

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 259/2016

Date of Institution ... 17.03.2016

Date of Decision ... 04.12.2017

Akhtar Abbas, Ex-LHC No.32,
S/O Abbas Ghulam,
R/O Alizai, Police Station Usterzai, Kohat

... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and 2 others.
... (Respondents)

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

--- For appellant.

MR. USMAN GHANI,
District Attorney

--- For official respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

... MEMBER(Executive)
... MEMBER(Judicial)JUDGMENTAHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected service appeals no. 260/2016 titled Zeeshan Haider and no. 219/2016 titled Syed Muhammad Abdullah as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. Brief facts of the case are that the appellant was serving as Head Constable when subjected to inquiry on the allegations of giving a wrong statement before Trial Court in case FIR no. 1220 dated 18.11.2013 registered regarding terrorism incident relating to Imam Bargah, Kohat where-against he preferred departmental appeal on 18.01.2016 which was rejected on 26.02.2016, hence, the instant service appeal on 17.03.2016.

ARGUMENTS

4. Learned counsel for the appellant argued that Khyber Pakhtunkhwa Police is divided into two wings i.e Operation and Investigation. Once FIR is lodged then it is the duty of the investigation wing to investigate the case and as such the appellant was least concerned with investigation. That proper departmental enquiry was not conducted before imposition of major penalty of dismissal from service on the appellant. Opportunity of cross examination and personal hearing were denied to him. Though show case notice was served on the appellant but copy of the enquiry report was not attached with the same which is a serious irregularity on the part of respondents. The enquiry officer miserably failed to discuss the role of Public Prosecutor, who was solely responsible to defend the respondents in the court of law. The respondents should have referred the matter to the concerned agencies to initiate the disciplinary proceedings against the Public Prosecutor concerned. Statement recorded under Section 161 of CRPC has not evidentiary value in the court of law. The inquiry officer acted as a prosecutor by serving questioner on the appellant and others. He further argued that the respondents should have filed appeal against the judgment of Anti Terrorism Court in Peshawar High Court. Reliance was placed on 2011 PLC(C.S) 1111, 2008 SCMR 1369, 2003 SCMR 215 and 2005 SCMR 1617.


5. On the other hand learned District Attorney assailed the arguments of the learned counsel for the appellant and stated that proper departmental enquiry in accordance with

rules was conducted and all legal formalities were observed and the appellant was found guilty. Impugned order was passed according to law and rules.

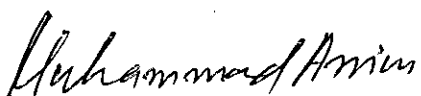
CONCLUSION.

6. Careful perusal of record would reveal that proper departmental enquiry strictly according to invogue rules was not conducted before imposition of major penalty of dismissal from service on the appellant. It is a well settled principle that in case major penalty is to be imposed on a civil servant proper enquiry should be conducted and full opportunity of defense and personal hearing should be provided to the accused official. Opportunity of cross examination and personal hearing were denied to him. Though show cause notice was served on the appellant but copy of the enquiry report was not attached with the same which is a serious departure from the laid down procedure and raises doubts on the fair and transparent inquiry proceedings. We are of the considered view that in the case in hand Article 4, 10-A and 25 of the constitution were violated and appellant was condemned unheard. It is strange that despite serious reservations raised by the ^{Anti-Corruption} ~~Accountability~~ Court in para 27-28 of the judgment dated 07.10.2015 on the dubious role of DSP, SHO and ASHO no action was taken against them. Needless to add that appellant was not only made scapegoat but also meted out discriminatory treatment.

7. As a nutshell of the above discussion, the appeal is accepted. Impugned order is set aside and the respondents are directed to conduct *de-novo* enquiry within a period of 90 days after receipt of this Judgment. Enquiry should be conducted in accordance with law and rules. The issue of back benefits shall be subject to the final outcome of the *de-novo* enquiry. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
04.12.2017

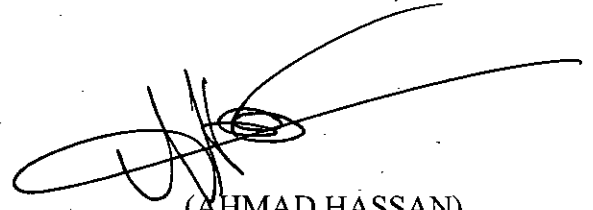
Order

04.12.2017

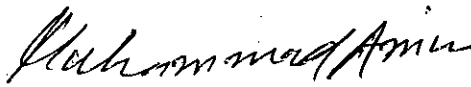
Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Arif Saleem, ASI for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted. Impugned order is set aside and the respondents are directed to conduct de-novo enquiry within a period of 90 days after receipt of this Judgment. Enquiry should be conducted in accordance with law and rules. The issue of back benefits shall be subject to the final outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

Announced:
04.12.2017




(AHMAD HASSAN)
Member


(MUHAMMAD AMIN KHAN KUNDI)
Member

30.06.2017

Counsel for the appellant present. Mr. Arif Saleem, ASI alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 18.07.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

18.07.2017

Clerk of the counsel for appellant present. Mr. Arif Saleem, ASI and Mr. Abid Munir, Assistant Accounts Officer alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 13.11.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

13.11.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested that similar nature of appeal titled Syed Muhammad Abdullah is pending before this Tribunal, therefore the same may also clubbed with the said. Request accepted. To come up for arguments on 04.12.2017 before D.B alongwith the connected appeal.


(AHMAD HASSAN)
Member


(Muhammad Hamid Mughal)
Member

259/16

25.07.2016

Appellant with counsel and Mr. Arif Saleem, SI (Legal) alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 21.11.2016.


Chairman

21.11.2016

Counsel for the appellant and Addl:AG for respondents present. Rejoinder submitted. To come up for arguments on 03.04.2017.



(ABDUL LATIF)
MEMBER


(MUHAMMAD AMIR NAZIR)
MEMBER

03.04.2017

Counsel for the appellant and Mr. Arif Saleem (ASI) Addl: AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 30.06.2017 before D.B.


Chairman

28.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that he was serving as Head Constable when subjected to inquiry on the allegations of giving a wrong statement before Trial Court in case FIR No. 1220 dated 18.11.2013 registered about the incident of terror relating to Imam Bargah where-against he preferred departmental appeal on 18.1.2016 which was rejected on 26.2.2016 and hence the instant service appeal on 17.3.2016.

That the Trial Court has acquitted the accused in the said case on the basis of other circumstances and evidence not attributable to appellant. That the appellant discriminated against as other Police Officials deposing the said case were neither subjected to inquiry nor punished.

Points urged need consideration. Admit. Subject to deposit of security and process within 10 days, notices be issued to the respondents for written reply/comments for 25.5.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

25.05.2016



Counsel for the appellant, Mr. Arif Saleem, SI (Legal) alongwith Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for reply/comments on 25.7.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 259/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17.03.2016	<p>The appeal of Mr. Akhtar Abbas presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR -</p>
2	21.3.16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28.03.2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>

Syed M. Ashraf

Learner Counsel for the appellant argued that on the charge of recording contradictory statement in the Court of law in a High Profile Retraction case disciplinary proceedings were initiated against him and upon conviction major penalty of dismissal from service was imposed with a suspended order dated 7.1.2006. Enquiry was not conducted in the manner prescribed in the rules. Charge of gross examination was not provided to the appellant. Though show cause notice was served on him but copy of the enquiry report was not attached with it, which is a necessary departure from laid down procedure. Charge of personal hearing was also not attached to him. He further argued that appellant was made ~~an~~ ^{an} ~~order~~ ^{order} ~~by~~ ^{by} ~~para 22 of~~ ^{para 22 of} ~~AS 110~~ ^{AS 110} and the judgment of J.J. - Tammur Court Refers dated 7.10.2015.

Some also reproduced from:
Reliance was placed on 2011 PCC 5 1111, & 2009 SCRR 1369, 2003 SCRR 215 & 2005 SCRR 1617, 2006 PCC 5 14.

DDA learned DDA assailed the arguments of the learned counsel for the appellant and stated that proper departmental enquiry was conducted in accordance with rules and the appellant was found guilty. Impugned order was passed accordingly to be set aside. ^{DDA}

get also amounts to discrimination

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 2159/2016

Akhtar Abbas

V/S

Police Deptt:

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APPELLANT

THROUGH:


(M.ASIF YOUSAFZAI),


(TAIMUR ALI KHAN),

 &
(Syed Noman Ali Bukhari)
(ADVOCATES, PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 259 /2016

Akhtar Abbas, Ex-LHC NO.32
S/O Abbas Ghulam
R/o Alizai, Police Station Usterzai, Kohat.

A.W.P. Province
Service Tribunal
Diary No. 231
Dated 17-3-2016

.....(Appellant)

VERSUS

1. The Provincial Police Officer, KPK Peshawar.
2. Regional Police Officer, Kohat Region.
3. District Police Officer Kohat

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 7.1.2016 WHEREBY, THE APPELLANT HAS BEEN DISMISSED FROM THE SERVICE AND AGAINST THE ORDER DATED 26.2.2016 WHEREBY, THE DEPARMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 7.1.2016 AND 26.2.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

~~17/3/16~~
17/3/16

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force in 1994 and completed his due training etc and total service of appellant was 21 years and also has good service record throughout.

2. That statement of allegation and charge sheet under police rules 1975 was served in which the appellant was charged for allegations as under:

You have intentionally and deliberately recorded contradictory statement in high profile sectarian case before learned At Court in case vide FIR No. 1220, dated 18.11.2013, u/s 302, 324, 353, 34 PPC, 13 AO, & ATA, in which three persons including gunman of DSP City Kohat were killed and two civilians sustained sever injuries.

You openly supported / favored the accused charged for above mention offences by stating the following:-

- i. You made presence of one of the accused Muharram Ali shah doubtful in your court statement by stating that he left the Imam Bargha in the morning of 18.11.2103 and that you did not see Muharram Ali Shah retuning to Imam Bargha before the occurrence. Whereas Muharram Ali Shah was present in the Imam Bargha at the time of occurrence, he threatened and fired upon the police party and civilians he along with other accused was arrested red handed with weapons of offence from Imam Bargha which was immediately encircled by police after firing.
- ii. Further you have also mad presence of the Complainant Mazhar Jehan Inspector and eye witness DSP Lal Farid doubtful by not uttering a single word to the effect that hey were present at the time, place and firing by the accused and realized from your earlier statement recorded u/s 1`61 CrPC during the course of investigation.
- iii. Being experience police personnel, you have provided an extra ordinary benefit to the accused in this high profile sectarian case which led to their acquittal. This amounts to gross professional misconduct, willful joining hands with accused and irresponsibility on you part.

The appellant properly replied to the charge sheet and denied all the allegations. **(Copy of statement of allegation, charge sheet and replied are attached as Annexure- A, b & C)**

3. That the inquiry was conducted against the appellant but no inquiry report was provided to appellant and not give a proper chance to appellant to defend himself.
4. That on 08.12.2015 final show cause notice was served to appellant without any copy of inquiry report and the appellant submitted his reply to the final show cause notice in time and denied all allegations in the reply to the final show cause notice.**(Copy of show cause notice and replied is attached as Annexure-D & E)**
5. That on 7.1.2016, the penalty of dismissal from service was imposed on the appellant under Police Rules 1975. The appellant filed departmental appeal on 18.1.2016, which was also rejected on dated 26.2.2016 for no good ground. **(Copies of order, departmental appeal and rejection order are attached as Annexure-F, G & H).**
6. That now the appellant come to this august Tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned order dated 7.1.2016 AND 26.2.2016 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.
- C) That neither the appellant was associated with the enquiry proceedings nor has any statement of witnesses been recorded in the presence of appellant. Even a chance of cross examination was also not provided to the appellant which is violation of norms of justice.
- D) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.

- E) That in reply to charge sheet the appellant submitted copy of bail bond presented on 18.11.2013 which proves that at that time he was in kachehry and might have come to Imam Bargah through any other door because the Imam Bargah has three doors on different sides and not in his presence at the spot. The said contention was also supported by site plan duly prepared by the I.O in site plan, might he had used other doors. **(Copy of Bail and site plan are attached as Annexure-I & J).**
- F) That statement u/s 161 Cr.P.C has been written by the I.O without examining me, where the I.O didn't mention the presence of eye witness DSP Lal Farid and complainant inspector Mazhar Jehan SHO City. After investigation, the case has been examined / prepared by I.O and SHO, and submitted complete challan in the case, so it was the responsibility of I.O and SHO to mention the presence of the above officers in all P.Ws statements. **(Copy of statement u/s 161 is attached as Annexure-K).**
- G) That from judgment it is clear that that acquittal of accused is not based on statements of appellant, however appellant told truth to the court and in the judgment it is also mention that the site plan Ex PB also does not support the story of the prosecution. The site plan and statement of complainant in case no. 6` /ATC-I/2014 Mazher jehan is contradictory with site plan which is based to acquit the accused but not the appellant statements and also 41 grounds are mentioned in judgment which based accused acquittal. **(Copy of judgments is attached as Annexure-L).**
- H) There are so many witnesses give statements in that case but enquiry is only conducted against the appellant which is discriminatory in nature.
- I) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- J) That the appellant's guilt has not been proved beyond the shadow of doubt and the appellant has been punished on the basis of conjecture and surmises.

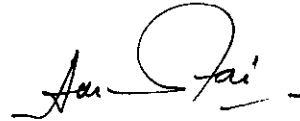
- K) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- L) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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



APPELLANT
Akhtar Abbas

THROUGH:



(M.ASIF YOUSAFZAI),



(TAIMUR ALI KHAN),



Syed Noman Ali Bukhari
(ADVOCATES, PESHAWAR)

(A) (6)

DISCIPLINARY ACTION

1. I, **MUHAMMAD SOHAIB ASHRAF, DISTRICT POLICE OFFICER, KOHAT**, as competent authority, am of the opinion that you **LHC Akhtar Abbas No. 32** have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

You have intentionally and deliberately recorded contradictory statement in high profile sectarian case before learned AT Court in case vide FIR No.1220, dated 18.11.2013, u/s 302,324,353,34 PPC,13 AO, 7 ATA, in which three persons including gunman of DSP City Kohat were killed and two civilians sustained severe injuries.

You openly supported/favored the accused charged for above mention offences by stating the following:-

1. You made the presence of one of the accused Muharram Ali Shah doubtful in your court statement by stating that he left the Imam Bargha in the morning of 18.11.2013 and that you did not see Muharram Ali Shah returning to Imam Bargha before the occurrence. Whereas Muharram Ali Shah was present in the Imam Bargha at the time of occurrence, he threatened and fired upon the police party and civilians and he alongwith other accused was arrested red handed with weapons of offence from Imam Bargha which was immediately encircled by police after firing.
2. Further you have also made presence of the complainant Mazhar Jehan Inspector and eye witness DSP Lal Farid doubtful by not uttering a single word to the effect that they were present at the time, place and firing by the accused and resiled from your earlier statement recorded u/s 161 CrPC during the course of investigation.
3. Being an experienced police personnel, you have provided an extra ordinary benefit to the accused in this high profile sectarian case which led to their acquittal. This amounts to gross professional misconduct, willful joining hands with accused and irresponsibility on your part.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations DSP Regal is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Disciplinary Rule-1975, provide reasonable opportunity of hearing to the accused official, record its findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.


**DISTRICT POLICE OFFICER,
KOHAT**

No. 3138-49/PA, dated 28-11-2015.

Copy of above is forwarded to:-

1. DSP Regal :- The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.
2. **LHC Akhtar Abbas No. 32** :- The concerned official/ officer's with the directions to appear before the Enquiry officer, on the date, time and place fixed by the enquiry officer, for the purpose of enquiry proceedings.

ATTESTED


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CHARGE SHEET.

B
⑦

1. I **MUHAMMAD SOHAIB ASHRAF, DISTRICT POLICE OFFICER, KOHAT**, as competent authority, hereby charge you **LHC Akhtar Abbas No. 32** Under Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014) as you have committed the following illegal act.

You have intentionally and deliberately recorded contradictory statement in high profile sectarian case before learned AT Court in case vide FIR No.1220, dated 18.11.2013, u/s 302,324,353,34 PPC,13 AO, 7 ATA, in which three persons including gunman of DSP City Kohat were killed and two civilians sustained severe injuries.

You openly supported/favored the accused charged for above mention offences by stating the following:-

1. You made the presence of one of the accused Muharram Ali Shah doubtful in your court statement by stating that he left the Imam Bargha in the morning of 18.11.2013 and that you did not see Muharram Ali Shah returning to Imam Bargha before the occurrence. Whereas Muharram Ali Shah was present in the Imam Bargha at the time of occurrence, he threatened and fired upon the police party and civilians and he alongwith other accused was arrested red handed with weapons of offence from Imam Bargha which was immediately encircled by police after firing.
2. Further you have also made presence of the complainant Mazhar Jehan Inspector and eye witness DSP Lal Farid doubtful by not uttering a single word to the effect that they were present at the time, place and firing by the accused and resiled from your earlier statement recorded u/s 161 CrPC during the course of investigation.
3. Being an experienced police personnel, you have provided an extra ordinary benefit to the accused in this high profile sectarian case which led to their acquittal. This amounts to gross professional misconduct, willful joining hands with accused and irresponsibility on your part.

2. By reasons of the above, you appear to be guilty of willful misconduct as defined in Rule 2 (iii) of Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties explained in rule 04 of the said rules.

3. You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

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

4. A statement of allegation is enclosed.

ATTESIED


**DISTRICT POLICE OFFICER,
KOHAT**

Respected Sir,

Kindly refer to charge sheet No. 13139-40/PA dated 28/10/2015.

- 1) It is submitted that Allegations leveled against me are totally incorrect.
- 2) A photocopy of bail of Abid Ali is submitted herewith as ready reference to the extent of Syed Muharram Ali that he had gone to Kohat Kitchery on 18/11/2013 and on return I had not seen him to Imambarga. As there are three doors of entrance duly shown by the I.O in site plan, might he had used others doors.
- 3) The copy of my statement U/s 161 Cr.P.C is submitted herewith, which has been written by the I.O without examining me, where the I.O didn't mention the presence of eye witness DSP Lal Farid and complainant Inspector Mazhar Jehan SHO City. After investigation, the case has been examined / prepared by I.O and SHO, and submitted complete challan in the case, so it was the responsibility of I.O. and SHO to mention the presence of the above officers in all P.Ws statements.

حدیث مبارک ہے

"پچھلے اقوام اس لیے تباہ ہوئے کہ وہ بڑوں کو معاف کیا کرتے تھے اور چھوٹوں کو سزا دیا کرتے تھے"

عدالت کا تفصیلی فیصلہ ملاحظہ فرمائیں۔

بہت سارے وجوہات کی بناء پر ملزمان بری ہوئے ہیں۔

میں نے اپنا فرض ادا کیا ہے۔ کسی کے ساتھ favour نہیں کیا ہے۔ تمام حقیقت مثل مقدمہ اور عدالتی فیصلے میں موجود ہے۔

لہذا بے گناہ ہوں۔ چارج شیٹ فائل کرنے کا حکم صادر فرمائیں۔

لف شدہ کاغذات۔

(1) نقل نقشہ موقع

(2) بیان 161 Cr.P.C

(3) عدالتی بیان بمعدہ کراس

(4) نقل بنام عابد علی شاہ 107/151

العارض
5-11-15
اختر عباس نمبر 32/LHC
تھانہ استرزی۔ کوہاٹ

ATTESTED

(D) , (9)

FINAL SHOW CAUSE NOTICE

1. I, Muhammad Sohaib Ashraf, District Police Officer, Kohat as competent authority under the Khyber Pakhtunkhwa, Police Rule 1975 Amendment 2014 serve you LHC Akhtar Abbas No. 32 as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, Mr. Javed Ahmad Chughtai DSP Legal, Kohat.

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers, I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975 Amendment 2014.

You have intentionally and deliberately recorded contradictory statement in high profile sectarian case before learned AT Court in case vide FIR No.1220, dated 18.11.2013, u/s 302,324,353,34 PPC,13 AO, 7 ATA, in which three persons including gunman of DSP City Kohat were killed and two civilians sustained severe injuries.

You openly supported/favored the accused charged for above mention offences by stating the following:-

- i. You made the presence of one of the accused Muharram Ali Shah doubtful in your court statement by stating that he left the Imam Bargha in the morning of 18.11.2013 and that you did not see Muharram Ali Shah returning to Imam Bargha before the occurrence. Whereas Muharram Ali Shah was present in the Imam Bargha at the time of occurrence, he threatened and fired upon the police party and civilians and he alongwith other accused was arrested red handed with weapons of offence from Imam Bargha which was immediately encircled by police after firing.
- ii. Further you have also made presence of the complainant Mazhar Jehan Inspector and eye witness DSP Lal Farid doubtful by not uttering a single word to the effect that they were present at the time, place and firing by the accused and resiled from your earlier statement recorded u/s 161 CrPC during the course of investigation.
- iii. Being an experienced police personnel, you have provided an extraordinary benefit to the accused in this high profile sectarian case which led to their acquittal. This amounts to gross professional misconduct, willful joining hands with accused and irresponsibility on your part.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Khyber Pakhtunkhwa, Police Rule 1975 Amendment 2014.

4. You are, therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

No. 15318/PA

Dated 08-12-2015


DISTRICT POLICE OFFICER,
KOHAT

ARRESTED


E 10

BEFORE THE DISTRICT POLICE OFFICER KOHAT

Subject: REPLY OF THE FINAL SHOW CAUSE NOTICE

Respected Sir,

Please refer to the Final Show Cause Notice issued Vide: your office No. 15318/PA dated 08/12/2015. In this regard it is stated that my earlier reply to the charge sheet my kindly be considered as reply to the instant final show cause Notice please.

Your obediently,

LHC Akhtar Abbas
Belt No. 32. Distt Police Kohat

Akhtar
14-12-2015

ARRESTED
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No 173-75/PA

Office of the
District Police Officer,
Kohat

Dated 07-1/2016

ORDER

This order is aimed to dispose of departmental inquiry initiated against defaulter Akhtar Abbas LHC No. 32 the then Guard Commander of Syed Habib Shah Imam Bargah Kohat.

The brief facts behind this enquiry are that on 18.11.2013 in wake of incident of Muharram ul Haram Rawalindi 2013, Ahle Sunnat ul Jumat, (defunct Sepahe Suhaba) organized as solidarity a procession from Tehsil Gate to Shah Faisal Gate. The participants of the said procession demanded removal of temporary Chapper erected for Zuljanah (Horse) in front of Imama Bargah Syed Habib Shah and moved toward that Chappar. In the meanwhile accused Syed Muharram Ali Shah alongwith co-accused duly armed with crime weapons from the rooftop of the said Imam Bargah emerged and threatened loudly the mob if they come forward than they would be killed but the said mob continued their forward movement. The accused ordered his accomplice for firing on the mob. They started firing at Police party as well as participants of the mob. Resultantly 03 persons including gunner constable of DSP City have been killed and 02 civilian sustained severe injuries. A proper case to this effect vide FIR No. 1220 dated 18.11.2013 u/s 302/324/353/34 PPC/13 AO/7ATA PS City was registered on the report of complainant Mazhar Jehan the then SHO PS City. All the nominated accused were arrested from the spot alongwith crime weapons just after the occurrence. After due investigation complete Challan has been submitted to the Anti Terrorism Court Kohat, which was subsequently transferred to Anti Terrorism Court-I Peshawar for trial. On conclusion of trial of this case on 07.10.2015 the learned court has acquitted all the accused by giving them benefit of doubt on the basis of contradictory statement of Police PWs including the defaulter official. The Learned Court referred in para-21 of the judgment that defaulter official appeared before the court as PW-2 stated in cross examination that accused Muharram Ali Shah has left the Imam Bargah in the morning of 18.11.2013 (Day of occurrence). He has not seen this accused returning the Imam Bargah before the occurrence and made presence of accused Muharram Ali Shah, Complainant Mazhar Jehan (PW-5) and DSP Lal Frid (PW-10) highly doubtful and created grave contradiction. The contradictory statements of the defaulter made the whole story of prosecution doubtful.

In the light of contradictory and resiled statement referred by the learned court in the judgment referred above a proper departmental inquiry was initiated against the defaulter on his gross professional misconduct. Charge sheet and statement of allegation vide this office No. 13139-40/PA dated 28.10.2015 was issued and served upon him. Mr. Javed Ahmed Chughtai DSP Legal Kohat was appointed as enquiry officer.

ATTESTED

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The inquiry officer conducted proper departmental inquiry and submitted his finding dated 07.12.2015. According to finding report, he recorded statements of complainant of the above mentioned case Mazhar Jehan the then SHO PS City, Lal Farid DSP City eyewitness and inspector Ibrahim Ullah Khan investigating officer in the presence of defaulter official who was given an opportunity of cross examination. All the witnesses categorically stated that the defaulter willfully and deliberately delivered contradictory statement to facilitate the accused, whenever according to the version of investigating officer, defaulter official did not disclose anything about departure of accused Muharram Ali Shah to him or investigation team at the time of recording this statement u/s 161 CrPC. He relied from his statement u/s 161 CrPC recorded by the I.O during the course of investigation. The enquiry officer recommended the defaulter for major punishment.

Consequently final show cause notice No. 15318/PA dated 08.12.2015 was issued and served upon defaulter. On 14.12.2015 the defaulter submitted his reply but it was neither appealing nor satisfactory. Hence he was called in Orderly Room for personal hearing. He was heard in person but he could not satisfy the undersigned about his innocence.

I have carefully gone through inquiry papers and relevant record and come to the conclusion that the allegations leveled against defaulter official are well founded and proved. I agree with the finding of inquiry officer. Being a member of disciplined Police force, he was found guilty of extending undue and unlawful favour to the accused by resiling on his statements. His retention in Police force will amount to encourage inefficient and unbecoming of good Police officers. Therefore, I Mr. Muhammad Sohaib Ashraf, District Police Officer, being competent authority under Khyber Pakhtunkhwa Police Rules 1975 with amendments-2014 hereby award him major punishment of dismissal from service with immediate effect.

ANNOUNCED

OB No. 22 dt: 7-1-2016



DISTRICT POLICE OFFICER,
KOHAT

G (13)

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE,
KOHAT DIVISION KOHAT

SUBJECT: APPEAL AGAINST THE ORDER PASSED BY DPO KOHAT VIDE
O.B NO. 22 DATED 07-01-2016 WHEREBY THE EX - LHC
AKHTAR ABBAS NO. 32 WAS DISMISSED FROM SERVICE WITH
IMMEDIATE EFFECT.

RESPECTFULLY SHEWETH,

Humbly submitted that this appeal is filed by the appellant based on the following facts and grounds:-

FACTS:-

Shortly stated that the appellant was performing duty as guard command of Imam Bargah Syed Habeeb Shah, Kohat in the year 2013. On 18-11-2013 the procession of Ahl-e-Sunnatul Jumat was moving towards the above Imam Bargah demanding the removal of temporary Chapper erected for Zul Jinah (Horse) in front of the Imam Bargah when it reached the Imam Bargah, accused Muharam Ali Shah alongwith his accomplices resorted to firing at the procession and police parts killing Constable Noor Muhammad, a passerby and injuring three civilians. A case was registered vide FIR No. 1220 dated 18-11-2013 U/S 302/324/353/34 PPC /13AO/7 ATA Police Station City Kohat on the murasla report of Inspector Mazhar Jehan then SHO P.S City Kohat. All the accused were arrested red handed with weapons of offence from Imam Bargah which was immediately encircled by police after firing. On completion of investigation complete challan was submitted to the court against the accused who faced the trial before judge A.T.C Peshawar and were acquitted by the court vide order dated 07-10-2015 giving them benefit of doubt due to contradictory statements of PWS including the appellant. On this score, the following allegations were leveled against the appellant.

- I. You made the presence of one of the accused Muharram Ali shall doubtful in your court statement by stating that he left the Imam Bargah in the morning of 18-11-2013 and that you did not see Muharram Ali

Shah returning to Imam Bargah before occurrence. Whereas Muharam Ali Shah was present in the Imam Bargah at the time of occurrence. He threatened and fired upon the police party and civilians and he alongwith accused was arrested red handed with weapons offence from Imam Bargah which was immediately encircled by the police after firing.

- II. Further you also made presence of the complainant Mazhar Jehan Inspector eye witnesses DSP Lal Fared doubtful by not uterining a single word to the effect that they were present at time, place and firing and resiled from your earlier statement recorded U/S 161Cr.P.C during the course of investigation.
- III. Being an experienced police personnel, you have provided an extraordinary benefit to the accused in this high profile sectarian case which led to their acquittal. This amounts to gross professional misconduct, willful joining hands with the accused and irresponsibility on your part. On the above allegations, the appellant was proceeded against departmentally. On completion of departmental enquiry, the appellant was dismissed from service by DPO Kohat vide the impugned order.

GROUND:-

- a. The first allegation levelled against the appellant is incorrect and not substantiated by the record of the case. Perusal of the appellant's statement recorded by the investigating officer U/S 161 Cr. P.C during the course of investigation did not contain any thing about the outgoing and incoming of accused Muharam Ali Shah to the Imam Bargah. It just contained that the processionists were fired at from the above leading to the killing of a constable, a passer by and injuries to three civilians. The appellant appeared as PW-2 during trial of the accused and stated in examination in Chief what was recorded in his statement U/S 161 Cr. P.C. The appellant had not resiled from his statement U/S 161 Cr. P.C. Had the appellant resiled from his statement earlier recorded U/S 161 Cr. P.C, the learned Special prosecutor would have made a request to the Court for

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declaring the appellant as hostile witness. But neither such request was made by the special public prosecutor to the court nor the appellant was declared as hostile witness which meant that the appellant had not resiled from his statement U/S 161 Cr. P.C (Copies of the statement of the appellant U/S 161 Cr. P.C and court statement recorded during trial are enclosed herewith for perusal). This allegation is not established against the appellant.

- b. In respect of the second allegation it is submitted that nothing regarding presence of DSP Lal Fareed and Inspector Mazhar Jehan was mentioned in my statement recorded by the investigating Officer U/S 161 Cr. P.C. How the appellant could depose in the court about the fact which was not mentioned in the statement recorded by the 10 U/S 161 Cr. P.C. Had the appellant introduce the fact of the presence of DSP Lal Fareed and Inspector Mazhar Jehan, it would have amounted to making improvement in the court statement by the appellant and made the prosecution case doubtful. This allegation is also not established.
- c. Regarding the third allegation, it may be mentioned that the appellant had not joined hands with the accused. There was no evidence to establish such allegation for doing so there should be some consideration which must be proved. No man of prudent mind would like to ruin his future and career for the sack of others without any consideration. This allegation is merely an unsubstantiated allegation based only on conjecture and surmise.

PRAYER:

In view of above submissions, it is prayed that by accepting the instant appeal, the impugned order may be set aside and the appellant reinstated in service with effect from the date of dismissal with all back benefit.

I may also be heard in person please.

Yours Obediently,

Ex-LHC Akhtar Abbas No. 32
S/o Abbas Ghulam
R/o Alizai, Police Station Usterzai,
Kohat.

Dated:- 18-01-2016

Encl: Two



(HA) 16
OFFICE OF THE
REGIONAL POLICE OFFICER
KOHAT REGION

No. 2155 /EC

Dated 26-02 /2016

ORDER

This order is passed on departmental appeal filed by Ex: LHC Akhter Abas No. 32 of district Kohat against the impugned punishment order passed by DPO Kohat vide his office OB No. 22 dated 07.01.2016, vide which he was awarded a major punishment of dismissal from service with immediate effect.

2. Brief facts of the case are that the appellant deployed as guard commander at Syed Habib Shah Imam Bargah was an eye witness of a **high profile sectarian case** vide FIR No. 1220 dated 18.11.2013 U/Ss 302, 324, 353, 34 PPC r/w 7ATA PS City Kohat. During course of trial of accused in ATC, he was examined as PW-2. In his cross examination, he willfully contradicted his statement and stated that the under trial accused Muharram Ali Shah has left the Imam Bargah in the morning of 18.11.2013 (eventful day). Further he intentionally made presence of complainant / SHO Mazhar Jehan and DSP Lal Farid (PWs) doubtful, who were eye witnesses and present at time of occurrence on the spot. Thus he undue favour the accused by recording contradictory statements to extend benefit to the accused, due to which all the 04 accused are acquitted by the ATC.

3. For the reasons above / willful misconduct, the appellant was served with Charge Sheet alongwith statement of allegations and DSP Legal Kohat was appointed as enquiry officer to scrutinize the conduct of appellant. The E.O while in his detailed findings held him guilty of the charges and recommended him for major punishment. Final SCN was served upon him by the competent authority, wherein he relied upon his earlier reply to the charge sheet. Hence, he was heard personally, but failed to satisfy the competent authority. On completion of all the codal formalities under the rules, the appellant was awarded a major punishment of dismissal from service by the competent authority (DPO Kohat) vide his office above quote order reference.

4. Feeling aggrieved, the instant appeal. Comments sought from DPO Kohat, record requisitioned and the appellant was called & patiently heard in Orderly Room held on 24.02.2016. During hearing the appellant could not submit any plausible explanation, nor could satisfy the undersigned.

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5. Record gone through, which indicates that the appellant at the time of incident was deployed / present at Imam Bargah and was an eye witness of the incident. All the accused including Muharram Ali Shah were arrested on the spot with recovery of weapons of offense, but the judgment of learned court transpires that the appellant made the presence of accused Muharram Ali Shah, complainant / SHO Mazhar Jehan and DSP Lal Farid (PWs- 5&10) highly doubtful and deliberately contradicted the statement to facilitate the under trial accused, which vitiated the entire prosecution case and caused acquittal of all the accused directly charged and arrested on the spot.

6. in view of above and available record, the undersigned came to the conclusion that the appellant committed a gross professional misconduct and the charges leveled against him have been proved beyond any shadow of doubt. All the codal formalities in departmental proceedings have been completed, a legal and speaking punishment order is passed by the competent authority. Hence the undersigned does not seem to interfere in it. Therefore, the appeal of Ex: LHC Akhter Abas No. 32 being without any substance, devoid from merits is hereby rejected and the punishment order passed by the DPO Kohat is upheld.

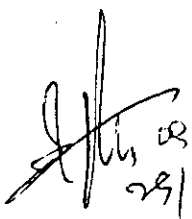
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24.02.2016


(DR. ISHTIAQ AHMAD MARWAT)
Regional Police Officer,
Kohat Region

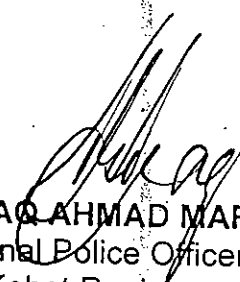
No. 2156-58 /EC,

- ✓ 1 Copy of above is submitted for favour information to the:-
Addl: Inspector General of Police Operation Khyber Pakhtunkhwa in continuation to this office No. 414/R dated 11.01.2016 please.
- 2 District Police Officer Kohat, service record alongwith enquiry file is returned herewith.
- ✓ 3 Appellant

okte/SRC
Per M. A. Siddiqui


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(DR. ISHTIAQ AHMAD MARWAT)
Regional Police Officer,
Kohat Region

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Signature of Notary

Notary Public

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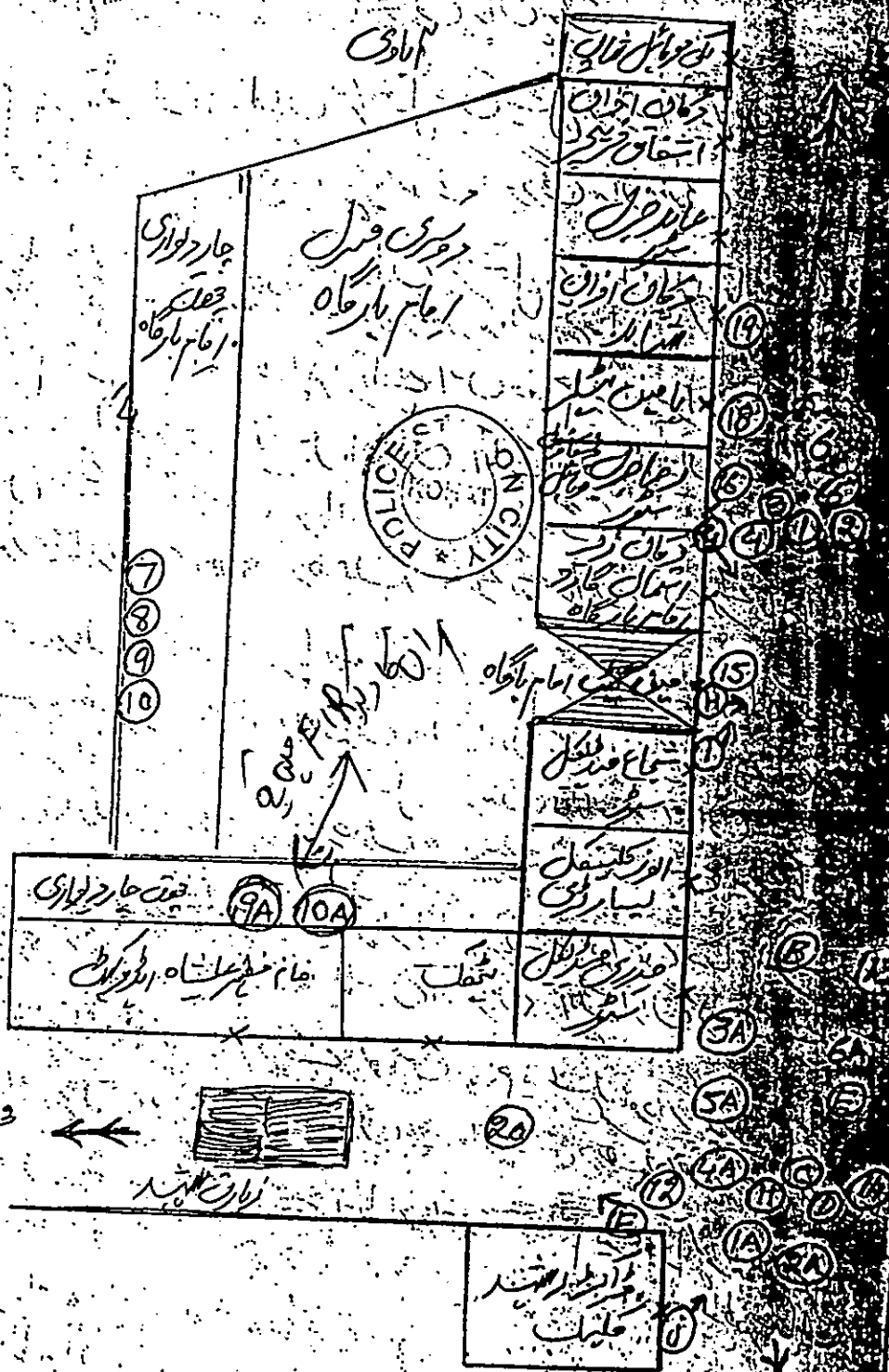
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شمارہ 302-324-353
1340-34-7ATA

ضلع گوجرانولہ

Exm P B

096-8211047
Contact No. A.J. class



فلم میان بادشاہ ←

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the SHO for meeting with the DCO however, instead of taking them to DCO office they took them to the PS Saddar.

RO & AC
Dated: 27.8.2014

Judge, Anti-Terrorism Court,
Kohat Division, Kohat,
Camp Court at Central Jail,
Peshawar.

PW-2 Statement of Akhter Abbas I.H.C.No. 32 PS Usterzai (On Oath)

During the days of occurrence, I was posted as Guard Commandar of Imam Bargah Syed Habib Shah. At about 12 noon a procession of about 40/50 persons with lacies were approaching towards Imam Bargah and they raised slogans against Shia sect. When the procession passed my point then firing started and the procession dispersed. Once the firing stopped we saw two dead bodies one of Police man and one another of a private person. I saw one injured as well the dead body and injured were shifted to the hospital.

XXX..... I was posted to protect the Imam Bargah as guard commander. I do not remember as to when I came to know about the procession moving towards the Imam Bargah. At the time of occurrence I had five Police official at guard duty. I have posted all the five police officials at different points at the Imam bargah. It is correct that the Imam Bargah is located at a slope of about 5 to 6 feet from Milad Chowk. It is correct that in front of Imam Bargah there is a college which is higher than the Imam Bargah and steps in a shape of stair case adjacent to it which is used by public as thorough fare. The procession proceeded from the Milad Chowk. I cannot say that the procession proceeded towards the Imam Bargah from all the four sides. It is incorrect to suggest that we were fired upon from the stairs mentioned in my statement. Self stated that I cannot say as to from which side the firing was made as my point was on the left side of the Imam bargah. I cannot say whether the firing was made from one point or from two or three points. I cannot say that whether Abid Ali Shah was booked u/s 107/151 Cr.P.C and Muharram Ali Shah was present in katchery for getting bus hal. It is correct that Muharram Ali Shah has left the Imam bargah in the morning of 18.11.2013. I have not seen Muharram Ali Shah returned to Imam Bargah before the occurrence.

RO & AC
Dated: 27.8.2014

ATTESTED

Judge, Anti-Terrorism Court,

COPYING AGENCY
ANTI-TERRORISM COURT,
KOHAT

ATTESTED TO BE TRUE COPY

27/8/14

~~ARRESTED~~

Prosecution conducted by Faheem Khan assisted by counsel for the complainant and

Kohat.

Under Sections 302/324/353/34 PPC/riw 7 ATA 1997 FIR No. 1220 Dt: 18.11.2013 of P.S. City

Charge:

City Kohat

Shah R/O Mohallah Sikandar Khan

4. Haider All Shah S/O Farzand All

Khan City Kohat

All Shah R/O Mohallah Sikandar

3. Syed Abid All Shah S/O Syed Amjid

Khan City Kohat

All Shah R/O Mohallah Sikandar

2. Ghazanfar All Shah S/O Syed Mazhar

Khan City Kohat

Habib Shah R/O Mohallah Sikandar

1. Syed Muharram All Shah S/O Syed

VERSUS

State

..... 7.10.2015

Date of decision

Institution..... 16.4.2014

Date of

Case No. 61/ATC-I/2014

F.ESHAWAN

COURT CENTRAL JAIL,

TERRORISM COURT 1 / CAMP

SALEEM JAN JUDGE ANTI

IN THE COURT OF MR.

Judge ATC-I
Faheem Khan

(5/16)

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L ATC Kohat

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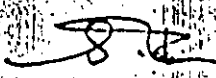


Legal heirs of deceased Muhammad Saeed Khan
Advocate

Defence conducted by Jalal Ud Din Akbar Azam
Gara Advocate..

IIIIIIIIII


1. The above mentioned accused faced trial in case F.I.R.No.1220 dated 18.11.2013., U/S 302/324/353/34 PPC r/w 7 ATA-1997 of P.S. City Kohat, District Kohat.
2. Brief facts of the case according to FIR Ex. PA are that complainant Mazhar Jehan SHO/Inspector alongwith other police contingent was present in Kohat City. In the wake of incident of *Muharram Ul Haram*, Rawalpindi today *Ahli-Sunat-w-Jumat*, defunct *Sipah-Suhaba* as solidarity a procession from Tehsil Gate to Shah Faisal Gate was arranged consisting of 350/400 persons. It was headed by Haider Wakeel. When the said procession reached Shah Faisal Gate, the participants of the procession got infuriated when Hafiz Sohail Mawaia and Mulana Qazi Khwaja Muhammad made provocative speeches, during the said speeches, they made a demand that a temporary *chapar* erected for *Zulhijah*(honor) in front of Syed Habib Shah Imam Bargah be removed. Unless and until it was not removed, participants of the procession would not go from there. DSP City informed them that a group of young persons comprising of 40/50 having flags sticks in their respective hands be blocked in


Judge ATC-I
Peshawar.

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Zargaran chowk. When he reached Milad Chowk. In spite of police obstruction the said mob was moving towards the said Chapar. In the meanwhile accused facing trial namely Syed Ghazanfar Ali Shah armed with 12 bore Repeater, Syed Abid Ali Shah armed with Kalashnikov, Haider Ali Shah armed with Kalakov, Syed Muharram Ali Shah armed with 88 mm rifle from the roof top of the said Imam Bargah emerged and Syed Muharram Ali Shah threatened loudly the mob if they come forward a pace then they would be killed but the said mob continued their forward movement. Accused Syed Muharram Ali Shah ordered his accomplice for firing at the mob. Accused facing trial started firing at police party as well as participants of the mob. From their firing he and DSP Lal Farid Khan escaped un-hurt while gunner constable Noor Muhammad 1126 of DSP Lal Farid Khan and one Khair Ur Rehman sustained serious injuries and died on the spot. From the said firing Aashad, Mir Ahmad, Abdullah sustained injuries. The dead and injured were shifted to hospital immediately. Reinforcement was called to the spot. After reaching the reinforcement, the said Imam Bargah and residence were searched for the accused facing trial. In the Imam Bargah they arrested Syed Muharram Ali Shah with 88mm rifle No.297489 with fixed magazine loaded with 4 live rounds of the said bore, from Syed Abid Ali Shah one Kalashnikov body No.20815 P loaded magazine

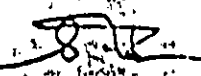

Judge ATC-1
Peshawar.

ATTESTED



containing 15 live rounds of the same bore, from accused Haider Ali Shah a Kalakov body No. 7508 loaded with magazine containing 10 live rounds of the same bore, and from accused Ghazanfar Ali Shah a 12 bore Repeater loaded with 3 live rounds of the same bore without number were recovered. The police also recovered from the residence of one Mazhar Ali Shah different bore of weapons alongwith live rounds of various kind. Accused were arrested formally and a case was registered against them.

3. The I.O., after completion of investigation on 16.4.2014., submitted complete challan against accused facing trial in the court of Judge ATC, Kohat Division Kohat. Accused named above were summoned from District Jail, Kohat. Copies were provided to them U/S 265(C) Cr.P.C.
4. Formal charge was framed against accused named above by Judge Anti Terrorism Court, Kohat Division Kohat. The accused facing trial named above did not plead guilty to the charge and contested the charge and claimed trial.
5. On 27.5.2014., accused facing trial were shifted to Central Jail, Peshawar due to security reasons, and through a notification of Home Department, KP, declared a place of sitting for Anti Terrorism Court, Kohat.
6. On 25.9.2014., the instant case was transferred from the court of Judge ATC, Kohat Division Kohat to this court vide order


Judge ATC-I
Peshawar.

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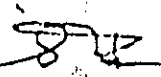


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- of Hon'ble Administrative/Monitoring Judge ATCs U/S 13(4) of the ATA-1997.
7. On 2.10.2014, case file of the instant case was received from learned Judge ATC, Kohat Division Kohat.
 8. Prosecution in support of its case examined twentyone(22) PWs and abandoned 14 PWs.
 9. Before discussing the merits of the case I would like to produce the brief resume of the prosecution evidence. The detail of which is as under:-

Syed Muhammad Abdullah ASI(PW1) stated that during the days of occurrence he was posted as Muharrir ASI at PS City Kohat. He received murassila sent by mazhar Jehan SHO P.S. City, Kohat through Peshawar Khan ASHO PS City Kohat on 18.11.2013. On the basis of which he chalked out FIR which is Ex PA. Today he has seen the contents of FIR which is correct and correctly bears his signature.

Akhtar Abbass LHC No.32(PW2) stated that during the days of occurrence, he was posted as Guard Commander of Imam Bargah Syed Habib Shah. At about 12 noon a procession of about 40/50 persons with *laties* were approaching towards Imam Bargah and they raised slogans against Shia sect. When the procession passed his point then firing started and the procession dispersed. Once the firing stopped they saw two dead bodies one of police man and one


Judge ATC-I
Reserve

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another of a private person. He saw one injured as well as the dead body and injured were shifted to the hospital.

Zeeshan Ali No. 500 (PW3) stated that during the days of occurrence he was posted as guard of Imam Bargah Syed Habib Shah. On the eventful day, he was present at his duty in the meanwhile a procession duly armed with daggers and *laties*. And upon reaching the procession started firing near the Imam Bargah. And he took shelter and noticed that the fire was coming from all four sides. As a result of firing the procession dispersed and he saw two dead bodies one of police official and one of private person and the other police contingent reached to the spot and shifted them to the hospital.


Muhammad Iqbal SHO/Inspector (PW4) stated that after completion of investigation by the I.O., the case file was handed over to him for onward submission in the court against accused Muharram Ali Shah nominated in the case.

Mazhar Jehan Inspector (PW5) stated that on 18.11.13., due to the incident of clash between two sects at Rawalpindi, on that very day there was a procession of *Sepah-e-Subha*. That very procession of *Sepah-e-Subha* from Faisal Gate to King Gate (Faisal Gate). On reaching the King Gate, they made a sit in (*Dhrana*). One Sohail Mayvia leader of *Sepah-e-Subha* accompanied by Khawaja Muhammad made


Judge ATC-1
Peshawar.

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speeches. During their speeches, they demanded that a horse standing in front of Imam Bargah Syed Habib Shah be removed. He was informed by DSP Lal Farid Khan that some young chaps of the said procession are coming towards the *Chapper* where the horse is standing alongwith sticks. The young chaps were emotional, so on his stopping, they have not stopped and went towards the said *Chapper*. He alongwith DSP Lal Farid and other police contingents rushed to stop the young chaps, during this time, accused Muharram Ali Shah raised a *Lalkara* from the top of the boundary wall of the Imam Bargh of Syed Habib Shah. In the meanwhile, accused Muharram Ali Shah, Haider Ali Shah, Abid Ali Shah and Ghazanfar Ali Shah (accused facing trial) started firing at them. As a result of the said firing he and Lal Farid DSP escaped unhurt, while gunner/constable Noor Muhammad of DSP Lal Farid and constable Khair Ur Rehman sustained serious injuries and died on the spot. Three persons namely Arshad S/O Shez Ali, Munir Akbar S/O Khista Gul and Abdullah S/O Muhammad Khalid sustained injuries from the said firing of accused facing trial. He ordered the police personnel on the spot to take the injured and dead body to the hospital for treatment and autopsy. He cordoned the spot. Later on the contingent of Pakistan Army and lady constable reached the spot, thereafter they entered the said


Judge ATC-1
Punjab

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Imam Bargah and overpowered all accused facing trial. He recovered from the possession of accused Ghaznfar Ali Shah one Repeater .12 bore Ex P-1, loaded with three cartridges Ex-P-2 of the same bore. He also recovered from the possession of Syed Abid Ali Shah one K.K., No. 20815-3 Ex P-3 alongwith fixed charger, containing 15 live rounds Ex P-4 of the same bore, from the possession of accused Haider Ali Shah recovered one Kala Kov No.7508 Ex P-5 with fixed charger having 10 live rounds Ex P-6. From the possession of accused Muhram Ali Shah, 8mm rifle Ex P-7 model Bren Gun Model No.297489 with fixed charger having four live rounds Ex P-8 of the same bore having freshly discharged shell and sealed into different parcels. He formally arrested the accused facing trial. On further search of the *kota* of accused Mazhar Ali Shah, he recovered one rifle semi automatic No. 3P469 Ex P-9, one double barrel gun Ex P-10, two rifles 7mm Ex p-11 without numbers, another double barrel gun No.9204 Ex P-12, One Revolver P-13, one pistol .30 bore No.G110 P-14, two numbers spare charges with 18 live rounds Ex P-15 of the same bore with bandolier, another .12 bore pistol No.4-4469 Ex P-16 with fixed charger loaded with four live rounds Ex P-17, one pistol .30 bore No. 403815 without charger Ex P-18, one pistol .22 bore No.1205146 without charger Ex P-19, one bandolier Ex P-20

Judge ATC
Peshawar.

ATTESTED

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containing 25 live cartridges of 12 bore Ex P-21, 44 cartridges of 455 bore Ex P-22, 200 live rounds of 7.62 bore Ex P-23 and took into my possession vide recovery memo Ex PW 5/1 in the presence of its marginal witnesses. He also formally arrested all the accused facing trial vide Cards of arrest Ex PW 5/2. He also drafted murasila Ex PA/1. He vide his application (the carbon copy) Ex PW 5/3 sent the above mentioned case property to the Armorer expert for its opinion. The report of which is available on the file which is Ex PW 5/4. Thereafter he sent the murasila alongwith the accused and case property to the P.S., for registration of the case through Peshawar Khan ASHO/SI for the registration of the case. All the documents exhibit above are correct and correctly bear his signature. The I.O. prepared the site plan at his instance. I.O. also took photographs of the place of occurrence in his presence.


Muhammad Munir S/O Khista Gul (PW6) stated that on the days of occurrence i.e. 18.11.13., he came out of Government High Secondary School No.1, Kohat. At 12:00 P.M., he reached Doctor Rashid clinic, in the meanwhile he saw a procession of 25/30 persons alongwith the police contingent were coming towards Zuljinah place (where the horse was standing). The police were trying to stop the mob, but the police failed to do so, in the meanwhile the mob reached the place

Judge ATC-I
Peshawar.

ATTESTED

of Zuljinah. From the boundary wall of the Imam Bargah Syed Habib Shah and from the house of accused Mazhar Ali Shah Advocate, four accused namely Muharam Ali Shah, Ghazanfar Ali Shah, Haider Ali and Abid Ali Shah started firing as a result of firing he alongwith three others including police official got hit. He was injured. His injury was on his right hand, thereafter he went to the hospital for medical treatment. He charge the accused facing trial for the commission of offence.

Abdullah S/O Muhammad Khalid (PW7) stated that on the day of occurrence i.e. 18.11.13., at 12:00 hours, he brought his aunt to the clinic of Dr. Rashid. He came out of the said clinic for call of nature. He saw a mob of 25/30 persons who were coming towards the place of Zuljinah/place of horse. The local police were trying to stop them. When the mob reached near to the place of horse/Zuljinah. Firing started from the top of Imam Bargah. Thereafter firing also started from the roof of the house of Mazhar Ali Shah Advocate. Accused facing trial namely Muharram Ali Shah, Ghazanfar Ali Shah, Abid Ali Shah and Haider Ali Shah fired at him and he got injured alongwith one police official and three others. He was taken to the hospital by the people of locality in Rickshaw for medical treatment. He was examined by the Police and his statement was also recorded by the Illaqa


 Judge A.F.C-1
 Peshawar.

ATTESTED


Judicial Magistrate. He charge all the four accused facing trial.

Wahid Zadin S/O Sher Zadin (PW8) stated that the deceased Arshid Khan was his brother. On 18.1.2013, his brother was killed by accused facing trial from the roof boundary wall of Syed Habib Shah Imam Bargah as well as roof and boundary wall of Syed Mazhar Ali Advocate, and he after due satisfaction charge the accused facing trial for the commission of offence. His statement to this effect was also recorded by the police as well as by the Illaqa Judicial Magistrate.


Numan S/O Amal Shah (PW9) stated that deceased Khair Aman was his son. On 18.11.13., his son was killed by accused facing trial from the roof boundary wall of Syed Habib Shah Imam Bargah as well as roof and boundary wall of Syed Mazhar Ali Advocate and, he after due satisfaction charge the accused facing trial for the commission of offence. His deceased son was a laborer who carried hand cart for transportation of goods. His statement to this effect was also recorded by the police as well as by the Illaqa Magistrate.

Lal Farid Khan DSP(PW10) stated that on the day of occurrence, he was supervising the police contingent at main Bazar, Kohat City of the procession of Sipah Suhaba. The procession started from Tehsil Gate and reached at King Gate where it turned into a public meeting. Sohail Mavia and Mulana Qazi Muhammad Khwaja started speeches over there. They stated in

ATTESTED

Judge MCO-1
Peshawar.

their respective speeches that near Syed Habib Shah Imam Bargah a shed was made where a horse (Zuljinah) tied. They demanded that the said horse (Zuljinah) shall be removed immediately, if the Shia sect failed to do so, then they will forcibly removed the said horse (Zuljinah). A group consisting of 40/50 persons came out the said procession and proceeded towards the shed of horse (Zuljinah). He called the concerned SHO on mobile and wireless to stop the mob of 40/50 persons in the bazar of Zargran. He also chased them from the back. At Milad Chowk, Zargran Bazar, the SHO tried to stop them but he failed. When the mob reached near the said shed of horse (Zuljinah), from the roof of said Imam Bargah Syed Habib Shah, Muhram Ali Shah accused facing trial made a "LALKARA" to the mob as well as to the police contingents, but the mob was moving towards the said place. In the meanwhile accused facing trial namely Muhram Ali Shah, Ghazanfar Ali Shah, Abid Ali Shah and Haider Ali Shah started firing at mob and the police contingents. As a result of the said firing, his gunman Noor Muhammad constable as well as Khir ur Rehman, Arshad, Munir and Abdullah got hit and fell down. His gunman Noor Muhammad constable and Khir ur Rehman died on the spot, while Munir, Arshad and Abdullah shifted to hospital. Later on Arshad succumbed to his injuries in the hospital.


Judge ATC-I
Peshawar.

ATTESTED
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As there was shortage of police contingents, he called on his pocket phone police nafri for re-enforcement. He alongwith his contingents available with him cordoned off the place of occurrence including Imam Bargah. In the meanwhile the police re-enforcement, as well as Pak Army, B.D.U., and lady constable reached the place of occurrence. They on mega phone commanded the accused to surrender, but they did not surrender to the police. Thereafter, the SHO alongwith the police nafri entered the said Imam Bargah and arrested the accused facing trial namely Ghazanfar Ali Shah, Muhrram Ali Shah, Haider Ali Shah and Abid Ali Shah alongwith the weapons of offence. He charged the accused facing trial for the commission of offence. His statement was recorded U/S 161 Cr.P.C., by the I.O.

Dr. Raza Ali, Women & Children LMH, Kohat(PW11) stated that on 18.11.2013., at 12:40 P.M., he examined injured Abdulah S/O Muhammad Khalid aged about 16/17 years, brought by police and found the following:-

The injured was conscious at that time

- 1. Fire arm entry wound on right left side of knee, exit on medial side of upper knee.

Weapon used fire arm.

He advised X-Ray right knee and then referred the patient to the Orthopedic Surgeon,

ATTESTED

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ATC-I
shawar.

K.D.A., for further treatment. His report is Ex PW 11/1. Report later on.

Nature of injury..... grievous

Today he has seen his report which is correct and correctly bear his signature.

Dr. Sajjad Rauf CMO Women and Children Liaqat memorial Hospital Kohat(PW12) stated that on 18.11.2013., at 12:10 P.M., he examined Munir Ahmad S/O Mubashta Gul aged about 25/26 years brought by police and found the following:-

The injured was conscious.

- 1. He has got fire arm entry wound over the right elbow joint about 1cm in dia-meter, swelling seems at the site.

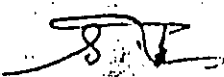
He advised him X-Ray right elbow, AP-Lateral view and referred the patient to Orthopedic Surgeon K.D.A. Hospital for further treatment.

The nature of injury at the time of examination was later on.

The duration between injured and examination was within 30 minutes.

The weapon used was fire arm.

His report is Ex PW 12/1.


Judge ATC-1
Peshawar.

ATTESTED


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Similarly he also examined injured Arshad Khan S/O Shiraz Ali aged about 28/29 years R/O Jandi Station Kohat at 12:25 P.M., on the same date brought by police., and found the following:-

The patient was conscious but confused.

1. He has got fire arm entry wound over the left Inguinal region about 1 cm in size.

2. Fire arm exit wound over the right renal area about 5cmx3 cm in size.

All muscles, skin and deep fascia all injured.

Patient serious, wound stitched, bleeding stopped and patient referred to V.S., K.D.A. hospital, Kohat for further management.

Nature was later on.

The duration between injury and examination was about 20/40 minutes.

The weapon used was fire arm.

His report is Ex PW 12/2 which is correct and correctly bear his signature.

Dr. Saleem Ullah, Medical Officer, KMC, Pesh:(PW13) stated that


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ATTESTED


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on 18.11.2013, at 11:00 P.M., he conducted autopsy over the dead body of Arshad S/O Sher Zadin R/O Kohat aged about 22/25 years, brought by Manzar Ali constable No.367 from L.R.H., Surgical-A Ward, Peshawar, identified by Agtiza Din S/O Noor Zadin and Shairza Din S/O Speen Za Din R/O Kohat.

External Appearance.

A bearded man of average body built, wearing sky blue color *Qameez/Shalwar* and white *bunyan* which were blood stained with fire arm defects.

Post Mortem Levidity and R/mortus started developing. He examined the dead body and found the following :-

1. Fire Arm stitched entry wound .5 cm x .5 cm in size on the left and inguinal ligament middle part. It was 4cm in mid line.
2. Fire arm exit wound right side back of abdomen 5x3 cm in size, 12 cm from posterior mid line, 1 cm above the posterior superior iliac spine, it was stitched.
3. Surgically produced mid line laparotomy wound 13x1 cm in size, it was stitched.
4. Surgically produced drain wound 1x2 cm in size, it was on the left side 3 cm below the coastal margin, 6 cm from mid line.
5. Surgically produced ileostomy wound on the right side of abdomen to which small intestine was stitched, it was 3x2 cm in size.

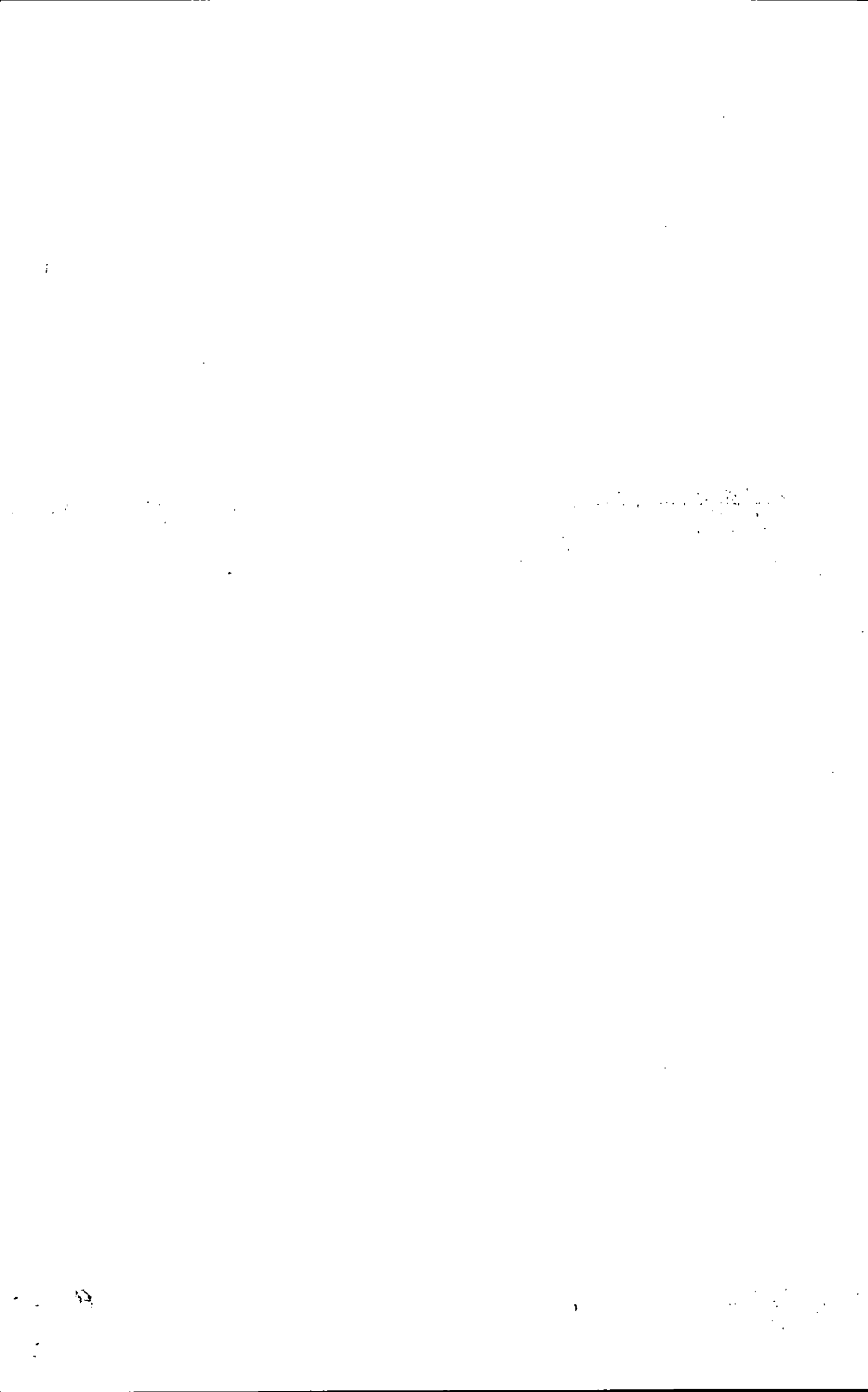
Internal Injuries

ABDOMEN

Wall, peritrium, small and large intestines were injured.

ATTESTED

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Peshawar



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In his opinion the deceased died due to fire arm injuries. The deceased was hospitalized.

Probable time between death and P.M 2 to 3 hours.

His PM report is Ex PW 13/1 consisting of 6 sheets including pictorial, he also endorsed the Inquest Report which is correct and correctly bear his signature. Similarly, he also placed on file the treatment chart of the deceased and death summary which is Ex PW 13/2 consisting of six sheets.

Dr. Muhammad Farid Afridi DHQ hospital KDA(PW14) stated that on 18.11.2013., at 12:45 P.M., he conducted autopsy on the dead body of Noor Muhammad Khan S/O Khan Badshah R/O Swoor Gul Kohat gunner of Lal Farid DSP, aged about 31/32 years, brought by police personnel alongwith public and identified by Shahid Malook and Gul Janan .

EXTERNAL APPEARANCE

The deceased was stout dressed in police uniform. He started post mortem at 1245 hours till 1:00 P.M.

INJURIES.

1. Fire arm entry wound on over tip of left shoulder slightly posteriorly measuring

ATTESTED

about half inch x half inch in size with corresponding entry wound over right hypochondria interiorly measuring about 1 inch x 1 inch in size.

INTERNAL INJURIES

THORAX

Walls, Ribs, and Cartilages, pleura, left lung, pericardium and heart along with blood vessels were injured.

ABDOMEN

Walls, peritoneum, diaphragm, large intestines and its contents, liver were found injured.

Muscles Bone

Corresponding muscles and bones injured.

In his opinion the deceased died of the injury to the vital organs like heart, lungs, and liver leading to shock cardiorespiratory arrest and death due to fire arm injury.

Probable time between injury and death.....Immediate.

Probable between death and P.M..... within two hours.

[Signature]
Judge
Resident.

ATTESTED

The dead body alongwith uniform and six pages P.M., report Ex PW 14/1. He also endorsed the inquest report and injury sheet Ex PW 14/2 and Ex PW 14/3. Today he has seen all the documents which are correct and correctly bear my signatures.

Similarly on 18.11.2013., at 1: 45 P.M., he conducted autopsy on the dead body of Khiaur Rehman S/O Numan R/O Sadda Kurram Agency aged about 25/26 years, brought by police personnel alongwith public and identified by Waheed S/O Dad Gul R/O Sadda Kurram Agency, Shahid S/O Dad Gul.

EXTERNAL APPEARANCE

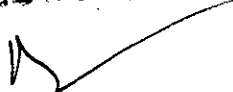
The deceased was stout dressed in shalwar and qameez. He started post mortem at 1:15 PM till 1:45 P.M.


INJURIES.

1. A fire arm entry wound on over supra sternal notch measuring about $\frac{1}{2}$ inch x $\frac{1}{2}$ in size with corresponding exit wound over left flanges, posteriorly measuring $1\frac{1}{2}$ x $1\frac{1}{2}$ inch in size.

INTERNAL INJURIES

ATTESTED




 Inspector
 Post-mortem

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THORAX

Walls, Ribs, Cartilages, left lung, pericardium and heart alongwith blood vessels were injured.

ABDOMEN

Large intestines and its contents, spleen, kidney left injured were found injured.

Muscles Bone

Corresponding muscles and bones injured.

In his opinion the deceased died of the injuries to the vital organs like heart, spleen, lungs leading to shock and death due to fire arm injury.

Probable time between injury and death.....Immediate.

Probable between death and P.M..... within two to three hours.

The dead body alongwith *shalwar qameez* six pages F.M., report Ex PW 14/4. He also endorsed the inquest report and injury sheet Ex PW 14/5 and Ex PW 14/6. Today he has seen all the documents which are correct and correctly bear his signatures


Judge ATC-1
Peshawar.

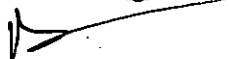
ATTESTED

Yousaf Zaman HC(PW15) stated that after PM examination of deceased, their garments were handed over to him by the concern doctor and he have the same to the I.O. in the P.S, alongwith the injury sheets and P.M. reports. The I.O. took these items on recovery memo.

Din Muhammad S/O Khan Bad Shah (PW16) stated that deceased namely Noor Muhammad head constable was his brother. On the day of occurrence his brother Noor Muhammad deceased was performing his duty with DSP in Police Department. On 11.11.2013 his brother was martyred during duty. Now after complete satisfaction he came to know that his brother namely Noor Muhammad deceased head constable was killed by accused Muharrim Ali, Haider Ali Shah, Ghazanfar Ali Shah, and Abid Ali Shah from the boundary wall of Imam Bargah Syed Habib Shah and house of Mazhar Ali Shah. He was also examined by the I.O. U/S 161 Cr.P.C. and also U/S 164 Cr.P.C. by the Illaqa Judicial Magistrate. He charge the above four accused for the murder of his late brother Noor Muhammad. The documents are correct and correctly bear his signatures and thumb impression.


Judge ATCA
Peshawar

ATTESTED



Shahid Salook S/O Salook Khan (PW17) stated that deceased Noor Muhammad was his brother-in-law. He had identified his dead body before doctor in KDA, hospital, Kohat.

Amjid Hussain S.I.(PW18) stated that he is marginal witness to the recovery memo already Ex PW 5/1 vide which the then SHO Mazhr Jehan while made entry in the Imam Bargah, arrested accused facing trial namely Syed Ghazanfar Ali Shah alongwith Repeater, Syed Abid Ali Shah alias Bablu alongwith K.K, Syed Haider Ali Shah alongwith Kalakove, Syed Muhrram Ali Shah with Rifle 8mm Brengun with live rounds as mentioned in the recovery memo having fresh smell of discharge from each of the barrels of the weapons and took into possession, sealed into separate parcels as mentioned in the recovery memo.

Likewise vide the same recovery memo the then SHO Mazhar Jehan also recovered from the residential room of Mazhar Ali Shah one rifle semi

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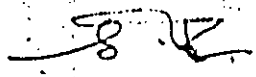
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Judge (FC) /
Resident

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automatic, shot gun double barrel, two rifle 7mm, shot gun double barrel, one revolver, one pistol .30 bore, alongwith spare charger and 18 live rounds and two bandoliers, .30 bore pistol with fixed charger, .30 bore without charger, pistol 22 bore, bandolier 25 live rounds of 12 bore, 44 Nos cartridges of 455 bore, and 200 live rounds of 7.62 bore as mentioned in the recovery memo already exhibited on 6.12.2014 as Ex PW 5/1. The recovery memo is correct and correctly bear his signature. His statement was also recorded by the I.O. U/S 161 Cr.P.C.

Razim SI(PW19) stated that on the day of occurrence he alongwith the I.O. Ibrahim Ullah Khan Inspector proceeded to the spot wherein in his presence the I.O. took into possession blood through cotton from place of deceased constable Noor Muhammad Ex P-24, from the place of deceased Khir Ur Rehman Ex P-25, injured Arshad Ex P-26, Munir Ahmad Ex P-27, and Abdullah Ex P-28. Similarly in his presence the I.O. also


Judge ATC-3
Peshawar.

ATTESTED


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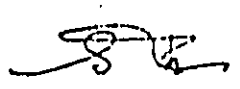
took into his possession 5 empties of 12 bore Ex P-29 from the place of accused Ghazanfar Ali Shah, 14 empties of 7.62 bore from the place of accused Abid Ali Shah Ex P-30, 13 empties of 222 bore from the place of accused Haider Ali Shah Ex P-31, 5 empties of 8 mm Ex P-32 from the place of accused Muhrram Ali Shah and the same were sealed into separate parcels in his presence through recovery memo Ex PW 19/1. Similarly, in his presence I.O., took into his possession the garments of deceased and injured which were produced by constable Yousaf Zaman, the same were sealed into four separate parcels which are Ex P-33 to Ex P-36 vide recovery memo Ex PW 19/2. Similarly in his presence, on 2.12.2013, accused facing trial while in hand cuffs in an official vehicle pointed out the different places where they were standing at the time of occurrence. The memos are correct and correctly bear his signatures.

Ibrahim Ullah Inspector/
I.O.(PW20) stated that during the days

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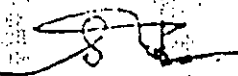
Judge
Peshawar

of occurrence, he was posted as incharge Circle Investigation Officer City, Kohat. After receiving the information regarding the registration of the present case. He came to P.S., from Rescue-15, and the case FIR was handed over to him. He proceeded to the spot alongwith Investigation Staff as a Joint Investigation Team was already constituted. He prepared the site plan Ex PB at the instance of complainant Mazhar Jehan the then SHO P.S. City. During spot inspection, he obtained blood through cotton from the places of deceased constable Noor Muhammad, Khiar ur Rehman, Arshid, and injured, Munir Ahmad and Abdullah. Vide recovery memo already Ex PW 19/1 and sealed the same in separate parcel in the presence of its marginal witnesses. Similarly, he also took into possession from place of accused Ghazanfar Ali five empties of 12 bore, from place of accused Syed Abid Ali Shah 14 empties of 7.62 bore, from place of accused Haider Ali Shah 13 empties of 272 bore, and


 Judge
 Peshawar.

ATTESTED


from the place of accused Muhrram Ali Shah 5 empties of 8mm were recovered and sealed the same into different parcels in the presence of its marginal witnesses vide recovery memo already Ex PW 19/1. He also recorded the statements of PWs U/S 161 Cr.P.C. Vide recovery memo already Ex PW 19/2, he took into possession blood stained garments of deceased constable Noor Muhammad uniform consisting of black shirt, black sweater, khaki patloon. One another blood stained shirt of injured Munir Ahmad. One shalwar of khar(grey) color which was blood stained belonging to deceased Khair Ur Rehman. Similarly, he also took into his possession blood stained shalwar and Qameez of the then injured Arshad which were produced by Yousaf constable, he sealed the same into different parcels in the presence of its marginal witnesses. Vide his application Ex PW 20/1, he sent the recovered empties, and case property to the fire arm expert, the receipt of which is Ex PR/1, and the report of the same


Judge AFO-1
Peshawar


ATTESTED


placed on file which is Ex PW 20/2 (consisting of two sheets).

Similarly, vide his application Ex PW 20/3, he also sent the recovered blood stained garments alongwith blood stained cotton of deceased and injured to FSL, the report of which is placed on file Ex PW 20/4. Receipts of which is Ex PR. Likewise, he also took photographs of the different places of the place of occurrence and placed on file consisting of sixteen in number which is Ex PW 20/5. Vide his application Ex PW 20/6, he produced all accused facing trial for obtaining their police custody, and the court concerned granted fourteen days police custody. He interrogated the accused. He recorded their statements U/s 161 Cr.P.C., they admitted their guilt.

The accused facing trial led the police party to the place of occurrence and pointed out different places where they were present at the time of occurrence, the pointation memo is already Ex PW 19/3, and he made entry


ATTESTED


Judge A.C.1.
Peshawar.

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in the site plan with the red ink which is Ex PW 20/7.

He also placed on file P.M reports of the deceased, and similarly the MLC reports of the injured. Vide his application Ex PW 20/8 for obtaining mobile data of accused facing trial to the quarter concerned and the mobile data placed on file is Ex PW 20/9 (consisting of Eighteen sheets). According the Ex PW 20/9, the location of accused facing trial at the relevant time was established at the place of occurrence. He also produced the injured persons Munir Ahmad and Adullah vide my application Ex PW 20/10 for recording their statements U/S 164 Cr.P.C., in the court of *Illaga* Judicial Magistrate, their statements are placed on file which are Ex PW 20/11 to Ex PW 20/12. He also recorded the statements of the legal heirs of the deceased U/S 161 Cr.P.C. Vide his application Ex PW 20/13, he got recorded the statements of legal heirs of deceased namely Din Muhammad Shah brother of deceased


Judge ATC-I
Peshawar.

ATTESTED


Noor Muhammad, Mr. Numan F/O deceased Khair Ur Rehman, Wahid Zadeen brother of deceased Arshad U/S 164 before the court of Illaqa Judicial Magistrate vide Ex PW 20/14. He also got recorded the statements of the shopkeepers adjacent the place of occurrence U/S 161 Cr.P.C. After the expiry of police custody of accused facing trial, he produced them before the Illaqa Judicial Magistrate for their confessional statements vide his application Ex PW 20/15, but they did not confess their guilt and, the concerned court sent them to judicial lockup. During investigation, he sent application to the concerned authority for verification of arm licences of accused facing trial issued in the name of Syed Muharram Ali Shah for 222 bore and 8mm rifle, the report of which is placed on file, and the same is Ex PW 20/16. He also placed on file the daily diary No.10 dated 17.11.2013 through which one Wajid Nazeer reported that when he was coming, the accused Abid


 Judge
 Perawan

ATTACHED


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Ali Shah, Waqar, Asad, Ali Haider and five other un-known persons assaulted him which is Ex PW 20/17. Similarly he also placed on file the Daily Diary Nos.3,4 and 5 dated 18.11.2013, regarding arrival and departure of ASI Nazar Abaas P.S. City regarding producing one of the accused Syed Abid Ali Shah before the court who was challenged U/S 107 Cr.P.C., to the concerned court, and returned back of the concerned ASI after he was released on bail by the concerned court which are Ex PW 20/18. The timing of arrival and departure is mentioned in the Daily Diary. All the case property of the present case had already exhibited. All the documents are correct and correctly bear his signatures.


Judge ATC-I
Peshawar.

Gul Shehzada SI, LRH(PW21) stated that on 18.11.2013., one Arshad Zareen S/O Sher Zareen aged about 22/23 years R/O Kohat who was brought in injured condition to L.R.H., Peshawar as he was referred from Kohat hospital. He was admitted in Surgical Ward,

ARRESTED

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however he succumbed to his injuries on the same day i.e. at night time. He has prepared his injury sheet and inquest report which are Ex PW 21/1 & Ex PW 21/2 respectively. Today he has seen both the documents which are correct and correctly bear his signatures.

Akbar Shah S.I.(PW22) stated that during the days of occurrence he was posted at P.P., political sarai cantt, Kohat. He prepared the injury sheets of injured Munir Ahmad, Abdullah and Arshad of the present case which are Ex PW 22/1 to Ex PW 22/3. The documents are correct and correctly bear his signatures.

Judge
Peshawar

10. After the close of prosecution evidence, accused facing trial were examined U/S 342 Cr.P.C. in which they opted not to be examined on oath nor wish to produce any defence evidence, and professed that they are innocent and falsely charged in the present case.
11. After close of prosecution evidence and statement of accused recorded U/S 342 Cr.P.C., it transpires to the undersigned that due to clerical mistake formal charge in the instant case has wrongly been

ARRESTED

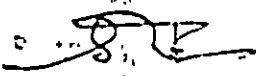
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framed. So on 01/09/2015 afresh charge was framed after close of prosecution evidence and statement of accused recorded U/S 342 Cr.P.C. Both the prosecution and defence counsel relied on the already recorded evidence and statement of accused U/S 342 and in this regard their joint statement recorded, placed on file.

12. I had already heard the arguments of the learned Prosecutor for the state and counsel for the defence.

13. Learned PP for the state assisted by learned counsel for injured private PWs and legal heirs of three deceased contended in their arguments that all the accused facing trial Syed Muharram Ali Shah, Syed Ghazanfar Ali Shah, Syed Abid Ali Shah and Syed Abid Ali Shah are directly charged in the FIR for the cold blood murder of constable Noor Muhammad, Khair ur Rehman and Arshad. They are further charged for effective firing at Muhammad Munir and Abdullah (PWs). They are further charged for firing at the police party.

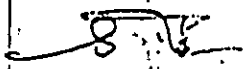
14. During the trial all the PWs had supported story of the prosecution. There is no major contradictions in their statements, nor their statements are based on any improvements.


Judge A.F.C.-1
Peshawar

ADMITTED

The FSL report and P.M. reports placed on file fully supports story of the prosecution. Stamp of injuries on the injured PWs further strengthen case of the prosecution. The site plan also supports story of the prosecution. So in these circumstances the prosecution had proved its case beyond shadow of doubt. Thus all the four accused mentioned above be convicted for charges leveled against them.

15. In rebuttal, learned counsel for defence contended in his arguments that in the present case time of occurrence is shown as 1200 hours and the time of report has shown as 1400/1500 hours, therefore, there is an un-explained delay in lodging the report. He further contended in his arguments that there is major contradictions in the statements of all the PWs. The two eye witnesses Akhter Abbas No.32 P.S. Usterzai(PW2) and Zeeshan Ali No. 500 Police Lines Kohat had not uttered a single word to the effect that they saw all the accused facing trial firing at the police party as well as on the mob. The learned counsel for defence further contended in his arguments that medical evidence also does not support the story of the prosecution. It is not in line with the ocular


Judge
Peshawar.

APPEAL

evidence because the Post Mortem report of all three deceased reveals that there is one entry wound. A lot of empties were recovered from the spot and the prosecution alleged that all accused facing trial fired indiscriminately. He further contended in his arguments that the injured witnesses(PW 6 & 7) had not identified accused facing trial, but later on they charged accused facing trial in their statements recorded U/S 161 and 164 Cr.P.C., and they had charged them after due satisfaction. The I.O. failed to conduct Identification Parade from these injured witnesses in respect of all accused facing trial. He further contended in his arguments that the site plan Ex PB also does not support story of the prosecution. So in these circumstances prosecution had miserably failed to prove its case against all the accused facing trial. Thus benefit of doubt be extended to accused facing trial and they be acquitted from the charges leveled against them.

[Signature]
 Judge AFO-1
 Resthawan

16. The prosecution case rests on the following categories of evidence:-

- (i) Ocular testimony furnished by Akhter Abbas LHC(PW2) and Zeeshan Ali constable No.500(PW3), Mazher Jehan

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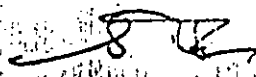
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Inspector/complainant(PW5) and Lal Farid DSP(PW10)

- (ii) Injured PWs namely Muhammad Munir (PW6) and Abdullah(PW7).
- (iii) P.M. reports Ex PW 13/1, Ex PW 14/1 & Ex PW 14/2, FSL report Ex PW 20/1, Ex PW 20/2, Ex PW 20/3, Ex PW 20/4 and site plan Ex PB.
- (iv) I have given my anxious thoughts to the arguments of learned counsels for the parties.

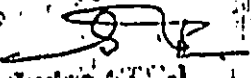
17. According to story of the prosecution on the tragic day i.e. 18.11.13., due to the incident of clash between two sects at Rawalpindi, on that very day there was a procession of Sepah-e-Subha. That very procession of Sepah-e-Subha from Tehsil Gate to King Gate(Fisal Gate). On reaching the King Gate, they made a sit in(Dhrana). One Sahil Mayvia leader of Sepah-e-Subha accompanied by Khawaja Muhammad made speeches. During their speeches, they demanded that a horse standing in front of Imam Bargah Syed Habib Shah be removed. He was informed by DSP Lal Farid Khan that


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some young chaps of the said procession are coming towards the Chapper where the horse is standing alongwith sticks. The young chaps were emotional, so on his stopping, they have not stopped and went towards the said Chapper. He alongwith DSP Lal Farid and other police contingents rushed to stop the young chaps. during this time, accused Muharram Ali Shah raised a Lalkara from the top of the boundary wall of the Imam Bargh of Syed Habib Shah. In the meanwhile, accused Muharram Ali Shah, Haider Ali Shah, Abid Ali Shah and Ghazanfar Ali Shah (accused facing trial) started firing at them. As a result of the said firing he and Lal Farid DSP escaped un-hurt, while gunner/constable Noor Muhammad of DSP Lal Farid and constable Khair Ur Rehman sustained serious injuries and died on the spot. Three persons namely Arsahd S/O Shez Ali, Munir Akbar S/O Khista Gul and Abdullah S/O Muhammad Khalid sustained injuries from the said firing of accused facing trial. He ordered the


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police personnel on the spot to take the injured and dead body to the hospital for treatment and autopsy. He cordoned the spot. Later on the contingent of Pakistan Army and lady constable reached the spot, thereafter they entered the said Imam Bargah and overpowered all accused facing trial.

18. In the present case there are two set of witnesses. The first set is of police witnesses who are also eye witnesses in the present case. The second set is of injured PWs.

19. First of all I will discuss the set of eye witnesses.

20. (PW5) Mazher Jehan admitted in his statement that five police personnel were guarding Imam Bargah. During the trial the police guards who were guarding the Imam Bargah Akhtar Abbas and Zeeshan Ali were examined by the prosecution as (PW2) and (PW3). Akhter Abbas was examined in the court as (PW2) stated before the court during the days of occurrence he was posted as guard Commander of Imam Bargah Syed Habib Shah. At about 12 noon a procession

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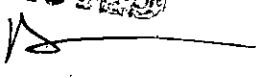
Judge
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of about 40/50 persons with laties were approaching towards Imam Bargah and they raised slogans against Shia sect. When the procession passed his point then firing started and the procession dispersed. Once the firing stopped they saw two dead bodies one of police man and another of a private person. He saw one injured as well as the dead body and injured were shifted to the hospital.

21. This witness further stated in his cross examination that it is correct that Muharram Ali Shah has left the Imam Bargah in the morning of 18.11.2013. He has not seen Muharram Ali Shah returning to Imam Bargah before the occurrence.

22. Zeeshan Ali No. 500 examined in the court as (PW3) stated in his examination in chief that during the days of occurrence he was posted as guard of Imam Bargah Syed Habib Shah. On the eventful day, he was present at his duty in the meanwhile a procession duly armed with daggers and laties. And upon reaching the procession started firing near the Imam Bargah. And he took shelter and noticed that the fire was coming from


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all four sides. As a result of firing the procession dispersed and he saw two dead bodies one of police official and one of private person and the other police contingent reached to the spot and shifted them to the hospital.

23. So in these circumstances I hold that these witnesses are natural witnesses and were present at the time of place of occurrence but they have not uttered a single word about the accused facing trial.

24. Mazhar Jehan, Inspector/Complainant (PW5) further stated before the court during the trial that he handed over all the accused and ammunitions recovered to Peshawar Khan Additional SHO for onward transmission to the P.S.

25. Mazhar Jehan (PW5) further stated that he sealed the weapons recovered from the possession of accused facing trial. This stance of this witness is again negated by (PW1) Syed Abdullah ASI. When he received the murasita he incorporated into FIR. In cross examination he stated that when Peshawar Khan Additional SHO (abandoned PW) brought the case property and accused

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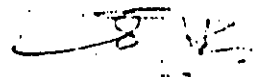
facing trial to the P.S., he kept the case property in an un-sealed condition in the *Mall khana* of the P.S., which was required for examination. He further stated in his cross examination that case property might have been sealed after Armourer examination by the I.O. He then admits that he was incharge of Register 19 and the I.O. took the case property on 22.11.2013 and returned to him after sealing it.

26. So in these circumstances the possibility can not be ruled out that the I.O. himself later fired through planted weapons and sent the empties alongwith weapons to FSL to procure the positive report. This positive report has been fabricated against the accused facing trial even otherwise positive report of Fire Arm Expert is only a corroborative piece of evidence and by itself is not considered sufficient for conviction when ocular evidence is discarded.

27. Perusal of the statements of Mazhar Jehan Inspector (PW5) and Lal Farid DSP(PW/10), their statements are full of contradictions and improvements, and according to the

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statements of (PW2) Akhter Abbas and (PW3) Zeeshan Ali, their presence i.e. PW-5 Mazher Jehan Inspector/complainant and PW-10 Lal Farid DSP at the time of place of occurrence is highly doubtful because these witnesses had not uttered a single word to the effect that PW-5 Mazhar Jehan Inspector and Lal Farid (PW10) were present at the time, place and firing by the accused facing trial.

28. Perusal of the record reveals that Peshawar Khan ASHO was abandoned un-necessary by the prosecution and adverse inference has drawn against the prosecution that Peshawar Khan ASHO being examined he would have not supported the version of the prosecution story. As the prosecution challenged the arrest of accused facing trial from the place of occurrence and recovery of weapons from their possession, then Peshawar Khan ASHO was an important witness for the case of the prosecution.

29. Now I will discuss the two injured witnesses.

Presence of injured witnesses can not be challenged, however it is testimony which requires scrutiny whether they are telling


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the truth or not? The two injured witnesses in present case are Muhammad Munir and Abdullah. They were examined during trial as PW6 and PW7 respectively. Muhammad Munir(PW6) remained in the hospital for two days and Abdullah (PW7) for one day. As per their replies in cross examination statements of both of them were recorded on 26.11.2013.. at a belated stage. If they had received injuries in the manner as depicted by them then question of identity of the accused arises. Both witnesses have charged the accused facing trial by name in their depositions in this court. However, when Investigating officer (I.O being king of every case) of the case, PW-20, Ibrahim Ullah Inspector was confronted with the statements recorded by him U/S 161 Cr.P.C., and later their production for statements U/S 164 Cr.P.C., before the learned Magistrate, both the injured witnesses had stated they had charged them only after due satisfaction. Now, if a person/accused is not known to one, then holding of Identification Parade is essential to arrive at the correct identity of any of

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accused. In the instant case the injured witnesses and the I.O. PW20 have admitted that no such exercise was conducted. The I.O., so boldly replied during cross examination on page 36(10th line from the top) "*That he has already placed on file the photographs of accused facing trial, therefore, it was not necessary to conduct the same*". The I.O. of the case has scant regard to the well settled principles of law governing the subject laid down by the Superior Courts. This by itself speaks of the dishonest investigation carried out against the accused facing trial, their later implication in the case, fabrication of evidence against them. Even the legal heirs of the deceased namely Wahid Zadin, Nauman and Din Muhammad Shah, who are examined as PW8, PW9 and pW16 respectively, have admitted in their cross examination that they charged the accused facing trial after their arrest and when police showed them the names.

30. So in these circumstances I hold that the two injured PWs namely Muhammad Munir and Abdullah (PW6) & (PW7) had not

identified all the four accused facing trial at the time and the place of occurrence.

31. Perusal of the record further reveals that the I.O., failed to conduct the Identification Parade of these two PWs i.e. (PW6) & (PW7) from all accused facing trial.

32. I.O., of the case Ibrahim Ullah Inspector examined in the court as (PW20) stated in his cross examination that he has recorded the statements of shopkeepers Farid Ahmad, Yaseen, Rehan, Haq Nawaz, Shuja and Muhammad Anwar U/S 161 Cr.P.C. The shops are situated on the left gate of Imam Bargah. In the said statements of the PWs firing are mentioned, but the names of the accused are not mentioned. Therefore, I hold that they were natural witness of the occurrence.

33. As far as medical evidence is concerned also does not support the story of the prosecution because medical evidence is and considered always as confirmatory nature of evidence. In the instant case the medical evidence has negated and belied the ocular account. All the victims of the case have received solitary wound each. If

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accused Ghazan Ali Shah is shown armed with a short-gun (Repeater) in the report and keeping in view the distance between his point and the targets, by stretch of imagination can a repeater cause such fatal injury to any of the victims. As far as deceased are concerned, no exit can be made by a pellet fire from such a distance. Injured Munir, PW6, says that he received injury from the firing from the boundary wall of the Imam Bargah. Now four accused are shown in the site plan at the boundary wall of the Imam Bargah. Still this injured witness has not named a single accused when cross examined that who was firing from the boundary wall.

34. Another astonishing aspect of the case is the locale of injury on the person of the injured deceased namely Arshad Khan. He has received the entrance wound at left inguinal region and its exit at right renal area, as per his examination by PW12, Dr. Sajjad Rauf. Now, the injury seems and is a result of through and through firing. This injury can in no way be caused by firing a roof top. Inference is, this injury was

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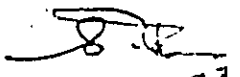
sustained only when firing was made by anyone standing or posted on the road.

35. PW 5 Mazher Jehan Inspector/Complainant of the case admitted in his cross examination that the site plan Ex PB was prepared at his pointation to the extent of dead bodies only. Then question arises who then showed the places where accused were present, where injured were present and the police party. In the site plan Ex PB first all the accused facing trial are shown at Point No.7,8,9, & 10 respectively. However, to justify the recovery from roof top of Mazher Ali Shah house, later two accused are shown at Points No.A and 10A. Strangely neither in the murasila nor in the statement of Mazher Jehan (PW5) he stated any thing about firing from points No.A and A10. Therefore I hold that site plan Ex PB also does not support story of the prosecution.

36. There is also un-explained delay of lodging of FIR by the prosecution and the delay has not been explained in the murasila nor in the evidence.

37. As discussed above and according to statements of (PW2) and (PW3) the presence of Mazher Jehan complainant of the case (PW5) and Lal Farid DSP(PW10) are highly doubtful and injured PWs Muhammad Munir(PW6) and Abdullah(PW7) had not identified all the accused facing trial at the time of firing.

38. As a result of my above discussion I hold that the prosecution had failed to prove its


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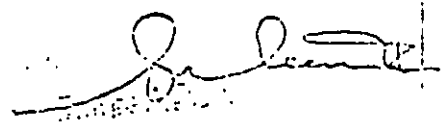
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case against all the accused facing trial Syed Muharram Ali Shah, Syed Ghazanfar Ali Shah, Syed Abid Ali Shah and Haider Ali Shah. Thus the benefit of doubt is extended to all of them, and they are acquitted from the charges leveled against them. They are in custody, they be released forthwith if not required in any other case.

- 39. Case property if any be kept intact till the expiry of period of appeal/revision.
- 40. Attested copy of this judgment be given to the learned PP free of cost.
- 41. File be transmitted to the Hon'ble Peshawar High Court, Peshawar U/S 25 of the ATA-1997.

ANNOUNCED
Dated:- 7.10.2015

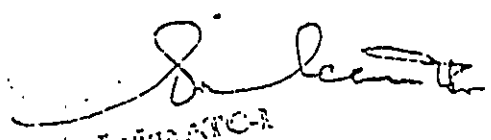


(SALEEM JAN)
Judge
Anti-terrorism Court-
I/Camp Court Central Jail,
Peshawar.

CERTIFICATE

Certified that, this Judgment consists of Fourtyseven(47)pages. Each page is checked and signed by me.

Dated:-7.10.2015 -



(SALEEM JAN)
Judge
Anti-terrorism Court-
I/Camp Court Central Jail,
Peshawar.

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VAKALAT NAMA

NO. _____/20

IN THE COURT OF KPK Service Tribunal Peshawar

Akhtar Abbas

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Department

(Respondent)
(Defendant)

I/We Akhtar Abbas (Appellant)

Do hereby appoint and constitute **M.Asif Yousafzai, 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 costs.

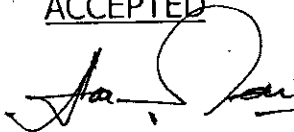
I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20




(CLIENT)

ACCEPTED




M. ASIF YOUSAFZAI
Advocate


(TAIMUR ALI KHAN)
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

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