 at 19.45, the then complainant injured namely Ibn-e-Amin
in injured condition reported the matter to the local police at Casualty Civil
Hospital Pabli, to the effect that on the day of occurrence he along with his
son Sadiq Amin (deceased), were walking on road near gate, when he had to the
place of occurrence i.e. near Hujra of Babu Salam situated at Akbarpura, the
accused facing trial along with absconding co-accused duly armed, were
already present there, who on seeing them started firing at them with the
intention to commit their Qatl-e-Aml. In the result of firing his son Sadiq

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محمد زاکر بنو

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Amin got hit and died on the spot, while he got seriously injured. The accused after commission of the offence escaped from the spot. Motive behind the occurrence was stated to be previous blood feud. The occurrence was stated to have witnessed by Muhammad Nazir, Muhammad Abbas Khan and other people present there. Hence, the present FIR. Later on the then complainant-injured succumbed to his injuries in LRH, Peshawar.

3. After completion of investigation, complete challan against the accused Waqar and Aizaz, while u/s 512 Cr.P.C against the accused Muhtaj, Rafiq and Mukhtiar, was submitted, which was entrusted to this Court for trial of the accused. Accused Waqar and Aizaz, who were in custody, attended the Court and after complying with provisions of Section 265-C, Cr.P.C, they were formally charged. They pleaded not guilty and claimed trial, while after recording statement SW-1, proceeding u/s 512 Cr.P.C were initiated against the absconding co-accused. Later on during the course of prosecution evidence, accused Mukhtiar was arrested and his supplementary challan was submitted before this court. Accused Mukhtiar, who was in custody, attended the Court and after complying with provisions of Section 265-C, Cr.P.C, he was formally charged on 12.05.2015. He pleaded not guilty and claimed trial.

4. The Prosecution produced 11 PWs, while the rest were given up, being unnecessary, and the evidence was closed. Brief account of the statements so recorded before the Court is as under:

- i) PW-1, Muhammad Abbas, the eyewitness, as per his statement, the deceased Ibn-e-Amin was his step brother, while Sadiq Amin deceased was his step nephew (son of Ibn-e-Amin). Yar Muhammad is his paternal uncle. Accused Mukhtaj and Shafiq (absconding co-accused) and Mukhtiar and Waqar (accused facing trial) are the sons of Yar Muhammad. they are his first cousins, while accused facing trial Aizaz is the son of Mukhtiar; that, they (he and

his deceased brother Ibn-e-Amin) have blood feud enmity with the accused party Mukhtiar etc: that, on the day of occurrence his step brother Ibn-e-Amin and his son Sadiq Amin had gone to Akbarpura on their motorcycle, when they delayed in return, he and his brother Nazir proceeded after them to Akbarpura. When they reached Akbarpura Bazar near Hujra of Babu Salam, in the meanwhile Ibn-e-Amin and Sadiq Amin were coming back to their house on motorcycle: that, there accused Aizaz, Waqar and Mukhtiar facing trial alongwith Shafique and Mukhtaj absconding co-accused were already present duly armed with firearms, they started firing upon Sadiq Amin and Ibn-e-Amin with the intention to commit their murder with their respective weapons: that, with their firing they got hit and fell down from the motorcycle and they entered the Hujra of Babu Salam in order to save their lives but there too they were fired at by the accused. With the firing of the accused Sadiq Amin got hit and died on the spot, whereas Ibn-e-Amin got seriously injured. The accused decamped from the spot after firing. They could not do anything being empty handed. He is the eyewitness of the occurrence. Then they took the deceased Sadiq Amin and Ibn-e-Amin the then injured to Pabbi Hospital, there Ibn-e-Amin was examined by the doctor and in presence of the doctor he reported the matter to the police, which was reduced into writing and he affixed his thumb impression over the same, whereas he verified/endorsed his report and affixed his signature over the same; that, the doctor also gave a certificate upon the report of his deceased brother, the then injured Ibn-e-Amin. His cell phone number was also written on the murasila. He has also identified both the deceased Ibn-e-Amin and Sadiq Amin before the police and doctor in the hospital. The police have prepared the site plan at his instance as well as of Nazir. He charged all the accused for the murder of Ibn-e-Amin and Sadiq Amin.

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- ii) PW-2, Muhammad Israr, is the marginal witness to the recovery memo Ex.PW2/1, vide which the IO recovered and took into possession bloodstained earth from the point of deceased Ibn-e-Amin on the spot and sealed the same into parcel No.1 by affixing 3 seal monograms of S.M upon the same. The said bloodstained earth is Ex.P-1. He is also marginal witness to the recovery memo Ex.PW2/2, vide which the IO of the instant case recovered and took into possession bloodstained earth Ex.P-2 from the point of deceased Sadiq Amin on the spot and sealed the same into parcel No.2 by

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affixing 3 seal monograms of S.M upon the same. Similarly, he is also marginal witness to the recovery memo Ex.PW2/3, vide which the IO recovered and took into possession in scattered condition 3 empties of 222 bore and 9 empties of 7.62 bore and sealed the same into parcel No.3 by affixing 3 seal monograms of S.M upon the same. He is also marginal witness to the recovery memo Ex.PW2/4, vide which the IO in his presence took into possession bloodstained garments of deceased Sadiq Amin Ex.P-3 and sealed the same into parcel No.4 by affixing 3 seal monograms of S.M upon the same. Similarly, the IO took into possession the bloodstained garments of deceased Ibn-e-Amin Ex.P-4 and sealed the same into parcel No.5 by affixing 3 seal monograms of S.M upon the same and prepared recovery memo Ex.PW2/5 in his presence. He is also marginal witness to the recovery memo Ex.PW2/6, vide which, the IO in his presence took into possession one empty of 30 bore from the car bearing registration No.U-3870/Peshawar left by the accused at some distance from the spot and sealed the empty into parcel No.6, by affixing 3 seal monograms of S.M upon the same. Similarly, the IO took into possession one motorcycle 70 Applied For. red in color, in accidental condition Ex.P-5, vide recovery memo Ex.PW2/7 in his presence. His statement was recorded u/s 161 Cr.P.C.

iii) PW-3, Dr. Saifullah Khan Khalil, as per his statement on 23.04.2014 at 09:10 pm, he conducted PM examination of deceased Ibn-e-Amin son of Rafique Muhammad, resident of Albarpura aged about 45/46 years, and found the following:-

Injuries:

1. A single firearm entry wound 1 x 1 cm on right interior flank with exit wound 3 x 3 cm on left side of lower back just lateral to the lumbar spine.
2. A Single firearm entry wound 1 x 1 cm on lateral side of left buttock with exit wound 2 x 4 cm on upper medial side of left buttock.
3. A Single firearm entry wound 1 x 1 cm on left upper quadrant (left hypochondrium) with exit wound 2 x 2 cm on right side of upper back.
4. One through and through firearm wound with entry wound 1 x 1.5 cm in epigastria region with exit wound 2 x 1 cm on upper middle back.
5. One through and through firearm wound with entry wound on right lumbar region with exit on right side of back.

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Cranium and spinal cord.

Intact.

Thorax.

Intact.

Abdomen.

Walls, peritoneum damaged. Stomach and its contents injured containing semi solid food particles. Small and large intestines injured. spleen damaged, right kidney damaged, bladder injured.

Muscles, bones and joints.

Pelvic bone fractured.

Remarks.

In my opinion the death of a person due to injury to the vital organs (spleen, right kidney and intestines) as a result of firearm injury. PM report alongwith dead body and clothes handed over to policeman.

Probable time between injury and death...1 to 2 hours.

Probable time between death and PM examination..30 to 60 minutes.

His report is Ex.PM consisting of 6 sheets including pictorial. He has also endorsed the injury sheet and the inquest report of deceased Ibn-e-Amin.

iv).

PW-4, Dr. Jamshed Qadir, as per his statement on 23.04.2014 at 07.50 pm he examined the injured Ibne Amin-the then complainant, who was produced to him by the Police. His findings are as under:

On examination:

Multiple firearm injuries on body. The patient very serious, referred to Casualty IRII. The said report is Ex.PW4/1.

In his presence, the said injured Ibne Amin reported the matter to Police in casualty and he endorsed the said report. His endorsement upon the marasila report of the injured is as under:

"Attested patient was alive and conscious."

His endorsement is Ex.PW4/2.

Similarly, on 23.04.2014, at 08.00 pm he conducted postmortem of deceased Sadiq Amin son of Ibne Amin and observed the following injuries:

Injuries:

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1. A single firearm entry wound in right side occipital region 1/2 cm circular with an exit wound 1- 1/2 cm irregular in left temporal region.
2. A single firearm entry wound 1/2 cm circular in posterior surface of lower thigh with exit wound 1- 1/2 cm irregular in shape in medial side of upper right thigh.
3. A tearing wound in thinner muscle of left hand with bleeding.

Cranium and Spinal Cord:

Damaged skull, bones and brain matter and vessels.

Thorax:

Intact.

Abdomen:

Stomach and its contents semi solid food.

Muscles, Bones, Joints:

Skull bones and joints, thigh muscles and thinner muscles of left hand damaged.

Remarks:

In my opinion, the death of the person is due to firearm injuries to vital organs brain and blood vessels.

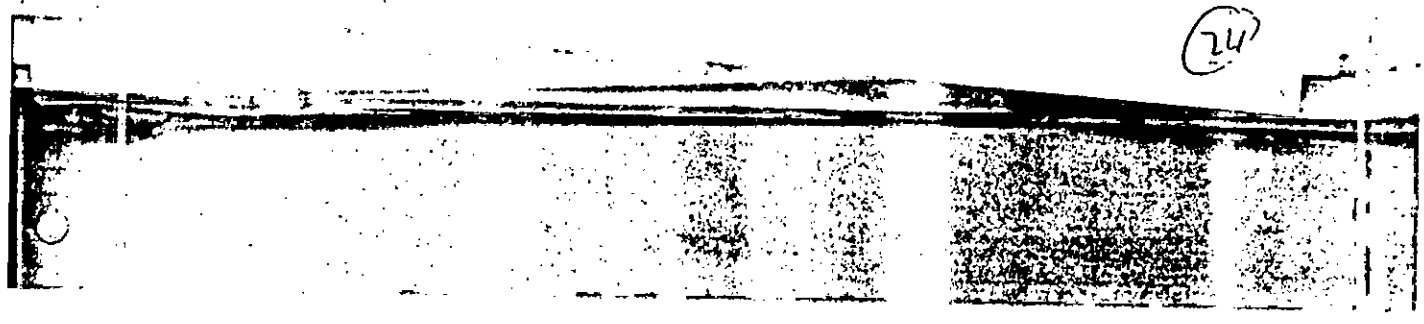
Probable that elapsed:

- a. Between injury and death... Instantaneously.
- b. Between death and Postmortem... 50 minutes to 1 hour.

This report is Ex.PM. He has also endorsed the inquest report of deceased Sadiq Amin and his injury sheet.

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 M. Amin
 S. Amin

v) PW-5, Karim Dad Khan SI, Incharge Casualty Civil Hospital Pabbi. As per his statement on 23.04.2014, at 19.45 hours, the deceased then injured Ibne Amin and deceased Sadiq Amin were brought by relatives to the Casualty Civil Hospital, Pabbi, where the injured Ibne Amin reported the matter to him that was reduced into the shape of murasila Ex.PA/I by him. The contents whereof were read over to him and after accepting the same to be correct, he thumb impressed his report: that, his report was verified by Muhammad Abbas by affixing his signature upon the same. In his presence, the doctor gave his certificate regarding conscious of patient Ibne Amin



upon the murasila. He also prepared injury sheet of deceased then injured Ibne Amin which is Ex.PW5/1. Similarly, he prepared the inquest report of deceased Sadiq Amin son of Ibne Amin resident of Akbarpura. His inquest report is Ex.PW5/2. He also prepared the injury sheet of deceased Sadiq Amin, which is Ex.PW5/3. He also drafted application to the doctor for conducting postmortem of deceased Sadiq Amin, which is Ex.PW5/4. Then the injured Ibne Amin who was referred to ERH was brought back to the hospital as dead, so he prepared his inquest report Ex.PW5/5 and also prepared his injury sheet and application to the doctor for conducting postmortem, which are Ex.PW5/6 and Ex.PW5/7 respectively. He also informed the Muharrir of Police Station Akbarpura through phone regarding the death of injured Ibne Amin on 21.00 hours. Both the deceased were produced before the respective Doctors alongwith respective documents for postmortem.

- vi) PW-6, Abdur Rauf Inspector, I.O of the case. As per his statement after the registration of the FIR, he visited the spot and prepared the site plan Ex.PB at the instance and pointation of eyewitnesses; that, he recovered and took into possession blood stained earth from the point of deceased Ibn-e-Amin vide recovery memo Ex.PW21 and sealed the same into parcel No.1 in presence of the marginal witnesses; that, he recovered and took into possession the bloodstained earth from the point of deceased Sadiq Amin vide recovery memo Ex.P2 and sealed the same into parcel No.2. Similarly, he recovered and took into possession three empties of 222 bore and nine empties of 7.62 bore Ex.P-6, from the spot vide recovery memo Ex.PW23 and sealed the same into parcel No.4; that, before sealing the same, he affixed his signatures on the empties with pointed object. Similarly, he received and took into possession bloodstained garments of deceased Sadiq Amin Ex.P-3 and sealed the same into parcel No.4; that, he prepared the recovery memo to that effect i.e Ex.PW24. Similarly, he received and took into possession bloodstained garments of deceased Ibn-e-Amin Ex.P-4, sent by the doctor and sealed the same into parcel No.5 in presence of the marginal witnesses vide recovery memo Ex.PW25; that, he recovered one empty of .30 bore Ex.P-7 from the seat of motorcar bearing registration No. U-3870.Peshawar Ex.P-8 of accused party parked at some distance from the spot of occurrence and to that effect he

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prepared the recovery memo Ex.PW2/6 in presence of the marginal witnesses; that, he recovered and took into possession motorcycle 70 Applied For. red in color in accidented condition, of the deceased/complainant vide recovery memo already Ex.PW2/7 in presence of the marginal witnesses of the recovery memo; that, he photographed the point where the blood of deceased Sadiq Amin was present. The photograph is Ex.P-9. Similarly, he photographed the point where the blood of deceased, Ibn-e-Amin was present. The photograph is Ex.P-10. He photographed the gate of Hujra of Babu Salam that was having bullet hitting marks. The photographs are three in number and Ex.P-11 to Ex.P-13. He photographed the .30 bore empty lying in the seat of motorcar. The photograph is Ex.P-14. The remaining pictures of motorcycle of the deceased/complainant and motorcar of the accused party were taken by him later-on which are Ex.P-15 to Ex.P-20; that, he vide application Ex.PW6/1 sent the garments of both the deceased alongwith the bloodstained earth of both the deceased, to the FSL for analysis. The FSL report in this respect is Ex.PK. he vide his application Ex.PW6/2, sent the three empties of 222 bore, nine empties of 7.62 bore Ex.P-6 recovered from the spot and one empty of .30 bore Ex.P-7 recovered from the motorcar of accused party to the FSL for safe custody till the recovery of weapon of offence. He searched/raided the house of accused facing trial and absconding co-accused vide search memo Ex.PW6/3 but they were not available. He vide his application Ex.PW6/4 sought information regarding the motorcar of accused party, from ITO Peshawar, KPK. Consequently, the document Ex.PW6/5 was handed over to him by the ITO, Peshawar. According to which the motorcar in question was registered in the name of Ikram Ullah Jan. Vide receipt placed on file as Mark-1 the car in question was purchased by one Qowat Khan, whereas, the son of said Qowat Khan namely Muhammad Kashif sold the car in question vide receipt Mark-2 i.e. the carbon copy of the original. Muhammad Kashif son of said Qowat Khan sold the car in question to one Abid Ali son of Kachkol Khan and ultimately the said Abid Khan sold the car in question to the absconding co-accused Mukhtiar son of Yar Muhammad and to that effect the deed was written, the attested copy of the same is Ex.PW6/6. He recorded statements of the PWs under section 161 Cr.P.C. Vide his applications Ex.PW6/7 and Ex.PW6/8, he applied and obtained warrant under section 204 Cr.P.C against the accused

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facing trial and absconding accused. Accordingly, the said warrants were issued and returned un-executed by the DFC concerned with his reports overleaf as the accused facing trial and absconding co-accused were willfully had gone into hiding and avoiding their lawful arrest. He placed on file the warrants so issued by the Judicial Magistrate. He also placed on file the statement of DFC Hamid Ali recorded before the Court of Judicial Magistrate i.e Ex.PW6/8. Thereafter he vide his application Ex.PW6/9 applied to the court of Judicial Magistrate for issuance of proclamation notices against the accused facing trial and absconding co-accused which were accordingly issued by the Court of JM and were also returned by the DFC concerned and he placed the said notices having reports of the DFC overleaf, on the case file. He also placed on file the PM reports of both the deceased alongwith inquest reports and injury sheets of both the deceased. He applied to Patwari Halqa vide his application Ex.PW6/10 for obtaining information regarding the immovable property in the name of absconding co-accused accused. The report whereon is Ex.PW6/11. He placed on file the list of legal heirs of both the deceased i.e Ex.PW6/12. He issued the card of arrest of the accused facing trial i.e Ex.PW6/13. He also placed on file DD No.22 dated 23.04.2014 Ex.PW6/14. Then the BBA of the accused facing trial was recalled and they were interrogated by him. He produced both the accused facing trial before the Court of Judicial Magistrate, Howshera for obtaining police custody vide his application Ex.PW6/15. Consequently, two days physical custody was granted. During interrogation both the accused facing trial confessed their guilt before him and willfully led the police party to the place of occurrence and pointed out the spot of occurrence correctly. He prepared pointation memo to that effect i.e Ex.PW6/16 duly signed by him and the marginal witnesses. On 27.05.2014, he vide application Ex.PW6/17 produced both the accused facing trial before the Judicial Magistrate, for recording their confessional statement under section 164/364 Cr.P.C to which they refused and were sent to Judicial Lock-up. He also applied for initiating departmental legal action against the accused Mukhtiar the then absconding accused vide his application Ex.PW6/18. Similarly, he also applied for initiating department legal action and for the arrest of accused Waqar vide his application Ex.PW6/19. He recorded statements of PWs under section 161

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Cr.P.C. After completion of the investigation he handed over the case file to the SHO concerned for onward submission.

- vii) PW-7, Istikhar Ali No.19/HC, who on the receipt of murasila sent by Karim Dad Khan ASI from Civil Hospital, Pabbi through Constable Siraj No.03, registered the FIR Ex.PA by incorporating the contents of murasila into the FIR.
- viii) PW-8, Abdul Wali Khan SI, who conducted partial investigation after arrest of the accused Mukhtiar. He vide his application Ex.Pw8/1, produced him before the Illaqa magistrate for obtaining physical custody which was allowed for two days. He interrogated the accused and during the interrogation the accused led the police party to the place of occurrence and correctly pointed out his place and the places of his companions at the time of occurrence. After expiry of the physical custody, he vide his application Ex.PW8/3, produced the accused before the Court for recording his confessional statement but he refused to do so and accused was remanded to judicial lock-up. He recorded statements of PWs and accused under section 161 Cr.P.C and after completion of the investigation he handed over the case file to the SHO concerned for onward submission.
- ix) PW-9, Akhtar Naseer SI/SHO, who has arrested the accused Mukhtiar, who was absconder in the instant case and issued his card of arrest Ex.PW9/1. At the time of his arrest he was armed with one Kalashnikov Learning No. A037600 loaded with fifteen live rounds of the same bore without license regarding which he registered separate FIR No 50 dated 07.04.2015 under section 15 A.A at Police Station Akbarpura. The copy of the murasila is Ex.PW9/2. To this effect he made his returned report reduced into DD No.20 dated 07.04.2015 at Police Station Akbarpura is placed on file. After the completion of investigation, the case file was given to him wherein he had submitted supplementary challan against the accused Mukhtiar. The challan form is Ex.PW9/3.
- x) PW-10, Irshad Ahmad SHO, who submitted interim challan in the instant case against all the accused which is Ex.PW10/1. Similarly, he also submitted challan in the instant case against all the accused for proceedings under section 512 Cr.P.C which is Ex.PW10/2. He also submitted supplementary challan against the accused facing trial Waqar Ahmad and Aizaz, which is Ex.PW10/3.

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41

xi) PW-11, Hamid Ali DFC No.232, who was entrusted with the warrants of arrest u/s 204 Cr.PC against the accused namely Waqar, Mukhtiar and Aizaz, in the present case and after completion of all the legal formalities he returned the warrants as un-executed with his report. The warrants are Ex.PW11/1 to Ex.PW11/3, whereas his reports on its back are Ex.PW11/4 to Ex.PW11/6. Similarly, he was also entrusted with proclamation notice u/s 87 Cr.PC issued against the said accused and after fulfilling all the legal formalities he returned one copy of each proclamation notice to the Court, which are Ex.PW11/7 to Ex.PW11/9, whereas his reports overleaf thereon are Ex.PW11/10 to Ex.PW11/12.

5. After close of prosecution evidence, accused facing trial were examined under Section 342 Cr.P.C, wherein they denied the charges, claimed innocence, contended false implication; however, neither opted to examine on Oath, nor wished to produce evidence in defence.

6. The learned APP for the State assisted by private counsel for the complainant submitted that it is a dying declaration case, wherein the complainant has directly charged the accused facing trial alongwith absconding co-accused in properly lodged FIR for the offence by the heinous in nature; that, it is a daylight occurrence and both the parties are relatives as well as co-villagers, therefore, there is no chance of misidentification of the accused; that the ocular account, circumstantial evidence and medical evidence fully supports the prosecution case; that, the testimony of the PWs have not been shattered during cross examination and the prosecution has proved the case against the accused facing trial through cogent, strong, reliable, confidence inspiring, impartial and convincing evidence, hence, requested for punishment of the accused.

7. Learned defense counsel rejected these arguments and submitted that the prosecution case is full of doubts, infirmities and irregularities. He argued that it is a case of no evidence; that no independent

eyewitness of the occurrence has been named in the FIR; that there are major contradictions amongst the statements of material prosecution witnesses and they are not unanimous in their statements at all; that, the medical evidence is totally in conflict with the prosecution story; that, the alleged motive behind the occurrence has not been proved on record; that, in such a situation when a person sustained serious injuries on vital part of the body, he cannot be able to talk and the alleged dying declaration is the result of joining hands of the doctor as well as local police with the complainant party; that, the prosecution has badly failed to bring home guilt to the accused facing trial, therefore, requested for acquittal of the accused facing trial.

8. Arguments heard and record gone through.

9. It is cardinal principle of administration of criminal justice that the prosecution is bound to prove its case beyond any shadow of doubt. If any reasonable doubt is created in the case, the benefit whereof must be extended to the accused not as a matter of grace or concession, but as a matter of right. Likewise, it is also known principle of criminal justice that the existence of even single doubt in the prosecution case, pricking the judicial mind, is sufficient for acquittal of the accused.

10. The prosecution's case is mainly based on the dying declaration of deceased Ibni-eAmin, the ocular account of Muhammad Abbas PW-1, the testimony of Doctor Saifullah Khan Khalil, PW-3 and Dr. Jamshed Qadir, PW-4 and lastly, the testimony of Abulur Rauf Inspector, the Investigation Officer of the case, PW-6.

DYING DECLARATION OF DECEASED IBN-E-AMIN, COMPLAINANT OF THE CASE.

11. As per murasila Ex.PA/1 then injured (now decd) Ibn-e-Amin, in full senses at DHQ Hospital, Nowshera, reported that on 23.04.2014 at 18.50 hours he alongwith his son Sadiq Amin, were riding on his motorcycle. When they reached the Hujra of Babu Salam at Akbarpura, the accused facing trial, Muhtaj, Aizaz, Waqar along with absconding co-accused Mukhtiar and Shaleeq, were duly armed and already present at the place of occurrence. When the complainant and his son reached the spot, all the accused mentioned above, started firing at them. The firing of the accused resulted in the death of son of the complainant Sadiq Amin, whereas the complainant sustained multiple firearm injuries. Previous blood feud is mentioned as motive behind the occurrence in the report, whereas Muhammad Nazir and Muhammad Abbas beside other people around, at the relevant time, are mentioned as eyewitnesses of the occurrence. The record is evident that the report of Ibn-e-Amin, the deceased complainant, was verified by Muhammad Abbas, whereas it has also been attested by Dr. Jamshed Qadir, PW-4 with the remarks that the patient was alive and conscious at the time of report. This attestation of PW-4 has established the fact that Dr. Jamshed Qadir was on duty at the relevant time and attended the patient during the discharge of his official duty.

12. Learned defence counsel has strongly assailed the validity and admissibility of the dying declaration on various legal and factual grounds. The learned defence counsel argued that since dying declaration is the weakest type of evidence, therefore, it requires strong corroborative evidence for its support. In this behalf the learned defence counsel relied on the judgment of their lordship reported in P.D 2012 Peshawar 1, wherein the essential conditions have been given, those must be fulfilled before the dying declaration is believed to true and made basis for conviction of the

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accused. The conditions mentioned in the judgment of their Lordship are as follows:-

1. That the dying man was in full senses, conscious and alert to the surrounding, was fully oriented in space and time and was able to make coherent speech.
2. That the dying declaration otherwise rings true and a sound in substance to be relied upon.
3. That it is free from promptness given by the outside water.
4. That the victim and dying man in position to identify his culprit and the doctor present at the occasion shall give a fitness certificate about the condition of the dying man.

13. The attestation of PW-1 with regard to the fact that the patient is alive and conscious is an important piece of corroborative evidence in support of dying declaration in question. PW-1 in his statement has further endorsed and reiterated his attestation and stated that the complainant at the time of reporting was conscious, oriented enough, in time and space and he could narrate in detail the occurrence. PW-1 has been cross examined at length with regard to his attestation and fitness of the complainant by the defence counsel, but his testimony could not be shattered even after lengthy and probing questions. The statement of PW-1 in support of the dying declaration is significant corroborative evidence. Secondly, the authenticity of the dying declaration is also supported by the evidence of Pw-1 Muhammad Abbas, who is one of the eyewitnesses of the occurrence. As stated above Muhammad Abbas verified the report of the complainant. PW-1 was present with the complainant when he was making dying declaration. PW-1 has narrated each and every detail of the occurrence in the same manner and mode, which is reported by the complainant in his report. Surprisingly PW-1 has not been probed and cross examined regarding the report/dying declaration of the complainant as he should have been. No

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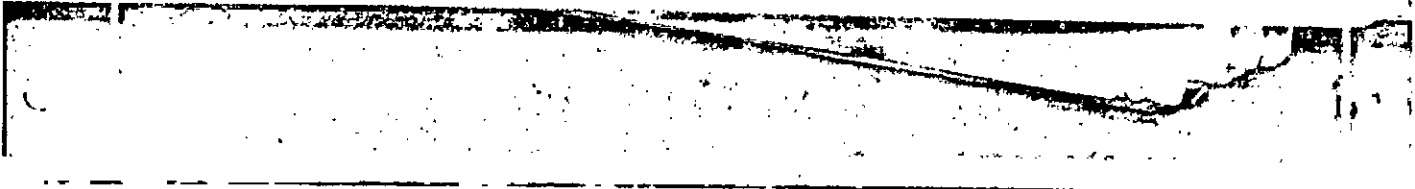
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cogent and material question has been put to PW-1 regarding the circumstances prevalent at the time of lodging the report by the complainant, the physical condition of the complainant at the relevant time and the activities and functions performed by PW-1, while he was endorsing and attesting the report/murasila Ex.PA/1. In my considered opinion the dying declaration of the deceased complainant is the true account of the facts what he narrated in the report. It is supported and corroborated by the testimonies of PW-1 & PW-4. There is no cogent evidence on record that the complainant had substituted the accused facing trail for someone else. There is no question on misidentification and false implication because both the parties are engaged in active blood feud. In this view of the matter it can be easily concluded that the dying declaration is proved beyond any shadow of doubt.

THE OCULAR EVIDENCE

14. The prosecution produced Muhammad Abbas as one of the eyewitness of the occurrence, although as per report the occurrence was also witnessed by Muhammad Nazir as well, but the prosecution only opted to produce Muhammad Abbas. Learned defence counsel argued that since the prosecution has held back their best evidence in the form of second eyewitness Muhammad Nazir, therefore, the court is bound to take negative inference of this act, under Article 129-G of the Qanoon-e-Shahdat. Secondly, he also argued that Muhammad Abbas is the step brother of deceased Ibn-e-Amin whereas Muhammad Nazir is his distant relative, therefore, the prosecution apprehended that the second eyewitness might speak the truth and ruin their case; hence deliberate omission. These arguments of the learned counsel are baseless because the law has always favoured the quality of evidence and not the quantity. Furthermore, it is a popular and consistent view of the Hon'ble Superior Courts, that conviction of an accused can be

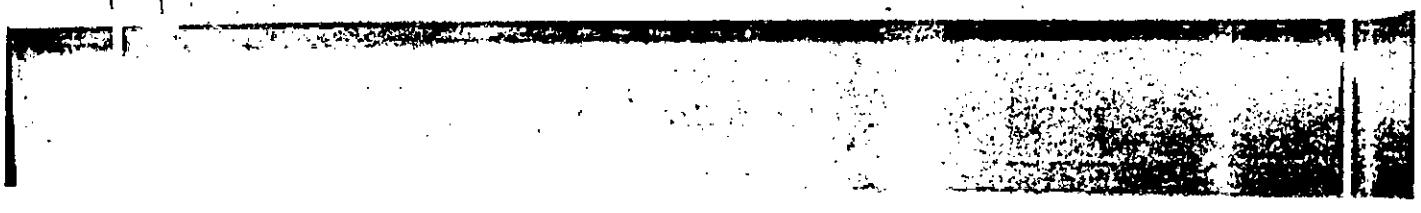
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based even on solid and substantive statement of a single eyewitness, if the same is supported and corroborated by other material available on file; hence, no negative inference can be drawn from the omission of the prosecution complainant to produce Muhammad Nazir, the other witness. Moreover the relationship of PW-1 is no draw back in the prosecution case because the defence has not proved any malafide on the part of the witness. Mere close relationship would not take away the credibility of the witness. Last but not the least in our society only the relatives would testify in their own case and the outsiders most of the time do not involve themselves in such affairs of others.

15. Secondly, the defence counsel has strongly assailed the status of Muhammad Abbas as eyewitness in the present case, and has termed him as chance witness who was introduced later on. He further argued that the prosecution has not been able to explain the fact that how PW-1 Muhammad Abbas and the other eyewitnesses knew the exact location of the occurrence and the thoroughfare on which the complainant and his son were coming. He further argued that it has not been explained by the prosecution that being relative of the complainant why did the accused party spare the eyewitnesses though they were at close proximity and completely at their mercy.

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16. These arguments of the learned counsel have been fully answered with convincing and solid reasons by the prosecution on the strength of the statement of their witnesses and the record available on file. PW-1 has been probed and cross examined at considerable length. In his cross examination PW-1 has successfully defended his narration of facts as stated in his examination in chief. PW-1 stated that before going to the place of occurrence, he went to the house of the complainant and asked his wife



about whereabouts of the complainant. He was informed by the complainant's wife that her husband (complainant) and her son (Sadiq Amin deceased) had left their house for some work. PW-1 after getting this information went after the complainant and his son. When he reached the spot of occurrence he saw the accused party firing upon the complainant. During the whole cross examination no specific, cogent and material question has been put to PW-1 that how did he know the exact thoroughfare whereupon the complainant and his son, were coming. Similarly, the defence side also failed to bring on record that beside the thoroughfare in question there are other thoroughfares which could have been used by the complainant and his son in returning to their house. The statement of PW-1 proved that the thoroughfare in question is the only way and the complainant and his son were supposed to return to their house, therefore, logically PW-1 and the other eye witness had to go after them where they witnessed the occurrence. Furthermore, the question that why the eyewitnesses were spared by the accused side, can also be justifiably answered by the facts and circumstances of the case. It is a common knowledge that when a determined enemy is waiting and focused on killing his rival, he is always oblivious of his surroundings. The fact that the accused did not see the eyewitnesses in their surroundings, is also true because they were more focused on firing and killing their main enemy, rather than observing the other people around. The presence of other people alongwith eyewitnesses is also reported by the complainant. It implies that the accused had not observed the eyewitnesses among the other people around; hence, the eyewitnesses were not fired at and got escaped. More importantly there is no specific or cogent question put to the eyewitness regarding the fact that whether or not they have been observed and seen by the accused side,

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therefore, whatever has been stated by the PW-1 is proved and un rebutted. The learned defence counsel also alleged that the eyewitness Abbas belongs to a different village but there is nothing brought on record to show that PW-1 Abbas was a stranger and not a local resident. The admitted close relationship also belies this argument of the defence counsel. If the close relationship is admitted then how can the place of his residence be different? The learned counsel cannot blow hot and cold in the same breath.

17. Furthermore, the testimony of PW-1 is in complete consonance with the medical evidence of PW-3 and PW-4 and the Investigation conducted by the I.O PW-6. The learned defence counsel alleges that as per report and statement of PW-1, the complainant and his son were hit by the fire shots; resultantly, they fell down from the motorcycle and went inside the Hujra of Babu Sanan, where again they were fired at and done to death. However, as per the investigation no trail of blood is found by the I.O despite the fact that both the victims had to run 17/18 paces from the place where they first fell from the motorcycle. Similarly, with regard to the bullet marks, learned counsel for the defence raised many objections and argued that the IO has not reported any bullet marks inside the hujra where the complainant was injured and his son breathe his last.

18. The absence of trail of blood from the place where the victims received the injuries, to the place where they were done to death is understandable because the fact and circumstances of the case suggest that when the victims were hit by the firing of the accused, they fell down and instinctively rushed inside the Hujra of Babu Salam for refuge. The hitting and running for 17/18 paces, was a matter of seconds. It is a common knowledge that when a person is hit by a fire, shot his body would instinctively react to the situation more than it would in a normal

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circumstance. Keeping in view this natural phenomenon it is my considered opinion that the victims had covered the distance of 17/18 paces in a matter of seconds and I do not feel the need to emphasis that the injuries sustained by them naturally needed time to bleed. It is for this reason that the IO had not recovered the blood trail and had only recovered the blood from final destination of the complainant and his son.

19. The statement of PW-1 is also in total conformity with the medical evidence of PW-3 & PW-4. As per post mortem report Ex.PM, the deceased Sadiq Amin received three firearm injuries on his left hand and right thigh, whereas complainant Ibn-e-Amin received five firearm injuries, one on his lower back, left buttock left side of abdomen, upper middle back and right lumber region. To better understand the seats of injuries of the victims/deceased it must be seen in juxtaposition with the site plan and testimony of PW-1. As per site plan both the deceased/victims were moving from south to north. They were confronted and fired at by the accused. In case of Sadiq Amin (deceased) he received the entry wound on his left side, as a result he reared and turned his back towards the accused side and started running inside the Hujra of Babul Adam. He also received an inlet firearm wound on his right thigh as well as a shot on occipital area of his head during the course of his running, which proved fatal which made him fall to the ground inside the Hujra. In case of deceased Ibn-e-Amin, he also received the initial injury on his left side and while running towards the Hujra, he received fire shots in the back of his body, resultantly he also fell down inside the Hujra. The bullet marks found on the left panel of the main gate of the Hujra further corroborate and confirm the fact that the firing was made in the manner and more narrated by the complainant, reiterated by PW-1 and proved by the spot inspection of the I.O during the course of his

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investigation. The IO has also captured photographs of blood of deceased Sadiq Amin and injured Ibne Amin inside the Hujra of Babu Salam. The scratches on the fuel tank of the Motorcycle as shown in the photograph Ex.P-16 further corroborates and confirms the fact that the deceased after receiving the initial fire shots, fell down from the motorcycle. The scratches on the fuel tank were the result of their falling down on the ground.

20. The medical evidence discussed above is totally supporting the prosecution case. PW-3 has given the probable time of death as one to two hours in case of deceased Ibn-e-Amin. This fact is yet another stamp on the veracity and truthfulness of the dying declaration. The seats of injuries on the bodies of deceased as per medico legal report are in total conformity with the dying declaration of the complainant as well as that of the eyewitness. Both the Doctors PW-3 & PW-4 are impartial witnesses and nothing has been brought against them. Each part of their affidavits and partiality towards the complainant side. Both the reports have been examined at length but no contradictions and impugmentations can be brought on record, rather both of them have reiterated and established their findings of medico legal reports.

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21. The IO has prepared the site plan at the instance and pointation of the eyewitnesses. He also took into possession bloodstained earth, empties of 222 bore and 7.62 bore, bloodstained garments of both the deceased. He has also recovered an empty of 30 bore from the motorcar of accused parked at a distance and the motorcycle of the complainant. He photographed the place wherefrom the blood of the deceased was recovered and bullet marks of the gate of Hujra abu Salam. PW-6 sent bloodstained garments of deceased, empties of 222 bore 7.62 bore and 30 bore. He also applied to ITO for verification of ownership of the motorcar and reply in

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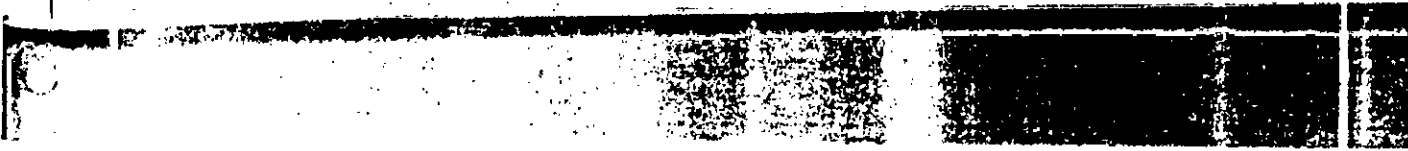
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form of Ex.PW.6/5. During the course of investigation vide various receipts and sale deed the motor in question was found to be the ownership of absconding co-accused Mukhtiar. The evidence of PW-6 was assailed by the defence side on various sides. The learned defence counsel pointed some minor discrepancies in the site plan. He argued that no bullet marks were found inside the Hujra as per site plan. These minor omissions in the site plan would not discredit the otherwise solid and up to the mark investigation of the I.O. The preparation of site plan was the immediate job of the I.O, therefore, the omission to mention only the bullet marks on the gate in the first place is not so serious to disbelieve the whole investigation. The photographs available on file showing the bullet marks are substantive pieces of evidence against the accused facing trial. The defence side has not shattered admissibility of these photographs in the statement of PW-6. Though, the learned defence counsel also objected that the empties were not sent to the FSL for its examination, but the I.O stated that the recovered empties from the place of occurrence were sent to FSL vide application Ex.PW.6/2. The I.O has done his duty by sending the empties to the quarter concerned

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 1. PW-6
 2. PW-6
 3. PW-6
 4. PW-6

22. The main stress of learned defence counsel during the course of the arguments was that the I.O did not investigate the plea of alibi of accused Aizaz and accused Waqar. The defence has taken the plea that on the relevant date and time of occurrence, accused Aizaz was present at his hostel, whereas accused Waqar was performing his duties at Police Station Sro. The learned defence counsel thus concluded that the I.O is guilty of dishonest investigation. But the statement of PW-6 has given all the answers to the accusations of the defence. PW-6 on application Ex.PW.6/D-11 for conducting impartial investigation made by the accused side first visited the

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Forest Department, where he recorded the statement of all concerned in connection with the plea of alibi. At page No.26 of his statement he categorically stated in his cross examination that none of the witnesses deposed before him that they have seen accused Aizaz at the relevant date and time of the occurrence. Similarly, with regard to accused Waqar he visited Police Station Sro and recorded statement of all concerned. He in categorical terms stated that the Daily Diaries of 23.04.2014 are silent about the presence of accused Waqar in the Police Station at the place of his duty.

23. It is important to mention that during the course of proceedings, the defence side submitted application for producing evidence in defence but later on opted against it. In my considered opinion if the accused side had such firm belief in their plea of alibi, then they had the option and opportunity of producing their evidence but their exercise of option of recording statement u/s 312 Cr.P.C instead of producing evidence in defence gives a strong negative inference against their plea of alibi. Similarly, the omission of motorcar in the site plan is also assailed by the defence counsel and has termed it a later introduction and improvement by the I.O. But the matter of fact is that the omission to show the motorcar in the site plan proves the honesty of the I.O because admittedly the site plan is prepared at the instance and pointation of the eyewitnesses. PW-1 has not stated anything regarding the presence of the motorcar parked away from the spot of occurrence. If PW-1 would have mentioned the presence of the motorcar to the I.O and later-on in his statement it would have arisen the eyebrows of a prudent mind because, then PW-1 would have been required to explain that how he saw and recognized the motorcar of the accused. The recovery of motorcar parked at some distance from the place of occurrence is yet another stamp on the fact of presence of the accused on the spot. The

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 District Magistrate
 District Court
 District
 Date

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26. So far as case against the absconding co-accused Mukhtaj and Shafiqe is concerned, sufficient material is available to connect them with the commission of offence, hence they are declared as Proclaimed Offenders. Perpetual warrant of arrest be issued against them and prosecution is directed to enter their names in the list of P.Os.

27. Case property be kept intact till the arrest of P.Os and concluding their trial.

28. Attested copy of this judgment be provided to the convicts free of cost through Superintendent Jail Nowshera in accordance with law forthwith and to this effect the acknowledging thumb impressions/signatures of the convicted accused be obtained in accordance with law. Another copy be sent to the District Public Prosecutor, Nowshera within in the meaning of section 373 Cr.P.C.

File be assigned to the record room after necessary completion and compilation.

ANNOUNCED
07-03-2016

[Signature]
Abdul Jabbar Khan
Additional Sessions Judge-III,
Nowshera

CERTIFICATE

Certified that the this judgment consist of 24 pages, each has been read, checked, signed and corrected by me whenever it was necessary.

[Signature]
Abdul Jabbar Khan
Additional Sessions Judge-III,
Nowshera.

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[Signature]
Nowshera

Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.



o. 5388-95/EF

Dated 21/03/2017.

ORDER

This order will dispose of the departmental proceedings initiated against unstable Waqar Ahmad No. 679 of district Police Nowshera now on deputation to Elite Force Khyber Pakhtunkhwa.

He was involved in case FIR No. 59, dated 23.04.2014 under section 12,324-148,147 PPC Police Station Akbarpura district Nowshera. He was suspended and Charge Sheet & Summary of Allegations were issued to him by this office vide No. 113-17/EF, dated 02.05.2014 and Mr. Javed Iqbal Acting DSP Elite Force Headquarters was appointed as Enquiry Officer. The enquiry officer submitted his findings and recommended his departmental enquiry may be kept pending till the decision of honorable court. A Final Show Cause Notice was issued to him but his reply was found unsatisfactory.

The trial court has recorded conviction order dated 07.03.2016 in the above mentioned criminal case. The Death penalty with fine of Rs. 500000/- has been imposed on accused official.

In view of the conviction order recorded by the trial court, the undersigned sees no other alternative but to dismiss the accused official from service, with immediate effect.

Termination of the proceedings.

(MUHAMMAD HUSSAIN) PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar.

Copy of the above is forwarded to the:-

1. District Police Officer, Nowshera for information.
2. Acting Deputy Superintendent of Police, Elite Force Headquarters.
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Incharge Kot, Elite Force Khyber Pakhtunkhwa Peshawar.
6. OASI/SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
7. FMC, Elite Force Khyber Pakhtunkhwa along with complete departmental enquiry file Encls: (62) pages.

(26)

69

FINAL SHOW CAUSE NOTICE

That, you, Waqar Ahmad Constable No. 679 while posted in Elite Force rendered yourself liable to be proceeded departmentally under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for the commission of misconduct enumerated below:-

That you were directly charged in a murder case vide FIR No. 59, dated 03.04.2014, U/S 302/324/148/147 PPC Police Station Akbarpura, District Nowshera.

That the enquiry proceedings were kept pending till decision of the criminal case.

iii. That eventually the trial court i.e. Additional Sessions Judge-III Nowshera recorded conviction order dated 07.03.2016 wherein you were awarded punishment of death and fine of Rs. 5,00,000/-

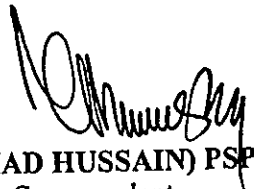
iv. That you are presently under going the above mentioned sentence awarded to you by the competent court on charges of murder.

2. That the charges of murder have proved against you and the competent court has awarded punishment to you for the said offence. The judgment of the trial court is sufficient proof that you committed the murder, therefore, it has been decided to impose major penalty on you.

3. That the proved charges of murder amount to commission of misconduct on your part which is prejudicial to good order and service discipline.

4. You are, therefore, called upon to show cause as to why you should not be death strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.

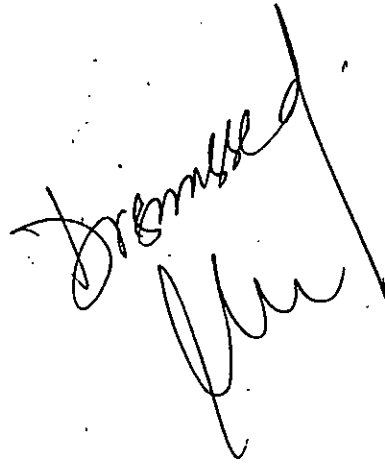
5. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex-parte action shall be taken against you.



(MUHAMMAD HUSSAIN) PSP
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. 3171 /EF, dated Peshawar the 15/02/2017.

Constable Waqar Ahmad No. 679 of Elite Force through Acting DSP/Headquarters Elite Force Peshawar.



RK

جواب عالی۔ بحوالہ شوکارا نوٹس نمبری 31 71 مجاریہ ڈپٹی
15. 2. 2017

ریمانڈنٹ ایلیٹ فورس انچارج KPK

معروض خدمت ہوگم من وقار احمد کو میرے مخالفین
نے گناہ بحوالہ مقدم عدت 59 مورخ 23/4/2014
تھانہ ابرہہ پور ضلع نوشہرہ میں گناہ علوت مرتے
302 / 148 مورخ 23/4/2014
324 / 149
PPC
ملی عدالت سے سزا یاب کروایا ہے۔ جو میں نے اس حکم
کے خلاف بالا عدالت حاکم کورٹ انچارج میں اپیل کی ہے۔
جو مورخ 23/4/2017 تاریخ مرتے۔ جواب معروض خدمت ہے۔

وقار احمد 679/FC ایلیٹ فورس



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KPK انچارج

18/2 مورخ 2017

L.T.I. ATTESTED

Handwritten signature of the Assistant Superintendent.

ASSISTANT SUPERINTENDENT
CENTRAL PRISON HARIPUR

انٹوائٹری رپورٹ

جناب عالی

انٹوائٹری میں صرف کنسٹیشن وقار الملک 679 صرف سے حضرت مولانا

مذکورہ کنسٹیشن پر مقدمہ عدالت 59 مورخ 23/4/14

کتابت کی ہے اور اس کے تحت سے متعلق دعویٰ جاری ہو کر انفارمیشن رپورٹ

میں درج ہے انھاری سٹیمپنگ ایسٹو جو الہ آباد میں 5406-12/EF کو سٹیمپنگ

ایسٹو جاری ہے سٹیمپنگ ایسٹو

مذکورہ درجہ جاری ہے سٹیمپنگ ایسٹو جو اب جاری ہے سٹیمپنگ ایسٹو سے ایسٹو
الو مقدمہ مذکورہ سے ہے گناہ بیان کیا۔

اس سلسلہ میں مذکورہ انٹوائٹری ہو کر ایسٹو نورس بلڈنگ نمبر 19

کتابت کی ہے اس سے 3984 سے بیانات قلمبند ہوئے جنہوں نے اپنے اپنے بیانات میں

بیان کیا ہے کہ مذکورہ کنسٹیشن جو الہ آباد 20 وقت 1320 بجے روزنامہ 22/4 کو

ایسٹو (مذکورہ) سے دریافت کیا گیا اور مورخ 23/4 کو دریافت کیا گیا

درخواست رضعت - روزنامہ والی لفظوں سے نقلات اور ڈیڑھ بجے لفظوں سے

کہ بیان کر لے انٹوائٹری ہے

جہاں تک درمی مقدمہ کا تعلق ہے تو انکی پر خانہ دہانی دستھی کافی ہے

اس سے کوئی لاگت تعلق گواہ بیان دینے کے لئے تیار ہونا ہے

مسلحہ بیانات سے پایا گیا کہ مذکورہ کنسٹیشن وقت وقوع سے اپنے

پر موجود تھا مذکورہ جو الہ آباد 18 روزنامہ 24/4 کو ایسٹو لفظوں سے

(u)

مذکورہ سے مذکورہ کی BBA کونفرم نہ ہونے پر جوڈیشل ایبائنڈری میں
جوئے مذکورہ کے خلاف مقدمہ عدالت میں زبردستی ہے

لٹریا تا فیصلہ عدالت انوائٹری کو سرٹیفکیٹ رکھنے کی سہولت
پہ انوائٹری رپورٹ تیار ہے

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Yu.
24/7/14

بیان ازالہ اسین الحق 244
HC

نے پوری صفحہ بیان کیا کہ میں جسٹس انجارجا پریڈن نمبر 19 ص 151
 سرکاری سے لفظات تھا۔ مورخہ $23/4$ کو اس میں رضعت پر کسٹڈ
 ضابطہ 4054 - وقار 679 - انعام 180 - الطمان 4001 کو 23/4
 منظور شدہ رضعت پر کسٹڈ ہے۔ مورخہ $23/4$ کو 23/4
 مذکورہ بالا کسٹڈ رضعت سے دلیلی امر برائے در 10
 روزانہ $23/4$ کو تھا، سرواٹے میں دلیلی امر برائے در 10 روزانہ
 کسٹڈ وقار 679 دربار کا وقت تھا، بنیادی طور پر دربار کا تھا تاہم
 سائڈ گائیڈ لبر میں ہمارے ساتھ موجود ہے۔ مذکورہ کی ڈیوٹی تھا
 کہ اس پر سرجی ہو گیا 12-7 گن پر رات 2 بجے تا 6:00 بجے تک
 ہوئی اس کی ڈیوٹی ہو گئی۔ موجود تھا۔ پھر میں اس کو 10/10
 پر مذکورہ صحت 59 ص 23/4 بحکم 302/324/198/199 HC تھا اس پر
 دیکھو برائے جوئی ہے۔ بوقت وقوع مذکورہ ہمارے ساتھ موجود تھا اس پر

الد
 اسین الحق
 244
 HC

Attested


بیان اذکار کبیر فقیہان فی 2002 میلادی 19

بیان اذکار کبیر فقیہان فی 2002 میلادی 19

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بیان اذکار کبیر فقیہان فی 2002 میلادی 19

Attested

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میں نے یہ بیان کیا کہ میں پندرہ دن سے 19 اگست 1959ء

کو 23 1/2 روزوں میں لکھنؤ میں مقیم رہا اور

حضرت سے والی اگر دربار کا کام چاہتا ہے تو

میں تمہارے میں موجود تھا۔ رات سادھت مذکورہ کا مورخہ

کی قیمت پر تھا۔ اور اس کی ڈیوٹی رات 10:00 تا 6:00

تک کی ہوگی۔ اس کی ڈیوٹی پر موجودی سے صلوات ہو

مذکورہ پر جو اخراجات ہوں گے 59 روزوں کے 23 1/2

روزوں کے 23 1/2 روزوں کے 23 1/2 روزوں کے 23 1/2

میں عبدالرزاق -

ABDUL RAZAQ

عبدالرزاق 3984

Attested

[Signature]

2/3/23
Scan 1/2