

1. *That the appellant was joined the Levy Force of District Orakzai as Sepoy in the year, 2005.*
2. *That after 25th amendment, the appellant's district i.e. Orakzai the then Orakzai Agency was also merged like other agencies in Khyber Pakhtunkhwa Province, after merger the Khasadar Force are absorbed in Khyber Pakhtunkhwa Police Force in the year, 2019 and the appellant was properly absorbed in Khyber Pakhtunkhwa Police vide Notification dated 23/07/2020. (Copy of Absorption Notification is attached as annexure "A")*
3. *That after being inducted into service, the appellant has been the most obedient, hardworking & sincere subordinate and never left any stone unturned in fulfillment of his duties and responsibilities.*
4. *That throughout his service carrier, the appellant has never been awarded minor or major punishment.*
5. *That unfortunately the appellant was enroped in a false and concocted case vide FIR No 888 dated 12/06/2019 u/s 302/324/337-D/452/34 PPC, Police Station MRS, District Kohat. (Copy of FIR is attached as annexure "B").*

6. *That after lodging the ibid case the appellant being a law abiding citizen and a member of police department, had surrendered before the law.*
7. *That after surrendering, the appellant was behind the bars, till the conclusion of trial, that after conclusion of trial the appellant was convicted by the learned trial court and thereafter the appellant filed Criminal Appeal against the conviction before Peshawar High Court, Peshawar, whereby the appellant was acquitted vide judgment dated 07/06/2023. (Copy of the judgment dated 07/06/2023 of Peshawar High Court is attached as annexure "C").*
8. *That after acquittal the appellant was release from jail on 22/06/2023 and soon after the appellant wants to resume his duty and approach to the office of respondent No 4 on 24/06/2023, but astonishingly the office of respondent No 4 handed over a dismissal order dated 28/12/2020 to the appellant. (Copy of dismissal order is attached as annexure "D").*
9. *That against the above impugned order dated 28/12/2020 of respondent No 4, the appellant preferred an appeal before the respondent No 3 on 24/07/2023, which was rejected on 14/09/2023, whereby upheld the punishment awarded by the*

respondent No 4. (Copy of appeal and order dated 14/09/2023 are attached as annexure "E").

10. That feeling aggrieved from both the impugned orders of respondents No 3 & 4, the appellant filed the instant Service Appeal on the following grounds, inter alia:-

Grounds:-

- A. That the both the impugned dismissal orders of respondents No 3 & 4 are illegal, against the facts and law, liable to be set aside.
- B. That the impugned dismissal order as well as that order of the appellate authority are cubical, void ab-initio, unwarranted and are liable to be set aside.
- C. That after acquittal of the appellant, the charges of the alleged crime is not proved, as per settled law every acquittal is Honourable acquittal, but the respondents instead of giving benefit of acquittal, dismissed the appellant representation which is not allowed by the law.
- D. That in case of the appellant, no show cause notice or statement of allegation or charge sheet were personally served upon the appellant, thus appellant remained unheard.

and the order consequent to such a legally defective order as of no legal effect, the law treats such order illegal, void ab-initio.

- E. That the appellant has served the department for more than 15 years, while the appellant is deprived from his bread and butter alongwith his family on the basis of alleged criminal case, the competent court of law after considering the evidence, acquitted the appellant from the charges, but for unknown reasons, the respondents have refused to give benefit of acquittal on technical ground.*
- F. That the under the principle of natural justice, fair play and equity, the appellant is entitled for restoration into service.*
- G. That from all prospective, the dismissal order as well as that of the appellate authority's order are illegal, wrong, unwarranted, hence liable to be set aside.*
- H. That if any delay in fling of departmental appeal is found, may kindly be condoned for the ends of justice.*
- I. That the appellant reserves the right to agitate any other ground at the time of arguments.*

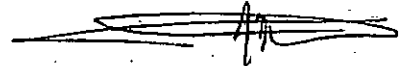
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It is, therefore, respectfully prayed that on acceptance of this Service Appeal, the impugned dismissal order dated 28/12/2020 of respondent No 4 as well as the appellate order dated 14/09/2023 of respondent No 3 may kindly be set aside and the appellant may kindly be re-instated on his service with all back benefit.

Dated:- 23/09/2023

Appellant

Through:-



Muhammad Ilyas Orakzai
Advocate Supreme Court.

7

**BEFORE THE KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. _____/2023

Abdul Wahab.....**Appellant**

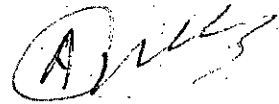
Versus

Govt. of KP & others.....**Respondents**

AFFIDAVIT

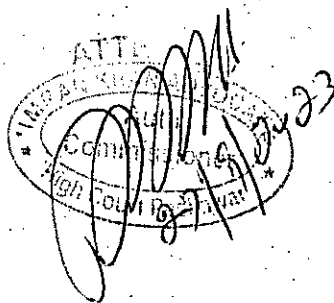
I, Abdul Wahab S/o Wakeel Akbar R/o Qom Mula Khel Tapa Qatab Khel, Mazari Garhi, Post Office Ghaljo, Tehsil Upper Mohmand Orakzai, Agency, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT



CNIC: 21604-6059008-1

Cell: 0337-8037937



**GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT.**

NOTIFICATION

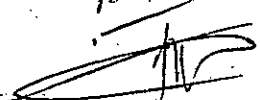
Peshawar dated the, 23/7/2020

No.SO(Police)HD/SMY 2019 Merged Area 1002-1013 In pursuance of the provisions contained in section 9 of the Khyber Pakhtunkhwa Levies Force Act, 2019 (Khyber Pakhtunkhwa Act No.XXXV of 2019) read with rule 3 of the Levies Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019, the Home and Tribal Affairs Department, with the prior approval of the Cabinet and on the recommendation of the Provincial Police Officer, hereby orders absorption of the following members of Levies Force of Orakzai Tribal District in the Khyber Pakhtunkhwa Police with effect from the date of the initial appointment of the said members:

S#	Name with parentage	Previous Rank	Rank in which absorbed
1.	Khan Muhammad s/o Khan Zaman	Sepoy BS-5	Constable BS-7
2.	Javid Hussain s/o Khial Afzal	Sepoy BS-5	Constable BS-7
3.	Abdul Wahab s/o Wakil Akbar	Sepoy BS-5	Constable BS-7
4.	Muhammad Tariq s/o Sahil Khan	Sepoy BS-5	Constable BS-7
5.	Sajid Rehman s/o Khanab Khan	Sepoy BS-5	Constable BS-7
6.	Abdul Janan s/o Jumma Khan	Sepoy BS-5	Constable BS-7
7.	Said Marjan s/o Burhan-u-Din	Sepoy BS-5	Constable BS-7

2. The above absorption shall be subject to the following terms and conditions:

- Their services shall be governed under the Khyber Pakhtunkhwa Police Act, 2017 and the rules made thereunder.
- A member shall not be entitled for absorption, if he has resigned from Levies Force Service or has been terminated from the Service ibid on account of misconduct, inefficiency or any other grounds or has been relieved from Service under the Federal Levy Force (Amended) Service Rules 2013, before commencement of the Khyber Pakhtunkhwa Levies Force Act, 2019 (Khyber Pakhtunkhwa Act No. XXXV of 2019).
- Their services shall be considered regular and they shall be eligible for pension and deduction of General Provident fund in terms of the Khyber

Amended


Pakhtunkhwa Civil Servant Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973).

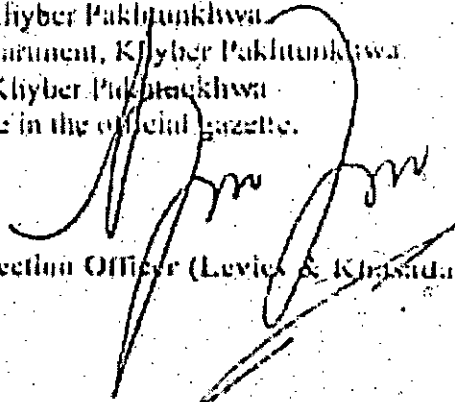
- (iv) Their seniority shall be determined in accordance with rule 6 of the Levies Force (Absorption in Khyber Pakhtunkhwa Police) Rules 2019.
- (v) They shall undergo training as provided in rule 5 of Levies Force (Absorption in Khyber Pakhtunkhwa Police) Rules, 2019.

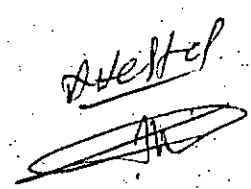
Secretary
to Government of the Khyber Pakhtunkhwa
Home and Tribal Affairs Department

No. & date even.

CC to:

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa.
3. Regional Police Officer, Kohat
4. District Police Officer Orakzai Tribal District.
5. District Commissioner Orakzai Tribal District
6. PS to Chief Secretary Government of Khyber Pakhtunkhwa
7. PS to Secretary, Home & TAs Department, Khyber Pakhtunkhwa
8. PS to Special Secretary-II, Home & TAs Department, Khyber Pakhtunkhwa
9. PS to Secretary, Establishment Department, Khyber Pakhtunkhwa
10. Manager Printing Press for notifying the same in the official gazette.
11. Office record file.


 Section Officer (Levies & Khissadars)



13 Annex C

Opening Sheet for Criminal Appeals (Section 419 Criminal Procedure Code)

IN THE PESHAWAR HIGH COURT, PESHAWAR

(JUDICIAL DEPARTMENT)



Appellate side _____ Criminal Case No: _____ /2020

District	Date of filing petition	Whether filed by Appellant in person or by pleader or agent	Stamp on petition of appeal
Kohat	26.12.2020	Jalal-ud-din Akbar Azam Khan(Gara) Advocate, Peshawar	Nil

Abdul Wahab S/O Wakeel Khan

R/O Orakzai Agency, presently Hangu District, Hangu.....Appellant

VERSUS

1. Mst. Shahnaz Bibi, W/O Mubammad Tariq

R/O Orakzai Agency, (presently Miangan Colony, Kohat) District, Kohat

2. The State.....Respondents

Criminal Appeal U/S.410
Cr.P.C from the order of:

The learned Additional Sessions Judge-III, Kohat

Dated:

21.12.2020

Charge U/Ss:

302/324/337-D/34 PPC (FIR No.888, dated 12.06.2019, PS Cantt, District, Kohat)

Sentences:

i)U/S302(b) PPC to life imprisonment R.I and to pay Rs.100.000/- as fine and to be paid as compensation U/S 544 Cr.PC to the legal heirs of the deceased
ii) U/S 324 PPC to 10 years R.I and a fine of Rs.50.000/ or in default 06 month S.I
iii)U/S 337-DPPC to 07 years R.I and a fine of Rs.50.000/- or in default 06 months S.I
Sentences to run concurrently, with benefit of S.382-B Cr.PC extended

GROUND'S OF APPEAL ARE ATTACHED

ATTESTED
EXAMINER
Peshawar High Court

GROUNDS:

- 1. That the order and judgment of the learned trial Court convicting the appellant is against law and facts on the file. Hence, untenable.
 - 2. That the learned trial Court has not appreciated the prosecution evidence in its correct legal and factual spectrum which has caused grave miscarriage of justice.
 - 3. That the appellant has no motive to commit the delict. A false motive was advanced by the complainant party against him and that also stood not proved.
 - 4. That keeping in view the circumstances of the case then available, preliminary investigation has preceded the report.
 - 5. That the report made by the complainant, Mst. Shahnaz Bibi(PW11) is, evidently, an off-spring of external prompting.
 - 6. That the injury on the person of the injured is that of availability, but not of reliability.
- The instant incident has not occurred in the manner as depicted by the complainant.

ATTESTED
EXAMINER
 Peshawar High Court

7. That the appellant has not absconded. He was avoiding his arrest on account of fear and false implication in the instant case. However, later he surrendered voluntarily for treatment according to law.

8. That, anyhow, the prosecution has miserably failed to prove its case against the appellant beyond shadow of a reasonable doubt.

It is, therefore, humbly prayed that on acceptance of this appeal, the order and judgment of the learned trial Court dated 21.12.2020 convicting the appellant and sentencing him i)U/S302(b) PPC to life imprisonment R.I and to pay Rs.100,000/- as fine and to be paid as compensation U/S 544 Cr.PC to the legal heirs of the deceased, ii) U/S 324 PPC to 10 years R.I and a fine of Rs.50,000/- or in default 06 month S.I and iii)U/S 337-DPPC to 07 years R.I and a fine of Rs.50,000/- or in default 06 months S.I. may graciously be set aside and he be acquitted.

Abdul Wahab
Appellant,

Through

Jalal Azam

1. Jalal-ud-din Akbar Azam
Khan(Gara)

Ayub Zaman

2. Ayub Zaman

Muhammad Khan

3. Muhammad Khan

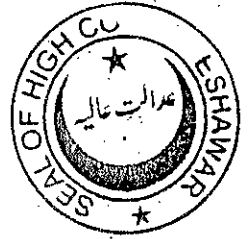
Aftab-ud-din

4. Aftab-ud-din
Advocates

ATTESTED
EXAMINER
Peshawar High Court

(16)

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)**



**Cr.A No. 1030-P of 2020
Abdul Wahab
Vs
The State & another**

Date of hearing: 07.06.2023.

Appellant (s) by: M/s Shabbir Hussain Gigynai & Dr. Amir
Ajam Khattak, Advocates

State by: Malik Haroon Iqbal, AAG

Complt by: Muhammad Khalid, son of the
complainant.

JUDGMENT

SAHIBZADA ASADULLAH, J.- Through this judgment, we intend to decide the instant criminal appeal as well as the connected Cr.R No.03-P of 2021 titled "Mst. Shahnaz Bibi Vs Abdul Wahab etc" as both the cases are the outcome of one and the same judgment dated 21.12.2020 passed by the learned Additional Sessions Judge-III, Kohat, whereby the learned judge has convicted and sentenced the appellant being found guilty of the offence, charge in case FIR No.888 dated 12.06.2019 under sections 302/324/337-D/34PPC, Police Station Cantt: District, Kohat in the following manner;

"Under section 302 (b) PPC convicted and sentenced the appellant to imprisonment for life with fine of Rs.100000/- (one lac) for the murder of deceased Muhammad Tariq. Under section 324 PPC convicted the appellant for making an attempt of the murder of complainant Mst. Shahnaz and

**ATTESTED
EXAMINER
Peshawar High Court**

sentenced him to 10 (ten) years R.I with fine of Rs.50,000/- (fifty thousand) as compensation, in default whereof he further to suffer 06 (six) months simple imprisonment.

Under Section 337-D PPC for murderous assault and causing injuries to complainant Mst. Shahnaz convicted and sentenced the appellant to 07 (seven) years R.I with fine of RS.50,000/- (fifty thousand) as compensation.

The sentences of the imprisonment shall run concurrently. Benefit of Section 382-B Cr.P.C has been extended to the appellant. The amount of fine if realized shall be paid to the shari legal heirs of the deceased as compensation under section 544-A Cr.P.C."

2. The precise facts of the instant case as per first information report are that on 12.06.2019 at 04:50 the complainant namely Mst. Shahnaz Bibi reported the matter in injured condition in emergency room at KDA Hospital, Kohat alongwith the dead body of her husband that she (the complainant) alongwith her husband Muhammad Tariq now deceased, alongwith children were asleep in the veranda of their house. The electricity bulb of the veranda was switched on at the relevant time i.e. 02:30 AM, she heard the voice of bolt of pistol, woke up from sleep and saw that accused Abdul Wahab s/o Wakeel found present inside the house, whereas the co-accused namely Fazal s/o Khan Wazir was present on the wall of their house, as both the accused are the residents of Orakzai Agency presently at Hango, and when her husband rose from his cot (charpai), in the meanwhile accused Abdul Wahab opened firing at

ATTESTED
EXAMINER
Peshawar High Court

him with the intention to kill him and during this interregnum she tried to catch hold of the accused, but the accused also fired at her and due to fire shots of the accused his husband got hit and died on the spot, whereas she received injuries on her body. The accused after firing decamped from the place of incident. Motive behind the occurrence was stated to be previous blood feud. The occurrence has witnessed by the children in the house, including her. She charged the accused for the murder of her husband as well as causing injuries to her. Hence, the ibid FIR.

3. After arrest of the accused and completion of investigation, case was put in Court where the appellant was indicted to which he pleaded not guilty and claimed trial. Prosecution, in order to prove its case, produced and examined as many as 14 witnesses, whereafter statement of the accused was recorded under section 342 Cr.P.C wherein he professed his innocence. The learned trial Court, after full-fledged trial, found the appellant guilty of the charge and while recording his conviction sentenced him as mentioned above, hence this appeal.

4. Arguments heard and record gone through

5. In the incident the deceased lost his life whereas the complainant received serious injuries,

ATTESTED
EXAMINER
Peshawar High Court

both the dead body of the deceased, and the injured complainant were shifted to the hospital, where the complainant reported the matter. The report was made to PW-2, who reduced the report of the complainant in the shape of murasila and thereafter the injury sheets and inquest report were prepared. The dead body of the deceased was sent to the doctor for postmortem examination, whereas the injured complainant was examined by the doctor and her medico legal certificate was prepared. The investigating officer after receiving copy of the FIR visited the spot and prepared the site plan. During spot inspection the investigating officer collected blood through cotton from the respective places of the deceased and the injured complainant, whereas two empties of .30 bore alongwith live cartridges were collected near from the place, where the accused-appellant was standing. It is pertinent to mention that during spot inspection a solar bulb was taken into possession, which was declared as the source of identification. The recovered empties were sent to the laboratory and therefrom a report was received, telling that the same were fired from one weapon. The co-accused Fazal Janan was arrested and also the appellant, when his bail before arrest was recalled. During interrogation the appellant

ATTESTED
EXAMINER
Peshawar High Court

disclosed his presence, on the night of incident, in Hango Police Line, being posted as ASI over there. The appellant also submitted an application regarding his innocence and the same was investigated. The investigating officer recorded the statements of all concerned and they tendered affidavits in favour of the appellant, so much so, the investigating officer collected the call data record, where the appellant is shown present at the place of his duty. Though the police opined regarding the innocence of the appellant, yet the learned trial Court did not agree with the same and as such the trial concluded in holding the appellant guilty and the co-accused innocent.

6. The learned trial Court took into consideration the material aspects of the case and applied its judicial mind to the evidence on file and the statements of the witnesses. The learned trial Court after feeling satisfied, convicted the appellant and acquitted the co-accused, but this being the Court of appeal is under the bounded duty to re-visit the record of the case and to re-appreciate the statements of the witnesses, so that miscarriage of justice could be avoided. True that in the instant case we have before us an injured eyewitness with the stamp of injuries, but we cannot forget the presence

ATTESTED
EXAMINER
 Peshawar High Court

of the eyewitness at the stated time, in the house in question, but what this Court is to see is; as to whether she told the whole truth and as to whether the incident occurred in the mode, manner and at the stated time. On one hand we have the injured eyewitness, the widow of the deceased, and in the like circumstances substitution is a rear phenomenon, but on the other we have an accused who came forward with a specific plea of his innocence, so this Court must walk with care to fix the liability and to determine the innocence of the appellant.

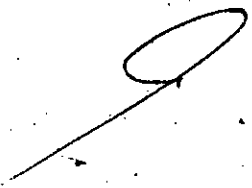
7. The points for determination before this Court are that; as to whether the incident occurred in the mode, manner and at the stated time; as to whether the complainant received injuries at the hands of the appellant and that the appellant was duly identified; as to whether the deceased and injured were shifted to the hospital soon after the incident and that the matter was promptly reported; as to whether the complainant was conscious, oriented in time and space and as to whether her injuries did permit her to report the matter and as to whether the prosecution succeeded in bringing home guilt against the appellant. There is no denial to the fact that the incident occurred inside the house of the deceased,

ATTESTED
EXAMINER
Peshawar High Court

where the deceased was done to death and the complainant received serious injuries on her body. There is no denial to the fact that the dead body of the deceased and the injured were shifted to the hospital, where the matter was reported, but we cannot forget that the incident occurred in the odd hours of the night and that by the time the darkness had prevailed, so this is for the prosecution to tell that how the appellant was identified and that how co-accused who was present on the top of the wall, could be seen from such a long distance. In order to appreciate this particular aspect of the case, we deem it essential to go through the statements of the witnesses. The complainant was examined as PW-11, who stated that on the night of occurrence she alongwith her husband and other inmates were sleeping in the house; that she got up on hearing the sound of pushing of bolt of the pistol by the accused; that the accused fired at her husband who died on the spot, then the accused fired at her which caused her injuries; that thereafter the dead body of the deceased was shifted to the hospital and the matter was reported. Similarly, Mst. Rabia was examined as PW-10, who stated that on the night of occurrence she alongwith other inmates of the house were sleeping in the Veranda of the house; that it was

ATTESTED
EXAMINER
Peshawar High Court

about 02:30 AM when she heard the voice of firing and cries of her mother-in-law and her father-in-law; that she saw a person duly armed with pistol present at the house, who fired at the complainant and the deceased; that the firing made by the accused proved fatal to the deceased, while the complainant got injured; another person was also present on the wall of the house; that the accused who fired at Mst. Shahnaz Bibi and her father-in-law was one Abdul Wahab; that site plan was prepared on her pointation and the motive was previous blood feud between the parties and that the accused were identified in the light of the bulb installed in the veranda of the house. This is interesting to note that when the statement of PW-10 was recorded by the investigating officer under section 161 Cr.P.C, she in her statement did not mention the names of the accused. It is further interesting to note that PW-10 in her cross-examination categorically stated that the accused was not known to her. We are to see that when the accused-appellant was not known to her, then she by herself did not identify that the accused was Abdul Wahab and even it suggests that the appellant was not known to her previously, as she did not belong to the village to which the accused-appellant belonged. This is for the prosecution to tell that how the co-



ATTESTED
EXAMINER
Peshawar High Court

accused was identified, who was present on the wall behind a tree, with no light at the place of his presence. This is surprising that both the accused are charged by name by the complainant when she reported the matter. The complainant was asked regarding the material aspects of the case and regarding her familiarity with the appellant and the other. She categorically stated that on one hand she is a pardanashin lady, whereas on the other she had no relation with the accused. As the age of the complainant is shown as 31 years and the history of the blood feud is given as 10/15 years, so it is yet to be ascertained as to whether complainant ever visited the village and she ever came across the appellant prior to the present incident. The very statement of the complainant makes us believe that she had no acquaintance with the appellant and also with the co-accused. When there was no relationship between the parties and that when both the parties were not on visiting terms and that when the blood feud has a history of more than ten years, then whether in such eventuality the complainant was able to identify the appellant and that she knew their names. The conflict between the statements of the witnesses and there no familiarity with the accused, is a circumstance to which this Court cannot close its

ATTESTED
 EXAMINER
 Peshawar High Court

eyes, as the incident occurred in the dark hours of the night, then the identity of the accused is a must and this is for the prosecution to convince that they were duly identified.

8. This is surprising that the accused selected the odd hours of night and this is again surprising that how the appellant could know, that how the deceased was available at point No.1 in the veranda. As the site plan depicts that all the inmates were lying in the veranda in their respective cots (charpai) and that cot of the deceased was lying to the west. The complainant was examined regarding the manner she woke up, regarding the manner the deceased was fired at and regarding the manner she attempted to catch hold of the appellant, but the explanation tendered by the complainant is hard to be believed, when the site plan is taken into consideration. The site plan depicts that apart from the complainant her other two sons, the deceased and one Mst. Rabia were available in the house on the night of occurrence, but surprisingly apart from the complainant no other inmate of the house, including her sons, actively participated in chasing the appellant. The complainant disclosed that after receiving firearm injuries the deceased fell on the ground, and breathed his last. She further disclosed

ATTESTED
EXAMINER
Peshawar High Court

that after the deceased was fired at, the accused-appellant fired at her as well and after receiving firearm injuries, she fell to the ground and she again stood up and struggled to catch hold of the accused, but could not. While reporting the matter, though the complainant stated that after the deceased was fired at, she struggled to catch hold of the appellant, but she could not and as a result of her active attempt, she was fired at. This portion of her statement is of great significance, as she was fired only by the accused when she tried to catch hold of him, but when her Court statement is taken into consideration, she stated that first she was fired at, she fell to the ground, she stood up and she tried to catch hold of the appellant, but she could not. When the report of the complainant and her Court statement are taken into consideration, then the relevant portion of her Court statement has damaged the prosecution case beyond repair. As by the time when she did not make an attempt to catch hold of the appellant, then there was no need for the accused to fire at her, as the accused had already achieved the desired goal, but if her Court statement is taken to be correct, then the complainant is to tell that why she was fired at when she had not attempted to catch hold of the appellant. This is for this Court to ascertain that once the

ATTESTED
EXAMINER
 Peshawar High Court

complainant received two serious injuries on her body and fell to the ground, whether in that eventuality she had the ability to stand up and to chase the appellant with the sole purpose to catch hold of him. We are not persuaded with this portion of her statement and we are not convinced that after receiving firearms injuries complainant was having the ability to rise and run. The complainant by herself went in self contradiction, as her report and her Court statement tells two different stories regarding the manner in which the incident occurred and regarding the mode in which the appellant left the house.

9. Another intriguing aspect of the case is the identification of the accused, the investigating officer during spot inspection observed a solar light installed at point "E" in the veranda and the same was declared to be the source of identification. This is surprising that the people of the house were sleeping in the veranda and it was 02:30 AM midnight, when they were fast asleep what need was there to keep the light on, rather at such time the lights are off, so that good sleep could be enjoyed. Even otherwise when the appellant was not known to the complainant and the eyewitness, whether in such eventuality the identification in the light of the bulb would serve the purpose, our answer is in emphatic

ATTESTED
 EXAMINER
 Peshawar High Court

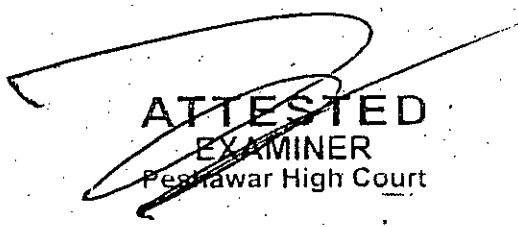
no. As admittedly, the complainant and the eyewitnesses were not on visiting terms with the accused and as admittedly the complainant and the eyewitness were married to the house with no relation with the accused and his family, so in such eventuality it was obligatory for the investigating officer to make arrangement for the identification parade. Another interesting aspect of the case is the identification and recognition of the co-accused who was present on the top of the wall. The site plan depicts that from such a long range his identification was not possible and even the record is silent as to what interest, the co-accused, had in the enmity of the parties. The record is silent regarding his status, his involvement and his interest in the matter. The identification of two different accused at two different places in the odd hours of the night, is a circumstance that has created dents in the prosecution case and that has shattered the veracity of the witnesses. As the witnesses admitted that they were not on visiting terms with the opposite side and that the blood feud between the parties goes back to 10/15 years, so in such eventuality the identity of the appellant is a question that remained unresolved, we are fortified from the judgment reported as "2019 M

ATTESTED
EXAMINER
 Peshawar High Court

L D-1966", titled "JUMO and 4 others Versus The STATE", which is reproduced herein below:-

"They have even failed to give the details of the motorcycle of the culprits, deceased and of their own. Undeniably, the culprits were not on visiting terms with the eye-witnesses including injured. The occurrence lasted more or less for five minutes and that too when incriminate firing was made by the perpetrators as such identification of the appellants in such a situation also raises suspicion upon the probability of the ocular account furnished by them."

The prosecution is to tell that when the sons of the complainant were present at the house, why they did not make efforts like their mother and that why they did not come forward as eyewitnesses of the incident. Though PW-12, Wahid i.e. son of the complainant, verified the report of the complainant, but interestingly when he was examined, he did not confirm the manner in which the incident occurred and he did not utter a single word, that he too, identified the accused and that the incident occurred in the manner as was disclosed by the complainant. This is more interesting to note that when PW-12 was cross-examined, he stated that complainant reported the matter in the morning when she gained consciousness. He further disclosed that the report was made when the light prevailed. As PW-12 is the real son of the complainant and the deceased, so it


ATTESTED
EXAMINER
Peshawar High Court

cannot be held that he was extended concession to the appellant, rather he told the truth and the truth is that, that at the time of arrival to the house the complainant was not in senses. The doctor who examined the complainant was examined as PW-7, she stated that when the complainant was brought to her, she disclosed that she was fired at by unknown accused and even in her cross-examination she confirmed that it was the complainant who told that she was fired at by unknown accused. When the statement of PW-12 is read in juxtaposition with the statement of the complainant and the statement of the doctor, no ambiguity is left that the complainant did not come forward with the whole truth, rather she concealed the material facts, both from the investigating officer as well as from the Court of law. This concealment of facts on part of the complainant has gone deep to the roots of the prosecution case.

10. The medical evidence is in conflict with the ocular account. The manner in which the deceased and the complainant were fired at, does not get support from the medical evidence, as in both the cases the projectile travelled from up to downward, had the deceased and the complainant were fired at from the place assigned to the appellant, then the same would pierce through the body. True that

ATTESTED
EXAMINER
Peshawar High Court

medical evidence is confirmatory in nature and in case of trust worthy, confidence inspiring evidence, the same plays a little role but once the Court comes to a conclusion that the eyewitness account is either suffering from infirmities or the witnesses concealed the real facts, then in such eventuality the conflict between the two will go to the roots of the prosecution case and in such eventuality it is the prosecution to suffer. As in this particular case the statements of the witnesses in respect of the injuries caused and the medical evidence are not on one page, so this conflict between the two can only and only be counted towards the appellant and its benefit must be extended to him. The situation in hand is dealt with by this Court in case titled "Haneef Ullah alias pentar and four others Vs Habib ur Rehman and three others (2021 YLR 899), which reads as follows:-

"The seat of injuries on persons of the deceased and the places of the assailants where they were standing at the time of firing find no support from the medical evidence, as one of the deceased had received two firearm injuries from the back side whereas the other from left to right, whereas the circumstances suggest that the deceased were facing the accused at the time of incident. One of the deceased received an entry wound from his right with its exit to left which further belies the stance of the prosecution, had he been facing the accused or having his back exposed to the accused then either the entry would have been on the front or back, but not from left to right, so it can safely be held that the medical evidence does not support the case of prosecution."

ATTESTED
EXAMINER
 Peshawar High Court

21

11. The motive was alleged as previous blood feud between the parties, but in that respect neither the complainant could bring on record independent evidence, nor the investigating officer could record the statements of independent persons, so this Court lurks no doubt in mind that the prosecution failed to prove the motive. As the motive was alleged by the prosecution, so the prosecution was under the bounden duty to prove the same. True that weakness or absence of motive hardly plays a role in the acquittal of an accused charged, but when the motive is the constituent part of the prosecution story, then under all circumstances the prosecution must prove the same and its failure will help none but the appellant. Even otherwise, the prosecution failed to prove that why both the accused attracted to the spot when one of the acquitted accused, had nothing in common with motive, as the cause of killing was the previous blood feud and once on record the same was not brought, then the prosecution is at the losing end.

12. The appellant soon after his arrest submitted an application to the police high-ups for fair investigation. In his application he disclosed that on the night of incident he was posted in Police Lines, Hango and that he was present at the place of his

ATTESTED
EXAMINER
Peshawar High Court

duty. The inquiry was initiated and an inquiry officer was deputed for the purpose. The statements of numerous officials were recorded and even they tendered affidavits in that respect. The bona-fide of the appellant can be gauged from the fact that soon after the occurrence he applied for bail before arrest and at the same time he submitted an application regarding his innocence. The inquiry officer also collected the call data record, where the appellant was shown present in Police Line, Hango and that the same evidence went unrebutted. Even the investigating officer opined regarding the innocence of the appellant. True that the plea of alibi will hardly play a role to discredit the eyewitness account, but when the plea taken appeals to a prudent mind and when the plea is duly verified, then in those circumstances the same can be taken into consideration. As on one hand the prosecution came forward with twisted and concealed facts, whereas on the other the medical evidence does not support the eyewitness account, then in such eventuality the plea of the appellant can be taken into consideration, more particularly, when the same set of evidence has been disbelieved in respect of the acquitted co-accused. The plea of alibi was taken into consideration in case titled "TASADDAQ HUSSAIN alias

ATTESTED
EXAMINER
Peshawar High Court

IDNAN Versus The STATE and others”, (2019 P Cr. L J Note

160), which is reproduced herein below:-

“It is important to mention here that co-accused Falak Sher, who was attributed the role of making fatal fire shot at the deceased was arrested later on and died in the judicial lockup. The appellant, from the day one, took the plea of alibi that he was running the business of pesticide, remained away from his house in connection with receiving the amount of pesticides. This plea of the appellant was further verified by the peoples of the vicinity to whom he had met at the relevant time. Different persons from the vicinity as well as from the appellant's work place joined the investigation in this regard and out of them, three persons appeared as defence witnesses in order to verify the appellant's presence with them at the time of occurrence. Admittedly, ipse dixit of the police opinion is not binding upon the Court, however, if the said opinion is based on sound material and the evidence collected in support of the innocence of the accused is well founded then the same could be taken into consideration in support of the other pieces of evidence.”

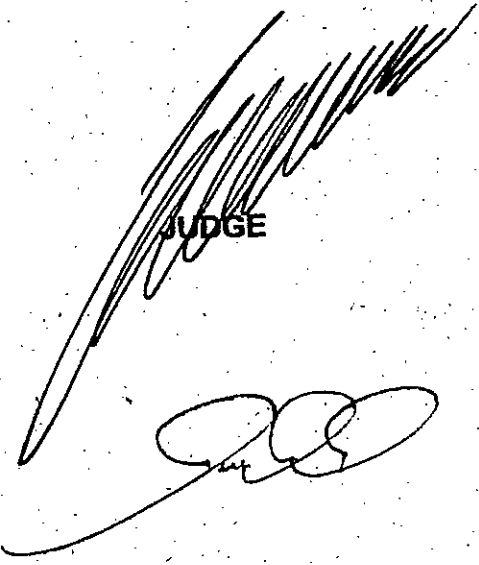
13. The cumulative effect of what has been stated above, leads this Court nowhere but to hold that the prosecution could not succeed in bringing home guilt against the appellant. The impugned judgment is suffering from inherent defects and the learned trial Court while passing the impugned judgment misdirected itself, both in law and on facts of the case, which calls for interference. The instant criminal appeal is allowed, the impugned judgment is

ATTESTED
EXAMINER
Peshawar High Court

set aside and the appellant is acquitted of the charge. He shall be released forthwith if not required to be detained in any other case.

14. Now diverting to the Criminal Revision No.03-P/2021 titled "Mst. Shahnaz Bibi Vs Abdul Wahab etc" through which the complainant has requested this Court for enhancement of the sentence. When once the appeal against conviction has been accepted and once the impugned judgment has been set aside, so in that eventuality the instant criminal revision would hardly proceed and the same is dismissed as such.

Announced
07.06.2023.



JUDGE

JUDGE

Shahnaz P.S.
(DB) Mr. Justice Ihtiaq Ibrahim & Mr. Justice Sahibzade Asadullah

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanoon-e-Shahadat Act 1984

22 SEP 2023

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**OFFICE OF THE DISTRICT POLICE
OFFICER ORAKZAI**

OFFICE ORDER:

The order will dispose off the departmental enquiry conducted against Constable Abdul Wahab s/o Wakeel Akbar under the Khyber Pakhtunkhwa Police Rules, (Amended 2014) 1975.

Constable Abdul Wahab s/o Wakeel Akbar was charged/involved in case FIR No: 888 dated 12.06.2019 U/S 302/324/452/34 PPC PS MRS District Kohat.

He was suspended vide order OB No. 606 dated 26.09.2019 and DSP HQrs was nominated as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer vide his finding and found him guilty of the charges leveled against him, and recommend him for major punishment.

These act of the accused official earned bad name to a discipline force on one hand and involved himself in criminal act.

In view of the above and available record, I reached to the conclusion that the accused official was involved in criminal act. Therefore, these charges leveled against accused Constable Abdul Wahab s/o Wakeel Khan have been established beyond any shadow of doubt. Therefore, in exercise of powers conferred upon me under the rules ibid, a major punishment of "dismissed from service with immediate effect" is imposed on accused Constable Abdul Wahab s/o Wakeel Khan with immediate effect. Kit etc issued to the Constable be collected.

Announced No. 1228
Dated 28/12/2020

DISTRICT POLICE OFFICER, ORAKZAI

No. 278 JEC/OASI Dated 28/12/2020

Copy of above to the-

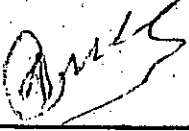
1. The Regional Police Officer, Kohat
2. DSP HQrs
3. SDPO Upper for collection of items and clearance
4. Pay Officer/SRC/OHC/Reader for necessary action

DISTRICT POLICE OFFICER, ORAKZAI

Attended

- ۵۔ یہ کہ سائل / ایپلانٹ کو مستغیث مقدمہ نے اپنی پہلی بیان میں ہرگز چارج نہیں کیا تھا۔
- ۶۔ یہ کہ سائل / ایپلانٹ اپنے سروس کارڈ سیریل نمبر 77 و بلیٹ نمبر 879 کے مطابق ریک آئی سی تھا۔ جبکہ DPO اور کزنٹی نے سائل / ایپلانٹ کو اپنے آرڈر میں صرف کانسٹیبل ظاہر کیا ہے حالانکہ سائل / ایپلانٹ بطور ریک آئی سی تھا۔
- ۷۔ یہ کہ سائل / ایپلانٹ نے اپنے دوران سروس تقریباً 18 سال میں کسی بالآفسران کو کسی قسم کی کوئی شکایت کا موقع نہیں دیا گیا اور نہ ہی سائل / ایپلانٹ کے خلاف کوئی شکایت درج ہے اور سائل / ایپلانٹ کی بعد از بحالی سروس بھی کسی قسم کا شکایت کا موقع بالآفسران کو نہیں دیا۔
- ۸۔ یہ کہ سائل / ایپلانٹ باقاعدہ شادی شدہ اور بال بچے دار شخص ہے۔ مذکورہ نوکری کے علاوہ ذرا ایج معاش آمدن بھی نہ ہے۔
- ۹۔ یہ کہ سائل / ایپلانٹ نے ایچل بروقت جمع نہ کر سکا کیونکہ سائل / ایپلانٹ جیل میں تھا اور مذکورہ مقدمہ کی سزا کاٹ رہا تھا۔

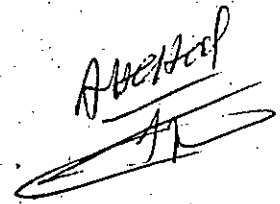
لہذا استدعا ہے کہ سائل / ایپلانٹ کا اپیل منظور کیا جا کر سائل / ایپلانٹ کی سروس پر دوبارہ بحال کرنے اور سائل / ایپلانٹ کی تمام مراعات بمعہ تنخواہ جاری کرنے کے احکامات صادر فرمایا جائے۔



مور نمبر: 24/7/2023

عرض

عبدالوہاب ولد وکیل اکبر سکونت ملا خیل چہ قصب خیل، مزاری گڑھی، ڈاکخانہ غلج تحصیل اپر ضلع اور کزنٹی



ORDER.

This order will dispose of the departmental appeal preferred by **Ex-Constable Abdul Wahab** of district Orakzai against the order of District Police Officer, Orakzai whereby he was awarded major penalty of dismissal from service vide OB No. 1228 dated 28.12.2020. Brief facts of the case are that the appellant was found involved in a criminal case vide FIR No. 888, dated 12.06.2019 u/s 32 / 324 / 452 / 34 PPC PS MRS Kohat. The appellant was awarded punishment of life sentence by the Court of Addl. District and Sessions Judge-III Kohat vide order dated 21.12.2020. The appellant lodged criminal petition in Peshawar High Court against the order of ASJ-III Kohat which was accepted and the order of ASJ-III was set-aside. He was dealt with departmentally on the above charges which culminated in major punishment of dismissal from service.

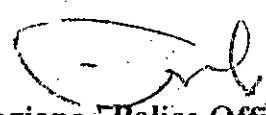
Proper departmental enquiry proceedings were initiated against him and DSP HQrs: Orakzai was nominated as Enquiry Officer. The Enquiry Officer after fulfillment of codal formalities submitted his findings wherein the appellant was found guilty of the charges leveled against him. He was, therefore, recommended for major penalty under the relevant rules.

Keeping in view the recommendations of the Enquiry Officer and the above cited circumstances, the defaulter official was awarded major punishment of dismissal from service under the relevant rules by the District Police Officer, Orakzai vide OB No. 1228 dated 28.12.2020.

Feeling aggrieved from the order of District Police Officer, Orakzai, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in the office of the undersigned on 12.09.2023. During personal hearing the appellant did not advance any plausible explanation in his defense. By involving himself in heinous criminal activities, the delinquent officer has rendered himself unfit for retention in a disciplined law enforcing agency. The allegations leveled against him have been established beyond any shadow of doubt. Moreover, the appeal of the appellant is badly time-barred by 02-years and 08 -months.

Foregoing in view, I, **Sher Akbar, PSP, S.St, Regional Police Officer, Kohat**, being the appellate authority, am not inclined to interfere in the order of punishment passed by DPO Orakzai. Hence, the appeal of Ex-Constable Abdul Wahab is hereby rejected being devoid of merit and badly time-barred.

Order Announced
12.09.2023


Regional Police Officer,
Kohat Region

No. 9915-16 /EC, Dated Kohat the 14 / 09 /2023.

Copy forwarded to District Police Officer, Orakzai for information and necessary w/r to his office Memo: No. 1167/EC, dated 10.08.2023. His Service Record is returned herewith.

- 2. The appellant, Ex-Constable Abdul Wahab of district Orakzai.

Attested


وکالت نامہ

بعدالت جناب ضعیف محسوس خواہ مسطورہ کے مدعیین علیہ
ضلع۔ اور اراکھی
مقدمہ فوجداری ادویاتی
منجانب۔ ایڈووکیٹ

ملت۔ مورخہ۔ جرم۔ تھانہ۔
عبدالوحید ب۔ بنام گوالہست ضعیف محسوس خواہ مدعیین
باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے بیروی و جواب دہی وکل کاروائی متعلقہ آن مقام۔ ایڈووکیٹ محمد الیاس کے

محمد الیاس اور کزنئی ایڈووکیٹ سپریم کورٹ آف پاکستان 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 تقریر ثالث و

فیصلہ بر حلف دینے جواب دعویٰ اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست

ہر قسم کی تصدیق زراں پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم بیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیر دائر

کرنے اپیل مگرانی و بیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکورہ 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 کبھی وہی تملک مذکورہ یا اختیارات حاصل ہوں گے

اور اس کا ساختہ پروا خستہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ دہر جائے التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی

مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ بیروی مذکورہ کریں۔

لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم:- 23 ماہ نومبر 2022ء

العبد

بمقام ایڈووکیٹ محمد الیاس

Attested & Accepted



Muhammad Ilyas Orakzai

Advocate Supreme Court of Pakistan

SC Enrollment No:- 5801

BC No:- 10-3471

CNIC 14101-0798923-7

Cell 0333-9191892

عبدالوحید ب۔ مدعیین علیہ
محمد الیاس اور کزنئی ایڈووکیٹ سپریم کورٹ آف پاکستان
کفایت ایڈووکیٹ اور اراکھی (ایڈووکیٹ)