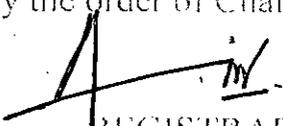


FORM OF ORDER SHEET

Court of

Appeal No. 2055 2055 /2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/10/2023	<p>The appeal of Mr. Muhammad Ayub Khan resubmitted today by Mr. Umar Khitab 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>

The appeal of MMr. Muhammad Ayub Khan PST GGPS Balogram Swat. received to-day i.e. on 26.09.2023 which is returned to the counsel for the appellant with the direction to submit 3 spare/copies of the memo of appeal along with annexures i.e. complete in all respect within 15 days.

No. 3306 /S.T,

Dt. 27/9 /2023.



Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Muhammad ayub khan Adv.
High Court Pesh.

Re-Submitted



13 ¹⁰/₂₀₂₃

BEFORE THE SERVICE TRIBUNAL KHYBER PUKHOON KHWA PESHAWAR.

Appeal No 2055/2023

Muhammad Ayub Khan P.S.T. Government Primary school Balogram Swat.....Appellant.

VERSUES.

2.The Secretary Elementary and Secondary Education K.P. Peshawar and others.....Respondents.

INDEX

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Muhammad Ayub Khan.....Appellant.

Through

Umar Khitab Advocate High Court/

Darulqaza Mingora Bench.

Cell No. 0345- 9524854

Page No.1.....

BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOON KHAW PESHAWAR
CAMP COURT MINGORA SWAT.

SERVICE APPEAL. 2055 /2023.

*Muhammad Ayub Khan P.S.T. . Government Primary school
Balogram Swat.....Appellant.*

Versues.

1. Government Khyber Pukhoonkhwa through Secretary
Elementary and Secondary Education K.P.Peshawar.
2. Director Elementary and Secondary Education K.P.
Peshawar.
3. District Education officer Male Swat .
4. The Sub Divisional Education officer Male circle Babocai
Shagai Shagai Saidu Sharif Swat..... Respondents.

Service Appeal Under section 4 of service Tribunal Khyber
Pukhoonkhawa Act, 1974 against the verbal impugned
order inactive of pay /salary of Respondent No, 4 where
stopped of pay / salary upon the appellant and of
Departmental appellate authority (Respondent No,3)
dated 20/6/2023 did not pass an appropriate order over the
departmental appeal of the appellant with in statutory
period of ninety (90) days.

PRAYER.

1) *In the view of the above, It is most respectfully prayed
that an appropriate service appeal may kindly be accepted
and Respondents may graciously be directed to release the
salary/ pay of the appellant with effect from 1/10/2021 along
with all consequential benefits.*

2) *To direct the Respondent departments to allow permission
to appellant for joining his duty.*

3) *To be declare and order that as the suspension order dated
05/03/2016 was not extend after 90 days as such the appellant
Shall be deemed to have be released for suspension period. It is
further respectfully prayed that the suspension order be set
aside and directed to respondent No, 4 to with draw the
suspension order of the annellant*

4) That the action of Respondent No, 4 (stoppage of pay) of the appellant against the law, service rules and violation of the constitution of Islamic Republic of Pakistan and fundamental rights

With any other relief (s) which this Honorable Service Tribunal may found deem fit and appropriate in the circumstances of the case may also be awarded with cost of the proceeding in the interest of justice and equity.

Respectfully Sheweth.

FACTS OF APPEAL.

1. That the appellant is the bonafide and permanent resident of Village Balogram Swat.
2. That the appellant was performing his duty as PST (Primary school teacher) in Swat with effect from 01/10/1989.
- 3 That the appellant was booked in F.I.R. No, 108 dated 18/02/2016 under sections 302,148,149, 417,419,420, 201 and 15AA PPC police station Rahim Abad Swat lodged against the appellant.
4. That after the lodging of the F.I.R. the Respondent No, 3 issued the suspension order of the appellant vide No, 10770-73 dated 5/3/2016. (Suspension order Annex: A)
5. That the appellant was acquitted from sections 302,148,417,420,201,15AA PPC and convicted for three years imprisonment and Rs.1,00,000/ fine under section 419 PPC vide Honorable Additional Session Judge II Swat Dated 18/05/2022 (Judgment / order as Annex: B)
6. That Honorable Peshawar High Court/ Darulqaza Mingora Swat Bench acquitted the appellant from the charges leveled against him.(Judgment / order as Annex: C)
7. That the appellant submitted an application to respondent No, 3 for release the pay of appellant on 22/10/2021 vide office diary No, 4326 dated 25/10/2021. But in vain. (application dated 22/10/2021 as Annex: D)
- 8.- That after the Honorable Peshawar High court/ Darulqaza Mingora Bench judgment the appellant submitted an application on 15/8/2023 to Respondent No, 3 for the permission for joining the duty and with drawl of suspension order vide diary No, 304 dated 16/8/2023 (Application as Annex: E)

3

- That the appellant submitted departmental appeal to respondent No, 3 vide diary No, 5767 dated 20/6/2023, but the appellate authority (District Education Officer Male Swat) not yet decided in prescribed period. (Departmental appeal as Annex: E)
10. That the Respondent No, 4 action (stoppage of salary/ pay) of the appellant is against the service rules and against the fundamental rights.

GROUND.

1. That the act of Respondent No, 3 is totally against the law and favors their blue eyed by illegally depriving the appellant from his protected fundamental rights.
2. That this is a classic case of misuse of the authority and a very colorful and fanciful use of them.
3. That the impugned action of Respondent No, 3 is whimsical, capricious and founded on surmises and conjectures.
4. That the appellant is dealt with in manner not warranted by the law and rules not the subject emanating from the commands of the constitution.
5. That the verbal impugned order is illegal, and violate of due process of law. Hence the same is liable to be set aside.
6. That no show cause notice, proper inquiry statement of allegations, personal hearing and final notice whatsoever have been conducted /served in the impugned proceeding.

It is most respectfully prayed to accept the appellant service appeal and any other relief (s) which this Honorable Service Tribunal may found deem fit and appropriate in the circumstances of the case may also be awarded with cost of the proceeding in the interest of justice and equity.


Muhammad Ayub Khan..... appellant
Through Council
Umar Khitab Advocate
Peshawar High Court/ Darulqaza
Mingora Swat Bench.

Alfa

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BEFORE THE SERVICE TRIBUNAL KHYBER
PUKHOONKHWA-PESHAWAR CAMP COURT
MINGORA SWAT.

Service appeal No, _____/2023.

Muhammad Ayub Khan P.S.T. G.P.S Balogram
Swat.....Appellant.

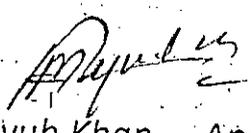
VERSUES.

1. The Secretary Elementary and Secondary Education Khyber
Pukhoonkhawa Peshawar & others.....Respondents.

AFFADAVIT.

It is stated on oath that the contents of this Writ
Petition are true and correct to the best knowledge and
belief. Moreover, no such like writ petition is pending before
this Honorable Service Tribunal K.P. Peshawar camp court
Swat.




Muhammad Ayub Khan.....Appellant..

BEFORE THE SERVICE TRIBUNAL KHYBER PUKHOONKHWA
PESHAWAR CAMP COURT SWAT.

Service appeal No. _____/2023.

Muhammad Ayub Khan P.S.T. G.P.S. BALOGRAM Swat
.....Petitioner.

VERSUS

1. The Secretary Elementary and Secondary Education
KhyberPukhtoonkhwa Peshawar and others.....Respondents.

MEMO OF ADRESSES OF THE PARTIES.

1. Muhammad Ayub Khan P.S.T. G.P.S Baloram Swat
.....appellant

Cell No. 0348-8991110

Addresses of Respondents.

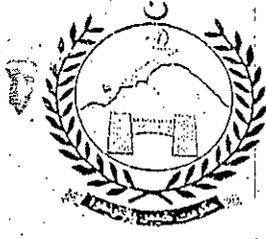
1. The Secretary Elementary and Secondary Education Peshawar.
2. The Director Elementary and Secondary Education Khyber
Pukhoon khawa Peshawar.
3. The District Education Officer Male Swat.
4. Sub Divisional Education officer circle Babozai Shagi Saidu
Sharif Swat.


Muhammad Ayub Khan..... Appellant.

Through

Umar Khitab Advocate
High Cour/Darul Qaza Swat.
Cell No, 0345-9524854

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Suspe



OFFICE OF THE DISTRICT EDUCATION
OFFICER (M) SWAT
(9240228-9240209)

Aux A
6

OFFICE ORDER.

Consequent upon FIR No.108 Dated 18.02.2016 U/S 302/148/149 PPC P.S Rahim Abad, Muhammad Ayub, s/o Shalyar SPST, Government Primary School Rahim Abad involved in the above cited case is hereby suspended with effect from 18.02.2016 till the decision of the case.

Necessary entries to this effect should be made in his S/Book and leave account from.

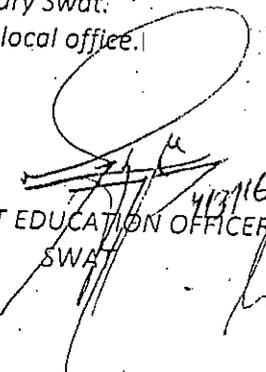
(Hafiz Mohammad Ibrahim)
DISTRICT EDUCATION OFFICER (M)
SWAT

Endst:No: 10770-73 /PF/M.Ayub/SPST/DEO/M.

Dated 5/3/2016.

Copy forwarded to:

- 1- The Director Elementary & Secondary Education KPK Peshawar.
- 2- The District comptrollers of Account Swat at Saidu Sharif.
- 3- The Senior Superintendent of Police Investigation, Swat.
- 4- The Dy District Education Officer (M) Swat.
- 5- The Sub Divisional Education Officer (M) Primary Swat.
- 6- P.A to District Education Officer (M) Swat the local office.
- 7- The teacher concerned.


DISTRICT EDUCATION OFFICER (M)
SWAT

Ann
July
2022

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IN THE COURT OF ZIA-UL-HAQ
ADDL: SESSIONS JUDGE/ IZAFI ZILLA QAZI-II, AT GULKADA
SWAT

Sessions Case # 1/7 of 2016
Date of Institution: 16.07.2016
Date of Transfer In: 28.01.2022
Date of Decision: 18.05.2022



The State through Dawa Khan S/O Shaiber Khan R/O Mohallah
Mutkhel, Balogram, Tehsil Babuzai, District Swat

(Complainant)

Versus

- 1) Muhammad Ayub Khan S/O Shalyar
- 2) Mushtaq Ahmad S/O Sheher Yar
- 3) Waqas Ahmad S/O Javed, residents of Mutkhel, Balogram,
District Swat.

(Accused facing trial)

- 4) Ibrar son of Sheher Yar
- 5) Intiaz son of Muhammad Ayub Khan residents of Mutkhel,
Balogram, District Swat.

(Absconding accused)

CHARGED UNDER SECTIONS 302/ 148/ 149/ 417/ 419/ 420
/201 PPC VIDE FIR NO. 108 DATED 18-02-2016 POLICE
STATION RAHIMABAD, SWAT

Mr. Ajmal Zia Khan Advocate for complainant.
Syed Mudassir Shah the learned APP for the State.
Mr. Rashid Ali and Mr. Razaullah Advocates for accused.

JUDGMENT

18.05.2022

1. Accused facing trial Muhammad Ayub Khan,
Mushtaq Ahmad and Waqas Ahmad alongwith absconding

accused Ibrar and Imtiaz stand charged under section 302/148/149/417/419/420/201 PPC vide FIR No. 108 dated 18.02.2016 registered at Police Station Rahimabad Swat.

2. Precisely stated facts of the case, as narrated in FIR No. 108 (EX PA/1) are that on 18-02-2016 at 18:35 hours, complainant Dawa Khan reported the matter to the local police at the place of occurrence that he after performing the Maghrib prayer, was present at her daughter's (Mst. Sohni Bibi) house, situated near the place of occurrence. In the meanwhile, Mst. Sohni and other female inmates of the house started crying by hearing sound of firing. The complainant came out of the house and saw his nephews Nadeem and Naeem proceeding to the spot. He saw that his sons (1) Shaukat (2) Ayaz (3) Fayaz and daughter (4) Mst. Shakila lying Walter in blood and accused (1) Ibrar (2) Mushtaq sons Sheher Yar (3) Muhammad Ayub Khan S/O Shalyar (4) Waqas S/O Javed (5) Imtiaz S/O Muhammad Ayub, residents of Balogram were present on the spot, duly armed with firearms and were firing with their respective firearms at his sons and daughter, who got hit from the firing of accused and died on the spot. When the accused saw the complainant and his nephews reaching towards the spot, they fled away from the spot. They could not trace the accused being empty handed. The occurrence is eye-witnessed by the complainant and his nephews Nadeem and



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Naeem sons of Khishwar and other persons as well. The motive stated to be altercation of accused Mushtaq Ahmad and Ayaz son of the complainant some time prior to the occurrence. The complainant charged the above mentioned accused for the commission of offence and instant FIR was registered.

3. After completion of investigation, complete Challan against the accused facing trial as well as against the absconding accused under the mandate of section 512 Cr.PC (EX PW-15/1) was put in court by PW-15. Constable Adnan No. 2091/DFC had also recorded his statement as PW-07 on 08.07.2020 wherein he had brought on record the warrant u/s 204 Cr.PC, report overleaf and the proclamation notices u/s 87 Cr.PC and his reports overleaf the same (EX PW-7/1 to EX PW-7/12) against the absconding accused Ibrar and Imtiaz which established their abscondance. Accused Muhammad Ayub Khan, Mushtaq Ahmad and Waqas Ahmad were summoned who appeared and Provision U/S 265-C Cr.P.C duly compiled with on 28-07-2016, whereas, accused Ibrar and Imtiaz were avoiding their lawful arrest, therefore, proceedings U/S 512 Cr.PC were initiated against them.

4. Formal charge was framed against the accused facing trial on 29-08-2016, to which they pleaded not guilty and claimed trial. The prosecution was given opportunity to

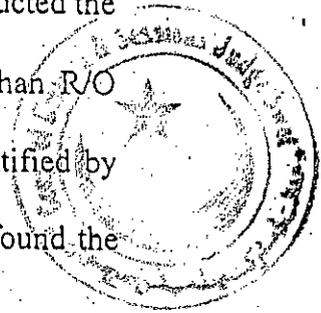


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produce evidence, who produced 21 witnesses, gist of which is as under:-

PW-1 was Mustaqim ASI, who after receipt of murasila, incorporated its contents in shape of FIR Ex.PA/1 and correctly signed the same.

PW-2 is the statement of Dr. Jamil Ahmad, SGTH, Swat, who deposed that on 18-02-2016 at about 07:08 pm, he conducted the autopsy of deceased Muhammad Ayaz S/O Dawa Khan R/O Balogram, Swat, brought by Hazrat Ali ASI and identified by Raza Khan S/O Shaiber Khan. After examination he found the following:



EXTERNAL APPEARANCE:

Mark of ligature on neck and dissection etc. Nil

Condition of subject: Beard young man wearing black clothes with blood stained, height 5' & 11", thin body.

Wounds, bruises, position, size, nature:

(A) F.A.I

1. Inlet "on right side frontoparietal region size 1/2 Inch in diameter, having charring marks.

Outlet: On left side at base of skull two inch in diameter brain matter out.

2. Inlet: "On back right side to vertebral column (lumbar), half inch in diameter, charring marks.

Outlet: On right side lower part of chest one inch in diameter.

3. A little bruise on left side on check.

Scalp, skull and vertebrae:

Describe on page No.1

Describe on page No.1

X-ray skull. Multiple fractures on skull.

THORAX:

1. Walls, ribs and cartilages: Outlet on right side, lower chest
2. Plurae: Ruptured.
3. Right lung: Ruptured.

Remarks by Medical Officer:

F.A.I.

Received dead body at 07:08 PM

Cause of death: Sever brain injury.

Probable time b/w injury & death: Withing 1/2 hours approx.

Probable time b/w death & postmortem: 02 hours approximately.

His report EX.PW-2/1 consisting of 06 sheet. He also made endorsement EX.PW-2/2 on injury sheet.

PW-3 is the statement of Dr. Saifullah, SGTH, Swat, who deposed that on 18-02-2016 at about 08:00 pm, he conducted the autopsy of deceased Shaukat Ali S/O Dawa Khan R/O Balogram, Swat, brought by Hazrat Ali ASI and identified by Raza Khan S/O Shaiber Khan. After examination he found the followings:

EXTERNAL APPEARANCE:

Mark of ligature on neck and dissection etc. Nil

Condition of subject: Healthy looking male of age 38-39 years, wearing Shalwar, Qameez and Banyan with blood staining.

Wounds, bruises, position, size, nature:

(A) F.A.I

1. Inlet "FAI wounds about 1/2 inch in diameter on the right side parital region.

2. F.A.I exit wound, left side, base of skull on neck 2 inch in diameter.
3. No postmortem livida, staining developed. No rigor mortis.

Scalp, skull and vertebrae:

According to radiologist, fracture on cranial vault at occipital parital junction, full thickness fracture. (Brain injury).

Expert opinion attached

Remarks by Medical Officer:

In his opinion deceased died due to hemorrhage and shock due to injury vital organs and skull, brain, vessel, meninges caused by F.A.I.

Received dead body at 07:08 PM

Probable time b/w injury & death: Spontaneously.

Probable time b/w death & postmortem: 2-3 hours approximately.

His report EX.PW-3/1 consisting of 06 sheets. He also made endorsement/opinion on injury sheet, which is EX.PW-3/2 on injury sheet. His remarks on back of inquest report is EX.PW-3/3.

PW-4 is the statement of Dr. Shams Ul Hadi, SGTH, Swat, who deposed that on 18-02-2016 at about 08:00 pm, he conducted the autopsy of deceased Fayaz S/O Dawa Khan R/O Balogram, Swat, brought by Hazrat Ali ASI and identified by Raza Khan S/O Shaiber Khan. After examination he found the followings:

EXTERNAL APPEARANCE:

Mark of ligature on neck and dissection etc. Nil

Condition of subject: Light blue color Shalwar Qameez, blood stained.

Wounds, bruises, position, size, nature:

(A) F.A.I (Chin)

1. Inlet "Right mandible (face) about two CM.

Outlet: No exit.

2. Inlet: "Between frontal and occipital bone 1 1/2 inch

Outlet: Occipital bone 2 inch.

3. Left neck inlet 1 inch with charring marks present, lower (fifth cervical disc).

Outlet: No exit, bullet, recovered from dead body at level of 8th thoracic spinal. Spinal vertebra. (Subcutaneously).

4. Left wrist entry 1 x 1 cm. 5 cm to joint.

Exit 2 x 1 cm forearm.

Scalp, skull and vertebrae:

1) Right sided face (mandible) entry 2 cm.

No exit.

2) Entry between occipital and frontal bone 1 1/2 inch.

Exit occipital bone region two inches distance between entry and exit 3 inch.

3) Left neck entry fifth cervical vertebra one inch charring marks present.

No exit. Eighth thoracic vertebra (bullet recovered subcutaneously).

THORAX:

Larynx and thrachea: Inlet wound left side neck.

Blood vessels: Vital vessels left side neck injured.

ABDOMEN:

Mouth, pharynx and esophagus. Right sided (chin) mandible injured (inlet).

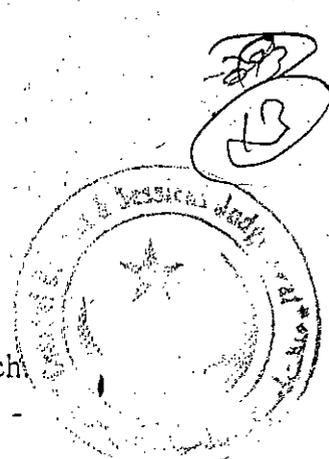
MUSCLES, BONES, JOINTS:

Injury: Left wrist entry 1 x 1 cm. Exit 2x2 cm.

5 cm from the wrist joint posterior.

Remarks by Medical Officer:

1. Inlet right mandible chin 2-cm.



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No exit

2. Left neck inlet 1 inch.

No exit. Bullet recovered.

3. Inlet frontal and occipital bone 1 1/2 inch.

Exit occipital bone 2 inch.

4. Left wrist entry 1 x 1 cm dorsal.

Exit 2 x 1 cm (5 cm from the wrist joint) "Posterior"

Cause of death: Severe bleeding due to brain damage.

Probable time b/w injury & death: About 1/2 hours.

Probable time b/w death & postmortem: 02 hours approximately.

His report EX.PW-4/1 consisting of 06 sheet, He also made endorsement EX.PW-4/2 on injury sheet. He also gave answers on inquest report as EX.PW-4/3.

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PW-5 was Rahim Gul RHC/120 PS Rahimabad, who deposed that on 19-02-2016 MHC Ismail Khan handed over him parcels No.1, 2, 3, 4, 10, 11, 12, 13, 5, 6, 7, 8 & 16 containing blood stained earth from the places of all the deceased, garments of deceased persons, empty shells, ammunition and 30 bore pistol with fixed charger for taking the same to FSL alongwith road receipt No.140/21 dated 19-02-2016, which were taken by him to the FSL and obtained acknowledgement signature with seal from the FSL officials. He has handed over the road certificate to the MHC Ismail. His statement was also recorded by IO u/s 161 Cr.PC.

PW-6 was Abdul Jabbar, Armorer, District Swat, who deposed that on 23-02-2016 constable Ayaz Khan No.1283 produced before him Kalashnikov No. 1954r3 1571 alongwith charge vide application for expert opinion. He perused the same, which was English made and was capable to fire. In this regard his report is EX.PW-6/1.

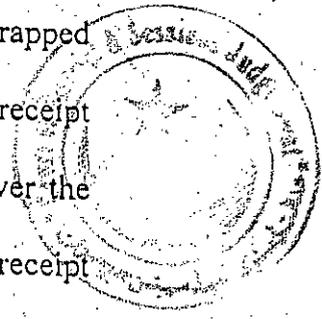
PW-7 was Adnan DFC No.2091, PS Rahimabad, who deposed that he was entrusted with the warrants u/s 204 Cr.P.C issued against the accused Ibrar and Imtiaz EX.PW-7/1 & EX.PW-7/4.

He went on the given addresses for their arrest, where he was informed that accused had gone into hiding and are intentionally avoiding their lawful arrest and there is no hope for their arrest in the near future, therefore, he returned the warrants Ex.PW7/1

& Ex.PW7/4 unexecuted along with his reports overleaf the warrants as Ex.PW7/3 & Ex.PW7/6, while verification from the elders of the locality are EX.PW-7/2 & EX.PW-7/5. Similarly, he was also entrusted with the proclamation notices u/s 87 Cr.P.C issued against the above named accused, which he executed according to law and returned the copies to the I.O as Ex.PW7/7 & Ex.PW7/10 along with his reports on its back as Ex.PW7/9 & Ex.PW7/12, while verification from the elders of the locality are EX.PW-7/8 & EX.PW-7/11. He verified his signatures on the above-mentioned documents.

PW-8 is the statement of Constable Zarshad No.473, PS Rahimabad, who deposed that on 04-03-2016 MHC Ismail Khan handed over him parcel No.20, containing spent bullet (wrapped in bottle) alongwith application for FSL analysis and road receipt No.185/21, which he carried to the FSL and handed over the same to the Incharge FSL by taking acknowledgement receipt and signature. He on his return, handed over the road certificate to the MHC Ismail Khan.

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PW-9 is the statement of Constable Haroon Ali No. 230 PS Rahimabad, deposed that he is marginal witness to recovery memo EX.PW-9/1, vide which Aziz Ur Rahman MLC, Central Hospital, Saidu Sharif, Swat, handed over spent bullet wrapped in bottle and squash tape, having signature and stamp of Dr. Shams Ul Hadi. The I.O took into possession the same in his presence as well as in presence of constable Muhammad Ali. The recovery memo correctly bears his signature.

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PW-10 is the statement of Akbar Hussain MHC, PS Rahimabad, presently posted as ASI/Incharge Police Post Barama, deposed that I.O handed him an application for obtaining record of NCP motorcar bearing NCP No.0797-C/PSR, Chassis No. NZE-12039154, white in color, Model 2002. He checked the record of NCP vehicles and found that NCP No.797 having engine No. INZ-FE1446 CC, Chassis No. NZE-1210129719 has been issued

to Ayub Khan. His report is EX.PW-10/1 and attested copy of relevant page of register NCP is EX.PW-10/2.

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PW-11 is the statement of Hazrat Ali, Incharge Casualty Hospital, Saidu Sharif, Swat, presently posted as ASHO Kalam Swat, deposed that during the days of occurrence, he was posted as Incharge Casualty Hospital Saidu Sharif, Swat. On 18-02-

2016 body of deceased Muhammad Ayaz was brought to the casualty hospital. He prepared injury sheet EX.PW-11/1 of the deceased. Similarly, he also prepared Inquest Report of deceased

Muhammad Ayaz, which is EX.PW-11/2. The body alongwith stated documents were handed over to Dr. Jamil for autopsy.

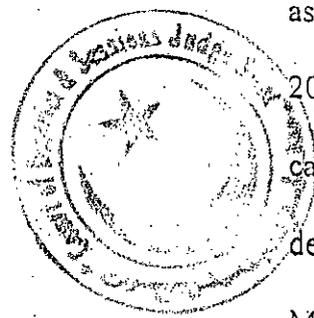
Similarly, bodies of deceased Shaukat and Fayaz were brought to the casualty hospital, he prepared injury sheets of the bodies of the both the deceased, which are EX.PW-11/3 & EX.PW-11/4

respectively. He also prepared Inquest Report of deceased Shaukat as EX.PW-11/5 and that of deceased Fayaz as EX.PW-11/6. The body of deceased Shaukat alongwith injury sheet and

Inquest Report were handed over to Dr. Saifullah for autopsy, while that of deceased Fayaz were handed over to Dr. Shams Ul Hadi. Similarly, body of deceased Mst. Shakila was also brought

to the casualty hospital. He prepared injury sheet EX.PW-11/7 and Inquest Report EX.PW-11/8 of the body of Mst. Shakila and handed over the body alongwith said documents to lady Dr.

Anila for autopsy.



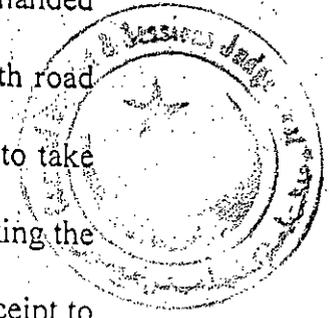
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اضالی ضلع فاضلی درم سوات

18/5/2022

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PW-12 is the statement of Ismail Khan No.103/MHQ, PS Rahimabad, deposed that the I.O handed over him parcels No.1, 2, 3, 4, 10, 11, 12, 13, 5, 6, 7, 8 and 16 alongwith applications for sending the same to FSL for chemical examination. He handed over the same to Constable Rahim Gul No.130 alongwith road receipt No.140/21 dated 19-02-2016, with the direction to take the parcels to FSL, Peshawar. The said constable after taking the same to FSL, returned back and handed over the road receipt to him, which he annexed with Register No.21. Similarly, he handed over parcel No.20 alongwith application and road receipt No.185/21 dated 04-03-2016 to constable Zarshad, for taking the same to FSL Peshawar. He took the same to FSL Peshawar and returned back the road receipt having acknowledgment signature & seal of FSL, which was annexed by him with Register No.21.



Copies of road certificates are EX.PW-12/1 & EX.PW-12/2. The I.O has also recorded his statement u/s 161 Cr.P.C.

PW-13 is the statement of Constable Samar Khan No. 1591 PS Rahimabad, Swat, deposed that he is marginal witness to recovery memo EX.PW-13/1, vide which the I.O, during the arrest of accused Waqas Ahmad, recovered Kalashnikov No.1954r3. 1571 with fixed charger including 29 cartridges of 7.62 bore, while from the personal search of accused Muhammad Ayub, the I.O recovered Qaash alongwith 30 bore pistol No.31123004-66 having fixed charger and 05 cartridges. He is

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also marginal witness to recovery memo EX.PW-13/2, vide which the I.O during personal search of the accused Muhammad Ayub, recovered service card, one mobile phone. He is also marginal witness to recovery memo EX.PW-13/3 vide which the I.O took screen shots of the place of occurrence from official camera, memory card of camera was given to the Fuji Color Lab for print and after a while, the I.O obtained 29 photos along with receipt and was taken into possession by the I.O in his presence.

He is also marginal witness to recovery memo EX.PW-13/4 vide which the I.O after taking 10 screen shots, obtained the same in printed form, from the photo lab. He is also marginal witness to recovery memo EX.PW-13/5 vide which one Kalashnikov and Hand Guard were taken into possession by the I.O in sealed form, after opinion of Armorer. He is also marginal witness to recovery memo EX.PW-13/6 vide which the I.O obtained 06 printed photos from color lab. All the recovery memos correctly bear his signatures. His statement was also recorded by the I.O u/s 161 Cr.P.C.

PW-14 is the statement of Sher Akbar SI, PS Rahimabad, deposed that on 18-02-2016 he was on Patrolling and after getting information regarding the occurrence, he proceeded to the spot, wherein the complainant reported the matter, whose report was culminated into Murasila EX.PW-14/1, which was signed by the complainant Dawa Khan and one Sirajuddin. The

Murasila correctly bears his signature, which was sent through Constable Muhammad Iqbal 1025 to PS Rahimabad.

PW-15 is the statement of Mujeeb Alam Khan SHO, PS Rahimabad, deposed that after completion of investigation, he has submitted complete challan against the accused Mushtaq Ahmad, Muhammad Ayub and Waqas Ahmad, while challan u/s 512 Cr.P.C. against the accused Ibrar and Imtiaz. Complete challan is EX.PW-15/1 which correctly bears his signature and stamp.

PW-16 is the statement of Aziz ur Rahman, Clinical Technician, Incharge MLC, Central Hospital, Saidu Sharif, Swat, deposed that Lady Dr. Anila Begum was posted as M.O in casualty hospital Saidu Sharif, Swat, who is died. The Lady Dr. Anila Begum had conducted the autopsy of Mst. Shakila Bibi. He verified the writing and signature of lady Dr. Anila Begum. The autopsy report of Mst. Shakila is EX.PW-16/1 and endorsement report is EX.PW-16/2.

PW-17 is the statement of Dawa Khan S/O Shaiber Khan R/O Balogram, Swat, (complainant), deposed that on the day of occurrence he performed Maghrib prayer at his Masjid and after Maghrib prayer he went to the house of his daughter Mst. Sohni Bibi, situated near to the place of occurrence, wherein the female inmates of the house including his daughter started crying that there is firing, outside the house. He came out from the house,

wherein he saw that accused Ayub, Imtiaz, Ibrar, Waqas and Mushtaq firing at Shaukat, Fayaz, Ayaz and Mst. Shakila. The accused were having 30 bore pistols, while accused Waqas was having Kalashnikov for his defense. At that time his wife, Mst. Mahi Parwara, Nadeem and Naeem also reached the spot on which the accused fled away from the spot. The accused Mushtaq also got injured with the firing of accused Ayub. The inhabitants of the locality also reached at the spot who carried his children to the hospital in vehicles. He charged the accused for committing murder of his children. The motive was stated to be the altercation in playing prior to the occurrence. He owned his signature on Murasila. He pointed out the place of occurrence to the local police. He also handed over blood stained garments of all the deceased persons to the local police. The local police also prepared list of legal heirs of all the deceased from him.

PW-18 is the statement of Mst. Mahi Parwara, wife of Dawa Khan, resident of Balogram, Swat, deposed that deceased Shaukat, Ayaz, Fayaz and Mst. Shakila were her sons and daughter. On the day of occurrence, she was present in her house, in the meanwhile Rab Nawaz knocked their door and asked about Shaukat to come out, upon which Shaukat and Ayaz came out. After lapse of some time, her daughter Mst. Shakila Bibi came to her and told her that someone is scuffling with Shaukat and Ayaz. She alongwith Mst. Shakila came out of the house and proceeded

to the spot, wherein her husband Dawa Khan, Naeem and Nadeem also reached there. Accused Ayub, Mushtaq, Waqas, Imtiaz and Ibrar were firing at her children, to which her children got hit and fell down. Even after they fell on the ground, accused also fired at them. Accused Mushtaq was hit at the firing of accused Ayub and got injured. The occurrence is eye-witnessed by her. The inhabitants of the locality reached the spot and took her children to hospital. She charged all the accused for the commission of offence.

PW-19 is the statement of Nadeem Khan S/O Kishwar R/O Balogram, Tehsil Babuzai, District Swat, deposed that on the day of occurrence at 06:15 hours evening, he and his brother Naeem were present at their house, where they heard the sounds of firing, upon which he and his brother Naeem came out from their house and rushed to the road side. On proceeding to the spot, they saw that accused Mushtaq, Ibrar, Waqas, Ayub and Imtiaz, were firing at Fayaz, Shaukat, Shakila Bibi and Ayaz, who fell down on the ground. Their parents had also reached at the spot. The accused Mushtaq was also hit by the firing of accused Ayub and got injured. On seeing them the accused fled away. The deceased persons were taken to hospital by the local inhabitants. The occurrence is witnessed by him. The I.O has inspected the spot in his presence and taken into possession samples of blood stained earth through cotton, empty shells were also taken into

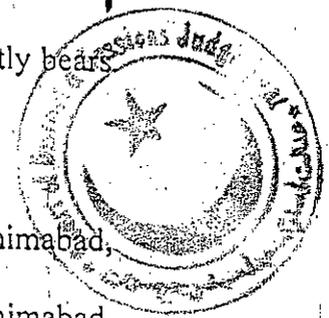
possession from the spot. In this regard the I.O has prepared recovery memo, which correctly bears his signature. Naeem is also marginal witness to the same. The recovery memo is EX.PW-19/1. He is also marginal witness to the recovery memo EX.PW-19/2, vide which the I.O took into possession the blood stained garments, which correctly bears his signature.

PW-20 is the statement of Sirajuddin S/O Shad, resident of Odigram, Tehsil Babuzai, District Swat, deposed that in his presence, the complainant had reported the matter to the local police. Report in the shape of Murasila correctly bears his signature. He and Raza Khan also made identification of bodies of deceased and after conducting the postmortems, the bodies were handed over to them. He is also witness of the pointation memo, which is EX.PW-20/1. He and Mustaqim were present outside the police station. The I.O Pir Syed told them to enter the police station. He himself asked the accused, who were willing to make pointation. He, Mustaqem and accused were taken into official vehicle by the I.O, for proceedings to the spot, when they reached near to Masjid Mula Khel, the accused Ayub indicated to stop the vehicle. The accused Ayub was alighted from the vehicle, wherein he pointed out his place and places of other accused and deceased. Similarly accused Waqas also made pointation of the place of occurrence. The police also took screen shots on the spot. The pointation memo correctly bears his thumb



impression. He is also marginal witness of pointation memo EX.PW-20/2 vide which the accused Mushtaq on 29-03-2016 correctly made pointation. The pointation memo correctly bears his signature and thumb impression.

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PW-21 is the statement of Pin Syed SDPO/OII, PS Rahimabad, Swat, who deposed that he was posted as OII at PS Rahimabad.

He after getting information regarding the occurrence, rushed to the spot and secured the spot. After getting copy of FIR, he started investigation and on the pointation of complainant and eyewitnesses, spot inspection was made out by him and took into possession bloodstained earth through cotton and sealed into separate parcels. Similarly, he collected 03 empties 30 bore (EX.PZ) from the point "A". From point "B" he took into possession 01 empty 30 bore (EX.PZ/1) and sealed into parcels.

From point "C" he collected 01 empty 30 bore (EX.PZ/2) and from point "D" 02 empties 30 bore (EX.PZ/3) and sealed into separate parcels. Similarly from point "E" one front handguard, which seems to be of 12 bore gun (EX.PZ/4) was taken into possession and sealed into separate parcel. All the mentioned recovered things were taken into possession vide recovery memo EX.PW-21/1. He prepared site plan on the pointation of complainant and eyewitnesses, which is EX.PW-21/2. He carried out photography of the proceedings of site plan, which contains 29 double photographs, which are EX.PW-21/3 to EX.PW-

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21/31, which were taken into possession after printing vide memo EX.PW-13/3. He also recorded the statements of eyewitnesses Naeem and Nadeem Khan sons of Kishwar. After that he proceeded to the hospital, wherein accused Mushtaq was taken to hospital in injured condition, who was arrested and issued his card of arrest EX.PW-21/32. He issued memo regarding correction of name of accused EX.PW-21/33. The accused Mushtaq was injured and was admitted in hospital, therefore, he was handed over to the Incharge Guard/Police vide receipt EX.PW-21/34. Parcels No.1 to 9 were handed over to the Muharrir Police Station. On 19-02-2016, the complainant Dawa Khan in presence of witnesses Naeem and Nadeem, produced him blood stained garments of deceased Fayaz (EX.PZ/5), blood stained garments of deceased Mst. Shakila Bibi (EX.PZ/6), blood stained garments of deceased Ayaz (EX.PZ/7), blood stained garments of deceased Shaukat (EX.PZ/8), which were taken into possession vide recovery memo EX.PW19/2. Similarly, he obtained list of legal heirs of all the deceased from the complainant, which are EX.PW-21/35 to EX.PW-21/38. Accused Mushtaq was admitted in hospital, he applied for his arrest till his recovery vide application, which was allowed on 19-02-2016 by the court concerned. He arrested the accused Waqas Ahmad and Muhammad Ayub Khan in the instant case and issued their cards of arrest EX.PW-21/40 & EX.PW-21/41.

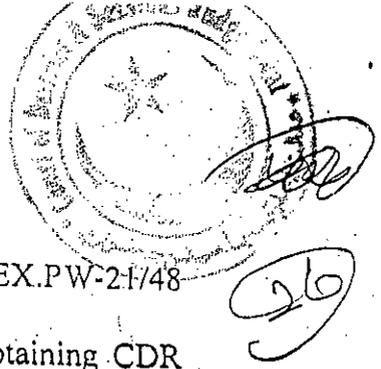
During the arrest of accused Waqas Ahmad, one Kalashnikov

alongwith charger fold 7.62 bore No.1954r3 1571 alongwith 29
cartridges of 7.62 bore EX.PZ/9 while during the personal search
of accused Muhammad Ayub Khan, he recovered Qash and
pistol 30 bore bearing No.31123004-66 having charger and 09
cartridges 30 bore (EX.PZ/10). The said ammunition was taken
into possession by him vide recovery memo EX.PW-13/1 and
sealed into separate parcels. He also recovered service card from
accused Muhammad Ayub Khan, EX.PZ/11 and one mobile
phone EX.PZ/12, which were taken into possession vide
recovery memo EX.PW-13/2. All the parcels 10 to 18 were
handed over to the Muharrir Investigation, for sending the same
for chemical analysis. Copies of applications for FSL analysis
are EX.PW-21/42 to EX.PW-21/45. He issued memo EX.PW-
21/46 regarding correction of names of accused Muhammad
Ayub Khan and Waqas Ahmad. He interrogated the accused
Muhammad Ayub Khan and Waqas Ahmad and from them he
got correct names/father names of absconding co-accused Ibrar
and Imtiaz and in this respect issued memo EX.PW-21/47. He
furnished application for obtaining CDR & registration report
regarding accused Mushtaq Ahmad and Muhammad Ayub Khan
to the computer Lab Investigation, copy of which is placed on
file. He also submitted application for obtaining IMEI and CDR
report regarding accused Muhammad Ayub Khan. The accused
could not produce any license regarding the recovered
Kalashnikov and pistol 30 bore, therefore, Section 15-AA was



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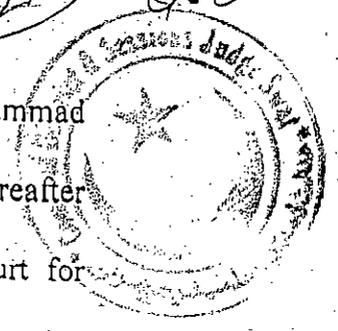


inserted into the case and in this respect memo EX.PW-21/48 was issued by him. He issued application for obtaining CDR report of absconding co-accused Ibrar and Imtiaz, copy of which is placed on file. He after getting information regarding names of deceased Muhammad Ayaz and Shaukat Khan, issued memo EX.PW-21/49 for correction of their names. He obtained police custody in favor of accused Muhammad Ayub Khan and Waqas Ahmad vide application EX.PW-21/50, which was allowed and 4/4 days police custody was granted. Similarly, vide application EX.PW-21/51 obtained Warrant u/s 204 Cr.P.C against the absconding co-accused Ibrar and Imtiaz, which was received and handed over to the DFC concerned. He recorded 161 Cr.P.C statements of Mst. Mahi Parwara and Mst. Sohni Bibi. He also recorded statements u/s 161 of Afaq Ahmad S/O Muhammad Ayub Khan and that of constable who brought Murasila to Police Station. He interrogated the accused Muhammad Ayub Khan and Waqas Ahmad, who were willing for pointation of the place of occurrence, who were taken, wherein both of them respectively pointed out the place of occurrence, upon their pointation sketch for pointation memo EX.PW-21/52 was prepared by him. He also took screen shots of the proceedings of pointation consisting of 10 photos (double), which are EX.PW-21/53 to EX.PW-21/62. Vide applications EX.PW-21/63 & EX.PW-21/64 he obtained expert opinion from Armorer regarding the Kalashnikov No.1954r3 1571 and front hand guard, which are placed on file.

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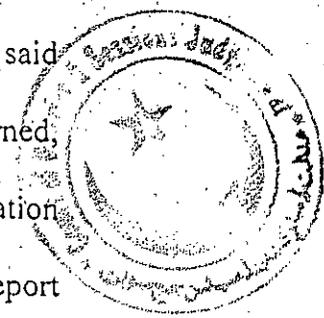


He recorded the statements of both the accused Muhammad Ayub Khan and Waqas Ahmad u/s 161 Cr.P.C, and thereafter they were produced by him before the competent court for recording their statements u/s 164/364 Cr.P.C vide application EX.PW-21/65. Vide application EX.PW-21/66 he obtained report regarding revenue record in respect of accused Ibrar and Imtiaz, which received in negative, placed on file. Vide application EX.PW-21/67 he obtained proclamation u/s 87 Cr.PC from competent court against the accused Ibrar and Imtiaz and handed over the same to DFC for compliance, which is placed on file. During investigation, he searched the houses of accused Ibrar and Imtiaz for the purpose of their arrest, who were not present at their houses and in this respect he prepared search memo EX.PW-21/68. He took into possession one spent bullet, recovered from the body of Fayaz during his postmortem examination, which was sealed in parcel No.20 and is EX.PZ/13, which was handed over to the Muharrir Police Station with application for sending the same for FSL analysis, report in this respect is EX.PW-21/70. The accused Mushtaq Ahmad was admitted in hospital and the I.O vide application EX.PW-21/71 obtained further custody of the accused. During investigation he recovered the motorcar of accused Muhammad Ayub Khan, wherein copy of arm license was lying, the same were taken into possession, the copy of arm license is EX.PZ/14 and the motorcar was taken into custody vide memo EX.PW-21/72. Vide

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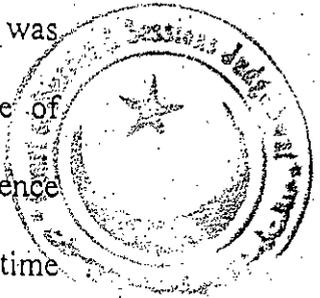
applications EX.PW-21/73 & EX.PW-21/74, he obtained reports from PS regarding ownership or involvement of recovered motorcar in any other criminal activities. Upon the said applications, the I.O obtained reports from officials concerned, which are EX.PW-21/75 & EX.PW-21/76. Vide application EX.PW-21/77 he requested the DC Swat for furnishing report regarding recovered copy of arm license, the report is EX.PW-21/78. During investigation he found that the accused Ibrar had tampered the chassis number and changed the number plate of the motorcar and by this way the, I.O vide memo EX.PW-21/79 added sections of law 417/419/420 PPC to the case FIR. Vide applications EX.PW-21/80 to EX.PW-21/82 he requested for obtaining CDR data of the accused Mushtaq Ahmad and Muhammad Ayub Khan. Similarly vide application EX.PW-21/83 he requested to collect report regarding the SIMs numbers of accused Ibrar and Imtiaz. He placed on file the CDR report EX.PW-21/84 consisting of 63 pages and info regarding accused Mushtaq is EX.PW-21/5. The accused Muhammad Ayub Khan was school teacher, the I.O vide application EX.PW-21/86 requested to the head of the department for initiating departmental proceedings against him. The report regarding blood stained articles was received from FSL, which is EX.PW-21/87. During investigation, he issued memo EX.PW-21/88 for deletion of section 15-AA and insertion of section 19-AA in respect of accused Muhammad Ayub Khan. After getting the



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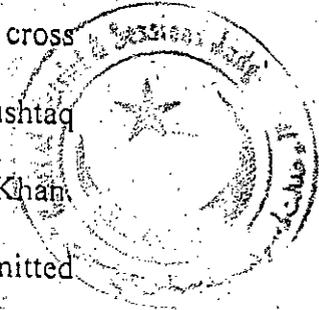
treatment from hospital, accused Mushtaq Ahmad was arrested and vide application EX.PW-21/89 he obtained two days custody. The accused Mushtaq was interrogated, who was willing to make pointation, who was taken to the place of occurrence, wherein he made pointation of place of occurrence and also pointed out his place wherein he was present at the time of occurrence. In this respect the I.O took 06 screen shots and obtained the same in printed form and are EX.PW-21/90. The sketch of pointation is EX.PW-21/91. The accused Mushtaq, during further interrogation stated that he after the commission had handed over the pistol to his brother. For the purpose of recovery of pistol, the I.O raided the house of Ibrar, who was not present at the house. The search memos of the house of accused Ibrar and that of the house of his father in law are EX.PW-21/92 & EX.PW-21/93. The receipt regarding printing out the photos is EX.PW-21/94. He recorded the statement u/s 161 Cr.P.C of the accused and the accused Mushtaq Ahmad was produced before the competent court for recording of his confessional statement u/s 164/364 Cr.P.C, who denied from his confession and thereby he was sent to jail. The accused Mushtaq Ahmad had handed over the weapon of offence to his brother Ibrar and by this way has committed misappropriation of evidence, therefore, vide memo EX.PW-21/96 section 201 PPC was added to the case FIR. The FSL report regarding empty shells and postil received in positive, which is EX.PW-21/97. During investigation he has



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recorded statements u/s 161 Cr.P.C of all the necessary witnesses. Similarly, he has also conducted investigation in cross FIR No.109/2016, wherein the complainant/injured Mushtaq nominated the accused Ayaz and Shaukat sons of Dawa Khan. As the accused of that case have died, therefore, he submitted abated challan in case FIR No.109. After completion of investigation in the instant, case he handed over the case file alongwith proceedings u/s 512 Cr.P.C against the absconding co-accused Ibrar and Imtiaz to the SHO. All the exhibited documents have been prepared by him, which are duly signed by him.



5. After closing of prosecution evidence, statements of accused under section 342 Criminal Procedure Code, were recorded wherein they pleaded their innocence, they neither wished to produce defense nor opted to be examined on oath. However, during the course of arguments, it was found that charge was not properly framed, therefore, charge was reframed on 20.09.2021. The complainant party submitted that they do not want to produce further evidence and relied upon the evidence already recorded. However, learned counsel for the accused stated that they want to re-cross examine 05 witnesses who were summoned and re-cross examined by the accused party and thereafter fresh statements of accused were recorded, who did not produce

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any evidence nor wish to be examined on oath. Subsequently, the charge was again altered and reframed on 10.03.2022 and Mr. Fawad Ahmad Dy PP assisted by Mr. Ajmal Zia Khan and Nasar Khan the learned counsels for the complainant party recorded their statement of relying on the evidence already recorded in the case. Similarly, order sheet No. 08 dated 14.03.2022 reveals that Mr. Shahzad Ahmad Advocate in appearance before the Court submitted Wakaalat Naama on behalf of the accused and recorded his statement to the effect that he is relying on the cross examination on the PWs made previously and that he does not want to further cross examine any of the PWs.



6. Arguments on behalf of the prosecution had been heard on 05.04.2022 while arguments on behalf of Mr. Rasheed Ali and Mr. Razaullah Khan Advocates assisted by Mr. Shahzad Ahmad Advocate heard on 09.04.2022, 12.04.2022, 15.04.2022, 16.04.2022, and 20.04.2022. Thereafter the case was adjourned with the directions to both the parties to explore ways for compromise however today both the parties stated before the Court that there is no possibility of compromise whereafter the case was decided.

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7. Mr. Muddasir Shah the learned APP for the state assisted by MS. Ajmal Zia Khan and Nasar Khan Advocates argued on the point that four innocent persons from the

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same family losing their lives to brutal occurrence culminated by accused facing trial with their absconding accused had been witnessed by complainant (PW 17) and eye witnesses who appeared in the witness box as PW 18, PW 19 and PW 20. They argued that the occurrence was promptly reported to PW 14 on the spot leading to drafting of Murasila EX PW 14/1 which was later incorporated into FIR without any noticeable delay. According to them all the witnesses are resident of the village and their approaching to the spot during the occurrence had been explained and that their presence or witnessing the occurrence could not have been shattered during lengthy cross examination on these PWs, they further argued that the charge is supported by recoveries from the spot, recoveries from accused on their arrest, blood stained garments from all the deceased, and reports from the FSL, Medical evidence and other pieces of evidence on file. They argued that motive had been admitted and presence of accused Mushtaq has also been admitted by defense during trial. Their contention was that the accused facing trial committed the brutal murder of 3 brothers and their sister and that the minor discrepancies brought on record are only to be ignored because these are but natural keeping in view the shock caused to PWs who stand near relatives to deceased and the mental shock which they experienced shall be kept in mind. They also relied on



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2017 YLR 469 [Lahore], 2008 YLR 580 [Shariat Court
AJ&K], 2020 SCMR 597, 2017 YLR 2427 [Lahore], 2020
YLR 942 [Balochistan (Sibi Bench)], 2011 SCMR 1148 &
PLD 1993 FSC 44. 2006 SCMR 1106, 2001 SCMR 177,
2005 P.Cr.LJ 1273 Lahore, 2002 SCMR 105, 2007
P.Cr.LJ 1173 Shariat Court AJ&K, 2011 SCMR 1148,
2003 SCMR 799, 1999 SCMR 1659, 2008 YLR 580
Shariat Court AJ&K, 2007 SCMR 1539, 2011 YLR 224
Lahore, 2004 P.Cr.L.J 1684 Peshawar.

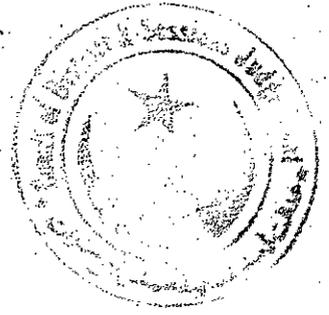


8. In contrast Mr. Razaullah Khan, Rasheed Ali Khan and Shahzad Anwar Advocates defending the accused while referring to various pieces of evidence available on record suggested that firstly the occurrence had not been witnessed by any of the PWs because their presence on the spot is highly doubtful by looking into their conduct on the spot, the distances mentioned by them which had been negated by Medical evidence reflecting charring marks, the number of injuries on the body of deceased viz-a-viz the murder of accused with the specific role of firing on the deceased, their not escorting the deceased to the hospital and that too without any explanation. They also agitated on the time of occurrence stated that the same occurred probably prior in time otherwise the inquest report would not have reflected the time even before the time of occurrence claimed by prosecution. They contended that

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PW Mst Mahi Parwara was later introduced as her presence was neither reported nor later during preparation of site plan her place of presence was shown. Further agitated that PWs Nadeem and Naeem not only remained in the street which is 5/6 feet below the road where the occurrence took place and that not only their witnessing the occurrence from there is not mind appealing but in the light of their deposition of their working as drivers they are chance witnesses beside their being related and interested witnesses. They also agitated on the point that all the 7 empties recovered from the spot had matched with the weapon shown to be recovered from accused Muhammad Ayub and that all the accused sustained but 7 entries which suggest that the occurrence was committed but only by one accused however this one accused could not have been sorted out during investigation. Similarly, the injuries of accused Mushtaq were suppressed and the record is not providing any support as to who was aggressor and who was aggressed upon. Both the learned counsels also laid their stress on the recovery especially of weapons from the accused and their pointation stating that had the weapon been recovered from accused Ayub and Waqas then the same would have find place in the card of arrest and that the pointation without recovery and discovery is of no help to prosecution. Impartiality of PW 21, the Investigation



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Officer was also questioned while referring to his admitted photograph with one Mustaqeem who is relative of the complainant party. Learned counsels for the accused also referred judgments of the superior Courts in the shape of 2012 YLR 2026, 2014 PCr.LJ 1441 20107 SCMR 1427, 2013 PCr.LJ 345, 2013 YLR 1580, 2022 YLR 2229, 2012 YLR 777, 1977 PCr.LJ 30, PLD 1981 SC 201, 2008 YLR 375, 2011 YLR 623, 1990 PCr.LJ 1, 2015 PCr.LJ 81, 2015 SCMR 1122, 2008 SCMR 707, 1999 SMR 1220, 2019 SCMR 631, 2002 PLJ(crc) 1134 and 2013 YLR 982.



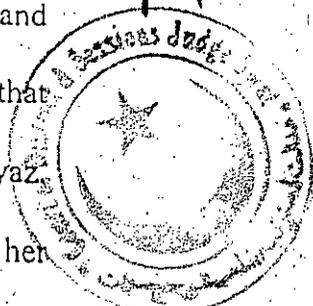
9. This occurrence culminating into the murder of three brothers and a sister is claimed to have been witnessed by PW 17, 18 and 19 beside abandoned PW Naeem Khan and I will make an attempt to determines as to the veracity of the ocular account viz a viz presence of the PWs on the spot and witnessing the occurrence.

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The Murasila EX PW 14/1 lodged on the report of the complainant (PW 17) to its scribe (PW 14) led to FIR EX PA/1 which suggest that complainant was in the house of his daughter Mst. Sohni at the time of starting of firing who approached the spot therefrom. The site plan did reveal the house of Mst. Sohni almost adjacent to the road where the occurrence had taken partially with partial of the occurrence had taken placed in the adjacent street on the opposite side. This street is going towards the house of abandoned PW Naeem and PW 19 with an

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intervening turn who had also claimed of hearing firing in their house and of reaching the spot therefrom and of witnessing the occurrence. As per PW 18 she had reached the spot after calling deceased Shawkat and Ayaz from the house by Rab Nawaz and of her being informed by her deceased daughter Mst. Shakila that someone is quarrelling with deceased Shaukat and Ayaz. According to the examination in chief of this witness after her reaching the spot PW-17, 19 and abandoned PW Naeem also reached the spot. The name of this PW was not shown during his initial report by PW 17 and in the site plan later prepared. This non mentioning PW 18 in the FIR and site plan could have been ignored had the statements of PWs otherwise been consistent, trust worthy and confidence inspiring in the light of the judgment of the August Supreme Court of Pakistan reported in 2003 SCMR 554 wherein it has been held that testimony of a witness cannot be believed or disbelieved simply for the reasons that his name appears or does not appear in FIR instead real test is the intrinsic value of his testimony. Similar opinion has also been expressed in PLD 2001 SC 107 and 2017 MLD 992. Similarly, the site plan had been held to be not a substantive piece of evidence. (1996 SCMR 908) and that omission to indicate position of eye witness in the site plan cannot lead to inference of such witness being not present particularly when presence of such witness is natural (PLD 1980 Supreme Court 317). PW-17 appearing as APW-17 on 20.11.2021 deposited as under:



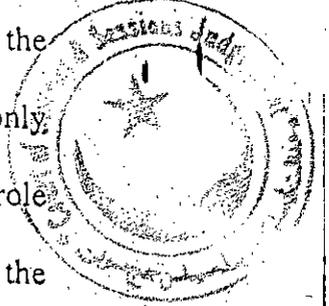
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جب میں وقوعہ کی رات اپنے گھر میں داخل ہوا تو میری بیوی مسماہ مابی پرورہ نے مجھ سے پوچھا تھا کہ ہمارے بچوں کو کس نے قتل کیا ہے۔

This deposition of APW-17 clearly negates presence of PW-18 on the spot and her witnessing the occurrence.

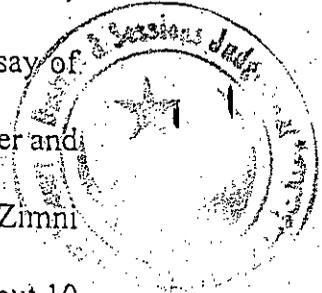
11. The specific kind of weapon has not been shown in the first report despite of fact that all the accused were not only attributed only one kind of weapon (Pistols) but also specific role of firing on respective deceased in the site plan prepared at the instance of complainant party. True that FIR is not an encyclopedia and is meant only to open way for investigation in a cognizable case however material omissions have always been held fatal. The conduct of the complainant party on the spot is not digestible. Complainant (PW 17) being an old aged person could have been given edge on the ground of his old age and suffering the shock of death of his four children including a daughter however during evidence no explanation could be brought on record as to why the deceased, who were none else than near and dear relative of PW 17 and PW 19 beside abandoned PW Naem, were not taken into lap by them, as to why their cloths did not sustained a single drop of blood despite of the fact that all the deceased had bled more than sufficiently on the spot as is evident from the pictures brought on record. PW 18 is stated to have received blood on her clothes however even those clothes were not produced to IO despite of the IO coming to the house of complainant on the fateful night



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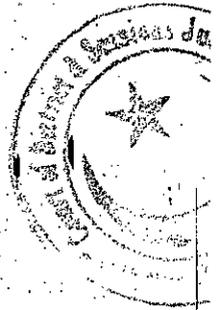
and remaining there for sufficient time as per PW 19. Normally women folk avoid appearance in public however it was not a normal situation as the complainant party had faced the loss of four humans yet neither of the male PWs (three in number) escorted the dead bodies including a young lady what to say of PW 18. The occurrence had taken place after Maghrib prayer and at 18:15 hours however as per PW 21 the investigation (Zimni No. 1) started at 18:25 hours, 10 minutes after occurrence but 10 minutes before the report at 18:35 hours. Inquest report of deceased Muhammad Ayaz (EX PW 11/2) in its column No. 3 reflects that time as 18:15 hours while that of deceased Shawkat as (EX PW 11/5) 18:00 hours. Similarly inquest report of deceased Faayaz (EX PW 11/6) reflect the time of death as 18:00 hours which suggest that the occurrence may have taken place before the claimed time of 18:15 hours however in order to curtail the delay it was shown at 18: 15 hours upon which FIR was lodged at 19:15 hours. As per the prosecution story the deceased were shifted to the hospital by peoples from the locality. The deceased were including one lady too and had the complainant party remained on the spot she would not have been escorted by unknown persons but the PWs especially PW 18 or for that matter other females of the house of the complainant party. The site plan reveals very detailed observation by PWs which is an abnormal conduct during deadly assault. The PW had neither attempted to escape from the spot nor to shield the



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deceased. They had also not attempted at the lives of the accused who-committed the offence. The accused party had also brought on record sustaining injury of accused Mushtaq Ahmad who was also shifted by the locals to hospital. The report is silent as to any injury of accused Mushtaq Ahmad. This is not a case of simple concealment because in case of presence of PW 17, 18, 19 and abandoned PW Naeem Khan certain attempts for vengeance on the spot would have been committed however no such attempt on the part of either of the PWs had been brought on record by either of the parties. Shifting of the accused Mushtaq from the spot alive after sustaining injury by itself is also sufficient for disbelieving the PWs with regard to their claim of presence on the spot and witnessing the occurrence. According to the record the report was made on the spot however as per APW-19 the local police had come to the house of complainant at 18:35 who remained there for an hour. According to this witness he had not went to the police station for report similarly he had also not went to the house of complainant when the police was inside there and he was waiting outside in the way. APW-19 is the nephew of complainant and his such conduct makes his present highly doubtful. As far as PW Naeem is concerned he has been abandoned. Had any of these PWs remained present then certainly they would have gone to report or would have escorted the dead bodies or would have verified the report of complainant however even the report was verified by PW-20 who belong to



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the nearby village. According to APW-19 complainant and PW-20 had remained in the police station for an hour at the fateful night. The deposition of APW-17 in this respect is also reproduced for ready reference as under:

یہ درست ہے کہ ہمارے خاندان میں سے میں یا میرے بھتیجھے ندیم یا نعیم یا دیگر کوئی فرد وقوعہ کی رپورٹ کیلئے تھانہ نہیں گئے تھے از خود کہا کہ پولیس خود آئی تھی میں نے پولیس کو وقوعہ کی نسبت اطلاع دی تھی اور پولیس موقع پر میری اطلاع پر آئی تھی میں پولیس کے عقب خود گیا تھا اور میں نے پولیس میں تھانہ میں واقعات بتائے۔ پولیس نے تھانہ میں میری رپورٹ درج نہیں کی تھی۔ از خود کہا کہ پولیس نے میری رپورٹ ایمرجنسی ہسپتال شیدو شریف سوات میں درج کی تھی۔

12. APW-13 had also deposed in his statement on 16.10.2021 that complainant had come for report to the police station. These pieces of evidence on the one hand shed doubts as to where the initial report was made to the local police. Similarly, on other hand it also makes the present case one of preliminary investigation costing serious doubts on the presence of the PWs and their witnessing the occurrence.

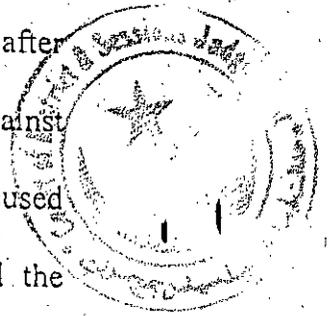
13. Learned APP for the state as well as learned private counsel for the complainant hotly argued on vicarious liability of accused, of the minor discrepancies, recovery of weapons of offence from accused Muhammad Ayub Khan and Waqas Ahmad and the matching FSL of the pistol recovered from accused Muhammad Ayub Khan with the 7 empties from the spot and referred lot of judgments, mentioned in their arguments part of this judgment however it is evident that the Kalashnikov had been recovered from accused Waqas Ahmad on the next day of

the occurrence and this recovery as well as the recovery of pistol from accused Muhammad Ayub will come under discussion in my separate judgment for the offence u/s 15AA in Sessions Case No. 1/AO of 2016 decided today however neither of the accused Waqas Ahmad and Muhammad Ayub could be connected with the offense u/s 302 PPC nor these recoveries provide any corroboration to the prosecution case with regard to section 302 PPC against accused Waqas and Muhammad Ayub for the reason that any role of firing through Kalashnikov had not been assigned in the first report nor during pointation on the spot by the PWs at the time of preparing site sketch wherein detailed attribution of role of each accused has been made. Accused Waqas Ahmad though had been attributed the role of firing through fire arm however a single empty of 7.62 bore could not have been recovered from the spot. Furthermore, PW 17 during his cross examination had deposed of the presence of accused Waqas Ahmad armed with Kalashnikov only for defense. This statement is in contradiction of the earlier charge against him making the case of accused Waqas Ahmad to the extent of 302 PPC highly doubtful.

14. True that the empties recovered from the spot had matched with the pistol recovered from accused Muhammad Ayub Khan, however sending both the pistol and empties to the FSL together by itself is sufficient to discard the recoveries and connection of the accused facing trail Muhammad Ayub especially when the

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ocular account to the extent of their presence and witnessing the occurrence is disbelieved. Accused facing trial Muhammad Ayub Khan alongwith accused facing trial Waqas Ahmad were arrested on the next day of the occurrence from the very village where the occurrence had taken place a day before. Both these accused were charged for tetra murder case alongwith their co accused and their remaining in the very village even a day after the occurrence is not a normal phenomenon which goes against the prosecution and in favor of both these accused. The accused had not resisted their arrest. As per the prosecution all the accused had fired at the deceased however astonishingly all the 07 empties recovered from the spot had matched with the pistol recovered from accused Muhammad Ayub which if considered to be true then the same is sufficient to shatter the whole prosecution story regarding charge of five accused with active role of firing. In the circumstances of sending the recovered empties and pistol together for FSL it is quite probable that the empties had been procured after recovery of the pistol and thereafter the matching FSL was obtained.



15. Accused facing trial Muhammad Ayub and Waqas Ahmad had also led to the spot pointation whereafter pointation sketch EX PW 21/52 and pointation memo EX PW 20/1 was prepared. According to PW 21 this pointation was made separately however joint sketch and joint pointation memo prepared in this respect hints other way which shows that law in this respect was

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violated. Even otherwise no recovery or discovery could be made in this pointation and the same being made during 4 days of police custody is not admissible in evidence. Furthermore, EX PW 21/52 reveals the same to have been prepared in the light of site plan already prepared in the case on the pointation of complainant party whose evidence has been discarded and had already been disbelieved in the earlier part of this judgment and in my opinion this pointation of the accused facing trial Muhammad Ayub and Waqas Ahmad is of no help to prosecution with regard to offence u/s 302 PPC.

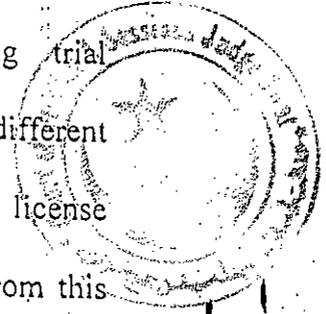
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16. During investigation of the case motor car No. 0797-PSR heaving chassis No NZE 120 3009154 belonging to accused Ibrar wherein arms license (EX PZ/14) on the name of accused Muhammad Ayub was also laying were taken into possession vide recovery memo EX PW 21/72. Regarding the Motor Car reports from concerned quarters regarding its ownership details and any theft record were asked vide EX PW 21/73, EX PW 21/74, EX PW 21/75 and EX PW 21/77 and the report EX PW 21/76 reveals it to be not stolen however report EX PW 10/1 reveals the Motor Car No 797 with Chassis No NZE 121-0129719 (instead of NZE 120 3009154). Report EX PW 10/2 also support the prosecution case regarding cheating by personation with regard to the vehicle recovered. The prosecution has brought nothing on record with regard to dishonestly inducing the delivery of property which is one of the

essential ingredient of Section 420 PPC as such conviction cannot be passed under this section however cheating by personation u/s 419 PPC by accused facing trial Muhammad Ayub Khan and absconding accused Ibrar is made out on record as accused facing trial remained owner of vehicle bearing Registration No. 797 with chassis No NZE 121-0129719 and the accused committed cheating by personation by fixing the registration number belonging to accused facing trial Muhammad Ayub to the recovered vehicle having different chassis number. The local police had recovered Arms license belonging to accused facing trial Muhammad Ayub from this vehicle. The answer to question No. 14 in the statement of accused facing trial Muhammad Ayub u/s 342 Cr.PC recorded on 26.11.2021 reveals admission in this regard. This question and answer being relevant is reproduced as under.

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سوال نمبر 14 فرد مقبوضگی میں ایک عدد کلاشنکوف معہ فیکس چارجر 29 عدد کارتوس 7.62 بور ایک ضرب بستول 30 بور معہ فیکس چارجر پانچ عدد کارتوس 30 بور ریگزمین کاش جوکہ EX PZ/9 EX PZ/10 بروئے فرد EX PW 13/1 قبضہ پولیس کی گئی ہے۔ فرد مقبوضگی EX PW 13/2 موبائل فون سیٹ EX PZ/13 سروس کارڈ EX PZ/11 قبضہ پولیس کی گئی ہے خول کارتوس پارسل نمبر 5 تا 8 ، 16 کو بروئے درخواست EX PW 21/44 ، EX PW 21/45 لیبارٹری FSL کو ارسال کئے ہیں اس نسبت تمہارا کیا بیان ہے۔

جواب:- یہ غلط ہے فرد مقبوضگی EX PW 13/1 غلط اور خلاف واقعات طور پر ظاہر کردہ ہے مقامی پولیس نے کوئی کلاشنکوف ملزم وقاص سے قبضہ میں نہیں کیا ہے اور نہ ہی کلاشنکوف الہ قتل ظاہر کردہ ہے۔ جبکہ مقامی پولیس نے میری گاڑی از قسم 0797-C/PSR جو رشتہ دارام ریاض کے گھر میں کھڑی تھی سے ایک عدد بستول بمعہ لائسنس قبضہ میں لی تھی اور غلط طور پر بستول مجھ سے برآمد کر لیا منسوب کیا ہے۔ مقامی پولیس نے فرد مقبوضگی موٹر کار اسلحہ لائسنس کا ذکر کیا ہے جبکہ غلط طور پر بستول کی موجودگی در موٹر کار ظاہر نہیں کی ہے موبائل فون اور سروس کارڈ غیر قانونی طور پر

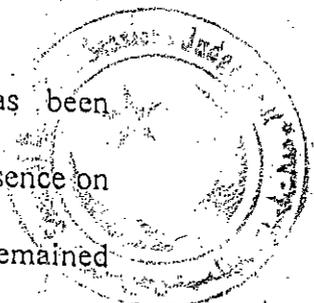
پولیس نے قبضہ خود میں لی ہے جبکہ دیگر جملہ کاروائی فرضی اور خلاف واقعات طور پر ظاہر کی ہے۔

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17. Reply to question number 27 also runs in a similar manner.

This answer suggests that accused facing trial had claimed the ownership of Motor Car however he had brought nothing with regard to the fact as to who tempered the chassis number as the chassis number as per EX PW 10/2 is different from the one on the recovered Motor Car due to which he cannot escape the liability under Section 419 PPC.

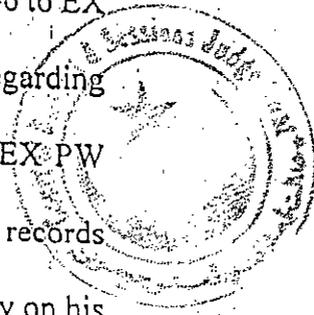
18. Despite of the fact that ocular account has been disbelieved for multiple doubts with regard to their presence on the spot and witnessing the occurrence the PWs had remained consistent with regard to the names of accused charged in the present case. The complainant party may have exaggerated with regard to the number of accused by throwing the net wide which is a normal phenomenon especially in cases of multiple murders however defense has brought nothing on record that the occurrence was committed by someone else than the accused charged by prosecution. A single suggestion in this regard has not been put. The statement of accused recorded u/s 342 is also silent as to the commission of offence by someone else. Accused facing trial Mushtaq Ahmad sustained injuries during the occurrence whose report had led to FIR No. 109 and the record of Murasila in that case, FIR No. 109, site plan prepared at the instance of accused facing trial Mushtaq Ahmad had been



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brought on the record of present case as EX PW 21/x-2 to EX PW 21/x-4. Similarly, recovery memo regarding blood stained cloth, bullet recovered from the body of accused Mushtaq, Pictures, FSL report regarding blood, injury sheet and Medial of accused Mushtaq site plan at the instance of accused, certificate of his consciousness and challan u/s 173 in FIR 109 u/s 324 / 34 PPC dated 18.02.2022 of the same police station had been brought on the record of the present case as EX PW 21/x-6 to EX PW 21/x-17. Recovery memo regarding the Sikah Goli regarding its recovery from the body of the accused Mushtaq in EX PW 21/x-1 while the FSL report is EX PW 21/x-5. All these records suggest that accused facing trial Mushtaq sustained injury on his head though iron fist blow by deceased Muhamad Ayaz who later fired at him through his 30 bore pistol causing injury on his leg. He had also charged deceased Shaukat for giving him blows. The time of occurrence in both the FIRs is the same. The site plan prepared in FIR No. 109 at the instance of accused facing trial Mushtaq and brought on the record during cross examination on PW 21 provide support to the prosecution case in establishing the venue which in both the cases is the same and is further supported by recovery of blood stained earth from the places of each of the deceased and their matching FSL with the last worn clothes of the deceased. Seven (07) empties of 30 bore had also been recovered from the spot and the same had been matched with the pistol recovered from accused facing trial Muhammad Ayub and

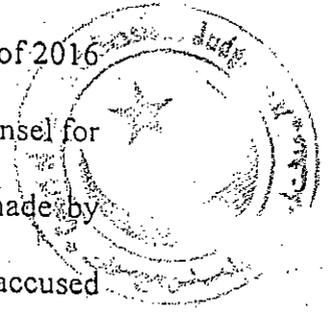
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though the same is discarded for my discussion in the earlier part of this judgment however that will not make any doubt regarding the venue of the occurrence. Presence of accused Mushtaq Ahmad on the spot at the relevant time when he sustained injuries and the other party lost four persons is proved on record. Seemingly this record (EX PW-21/x-1 to EX PW-21/x-17) was brought on record to make the case one of cross version wherein proceedings in the FIR No. 109 had already been abated vide order No. 35 dated 24.10.2020 in sessions case No. 21/7 of 2016 for the reason of accused therein being dead. Learned counsel for the accused had hotly contested on the concealment made by complainant party regarding injuries sustained by accused Mushtaq however FIR No. 109 also reflect concealment on the part of accused Mushtaq (complainant in FIR No 109) as he had remained silent as to injuries to deceased Shaukat and Ayaz. Similarly, he had also remained silent as to presence and causing fatal injuries of deceased Mst. Shakila and deceased Fayaz. He had claimed his Firearm injury at the hand of deceased Ayaz. Similarly, head injury is also attributed to deceased Ayaz. During arguments defense side hotly contested on the point that deceased received firearm injuries at the hand of deceased Ayaz however this is not digestible for the reasons that firstly all the deceased were not shown present in FIR No. 109, secondly that only deceased Ayaz was armed with pistol, thirdly that his fire causing fatal injuries not to one but to his two brothers and a

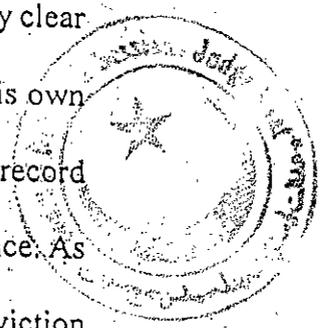
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sister while leaving the accused with a non-fatal injury on a non vital part is not appealable to a prudent mind. Deceased Ayaz had also sustained Fire Arm injuries and there is no explanation on record as to how deceased Muhammad Ayaz sustained fatal injuries. Admittedly deceased Ayaz alongwith other deceased were at conflict with accused Mushtaq Ahmad and it is cent percent beyond the limits of probabilities that deceased Ayaz would have committed suicide and that too before committing the murder of his enemy laying before him. Present is a very clear case against accused Mushtaq on the basis of record in his own case and the circumstantial pieces of evidence brought on record though with circumstances warranting mitigation in sentence. As per Article 17 of the Qanun-e-Shahadat Order, 1984 conviction can be based on circumstantial evidence as well and in the present case there is strong circumstantial pieces of evidence leading towards the culpability of accused facing trial Mushtaq Ahmad. Learned counsel for the accused had referred lot of authorities however in the specific nature of the case of accused facing trial Mushtaq Ahmad whose presence on the spot is established from his own FIR and the record produced therefrom which provide strong corroboration to the case against him, these judgments are not providing any cover to this accused and the same are not applicable to the facts and circumstances of the case against accused Mushtaq Ahmad.

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19. Medical evidence brought on record provide support to the prosecution case to the extent of all the deceased sustaining fire arm injuries and dying their unnatural death. The medical evidence also could not be shattered and the time and date of the same provide corroboration to the prosecution case at least against the accused facing trial Mushtaq Ahmad and his absconding co accused. Motive was alleged to be quarrel over children prior to the occurrence this motive is narrated by accused Mushtaq in his Murasila leading to FIR No. 109, as under:

امروز میں بسلسلہ فاتحہ خوانی ضلع بونیر گیا ہوا تھا کہ واپسی میں آکر دیکھا کہ ہمارے گیراج کیساتھ لوگوں کا ہجوم موجود ہے وہاں پر مجھے معلوم ہوا کہ میرے بھانجا مسمی آفاق احمد ولد محمد ایوب ساکن دیہہ بالا اور مسمی ایاز ولد دوا خان ساکن دیہہ بالا کے مابین لڑائی جھگڑا ہو چکا تھا۔ میں سیدھا اپنے گھر جا کر بعد میں اپنے چچا زاد بھائی مسمی شاہ دوران ولد مالیر ساکن دیہہ بالا جو بیمار تھا کی بیمار پرسی کیلئے جا رہا تھا کہ جب بوقت بمقام بالا پہنچا تو راستے میں مسمیان ایاز، شوکت پسران دواخان ساکنان دیہہ بالا پہلے سے موجود تھے اور مجھے دیکھتے ہی مجھ پر دونوں بالا کسان نے گزارات شروع کئے اور مسمی ایاز بالا نے مجھ پر لوہے کے مکے سے گزارات کر کے جس نے مسمی ایاز بالا نے مجھ پر سے میں سر پر لگ کر زخمی کیا کہ اس دوران مسمی ایاز بالا نے مجھ پر پستول سے بہ ارادہ قتل فائر کر کے جس سے میں بائیں پاؤں کے ران پر لگ کر شدید زخمی ہوا ہوں۔ وجہ عناد بچوں کا لڑائی جھگڑا ہے۔

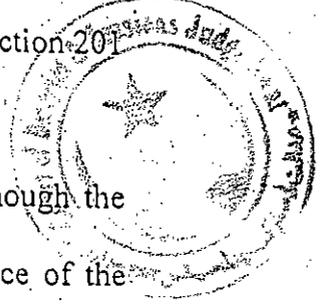
20. As is evident the motive claimed by the prosecution is supported from the report of accused in FIR No. 109 and the same stand proved on record.

21. Accused Mushtaq Ahmad had been claimed to have been armed with pistol who had provided the same after the occurrence to his absconding co-accused Ibrar in order to disappear the evidence. The local police had inserted subsequently section 201 PPC vide EX PW-21/96 to the FIR in

hand. As per the report of this accused he had the knowledge of quarrel between the children after his return from Buner whereafter he had gone to his house and in the circumstances of such strained relations his coming out of his house armed with pistol is not improbable. This accused had taken active participation in the commission of offence wherein he had also sustained injury and his empty handed presence is not appealable to a prudent mind. The number of casualties suffered by the opposite party reflect on the armed presence of the accused on the spot and which further suggest that charge under section 201 PPC against this accused.

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22. The nutshell of my above discussion is that though the ocular account of prosecution story regarding presence of the PWs on the spot and witnessing the occurrence is not believable



yet commission of the offence of 302 PPC by accused Mushtaq Ahmad with his absconding accused Ibrar and Imtiaz is proved on record in the light of my discussion earlier made and the fact that both the absconding accused avoided their appearance before the court in proceeding initiated against them u/s 512 Cr.PC. Similarly, charge u/s 419 PPC against accused Muhammad Ayub and the charge u/s 201 PPC against accused Mushtaq Ahmad for concealing the pistol (weapon of offence) has also been proved on record.

23. The prosecution has proved its case against accused facing trial Mushtaq Ahmad beyond any doubt and thus, I have found

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him guilty of the offence of committing Qatl-e-Amd of the deceased Ayaz, Shaukat, Fayaz and Mst. Shakila therefore, he is convicted and sentenced to undergo imprisonment for life in four counts under section 302 (b) of the Pakistan Penal Code r/w Section 149 PPC as Taazir. The accused is further directed to pay Rs. 500,000/- (five lacs) each to the legal heirs of above named deceased as compensation under section 544-A Cr.PC. In default of payment thereof, he shall further undergo six months simple imprisonment for each default.

24. Accused Mushtaq Ahmad is also convicted for concealing evidence u/s 201 PPC for simple imprisonment for a period of Two years with fine of Rs 50,000/- (fifty thousands) to be recoverable as arrears of land revenue. In default of payment thereof, he shall further undergo three months simple imprisonment.

25. The accused facing trial Muhammad Ayub Khan and Waqas are Acquitted of the charge under Section 302 PPC.

26. Accused Muhammad Ayub has been found guilty of cheating by personation U/S 419 PPC and is convicted for a period of three years. He is also imposed with a fine of Rs. 100,000/- (one lac) to be recoverable as arrears of land revenue. In default of payment thereof, he shall further undergo six months simple imprisonment.

27. Benefit of section 382-B Cr.PC is extended to the convicted accused. The sentences of accused Mushtaq Ahmad

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9



ایڈیشنل ڈسٹرکٹ جج /
اضالی ضلع فیاضی ڈوم سوات
18/1/24

u/s 302 PPC shall run consecutively while that u/s 201 PPC shall run concurrently. Convict named above are on bail, they are taken into custody. They be sent to District Jail, alongwith conviction warrants to undergo the aforesaid sentences as per law. Certified copy of this judgment is handed over to the convicts named above free of cost. A copy of this judgment be also sent to the Incharge of District Prosecution.

28. Accused are on bail, their bail bonds stand cancelled and sureties are absolved from the liability thereunder.

29. As far as absconding accused Ibrar and Imtiaz are concerned there are sufficient materials against them, as such they are declared proclaimed offenders. Perpetual non-bailable warrants of arrest be issued against them with the direction to SHO to enter their names in the relevant register. Case property be kept intact till arrest and trial of the PO. File be consigned to record room after its necessary completion and compilation.

Announced
18.05.2022



(Zia ul Haq)
Additional Sessions Judge-II

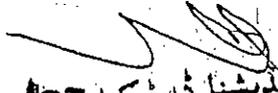
ایڈیشنل سیشن جج /
اضافی ضلع قاضی دوم سوات

CERTIFICATE:-

Certified that this Judgment comprises Forty Seven (47) pages. The same have been signed after making necessary corrections therein.

ATTESTED TO BE TRUE COPY

EXAMINER
District & Session Judge
Zilla Qazi Swat.



ایڈیشنل سیشن جج /
اضافی ضلع قاضی دوم سوات
Additional Sessions Judge/
Izafi Zilla Qazi-II, Swat

19/9/23

Aux B C
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**BEFORE THE HON'BLE PESHAWAR HIGH COURT
MINGORA BENCH (DARUL QAZA), SWAT.**

Cr. Appeal No 144 -M/2022.



- (1) Mushtaq Ahmad S/o Sheher Yar,
- (2) Muhammad Ayub Khan S/o Shalyr, both residents of Mohallah Muthkhel, Balogram, Tehsil Babozai, District Swat Appellants.

VERSUS

- (1) The State through,
Additional Advocate General, Khyber Pakhtunkhwa at Peshawar High Court Bench Mingora Swat;
- (2) Dawa Khan S/o Shaiber Khan R/o Mohallah Muthkhel, Balogram, Tehsil Babozai, District Swat Respondents.

**CASE F.I.R NO.108 DATED 18/02/2016
CHARGED U/Ss.302, 148, 149, 417, 419,
420 & 201, PPC
POLICE STATION RAHIMABAD DISTRICT SWAT**

Criminal Appeal under Section 410 Cr.P.C read with Para 10(8) of Shariah Nizam-e-Adel Regulation 2009, against the impugned Order/ Judgment dated 18/05/2022 passed by Mr. Zia-ul-Haq, learned Additional Sessions Judge/Izafi Zila Qazi-II, Swat, in Sessions Case No.1/7 of 2016, whereby convicted the appellant and awarded him the following sentences/ punishments: -

FILED TODAY

24 MAY 2022

Additional Registrar

- (i) Convicted the appellant No.1/Mushtaq Ahmad under Section 302(b) PPC read with Section 149 PPC for the alleged murders of four deceased, namely Ayaz, Shaukat, Fayaz and Mst. Shakila, and sentenced him to life Imprisonment on four counts. He was further ordered to pay Rs.500,000/- (five lac) each to the legal heirs of above named deceased as compensation under Section 544-A Cr.P.C and in default thereto, shall further undergo six months SI for each default.

ATTESTED
Examiner
Peshawar High Court Bench
Mingora Bench, Darul Qaza, Swat.

- 1 -

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

Cr. A No. 144-M/2022

(Mushtaq Ahmad and 01 other Versus The State and another)

Present:

Mr. Razaullah Advocate for the appellants/convicts.

Ms. Mehnaz, Assistant Advocate General for State.

Mr. Ajmal Zia Khan, Advocate along with Dawa Khan and Mst. Mahi Parwara (parents of the deceased) and Mst. Husna, widow of deceased Shaukat Khan in person.

Date of hearing: 31.05.2023

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Through this single judgment, we intend to decide instant appeal filed by convicts Mushtaq Ahmad and Muhammad Ayub Khan, as well as the connected Cr.A No. 175-M/2022, and Cr.R No. 32-M/2022 as all these cases are emanating from the same judgment dated 18.05.2022 rendered by learned Additional Sessions Judge/Izafi Zilla Qazi-III, Swat in case FIR No. 108 dated 18.02.2016 u/s 302/148/149/417/419/420/201 PPC of P.S Rahim Abad, District Swat whereby the present appellants were convicted and sentenced as under:

Appellant Mushtaq Ahmad

i) u/s 302(b) PPC

Imprisonment for life as *Ta'zir* on four counts for committing murders of deceased Ayaz, Shaukat, Fayaz and Mst. Shakila with payment of compensation of Rs.500,000/- to legal heirs of each deceased under section 544-A, Cr.P.C. In case of each default in payment of the

compensation, he was directed to undergo further six months S.I. (SS)

ii) u/s 201 PPC

Simple Imprisonment for two years with fine of Rs.50,000/- or in case of default thereof to undergo further 03 months S.I.

Appellant Muhammad Ayub

u/s 419 PPC

Imprisonment for three years with fine of Rs.100,000/- or to undergo further six months S.I in case of default thereof.

The sentences of appellant Mushtaq Ahmad were ordered to run concurrently. Benefit of section 382-B, Cr.P.C was extended to both the appellants.

Appellant Muhammad Ayub Khan and convict Waqas Ahmad (appellant in connected Cr.A No. 143-M/2022 Arms case), were acquitted of the charge u/s 302 PPC which has been challenged by complainant through connected Cr.A No. 175-M/2022 besides he has also filed the connected Cr.R No. 32-M/2023 for enhancement of the sentences awarded to appellants Mushtaq Ahmad and Muhammad Ayub Khan.

2. Facts of the case need no reiteration as learned counsel for the appellants had apprised this Court on 19.04.2023 regarding compromise between the parties, therefore, the case was sent to the learned trial Court on his request for confirmation of the compromise by way of recording statements of legal heirs of the deceased and elders of the locality with further directions that rights of the

minor legal heirs, if any, shall be protected in accordance with law. (50)

3. The record shows that four persons namely Shaukat Khan, Muhammad Ayaz, Muhammad Fayaz and Mst. Shakila, who were brothers and sister inter se, have lost their lives in the occurrence reported in the referred to above FIR. Report of the learned trial Court along with the relevant documents have been received which reflect that the above named deceased persons were children of Dawa Khan and Mst. Mahi Barwar (Parwara) who are alive. Apart from the above common legal heirs, deceased Shaukat Khan has also left behind him his widow Mst. Husna and minor son Shah Fahd (Arman) whereas the remaining deceased have been reported as unmarried. It is noteworthy that name of minor Arman has been mentioned in Form "B" as Shah Fahd, copy of which is annexed with report as Ex.PI. The report/order of the learned trial Court reflects that major legal heirs of the deceased persons have affected a genuine compromise with the present appellants/convicts as well as their absconding co-accused. In this regard, the compromise on the prescribed proformas are Ex.PA and Ex.PE, the affidavits on behalf of legal heirs of the deceased are Ex.PB and Ex.PF whereas CNICs of the parents of the deceased are Ex.PC and Ex.PE. Copy of CNIC of Mst. Husna Bibi, widow of deceased

Tajmul/CS-

09:

Hon'ble Mr. Justice Muhammad Nazeem Anwar
Hon'ble Mr. Justice Shahid Khan

ATTESTED
Examiner
Peshawar High Court Bench
Mingora Darul-Uloom, Swat.

Shaukat Khan, is annexed with the report as Ex.PG besides she was also identified before the learned trial Court by her brother Zeeshan Ahmad, whose CNIC is Ex.PH. Rights of the sole minor namely Shah Fahd (Arman) have duly been protected through transfer of cash amount of Rs.23,40,000/- as his share in *Diyat* amount and National Saving Certificates have been purchased in his name on directions of the learned trial Court with further directions of re-investment thereof till attaining the age of majority. To this effect report of Naib Nazir of the Court of learned Senior Civil Judge (Admn.), Swat along with copies of the Saving Certificates are available with the report/order of the learned trial Court. Joint statements of legal heirs of the deceased have been recorded in support of the compromise besides the compromise has also been verified by elders of the locality namely Amjad Ali, Chairman Village Council *Balogram*, Faisal Khan and Zeeshan Ahmad. Their joint statement along with an affidavit (Ex.PJ) on their behalf as well as their CNICs (Ex.PK & Ex.PL) have also been annexed with the report. The report of the learned trial Court and the documents annexed therewith would reveal that major legal heirs of the deceased have affected a genuine compromise with the appellants without any pressure. They have pardoned them in the name of Almighty Allah by

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waiving their right of *Qisas* and *Diyat* against the appellants.

The parties have buried their hatchets by patching up the matter at the intervention of the local elders, thus, the compromise is in the best interests of both the parties whereas rights of the minor have been protected in accordance with law.

4. Learned Assistant Advocate General, appearing on behalf of State, contended that appellant Muhammad Ayub Khan has been convicted and sentenced under section 419, PPC, which cannot be compounded. Just like the offence of *qatl-i-amd* punishable u/s 302 PPC, the offence of cheating by personation, which is punishable u/s 419 PPC, is also included in the table of offences under section 345(2), Cr.P.C which can be compounded with permission of the Court. Since, compromise between the parties has been affected with permission of the Court, therefore, same is effective in respect of section 419 PPC as well, for which the learned trial Court has convicted him. Thus, above submission of the learned Assistant A.G. cannot be accepted.

5. In light of the foregoing discussion, the compromise is accepted and this appeal is allowed on the basis of compromise. Resultantly, the impugned judgment dated 18.05.2022 rendered by learned Additional Sessions

Tajamu/CS*

08: Hon'ble Mr. Justice Muhammad Naveem Anwar
Hon'ble Mr. Justice Shahid Khan

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ATTESTED
Examiner
Peshawar High Court Bench
Mingora Darul-Uloom Swat.

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Judge/Tzafi Zilla Qazi-III, Swat is set aside and appellants Mushtaq Ahmad son of Sheher Yar and Muhammad Ayub Khan son of Shalyar are acquitted of the charge in case FIR No. 108 dated 18.02.2016 w/s 302/148/149/417/419/420/201 PPC of P.S *Rahim Abad*, District *Swat*. Appellant Mushtaq Ahmad is in jail, therefore, he be released forthwith if not required in any other case whereas sureties of appellant Muhammad Ayub Khan, being on bail, are absolved from the liability of the bail bonds already furnished by him on the directions of this Court. The connected Cr.A No. 175-M/2022 and Cr.R No. 32-M/2022 are dismissed being not pressed.

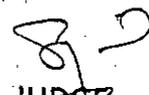
6. Above are the reasons of our short order of the even date.

Announced
Dt: 31.05.2023


JUDGE

Certified to be true copy


EXAMINER 13/6/23
Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 17 of Qanoon-e-Shahadat Order 1984


JUDGE

Office
6/6/2023
WR

Tajamu/CS*

OB: Hon'ble Mr. Justice Muhammad Naeem Anwar
Hon'ble Mr. Justice Shahid Khan

AA

ام ا
25/10/2021

Aux

(Handwritten marks)

جناب ڈسٹرکٹ ایجوکیشن افسر مردانہ سوات۔

عنوان۔ محکمانہ آپیل برائے ادا ینگی تنخواہ۔

جناب عالی۔ آپیلانٹ ذیل عرض کرتا ہے۔

1۔ یہ کہ آپیلانٹ گورنمنٹ پرائمری سکول بلوگرام میں بحسبیت SPST

ڈیوٹی سرانجام دے رہا ہے۔

2۔ یہ کہ آپیلانٹ کے خلاف مقامی پولیس سٹیشن میں ایف۔ ای۔ اے نمبر 108

محررہ 18/02/2016 PPC 148,149,302 درج ہوا۔

3۔ یہ کہ بعد میں آپیلانٹ ضمانت پر رہا ہو گیا ہے۔

4۔ یہ کہ آپیلانٹ کا مقدمہ معزز عدالت ایڈیشنل سیشن جج کمیپ کورٹ خواہ خیلہ

گلدہ سوات میں انڈر ٹرائل ہے۔

5۔ یہ کہ آپیلانٹ کو ابھی تک معطلی کے احکامات نہیں ملے ہیں۔ لیکن ہو سکتا ہے

کہ آپیلانٹ کو ملازمت سے معطل کیا گیا ہوں۔

6۔ یہ کہ آپیلانٹ نے ستمبر 2021 تک مسلسل اپنا تنخواہ وصول کیا ہے۔

7۔ یہ کہ آپیلانٹ ابھی تک کسی معزز عدالت نے مجرم نہیں گردانا ہے۔

8۔ یہ کہ آپیلانٹ کو سزا کے خلاف سپریم کورٹ تک آپیل کرنے کا حق ہے۔

9۔ یہ کہ سروس رولز کے مطابق معطل ملازم کے تنخواہ بند نہیں کیا جاسکتا ہے۔

لہذا استدعا ہے۔ کہا گیا ہے کہ متعلقہ ایس ڈی ای ای او کو

ہدایت جاری کرے کہ وہ سروس رولز کے مطابق آپیلانٹ کے تنخواہ کے ادا ینگی کو جاری کرے۔

محمد ایوب خان

SPST

GPS Balogram swat dated 22/10/2021

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16/8/23

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To,

The District Education Officer
Male Swat.

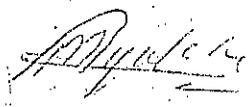
Subject:— Application for withdrawal of the
Suspension order and permission for
Joining duty.

R/ Sir,

- 1) That the appellant already submitted an application including complete record in your good honor vide D.O. Diary No. 5767 dated 20/6/2023, but in vain.
- 2) That the appellant/applicant again prayed to withdraw the Suspension order/Notification and allow the applicant for joining his duty.
- 3) Issue a direction in the form of Mandamus to SDEO (Male) Babozai to allow the applicant to join his duty.
- 4) Issue a direction in the form of Mandamus to SDEO (M) Babozai Salate the applicant salary with effect from 1/11/2021 to date.

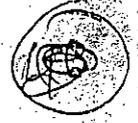
It is therefore, humbly prayed to accept the applicant application as soon as possible.

Yours obedient

Muhammad Ayub 
 SPST
 Govt. Primary School Pecher
 Balafraim Swat
 Dated: 15/08/2023

awad Ali
20/6/23

Amx F



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جناب ڈسٹرکٹ ایجوکیشن آفسر مردانہ ایسٹری
اینڈ سیکنڈری ایجوکیشن گلدرہ سپروٹرنٹ سورت

درخواست بہرین مراد کہ آپ پبلک ٹی کے عنوانہ باری کرنے
اور مہطلی کے احکامات کو واپس لیکر آپ پبلک ٹی کو
سابقہ تمام بقا باجات ادا کیا جائے۔
جناب عالی! حسب ذیل گزارش ہے۔

1۔ بہر کہ آپ پبلک ٹی بحیثیت جی۔ ایس۔ ٹی ایسٹری
اینڈ سیکنڈری ایجوکیشن سورت میں ڈپٹی
س انجام دے رہا تھا۔

2۔ بہر کہ آپ پبلک ٹی کے خلاف ایف۔ ایف۔ ایف۔ 108
تحریر 2/14 جن 2016
302-148, 149, PPL ٹرانس
417, 419, 420, 2015AA

بہم آباد سورت راج ہی۔

3۔ بہر کہ ایڈیشنل جج آ / افاضی قلع قافی نے آپ پبلک ٹی کو
تمام دفعات میں بری کیا۔ البتہ دفعہ 419 PPL میں
جرم قرار دے دیا۔

4۔ بہر کہ آپ پبلک ٹی نے ایڈیشنل جج آ کے حکم کے
خلاف بائی کورٹ لٹا اور / درالقضا منگورہ منع
میں آپ پبلک ٹی کو بری کیا۔

5۔ بہر کہ آپ پبلک ٹی اور خالقی فریق کے درمیان
درجی نامہ عمل میں لایا گیا۔ جس کے بنا پر
عدالت عالیہ / منگورہ منع نے آپ پبلک ٹی کو
تمام دفعات میں بری کر دیا۔

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20/6/23

6۔ پیر آپیلانٹ کو 2016 سے لیکر اکتوبر 2021 تک باقاعدہ ٹخنووا مل رہا تھا۔ لیکن اکتوبر 2021 میں نا حال کیا آپیلانٹ کے ٹخنووا غیر قانونی طور پر بند کیا گیا تھا۔ کیونکہ سروہ سے معطلی کے بنیاد پر ملازم کی ٹخنووا بند کرنا سروہ روئز کے خلاف ورزی ہے۔

7۔ پیر آپیلانٹ کو اکتوبر 2021 کو ملازمت سے معطل کیا گیا تھا۔ اور نا حال اکتوبر 2021 سے آپیلانٹ کا ٹخنووا غیر قانونی طور پر بند ہے۔

8۔ پیر آپیلانٹ اور فیاض علی کے درمیان رہن نام کے بنیاد پر آپیلانٹ کو تمام دفعات میں بری کیا ہے۔ (حجیلہ نمبر 1)

لہذا استدعا ہے کہ عدالت عالیہ/ہائیکورٹ پینچ کے حکم کے مطابق آپیلانٹ کے تمام لغات دیا جائے اور معطلی کے حکم واپس لیکر سکور دیا جائے۔

(Signature)

محمد ایوب خان
پی ایس ٹی
گورنمنٹ پرائمری سکول بلوچر
سموات
صوبہ 20 جون 2023

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<p>بار کونسل نمبر: 18-10-58</p> <p>بار ایسوسی ایشن نمبر: 345</p> <p>رابطہ نمبر: 0345-9504854</p> <p>ای میل ایڈریس: ۲۷</p>	<p>127066</p>    <p>ڈسٹرکٹ بار ایسوسی ایشن سوات</p>
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بعدالت جناب: سروسی ٹریبیونل کے۔ پی ایٹیاورکمپ کورٹ سوات

<p>منجانب: اپیلانٹ</p> <p>محمد ابو خان</p> 	<p>دعویٰ اورخواست: سروسی اپیل</p> <p>علت نمبر:</p> <p>مورخہ:</p> <p>جرم:</p> <p>تھانہ:</p>
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بابت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے برائے پیروی مقدمہ

آن مقام گلہ منگورہ کیلئے عسکر خطاب (مہر و کیس) / سوال گلہ کو مقرر کر کے

اقرار کیا جاتا ہے، کہ صاحب موصوف کو مقدمہ کی کل کارروائی کو کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث کرنے، دعویٰ، جواب دعویٰ، اقبال دعویٰ اور درخواست برائے سرسبزی مقدمہ، منسوخی ڈگری یکطرفہ، اجراء و پیروی کرنے کا مختار ہوگا۔ نیز دائر کرنے اپیل نگرانی، نظر ثانی و پیروی کرنے کا مختار ہوگا۔ اور مقدمہ مذکورہ کیلئے کل وقتی یا جزوی کارروائی کیلئے کسی دیگر وکیل یا مختار قانون کو اپنے ہمرازہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ اختیارات حاصل ہوں گے، اور اس کا سائنٹہ و پرداختہ منظور قبول ہوگا، بدوران مقدمہ جو خرچہ و ہر جانہ کسی بھی سبب سے حاصل ہوگا، وہ وکیل موصوف وصول کرنے کا حقدار ہوگا، کوئی تاریخ پیشی مقام مذکورہ بالا سے باہر ہو، تو وکیل صاحب پیروی مقدمہ کرنے کے پابند نہ ہوں گے، مقدمہ کسی عدالت میں بعدم پیروی خارج ہونے یا ڈگری یکطرفہ ہونے کے صورت میں وکیل صاحب ذمہ دار نہیں ہوں گے، لہذا وکالت نامہ لکھ دیا کہ سندر ہے

Accepted

مقام گلہ سید شریف سورت

محمد ابو خان - اپیلانٹ