


# FORM OF ORDER SHEET

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

**Appeal No.:** 1429/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/07/2023	<p>The appeal of Mr. Alim Zar resubmitted today by Mr. Mushtaq Ahmad Khan Alizai Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>


This is an appeal filed by Mr. Alim Zar today on 05/06/2023 against the order dated 11.09.2020 against which he made/preferred departmental appeal/representation on 27.03.2023 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiencies.

The law under which appeal is filed is not mentioned.

No. 1657/ST,


Dt. 09/06/2023.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.


Mushtaq Ahmad Khan Adv.  
District Court Buner.

Note: Sir

Departmental appeal, though, inadvertently addressed to DEO, is available on Page 61 which is dated 11 <sup>2</sup>/<sub>2023</sub>. Hence service of appeal has been preferred after its maturity and needs to be fixed for hearing.

  
16/6/23

Sir,  
The objection of this office still stands. The reply of the learned counsel for appellant is submitted for appropriate order, please.

  
mv.  
04/07/23

Honible Chairman

Assistant Registrar

The case may be fixed for PH before the Bench and also assign appeal no..

  
mv.  
04/07/23

BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOONKHWA

PESHAWAR.

Service appeal No. 1429 20123

Alim zar Ex PHST.....Appellant

VS

District Education officer and others.....Respondents


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Dated: 05 / 06 / 2023

  
Appellant

Through

  
Mushtaq Ahmad Khan Alizai

Advocate, office district court

Buner. cell No 03469014199

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BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOONKHWA  
PESHAWAR .

Service appeal No. 1429/2023

Alim Zar s/o Ajam khan EX PSHT, r/o village cheena, tehsil Gagra, district Buner.  
.....Appellant

Vs

1. District Education officer (M) Buner .
2. Director E & SE khyber pukhtoonkhwa at Peshawar.
3. Govt of khyber pukhtoonkhwa through secretary E & SE  
khyberpukhtoonkhwa at Peshawar.....Respondents

*u/s 4 Service Tribunal Act 1974*

Service Appeal against the impugned order dated 11/9/2020, whereby the respondent No 1 dismissed the appellant from service on the basis of judgment of the additional session judge dated 7/12/2019 which have now been set aside by the honorable Peshawar high court vide judgment dated 1/2/2023 and have acquitted the appellant from all the charges leveled against him but despite the above his departmental appeal for re instatement was not decided within the statutory period.

The appellant submits as follows:

1. That the appellant was appointed as primary school teacher on 31/5/1995 and was serving in GPS Cheena as primary school head teacher (hereinafter called as PSHT) when he was falsely charged in Case FIR No 1687, dated 21/11/2018, u/s 302/34 PPC, 15 AA and there after he was arrested by the local police and the respondent No 1 suspended him from service on 5/12/2018. (case FIR No 1687 and suspension order attached as an x A).
2. That after full-fledged trial in the above cases the appellant was convicted by the additional session judge Buner vide its order and judgment dated 7/12/2019. (judgments of the additional session judge Buner attached as an x B).
3. That after conviction and sentence of the appellant he was dismissed from service by the respondent No 1 vide order of dismissal dated 11/9/2020. (impugned order of dismissal dated 11/9/2020 attached as an x C).

4. That the appellant preferred criminal appeals No 586 M of 2019 and 588 M of 2019 whereas the complainant side filled a criminal revision No 1 M of 2019 against the aforesaid impugned order and judgment before the honorable Peshawar high court Mingora bench and the above mentioned appeals and revision were decided vide judgment dated 1/2/2023 whereby the appeals of the appellant were accepted and the revision of the complainant side was dismissed and the appellant was acquitted from all the charges leveled against him. (Order and judgments of the Peshawar high court Mingora bench dated 1/2/2023 attached as anx D).
5. That after order of acquittal mentioned in the preceding Para the appellant preferred departmental appeals through proper channel but No heed have been paid to the same till the expiry of the statutory period.(departmental appeals, applications dated 3/2/2023 through proper channel ,appeal dated 11/2/2023 and 27/3/2023 along with courier service receipt attached as anx E,E1 and E2).
6. That the impugned dismissal order is liable to be set aside and the appellant need to be re-instated in service with all back benefits on the following grounds inter alia.

### **Grounds:**

- a. That the impugned dismissal order from service of the appellant dated 11/9/2020 was solely based on the order and judgment of the learned additional session judge/Model criminal court dated 7/12/2019 but the same was set aside by the appellate court and ordered acquittal of the appellant from the charges leveled against him hence the very base of his dismissal has been vanished pursuance to the order and judgment of the appellate court.
- b. That the dismissal of the appellant is not the result of any parallel department proceedings and fact finding inquiry into the allegation against the appellant rather the dismissal of the appellant was ordered after his conviction by the criminal court which conviction order is no more in field due to the order of acquittal of the learned Peshawar high court in its appellate jurisdiction hence the impugned order cannot legally sustain in the facts and circumstances of the case and is illegal, against natural justice and per incurium coram non judice.

- c. That the appellant was serving the department with full zeal and zest to the entire satisfaction of his superiors but he was falsely roped in the aforesaid criminal case and thereafter arrested hence non attending his duties was beyond his power and control as he was behind the bars and later on his false implication in the case was endorsed by the appellate court through its acquittal order.
- d. That the respondent No 1 and 2 has totally ignored the law and rules applicable to the subject matter and have not reinstated the appellant which actions and inactions are not in consonance with the law and natural justice.
- e. That no showcase notices, charge sheet and statement of allegation were issued to the appellant. More over neither any opportunity of personal hearing was given to him nor any inquiry was conducted in the case on which score alone the impugned dismissal order on the allegation against him is illegal and unwarranted under the law.
- f. That the action and inactions of the respondents are violative of the Khyber pukhtoonkhwa Govt servant efficiency and discipline rules 2011 read with amended rules 2021 and constitution of Islamic republic of Pakistan.
- g. That a hasty and arbitrary proceeding were initiated and conducted against the appellant which is a classic example of the Maxim "justice hurried is a justice buried".
- h. That the appellant seeks the permission of this worthy tribunal to relay on additional grounds at the time of arguments.


**Prayer:**

It is therefore kindly prayed that, on acceptance of this appeal the impugned order dated 11/9/2020 of the respondent No 1 may kindly be set aside and the appellant may kindly be re-instated in service with all back benefits.

Any other relief not specifically prayed for and which this worthy tribunal deem fit and appropriate in the facts and circumstances of the instant case may also kindly be granted for the end of justice.

Dated: 05 / 06 / 2023

  
Appellant

Through 

Mushtaq Ahmad Khan Alizai  
Advocate, Office District Court

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**BEFORE THE SERVICE TRIBUNAL KHYBER**  
**PUKHTOONKHWA PESHAWAR**

Service Appeal No.....2023

Alim Zar Ex PHST.....(Appellant)

VS

District Education Officer and others.....(Respondents)

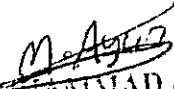
**AFFIDIVET**

I Alim Zar S/O Ajam Khan Appellant, do hereby solemnly affirm and declare on oath that the contents of the instant service appeal is correct to the best of my knowledge and belief & nothing has been concealed from this worthy tribuna.

  
Deponent

CNIC: 15101-0388310-1

MOB: 0331-9696850

  
**MUHAMMAD AYAZ**  
Advocate  
Oath Commissioner  
Distt: Courts Dept for Buner  
No.....Date: 2-6-23



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**BEFORE THE SERVICE TRIBUNAL KHYBER**  
**PUKHTOONKHWAW PESHAWAR**

Service Appeal No.....2023

Alim Zar Ex PHST.....(Appellant)

VS

District Education Officer and others.....(Respondents)

**Addresses of parties**

**PETITIONER**

Alim Zar s/o Ajam Khan EX PSHT, r/o village Cheena, Tehsil Gagra, District Buner.

**RESPONDANTS**

1. District Education officer (M) Buner.
2. Director E & SE Khyber Pukhtoonkhwa at Peshawar
3. Govt of Khyber Pukhtoonkhwa through secretary E & SE Khyber Pukhtoonkhwa at Peshawar.



Appellant

Through



Mushtaq Ahmad Khan Alizai  
Advocate, Office District Court  
Buner. cell No 03469014199.









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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DISTRICT BUNER

SUSPENSION ORDER

The competent authority is pleased to suspend the services of Mr. Alim Zai  
PSHT SPS Cheena w.e.f 21-11-2018, the official concerned is involved in case FIR No. 1687  
Dated 21-11-2018 U/S 302/324 PPC & FIR No. 1689, dated 21/11/2018 u/s 15-AA PS Gagra as  
reported by the District Police Officer Buner vide his Office No. 7154/GB, Dated 26-011-2018.

Necessary entry to this effect should be made in his service book accordingly.

(BAKHT ZADA)  
DISTRICT EDUCATION OFFICER (M)  
BUNER

Endst: No. 1076-80 / Dated. 5/12 /2018.

Copy forwarded for information to the;

1. Superintendent of Police Investigation Buner
2. SHO Gagra Buner.
3. SDEO (Male) Primary Gagra Buner.
4. District Accounts Officer Buner.
5. Official Concerned.

DISTRICT EDUCATION OFFICER (M)  
BUNER

ATTESTED

*(Signature)*

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**IN THE COURT OF KASHIF DILAWAR  
ADDITIONAL SESSIONS JUDGE/JUDGE MODEL CRIMINAL  
TRIAL COURT /IZQ, BUNER.**

Session Case No. 21/7 of 2019

Date of Institution.....22.02.2019  
Date of entrustment to this court.....25.02.2019  
Date of commencement of trial.....18.03.2019  
Date of Decision.....07.12.2019

State through Muhammad Azar s/o Manzar Khan r/o Cheena District  
Buner..... (Complainant)

VS

Alim Zar s/o Ajam Khan r/o Cheena District  
Buner.....(Accused)

Charged in Case F I R No. 1687 Dated 21.11.2018

U/Ss 302/324PPC Police Station Nawagai District Buner.

**JUDGMENT**

1. Through this judgment, case against accused will be disposed of.
2. Prosecution story as unfolded in the FIR is that on the day of occurrence, on receiving information, the local police rushed to emergency room where injured Muhammad Ayaz was lying in unconscious condition and complainant was present with him who reported to police that his brother/deceased (the then injured) and cousin Alim Zar (accused) were present in their Hujra. In the meanwhile, his brother and the accused had exchanged hot words with each other. The accused went to his house situated in courtyard of the said Hujra and from the roof

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AD & S JUDGE  
Model Criminal Trial Court  
Buner

(Page No. 1)

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attested  
Mushtaq Ahmad Khan  
Peshawar at Courts Dagge

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started firing upon his brother with his Kalashnikov in order to commit his Qatl-e-amd. Resultantly, from fire shots of the accused, the complainant escaped unhurt whereas his brother sustained injury on his head. Occurrence was witnessed by one Emad son of the complainant. Motive behind the occurrence was disclosed as to be the strained domestic relations between the parties and sudden exchanged of hot words. Hence, the instant case.

3. Accused was arrested and challan was submitted against him. After observing codal formalities, accused was charge sheeted on 18.03.2019, to which he did not plead guilty and claimed trial. Therefore, in order to substantiate the charge against the accused, the prosecution recorded the statements of PWs with the following resume.

*PW-1 Habib Taj FC stated that he was the marginal witness of the recovery memo vide which the Investigating Officer took into possession the blood stained garments of injured Muhammad Ayaz produced by Muhammad Azar brother of the then injured and sealed them in parcel No.4. He signed the memo along with Sardar Ali, which was ExPw1/1. Similarly, he had also taken the case properties to FSL through receipts No.1230/21 and 1231/21. In this respect, his statement was recorded by the I.O.*

*PW-2 Zahid Mand ASI stated that during those days he was posted in casualty DHQ hospital Daggar. On 21-11-2018, he was present in the casualty, he received information and came to the emergency room where he found the injured Muhammad Ayaz s/o Manzar r/o Cheena, in unconscious condition. Complainant Muhammad Azar, the brother of*

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Mushtaq Ahmad Khan  
 Advocate  
 Courts Daggar



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injured who was also present along with the injured, reported the matter to him, which he reduced in shape of Murasila ExPA. He read over the same to the complainant which he admitted correct and then he obtained his signature on it. He sent Murasila to Police Station through Noorul Basar FC. He also obtained the unconsciousness certificate of the injured which was ExPw2/1. Similarly, he also prepared the injury sheet of the injured which was ExPw2/2 and handed over to doctor concerned.

PW-3 Bahadar Shah stated that during those days he was posted in Police Station Gagra. On 21-11-2018, he arrested the accused Alim Zar and issued his card of arrest ExPw3/1. After completion of investigation, he submitted challan against the accused which was ExPW3/2.

PW-4 Nawab Zaid HC stated that during those days he was posted in police station Gagra. In his presence, the Investigating Officer during spot inspection recovered blood through cotton from the place of deceased during spot inspection and sealed that into parcel No.1. In this respect, Investigating Officer prepared recovery memo ExPW4/1. He signed the memo along with Emad. Similarly, he was also marginal witness to recovery memo ExPw4/2, vide which the Investigating Officer recovered two empty shells of 7.62 and one spent bullet from the place of occurrence and sealed them in parcel No.2. He signed the memo along with Emad. In this respect, his statement was recorded by the I.O. Similarly, he was also marginal witness of pointation memo vide which the accused pointed out his place of presence at the time of occurrence to the Investigating Officer. In this respect, he signed the memo along with Amir Ali FC and accused Alim Zar which was ExPw4/3. In this respect his statement was recorded by the I.O.

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PW-5 Dr. Karimur Rahman CMO DHQ, Hospital Daggar stated that on 21.11.2018 at 04:30 PM, he examined the injured Muhammad Ayaz s/o Manzar r/o Cheena aged about 25/26 years, brought and identified by Muhammad Azar s/o Manzar (brother of the deceased). After examination, he found that there was a fire arm entry wound on left side of head on parietal bone, edges inverted correspondence with exit wound on right side of head on the temporal bone having everted edges brain matter was coming through exit wounds. The patient was in critical/gasping condition. They gave him first aid and then referred the patient to neurosurgical unit LRH, Peshawar for further treatment due to non-availability of neurosurgical department in DHQ, Daggar.

Kinds of injury: *Shajah Damiya*

Weapon used: *Fire Arm*

In this respect, his report was Ex-Pw-5/1. He also gave unconsciousness certificate which was Ex-Pw-5/2.

On 24.11.2018, he received the dead body of Muhammad Ayaz, brought and identified by Irshad s/o Sahib Zar CNIC No. 15101-5824794-9 and Arshad s/o Asghar CNIC No. 15101-2720512-3 r/o Chena along with death summary and treatment documents. He examined the dead body externally and found the following.

A case of FAI on the head having an entry wound on left side of parietal bone about 2-3 cm long, edges inverted correspondence with exit wound on right side of temporal bone about 3-4 cm long having everted edges brain matter was coming through exit wound. There were no charring marks on the entry and exit wounds, which was Ex-Pw-5/3 consisting of 5 pages along with pictorial. He also endorsed inquest report which was Ex-Pw-5/4.

FAI wounds (entry and exit) on the skull as mentioned

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 Advocate High Court  
 Peshawar District Courts Daggar

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previously (one entry and one exit wound on the skull).

Remarks: Fire arm injury on the head (brain).

Cause of death: FAI to brain (brain death/ cardiopulmonary arrest)

**PROBABLE TIME:**

(a) Between injury and death

(b) Between death and post mortem: Given on page NO.1 of post mortem report.

In this respect, his report was Ex-Pw-5/1 which correctly bore his signature. Similarly, he also gave his opinion on consciousness certificate of injured, the then deceased which was Ex-Pw-5/2. Post mortem report consisting upon 5 pages was Ex-Pw-5/3. He also endorsed inquest report Ex-Pw-5/4.

PW-6 Fazal Wahab ASI stated that on 21-11-2018, he received murasila from Zahid Mand Khan ASI through Noor Ul Basar FC, who incorporated its contents into FIR which was Ex-PA/1 which was correct and correctly bore his signature.

PW-7 Amir Nawab MM stated that in the instant case as well in case FIR No. 1689/2018, he handed over two parcels vide Rahdari No. 1230/21, Ex-Pw-7/1 and two parcels along with the other parcels of case FIR No. 1693/2018 vide rahdari No. 1231/21 to Habib Taj for FSL purposes. In this respect, his statement was recorded by the I.O.

PW-8 Imtiaz Ali No. 730 AMHC stated that he was the marginal witness to recovery/pointation memo Ex-Pw-8/1 vide which muharrir of the PS produced parcel No.1 to I.O which was de-sealed before the accused wherein (Kalashnikov along with fix charger containing 20 live rounds 7.62 bore while in bandolier along with extra charger containing 30 live rounds 7.62 bore) which was

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Model Technical Test Centre  
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duly identified by the accused and stated that through which fired on complainant and injured/deceased Muhammad Ayaz. Muhammad Ayaz got hit and injured. In this respect, the I.O prepared the recovery memo/pointation memo and re-sealed it into parcel No.3. He signed the recovery memo along with co-marginal witness Sher Bahadar No. 192 and Rahman Wali No. 730. His statement u/s 161 Cr.P.C was recorded by the I.O.

PW-9 Mian Hussain Shah ASI stated that on 24.11.2018, he was present at the casualty. Meanwhile, dead body of Muhammad Ayaz was brought from LRH Peshawar. He prepared the inquest report Ex-Pw-9/1 and handed over the same along with the dead body and relevant documents of LRH to the concerned doctor for opinion. He handed over the dead body to their relatives through receipt Ex-Pw-9/2.

PW-10 Muhammad Azar s/o Manzhar Khan stated that that on the day of the occurrence, he along with his young brother Muhammad Ayaz (deceased) and cousin Alim Zar (accused) were present in their Dera/Hujra. Meanwhile, hot words were exchanged between Muhammad Ayaz and Alim Zar (accused) on domestic affair. During the exchange of hot words, Alim Zar (accused) went to his house and aimed his pistol on them. Then he started firing on them from the roof of his house with Kalashnikov. As a result, Muhammad Ayaz sustained injuries on head and was seriously injured. His son namely Emad also witnessed the occurrence. Motive was internal domestic affair and timely exchange of hot words. Later on, they took the injured to DHQ Hospital Daggar and gave his statement to Casualty police in shape of Murasila signed by him which was already ExPA. On 24/11/2019, injured Muhammad Ayaz was died in LRH Peshawar. He charged the accused for the murder of his brother Muhammad Ayaz and attempt at his

11/11/18

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Huner at Daggar

Mushiq Ahmad Khan  
Advocate High Court  
Peshawar & Courts Daggar

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life. The Investigating Officer prepared site plan on his pointation as well as on the pointation of Pw Emad. He also produced the blood stained garments of deceased, vide recovery memo already ExPw1/1.

PW-11 Emad s/o Muhammad Azar stated that that on the day of the occurrence, he was present in his Hujra and after urination he came to back to veranda, Meanwhile, the accused and his uncle Muhammad Ayaz were exchanging hot words with each on a domestic issue. The accused ran to his house and from the top of the roof, he opened firing on his uncle and his father. And due to miracle, his father was narrowly escaped however, his uncle Muhammad Ayaz sustained serious injury on head from the firing of the accused. The accused Alim Zar and deceased were brothers-in-law *inter se*. The wife of deceased was living in her parent's house due to strained relation with her husband (deceased). His father was trying to persuade the wife of deceased for settlement while accused was creating hindrance in the same, which resulted in the occurrence. He was the eye witness of the occurrence. He was also the marginal witness of recovery memo already Expw4/1, vide which the Investigating Officer recovered the blood through cotton from the spot and sealed in parcel. Similarly, he was also the marginal witness of the recovery memo ExPw4/2. In his presence, the Investigating Officer recovered two empties 7.62 bore from the place of accused and one coin from the point A and sealed in parcel. Similarly, the Investigating Officer prepared the site plan on his pointation as well as on the pointation of his father. In this respect, his statement was recorded by the I.O. I signed the recovery memos.

PW-12 Akhtar Munair SI stated that during those days he was posted in PS Gagra. The investigation was entrusted to

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District of Dera

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Advocate High Court  
Peshawar at Colins Dargah  
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him on 21-11-2018 at about 1745 hours. He perused case file. He proceeded to spot and prepared site plan ExPB on the instance of complainant and eye witnesses. He recorded the statements of PWs w/s 161 CrPC. He prepared recovery memo already ExPw4/1, vide which he took into possession blood through cotton ExP1 from the place of occurrence and sealed in parcel No.1 and prepared the recovery memo. He also prepared recovery memo already ExPw4/2, vide which he recovered two empties 7.62 bore from the place of accused Alim Zar and also took into possession one spent bullet from point A, which was ExP3 and sealed in parcel No.2. After arrest of the accused, vide application ExPw12/1, he produced the accused for obtaining his custody and obtained one day custody. He interrogated the accused. He prepared pointation memo which was already ExPW4/3, vide which the accused correctly pointed out place of occurrence. He also prepared recovery memo already ExPw8/1, vide which muharrir of Police Station Gagra produced Kalashnikov ExP4 with magazine containing 20 cartridges of 7.62 bore and bandoleer having three chargers containing 30 live rounds of even bore which had been recovered from the accused during his arrest by the SHO to him said was de-sealed by him in presence of the accused, who admitted that the same was used in the commission of offence, he resealed the said in parcel and prepared the recovery memo. He also prepared the sketch of said recovery which was ExPw12/2. Vide application ExPw12/3, He produced the accused before the learned Judicial Magistrate but on his denial, he was sent to jail. He also prepared recovery memo already ExPw1/1, vide which the complainant Muhammad Azar produced blood stained garments/Shirt white colour of the injured/deceased Muhammad Ayaz and sealed in parcel

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Advocate High Court  
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No.4. He issued Parwana for addition of section 302 PPC which was ExPw12/4. He also issued application for departmental proceedings against accused Alim Zar ExPw12/5. He sent the parcel of garments and other recovered articles to FSL vide application ExPw12/6 & ExPw12/11 and obtained FSL reports ExPw12/7 & ExPw12/8. He placed on file the list of LRs of deceased which was ExPw12/9. He annexed with file the medical documents of LRH in respect of deceased. He also wrote an application ExPw12/10 for obtaining legal opinion of the prosecution for re-arrest of the accused. After the completion of investigation, he handed over file to SHO for submission of challan.

PW-13 Muhammad Ghulam Khan Inspector CIO stated that I was incharge investigation. The case file was returned from prosecution for compliance. I gave detail of point No. 4 with red ink Ex-Pw-13/1 in site plan already Ex-PB.

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ASST. DIST. JUDGE  
AD & SI/170-18  
Muzaffargarh District Court  
Buneri, Muzaffargarh

4. After completion of evidence, accused was examined under section 342 Cr.P.C wherein he denied the allegations and pleaded his innocence but he neither wished to be examined on oath nor he opted to produce any witness in defence.

5. Learned APP for state assisted by learned counsel for complainant argued that accused was directly charged in the FIR for commission of offence. That the accused was arrested on the same day and one Kalashnikov and one pistol were recovered from his possession at the time of his arrest. That FSL report regarding the weapon was received back as positive. That there were strained family relations and quarrel on the spot was taken place between the parties.

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MR. SHABAZ KHAN  
ADVOCATE HIGH COURT  
Peshawar  
Couns. Dargah

That both the parties were cousins interse and there was no question of mis-identification. That the occurrence was witnessed by the complainant and his son. That the prosecution fully connected the accused facing trial with the murder of the deceased. That the medical evidence in the instant case fully supported the complainant's version. That the incriminating recoveries of blood, blood stained garments, FSL reports, arms expert report and site plan further supported the prosecution evidence. That no contradiction in between ocular witness or I.O was brought on record. That case against accused was proved beyond any doubt. They placed their reliance on case laws titled "Muhammad Waris vs The State" reported in 2008 SCMR 784, "Roshan Ali vs The State" reported in 2019 MLC 542, "Muhammad Tufail vs The State" reported in PLD 2002 SC 786, "Muzaffar Khan and another vs The State and another" reported in 2019 YLR 1109, "Muhammad Fayyaz vs The State" reported in 2001 P Cr. L J 453, "Hassan Askari vs The State" reported in 2011 P Cr. L J 778, "Muhammad Yaqoob alias uncle vs The State" reported in 2005 P Cr. L J 1914, "Ghulam Mustafa vs The State" reported in 2009 SCMR 916, "Bashir Ahmad Butt and others vs The State" reported in PLD 2014 Lahore 394, "Mushtaq Ahmad alias Lila Sain vs The State" reported in 2009 YLR 529, "Gohram Zardari vs The State" reported in 2018 P Cr. L J Note 226, "Muhammad Akram alias Akrai vs The State" reported in PLJ 2019 SC(Cr.C.) 532, "Saleh Muhammad alias Hashim Marri vs The State" reported in 2013 P Cr. L J 692 and "Abdul Hameed vs The State" reported in 2016 P Cr. L J 89.



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6. On the contrary, learned counsel for the accused argued that the prosecution case was full of doubts and contradictions. That the story advanced by the complainant was not based on true facts and circumstances of the case. That the complainant of the instant case had already killed his father and now he killed his brother for property. That the strained relations between the parties were not proved. That the presence of ocular account was not established. That the recovery of empties was not believable. That the site plan contradicted the ocular account. That in general firing, escaping unhurt of the complainant and his son while hitting the of deceased was not appealable to the prudent mind. That the deceased was living with the complainant and he had strained relation with the deceased and there was no ill will of the accused with the deceased. That the accused had not confessed his guilt. That the mode and manner as described by the complainant was totally against the facts and circumstances of the case which created serious doubts, therefore, the accused was entitled for acquittal. He placed his reliance on case laws titled "Rajab Ali vs The State and others" reported in 2018 YLR 809, "Nadeem alias Kala vs The State and others" reported in 2018 SCMR 153, "Irfan Ali vs The State" reported in 2015 SCMR 840, "Sahib Zada vs The State and 2 others" reported in 2015 P Cr. L J 554, "Haji Muhammad Naeem vs Muhammad Younas and others" reported in 2017 P Cr. L J 1113, "Muhammad Ashraf Javeed and another vs Muhammad Umar and others" reported in 2017 SCMR 1999 and "Nasrullah alias Nasro vs The State" reported in 2017 SCMR 724.

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Model Criminal Court  
Bunjer Rd, D-8/2005

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7. I have given thorough consideration to the contentions on both the sides and have gone through the entire record of the case meticulously, with the assistance of learned counsel.

8. My understanding of different aspects of the case and findings thereon are as follow. Admittedly, as per report, the murder of the deceased has been committed and the accused was charged alone for the commission of offence. As per prosecution, the complainant reported to police that his brother/deceased (the then injured) and cousin Alim Zar (accused) were present in their Hujra. In the meanwhile, his brother and the accused exchanged hot words with each other. The accused went to his house situated in courtyard of the said Hujra and from the roof started firing upon his brother with his Kalashnikov in order to commit his Qatl-e-amd. Resultantly, from fire shots of the accused the complainant escaped unhurt whereas his brother sustained injury on his head. Occurrence was witnesses by one Emad son of the complainant. The motive behind the occurrence was disclosed as the strained relations between the parties. The evidence which was produced before this Court was the ocular account i.e. furnished by the eye witnesses, complainant as PW-10 and Emad as PW-11. Ocular version of the complainant needed support from the physical circumstances of the case as well as corroborative evidence of the case. The injury sheet EX-PWS/1, inquest reports EX-PW9/1 and PM report EX-PWS/3 affirmed that the deceased died due to firearm injury. The site plan EXPB was available on the file being supportive document to make the picture of occurrence.

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understandable. Two empties of 7.62 bore EX-P2, spent bullet EX-P4 and blood through cotton EX-P1, blood stained shirt and shalwar EX-P5 vide different recovery memos EX-PW1/1, EX-PW4/1, and EX-PW4/2 were collected during investigation. During the investigation, the I.O vide application ExpW12/6 sent blood, and blood stained garments to FSL for chemical analysis, of which report EX-PW12/8 was received back as positive and the same was available on file being incriminating evidence. Moreover, the accused made pointation on the spot regarding crime scene vide memo ExpW4/3 which the prosecution claimed as discovery of facts. More so, at the time of arrest of the accused, weapon of offence i.e. Kalashnikov was recovered and the investigation officer sent the same with the recovered empties to FSL vide road receipt No.1230/21 EXPW7/1 and report of FSL EXPW12/7 received back as positive. The learned counsel for prosecution claimed their case proved on the strength of above referred evidence. However, learned defence counsel challenged each and every referred point on the strength of standard of appreciation of evidence.

9. The main objections and arguments of learned defense counsel revolve around certain points; that the statement of the complainant and eye witnesses were contradictory to the report; that recovery of weapon of offence was not proved; that medical report of the deceased contradicted the ocular account; that the occurrence was committed by the complainant himself and the eye witnesses was neither present on the spot nor he witnessed the occurrence; that the

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 Advocate  
 Model Criminal Trial Court  
 Honour of District

Muhammad Ahsan  
 Advocate High Court  
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complainant and so called eye witness were father and son interse and brother and nephew of the deceased interse, therefore they were interested witnesses; that the widow of deceased was not produced as she was not supporting the prosecution and that motive for the crime was not proved.

10. It is the general principle of appreciation of evidence that direct testimony from a primary source always has precedence over corroborative evidence, provided such testimony is consistent, unbiased and capable of standing the test of cross examination. It is also equally important to note that corroborative testimony is used to second the direct evidence and it by no stretch of imagination, can outweigh what comes out of primary source.

11. To avoid the repetition of facts, this Court will take the ocular account of the case first for appreciation. Muhammad Azar, the complainant claimed that he along with his son Emad were the eye-witnesses of the occurrence as they along with deceased and accused were present in the Hujra. It was his case that in the meanwhile, hot words between Muhammad Ayaz and Alim Zar (accused) were exchanged on domestic affair. During the exchange of hot words, Alim Zar (accused) went to his house and aimed his pistol on them. Then the accused started firing on them from the roof of his house with Kalashnikov. As a result, Muhammad Ayaz sustained injuries on head while the complainant luckily escaped unhurt while his son Emad witnesses the occurrence. The deceased, the then injured succumbed to the injuries on fourth day of the occurrence in LRH, Peshawar. The

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Advocate High Court  
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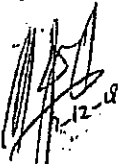
complainant charged the accused for the murder of his brother Muhammad Ayaz and for attempting at his life. The complainant appeared in witness box as PW-10. Said witness fully endorsed the facts as narrated in the FIR. In cross-examination of PW-10, the learned defense counsel at first brought on record the presence of the complainant prior the occurrence and then his arrival at the spot i.e. joint Hujra of the parties. Likewise, the fact of Hujra being combined property of all three cousins was also admitted by the learned defense counsel with further details i.e. it was cemented in 1980 and its floor was at the height of 5/6 feet from the yard/land and height of Hujra's building was about 11 feet. Similarly, the fact that the house of accused was attached to the Hujra while the distance between the veranda and the boundary wall of the house of the accused was about 40/45 feet and the height of its DPC was also about 5/6 feet whereas, the building height was about 11 feet, all facts brought on record. Admittedly, as per site plan the deceased, the then injured received fire arm injury in the veranda/courtyard of the Hujra while the firing attributed to the accused from the roof of the house of the accused and the bullet marks were found inside the wall of the room at the height of 6 feet of said Hujra. The learned defense counsel not denied the same spot i.e. Hujra and place presence of accused at the time of firing i.e. roof of house of accused adjacent to said Hujra. The line of cross-examination of learned defense counsel regarding the questions asked about the details of height of house of the accused and the Hujra shows that he was trying to bring the fact on record that it was not possible if anyone

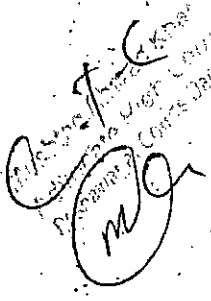
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opened fire from the height of same floor and roof which could hit the wall inside the room. But when the same questions were put by the learned defense counsel to the investigating officer PW-12, he explained that at the relevant time the door, window and ventilator of said room were opened and when it confronted with the site plan EXPB, the bullets marks were found on the wall of veranda/courtyard and inside room parallel to the line of direction of firing. Moreover, the learned defense counsel agitated that during the statement of investigating officer, PW-12 and marginal witness to recovery memo PW-4, they admitted that the blood was lying on two places, one inside the room and the other outside the room while the de shaped coin/spent bullet of .30 bore was also recovered and the same was not sent to FSL with the alleged recovered pistol whereas the record was silent about recovery of blood from inside the room. More so, as per contention of learned defense the complainant in his report stated weapon of offence as Kalashnikov which suggested that the complainant himself committed the murder of his brother(deceased) with his pistol. The contention of learned defense found without force because no empty shell of .30 bore was recovered from inside the said Hujra. However, it is pertinent to mention that during the court statement, the complainant stated that the accused first aimed at them with pistol and then he started firing at them from the roof of his house with Kalashnikov. Here, the fact of aiming of pistol was very first time introduced by the complainant but surprisingly, the learned defense counsel neither cross-examined the complainant for introducing and

  
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making addition to that extent in his court statement nor he alleged that as dishonest improvement. But it would be seen by this court that either said saying of complainant amounted to explanation or dishonest improvement. Since, it is evident from the report of complainant that it has been incorporated promptly within short duration, therefore, non-mentioning of fact of aiming pistol would not amount to dishonest improvement because the complainant mentioned about the fact of firing with Kalashnikov in his report as well as in his court statement. Thus it was not necessary that the complainant should have narrated all details in his first report. Besides, it was affirmed by the defense counsel during the cross-examination of complainant that firstly, 4-5 single shots were opened later on, rapid firing was made and after the rapid, further two shots were made and the witness further replied to the question put to him by learned defense counsel that it was correct that he had mentioned the kind of weapon used in the occurrence i.e. Kalashnikov. The learned defense counsel further admitted the recovery of pistol and Kalashnikov by putting suggestion to the investigating officer PW-12 that it was incorrect to suggest that from the house of accused two Kalashnikov and one pistol were taken into possession. The suggestion was denied by the I.O because as per record two Kalashnikovs and one pistol were taken into possession from the custody of accused and his brother at the time of their arrest. Meaning thereby, only mode and manner of recovery was denied by the defense but recovery was admitted and in presence of recovery of pistol and Kalashnikov from the possession of accused, there is

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 Advocate High Court  
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possibility of use of two weapons by the accused. Reliance is placed on Case law titled "Jan Muhammad vs Muhammad Ali and three others" reported in 2002 SCMR 1586(Supreme Court of Pakistan) wherein it is held that:

(c) Criminal Procedure Code (V of 1898) --

--S. 154-- First information report--F.I.R. is neither a substantive evidence nor an exhaustive document and if the detailed facts have not been mentioned therein, it would not diminish its correctness.

(d). Penal Code (XLV of 1860) --

--Ss. 302/34, 307/34 & 323/34--Appreciation of evidence--Grain is to be sifted from the chaff so as to arrive at the truth of the occurrence-- Evidence has to be appraised in the entirety to sift the grain from the chaff so that essential portion of the prosecution evidence which has probability and reliability in the peculiar circumstances of the case could be believed or acted upon otherwise.

12. So far as the contention of learned defense counsel is concerned, regarding the non-sending of recovered pistol and coin/spent bullet together to FSL for ascertaining the fact that whether the same was used from said pistol or not is failure on the part of investigating officer but not of complainant. Likewise, if there was any blood inside the room of Hujra then it was also the duty of the investigating officer to take the same into possession in order to dig out the reality of said blood. Deficiency or anomalies in non-procurement of blood and its dispatch along with pistol would otherwise be the liability of investigating officer and why the complainant would suffer due to deficiencies in investigation. In this respect, reliance is placed on case law titled "Gulam Raza Alias T.T vs The State" reported in NLR 2005 Criminal 232, of which relevant Para is reproduced as under:

"(f) Investigation--  
Illegality committed during investigation shall not demolish prosecution case and shall not vitiate the trial. -- "

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13. Another contention of learned defense counsel was that the complainant committed the murder of the deceased which is also not getting support from the medical report because the dimension or direction of entry wound and exit wound also reflects that the bullet hit the deceased from the upper side of the skull and exit from the lower side which denotes that the injury received on person of deceased was result of bullet fired from the height. The learned defense counsel also established the presence of the eye witness by putting question to PW-10, the complainant in cross-examination to which he replied that at the time of occurrence, he along with his son Emad and brother(deceased) were present in Hujra. He was subjected to lengthy cross-examination by the learned defense counsel but nothing favourable to accused has been brought on record. Statement of PW-10 was further corroborated by the witness namely Emad, PW-11 who is the eye witness and was present at the spot and had seen the occurrence. While cross-examining the PW-11, the defense counsel made admission from the mouth of said witness about the fact of his presence and the mode and manner of the occurrence. During cross-examination, PW-11 stated that the deceased was living with the accused and when the wife of deceased was not at good terms with him, the deceased was living in the said Hujra and they were managing his meal and clothes. Likewise, he also made admission from the mouth of the witness about the fact that no bullet hit on his father and only one bullet was received by his deceased uncle on his head. Here, defense counsel also agitated the point that despite showing presence

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 High Court  
 District Judge

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of eye witness, the report of complainant was not verified by the eye witness and why the complainant not accompanied the deceased while shifting to LRH, Peshawar and how despite short distance from the deceased, complainant escaped unhurt. As per defense, all these facts create serious doubt about the presence of ocular account. However, in cross-examination, PW-11 stated that he was graduate and jobless and further replied that he did not accompany the deceased to the hospital and his father/complainant had also come to home from DHQ hospital at about 6 PM. The queries of learned defense counsel were answered ipso facto by the said witness. The learned defense counsel also pointed out that being relatives the complainant and the eye witnesses were interested witnesses but no ill will or reason for false implication has been forwarded by the defense.

14. The learned defense counsel also argued that the widow of deceased was abandoned by the complainant as a witness which showed their malafide as she was not supporting the complainant stance. Though, widow of the deceased was not eye witness of the occurrence but on the other hand, despite having opportunity and the fact that widow was sister-in-law of the accused and she could tell the true story, she was neither produced by the accused before the court or any other competent forum nor the accused himself did so.

15. Likewise, PW-12, the investigation officer also confirmed the facts as narrated by the PW-10, regarding his as well as the presence of eye witness and preparation of site plan on their instance. Similarly, PW-2, who appeared in witness box and stated that he scribed the

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report ExPA of the complainant in presence of deceased/ the then injured and obtained the consciousness certificate, (ExPW2/1) according to which the deceased, the then injured was in un-conscious condition from the medical officer, he remained consistent in cross-examination.

16. Now, adverting to medical legal evidence brought on file in the shape of injury sheet ExPW2/1, report of medical officer, ExPW5/1, inquest report ExPW9/1 and PM report ExPW5/3, coupled with the application for obtaining opinion regarding consciousness certificate ExPW5/2, reflects that at the time of report, deceased/ the then injured was not conscious and he succumbed to his injuries after fourth day of his admission in Neurosurgical unit at Lady Reading Hospital, Peshawar. As per medical reports, the nature of injury and weapon was mentioned as fire arm weapons. The medical officer who initially examined the deceased in injured condition and then on expiry conducted post mortem on person of the deceased, he appeared as PWS and stated in his court statement that the deceased sustained fire arm injury on head having an entry wound on left side of parietal bone about 2-3 cm long, edges inverted correspondence with exit wound on right side of temporal bone about 3x4 cm long having everted edges, brain matter was coming through exit wound and there were no charring marks on the entry and exit wounds. The learned defense counsel argued that as per history sheet of examination of Lady Reading hospital, Peshawar the size of entry wound mentioned in reports was 1x1 cm which was contradictory one but it is pertinent to

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mention here that in Lady Reading Hospital the deceased, the then injured was examined externally while in DHQ, hospital Daggur proper post mortem on his person was conducted, therefore, it does not amount to contradiction. Likewise, receiving officer who had prepared the injury sheet entered into the witness box as PW2. Their depositions on material particulars remained consistent. Thus, the medico legal evidence clearly corroborated the version of prosecution.

17. Motive as set out in the initial report was internal domestic affair and timely exchange of hot words in between the accused and deceased which apparently seems to be weak as it is also proved from the evidence that in respect of the motive as advanced by the prosecution no single iota of evidence has been brought on record. But it is the well settled law that motive is not a sine qua non for establishing the guilt of an accused. Wisdom is derived from the case law titled "State/Govt of Sindh Vs Sobharo" reported in 1993 SCMR 585 wherein it has been held that:

*"Motive—Absence or weakness of motive does not come in the way of the case of the prosecution and can be condoned if there is otherwise strong and reliable evidence in support of the case."*

However, weak motive might be considered as mitigating circumstance qua quantum of sentence. In other case reported in case law titled "Naveed alias Needu vs The State" reported in 2014 SCMR page No.1464(b) it is held that:

*"Upon our own assessment, the evidence available on record we have felt no hesitation in concluding that the specific motive set up by the prosecution had indeed remained far from being established on record. The law recently declared by this court in case of "Ahmed Nawaz vs The state", 2011 SCMR 593, "Ifikhar Mehmood vs Qaiser Ifikhar", 2011*

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SCMR 1165 and "Muhammad Muntaz vs State", 2012 SCMR 267 reiterate the settled and long standing principle, that the failure of prosecution to prove the motive set up by it may have a bearing upon the question of sentence and an appropriate case such failure may result in reduction of sentence from sentence of death to that of imprisonment of life for safe administration of justice,"

18. During the course of investigation, the I.O took into possession one Kalashnikov and one pistol which were already taken into possession by the police from the custody of the accused at the time of his arrest. The recovered Kalashnikov along with the recovered crime empties of 7.62 bore from the spot were sent to FSL and the report whereof received back as positive. The learned defense counsel raised the objection in respect of the recovery that the recovery of Kalashnikov and pistol was made on the same day in violation of section 103 of section Cr.P.C as no independent witness was associated to said recovery proceeding which was inadmissible in the evidence. The learned defense counsel further admitted the recovery of pistol and Kalashnikov by putting suggestion to the investigating officer PW-12 that it is incorrect to suggest that from the house of the accused, two Kalashnikov and one pistol were taken into possession. Now, when the prosecution has proved its case on the basis of direct as well as circumstantial evidence then if we otherwise consider the reason that the I.O. has not recovered the weapons as per law, the prosecution's case should not be failed on said sole ground. In this regard, it is worth mentioning that it is held by the superior court that even the non-recovery of weapon of offence would not become fatal for the prosecution's case, as the same is not the substantive piece of

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Model Criminal Court  
Kohat District

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Advocate High Court  
Faisalabad

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evidence but corroborative piece of evidence and it is the settled law that in criminal administration of justice each case has to be seen in its specific circumstances and facts. Wisdom is drawn from case law titled "Abdul Hameed vs The State and others" reported in 2016 PCr.LJ 89 (Peshawar), wherein it is held that;

*"--S.302(b)—Qatl-i-amd—Recovery of crime weapon and empties—Scope—Recovery of crime weapon and empties, were pieces of evidence of corroboration and even if recovery was not proved in the presence of reliable, and unimpeachable ocular testimony and other circumstantial evidence, it would not adversely affect the prosecution case. —"*

19. Though, there are some minor contradictions in the statements of the complainant and eye witness but it is factual position that one witness is the brother of deceased and the other one is nephew and their statement are recorded after lapse of one and half years and defense has failed to brought on record any ill will or previous enmity of witnesses with the accused so their testimony could not be discredited on the basis of minor discrepancies. Wisdom is derived from the case law titled "Mawas Khan Vs The state and another" reported in PLD 2004 Supreme Court 330. wherein it has been held that:

*"Even otherwise the statement of injured witness cannot be brushed aside merely on the ground of some minor contradiction which do creep in the passage on time."*

20. The eye witness PW-11 narrated the whole episode in the same manner as stated by PW-10. Statements of the eye witnesses are found in conformity in respect of the order of casualties, shifting of the injured from the spot to hospital and positions of the deceased the then injured as well as the accused, as detailed in the site plan. As regards

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the objection of the defense that PW-11 has not been cited as eye verifier or rider in the F.I.R by the complainant and he had also not accompanied the complainant and deceased to the hospital for the reason his presence was not established at the spot, such omission alone is not sufficient to make his presence on the spot as doubtful, for his presence on the spot at the time of occurrence can be inferred from the surrounding circumstances. Even otherwise, in order to believe or disbelieve a witness, the test is to look into his credibility and the value of his statement and not the fact that he has not verified the report or signed the same as rider.

21. The consistency and conformity of the statements recorded by PW-10 with that of PW-11 is convincing and credible enough to establish his presence on the spot. So, the statement of both the eye witnesses, being confidence inspiring and remained un-damaged and can safely be relied upon for conviction of the accused. Undoubtly, PW-10 is brother of deceased/complainant whereas PW-11 is the nephew of the deceased, however, their testimony cannot be discarded only on the ground that they have blood relation with the deceased. During cross-examinations, both the witnesses categorically stated that they did not have any ill will or enmity with the accused. In this regard, I would refer to the judgment in the case law titled "Samiullah and another vs Jamil Ahmed and another reported in 2008 SCMR 1623 wherein it was held that:

*"The evidence of the eye witness has proved the cause of assault by the accused upon the deceased and the injured PW Ameer Jan. These witnesses have undergone the test of lengthy cross-*

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Advocate High Court  
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examination but their presence at the spot and credibility could not be shattered by the defense except their relationship with the deceased. The eye witnesses were natural witnesses of the occurrence and are as good as any other independent witness. The defense has failed to bring on record any ill-will or animosity qua the PWs. Or the police. The mere relationship of the prosecution witnesses with the deceased is no ground to discredit their evidence if it is proved that the same is straight forward, fair and confidence-inspiring."

22. Thus, keeping in view the ocular evidence, medical evidence, circumstantial evidence, it is held that prosecution has successfully proved its case against accused Alim Zar, beyond any shadow of doubt. He is found guilty for the murder of the deceased Muhammad Ayaz. But at the same time, it is also proved from the evidence that in respect of the motive as advanced by the prosecution no single iota of evidence has been brought on record, likewise, the wives of accused and the deceased are sisters and children/family of one sister is already deprived/ruined and awarding capital punishment to the accused, the house of another sister going to be deprived/ruined, therefore, taking the stated factual positions as a mitigating circumstance, instead of awarding capital punishment, accused facing trial is convicted and sentenced u/s 302(b) PPC for life imprisonment (RI) each as Ta'zir with compensation amount of Rs. 10,00000/- (Ten hundred thousands), to be paid to the legal heirs of the deceased U/s 544-A Cr.P.C. In case of default of payment of compensation amount, the convict shall further undergo six months SI. He is also convicted and sentenced u/s 324 PPC for attempting at the life of the complainant for five years (RI). All the sentences shall run

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Model Criminal Court  
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concurrently. The compensation amount shall be recovered as arrears of land revenue. Benefit of section 382-B Cr.P.C shall be extended to the convict.

23. Attested copy of this judgment be provided to the convict free of cost and to this effect his acknowledging thumb impressions/signatures be obtained at the margin of order sheet.

24. Case property (if any) be kept intact till the expiry of period of appeal/revision. File be consigned to the record room after necessary completion and compilation.

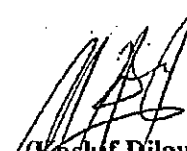


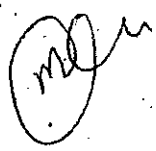
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07-12-2019

  
(Kashif Dilawar)  
Addl. Sessions Judge-II/IZQ  
Judge MCTC, Buner at Daggar  
Kashif Dilawar  
Addl. Sessions Judge-II/IZQ-II  
Judge MCTC, Buner at Daggar

**CERTIFICATE**

Certified that this judgment consists of twenty-seven (27) pages, each has been read, checked, signed and corrected by me wherever it was necessary.

  
(Kashif Dilawar)  
Addl. Sessions Judge-II/IZQ  
Judge MCTC, Buner at Daggar  
Kashif Dilawar  
Addl. Sessions Judge-II/IZQ-II  
Judge MCTC, Buner at Daggar

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OFFICE OF THE DISTRICT EDUCATION OFFICER  
(MALE) DISTRICT BUNER  
PHONE & FAX NO. 0939-510468  
EMAIL: edobuner@gmail.com



NOTIFICATION

- WHEREAS Mr. Alim Zar was working as PSHT at GPS Cheena.
2. WHEREAS he was charged under section 302/324 PPC in police station Gagra FIR No.1687 dated 21/11/2018.
  3. WHEREAS, the accused was arrested and was suspended w.e.f 21/11/2018 vide DEO(M) Buner Endst: No.6076-80 dated 5/12/2018.
  4. WHEREAS the accused was convicted and sentenced u/s 302(b)PPC for life imprisonment (R 1) as Ta, zir with compensation amount of Rs.1000000/- to be paid to the legal heir of the deceased u/s 544-ACr.P.C by the Additional Session Judge/ Judge model criminal Trial Court/IZQ Buner on dated 7/12/2019.
  5. WHEREAS, the Competent Authority is pleased to dispense with the inquiry as accused had been convicted by the Court.
  6. NOW, THEREOF, I, Muhammad Azam Khan DEO(M) Buner, being Competent Authority is pleased to impose Major penalty "Dismissal from Service upon Mr. Alim Zar PSHT GPS Cheena under 4(b) (iv) of the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011, w.e.f the date of Judgement i.e dated 07/12/2019

(MUHAMMADAZAM KHAN)  
DISTRICT EDUCATION OFFICER (M)  
BUNER

Endst; No. 2623-28/

Dated 11/9 /2020.

Copy for information to the.

1. Director (E&SE) Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Buner.
3. District Monitoring Officer Buner.
4. Sub Divisional Education Officer (M) Gagra with the reference to his letter No.1060 dated 28/8/2020 with the direction to stop his subsistence allowance immediately and do necessary entry in his service Book accordingly.
5. District Accounts Officer Buner
6. Official Concerned.

ATTESTED

DISTRICT EDUCATION OFFICER (M)  
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JUDGMENT SHEET

**PESHAWAR HIGH COURT  
MINGORA BENCH  
(Judicial Department)**

Cr.A No. 586-M/2019

*Alim Zar son of Ajam Khan* (Appellant)

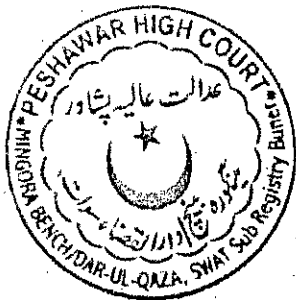
Versus

- (1) The State through A.A.G.  
(2) Muhammad Azar son of Manzar Khan  
(Respondents)

Present: Mr. Jalal-ud-Din Akbar Khan (Gara), Advocate,  
for the appellant.

Mr. Raza-ud-din Khan, A.A.G, for the State.

Mr. Khan Sardar Alam, Advocate, for the  
complainant



Cr.R. No. 1-M/2020 (for enhancement)

*Muhammad Azar son of Manzar Khan* (Petitioner)

Versus

- (1) Alim Zar son of Ajam Khan  
(2) State through A.A.G.  
(Respondents)

Present: Mr. Khan Sardar Alam, Advocate, for the  
petitioner/complainant.

Mr. Jalal-ud-Din Akbar Khan (Gara), Advocate,  
for the accused/respondent.

Mr. Raza-ud-din Khan, A. A.G, for the State.

ATTESTED

EXAMINER  
PESHAWAR HIGH COURT  
Mingora Bench/Dar-ul-Qaza, Swat  
Sub-Registry, Duner

24-03-2023

Date of hearing: 01.02.2023

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Appellant namely  
Alim Zar has called in question judgment of his  
conviction and sentence dated 07.12.2019 passed by  
the learned Additional Sessions Judge/ Judge Model

(D.B.) Hon'ble Mr. Justice Muhammad Naeem Anwar  
Hon'ble Mr. Justice Muhammad Ijaz Khan.

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Criminal Trial Court/Izafi Zilla Qazi, Buner, vide  
which he was convicted and sentenced as follows;

- U/S 302(b) PPC for life imprisonment (R.I) along with compensation of Rs. 10,00,000/- (Ten hundred thousand) under section 544-A Cr.P.C payable to legal heirs of the deceased, or in default thereof, the accused shall further undergo six months simple imprisonment.
- U/S 324 PPC for five years imprisonment rigorous imprisonment.
- All the sentences were ordered to run concurrently.
- The Appellant was also extended the benefit of section 382-B Cr.P.C.



2. The appellant faced trial in the criminal case registered against him vide FIR No. 1687 dated 21.11.2018 under sections 302/324 PPC at Police Station Gagra District Buner. As per contents of the FIR, the complainant namely Muhammad Azar reported the matter to the local police in emergency room of Daggar hospital that on the fateful day he along with his brother namely Muhammad Ayaz and cousin namely Ali Zar (the appellant herein) were present in their Hujra, when in the meanwhile, a brawl took place between his brother and cousin namely Alim Zar. During the course of altercation his cousin Alim Zar went to his house and started firing at the complainant-party from the rooftop of

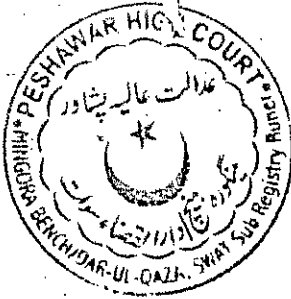
ATTESTED

EXAMINER,  
PESHAWAR HIGH COURT,  
Mingora Bench/Dar-ul-Qaza, Swat  
Sub-Registry, Buner

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his house while being duly armed with Kalashnikov and due to firing of the appellant namely Alim Zar his brother got hit on his head and seriously got injured, whereas the complainant escaped un-hurt. Later on, the injured Muhammad Ayaz succumbed to his injury and died. Motive behind the occurrence was stated to be verbal altercation due to previous ill-will/strained relations between the parties.

3. The accused was summoned by the learned trial Court and charge was framed against him to which he pleaded not guilty and claimed trial. The prosecution was invited to produce its evidence, who accordingly examined thirteen (13) witnesses in support of their case. Thereafter, statement of accused was recorded under section 342 Cr.P.C. On conclusion of proceedings in trial, accused/appellant was convicted and sentenced vide the impugned order/judgment dated 07.12.2019 of the Court of learned Additional Sessions Judge/Judge Model Criminal Court Trial Court Buner, as stated earlier. The appellant has now challenged the aforesaid judgment by filing the instant appeal.



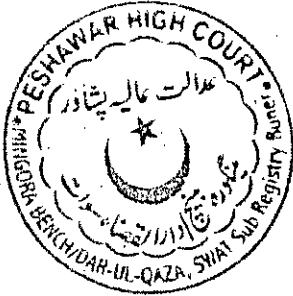
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4. Arguments of learned counsel for the parties as well as learned Astt: A.G. appearing on behalf of the State were heard in considerable detail and the record perused with their able assistance.

5. It is the case of prosecution as reported by the complainant namely Muhammad Azar that on the date and time of occurrence he along with his brother namely Muhammad Ayaz (the deceased) and his first-cousin namely Alim Zar (the appellant herein) were present in their *Hujra*, when in the meanwhile his brother and the appellant exchanged hot words with each other and the appellant then went to his house situated in the courtyard of the said *Hujra* and from the rooftop of his house he started firing upon his brother with his Kalashnikov and as a result of which his brother got hit on his head and seriously injured whereas he escaped unhurt. The occurrence was stated to be witnessed by one Imad who is the son of complainant namely Muhammad Azar. Motive behind the occurrence was stated to be strained domestic relations between the parties and sudden exchange of hot words. Later on, the injured namely Muhammad Ayaz succumbed to his injury and died.

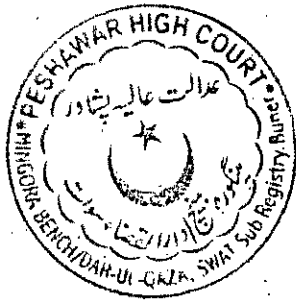


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6. In this case the ocular account has been furnished by the complainant namely Muhammad Azar who appeared in Court as PW-10 and Imad who appeared in Court as PW-11, however, through their statements prosecution has not been able to prove the mode and manner of the occurrence as alleged by them in the FIR as it has been alleged that the appellant and deceased were present in a common *Hujra* when after the exchange of hot words the appellant left for his house situated aside in the courtyard of said *Hujra* and then made firing from the rooftop of his house and from there the deceased sustained injury which proved fatal for him, however, all the attending circumstances of this case as explained by the PWs and the site plan are not supporting the same, which are highlighted as below.

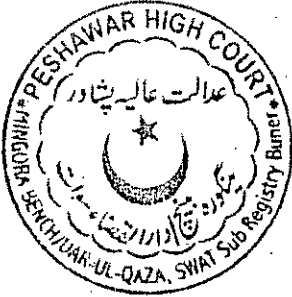


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Mingora Bench/Dar-ul-Qaza, Swat  
Sub-Registry, Buneri

7. In order to place the aforesaid narrations as set-up in the *Murasila* in *juxta* position with the site plan, the same do not reconcile with each other as in the site plan the appellant has been shown at point No.3 whereas the deceased has been shown at point No.2 and the distance between the points No.2 and 3 is shown as more than 46 feet and the firing was allegedly made from the rooftop of appellant's house

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which was at the height of 18/19 feet, however, the medico-legal evidence furnished by PW-5 namely Dr. Karim-ur- Rahman would show an entry wound of 2x3 cm with corresponding exit wound of 3x4 cm which could not be possible in the stated circumstances as when the appellant was stately at the rooftop of his house and when the deceased was standing on the ground in the *Hujra* then injury should have been from up to downside which is not the position here and conversely such a through and through injury could be caused when both the assailant and the victim are standing on the same level but it has never been the case of the prosecution that the deceased got injured when the appellant was present in the *Hujra*.

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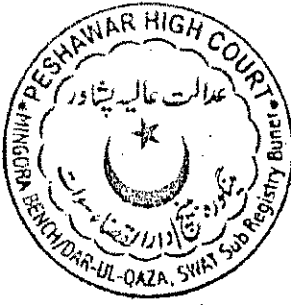
EXAMINER  
PESHAWAR HIGH COURT  
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8. It is also a case where the ocular account is contradicted by the medical evidence as stated hereinabove that the allegations of the complainant party is that the deceased then victim got injured due to the firing of the appellant which he made with his Kalashnikov. It is also an admitted fact that the said firing was made from more than 46 feet distance and it is also an admitted position that the firing was made when the appellant was at the rooftop of his house, however, the medico-legal evidence furnished by



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PW-5 which was exhibited as Ex.PW-5/1 would show the entry wound of 2x3 centimeter and the exit wound of 3x4 centimeter which could not be possible from a fire made with a Kalashnikov and that too from a 45 feet distance. Similarly, the locale of entry and exit wound also falsify the stance of the complainant-party as allegedly at the relevant time the appellant was at the height whereas the victim was standing on the ground of *Hujra*, therefore, the direction should be from upper to downward, which is not the case here, therefore, the ocular account is contradicted by the medical evidence. In the case of "Nadeem alias Kala v/s The State & others" reported as 2018 SCMR 153 it was held by the Apex Court that the medical evidence is merely a supportive/corroborative piece of evidence but in this case the same is not in line with the ocular account because Dr. Monum Javed (PW.2) noted a firearm entry wound on the front of right thigh whereas it is case of the complainant in the FIR and both the witnesses of ocular account stated before the learned trial court that the other accused had caught hold of Maqsood Ahmad (deceased) from the front side, therefore, the ocular account is not in consonance with the medical evidence. Similarly, in

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the case of "Haroon Bin Tariq & others v/s The State & others" reported as 2019 SCMR 2014 it was observed by the Apex Court that no independent verification was available on record to establish that the deceased directed himself to the assailants in order to disengage or overpower them and in the process received fire shot during grappling them from a close blank. On the contrary, medical evidence contradicted the prosecution case, as there was no blackening on the margins of solitary entry wound, therefore, possibility of a stray bullet could not be viewed as entirely unrealistic, particularly in the presence of as many as sixteen (16) casings, secured from the spot, unambiguously suggesting volley of fires.



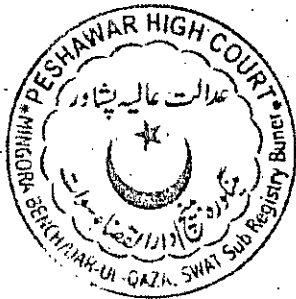
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PESHAWAR HIGH COURT,  
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Sub-Registry, Buner.

9. It has never been the case of prosecution that during the whole episode anybody including the appellant has made firing with his pistol but as per the site plan a spent bullet of 30 bore pistol has been shown recovered from point "A" which is just behind point No.1 assigned to the deceased which shows that prosecution has not come forward with the whole truth and it has suppressed the actual mode and manner of the occurrence.

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10. The record further shows that when the appellant was arrested on 21.11.2018 at 18:20 hours i.e. after 02 hours of the occurrence on the same day he was allegedly found in possession of a Kalashnikov and a pistol, however, the Investigating Officer has not sent the pistol to the FSL for matching the spent bullet with the pistol. Since, the spent bullet was recovered just behind the place assigned to the deceased then in view of the above admitted position of this case the same should have been sent to ascertain that as to whether the same was fired from the same pistol or not.

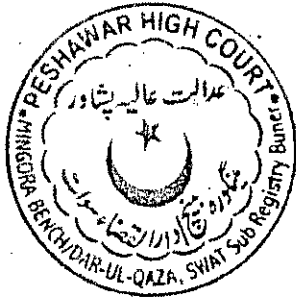


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11. Though as per the recovery memo Ex Pw 4/1 the Investigating Officer has recovered blood from the veranda of the *Hujra*, however, PW-4 namely Nawab Zada who is the marginal witness to recovery memo Ex-PW-4/1 vide which blood was shown recovered from the spot has stated in his cross-examination that blood was recovered from the veranda as well as from the room. The whole prosecution evidence is completely silent that if the deceased was present in the veranda at the time of firing then why the blood was found inside the room, therefore, it prima facie shows that the prosecution has

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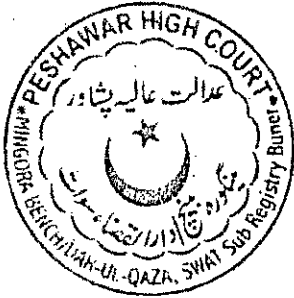
suppressed the actual mode and manner of the occurrence. In the case of "Muhammad Imran v/s The State" reported as 2020 SCMR 857, it was held by the Apex Court that ocular account had been furnished by the witnesses who were found out of tune with one another; they were discrepant on the manner and mode of their arrival at the crime scene; and there was no unanimity amongst them on the passage they took to take the deceased to the hospital. Such contradictions, viewed in the retrospect of arrival of the witnesses exactly at a point of time when the accused started inflicting blows to the deceased with their inability to apprehend him without there being any weapon to keep them effectively at bay, cast shadows on the hypothesis of their presence during the fateful moments.

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12. In view of the recovery of a 30 bore spent bullet from the spot, the PWs have also made improvements in their Court statements as at the time of lodging the report the complainant has never stated that the appellant while leaving for his home has fired with his pistol on them, however, in the Court statement he in order to make his statement in line with the alleged

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recovery of the spent bullet of 30 bore and then recovery of pistol from the appellant has made an improvement that after the exchange of hot words the appellant went to his house and aimed his pistol on them, however, this statement further casts a serious doubt on the veracity of his statement as when the appellant was having a pistol in his hands as alleged by the complainant then why he felt the need to go home and to fire with a Kalashnikov, he could have done the deceased to death with his pistol as well, therefore, in view of such intentional and willful improvement, their evidence could not be relied upon.

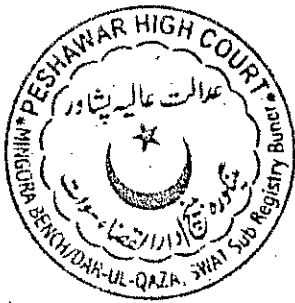
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13. On one hand the statement of the complainant who appeared in Court as PW-1 is suffering from material improvements which rendered his statement as un-reliable and on the other hand the other PW namely Imad who though was mentioned as eyewitness of the occurrence in the 'Murasila', however, in the site plan which has allegedly been prepared on the pointation of the complainant on 21.11.2018 but no place was assigned to him and it was on 20.05.2019 i.e. after six months of the occurrence when addition in the site plan was made to assign him point No.4, therefore, it appears that the

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Investigating Officer and the complainant-party have made all their efforts to create materials for the implication and to bring home charge against the appellant.



14. The presence of PW-11 namely Imad has also not been established above the board as despite the fact that the deceased was his uncle and his father was taking him to the hospital for first-aid but surprisingly he has not accompanied his father and his victim uncle as PW-10, the complainant has admitted that his son Imad has not accompanied him to the DHQ hospital which conduct on the part of PW-11 is highly unnatural and it shows that in-fact he was not present on the spot. It is settled law that the prosecution is bound to prove the presence of the eyewitness and they have also to prove the mode and manner of the occurrence and thus even if the presence of the eyewitness is established but it is found that they have not been able to prove the mode and manner of the occurrence or they have suppressed the same or they have twisted the facts as happened at the time of occurrence then their statement could not be relied upon.

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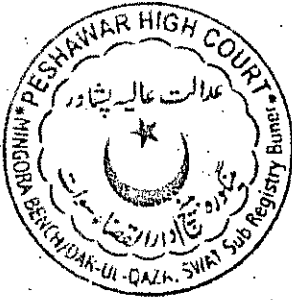
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PESHAWAR HIGH COURT  
Mingora Bench/Dar-ul-Qaza Swat  
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15. In this case though the complainant has set a motive of strained relations between the parties which led to the exchange of hot words and ultimately resulted in the happening of this unfortunate occurrence, however, no material what so ever has been brought on record with respect to the existence of strained relations between the parties, though the prosecution was not bound to set a motive, however, when once the prosecution set a motive then it is bound to prove the same, however, in the present case they could not be able to prove the same specially when both the PWs i.e. PW-10 & PW-11 have admitted in their cross examination that the deceased was having strained relations with his wife and he was living in the *Hujra* and during these days it was the appellant who was caring for his food and cloth etc. In the case of "Khalid Mahmood & another v/s The State" reported as 2021 SCMR 810 it was held by the Apex Court that a specific motive was set out by the prosecution in the FIR inasmuch as hot words were being exchanged between Khalid Party and Sarwar Party in front of house of Javaid. There is no detail whatsoever why Khalid Party and Sarwar Party were quarrelling with each other; why both the parties at once started firing at the deceased; why and in which capacity deceased Muhammad Aslam intervened to

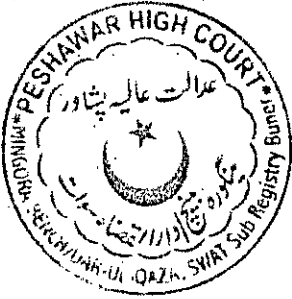


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pacify both the parties. The answers to these questions are not available on record. In these circumstances, the learned High Court has rightly not believed the motive set out by the prosecution in Para 12 of the impugned judgment.



16. In view of the above when neither any direct nor any circumstantial evidence is available on file and case of prosecution is full doubt all around, therefore, the appellant has to be extended its benefit and as such he deserved to be acquitted of the charges leveled against him.

17. It is settled since long that for giving benefit to an accused, it is not essential that there should be many grounds for the same, even a single doubt is sufficient to extend its benefit to an accused person as it is the cardinal principle of criminal administration of justice that let hundred guilty persons be acquitted but one innocent person should not be convicted. In the case of "Bashir Muhammad Khan v/s The State" reported as 2022 SCMR 986, the Hon'ble Apex Court has held that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction

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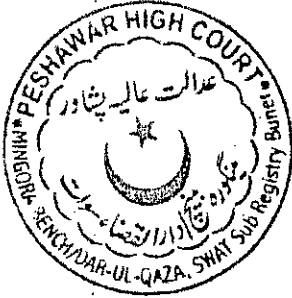
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EXAMINER  
PESHAWAR HIGH COURT,  
Mingora Bonchi Dar-ul-Qaza, Swat  
Sub-Registry, Buner


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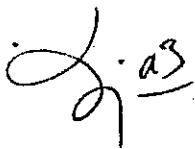


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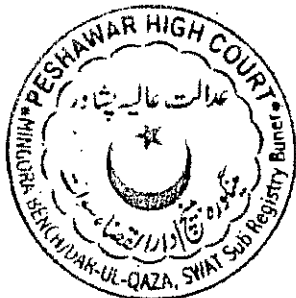
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EXAMINER  
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must be based on unimpeachable; trustworthy and reliable evidence. Any doubt arising in prosecution's case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt. Similarly, in the case of "Khalid Mehmood alias Khaloo v/s The State" reported as 2022 SCMR 1148, the Hon'ble Apex Court has reiterated the same rational by observing that in these circumstances, a dent in the prosecution's case has been created, benefit of which must be given to the appellant. It is a settled law that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. In the case of "Muhammad Mansha v/s The State" reported as 2018 SCMR 772, the Hon'ble Apex Court has also held that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable

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doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". In the case of "Tariq Pervaiz v/s The State" reported as 1995 SCMR 1345, the Hon'ble Apex Court has held that the concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.

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18. For what has been discussed above, this Court is of the firm view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt, therefore, his conviction cannot be maintained. Resultantly, while extending him the benefit of the doubt this appeal is allowed and the

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impugned order/judgment of conviction and sentence dated 07.12.2019 recorded by the learned trial Court is set aside and consequently the appellant is acquitted of the charges levelled against him. He be released forthwith from the Jail, if not required in any other case.



19. Since we have allowed the appeal, therefore, the connected criminal revision No. 1-M of 2020 filed by the petitioner/complainant for enhancement of the sentence of the appellant having become infructuous is accordingly dismissed.

20. These are reasons for our short order of even date.

Announced  
Dt. 01.02.2023

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JUDGE

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JUDGE

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EXAMINER  
Peshawar High Court, Mingora Bench/Dar-ul-Qaza, Swat  
Sub Registry, Buner  
Authorized Under Article 81 of Rangoon-Shahadat Order, 1954

Office  
09/03/2023  
W/R

N.O. No.	150 (2)
Date of Application	24-03-23
Date of Receipt of File	-
Date of Preparation	24-03-23
Date of Notice	-
Words	17P
Fees	68/-
Urgent Fees	-
Date of Delivery	24-03-23
Signature	<i>[Signature]</i>

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JUDGMENT SHEET

PESHAWAR HIGH COURT  
MINGORA BENCH  
(Judicial Department)

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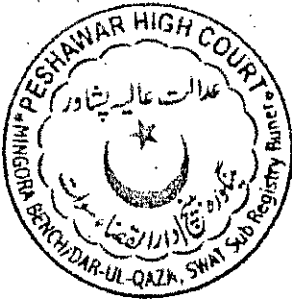
Criminal Appeal No. 588-M/2019

JUDGMENT

Date of hearing: 01.02.2023

Appellant:- (Alim Zar) by Mr. Jalal uddin Akbar Khan (Gara), Advocate.

Respondents:- (The State & another) by Mr. Raza-ud-Din Khan A.A.G.



MUHAMMAD IJAZ KHAN, J.- Appellant namely Alim Zar has called in question judgment of his conviction and sentence dated 17.12.2019 passed by the learned Additional Sessions Judge-II/Judge Model Criminal Trial Court/Izafi Zila Qazi Buner, in case FIR No. 1689 dated 21.11.2018 registered under section 15 A.A at Police Station Gagra District Buner.

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EXAMINER  
PESHAWAR HIGH COURT  
Mingora Bench/Dar-ul-Qaza, Swat  
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24-3-23

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2. Precisely the fact of prosecution case is that during the investigation of case FIR No. 1687 dated 21.11.2018 U/S 302/324 PPC, P.S Gagra Buner the local police in order to arrest the accused raided a place known as Ziara situated in hilly area where accused/appellant namely Alim Zar was arrested and during his personal search the local police recovered one 30 bore pistol along with a charger containing six live rounds and a Kalashnikov

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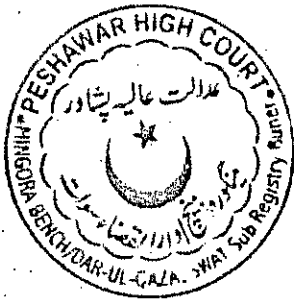
bearing No. 66 56.1 X 1905362 along with magazine having 30 live rounds, in respect of which he could not produce any permit or license, therefore, the ibid FIR was registered against him.

3. On completion of investigation, complete challan was submitted against the appellant before learned trial Court. After compliance of proceedings under section 265-C Cr.P.C; charge was framed against him, to which he pleaded "not guilty" and claimed trial. Prosecution produced as many as seven (07) witnesses, whose statements were recorded and placed on file. On conclusion of proceedings in the case, the accused was examined under section 342 Cr.P.C. The learned trial Court convicted and sentenced the appellant vide the impugned judgment dated 07.12.219 as follows;

- *U/S 15 A.A to five years simple imprisonment along with fine of Rs. 50,000/-, or in default thereof to suffer six months simple imprisonment.*
- *Appellant was however extended the benefit of section 382-B Cr.P.C.*

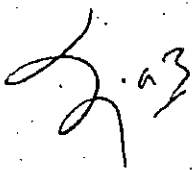
Accused/appellant challenged his conviction and sentence through the instant appeal.

4. Arguments of learned counsel for the appellant as well as learned Addl: A.G for the State



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Mingora Bench/Dar-ul-Qaza, Swat  
Sub-Registry, Swat

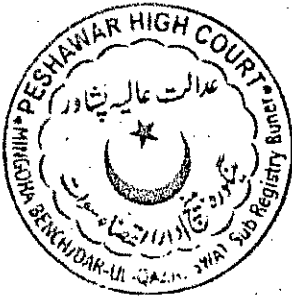


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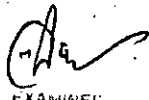
were heard and the record perused with their able assistance.

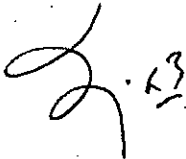
5. It is the case of prosecution that at the time of arrest of the present appellant namely Alim Zar a Kalashnikov and a pistol was recovered along with chargers having live rounds etc, however, admittedly they have only sent the Kalashnikov to the FSL and have not sent the pistol, therefore, the very foundation stone of the alleged recovery of the weapon of offence, if any, has not been established as if truly the Kalashnikov and the pistol were recovered then both of them should have been sent to the FSL together for matching the same with the empties recovered from the spot, therefore, the story of prosecution cannot be accepted in parts and thus the benefit of the same has to be given to the appellant.

6. The prosecution has also not sent the Kalashnikov to the finger print expert for matching the same with the finger prints of the appellant to establish that in-fact it was recovered from him and thus being admissible evidence the prosecution has not been able to produce the same which rendered the whole episode of recovery as doubtful.



ATTESTED

  
EXAMINER  
PESHAWAR HIGH COURT  
Mingora Bench/Dar-ul-Qaza Sوات  
Sub-Registry, Buner



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7. In light of what has been discussed above, accused/appellant is extended benefit of doubt and resultantly acquitted of the charge of commission of the alleged offence by setting aside the impugned order and judgment of conviction dated 07.12.2019 of the Court of learned Additional Sessions Judge-II/Judge Model Criminal Trial Court/Izafi Zila Qazi Buner. The appeal in hand is allowed in above terms.

8. These are reasons for our short order of even date.

ATTESTED

*[Signature]*  
 EXAMINER  
 PESHAWAR HIGH COURT  
 Mingora Bench/Dar-ul-Qaza, Swat  
 Sub-Registry, Buner

Announced  
Dt: 01.02.2023

*[Signature]*

JUDGE

*[Signature]* 23

JUDGE

Certified to be true copy

Office  
 09/03/2023  
 W/R

*[Signature]*  
 EXAMINER 24-03-23  
 Peshawar High Court, Mingora Bench/Dar-ul-Qaza, Swat  
 Sub Registry, Buner  
 Authorized Under Article 87 of Quanoon-e-Shahadat Order, 1984

CU No. 15162  
 Date of Application 24-03-23  
 Date of Receipt of File -  
 Date of Preparation 24-03-23  
 Date of Notice -  
 Words 04P  
 Fees 16/-  
 Urgent Fees -  
 Date of Delivery 24-03-23  
 Signature *[Signature]*



OFFICE OF THE SUB DIVISIONAL EDUCATION  
(M) GAGRA DISTRICT BUNER

No 10191

Dated: 13/02/2023

To

The District Education  
Officer (M) Buner.

Subject: RE-INSTATEMENT IN R/O MR. ALIM ZAR (PSHT)

R/Sir,

Enclosed, please find herewith an original application which is self-explanatory for the purpose of re-instatement in respect of the subject official.

The case is hereby forwarded for onward necessary action please.

SUB DIVISIONAL EDUCATION  
OFFICER (M) GAGRA BUNER

ADCOB (L5816 = pay)  
D not keep an file  
18/2/023  
ATTESTED

(M)



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The District Education Officer  
District Buner

Subject: Application for Reinstatement

Sir;

With due respect it is stated that I was serving as primary school head teacher at GPS CHEENA in this department under your kind control. but unfortunately I was blamed at 21.11.2018 and convicted by the learned ASJ(MCTC)Buner and sentenced for life imprisonment. I filed appeal before the honorable Peshawar high court mingora bench (Darul qaza) Swat. The Hon'ble court set aside the impugned judgement of ASJ Buner which was passed on dated 07/12/2019 and acquitted me from the charges which were levelled against me. Now I am free and want to continue my service.

Therefore kindly reinstate me on my post I shall be greatly thankful to you.

Your sincerely

Alimzar (PSHT)

Personal no:00272774

Cnic no:15101-0388310-1

Mob no:03319696850

Sign:



DATE 11-02-2023

ATTESTED



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خدمت جناب ڈائریکٹر صاحب ایلیمنٹری اینڈ سیکنڈری ایجوکیشن خیبرپختونخوا

عنوان: حکمانہ اپیل پر خلاف حکم ڈی ای او بونیر ملازمت سے برخاستگی از علیم زر

ایس جینہ بونیر

جناب عالی

گزارش کی جاتی ہے کہ میں بحیثیت پرائمری سکول ہیڈ ٹیچر گورنمنٹ پرائمری سکول چینہ رہا تھا بد قسمتی سے میرے خلاف 21 نومبر 2018 کو دفعہ 302 اور دفعہ 15 کے تحت بونیر نے پہلا سسپنشن آرڈر اور بعد میں ٹرائل کورٹ سے سزا ہونے کی صورت میں بنا مجھ کو ملازمت سے برخاست کر دیا میں نے سیشن کورٹ کے فیصلے کے خلاف پشاور ہائی کورٹ میں اپیل معزز عدالت پشاور ہائی کورٹ مینگورا بینچ دارلقضاء سوات نے منظور کرتے ہوئے 01-02 کو دونوں مقدمات میں باعزت بری کر دیا پری ہونے کی صورت میں نے ڈی ای او صاحب کو درخواست دی لیکن سروس بک سے پتہ چلا کہ مجھ کو ملازمت سے برخاست کر دیا گیا ہے جس کے بعد میں نے ڈی ای او صاحب کو ملازمت پر بحالی کی درخواست بمع ہائی کورٹ کا تفصیلی فیصلہ دے دی ڈی ای او صاحب نے اس سلسلے میں دو ایس ڈی اوز کو انکوائری آفسیرز مقرر کر کے انکوائری کے تمام تر لوازمات میں نے پورے کر کے انکوائری مکمل ہوئی اب تقریباً دو ماہ گزرنے کے بعد ڈی ای او صاحب ہائی اتھارٹیز سے رجوع کرنے کا کہہ رہا ہے۔

لہذا میں آپ کی خدمت میں درخواست کرتا ہوں کہ آپ صاحبان مہربانی کر کے مجھ ملازمت پر بحالی اور بقایا جات کی ادائیگی کے احکامات صادر فرمائے تو بندہ عریب پر بڑا کرم ہوگا۔

نوٹ: درخواست کے ساتھ درجہ ذیل کاپیاں منسلک ہے۔

- (1) ایف آئی آر کاپی
- (2) سسپنشن آرڈر کاپی
- (3) ڈیسمیزل آرڈر کاپی
- (4) ایس ڈی ای او کورنگ لیٹر کاپی
- (5) ڈی ای او صاحب کو درخواست کاپی
- (6) ہائی کورٹ شارٹ آرڈر کاپی

آپ کا محسن: علیم زر ولد اعجم خان

سکنہ چینہ محلہ حسن حیل ضلع بونیر

شناختی کارڈ نمبر: 1-0388310-15101

موبائل نمبر: 03369696850

27-03-2023 مورخہ

ATTESTED



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مت جناب ڈائریکٹر صاحب، ایلیمنٹری اینڈ سیکنڈری ایجوکیشن خیبرپختونخوا:

ان محکمانہ اپیل پر خلاف حکم ڈی ای او بونیر ملازمت سے برخاستگی از علیم زر (بی ایس ایچ ڈی) جی بی

چینہ بونیر

عالیٰ

ش کی جاتی ہے کہ میں بحیثیت پرائمری سکول ہیڈ ٹیچر گورنمنٹ پرائمری سکول چینہ میں خدمات سرانجام دے رہا ہوں۔ بد قسمتی سے میرے خلاف 21 نومبر 2018 کو دفعہ 302 اور دفعہ 15 کے تحت مقدمہ دائر ہوا ڈی ای او بونیر نے پیلا سپینشن آرڈر اور بعد میں ٹرائل کورٹ سے سزا ہونے کی صورت میں بنا کسی اطلاع یا نوٹس کے کو ملازمت سے برخاست کر دیا میں نے سپینشن کورٹ کے فیصلے کے خلاف پشاور ہائی کورٹ میں اپیل دائر کیا اور اپیل معزز عدالت پشاور ہائی کورٹ مینگورا بینچ دارالقضاء سوات نے منظور کرتے ہوئے مجھے 2023-20 کو دونوں مقدمات میں باعزت بری کر دیا بری ہونے کی صورت میں نے ڈی ای او صاحب کو پوسٹنگ کی درخواست دی لیکن سروس بک سے پتہ چلا کہ مجھ کو ملازمت سے برخاست کر دیا گیا ہے جس کے بعد میں نے ڈی ای او صاحب کو ملازمت پر بحالی کی درخواست بمع ہائی کورٹ کا تفصیلی فیصلہ دے دی ڈی ای او صاحب نے اس سے سیر دو ایس ڈی اوز کو انکوائری آفسیرز مقرر کر کے انکوائری کے تمام تر لوازمات میں نے پورے کر کے ترقی مکمل ہوئی اب تقریباً دو ماہ گزرنے کے بعد ڈی ای او صاحب ہائی انپارٹیز سے رجوع کرنے کا کہہ رہا

میں آپ صاحبان کی خدمت میں درخواست کرتا ہوں کہ آپ صاحبان مہربانی کر کے ڈی ای او بونیر کے ملازمت سے برخاستگی کے حکم کو کالعدم کر کے مجھے ملازمت پر بحالی اور بقایا جات کی ادائیگی کے احکامات صادر فرمائیں۔

تو بندہ غریب پر بڑا کرم ہوگا۔

درخواست کے ساتھ درجہ ذیل کاپیاں منسلک ہے۔

- ( ایف ای آر کاپی )
- ( سپینشن آرڈر کاپی )
- ( ڈیمیزل آرڈر کاپی )
- ( ایس ڈی ای او کورنگ لیٹر کاپی )
- ( ڈی ای او صاحب کو درخواست کاپی )
- ( ہائی کورٹ کا تفصیلی فیصلہ )
- ( پریس کلیرنس سرٹیفکیٹ کاپی )

اب کا محسن: علیم زر ولد اعجم خان

سکنہ چینہ محلہ حسن جیل ضلع بونیر

شناختی کارڈ نمبر: 1-0388310-15101

موبائل نمبر: 03369696850

ATTESTED

27-03-2023

مورثر

11/3/23, 8:50 AM

Leopards Courier Services | Courier & Logistics Services in Pakistan

Consignment No. : BU589338648

65

1 Shipment picked      2 Dispatched      3 Arrived      4 Out for Delivery      5 Pending      6 Delivered

Delivered

Signed for by : (AJMAL - STAFF)      Dated: 28 March 2023, 13:18

Shipment Detail

Origin : BUNNER      Destination : PESHAWAR  
Shipper : ALIM ZAR      Consignee : THE DIRECTOR OF ELEMINTARY  
Reference No. :      Booking Date : 27 March 2023, 14:11  
Pieces : 1      Weight : 250 Gram(s)

ATTESTED

(M)

## وکالت نامہ

ایڈووکیٹ دستخط: _____	ڈسٹرکٹ بار ایسوسی ایشن بوئیر خیبر پختونخوا
بار کونسل / بار ایسوسی ایشن نمبر: <u>Bx-10-0116</u>	
رابطہ نمبر: <u>0346-9011188</u>	

بعدالت جناب: مسٹر جسٹس محمد رفیق صاحب

دعویٰ: _____	مخانب: <u>ایڈووکیٹ</u>
علت نمبر: _____	
مورخہ: _____	
جرم: _____	
تھانہ: _____	

علم زور  
بنام ڈس۔ ای۔ او۔ وغیرہ

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ  
آن مقام مسٹر جسٹس محمد رفیق صاحب کیلئے مشتاق احمد خان ایڈووکیٹ کو وکیل مقرر  
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی  
نامہ کرنے و تقرر ثالث و فیصلہ بر خلف دینے جواب دعویٰ، اقبال دعویٰ اور درخواست ازہر قسم کی تصدیق زریں پر دستخط کرنے کا  
اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی  
کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے  
بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیار حاصل ہونگے اور اس کا ساختہ پر داختم قبول و منظور ہوگا  
دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف وصول کرنے کا حقدار ہوگا۔ کوئی تاریخ پیشی  
مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مقدمہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

2/6/12-3

المرقوم:

\_\_\_\_\_

گواہ شد

\_\_\_\_\_

\_\_\_\_\_ کے لئے قبول منظور ہے۔

مسٹر جسٹس محمد رفیق صاحب

علم زور  
بنام ڈس۔ ای۔ او۔ وغیرہ