BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT SWAT

Service Appeal No. 1098/2015

Date of Institution... 07.10.2015

Date of decision... 08.11.2017

Yousuf Ali Shah, Patwari (BPS- 07) office of the Deputy Commissioner, Buner District Buner. ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary Board of Revenue, Peshawar and 3 others. ... (Respondents)

MR. NOOR MUHAMMAD KHATTAK, Advocate ... For appellant.

MIAN AMIR QADAR, District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD HAMID MUGHAL, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. Appellant is aggrieved from an order passed on 31.07.2015 issued by Deputy Commissioner Buner whereby he was reinstated in service but the period of his absence was considered as leave without pay. Against this order the appellant filed a departmental appeal on 18.08.2015 which was rejected on 17.09.2015. thereafter the appellant file the present appeal on 07.10.2015. The allegation against the appellant was his involvement in a murder case He was

suspended on 08.07.2011 till the final decision of the court. The Trial Court sentenced him to life imprisonment on 17.07.2012 but the Apex Court finally acquitted him on 25.2.2015. The appellant was terminated from service in the meantime on 2.12.2014 on the basis of his conviction by the learned Trial Court. When the Apex court acquitted him of the charge, the department reinstated the appellant vide impugned order dated 31.07.2015.

ARGUMENTS

3. The learned counsel for the appellant argued that there was no departmental proceedings and appellant was suspended, then terminated and reinstated in service solely on the basis of the judgment of courts. He meant that the department just followed the verdicts of the courts in this regard. That under F.R 53 (b) the appellant was entitled for his full salary for the period of his suspension. That he was also entitled for full salary for remaining period under F.R 54. The learned counsel argued that every acquittal is honourable acquittal and relied upon 1998-SCMR-1193.

4. The learned District Attorney argued that the department has rightly ordered the intervening period as leave without pay on the basis of principle of *no work no pay.* That the appellant was not entitled for any pay for the said period.

CONCLUSION

5. Admittedly there were no departmental proceedings against the appellant and the department followed the judgments of the Courts in criminal case. In view of F.R 53(b) the appellant is entitled for full salary during the period of suspension. So far as the second period is concerned, no authority has exercised the powers

under FR 54 (a). In such event such period shall be treated as spent on duty as per FR 54. Secondly, in accordance with the judgment referred to by the learned counsel for the appellant reported as 1998-SCMR-1193, every acquittal is "honourable acquittal" for the purpose of F.R 54. This Tribunal has already delivered a judgment on this point in appeal No. 669/2014 decided on 25.10.2017 in case entitled *"Darvaiz Khan Vs. Provincial Police Officer and others"*

6. In view of the above discussion, this appeal is accepted and appellant is entitled for benefits in terms of FR 53(b) and 54(a) for whole of the period. Parties are left to bear their own costs. File be consigned to the record room.

(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

(Muhammad Hamid Mughal)
Member

ANNOUNCED
08.11.2017

1098/2015

08.11.2017

Counsel for the appellant and Mian Amir Qadar, District Attorney for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.

Member

Chairman
Camp Court, Swat

ANNOUNCED
08.11.2017

1098/2015

09.11.2016 Appellant in person and Mr. Muhammad Zubair, Sr.GP for respondents present. Learned counsel for the appellant has not turned-up from Peshawar. Requested for adjournment. Adjourned for rejoinder and final hearing to 06.03.2017 before D.B at Camp Court Swat.

Member

Chairman
Camp court, Swat

06.03.2017 Clerk of counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader for the respondents present. Rejoinder not submitted. Due to strike of the bar counsel for the appellant is not in attendance. To come up for rejoinder and final hearing on 05.07.2017 before the D.B at camp court, Swat.

Member

Chairman
Camp court, Swat

10 05.07.2017 Counsel for the appellant has sent an application for adjournment. Mr. Muhammad Zubair, District Attorney for the respondents present. Adjourned. To come up for rejoinder and final hearing on 08.11.2017 before D.B at Camp Court, Swat.

Member

Chairman
Camp Court, Swat

3.2.2016

None present for appellant. Mr. Sami-ur-Rehman, Assistant alonwith Mr. Ameer Qadir, GP for respondents present. Requested for adjournment. To come up for written reply/comments on 6.4.2016 before S.B at Camp Court Swat.

Chairman
Camp Court Swat

06.04.2015

None present for the appellant. Mr. Samiur Rahman, Asstt. alongwith Sr.GP for the respondents present. Written reply of respondents No. 1, 2 and 4 submitted while learned Sr.GP requested for further adjournment on behalf of respondent No. 3. Last opportunity granted. To come up for written statement of respondent No. 3 on 13.07.2016 before S.B at Camp court, Swat.

Chairman
Camp Court Swat

13.7.2016

Appellant in person and Mian Amir Qadar, GP for the respondents present. Written reply by respondent No. 3 not submitted despite repeated adjournments including last opportunity. No further opportunity is granted to respondent No. 3. The appeal is assigned to D.B for rejoinder and final hearing for 09.11.2016 at camp court, Swat.

Chairman
Camp Court, Swat

07.12.2015 Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Patwari when charged in a criminal case registered under section 302/PPC vide FIR No. 440 dated 3.7.2011 at P.S Gagra and after conviction terminated from service vide order dated 2.12.2014 and that the appellant was finally acquitted by the august Supreme Court of Pakistan on the basis of compromise where-after appellant was reinstated in service but back benefits were not granted vide impugned order dated 31.7.2015 where against departmental appeal was preferred which was also rejected on 17.9.2015 and hence the instant service appeal on 7.10.2015.

Appellant Deposited Security & Process Fee

That the appellant was entitled to the back benefits and was illegally deprived of the same by the respondents.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 3.2.2016 before S.B at Camp Court Swat.

Chairman
Camp Court Swat

FORM-A

FORM OF ORDER SHEET

Court _____

Case No. 1098/2015

	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	7.10.2015	The appeal of Mr.Yousaf Ali Shah presented today by Mr. Noor Muhammad Khattak, advocate, may be entered in the institution register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR This case be put up before the S.B at camp court, Swat for preliminary hearing on 2-11-15. CHAIRMAN
	2.11.2015	None present for appellant. The appeal be relisted for preliminary hearing for 7.12.2015 before S.B at Camp Court Swat. Chairman Camp Court Swat

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1098 /2015

YOUSAF ALI SHA **VS** **GOVT: OF KPK**

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APPELLANT

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1098 /2015

K.W.F. Province
Service Tribunal
Diary No 1183
Dated 7-10-15

Mr. Yousuf Ali Shah, Patwari (BPS-07),
O/O the Deputy Commissioner Buner, District Buner.

..... **APPELLANT**

VERSUS

1- The Government of Khyber Pakhtunkhwa through Secretary Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2- The Commissioner Malakand Division at Saidu Sharif, Swat.
3- The Director General Anti Corruption, Khyber Pakhtunkhwa, Peshawar.
4- The Deputy Commissioner Bunner, District Malakand.

..... **RESPONDENTS**

Ex-partee on 13-7-2016

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE APPELLATE ORDER DATED 17-09-2015 WHERE BY THE DEPARTMENTAL APPEAL OF APPELLANT FOR THE GRANT OF BACK BENEFITS FOR THE INTERVENING PERIOD HAS BEEN REJECTED ON NO GOOD GROUNDS AND AGAINST THE ORIGINAL IMPUGNED ORDER DATED 31.7.2015 WHEREBY THOUGH THE APPELLANT WAS RE-INSTATED ITO SERVICE BUT WITHOUT BACK BENEFITS

Filed to-day
Registrar
7/10/15

PRAYER:

That on acceptance of this appeal the impugned orders dated 31.07.2015 and 17.9.2015 may very kindly be set aside and the respondents may be directed to grant back benefits of the intervening period i.e. w.e.f. 8.7.2011 till 31.7.2015. That the respondents may further please be directed to release the recovered amount i.e. Rs. 2,93043/=. Any other remedy which your good self deems fit that may also be awarded in the favor of the appellant.

R/SHEWETH:
ON FACTS:

1. That the appellant was appointed as Patwari (BPS-07) in the respondent Department after fulfilling all the codal formalities. That after appointment the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.

2. That appellant while working as Patwari Halqa Banj Kara an FIR No.440 dated 03-07-2011 Police station Gagra was falsely lodged against the appellant under section 302 of Pakistan Penal Code. That on the basis of that FIR the appellant was suspended till final decision of the case by the concerned authority vide order dated 08-07-2011. Copies of the FIR and suspension order are attached as Annexure ..... **A & B.**

3. That vide judgment/order dated 17-07-2012 the appellant was sentenced to life imprisonment u/s 302(b) PPC as Tazeer by the learned District & Session Judge/Zilla Qazi Buner at Daggar. That after the judgment of learned District & Session Judge/Zilla Qazi Buner at Daggar Deputy Commissioner Buner straight away **"Terminated"** the appellant with out conducting regular inquiry in the matter. That the appellant challenged his conviction and sentenced before the Peshawar High Court, Mingora bench (Darul Qaza) Swat through criminal appeal No.136/2012 which was heard and dismissed by the learned Division Bench vide judgment dated 02-12-2014. Copies of the Judgment of learned District & Session Judge/Zilla Qazi Buner at Daggar and termination order are attached as Annexure ..... **C and D.**

4. That it is very pertinent to mention that the Anti-Corruption Department recovered excess salaries from the appellant amounting Rs.2,93,043/- though the period between suspension and sentence of life imprisonment was less than 12 months. That the Anti-Corruption Department illegally recovered salaries from the appellant because during suspension period the appellant was fully entitled for the salaries and other emoluments. Copies of the anti corruption judgment and receipt is attached as Annexure ..... **E and F.**

5. That the appellant challenged the Peshawar High Court Mingora Bench (Darul Qaza) Judgment/order dated 07-05-2014 in Criminal Appeal No.383/14 and Criminal Miscellaneous Application No.831/14 before the Hon'ble Supreme Court and the Hon,ble Supreme Court acquitted the appellant from the said charge vide judgment dated 25.2.2015. That after acquittal the appellant filed application for re-instatement with all back

benefits resultantly the same was accepted vide order dated 31.7.2015 according to which the appellant re-instated in to service but without back benefits. Copies of the Supreme Court Judgment, forwarding letters, re-instatement order and posting order are attached as annexure ..... **G, H, I, J & K.**

6. That feeling aggrieved and having no other remedy the appellant filed Departmental appeal before the appellate authority (respondent No.2) but the same was rejected on good grounds vide appellate order dated 17-09-2015. Copies of the Departmental appeal and rejection order are attached as Annexure ..... **L & M.**

7. Hence the instant appeal on the following grounds amongst the others.

GROUNDS:

A- That the impugned orders dated 31.07.2015 and 17.9.2015 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the authority violated article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That no charge sheet and statement of allegations has been served on the appellant by the respondent Department which is mandatory under the law and rules before issuing any adverse order against the civil servant.

D- That no chance of personal hearing/defense has been given to the appellant before issuing the impugned order dated 31.07.2015.

E- That no show cause notice has been served on the appellant before issuing the order dated 31.07.2015 against the appellant.

F- That inspite of acquittal from the trial Court the respondent Department acted in arbitrary and malafide by not allowing the appellant back benefits for the interning period i.e. w.e.f. 8.7.2011 till 31.7.2015.

G- That under FR 53 the appellant is fully entitle for the grant of back benefits but inspite of that the respondents are not willing to do the same.

H- That recovery of the respondents from the appellant is also not tenable under the above mentioned Rule but inspite of that the respondents recovered excess amount worth Rupees 293043/= which is the clear violation of rules and regulations.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 1.10.2015

APPELLANT

YOUSUF ALI SHAH

THROUGH :

NOOR MOHAMMAD KHATTAK
ADVOCATE

A-(5)

(68)

انسپکٹر جنرل پولیس صوبہ سرحد نام نمبر ۷۳

کاؤنٹر فائل

گرفتار پریس پشاور باب نمبر 540/19 نام سٹوڈنٹ تعداد دو ہزار ستر سو 23 مارچ 2006ء

فارم نمبر ۲۴-۵(۱)

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

تھانہ ضلع

نمبر 440 تاریخ 40

۱۔	تاریخ و وقت رپورٹ	
۲۔	نام و سکونت اطلاع دہندہ / مستغیث	
۳۔	مختصر کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو۔	
۴۔	جائے وقوعہ فاصلہ تھانہ سے اور سمت	
۵۔	نام و سکونت ملزم	
۶۔	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	
۷۔	تھانہ سے روانگی کی تاریخ و وقت	

ATTESTED

TRUE COPY

EXAMINER

District & Session Judge Bu

Authentication u/s 87 of

Qanun-e-Shahadat Order, 1984

(6)

[illegible]

ستار خان Ali

Ali [illegible]

03.7.11

TRUE COPY

EXAMINER

District & Session Judge

Authorized u/s [illegible]

O.C.S.O. Order [illegible]

ATTESTED

دستخط

عہدہ

اطلاع کے نیچے اطلاع دہندہ کا دستخط ہوگا یا اس کی مہر یا نشان لگایا جائے گا اور افسر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف یا ب سرخ روشنائی سے بالقابل

B-7

OFFICE OF THE DISTRICT OFFICER (R&E)/COLLECTOR BUNER.

No. 6 /1/8/DK Dated. 8/7/ /2011.

ORDER.

Mr. Yousaf Ali Shah Patwari Halqa Banj Kara involved in 302 case vide FIR No.440 dated 03-07-2011 Police Station gagra. He is therefore suspended from service till the final decision of the Court.

District Officer,
Revenue & Estate/Collector,
Buner.

No. 7-12/1/8/DK.

Copy forwarded to the

1. Commissioner Malakand Division at Saidu Sharif Swat.
2. District Coordination officer Buner.
3. Secretary Board of Revenue Khyber Pakhtunkhwa, Peshawar.
4. District Accounts Officer Buner.
5. Tehsildar Chagarzai.
6. Official concern.

District Officer,
Revenue & Estate/Collector,
Buner.

Attested

SUPERINTEDENT
DC's Office, Buner.

(7) Annexure "A"

C-(8)

IN THE COURT OF SYED MOAMBER JAN, SESSIONS JUDGE /ZILLA QAZI, BUNER

Case No. 66/7

Dated of Institution: 30/7/2011

Dated of Decision: 17/7/2012

Charge 302 PPC, P.S Gagra,

Vide FIR No. 440 Dated 03/7/2011

STATE Vs Yousaf Ali Shah s/o Mian Hussain Shah r/o Matwani, Buner.

(Accused Facing trial)

Judgment

The accused facing trial namely Yousaf Ali Shah aged about 30 years s/o Mian Hussain Shah, r/o Matwani, Tehseel Daggar, District Buner, has been charged that on 03/7/2011 at 16:00 hours, at clinic situated in village Matwani, within the criminal jurisdiction of P.S Gagra, he fired at Fida Mohammad, the brother of complainant with fire arm, with intention to kill him, whereby, he was hit and succumbed to his injuries on spot and as such the accused facing trial committed the offence punishable u/s 302 PPC.

2. Briefly stated the facts leading to the registration of case in hand against the accused facing trial are that on 03/7/2011, Atiqur Rahman ASHO P.S Gagra, received information that murder has been committed in village Matwani, therefore, for verification and legal proceedings, he along with police party came to the clinic of deceased Fida Mohammad, situated in village Matwani, where he found the dead body of deceased Fida Mohammad, soaked with blood s/o Hazrat Hamad r/o Karapa, placed on cot, with his brother the complainant, Haji Mohammad aged about 39/40 years, s/o Hazarat Hamad, caste Afghan, who on the same date at 17:00 hours made report to the above mentioned police official that his deceased brother was running his own clinic in village Matwani and he

Attested under Article [illegible] P.O. No. [illegible] of 1984

SYED MOAMBER JAN
District & Sessions Judge / Zilla Qazi
Buner at Daggar
17.7.2012

ATTESTED

(deceased) had come to his clinic on the day of occurrence, when he received information that his brother Fida Mohammad has been murdered by accused facing trial, with fire arm. On receiving information, he (complainant) rushed to the above mentioned clinic and saw that his brother has been murdered by accused facing trial with fire arm, who has decamped from the place of occurrence. The motive behind the occurrence was stated to be the existence of ill well between the accused facing trial and deceased. The occurrence was stated to have been witnessed by eye witnesses, Fawad Khan s/o Noor Mohammad and Farhad Ali s/o Fida Mohammad. The complainant charged the accused facing trial for the murder of his brother. The above mentioned police officer reduced the report of complainant into Murasila ExPA/1, which was signed by complainant as token of its correctness. The above mentioned police official prepared the injury sheet and inquest report of the deceased and sent the dead body of deceased to DHQ, Hospital Daggar, for purpose of post mortem, under the supervision of Israr Khan HC No. 1803 and sent the Murasila to police station as special report through constable Murad Ali No. 509 for registration of case. On receipt of Murasila ExPA/1, its contents were incorporated into FIR ExPA, by registering the case in hand u/s 302 PPC, against the accused facing trial by chalking it on the same date at 18:10 hours and Mohammad Alamzeb Khan S.I was entrusted with investigation of the case.

3: After completion of investigation complete challan u/s 173 CrPC, was submitted in the court on 30/7/2011. The accused facing trial was produced from Jail in the court. He was furnished with copies of relevant papers u/s 265 C CrPC and thereafter formal charge was framed by the then Sessions Judge Buner, against the accused facing trial, to which he did not plead guilty, therefore, prosecution was directed to produce its evidence against accused facing trial. In support of prosecution case, the prosecution produced and examined

ATTESTED

SYED MOAMBER JAN
District & Sessions Judge / Zilla Qazi
Buner at Daggar

as many as 9 witnesses against the accused facing trial and rest were abandoned.

4. The resume of the statements of PWs are as follow.

PW-1, Haji Mohammad aged about 42 years, s/o Hazrat Hamid r/o Karapa Buner, is the complainant, who in his statement has reproduced the contents of Murasila ExPA/1. He has also deposed to the receipt of dead body of deceased, vide receipt ExPW1/1 after his examination in the hospital.

6. PW-2 Fawad Khan aged about 16 years, s/o Noor Ahmad r/o Karapa, Buner, is the eye witness to the occurrence, who in his statement has deposed that on the day of occurrence, he along with Farhad Ali had gone to village Dewana Baba from their village Karapa and there from, they came to village Matwani, where their deceased uncle Fida Mohammad was running a clinic and before arriving to the clinic they heard firing shots from some distance and they looked towards the clinic and saw that firing was made on their uncle, therefore, they took shelter and after the ending of firing they went and saw the deceased soaked in blood. They informed their uncle Haji Mohammad (complainant) about the occurrence and after one hour of his arrival on the spot proceeding was started. He expressed his ignorance about any other proceeding thereafter. He has further stated that the firing was made by accused facing trial, who had been seen by them at that time. (This part of his statement has been subjected to objection by the counsel for defense that the witness by himself has not stated as to who made the firing, rather the name of accused was disclosed in the result of a leading question, put to him.)

7. PW-3, Dr. Mohammad Farooq (Junior) Buner, has examined the dead body of deceased on 03/7/2011 at 06:20 hours, who in his statement has deposed to his report ExPM on injury sheet

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Court of Distt & Sessions Judge Buner

Constituted under Article 4 of F.R. No-10 of 1969

SYED MOAMBER JAN
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Buner at Daggar

and has also deposed to his endorsement on inquest report of the deceased.

8. PW-4, Khurshid Anwar Khan SHO, P.S Gagra, has submitted complete challan against the accused facing trial, after completion of investigation.

9. PW-5, Ateequr Rahman ASHO, P.S Gagra, has drafted murasila ExPA on the report of complainant. In his statement, he has also deposed to injury sheet ExPW5/1 and inquest report ExPW5/2 of the deceased.

10. PW-6, Khan Sher AMHC/29 P.S Jowar, then posted at P.S Gagra, who in his statement has deposed to recovery memo ExPW6/1, regarding the blood stained garments of deceased, comprising Qamees ExP-1 and Banyan ExP-2 to have been taken into possession by I.O, which were handed over to him by witness Israr Mohammad HC.

11. PW-7, Sadullah Khan s/o Juma Khan r/o Dewana Baba, Buner is marginal witness to recovery memo ExPW7/1, vide which the I.O has taken into possession blood stained earth from the place of occurrence. He is also marginal witness to recovery memo ExPW7/2 regarding thirteen, 7.62 bore, empties ExP-3 and spent bullet ExP-4, to have been taken by the I.O into his possession, recovered from the place of occurrence.

12. PW-8, Mohamamad Alamzeb Khan S.I, P.S Daggar, then posted at P.S Gagra, is the I.O, who in his statement has deposed that after registration of the case, vide FIR ExPA, he was entrusted with investigation of the case, during which he prepared site plan ExPB on the pointation of eye witnesses and recovered blood stained earth vide recovery memo ExPW7/1 from the place of presence of deceased and also recovered thirteen 7.26 bore empties ExP-3 and spent bullet ExP-4 vide recovery memo ExPW7/2 and sealed the same into parcel. That he conducted the house search of accused facing trial vide Fard

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SYED MOAMBER JAN
District & Sessions Judge / Zilla Qazi
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17.7.2018

ExPW8/1. He also took into possession the blood stained garments ExP-1 and ExP-2 of the deceased vide recovery memo ExPW6/1, which were having cut marks and brought by Israr Mohammad Khan HC from Daggar Hospital. He has also deposed to application ExPW8/2, regarding the keeping of empties in safe custody. In his additional evidence as APW-8, I.O has also deposed to application ExPW8/3, vide which he has sent the blood stained articles.

13. PW-9, Qasim Jan Khan S.I, P.S Daggar, then posted at P.S Gagra, has conducted partial investigation in the case, during which he has obtained warrant u/s 204 CrPC against the accused facing trial vide application ExPW9/1. He has also arrested the accused facing trial on 07/7/2011 and obtained his two days police custody vide application ExPW9/2. He requested for further custody of the accused facing trial vide application ExPW9/4, but it was refused and accused facing trial was sent to judicial lockup. PW-9 has also deposed to Mat No. 24 daily diary dated 28/3/2006 ExPW9/5, regarding previous motive between the parties. He has also placed on file the post mortem report in respect of deceased. He has also deposed to FSL report ExPK, regarding the blood stained articles and list ExPW9/6, regarding the legal heirs of deceased Fida Mohammad.

14. At the close of prosecution evidence, statement of accused was recorded, wherein he pleaded his innocence and false implication, however, he did not want to take oath in terms of section 340(2) CrPC nor wish to produce evidence in his defense.

15. Arguments have been heard and record gone through.

16. As has already been discussed that PW-5, has drafted Murasila ExPA on the report of complainant. In his statement, he has also deposed to injury sheet ExPW5/1 and inquest report ExPW5/2 of the deceased.

17. In cross examination PW-5 has stated that he received information in P.S at 05:00 hours, before 05:00 hours/at evening time.

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SYED MOAMBER JAN
District & Sessions Judge / Zilla Qazi
Buner at Daggar

That he had recorded the fact of their proceeding from P.S in daily diary and recorded the Murasila, inquest report and injury sheet with his own hands. That he received information on 30/7/2011 at 16:15 hours, as mentioned at column NO. 3 of the inquest report.

18. PW-8, in his statement has deposed that after registration of the case, vide FIR ExPA, he was entrusted with investigation of the case, during which he prepared site plan ExPB on the pointation of eye witnesses and recovered blood stained earth vide recovery memo ExPW7/1 from the place of presence of deceased and also recovered thirteen 7.26 bore emptles ExP-3 and spent bullet ExP-4 vide recovery memo ExPW7/2 and sealed the same into parcel. That he conducted the house search of accused facing trial vide Fard ExPW8/1. He also took into possession the blood stained garments ExP-1 and ExP-2 of the deceased vide recovery memo ExPW6/1, which were having cut marks and brought by Israr Mohammad Khan HC from Daggar Hospital. He has also deposed to application ExPW8/2, regarding the keeping of empties in safe custody. In his additional evidence as APW-8, I.O has also deposed to application ExPW8/3, vide which he has sent the blood stained articles.

19. In cross examination, PW-8 has deposed that the dead body of deceased had already been taken to hospital before his arrival at the place of occurrence and Ateequr Rahman S.I (PW-5) was not present on spot rather he had left two police officials on the place of occurrence. That the dead body of deceased had been taken to hospital 45 minutes prior of his arrival on the spot. That two bullet marks "B" and "C" have been pointed out, mentioned in site plan, but no spent bullet was recovered from any place inside the clinic. That neither cupboards and medicines were present on point "B" and "C". That the eye witnesses had pointed their presence at points "3" and "4" and no blood was present on any other thing except the floor. Both the eye witnesses and complainant were present on the spot,

SYED MOAMSER JAN
District & Sessions Judge / Zilla Qazi
17-7-2012 Buner at Daggar

when he arrived there. He has further added that his statement in this regard would be correct and that of complainant and eye witnesses would be wrong, if they had stated that they had gone to hospital with the dead body of deceased. That the entries were not sent to FSL to determine as to whether these have been fired from one weapon or more than one and has self stated that it was not proper to send the empties to laboratory till the recovery of weapon of offence. That ExPW5/1 (injury sheet), ExPW5/2 (inquest report) and ExPA/1 (Murasila) are in the handwriting of Ateequr Rahman S.I (PW-5).

20. PW-9, has conducted partial investigation in the case, during which he has obtained warrant u/s 204 CrPC against the accused facing trial vide application ExPW9/1. He has also arrested the accused facing trial on 07/7/2011 and obtained his two days police custody vide application ExPW9/2. He requested for further custody of the accused facing trial vide application ExPW9/4, but it was refused and accused facing trial was sent to judicial lockup. PW-9 has also deposed to Mad No. 24 daily diary dated 28/3/2006 ExPW9/5, regarding previous motive between the parties. He has also placed on file the post mortem report in respect of deceased. He has also deposed to FSL report ExPK, regarding the blood stained articles and list ExPW9/6, regarding the legal heirs of deceased Fida Mohammad.

21. In cross examination PW-9 has admitted that accused surrendered himself through the elders of area. He has further added that accused pleaded his innocence during investigation and told that prior to the occurrence, he had a minor quarrel with deceased, wherein compromise was effected and except this, there was no ill well or anger between him and the deceased. He has conducted no investigation in respect of injury caused on the dead body of deceased with blunt weapon as mentioned in the medical report and

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there is no allegation against the accused facing trial regarding attack on the deceased with blunt weapon. As single accused has been charged for the commission of offence, therefore, the accused facing trial is responsible for the occurrence. That he has gone through the daily diary vide Mad No. 20 dated 30/7/2011, according to which Atteequr Rahman ASHO (PW-5) had proceeded from P.S on 15:00 hours for the purpose of patrolling in Dewana Baba Bazar etc.

22. PW-7, is marginal witness to recovery memo ExPW7/1, vide which the I.O has taken into possession blood stained earth from the place of occurrence. He is also marginal witness to recovery memo ExPW7/2 regarding thirteen, 7.62, bore empties ExP-3 and spent bullet ExP-4, to have been taken by the I.O into his possession, recovered from the place of occurrence.

23. In cross examination PW-7 has deposed that police party was already present on the spot, before his arrival. That numerous people were present on the spot besides police party. That deceased was his cousin and that he runs a general store in village Matwani. As he had not received information in time, therefore, he came with delay to the place of occurrence, where many people and police party were present. That the dead body was brought to dry "Nalla" namely Panay for the purpose of taking it to hospital, whereas the people of village Matwani and village Karapa brought the dead body to main road. That some of the relatives of the deceased reached at the place of occurrence, while some of them met at the Ghair Mumkin Khwar (Panay). That all of the empties were recovered from inside of the clinic.

24. PW-6, in his statement has deposed to recovery memo ExPW6/1, regarding the blood stained garments of deceased, comprising Qamees ExP-1 and Banyan ExP-2 to have been taken into possession by I.O, which were handed over to him by witness Israr Mohammad HC.

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25. In cross examination PW-6 has not been contradicted on any material point rather, he has stuck to his stance, mentioned in his examination in chief.

26. PW-3, has examined the dead body of deceased on 03/7/2011 at 06:20 hours, who in his statement has deposed to his report ExPM on injury sheet and has also deposed to his endorsement on inquest report of the deceased. His report is as follow.

The dead body was lying in a bed, the colour of skin pale, there was bleeding from the wounds, clothes were stained with blood. There were multiple fire arm injures to the chest and head injury. The following wounds were found on his body.

a. *Six fire arm entry wounds about 1/3 inch in diameter, with margins inverted and charring marks present around the wounds on the back of chest along the upper to lower medial margins of left scapula on back of chest.*
b. *Three fire arm entry wounds about 1/3 inch in diameter with margins inverted with charring marks, present around the wounds on the back of chest. Close to each other just below the left scapula.*
c. *Two fire arm entry wounds, about 1/3 inches in diameter with margins inverted with charring marks present around the wound close to each other on the back of chest and the middle into the left side of vertebral column.*
d. *Two fire entry wounds about 1/3 inches in diameter with margins inverted and charring marks present around the wounds, on the lower back of chest, close to each other and to the left side of vertebral column.*
e. *One fire arm exit wound about 3x2 inches on front of chest about a medial to right nipple.*
f. *One fire arm exit wound, lacerated about 2x1 inch in diameter below and medial to right nipple.*
g. *One fire arm exit wound lacerated about 1 ½ inch in diameter above the left nipple.*
h. *One fire arm exit wound about ½ inch in diameter, to the right of left nipple.*
i. *Two fire farm exit wounds about ½ inch in diameter and close to each other below and medial to left nipple.*
j. *One fire arm exit wound lacerated about ¾ inch in diameter on epigastrium.*

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k. *Lacerated wound on the occipital region of head about 5 inch long and two inch broad, with irregular margins and visible fracture of skull and exposure of brain matter.*

X-Rya skull was suggested of depressed fracture of occipital bone and multiple fracture of skull. Chest X-Ray was suggestive of multiple rib fracture.

Weapon used: Fire Arm and Blunt with history of fire arm.

Cause of death:1. Trauma to head and brain injury.

2. Trauma to chest and cardio respiratory failure.

3. Sever bleeding causing hypo volumic shock.

Time since death: about 2 hours.

27. In cross PW-3 has admitted that there are charring marks on all the entry wounds, which explains that deceased has been fired from a distance of about 3/4 feet. That all the entry wounds are of same size, while exit wounds are of different size and it cannot be predicted from the size of exit wounds that firing has been made with different fire arms of different nature. That according to his opinion injury No. 11 has been caused through blunt weapon. That he has not mentioned the time between the receipt of injures and that of death.

28. PW-1, in his statement has reproduced the contents of Murasila ExPA/1. He has also deposed to the receipt of dead body of deceased, vide receipt ExPW1/1 after its examination in the hospital.

29. In cross examination PW-1 has mentioned the distance between their village and place of occurrence to be 14 km, and has further deposed that P.P Dewana Baba, Sawari and P.S Gagra are situated on the way, while going to the place of occurrence from their village, but he has not reported the matter at none of the above mentioned places. He has self stated that due to sudden death he wanted to reach the place of occurrence as soon as possible and to find the cause of death. Therefore, he did not make report at the above mentioned places. That he reached the place of occurrence ten minutes before the making of report. That the dead body of his deceased brother was lying on the ground inside the clinic before his arrival. That many people were present on the spot, but he knew

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none of them as they were residents of village Matwani and none of them mentioned the detail of occurrence to him and has self stated that his nephews told him about the occurrence. That blood was present on table and chair besides ground and again stated that blood was not present on table. That he did not know the local people, who had provided cot for the dead body of deceased and those people were present at the time of arrival of the police on the spot, who had put the dead body of deceased on cot. That the clinic of deceased is situated inside the village population. He has admitted that witness Saidullah is his cousin and resident of village Dewana Baba. That after the report the police did not record the statement of anyone in his presence. That he and police proceeded along with the dead body, however, dead body was kept in pickup and he departed in another vehicle. He has further admitted that he has rightly mentioned in his report that there was ill well between the accused and the deceased, but he did not know the detail nature of such ill well. He has further admitted that the deceased had mentioned him the exchange of hard words with the accused in the year 2006, however, it was patched up privately. The record is available in P.S Daggar in this respect. He has admitted that he has not mentioned the name of Fawad (PW-2) as informer in his initial report. That he did not mention the name of Fawad during investigation or any other court statement prior to the statement recorded in this court.

30. PW-2, is the eye witness to the occurrence, who in his statement has deposed that on the day of occurrence, he along with Farhad Ali had gone to village Dewana Baba from their village Karapa and there from, they came to village Matwani, where their deceased uncle Fida Mohammad was running a clinic and before arriving to the clinic they heard firing shots from some distance and they looked towards the clinic and saw that firing was made on their uncle, therefore, they took shelter and after the ending of firing they went

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and saw the deceased soaked in blood. They informed their uncle Haji Mohammad (complainant) about the occurrence and after one hour of his arrival on the spot proceeding was started. He expressed his ignorance about any other proceeding thereafter. He has further stated that the firing was made by accused facing trial, who had been seen by them at that time. (This part of his statement has been subjected to objection by the counsel for defense that the witness by himself has not stated as to who made the firing, rather the name of accused was disclosed in the result of a leading question, put to him.)

31. In cross examination PW-2 has stated that he informed his uncle about the detail of occurrence on his arrival and he did not mention the same to anyone else including police except his uncle. That the dead body had already been put on cot before arrival of complainant Haji Mohammad. He has further added that the dead body was lifted by the local people of village Matwani, whom he knew by face, not by name and has self stated that he knows the accused because prior to the occurrence the accused had come along with deceased to their house for effecting compromise in respect of previous ill well and quarrel, which happened in the year 2006 and its report was also recorded and compromise was also effected in the same. That Haji Mohammad has arrived to the place of occurrence before 5:00 hours and thirty minutes after his presence on the place of occurrence, the police along with the dead body proceeded from the place of occurrence. That the police has recovered the blood and empties and taken into possession the same in his presence. He has further added that he has mentioned to the police that the accused was making fire, during which they took shelter at a distance of about [illegible] paces from the clinic. That there is a house of Fazal Dad, situated at one side of the clinic and this house is situated both to the north and west of the clinic. That there is a house of Khushal situated to the east

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and a path to the south. That are three paths situated at the place of occurrence and that in front of the clinic there is house of Kherati across the path and these houses were told to him by the deceased and the accused had come to this clinic in 2006 after the quarrel. That they had told to the police the place, where they took shelter. That medicines were available in the cupboard of the clinic and this cupboard was situated by the side of chair of the deceased and the cupboard of medicines was present at the north wall of the clinic, while the chair used by deceased was present at the south. Deceased was facing towards the cupboard for taking out medicines at the time of firing and no one was present at the clinic at the time of firing. That the table and chair were not blood stained with the blood of deceased. That no bullet had hit the cupboard, wherefrom the deceased was taking out the medicines. He has admitted that they had not seen the accused prior to the firing and has self stated that they had seen firing at the deceased, from their place of shelter. They took shelter again after the ending firing for thirty seconds. That they were present with the dead body, till the arrival of their uncle Haji Mohammad. That the name of Fazal Dad, Kherati and Khushal has been told to him by the deceased. That the father name of the accused was told by deceased at the time of Jirga and the father name of deceased is Mian Hussain Shah. That the deceased left the previous clinic after the quarrel with accused in 2006. That the deceased was married, but was residing in the Bhetak of the house and his matrimonial relations were bad and has again stated that he was residing in the home.

32. After having analyzed, scrutinized and appreciated the evidence of the prosecution in the context of FIR, other material available on file through above discussion and having heard the learned counsel for the parties the court came to the conclusion:-

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i. *Admittedly the occurrence had taken place on 03/7/2011 at 16:00 hours and its report has been made on the same date at 17:00 hours, meaning thereby that the report about the occurrence had been make with a delay of about 1 hour, but keeping in view the distance between the place of occurrence and village Karapa (the village of complainant), which is 14 km as divulged from the mouth of complainant in cross examination. This delay cannot be presumed to have been consumed in consultation and deliberation in the absence of any evidence to the contrary. Therefore, it can safely be held that the accused facing trial has been charged for the murder of deceased Fida Mohammad, coupled with the facts that the police promptly lodged the FIR excluding any type of consultation and deliberation.*

ii. *The motive behind the occurrence has been mentioned that ill well/anger was existing between the deceased and the accused facing trial due to quarrel/exchange of hard words, taken place in the year 2006 and in this respect a report was also lodged by the deceased vide Mad NO. 20, daily diary of 28/3/2006 ExPW9/5 and though that matter between the deceased and the accused facing trial was admittedly patched up through private compromise, but it has been divulged from the mouth of complainant*

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that despite compromise the ill well was still existed between the deceased and the accused facing trial, which factum suggests that the prosecution has been successful in establishing the motive behind the occurrence.

iii. The report of the occurrence ExPA/1 has been made by PW-1, the brother of deceased, who has been cross examined at length, wherein, though he had admitted that P.P Dewana Baba, P.S Gagra and P.P Sawari are lying in the way, while going to the place of occurrence from his village and though he has admitted that he did not make information about the occurrence at the above mentioned places, but this laxity has been explained by complainant by self saying that due to sudden death of his brother, he wanted to reach the place of occurrence and to know the cause of his death, as soon as possible. In the rest of his cross examination he has not been contradicted on any material point to prove fatal to the prosecution story, rather he (PW-1) has further elaborated the detail of occurrence to have been committed by accused facing trial, which factum has been disclosed to him by his nephews namely Fawad Khan and Farhad Ali, the eye witnesses to the occurrence. This factum has been confirmed by him in his cross

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examination, when he says that the other people of village present on the spot, did not mentioned to him the detail of the occurrence and has self stated the it was told to him by his above mentioned nephews.

iv. The private witnesses as well as the police officials are unanimous to the factum that the occurrence has taken place in the clinic of deceased, situated inside the village population of village Matwani. On this point non of the witness has been cross examined to divulge from their mouths as if the occurrence has taken place in some other place, other than the clinic of the deceased.

v. The complainant has mentioned in his report ExPA/1, that the occurrence has been eyewitnessed by his nephews namely Fawad Khan and Farhad Ali, out of whom Fawad Ali has been produced by the prosecution as PW-2 in the witness box, who though disclosed the name of accused on the leading question put to him by counsel for complainant, but in cross examination PW-2, has disclosed that he was knowing the accused facing trial as he had come along with the deceased to their home prior to the occurrence for the purpose of effecting compromise, regarding the ill well/quarrel taken place between the accused facing trial and the deceased, and due to this fact accused facing trial was known to him.

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Buner at Gagoor

Moreover, it is a day light occurrence and the question of mis identification and non identification of accused facing trial did not arise.

The learned counsel for the defense has tried to divulge from the mouth of complainant (PW-1) during his cross examination as if the deceased was a man of immoral character and in the garb of medical practice, he was in habit of having immoral relations with women folk of the locality and the local people were aggrieved from him on this account and as such the accused facing trial would have been substituted for some unknown culprit. Though, complainant has expressed his ignorance in cross examination, as if deceased was a man of immoral character or not. But in this respect the statement of accused facing trial is completely silent and similarly he has not produced any evidence in defense to substantiate as if deceased was man of immoral character and accused facing trial was substituted in place of someone else. Moreover, no one would like to charge an innocent person for the offence, committed by someone else. Again, substitution is a rare phenomena and in very rare cases it happens.

vii. The learned counsel for the defense, during arguments, contended that PW-2 is chance

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witness and the other eye witness namely Farhad Ali has not been produced by the prosecution to corroborate the testimony of PW-2. Though, PW-2 is the resident of village Karapa and the occurrence had taken place at the clinic of deceased situated in village Matwani, but PW-2 has established his presence at the time of occurrence by deposing that on the day of occurrence, he along other with eye witness Farhad Ali, went to Dewana Baba for its "Zyarat" and there from they went to village Matwani, where the clinic of the deceased Fida Mohammad (his uncle) was situated. On this point when PW-2 has been cross examined, he has deposed that he had given statement to police at the time of report and they recorded the statement, showed to him, wherein though there was no mention of their going to the house of his uncle, however, he had mentioned about going to Dewana Baba, for the purpose of its "Zyarat". PW-2 in cross examination has confirmed his presence on the spot by saying that he had told to the police that the accused was making firing, during which they took shelter at distance of about five paces from the clinic.

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viii. The presence of PW-2 on the spot is further established by him during his cross examination wherein he has mentioned the

EXAMINER, Constituted under Article 9 of P.O. No-10 of 1982

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houses, the owners thereof and path/paths situated around the place of occurrence. Though, the statement of PW-2 is silent about the site plan, as on whose pointation it was prepared, however, the house, path/paths mentioned by him in cross examination fully tally with the houses and path/paths surrounding the place, mentioned in site plan. And it can also be safely presumed that the site plan ExPB was prepared by the I.O on the poiatation of eye witnesses including PW-2, as mentioned by him as PW-8 in his statement.

ix. The I.O has recovered the blood stained earth vide recovery memo ExPW7/1 from the place of occurrence and has also recovered thirteen 7.62 bore empties ExP-3 along with one spent bullet ExP-4 vide recovery memo ExPW7/2. In this respect the prosecution has produced PW-7, the marginal witness to recovery memo, in witness box to depose, who has fully corroborated the above mentioned recoveries in his statement and he has been cross examined but he has not been contradicted on any material point nor his veracity has been impeached. Similarly, the I.O has taken into possession the blood stained garments comprising Qamees ExP-1 and Banyan ExP-2, vide recovery memo ExPW6/1 and the prosecution has produced PW-6, the marginal witness, in this regard,

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EXAMINER
Constituted under Article
P.O. Rule of 1964

SYED NOAMBER JAN
District & Sessions Judge
Buner at Daggar

Wo/ Zilla Qazi

who has fully supported the testimony of PW-8 (I.O).

x. The recovered blood stained earth and garments have been sent to FSL Peshawar and its report ExPK has been received in positive, which factum further corroborate the story of prosecution about the occurrence. Similarly thirteen empties and one spent bullet has been recovered from the place of occurrence and the record is silent as if these have been sent to expert for his opinion, but at the same time it is also pertinent to mention that the record is also silent about the recovery of weapon of offence from the possession of accused facing trial. Therefore, there was no need to send the empties etc either to arm expert or FSL for their opinions. Furthermore, it is evident from the cross examination of PW-3 (the doctor), that it is not correct to draw conclusion that the firing was made through different weapons and of different nature by keeping in view the size of exit wounds, suggesting that single weapon was used in the commission of offence for which single accused (facing trial) has been charged, which factum further support the prosecution version.

xi. According to external examination report ExPM of the deceased and according to the statement of PW-3 (the doctor), fourteen fire

arm entry wounds have been caused on the body of deceased, whereas, thirteen empties of 7.62 bore and one spent bullet have been recovered from the place of occurrence, which factum is fully supported by the report of PW-3 ExPM drawn on injury sheet. Though, in cross examination, PW-3 has admitted that there were charring marks on all entry wounds, which by no means appealable to common mind that these injuries were self inflicted, rather strong presumption of truth is attached to the factum that accused facing trial has fired at the deceased at a range, very close to the deceased.

xii. The oral evidence against the accused facing trial is fully supported by the circumstantial evidence, produced by prosecution against the accused facing trial, which otherwise suggests that the prosecution has been successful to establish the offence against the accused facing trial, not only through unsheltered and un-impeached oral evidence, but also through circumstantial evidence and as already discussed that fourteen fire arm entry wounds have been caused on the body of deceased at a close distance, by causing also charring marks thereon, which factum suggests the brutal murder of the deceased at the hands of accused facing trial.

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33. For the reasons recorded above, prosecution has been successful in bringing home guilt to the accused facing trial, beyond shadow of reasonable doubts, however, weapon of offence has not been recovered during investigation from the possession of accused facing trial which lacuna on the part of prosecution makes their case against the accused facing trial of mitigating circumstances, therefore the accused facing trial is convicted and sentenced to life imprisonment u/s 302(b) PPC as Tazeer. He is also burdened with Rs. 1000,000/- (ten lacs) as compensation to be paid to the LRs of deceased, failing which he will be remain behind the bars, till the payment of above mentioned compensation amount. Benefit of section 382 (B) CrPC is extended to the accused. Case property be kept intact till the expiry period of appeal/revision and thereafter be disposed of in accordance with law.

Announced
17/7/2012

SYED MOAMBERJAN
Sessions Judge/Zilla Qazi
Buner at Daggar
17/7/2012

CERTIFICATE

This judgment consisting of (22) pages bears my seal, signature and correction where found necessary.

No 3806
Date of application 18-2-12
Date of receipt file
Word 25
Fee
Urgent fee
Date of delivery 18-2-12
Signature

SYED MOAMBERJAN
Sessions Judge/Zilla Qazi
Buner at Daggar

ATTESTED

D-30

OFFICE OF THE
DEPUTY COMMISSIONER,
BUNER.

No. 15423-30 /DC/Buner/Estt:
Dec 02, 2014.

Office Order.

In light of the District & Sessions Judge / Zilla Qazi's verdict dated 17-07-2012 given in the case *Charge 302 PPC PS Gagra vide FIR No. 440 Dated 03-07-2011 VS Yousaf Ali Shah s/o Mian Hussain Shah r/o Matwani, Buner* whereby the accused Mr. Youaf Ali Shah was sentenced to life-imprisonment u/s 302(b) PPC as Tazeer, Mr. Yousaf Ali Shah Patwari is hereby terminated from service with immediate effect in the best interest of public service.

(Khaista Rahman)
DEPUTY COMMISSIONER,
BUNER.

Endst. No. & date even.

1. Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Commissioner, Malakand Division.
4. District & Sessions Judge, Buner.
5. All Assistant Commissioners, Buner.
6. District Accounts Officer, Buner.
7. The terminated official.

(Khaista Rahman)
DEPUTY COMMISSIONER,
BUNER.

ATTESTED

Attested

عدالت جناب سیشن جج / اینٹی کرپشن
(صوبائی) پشاور
مقدمہ نمبر 38 آف 2014
سرکار بنام (1) یوسف علی شاہ (2) شمیر خان
علت نمبر 440 مورخہ 30/5/14 جرم 5 PC 409/109 PPC
ACE بونیر

E-(31)

0-9 08-5-2015

ORDER:-

Accused on bail with counsel and P.P. for state present. Arguments on application submitted by counsel for accused u/s 249-A Cr.Pc for the acquittal of accused heard and record perused.

As per contents of FIR the facts of the present case are that accused patwari Yousaf Ali Shah though involved in case FIR No.440 registered on 03.07.2011 u/s 302/PPC of P.S. Gagra got arrested and after trial was convicted to suffer life imprisonment and to pay a fine of Rs.10 lac by the court of Sessions Judge District Bunair was still receiving his pay as patwari and has received illegally Rs.2,93,043/- with the abetment and connivance of accused revenue clerk Shamsher khan. On submission of source report by Circle Officer ACE Bunair containing allegation of corruption, illegal drawl of monthly salary, permission of ADC ACE KPK, open inquiry was conducted bearing No.66/2013 consequently present case was registered.

The accused was charge sheeted on commencement of trial and 3 PWs were examined so far. In the meanwhile the learned counsel for accused petitioners submitted an application u/s 249-A Cr.Pc on 02.04.2015. Hence counsel for both the accused advanced their points.

Special Judge
Anti Corruption
Khyber Pakhtunkhwa Peshawar
08/5/2015

ATTESTED

EXAMINER
Court Of Special Judge
Anti Corruption KPK Peshawar
08/5/15

Record shows that PW-2 Abdul Waheed khan Naib Tehsildar Chagharzai, District Bunair when examined as PW-2 in cross examination conceded to the fact that issuance/continuation and stoppage of the salary is the mandatory job of the District collector to which I know nothing whether DC had stopped the salary or the same was continued.

Similarly PW-3 Bakht Raj, District Nazir Bunair stated in his statement that on 01.01.2013 the magistracy system was implemented and all the revenue record was transferred from DOR to DC. Father of Yousaf Ali Shah namely Mian Hussain Shah brought Rs.2,93,043/- which his son Yousaf Ali Shah illegally received/drawn as salary and handed over to him and he deposited the same in the NBP Daggar branch vide receipt No.142 Ex.PW3/2.

Similarly PW-1 Ismaiel khan retired DOR R/o Baggata District Bunair stated in cross examination that he was incharge of the concerned revenue department in District Bunair. Tehsildar and District Kanungo are subordinate to him. Accused Yousaf Ali Shah is patwari Shamsher is a revenue clerk, and they all are immediate bosses of both the accused. he further stated that accused Yousaf Ali Shah was in jail and they used to issue salary of the said accused Yousaf Ali Shah which was being delivered to him through bank in his account. The salary was continued till the date alleged in the FIR. He further reiterated that the accused Yousaf Ali Shah was charged due to the reason that the department as usual delivering the salary to his account and he being in jail through bank was receiving the same. He further conceded that he was retired when the accused was convicted and later on nobody has discharged his liability to stop his salary. He further conceded and exonerated the accused Shamsher by stating that accused Shamsher being revenue clerk has complied the instructions in the present case as made by the high ups to have delivered the salary of Yousaf Ali Shah into his

Special Judge
Anti Corruption
Khyber Pakhtunkhwa Peshawar
08/5/2015

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Court Of Special Judge
Anti Corruption Khyber Pakhtunkhwa Peshawar
08/5/15

account. In his tenure he has not instructed revenue clerk to stop the salary nor anybody else after him.

The perusal of above recorded statement shows that accused patwari Yousaf Ali Shah was behind the bar when his salary was released through bank to him and he had no dominion over government money to be delivered to himself. Under the head salary and the revenue clerk Shamsher had also no authority to issue salary to any government employee including Yousaf Ali Shah Patwari. the accused is charged u/s 409/PPC and at the time of framing of charge it was brought on record that during this period he was charged and arrested in a murder case. The ingredients of section 409/PPC hence not attracted to his case and in the light of available evidence on record there is no chance of conviction of accused because main star witnesses of department officials have been examined. Moreso, the salary of accused patwari Yousaf Ali Shah was erroneously issued or delivered by the high ups of the department has been repaid through his father, when he was still behind the bar. Hence to proceed with the trial is nothing but a futile exercise, even if I.O. is examined no fruitful result to prosecution would avail, therefore by allowing the present application submitted u/s 249-A/265-K Cr.Pc, both the accused Yousaf Ali Shah patwari and Shamsher Khan revenue clerk are acquitted of the charges leveled against them.

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Court Of Special Judge
Anti Corruption KPK Peshawar
08/05/15

Both the accused are on bail, they are relieved and their sureties are discharged from the liabilities of the bail bonds.

The case property, if any, be kept intact till the expiry of the period of limitation prescribed for appeal/revision.

File of the case be consigned to the record room after its necessary completion.

Announced.
Swat.
08.05.2015.

Special Judge,
Anti-Corruption KPK,
(Camp at Swat).

15/15

G-34

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Iqbal Hameedur Rahman
Mr. Justice Qazi Faez Isa

Criminal Appeal No. 383 of 2014 and Criminal Miscellaneous Application No. 831 of 2014
(Against the judgment dated 07.05.2014 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Criminal Appeal No. 136 of 2012)

Yousaf Ali Shah ...*Petitioner*

versus

The State, etc. ...*Respondent*

For the petitioner:	Mr. Basharat Ullah Khan, ASC Syed Rifaqat Hussain Shah, AOR
For the State:	Mr. Mujahid Ali Khan, Additional Advocate-General, Khyber Pakhtunkhwa
Date of hearing:	25.02.2015

JUDGMENT

Asif Saeed Khan Khosa, J.: Yousaf Ali Shah appellant was tried for the murder of one Fida Muhammad *vide* FIR No. 440 registered at Police Station Gagra, District Buner on 03.07.2011 for an offence under section 302, PPC and *vide* judgment dated 17.07.2012 rendered by the learned Sessions Judge/Zilla Qazi, Buner at Daggar he was convicted for an offence under section 302(b), PPC and was sentenced to imprisonment for life as *Ta'zir* and to pay a sum of Rs. 10,00,000/ to the heirs of the deceased by way of compensation under section 544-A, Cr.P.C. failing which he

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Superintendent
Supreme Court of Pakistan
Islamabad

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was to remain behind the bars till payment of the said amount. The benefit under section 382-B, Cr.P.C. was extended to him. The appellant challenged his conviction and sentence before the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat through Criminal Appeal No. 136 of 2012 which was heard and dismissed by a learned Division Bench of the said Court *vide* judgment dated 07.05.2014. Hence, the present appeal by leave of this Court granted on 25.06.2014.

2. During the pendency of this appeal Criminal Miscellaneous Application No. 831 of 2014 had been filed before this Court seeking acquittal of the appellant on the basis of a compromise with the heirs of the deceased. The matter of compromise had been referred by this Court to the learned Sessions Judge/Zilla Qazi, Buner at Daggar for its verification and the report dated 31.01.2015 submitted by the learned Sessions Judge/Zilla Qazi, Buner at Daggar in that regard shows that all the heirs of Fida Muhammad deceased have already entered into a compromise with the appellant and they have offered no objection to acceptance of the appellant's appeal, setting aside of his conviction and sentence and his release from the jail on the basis of the compromise. After going through the said report we note that the major heirs of the deceased have received *Badal-i-Sulh/Diyat* and the share of *Diyat* of the minor heir has already been handed over in the shape of National Savings Certificates. The learned Sessions Judge/Zilla Qazi, Buner at Daggar has felt satisfied with the genuineness and completion of the acclaimed compromise between the parties. In these circumstances we have found no occasion for not accepting the compromise between the parties and for not acting upon the same. Criminal Miscellaneous Application No. 831 of 2014 is, therefore, accepted and on the basis of acceptance of the compromise between the parties the appellant is ordered to be released from the jail forthwith if not required to be detained in connection with any other case. By virtue of the provisions of subsection (6) of section 345, Cr.P.C. the composition of the

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Supreme Court of Pakistan
Islamabad

(36)

offence brought about in the case shall have the effect of acquittal of the appellant. This appeal is disposed of in these terms.

Sd/- Asif Saeed Khan Khosa,
Sd/- Iqbal Hameedur Rahman
Sd/- Umar Ata Bandial,J

Certified to be True Copy

1/4/15

Superintendent
Supreme Court of Pakistan
Islamabad

SEAL OF THE SUPREME COURT OF PAKISTAN

Islamabad
25.02.2015
Not approved for reporting.
Arif*

28/2/15

4826/15

GR No: _____ Civil/Criminal
Date of Presentation: 27.3.15
No. of Words: 900
No. of Follies: 9
Requisition Fee Rs: 5.00
Copy Fee in: 5.50
Court Fee stamps: 10.50
Date of Completion of Copy: 1/4/15
Date of delivery of Copy: 01/4/15
Compared by/Prepared by:
Received by:

H-(37)

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

No. Estt;VII/Commr/MKD/ 16546
Peshawar dated the 8 /07/2015.

To

Secretary to Commissioner,
Malakand Division.

SUBJECT: - RE-INSTATEMENT OF TERMINATED PATWARI.

I am directed to refer to your letter No. 916/2/26/Estt., dated 13.04.2015 and to enclose copy of Section Officer (Opinion-I) Law Department for further necessary action at your end please.

Secretary -I

No. Estt;VII/Commr/MKD/ 16547

Copy is forwarded to Deputy Commissioner, Buner for similar action please.

Secretary -I

Attested

SUPERINTEDENT
Dc's Office, Buner.

I- (38)

PS/SMBR
Dy No 4199
Date 2/7
Govt: of Khyber Pakhtun Khw

16953-56

GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SO(OP-I)/LD/5-1/2012-VOL-III
DATED: PESH: THE 2 JULY 2, 2015

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Revenue & Estate Department

Subject: **RE-INSTATEMENT OF TERMINATED PATWARI.**

Dear Sir,

I am directed to refer to your Department's letter No.Estt:VII/Commr/MKD/15115 dated 26-06-2015 on the subject noted above and to state that the Honorable Supreme Court of Pakistan in the case of Dr. Muhammad Islam Versus Government of NWFP (KPK) through Secretary Food, Agriculture, Live Stock and Cooperative Department at **1998 SCMR Page 1993** has ruled as follows:-

> *"We are inclined to uphold the above view in as much as all acquittals even if there are based on benefit of doubt are honorable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgment are recorded on the basis of* ***compromise*** *between the parties and the accused are acquitted in consequence thereof. What shall be the nature of acquittals? All acquittals are certainly honorable. There can be no acquittals, which may be said to be dishonorable. The law has not drawn any distinction between these types of acquittals."*

After setting aside the conviction by the Competent Court, there is nothing to stigmatize and penalize the employee as the compromise has washed away the blemish of the employee regarding his being as punished person. Therefore, the Ex-official can be re-instated in service even after acquittal on the basis of compromise with the heirs of the deceased. However, his absence period may be treated as leave without pay.

Yours Faithfully,

Section Officer (Opinion-I)

Endst: of even No. & date.

Copy forwarded for information to the PS to Secretary Law, Department.

Section Officer (Opinion-I)

Attested
SUPERINTENDENT
DCs Office, Buner.

J-39

OFFICE OF THE
DEPUTY COMMISSIONER,
BUNER.

Re-instatement Order.

July 31, 2015.

No. 12807-19/DC/Buner/Estt. In pursuance of the Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department's letter no. SO(OP-I)/LD/5-1/2012/Vol-III/16953-54 dated 02-07-2015 endorsed vide Secretary to Commissioner, Malakand Division's letter no. 1515/2/26/Estt. dated 30-07-2015, Mr. Yousaf Ali Shah Patwari terminated vide Office Order No. 15423-30/DC/Buner/Estt. dated 02-12-2014 is hereby re-instated with immediate effect. Accordingly, his absence period may be considered as *leave without pay.*

(Khaista Rahman)
DEPUTY COMMISSIONER,
BUNER.

Endst. No. & date even.

1. Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Commissioner, Malakand Division.
4. District & Sessions Judge, Buner.
5. Additional Deputy Commissioner, Buner.
6. All Assistant Commissioners, Buner.
7. District Accounts Officer, Buner.
8. District Nazar.
9. Mr. Yousaf Ali Shah, Patwari.

(Khaista Rahman)
DEPUTY COMMISSIONER,
BUNER.

Attested:

SUPERINTEDENT
Dc's Office, Buner.

K-(40)

OFFICE OF THE
DEPUTY COMMISSIONER,
BUNER.

No. 12830-33 /DC/Buner/Estt.
July 31, 2015.

Office Order.

Consequent upon the re-instatement of Mr. Yousaf Ali Shah Patwari, he is further posted as Halqa Patwari Guluno Borhai against the vacant post.

(Khaista Rahman)
DEPUTY COMMISSIONER,
BUNER.

Endst. No. & date even.

1. Assistant Commissioner, Gagra.
2. Naib Tehsildar, Chagharzi.
3. Official concerned.

(Khaista Rahman)
DEPUTY COMMISSIONER,
BUNER.

Attested

SUPERINTENDENT
Dc's Office, Buner.

L-(41)

To

The Hon'ble Commissioner,
Malakand Division, at Saidu Sharif Swat.

SUBJECT:

DEPARTMENT APPEAL AGAINST THE ORDER DATED 31-07-2015 WHEREBY THE APPELLANT WAS RE-INSTATED IN TO SERVICE BUT WITHOUT BACK BENEFITS

R/SHEWETH:
ON FACTS:

1. That the appellant was appointed as Patwari (BPS-07) in the Revenue Department after fulfilling all codal formalities. That after appointment the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.

2. That appellant while working as Patwari Halqa Banj Kara an FIR No.440 dated 03-07-2011 Police station Gagra was falsely lodged against the appellant under section 302 of Pakistan Penal Code. That on the basis of that FIR the appellant was suspended till final decision of the case by the concerned authority vide order dated 08-07-2011.

3. That vide judgment/order dated 17-07-2012 the appellant was sentenced to life imprisonment u/s 302(b) PPC as Tazeer by the learned District & Session Judge/Zilla Qazi Buner at Daggar. That after the judgment of learned District & Session Judge/Zilla Qazi Buner at Daggar Deputy Commissioner Buner straight away terminated the appellant with out conducting any regular inquiry in the matter. That the appellant challenged his conviction and sentenced before the Peshawar High Court, Mingora bench(Darul Qaza) Swat through criminal appeal

   No.136/2012 which was heard and dismissed by the learned Division Bench vide judgment dated 02-02-2014.

4. That the appellant challenged the Peshawar High Court Mingora Bench (Darul Qaza) Judgment/order dated 07-05-2014 in Criminal Appeal No.383/14 and Criminal Miscellaneous Application No.831/14 before the Hon'ble Supreme Court and the Hon,ble Supreme Court acquitted the appellant from the said charge. That after acquittal the appellant was re-instated by the concerned authority but with out back benefits vide dated 31-07-2015.

ATTESTED

5. That it is pertinent to mention that in light of FR-53 & 54 the appellant is fully entitle for the grant of back benefits but the

concerned authority malafidely ignored the appellant from the said benefits. That feeling aggrieved and having no other remedy the appellant prefer this Departmental appeal before your good self on the following grounds amongst the others.

GROUNDS:

A- That the impugned order dated 31.07.2015 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That the appellant has not been treated by the concerned authority in accordance with law and rules on the subject noted above and as such the authority violated article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That inspite of acquittal from the trial Court the concerned authority is not willing to give back benefits to the appellant, rather the concerned authority acted in arbitrary and malafide manner on the subject noted above.

D- That according to FR-53 and 54 the appellant is fully entitle for the grant of back benefits but the respondents ignored the appellant with out any reason and clear justification.

E- That the appellant is fully entitle for the grant of back benefits under the principle of natural justice.

It is therefore humbly requested that on acceptance of this Departmental appeal the impugned order dated 31.07.2015 may be modified to the extent that the appellant may kindly be allowed/granted back benefits for the intervening period. Any other remedy which your good self deems fit that may also be awarded in the favor of the appellant.

Dated: 18.8.2015

ATTESTED

APPELLANT

Yousaf Ali Shah S/O Mian Hussain,
R/O Village Matwani, Tehsil Daggar
District Malakand.

M-43

OFFICE OF THE
COMMISSIONER MALAKAND DIVISION
SAIDU SHARIF SWAT

No. 2000 /2/26/Estt:

Dated 17 /09/2015

To:

The Deputy Commissioner, Buner.

Subject: - **DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 31-07-2015 WHEREBY THE APPELLANT WAS RE-INSTATED IN TO SERVICE BUT WITHOUT BACK BENEFITS.**

Sir,

I am directed to refer to the subject noted above and to enclose herewith copy of the subject appeal submitted by Mr. Yousaf Ali Shah, Patwari, the contents of which are self-explanatory.

2. I am further to convey that absence period of the appellant has been treated as leave without pay on the advice of Law Department, Khyber Pakhtunkhwa, Peshawar, therefore no remedy can be granted by this office. The appellant may be informed accordingly.

Encl: As above

Office Of The DC Buner
Dairy No 9576
Branch
Signature
28-9-15

SECRETARY TO COMMISSIONER
MALAKAND DIVISION
Ph# 0946-924038

ATTESTED

DC Buner
28/9/15

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

_____ OF 2015

Yousaf Ali Shah (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Govt: of KPK (RESPONDENT) (DEFENDANT)

I/We Yousaf Ali Shah

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 1 / 10 /2015

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No.0345-9383141

Before the Service Tribunal, Khyber Pakhtunkhwa, Camp Court, Swat.

Service Appeal No. 1098/2015

Yousaf Ali Shah Patwari..... Appellant

Vs

1. Secretary Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner, Malakand Division at Saidu Sharif, Swat.
3. Director General Anti-Corruption, Khyber Pakhtunkhwa, Peshawar.
4. Deputy Commissioner, Buner..... Respondents.

Parawise Comments on Behalf of Respondents No. 1, 2 & 4.

Preliminary Objections:

1. The appeal is not maintainable.
2. The appeal has no legal grounds.

Para-wise Comments:

1. No comments. Pertains to the record.
2. FIR against the appellant was lodged. On the said basis, he was proved guilty of the offence hence sentenced to life-imprisonment by the District & Sessions Judge, Buner in the judgment dated 17-07-2012 **(Annexure-A)**. Astonishingly, the appellant admits the same as in *para-3*.
3. Under the prescribed law, the authority was satisfied that no more inquiry was required as the learned court had already fulfilled all the required procedure and sufficient documentary evidence existed against the accused / appellant **(Esta-code annexed as B)**.
4. No comments.
5. The appellant was not acquitted from the charges rather his payment of *diyat* to the legal heirs of the murdered and *compromise* was accepted by the august Supreme Court of Pakistan in its judgment dated 25-02-2015 **(Annexure-C)**. Based on the advice of Law Department, back-benefits were not granted to the appellant **(Annexure-D)**.
6. As per Para-5.
7. No comments.

Grounds:

A. Denied. The orders dated 31-07-2015 & 17-09-2015 are according to the law. The orders were passed in accordance with the prescribed procedure and existing law.
B. Denied. The appellant has been treated according to the law.
C. In case of conviction by the court, according to the law, routine procedures can be avoided **(Annexure-B)**. He was terminated based on the judgment of the court.
D. Reply as per Para-C.
E. Reply as per Para-C.
F. Reply as per Para-5.
G. Reply as per Para-5.
H. No comments.

It is requested that the appeal is baseless having no legal grounds therefore may kindly be dismissed with special costs.

Hazrat Masood Khan

Secretary, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1).

Secretary to Government
Revenue & Estate Department
Khyber Pakhtunkhwa

Commissioner, Malakand Division
(Respondent No. 2).

Deputy Commissioner, Buner.
(Respondent No. 4)

Deputy Commissioner
Buner

Affidavit.

I, Deputy Commissioner, Buner do hereby solemnly affirm and declare on oath that the reply to this Appeal is true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable tribunal.

DEPUTY COMMISSIONER,
BUNER.

IN THE COURT OF SYED MOAMBER JAN, SESSIONS JUDGE/ZILLA QAZI, BUNER

Case No. 66/7

Dated of Institution: 30/7/2011

Dated of Decision: 17/7/2012

Charge 302 PPC, P.S Gagra,
Vide FIR No. 440 Dated 03/7/2011

STATE Vs Yousaf Ali Shah s/o Mian Hussain Shah r/o Matwani, Buner.

(Accused Facing trial)

Judgment

The accused facing trial namely Yousaf Ali Shah aged about 30 years s/o Mian Hussain Shah, r/o Matwani, Tehseel Daggar, District Buner, has been charged that on 03/7/2011 at 16:00 hours, at clinic situated in village Matwani, within the criminal jurisdiction of P.S Gagra, he fired at Fida Mohammad, the brother of complainant with fire arm, with intention to kill him, whereby, he was hit and succumbed to his injuries on spot and as such the accused facing trial committed the offence punishable u/s 302 PPC.

2. Briefly stated the facts leading to the registration of case in hand against the accused facing trial are that on 03/7/2011, Atiqur Rahman ASHO P.S Gagra, received information that murder has been committed in village Matwani, therefore, for verification and legal proceedings, he along with police party came to the clinic of deceased Fida Mohammad, situated in village Matwani, where he found the dead body of deceased Fida Mohammad, soaked with blood s/o Hazrat Hamad r/o Karapa, placed on cot, with his brother the complainant, Haji Mohammad aged about 39/40 years, s/o Hazarat [redacted] Mohammad, caste Afghan, who on the same date at 17:00 hours made [redacted] report to the above mentioned police official that his deceased [redacted] was running his own clinic in village Matwani and he

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SYED MOAMBER JAN
District & Sessions Judge/Zilla Qazi

as many as 9 witnesses against the accused facing trial and rest were abandoned.

4. The resume of the statements of PWs are as follow.

PW-1, Haji Mohammad aged about 42 years, s/o Hazrat Hamid r/o Karapa Buner, is the complainant, who in his statement has reproduced the contents of Murasila ExPA/1. He has also deposed to the receipt of dead body of deceased, vide receipt ExPW1/1 after the examination in the hospital.

6. PW-2 Fawad Khan aged about 16 years, s/o Noor Ahmad r/o Karapa, Buner, is the eye witness to the occurrence, who in his statement has deposed that on the day of occurrence, he along with Farhad Ali had gone to village Dewana Baba from their village Karapa and there from, they came to village Matwani, where their deceased uncle Fida Mohammad was running a clinic and before arriving to the clinic they heard firing shots from some distance and they looked towards the clinic and saw that firing was made on their uncle, therefore, they took shelter and after the ending of firing they went and saw the deceased soaked in blood. They informed their uncle Haji Mohammad (complainant) about the occurrence and after one hour of his arrival on the spot proceeding was started. He expressed his ignorance about any other proceeding thereafter. He has further stated that the firing was made by accused facing trial, who had been seen by them at that time. (This part of his statement has been subjected to objection by the counsel for defense that the witness by himself has not stated as to who made the firing, rather the name of accused was disclosed in the result of a leading question, put to him.)

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7. PW-3, Dr. Mohammad Farooq (Junior) Buner, has examined the dead body of deceased on 03/7/2011 at 06:20 hours, whose statement has deposed to his report ExPM on injury sheet

and has also deposed to his endorsement on inquest report of the deceased.

8. PW-4, Khurshid Anwar Khan SHO, P.S Gagra, has submitted complete challan against the accused facing trial, after completion of investigation.

9. PW-5, Ateequr Rahman ASHO, P.S Gagra, has drafted murasila ExPA on the report of complainant. In his statement, he has also deposed to injury sheet ExPW5/1 and inquest report ExPW5/2 of the deceased.

10. PW-6, Khan Sher AMHC/29 P.S Jowar, then posted at P.S Gagra, who in his statement has deposed to recovery memo ExPW6/1, regarding the blood stained garments of deceased, comprising Qamees ExP-1 and Banyan ExP-2 to have been taken into possession by I.O, which were handed over to him by witness Israr Mohammad HC.

11. PW-7, Sadullah Khan s/o Juma Khan r/o Dowana Baba, Buner is marginal witness to recovery memo ExPW7/1, vide which the I.O has taken into possession blood stained earth from the place of occurrence. He is also marginal witness to recovery memo ExPW7/2 regarding thirteen, 7.62 bore, empties ExP-3 and spent bullet ExP-4, to have been taken by the I.O into his possession, recovered from the place of occurrence.

12. PW-8, Mohamamad Alamzeb Khan S.I, P.S Daggar, then posted at P.S Gagra, is the I.O, who in his statement has deposed that after registration of the case, vide FIR ExPA, he was entrusted with investigation of the case, during which he prepared site plan ExPB on the pointation of eye witnesses and recovered blood stained earth vide recovery memo ExPW7/1 from the place of presence of deceased and also recovered thirteen 7.26 bore empties ExP-3 and spent bullet vide recovery memo ExPW7/2 and sealed the same into parcel. That he conducted the house search of accused facing trial vide card

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ExPW8/1. He also took into possession the blood stained garments ExP-1 and ExP-2 of the deceased vide recovery memo ExPW6/1, which were having cut marks and brought by Israr Mohammad Khan HC from Daggar Hospital. He has also deposed to application ExPW8/2, regarding the keeping of empties in safe custody. In his additional evidence as APW-8, I.O has also deposed to application ExPW8/3, vide which he has sent the blood stained articles.

13. PW-9, Qasim Jan Khan S.I, P.S Daggar, then posted at P.S Gagra, has conducted partial investigation in the case, during which he has obtained warrant u/s 204 CrPC against the accused facing trial vide application ExPW9/1. He has also arrested the accused facing trial on 07/7/2011 and obtained his two days police custody vide application ExPW9/2. He requested for further custody of the accused facing trial vide application ExPW9/4, but it was refused and accused facing trial was sent to judicial lockup. PW-9 has also deposed to Mat No. 24 daily diary dated 28/3/2006 ExPW9/5, regarding previous motive between the parties. He has also placed on file the post mortem report in respect of deceased. He has also deposed to FSL report ExPK, regarding the blood stained articles and list ExPW9/6, regarding the legal heirs of deceased Fida Mohammad.

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14. At the close of prosecution evidence, statement of accused was recorded, wherein he pleaded his innocence and false implication, however, he did not want to take oath in terms of section 340(2) CrPC nor wish to produce evidence in his defense.

15. Arguments have been heard and record gone through.

16. As has already been discussed that PW-5, has drafted Murasila ExPA on the report of complainant. In his statement, he has also deposed to injury sheet ExPW5/1 and inquest report ExPW5/2 of the deceased.

In cross examination PW-5 has stated that he received information in P.S at 05:00 hours, before 05:00 hours/at evening time.

SYED MOMBER JAN
District & Sessions Judge/Zilla Qazi

That he had recorded the fact of their proceeding from P.S in daily diary and recorded the Murasila, inquest report and injury sheet with his own hands. That he received information on 30/7/2011 at 16:15 hours, as mentioned at column NO. 3 of the inquest report.

18. PW-8, in his statement has deposed that after registration of the case, vide FIR ExPA, he was entrusted with investigation of the case, during which he prepared site plan ExPB on the pointation of eye witnesses and recovered blood stained earth vide recovery memo ExPW7/1 from the place of presence of deceased and also recovered thirteen 7.26 bore emptles ExP-3 and spent bullet ExP-4 vide recovery memo ExPW7/2 and sealed the same into parcel. That he conducted the house search of accused facing trial vide Fard ExPW8/1. He also took into possession the blood stained garments ExP-1 and ExP-2 of the deceased vide recovery memo ExPW6/1, which were having cut marks and brought by Israr Mohammad Khan HC from Daggar Hospital. He has also deposed to application ExPW8/2, regarding the keeping of empties in safe custody. In his additional evidence as APW-8, I.O has also deposed to application ExPW8/3, vide which he has sent the blood stained articles.

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19. In cross examination, PW-8 has deposed that the dead body of deceased had already been taken to hospital before his arrival at the place of occurrence and Ateequr Rahman S.I (PW-5) was not present on spot rather he had left two police officials on the place of occurrence. That the dead body of deceased had been taken to hospital 45 minutes prior of his arrival on the spot. That two bullet marks "B" and "C" have been pointed out, mentioned in site plan, but no spent bullet was recovered from any place inside the clinic. That neither cupboards and medicines were present on point "B" and "C". That the eye witnesses had pointed their presence at points "3" and "4" and no blood was present on any other thing except the floor. Both the eye witnesses and complainant were present on the spot

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when he arrived there. He has further added that his statement in this regard would be correct and that of complainant and eye witnesses would be wrong, if they had stated that they had gone to hospital with the dead body of deceased. That the entries were not sent to FSL to determine as to whether these have been fired from one weapon or more than one and has self stated that it was not proper to send the empties to laboratory till the recovery of weapon of offence. That ExPW5/1 (injury sheet), ExPW5/2 (inquest report) and ExPA/1 (Murasila) are in the handwriting of Ateequr Rahman S.I (PW-5).

20. PW-9, has conducted partial investigation in the case, during which he has obtained warrant u/s 204 CrPC against the accused facing trial vide application ExPW9/1. He has also arrested the accused facing trial on 07/7/2011 and obtained his two days police custody vide application ExPW9/2. He requested for further custody of the accused facing trial vide application ExPW9/4, but it was refused and accused facing trial was sent to judicial lockup. PW-9 has also deposed to Mad No. 24 daily diary dated 28/7/2006 ExPW9/5, regarding previous motive between the parties. He has also placed on file the post mortem report in respect of deceased. He has also deposed to FSL report ExPK, regarding the blood stained articles and list ExPW9/6, regarding the legal heirs of deceased Fida Mohammad.

21. In cross examination PW-9 has admitted that accused surrendered himself through the elders of area. He has further added that accused pleaded his innocence during investigation and told that prior to the occurrence, he had a minor quarrel with deceased, wherein compromise was effected and except this, there was no ill well or anger between him and the deceased. He has conducted no investigation in respect of injury caused on the dead body of deceased with blunt weapon as mentioned in the medical report and

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there is no allegation against the accused facing trial regarding attack on the deceased with blunt weapon. As single accused has been charged for the commission of offence, therefore, the accused facing trial is responsible for the occurrence. That he has gone through the daily diary vide Mad No. 20 dated 30/7/2011, according to which Atteequr Rahman ASHO (PW-5) had proceeded from P.S on 15:00 hours for the purpose of patrolling in Dewana Baba Bazar etc.

22. PW-7, is marginal witness to recovery memo ExPW7/1, vide which the I.O has taken into possession blood stained earth from the place of occurrence. He is also marginal witness to recovery memo ExPW7/2 regarding thirteen, 7.62, bore empties ExP-3 and spent bullet ExP-4, to have been taken by the I.O into his possession, recovered from the place of occurrence.

23. In cross examination PW-7 has deposed that police party was already present on the spot, before his arrival. That numerous people were present on the spot besides police party. That deceased was his cousin and that he runs a general store in village Matwani. As he had not received information in time, therefore, he came with delay to the place of occurrence, where many people and police party were present. That the dead body was brought to dry "Nalla" namely Panay for the purpose of taking it to hospital, whereas the people of village Matwani and village Karapa brought the dead body to main road. That some of the relatives of the deceased reached at the place of occurrence, while some of them met at the Ghair Mumkin Khwar (Panay). That all of the empties were recovered from inside of the clinic.

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24. PW-6, in his statement has deposed to recovery memo ExPW6/1, regarding the blood stained garments of deceased, comprising Qamees ExP-1 and Banyan ExP-2 to have been taken into possession by I.O, which were handed over to him by witness Israr Mohammad HC.

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25. In cross examination PW-6 has not been contradicted on any material point rather, he has stuck to his stance, mentioned in his examination in chief.

26. PW-3, has examined the dead body of deceased on 03/7/2011 at 06:20 hours, who in his statement has deposed to his report ExPM on injury sheet and has also deposed to his endorsement on inquest report of the deceased. His report is as follow.

The dead body was lying in a bed, the colour of skin pale, there was bleeding from the wounds, clothes were stained with blood. There were multiple fire arm injures to the chest and head injury. The following wounds were found on his body.

a. *Six fire arm entry wounds about 1/3 inch in diameter, with margins inverted and charring marks present around the wounds on the back of chest along the upper to lower medial margins of left scapula on back of chest.*
b. *Three fire arm entry wounds about 1/3 inch in diameter with margins inverted with charring marks, present around the wounds on the back of chest. Close to each other just below the left scapula.*
c. *Two fire arm entry wounds, about 1/3 inches in diameter with margins inverted with charring marks present around the wound close to each other on the back of chest and the middle into the left side of vertebral column.*
d. *Two fire entry wounds about 1/3 inches in diameter with margins inverted and charring marks present around the wounds, on the lower back of chest, close to each other and to the left side of vertebral column.*
e. *One fire arm exit wound about 3x2 inches on front of chest about a medial to right nipple.*
f. *One fire arm exit wound, lacerated about 2x1 inch in diameter below and medial to right nipple.*
g. *One fire arm exit wound lacerated about 1 ½ inch in diameter above the left nipple.*
h. *One fire arm exit wound about ½ inch in diameter, to the right of left nipple.*
i. *Two fire farm exit wounds about ½ inch in diameter and close to each other below and medial to left nipple.*
j. *One fire arm exit wound lacerated about ¾ inch in diameter on epigastrium.*

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k. *Lacerated wound on the occipital region of head about 5 inch long and two inch broad, with irregular margins and visible fracture of skull and exposure of brain matter.*

X-Rya skull was suggested of depressed fracture of occipital bone and multiple fracture of skull. Chest X-Ray was suggestive of multiple rib fracture.

Weapon used: Fire Arm and Blunt with history of fire arm.

Cause of death:1. Trauma to head and brain injury.

2. Trauma to chest and cardio respiratory failure.

3. Sever bleeding causing hypo volumic shock.

Time since death: about 2 hours.

27. In cross PW-3 has admitted that there are charring marks on all the entry wounds, which explains that deceased has been fired from a distance of about 3/4 feet. That all the entry wounds are of same size, while exit wounds are of different size and it cannot be predicted from the size of exit wounds that firing has been made with different fire arms of different nature. That according to his opinion injury No. 11 has been caused through blunt weapon. That he has not mentioned the time between the receipt of injures and that of death.

28. PW-1, in his statement has reproduced the contents of Murasila ExPA/1. He has also deposed to the receipt of dead body of deceased, vide receipt ExPW1/1 after its examination in the hospital.

29. In cross examination PW-1 has mentioned the distance between their village and place of occurrence to be 14 km, and has further deposed that P.P Dewana Baba, Sawari and P.S Gagra are situated on the way, while going to the place of occurrence from their village, but he has not reported the matter at none of the above mentioned places. He has self stated that due to sudden death he wanted to reach the place of occurrence as soon as possible and to find the cause of death. Therefore, he did not make report at the above mentioned places. That he reached the place of occurrence ten minutes before the making of report. That the dead body of his deceased brother was lying on the ground inside the clinic before his arrival. That many people were present on the spot, but he knew

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none of them as they were residents of village Matwani and none of them mentioned the detail of occurrence to him and has self stated that his nephews told him about the occurrence. That blood was present on table and chair besides ground and again stated that blood was not present on table. That he did not know the local people, who had provided cot for the dead body of deceased and those people were present at the time of arrival of the police on the spot, who had put the dead body of deceased on cot. That the clinic of deceased is situated inside the village population. He has admitted that witness Saidullah is his cousin and resident of village Dewana Baba. That after the report the police did not record the statement of anyone in his presence. That he and police proceeded along with the dead body, however, dead body was kept in pickup and he departed in another vehicle. He has further admitted that he has rightly mentioned in his report that there was ill well between the accused and the deceased, but he did not know the detail nature of such ill well. He has further admitted that the deceased had mentioned him the exchange of hard words with the accused in the year 2006, however, it was patched up privately. The record is available in P.S Daggar in this respect. He has admitted that he has not mentioned the name of Fawad (PW-2) as informer in his initial report. That he did not mention the name of Fawad during investigation or any other court statement prior to the statement recorded in this court.

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30. PW-2, is the eye witness to the occurrence, who in his statement has deposed that on the day of occurrence, he along with Farhad Ali had gone to village Dewana Baba from their village Karapa and there from, they came to village Matwani, where their deceased uncle Fida Mohammad was running a clinic and before arriving to the clinic they heard firing shots from some distance and they looked towards the clinic and saw that firing was made on their uncle, therefore, they took shelter and after the ending of firing they went

and saw the deceased soaked in blood. They informed their uncle Haji Mohammad (complainant) about the occurrence and after one hour of his arrival on the spot proceeding was started. He expressed his ignorance about any other proceeding thereafter. He has further stated that the firing was made by accused facing trial, who had been seen by them at that time. (This part of his statement has been subjected to objection by the counsel for defense that the witness by himself has not stated as to who made the firing, rather the name of accused was disclosed in the result of a leading question, put to him.)

31. In cross examination PW-2 has stated that he informed his uncle about the detail of occurrence on his arrival and he did not mention the same to anyone else including police except his uncle. That the dead body had already been put on cot before arrival of complainant Haji Mohammad. He has further added that the dead body was lifted by the local people of village Matwani, whom he knew by face, not by name and has self stated that he knows the accused because prior to the occurrence the accused had come along with deceased to their house for effecting compromise in respect of previous ill well and quarrel, which happened in the year 2006 and its report was also recorded and compromise was also effected in the same. That Haji Mohammad has arrived to the place of occurrence before 5:00 hours and thirty minutes after his presence on the place of occurrence, the police along with the dead body proceeded from the place of occurrence. That the police has recovered the blood and empties and taken into possession the same in his presence. He has further added that he has mentioned to the police that the accused was making fire, during which they took shelter at a distance of about [illegible] paces from the clinic. That there is a house of Fazal Dad, situated at one side of the clinic and this house is situated both to the north and west of the clinic. That there is a house of Khushal situated to the east

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and a path to the south. That are three paths situated at the place of occurrence and that in front of the clinic there is house of Kherati across the path and these houses were told to him by the deceased and the accused had come to this clinic in 2006 after the quarrel. That they had told to the police the place, where they took shelter. That medicines were available in the cupboard of the clinic and this cupboard was situated by the side of chair of the deceased and the cupboard of medicines was present at the north wall of the clinic, while the chair used by deceased was present at the south. Deceased was facing towards the cupboard for taking out medicines at the time of firing and no one was present at the clinic at the time of firing. That the table and chair were not blood stained with the blood of deceased. That no bullet had hit the cupboard, wherefrom the deceased was taking out the medicines. He has admitted that they had not seen the accused prior to the firing and has self stated that they had seen firing at the deceased, from their place of shelter. They took shelter again after the ending firing for thirty seconds. That they were present with the dead body, till the arrival of their uncle Haji Mohammad. That the name of Fazal Dad, Kherati and Khushal has been told to him by the deceased. That the father name of the accused was told by deceased at the time of Jirga and the father name of deceased is Mian Hussain Shah. That the deceased left the previous clinic after the quarrel with accused in 2006. That the deceased was married, but was residing in the Bhetak of the house and his matrimonial relations were bad and has again stated that he was residing in the home.

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32. After having analyzed, scrutinized and appreciated the evidence of the prosecution in the context of FIR, other material available on file through above discussion and having heard the learned counsel for the parties the court came to the conclusion:-

i. *Admittedly the occurrence had taken place on 03/7/2011 at 16:00 hours and its report has been made on the same date at 17:00 hours, meaning thereby that the report about the occurrence had been make with a delay of about 1 hour, but keeping in view the distance between the place of occurrence and village Karapa (the village of complainant), which is 14 km as divulged from the mouth of complainant in cross examination. This delay cannot be presumed to have been consumed in consultation and deliberation in the absence of any evidence to the contrary. Therefore, it can safely be held that the accused facing trial has been charged for the murder of deceased Fida Mohammad, coupled with the facts that the police promptly lodged the FIR excluding any type of consultation and deliberation.*

ii. *The motive behind the occurrence has been mentioned that ill well/anger was existing between the deceased and the accused facing trial due to quarrel/exchange of hard words, taken place in the year 2006 and in this respect a report was also lodged by the deceased vide Mad NO. 20, daily diary of 28/3/2006 ExPW9/5 and though that matter between the deceased and the accused facing trial was admittedly patched up through private compromise, but it has been divulged from the mouth of complainant*

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that despite compromise the ill well was still existed between the deceased and the accused facing trial, which factum suggests that the prosecution has been successful in establishing the motive behind the occurrence.

iii. The report of the occurrence ExPA/1 has been made by PW-1, the brother of deceased, who has been cross examined at length, wherein, though he had admitted that P.P Dewana Baba, P.S Gagra and P.P Sawari are lying in the way, while going to the place of occurrence from his village and though he has admitted that he did not make information about the occurrence at the above mentioned places, but this laxity has been explained by complainant by self saying that due to sudden death of his brother, he wanted to reach the place of occurrence and to know the cause of his death, as soon as possible. In the rest of his cross examination he has not been contradicted on any material point to prove fatal to the prosecution story, rather he (PW-1) has further elaborated the detail of occurrence to have been committed by accused facing trial, which factum has been disclosed to him by his nephews namely Fawad Khan and Farhad Ali, the eye witnesses to the occurrence. This factum has been confirmed by him in his cross

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examination, when he says that the other people of village present on the spot, did not mentioned to him the detail of the occurrence and has self stated the it was told to him by his above mentioned nephews.

iv. The private witnesses as well as the police officials are unanimous to the factum that the occurrence has taken place in the clinic of deceased, situated inside the village population of village Matwani. On this point non of the witness has been cross examined to divulge from their mouths as if the occurrence has taken place in some other place, other than the clinic of the deceased.

v. The complainant has mentioned in his report ExPA/1, that the occurrence has been eyewitnessed by his nephews namely Fawad Khan and Farhad Ali, out of whom Fawad Ali has been produced by the prosecution as PW-2 in the witness box, who though disclosed the name of accused on the leading question put to him by counsel for complainant, but in cross examination PW-2, has disclosed that he was knowing the accused facing trial as he had come along with the deceased to their home prior to the occurrence for the purpose of effecting compromise, regarding the ill well/quarrel taken place between the accused facing trial and the deceased, and due to this fact accused facing trial was known to him.

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District & Sessions Judge/Zilla Qazi

Moreover, it is a day light occurrence and the question of mis identification and non identification of accused facing trial did not arise.

The learned counsel for the defense has tried to divulge from the mouth of complainant (PW-1) during his cross examination as if the deceased was a man of immoral character and in the garb of medical practice, he was in habit of having immoral relations with women folk of the locality and the local people were aggrieved from him on this account and as such the accused facing trial would have been substituted for some unknown culprit. Though, complainant has expressed his ignorance in cross examination, as if deceased was a man of immoral character or not. But in this respect the statement of accused facing trial is completely silent and similarly he has not produced any evidence in defense to substantiate as if deceased was man of immoral character and accused facing trial was substituted in place of someone else. Moreover, no one would like to charge an innocent person for the offence, committed by someone else. Again, substitution is a rare phenomena and in very rare cases it happens.

vii. The learned counsel for the defense, during arguments, contended that PW-2 is chance

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Buner at Gagar

witness and the other eye witness namely Farhad Ali has not been produced by the prosecution to corroborate the testimony of PW-2. Though, PW-2 is the resident of village Karapa and the occurrence had taken place at the clinic of deceased situated in village Matwani, but PW-2 has established his presence at the time of occurrence by deposing that on the day of occurrence, he along other with eye witness Farhad Ali, went to Dewana Baba for its "Zyarat" and there from they went to village Matwani, where the clinic of the deceased Fida Mohammad (his uncle) was situated. On this point when PW-2 has been cross examined, he has deposed that he had given statement to police at the time of report and they recorded the statement, showed to him, wherein though there was no mention of their going to the house of his uncle, however, he had mentioned about going to Dewana Baba, for the purpose of its "Zyarat". PW-2 in cross examination has confirmed his presence on the spot by saying that he had told to the police that the accused was making firing, during which they took shelter at distance of about five paces from the clinic.

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viii. The presence of PW-2 on the spot is further established by him during his cross examination wherein he has mentioned the

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houses, the owners thereof and path/paths situated around the place of occurrence. Though, the statement of PW-2 is silent about the site plan, as on whose pointation it was prepared, however, the house, path/paths mentioned by him in cross examination fully tally with the houses and path/paths surrounding the place, mentioned in site plan. And it can also be safely presumed that the site plan ExPB was prepared by the I.O on the poiatation of eye witnesses including PW-2, as mentioned by him as PW-8 in his statement.

ix. The I.O has recovered the blood stained earth vide recovery memo ExPW7/1 from the place of occurrence and has also recovered thirteen 7.62 bore empties ExP-3 along with one spent bullet ExP-4 vide recovery memo ExPW7/2. In this respect the prosecution has produced PW-7, the marginal witness to recovery memo, in witness box to depose, who has fully corroborated the above mentioned recoveries in his statement and he has been cross examined but he has not been contradicted on any material point nor his veracity has been impeached. Similarly, the I.O has taken into possession the blood stained garments comprising Qamees ExP-1 and Banyan ExP-2, vide recovery memo ExPW6/1 and the prosecution has produced PW-6, the marginal witness, in this regard,

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who has fully supported the testimony of PW-8 (I.O).

x. The recovered blood stained earth and garments have been sent to FSL Peshawar and its report ExPK has been received in positive, which factum further corroborate the story of prosecution about the occurrence. Similarly thirteen empties and one spent bullet has been recovered from the place of occurrence and the record is silent as if these have been sent to expert for his opinion, but at the same time it is also pertinent to mention that the record is also silent about the recovery of weapon of offence from the possession of accused facing trial. Therefore, there was no need to send the empties etc either to arm expert or FSL for their opinions. Furthermore, it is evident from the cross examination of PW-3 (the doctor), that it is not correct to draw conclusion that the firing was made through different weapons and of different nature by keeping in view the size of exit wounds, suggesting that single weapon was used in the commission of offence for which single accused (facing trial) has been charged, which factum further support the prosecution version.

xi. According to external examination report ExPM of the deceased and according to the statement of PW-3 (the doctor), fourteen fire

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arm entry wounds have been caused on the body of deceased, whereas, thirteen empties of 7.62 bore and one spent bullet have been recovered from the place of occurrence, which factum is fully supported by the report of PW-3 ExPM drawn on injury sheet. Though, in cross examination, PW-3 has admitted that there were charring marks on all entry wounds, which by no means appealable to common mind that these injuries were self inflicted, rather strong presumption of truth is attached to the factum that accused facing trial has fired at the deceased at a range, very close to the deceased.

xii. The oral evidence against the accused facing trial is fully supported by the circumstantial evidence, produced by prosecution against the accused facing trial, which otherwise suggests that the prosecution has been successful to establish the offence against the accused facing trial, not only through unsheltered and un-impeached oral evidence, but also through circumstantial evidence and as already discussed that fourteen fire arm entry wounds have been caused on the body of deceased at a close distance, by causing also charring marks thereon, which factum suggests the brutal murder of the deceased at the hands of accused facing trial.

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33. For the reasons recorded above, prosecution has been successful in bringing home guilt to the accused facing trial, beyond shadow of reasonable doubts, however, weapon of offence has not been recovered during investigation from the possession of accused facing trial, which lacuna on the part of prosecution makes their case against the accused facing trial of mitigating circumstances, therefore the accused facing trial is convicted and sentenced to life imprisonment u/s 302(b) PPC as Tazeer. He is also burdened with Rs. 1000,000/- (ten lacs) as compensation to be paid to the LRs of deceased, failing which he will be remain behind the bars, till the payment of above mentioned compensation amount. Benefit of section 382 (B) CrPC is extended to the accused. Case property be kept intact till the expiry period of appeal/revision and thereafter be disposed of in accordance with law.

Announced:
17/7/2012

SYED MOAMBERJAN
Sessions Judge/Zilla Qazi
Buner at Daggar

CERTIFICATE

This judgment consisting of (22) pages bears my seal, signature and correction where found necessary.

No 3806
Date of application 18-2-12
Date of receipt
Word 25-12
Fee
Urgent fee
Date of delivery 18-2-12
Signature

SYED MOAMBERJAN
Sessions Judge/Zilla Qazi
Buner at Daggar

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(2) Before passing an order under sub-section (1), the competent authority shall,-

(a) by order in writing, inform the accused of the action proposed to be taken with regard to him and the grounds of the action; and

(b) give him a reasonable opportunity of showing cause against that action within seven days or within such extended period as the competent authority may determine:

Provided that no such opportunity shall be given where-

(i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof it is not expedient to give such opportunity; or

(ii) the accused is dismissed under clause [100][(a) of sub-section (2) of section 3A] or where the competent authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to give the accused an opportunity of showing cause.

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(3) The dismissal or removal or premature retirement from service or reduction to lower post or pay scale of a person under sub-section (1) shall not absolve such person from liability to any punishment to which he may be liable for an offence committed by him under any law, while in service.

[101]**3A. Procedure in case of conviction by a court of law.**---(1) Where a person in Government service or in corporation service on conviction by a court of law is sentenced to imprisonment or fine, the competent authority shall examine the facts and the grounds on which the order convicting such person was passed by a court of law.

(2) Where on examination the competent authority finds that order of imprisonment or fine is based on-

(a) established charges of corruption or moral turpitude, it shall pass order of dismissal from service of the delinquent person in Government service or in corporation service which shall be effective from the date of his conviction by a court of law; or

(b) charges other than corruption or moral turpitude it may, in the light of the facts and circumstances of the case, decide as to whether it is a fit case for taking departmental action under this Ordinance, and if it so decides it may, subject to the provisions of sub-section (2) of section 3, impose any penalty provided by this Ordinance as it may deem fit.

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[100] (a) of sub-section (2) of Section 3A added by Act No.XII of 2003.
[101] Section 3A added by N.-W.F.P. Ord. No. XII of 2003.

4. **Suspension.**--- A person against whom action is proposed to be taken under sub-section (1) of section 3 may be placed under suspension with immediate effect if, in the opinion of the competent authority, suspension is necessary or expedient:

Provided that the competent authority may, in an appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave, as may be admissible to him, from such date as may be specified by the competent authority.

[102]5. **Power to appoint an Inquiry Officer or Inquiry Committee.**--(1) Subject to the provisions of sub-section (2), the competent authority shall, before passing an order under section 3, appoint an Inquiry Officer or Inquiry Committee to scrutinize the conduct of a person in Government service or a person in corporation service who is alleged to have committed any of the acts or omissions specified in section 3. The Inquiry Officer or, as the case may be, the Inquiry Committee, shall-

(a) communicate to the accused the charges and statement of allegations specified in the order of inquiry passed by the competent authority;

(b) require the accused within seven days from the day the charge is communicated to him to put in a written defence;

(c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him; and

(d) hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority.

(2) Where the Inquiry Officer or, as the case may be, the Inquiry Committee, is satisfied that the accused is hampering, or attempting to hamper, the progress of the Inquiry, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as he or it deems proper in the interest of justice.

(3) The Inquiry Officer or, as the case may be, the inquiry Committee, shall submit his or its findings and recommendations to the competent authority within twenty-five days of the initiation of inquiry.

(4) The Competent authority may dispense with the inquiry under sub-section (1) if it is in possession of sufficient documentary evidence against the accused, or for reasons to be recorded in writing, it is satisfied that there is no need of holding an inquiry.

(5) Where a person who has entered into plea bargaining under any law for the time being in force, and has returned the assets or gains acquired through corruption or corrupt practices voluntarily, the inquiry shall not be ordered:

[102] Section 5 Substituted. by N.-W.F.P. Ord. No. V of 2001.

G-(32)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Iqbal Hameedur Rahman
Mr. Justice Qazi Faez Isa

Criminal Appeal No. 303 of 2014 and Criminal Miscellaneous Application No. 831 of 2014
(Against the judgment dated 07.05.2014 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Criminal Appeal No. 136 of 2012)

Yousaf Ali Shah

...*Petitioner*

versus

The State, etc.

...*Respondent*

For the petitioner: Mr. Basharat Ullah Khan, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Mr. Mujahid Ali Khan, Additional Advocate-General, Khyber Pakhtunkhwa

Date of hearing: 25.02.2015

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JUDGMENT

Asif Saeed Khan Khosa, J.: Yousaf Ali Shah appellant was tried for the murder of one Fida Muhammad *vide* FIR No. 440 registered at Police Station Gagra, District Buner on 03.07.2011 for an offence under section 302, PPC and *vide* judgment dated 17.07.2012 rendered by the learned Sessions Judge/Zilla Qazi, Buner at Daggar he was convicted for an offence under section 302(b), PPC and was sentenced to imprisonment for life as *Ta'zir* and to pay a sum of Rs. 10,00,000/ to the heirs of the deceased by way of compensation under section 544-A, Cr.P.C. failing which he

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Superintendent
Supreme Court of Pakistan
Islamabad

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was to remain behind the bars till payment of the said amount. The benefit under section 382-B, Cr.P.C. was extended to him. The appellant challenged his conviction and sentence before the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat through Criminal Appeal No. 136 of 2012 which was heard and dismissed by a learned Division Bench of the said Court *vide* judgment dated 07.05.2014. Hence, the present appeal by leave of this Court granted on 25.06.2014.

2. During the pendency of this appeal Criminal Miscellaneous Application No. 831 of 2014 had been filed before this Court seeking acquittal of the appellant on the basis of a compromise with the heirs of the deceased. The matter of compromise had been referred by this Court to the learned Sessions Judge/Zilla Qazi, Buner at Daggar for its verification and the report dated 31.01.2015 submitted by the learned Sessions Judge/Zilla Qazi, Buner at Daggar in that regard shows that all the heirs of Fida Muhammad deceased have already entered into a compromise with the appellant and they have offered no objection to acceptance of the appellant's appeal, setting aside of his conviction and sentence and his release from the jail on the basis of the compromise. After going through the said report we note that the major heirs of the deceased have received *Badal-i-Sulh/Diyat* and the share of *Diyat* of the minor heir has already been handed over in the shape of National Savings Certificates. The learned Sessions Judge/Zilla Qazi, Buner at Daggar has felt satisfied with the genuineness and completion of the acclaimed compromise between the parties. In these circumstances we have found no occasion for not accepting the compromise between the parties and for not acting upon the same. Criminal Miscellaneous Application No. 831 of 2014 is, therefore, accepted and on the basis of acceptance of the compromise between the parties the appellant is ordered to be released from the jail forthwith if not required to be detained in connection with any other case. By virtue of the provisions of subsection (6) of section 345, Cr.P.C. the composition of the

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offence brought about in the case shall have the effect of acquittal of the appellant. This appeal is disposed of in these terms.

Sd/- Asif Saeed Khan Khosa,J
Sd/- Iqbal Hameedur Rahman
Sd/- Umar Ata Bandial,J

Certified to be True Copy

1/4/15

Superintendent
Supreme Court of Pakistan
Islamabad

SEAL OF THE SUPREME COURT OF PAKISTAN
Islamabad
25.02.2015
Not approved for reporting.

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Mr
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GR No: Civil - Urgent
Date of Presentation: 22.3.15
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GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

NO. SO(OP-I)/LD/5-1/2012-VOL-III
DATED: PESH: THE JULY 2, 2015

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Revenue & Estate Department

Subject: **RE-INSTATEMENT OF TERMINATED PATWARI.**

Dear Sir,

I am directed to refer to your Department's letter No.Estt:VII/Commr/MKD/15115 dated 26-06-2015 on the subject noted above and to state that the Honorable Supreme Court of Pakistan in the case of Dr. Muhammad Islam Versus Government of NWFP (KPK) through Secretary Food, Agriculture, Live Stock and Cooperative Department at **1998 SCMR Page 1993** has ruled as follows:-

> *"We are inclined to uphold the above view in as much as all acquittals even if there are based on benefit of doubt are honorable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgment are recorded on the basis of* ***compromise*** *between the parties and the accused are acquitted in consequence thereof What shall be the nature of acquittals? All acquittals are certainly honorable There can be no acquittals, which may be said to be dishonorable. The law has not drawn any distinction between these types of acquittals"*

After setting aside the conviction by the Competent Court, there is nothing to stigmatize and penalize the employee as the compromise has washed away the blemish of the employee regarding his being as punished person. Therefore, the Ex-official can be re-instated in service even after acquittal on the basis of compromise with the heirs of the deceased. However, his absence period may be treated as leave without pay.

Yours Faithfully,

Section Officer (Opinion-I)

Endst: of even No. & date.

Copy forwarded for information to the PS to Secretary Law, Department.

Section Officer (Opinion-I)

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Office, Buner.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1098/2015

YOUSAF ALI SHAH **VS** **GOVT: OF KPK**

APPLICATION FOR ADJOURNMENT OF THE ABOVE MENTIONED APPEAL

R/SHEWETH:

1- That the above mentioned appeal is pending adjudication before this august Tribunal which is fixed for hearing on 04.07.2017.

2- That due to unavoidable circumstances Counsel for appellant cannot attend this august Tribunal on the above mentioned date.

It is therefore, most humbly prayed that on acceptance of this application the above mentioned appeal may kindly be adjourned.

Dated: 04.07.2017

APPELLANT

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2438/ST Dated 14/11/2017

To

The Deputy Commissioner,
Government of Khyber Pakhtunkhwa,
District Malakand.

Subject: **JUDGEMENT IN APPEAL NO. 1098/15, MR.YOUSAF ALI SHAH.**

I am directed to forward herewith a certified copy of Judgment dated 08/11/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.