

Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 55 /2024

S.No.

Date of order proceedings

Order or other proceedings with signature of judge

1

2

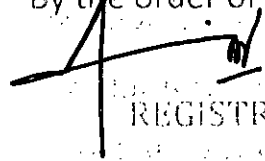
3

1

09.01.2024

The implementation petition of Mr. Mehsam Ali submitted today by Mr. Hassan U.K Afridi Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. Parcha Peshi is given to the counsel for the petitioner.

By the order of Chairman


REGISTRAR

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Case Title: Mehsam Adi CHECK LIST v/s LGP KPK

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: _____	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	x	✓
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On _____	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	✓	
26	Whether copies of comments/reply/rejoinder submitted? On _____	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Hassan UK Asidi

Signature: _____

Dated: 9-1-2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution petition No. 55 /2024

In

Service Appeal No.1273/2017

Mehsam Ali S/o Raiz Ali,

R/o Ustarzai, Kohat (Constable No.1192)

.....**Appellant/Applicant**

V E R S U S

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar & others.....**Respondents**

I N D E X

S#	Description of Documents	Annex	Pages
1.	Execution petition with affidavit		1-3
2.	Application for condiation alongwith affidavit		4-6
3.	Copy of judgment	A	7-12
4.	Letter dated 27.07.2020	B	13
5.	Reinstatement order	C	14
6.	Application	D	15
7.	Judgment of Session Judge, Peshawar dated 13.10.2022	E	16-50
8.	Judgment of Peshawar High Court dated 28.02.2023	F	51-58
9.	Judgment of Session Judge Peshawar dated 16.09.2023	G	59-86
10.	Wakalatnama		87

Through Appellant

Dated 09.01.2024

Hassan U.K Afridi
Advocate Supreme Court
Cell No.0300-9151963

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution petition No. 55/2024
In Service Appeal No.1273/2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 10454

Dated 09-1-2024

Mehsam Ali S/o Raiz Ali,
R/o Ustarzai, Kohat (Constable No.1192)
District Police Kohat.....**Appellant/Applicant**

V E R S U S

1. Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar
2. Deputy Inspector General of Police, Khyber
Pakhtunkhwa, Peshawar
3. District Police Officer, Kohat.....**Respondents**

**APPLICATION FOR IMPLEMENTATION/
COMPLIANCE OF JUDGMENT/ORDER OF
THIS HON'BLE TRIBUNAL VIDE DATED
01.07.2020**

Respectfully Sheweth:-

1. That the applicant/appellant has filed service Appeal before this Hon'ble Tribunal, which was decided in favour of applicant vide judgment dated 01.07.2020. **(Copy of judgment is attached).**
2. That the applicant/appellant was reinstated but the intervening period has treated as un-authorized

leave without pay, which is without jurisdiction and illegal.

- 3. That the applicant/appellant then filed application for compliance of the order of this Hon'ble Tribunal but in vain.
- 4. That the respondent turn deaf ear and not interested to implement the judgment of this Hon'ble Tribunal.
- 5. That some other ground may be adduced at the time of arguments with the permission of this Honourable Court.

It is, therefore most humbly prayed that on acceptance of this application the respondents may kindly be directed to implement the judgment dated 01.07.2020 of this Hon'ble Tribunal and awarded the back benefit from 05.04.2017 to 27.07.2020.



Appellant

Through

Hassan U.K Afridi

Advocate Supreme Court

Dated 09.01.2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution petition No. _____/2024
In
Service Appeal No.1273/2017

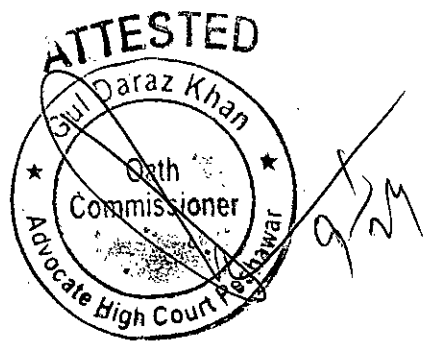
Mehsam Ali S/o Raiz Ali,
R/o Ustarzai, Kohat (Constable No.1192)
.....**Appellant/Applicant**

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar & others.....**Respondents**

AFFIDAVIT

I, Mehsam Ali S/o Raiz Ali, R/o Ustarzai, Kohat
(Constable No.1192), do hereby solemnly affirm and
declare on oath that the contents of the accompanying
Execution petition are true and correct to the best of my
knowledge and belief and nothing has been concealed
from this Hon'ble Court.



Mehsam Ali
DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M.No. _____/2024
in Execution petition No. _____/2024
In
Service Appeal No.1273/2017

Mehsam Ali S/o Raiz Ali,
R/o Ustarzai, Kohat (Constable No.1192)
.....**Appellant/Applicant**

V E R S U S

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar & others.....**Respondents**

APPLICATION FOR CONDONATION OF

DELAY IF ANY

Respectfully Sheweth:-

1. That the execution petition has being filed before this Hon'ble Tribunal with the present application, which has bright chance to succeed.
2. That the appellant/applicant was behind the bar in one criminal case from 13.10.2020 till 28.02.2023 for the reason, the present execution petitioner has been filed after three years.
3. That the delay to file execution petition is not intentional.
4. That there is no legal bar in the way, for execution/ compliance of the judgment of Hon'ble Tribunal.

5. That some other ground may be adduced at the time of arguments with the permission of this Honourable Court.

It is therefore humbly prayed that on acceptance of this application, the delay to file execution petition, if any, may kindly be ordered to condone.

Muzam Ali

Appellant

Through

Hassan U.K Afridi

Advocate Supreme Court

Dated 09.01.2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M No. _____/2024
in Execution petition No. _____/2024
In
Service Appeal No.1273/2017

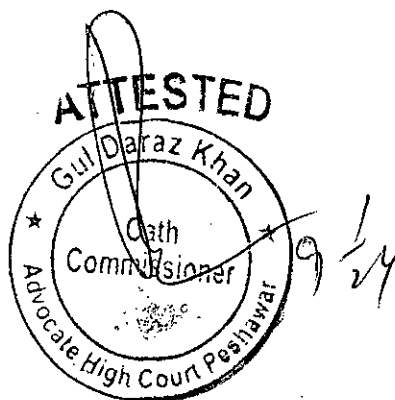
Mehsam Ali S/o Raiz Ali,
R/o Ustarzai, Kohat (Constable No.1192)
.....**Appellant/Applicant**

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar & others.....**Respondents**

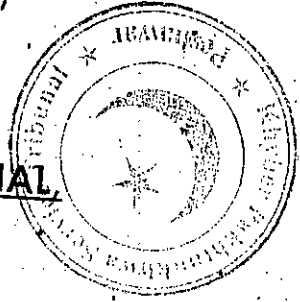
AFFIDAVIT

I, Mehsum Ali S/o Raiz Ali, R/o Ustarzai, Kohat (Constable No.1192), do hereby solemnly affirm and declare on oath that the contents of the accompanying **condonation of delay** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Mehsum Ali
DEPONENT

7 - Answer



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 1273 /2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1313

Dated 15-11-2017

Mehsam Ali S/o Raiz Ali,
R/o Ustarzai, Kohat (Constable No.1192).....Appellant

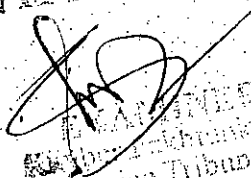
V E R S U S

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police, Kohat
3. District Police Officer, Kohat.....Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER
 PAKHTUNKHWA SERVICE TRIBUNAL ACT,
 1974, AGAINST THE IMPUGNED ORDER OF
 DISMISSAL OF THE APPELLANT FROM
 SERVICE OF THE RESPONDENT NO.3
 DATED 04.05.2017, WHEREBY THE
 REPRESENTATION/DEPARTMENTAL APPEAL
 OF THE APPELLANT WAS UNANSWERED,
 AND REVISION FILED BY THE APPELLANT,
 VERBALLY REJECTED ON 18.10.2017
 WHICH ARE AGAINST LAW AND JUSTICE
 AND LIABLE TO BE SET ASIDE.

Filed to-day
 Registrar
 15/11/17

ATTSTED

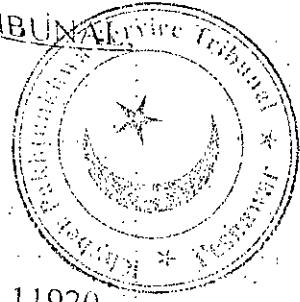
ATTESTED

 REGISTRAR
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service appeal No. 1273/2017

Date of institution 15.11.2017

Date of decision 01.07.2020



Mehsam Ali S/O Raiz Ali, R/O Ustarzai, Kohat (Constable No.11920

(Appellant)

VersusInspector General of Police, Khyber Pakhtunkhwa, Peshawar and two (02)
others.

(Respondents)

PresentMr. Hassan U.K Afridi,
Advocate

For appellant.

Mr. Muhammad Jan,
Deputy District Attorney

For respondents.

MR. HAMID FAROOQ DURRANI,
MR. MIAN MUHAMMAD,CHAIRMAN
MEMBER(E).JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

The appellant was appointed as Constable in the Police department on 06.07.2007 and started performing his duty in District Kohat. One Mst. Farheen Shah lodged an FIR U/S 302 PPC etc. on 26.02.2017 regarding the murder of her sister. The accused therein did not include the appellant but, subsequently, he was charged in a statement of complainant recorded U/S 164 Cr. P.C. on 14.02.2017. The appellant was arrested and was enlarged on bail on 05.05.2017. Upon the conclusion of trial the appellant, alongwith other accused, was acquitted by a court of competent jurisdiction on 21.9.2019. The respondents, in

ATTESTED

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

the meanwhile, started departmental proceedings against the appellant on account of his nomination in the FIR and ultimately the impugned order dated 04.05.2017 was passed, whereby, the appellant was imposed upon penalty of dismissal from service with immediate effect. A departmental appeal was preferred on 16.05.2017 which remained unanswered and consequently a Petition under Rule 11-A of the Khyber Pakhtunkhwa Police Rules, 1975, was submitted before respondent No.1 on 10.09.2017. It is the version of appellant that his Petition was decided in negative on 18.10.2017 while he was verbally conveyed the order. The appeal in hand was thereafter filed on 15.11.2017.

2. We have heard learned counsel for the appellant, learned DDA on behalf of respondents and have gone through the available record.

3. It was contended on behalf of the appellant that the respondents failed to conduct a regular inquiry against the appellant. He was not handed over Show Cause Notice nor the copy of inquiry report. He referred to the statement of Mst. Farheen Shah, Complainant of FIR, and stated that the implication of appellant was a result of after thought Eight (08) days from the alleged occurrence. This fact clearly demonstrated that there was element of malafide against the appellant. It was further argued that in the impugned order there was a mention of past conduct of the appellant which was not to be made basis of penalty in questioned order under the law.

While defending the case of appellant on the count of delay, as pressed into service by the other side, it was stated that the delay was not willful but due to non attending of departmental appeal of the appellant. The appellant, therefore, submitted a Petition under Rule 11-A of Rules ibid upon completion of period of Ninety (90) days and within a further period of Thirty (30) days. Learned counsel relied on judgments reported as 1999 SCMR 166, 998 PLC

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED


(C.S) 1430, 2003 PLC (C.S) 514, PLD 2000 Supreme Court 94 and 2010 PLC (C.S) 435.

4. On the other hand, learned DDA, while pressing the delay in submission of appeal argued that the appellant did not approach the proper forum in time. As the departmental appeal of appellant was not decided he was barred from approaching the respondents No.1 through Petition under Rule 11-A of the Rules ibid. It was also the argument of learned DDA that the proceedings against the appellant were conducted in accordance with rules and he was provided with every opportunity to cross examine the witnesses appearing before the inquiry officer. He relied on judgments of this Tribunal handed down in Service Appeal No. 189/2015 and 458/2017.

5. We have thoroughly considered the record as submitted by the parties before this Tribunal.

Dealing firstly with the issue of delay in filing the appeal/petition, it is gatherable from record that the departmental appeal was preferred by the appellant on 16.05.2017 against the impugned order dated 04.05.2017. There is copy of a memorandum No. 9678-84 dated 17.10.2017, whereby, at least Twenty Eight (28) officials, including the appellant, were required to appear before the RPO, Kohat on 18.10.2017 in connection with their departmental appeals/application. The proceedings consequent to the issue of memo are not available on record. In the meanwhile, the appellant submitted a petition to the respondent No.1 under Rule 11-A of the Rules ibid considering the forum to be next available. Under Sub Rule 11(1) of Rules ibid the Inspector General, Additional Inspector General, Deputy Inspector General of Police or a Senior Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same or make further

ATTESTED


 ATTESTOR
 Khayal Ahmad
 Service Tribunal,
 Peshawar

ATTESTED



investigation or direct such to be made before passing orders. In the circumstances, the delay on the part of appellant, if any, is worth condonation and is accordingly condoned. Reliance is placed on PLD 2000 Supreme Court 94 and 2010 PLC (C.S) 435.

6. Attending to the other aspect of the case it is abundantly clear that the departmental proceedings against the appellant were not free from malafide on the part of police officials at the helm of affairs. In that regard, the statement of Mst. Farheen Shah/Complainant recorded during the trial as PW2 is worth consideration. It was categorically stated by her that in statement recorded U/S 164 Cr.PC she had charged the accused at the instance of local police after delay of Eight (08) days. It was also added that she was not present on the spot at the time of occurrence and there was no eye witness to the commission of offence. Needless to re-attribate that the appellant was acquitted from the charge.

There is another element of visible malafide on the part of respondents in Quarter Guarding the appellant on 13.02.2017 at 1320 hours when he reported back for duty after availing three (03) days leave. The detention of appellant was one (01) day before the complainant even charged him through her statement recorded U/S 164 Cr.PC.

7. The record bespeaks of another FIR recorded against the appellant on 24.03.2014, at police station Ostarzai Kohat U/S 302/34 PPC. The appellant was consequently suspended from service and an inquiry was conducted against him. The inquiry officer then recommended that the inquiry may be ordered to be kept pending till the decision of the case from a court of law to meet the ends of justice. The appellant was, thereafter, reinstated from the date of suspension through order No.15293-99 dated 17.10.2014. During the inquiry in the case in hand, the appellant duly requested to keep the proceedings pending till decision

ATTESTED

EX-MINISTERS
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

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of the case from the court of law. This fact is clearly noted in the inquiry report. The competent authority, however, did not consider the request of appellant and proceeded to conclude the disciplinary proceedings. It is not understandable why in two different cases of similar nature the appellant was dealt with distinctly without assigning any valid reason(s).

8. For what has been discussed above instant appeal is allowed as prayed for.

Parties are left to bear their own costs. File be consigned to the record room.

SD/
(Mian Muhammad)
Member (E)

SD/
(Hamid Farooq Durrani)
Chairman

ANNOUNCED
01.07.2020

Date of Presentation of Application	<u>09/07/2020</u>
Number of Words	<u>2400</u>
Copying Fee	<u>26.00</u>
Urgent	<u>—</u>
Total	<u>26.00</u>
Name of Copyist	<u><i>[Signature]</i></u>
Date of Completion of Copy	<u>13/07/2020</u>
Date of Delivery of Copy	<u>13/07/2020</u>

Certified to be true copy
[Signature]
MEMBER
Service Tribunal,
Peshawar

~~ATTACHED~~

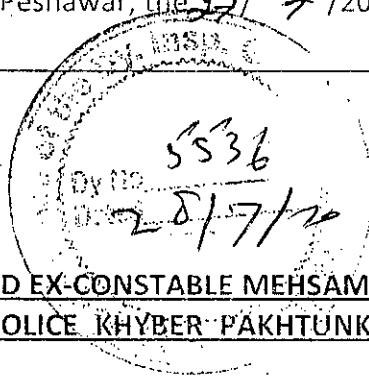
OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

B. Amst

13

No. 3644 / Legal dated Peshawar, the 27 / 7 / 2020.

To: - The Regional Police Officer,
Kohat.



Subject: - SERVICE APPEAL NO. 1273/2017 TITLED EX-CONSTABLE MEHSAM ALI NO. 1192 VS INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA & OTHERS.

Memo:-

Please refer to District Police-Officer, Kohat office Letter No. 7763/LB, dated 03.07.2020, on the subject cited above.

Order/ judgment dated 01.07.2020, passed by Service Tribunal in the instant Service Appeal.

The tribunal accepted the Service Appeal, set aside the impugned order of dismissal of appellant and re-instated him in service. The appellant was charged in murder case, in which he was acquitted from the Court.

The Competent Authority has directed for necessary action.

EC
28/7
DYP/16
For 11/11/2020
District Police Officer,
Kohat 28/7/2020

nr 8036 / Ec
dt 27/7/20
DPO Kohat

AIG/Legal
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
03.07.2020

For n/a as per rules & law. 402 / 30/7/2020

Encls: (Judgment)

SIG POLICE KOHAT

For n/a pl.
3/18

Office of the D.S.P.
Legal, Kohat.
Dy. No. 184
Dated 30-7-20

ATTSTED



C. Ahmad

14

OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT
Tel: 0922-9260116 Fax 9260125

ORDER

In pursuance of Judgment of the Khyber Pakhtunkhwa Service Tribunal dated 01.07.2020, in Service Appeal No. 1273/2017, and approval of the competent authority vide Memo No. 3644/Legal, dated 27.07.2020, Ex: Ex: Constable Mesam Ali No.4192 is hereby re-instated in service from the date of dismissal. The intervening period is treated as un-authorized leave without pay on the principle of "No work No wage".

(JAVED IQBAL) RSP
DISTRICT POLICE OFFICER
KOHAT

9557-95 [unclear] 6.8.2020

Copy of above is submitted for favour of information to the:-

- 1. Director of Public Safety, Kohat
- 2. District Police Officer, Kohat
- 3. District Police Officer, [unclear]
- 4. District Police Officer, [unclear]

(JAVED IQBAL) PSP
DISTRICT POLICE OFFICER
KOHAT

~~ATTSTED~~

15 - D¹ Amul

بھنور جناب ڈپٹی انسپکٹر جنرل آف پولیس کوھاٹ

Departmental Representation

جناب عالی! سائل ذیل عرض کرتا ہے۔

- ۱۔ یہ کہ سائل مورخہ 26-07-2007 کو محکمہ پولیس میں بطور کانسٹیبل بھرتی ہوا۔
- ۲۔ یہ کہ سائل کو بدینتی سے ایک FiR نمبر 37 مورخہ 06-02-2017 بجزم PPC 302 کے تحت چارج کیا گیا۔ اور مندرجہ بالا FIR کی بنیاد پر سائل کو مورخہ 05-04-2017 کو برخواست کیا گیا۔ ک
- ۳۔ یہ کہ سائل نے اپنے برخاستگی کے حکم کے خلاف محکمہ اپیل دائر کی۔ جو کہ خارج ہوئی۔ اور پھر سائل نے سروس اپیل سروس ٹریبونل میں دائر کی۔ جو کہ سائل کے حق میں فیصلہ ہوا۔ اور سائل کو تمام Back Benifit کے ساتھ بحال کیا گیا۔
- ۴۔ یہ کہ اس کے بعد سائل نے مورخہ 14-07-2020 کو درخواست گزاری کہ سائل کو تمام Back Benifit کے ساتھ بحالی کے احکامات جاری فرمائے جائیں۔ لیکن سائل کا حکم صادر ہوا۔ اور سائل کو Back Benifit نہیں دیئے گئے۔

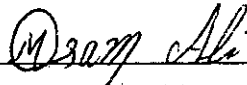
The intervening period is treated as un-authorized leave without pay on the principal of "No work no wage"

جبکہ سروس ٹریبونل کے حکم کے مطابق "appeal is allowed as prayed for" اور Prayer میں سائل نے بحالی کے ساتھ ساتھ ساتھ Back Benifit کی بھی استدعا کی ہے اور قانوناً سائل کو تمام Back Benifit کے ساتھ بحال کرنا چاہیے تھا۔

لہذا استدعا ہے کہ سائل کو سروس ٹریبونل کے حکم کے مطابق تمام Back Benifit دینے کے احکامات صادر فرمائے جائیں۔

نوٹ: سروس اپیل، حکم سروس ٹریبونل مورخہ 01-07-2020 اور حکم DPO صاحب مورخہ 06-08-2020 اور درخواست بحالی گزشتہ مراعات کے ساتھ درخواست ہذا کے ساتھ لف ہیں۔

مورخہ 20-08-2020



میسیم علی نمبر 1192

حال تعینات پولیس لائن کوھاٹ

موبائل نمبر 0334-8298508

ATTSTED

E. A. 16

**BEFORE THE COURT OF MUHAMMAD YOUNAS
SESSIONS JUDGE, PESHAWAR.**

Case No. 02/SC of 2014
Date of Institution in District Kohat: 24/10/2013.
Date of transfer to this court: 25/03/2014.
Date of Decision: 13/10/2020.

State Versus

- 1) Riaz Ali s/o Nadar Ali,
- 2) Maisam Ali s/o Riaz Ali,
- 3) Zulfiqar Ali alias
Bhutto s/o Nadar Ali all
r/o Ustarzai Payan,
Tehsil & District Kohat.
.....(on bail)
- 4) Mazhar Ali s/o Nadar
Ali r/o Ustarzai Payan,
Tehsil & District Kohat.
.....(absconding)

13 OCT 2020

Attested to be true copy

FIR No. 80.
Dated: 24/03/2013.
Sections: 302/34/109 PPC
Police Station: Ustarzai, Kohat.

JUDGMENT:

Needless to mention here that initially instant case was submitted for trial before the learned Sessions Judge, Kohat. However, on application of complainant Abbas Ali Bangash, the Hon'ble Peshawar High Court, Peshawar transferred the case to this court vide valued judgment dated 14/03/2014 passed in C.M/TA No. 53 of 2013.

2. Accused Riaz Ali, Maisam Ali and Zulfiqar Ali alias Bhutto have faced trial in the instant case for the offence under sections

ATTSTED

302/34/109 PPC registered at Police Station Ustarzai Kohat vide FIR No. 80 dated 24/03/2013.

3. Abbas Ali Bangash s/o Ali Muhammad Bangash on 24/03/2013 at 09:00 hours through FIR reported to the police that while posted at General Head Quarters (GHQ) Rawalpindi being Major in Pakistan Army he was informed on 23/03/2013 at 20:16 hours by his brother Haidar Ali Bangash (posted at Cadet College Swat as Instructor) on his (complainant's) cell # 0300-5708179 regarding the murder of his father Capt: Ali Muhammad Bangash (retired) in his village Ustarzai Payan, Kohat; that on 23/03/2013 at about 19:25 hours someone knocked the left yellow back door of their house which was towards the barren field having some trees; that in response thereto Ali Muhammad Bangash while having his dinner went outside through the right door of his house; that after about 1.5 minute inmates of the house heard firing from back side of the house whereupon they called Taj Muhammad (complainant's uncle) on phone and Taj Muhammad came to their house; that inmates of the house and Taj Muhammad went towards the barren field and found over there Ali Muhammad Bangash lying murdered in pool of blood; that the dead body was shifted to Civil Hospital Ustarzai, Kohat for post mortem examination; that the complainant left Rawalpindi for Kohat via Fateh Jhang road; that he returned from Khushal Garh Bridge as it was closed and then took Fateh

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Jhang, Attock, Peshawar, Kohat road; that he told Mujtaba Ali SHO Police Station Ustarzai on phone to wait for him as he himself wanted to report the matter; that he firmly believes that his co-villagers namely Zulfiqar Ali alias Bhutto, Mazhar Ali and Riaz Ali sons of Nadar Ali are involved in the murder of his father; that motive behind the occurrence is dispute over Shamilat-e-Deh with the accused party which is pending in the court; that many a time the culprits have given life threat to the deceased; that the deceased had told him (complainant) and other two sons namely, Haidar Ali Bangash and Jehangir Ali Bangash that if he was killed it would be the doing of the aforementioned culprits; that if Zulfiqar Ali alias Bhutto is abroad then he is involved in conspiracy of the murder of the deceased and that the culprits belong to the terrorist group of Orakzai and Kurrum Agency. The FIR was also signed by Jehangir Ali Khan Bangash, brother of the complainant, as verifier. Hence, the present case.

RP

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4. Initially challan was submitted against accused Riaz Ali and Maisam Ali for contested trial and for proceedings u/s 512 Cr.PC against Zulfiqar Ali alias Bhutto and Mazhar Ali. On appearance of accused Riaz Ali and Maisam Ali in the court, necessary papers were provided to them as required under section 265-C Cr. P.C. Charge was framed to which they pleaded not guilty and claimed trial. On the basis of statement of SW-1 Dastan Ali No. 87 DFC police station Usterzai Kohat, proceedings u/s 512 Cr.P.C. were

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initiated against the absconding co-accused Zulfiqar Ali alias Bhutto and Mazhar Ali and the prosecution was allowed to lead evidence in their absence. Later on, accused Zulfiqar Ali alias Bhutto was arrested and his supplementary challan was submitted. And under section 265-C Cr.PC necessary documents were also provided to him. Joint charge against all the 03 accused facing trial framed to which they pleaded not guilty and claimed trial.

5. The prosecution produced and examined as many as 17 witnesses gist whereof is reproduced as under:-

- i. PW-1/Iftikhar Ali FC No.84 took parcel containing blood stained pebbles and parcel containing blood stained garments of deceased through receipt Ex.PW1/1 to FSL, Peshawar. Similarly, vide receipt Ex.PW1/2 he took parcel containing 16 empties of 7.62 bore to FSL for expert opinion. His statement was recorded by the IO u/s 161 Cr.PC.
- ii. PW-2/Hashmat Ali ASI is marginal witness to the recovery memo Ex.PW2/1 vide which the IO took into possession blood stained garments of the deceased brought by Riyat Ali FC consisting of shirt, shalwar of black colour, one waistcoat of Khaki colour and one white colour banyan which the IO sealed into parcel in his presence. His statement was recorded by the IO u/s 161 Cr.PC.



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- iii. PW-3/Maqbool Hussain FC No. 67 is marginal witness to the recovery memo Ex.PW3/1 vide which the IO took into possession one Kalashnikov No. 313 56-14611810 with fixed charger produced by Dastan Ali LHC No. 87 from the personal box of accused/police constable Maisam Ali FC No. 1502 of Elite Force Platoon No. 87 and sealed into parcel in his presence. Later on the said Kalashnikov was handed over to him through receipt Ex.PW3/2 for onward deposit in FSL Peshawar which he did. His statement was recorded by the IO u/s 161 Cr.PC.
- iv. PW-4/Aman Ullah Constable No.88 is marginal witness to recovery memo Ex.PW4/1 vide which the IO took into possession 03 CDs produced by complainant Abbas Ali Bangash and 02 English letters. His statement was recorded by the IO u/s 161 Cr.PC.
- v. PW-5/Dastan Ali HC No. 87 is marginal witness to recovery memo Ex.PW2/1 vide which the IO took into possession blood stained garments of deceased produced by Riyat Ali FC and sealed into parcel in his presence. On 31/03/2013 vide recovery memo Ex.PW3/1 he handed over official Kalashnikov to IO. As DFC he was entrusted with warrants u/s 204 Cr.PC


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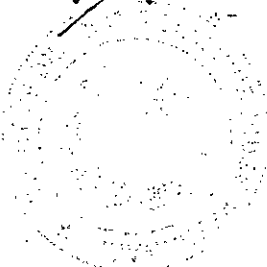
(Ex.PW5/1 & Ex.PW5/2) for execution against Zulfihar Ali and Mazhar Ali which he returned unexecuted along with his reports Ex.PW5/3 & Ex.PW5/4. He was then entrusted with proclamation notices u/s 87 Cr.PC Ex.PW5/5 & Ex.PW5/6 against the above named accused. He returned the same along with his reports which are Ex.PW5/7 & Ex.PW5/8.

- vi. **PW-6/Mujtaba Ali SI** on 24/03/2013 has reduced report of complainant Abbas Ali Bangash into FIR Ex.PA. On the same day, he also arrested the accused Riaz Ali and issued his card of arrest Ex.PW6/1. He submitted interim challan on 06/04/2013 Ex.PW6/2 as well as complete challan Ex.PW6/3 on 22/04/2013.
- vii. **PW-7/Nazeer Khan SHO** says that he prepared the inquest report Ex.PW7/1 of deceased Ali Muhammad Bangash duly identified by witnesses as well as injury sheet Ex.PW7/2. He sent dead body of the deceased to Mortuary under the escort of Riyat Ali FC.
- viii. **PW-8/Dr. Ashfaq** says that on 23/03/2013 at 09:15 PM, he has conducted post mortem examination on the dead body of deceased Ali Muhammad Bangash s/o Baqir Ali aged about 64 years brought by police, identified by Shamsad Ali s/o Zafar Ali & Siraj Hussain s/o Zawar Hussain and found the following:

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A fresh body wearing shalwar & gamees of white colour.

Injuries.

<u>Entry wounds</u>	<u>Exit wounds</u>
1. Right parietal bone (right ear) of the skull (1 cm)	1. Left occipito parietal bone of the skull (3"x 2")
2. Right iliac fossa (1cm) anteriorly	2. Posteriorly at level of L-3 vertebrae (2"x 1")
3. Anteriorly at level of 11 th rib right side (1cm)	3. Posteriorly at the level of L-1 vertebrae (1" x 1")
4. Anteriorly (right side) at the level of 5 th intercostals space (1cm)	4. Posteriorly right side at scapular region (1" x 1")
5. Anteriorly left side at the level of umbilicus (1cm)	5. Posteriorly left at lumber region (1"x 1")
6. Anteriorly left side at the level of 2 nd intercostals space (1cm)	6. Posteriorly (left) through in through (1"x 1")
7. Left axillary fold 1cm	7. Posteriorly at shoulder girdle (1" x 1/2")
8. Anteriorly at left upper thigh (1")	8. Posteriorly medially left middle thigh (1"x 1 1/2")
9. Left leg anterior laterally (1cm)	9. Posteriorly-medially left leg 1"x 1" with fracture of tibia.
10. Left foot posteriorly (1")	10. Left foot anteriorly (2" x 1")
11. Anteriorly pubic region	11. Posteriorly at left


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(1cm)	buttock (1"x 1")
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12. A lacerated wound anteriorly left side of abdomen (4" x 1 1/2").

Cranium & Spinal Cord.

Fracture of parieto occipital bone of the skull & membranes are ruptured.

Thorax: Walls, ribs, cartilages, plurae, right and left lungs, pericardium, heart and blood vessels were injured.

Abdomen: Walls, peritoneum, diaphragm, stomach & its contents, small intestine and their contents, large intestine & their contents, liver, right kidney and bladder are injured.

Muscles, Bone & Joint:

Fracture of skull, left femur, left tibia and scapula.

Remarks.

12 bullet shots with its entry & exit wounds described above. Death was due to injuries to vital organs i.e. brain, heart, lungs, kidney & massive bleedings from the vessels.

Probable time between injury & death..... 05 to 10 minutes approximately.

Probable time between death & PM 1 1/2 to 2 hours approximately.

PM report Ex.PM correctly bears his signature.

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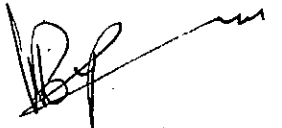


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ix. **PW-9/Aftab Javed** then **JMIC-VI Kohat** told that on 30/03/2013 vide application Ex.PW9/1 and on 03/04/2013 vide application Ex.PW9/2 the local police approached the learned Sessions Judge, Kohat for conducting identification parade of the accused Maisam Ali & Riaz Ali through PWs Mst. Alia Parveen & Mst. Maria Parveen which were marked to him. On 03/04/2013 he conducted identification parade of the accused Riaz Ali and Maisam Ali from PWs Mst. Alia Parveen and Mst. Maria Parveen inside jail premises Kohat who correctly identified them on 03 different occasions. His report Ex.PW9/3 consisting of 04 sheets correctly bears his signature.

x. **PW-10/Gul Janan Inspector** has submitted supplementary challan Ex.PW10/1 against the accused Zulfiqar Ali alias Bhutto after his arrest.

xi. **PW-11/Naeem Ullah SI** has partially investigated the instant case. On 08/09/2014 he has shown formal arrest of the accused Zulfiqar Ali alias Bhutto after his BBA. On 09/09/2014 complainant produced 03 CDs in respect of accused Maisam Ali showing the call data recording from 01/03/2013 to 10/04/2013 of mobile phone No. 0334-8298508 issued in the name of accused Maisam Ali which shows his involvement in


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the case and his absence from duty. Similarly, 02 letters were also handed over to him in respect of CDR of the above mentioned mobile number of the accused Maisam Ali and of Zulfiqar Ali consisting of 10 pages and 12 pages vide letter diary Nos. 140, 141 dated 09/09/2014 which were written on 04/09/2014 & 09/09/2014. After recalling of BBA of accused Zulfiqar Ali, he was formally arrested by ASI Azam Khan who then handed over the said accused to him. Vide his application Ex.PW11/1 he obtained 02 days police custody of accused Zulfiqar Ali. He interrogated the accused. After expiry of police custody, vide his application Ex.PW11/2 he applied for further police custody of the accused Zulfiqar Ali on the ground that he was contacted by Maisam Ali from Saudi Arabia through his cell No.0332-9514301 (mobile data Ex.PW11/3) which was turned down and the accused was remanded to judicial lock up. He recorded statements of the accused and PWs u/s 161 Cr.PC. After completion of investigation he handed over the case file to the SHO for submission of supplementary challan against the accused Zulfiqar Ali.

xii. PW-12/Wisal PA to SP Investigation is marginal witness to the recovery memo Ex.PW12/1 vide which


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the IO took into possession covering letter of complainant addressed to police officials and a number of court documents/petitions, letters and google maps attached with the letter. In the office of SP Investigation Kohat Diary No. 147/PA is dated 12th September, 2014. The court documents/petitions are related to Civil case/dispute filed by the deceased Captain (Rtd) Ali Muhammad Bangash against accused Zulfiqar Ali alias Bhutto, Riaz Ali and Mazhar Ali. His statement was recorded by the IO u/s 161 Cr.PC.


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xiii. **PW-13/Muhammad Azam SI** told that as ASI vide recovery memo Ex:PW12/1, he took into possession in presence of marginal witnesses documents consisting of 205 pages. He recorded statements of the PWs under section 161 Cr.P.C.

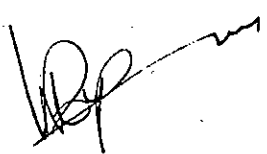
xiv. **PW-14/Captain Jehangir Ali Khan Bangash s/o Ali Muhammad Bangash** told that in his presence his brother Abbas Ali Bangash had lodged the instant FIR. He endorsed the FIR as verifier. In his presence the accused party had extended serious life threats to his father during his life time in Ustarzai Payan, Kohat in respect whereof his father had written a complaint to

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Magistrate Kohat u/s 107/51 Cr.PC. The letter is Ex.PW14/1 and surety bond is Ex.PW14/2.

xv. PW-15/Abbas Ali Bangash s/o Ali Muhammad Bangash (complainant) has repeated the story contained in the FIR reproduced in third para of this judgment. He also recorded his statement on 30/03/2013 u/s 164 Cr.PC wherein he also nominated accused Maisam Ali.

xvi. PW-16/Mst. Alia Parveen d/o Ali Muhammad Bangash told that on 23/03/2013 at about 19:25 hours she and her sister Mst. Maria Parveen were preparing tea in their kitchen for their father. Meanwhile, some one knocked yellow gate of their house. At this, her father went out from another gate i.e. red gate of their house. After 1 ½ minute, they heard the report of fire shots whereupon they looked outside the house from their kitchen through window and in search light she saw 03 persons while firing at her father. They also focused their hand torch upon the said three persons and clearly saw their faces who were making firing with their Kalashnikovs. After the firing the accused decamped from the spot through Challi Bagh thoroughfare whereas after sustaining firearm injuries her father fell on the ground. After that she made call


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to her uncle Taj Muhammad living in adjacent house who came to their house. She narrated the incident to him who along with them quickly moved towards the spot where they saw their father lying murdered on the ground in the pool of blood. On the next day, on the arrival of police her statement was recorded and at their (Mst. Alia Parveen & Mst. Maria Parveen) instance the site plan was also prepared by the IO. On 30/03/2013 her statement u/s 164 Cr.PC was recorded. On 03/04/2013, she identified two of the accused Riaz Ali and Maisam Ali in District Kohat Jail in presence of JMIC, Kohat, whereas the 3rd accused was not brought before her and she can also recognize him if brought before her. She charged the accused for the commission of offence.

- i. **PW-17/Zeenat Hussain Inspector (Rtd)** has also investigated the instant case. He visited the spot and prepared site plan Ex.PB in presence of complainant at the instance of PWs Mst. Alia and Mst. Maria Parveen. During spot inspection vide recovery memo Ex.PW17/1, he took into possession some blood stained pebbles and 16 empties of 7.62 bore from the spot, one torch from the house of deceased lying in the kitchen and one search light installed outside the house


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of the deceased. Vide recovery memo Ex.PW2/1 he took into possession blood stained garments of deceased consisting of qamees, shalwar, waistcoat and banyan. He also recorded statements of two eye witnesses (namely Mst. Alia Parveen & Mst. Maria Parveen), Taj Muhammad and Jehangir Khan on the spot. Similarly, he also recorded statements of the marginal witnesses and PW Tanveer Ali. Vide search memo Ex.PW17/2 he raided house of the accused but neither they were present in their house nor anything incriminating was recovered therefrom. He took into possession the mobile sets of the deceased, Taj Muhammad and Mst. Alia Parveen. Vide application Ex.PW17/3 he applied for the mobile data of the above mentioned cell numbers of deceased, PWs as well as of accused Riaz, sim No. 0332-9652147 & 0333-5013262 and received/obtained the mobile data Ex.PW17/4 consisting of 71 sheets (mark as 132 to 202) available on file. After the arrest of accused Riaz Ali, he was handed over to him for interrogation. Vide application Ex:PW17/5 he obtained 02 days police custody of accused Riaz Ali. He interrogated him and after completion of police custody vide his application Ex:PW17/6 he again produced the accused for further

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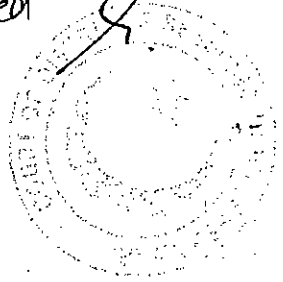
police custody but the same was turned down. Vide application Ex:PW17/7, he sent the blood stained garments to the FSL for analysis. Similarly vide his application Ex:PW17/8 the recovered empties were sent to the FSL for analysis. In this respect the FSL reports are Ex:PZ and Ex:PZ/1 respectively. Vide application Ex:PW17/9, he produced PW Mst. Aalia Parveen and Mst. Maria Parveen in the court of JMIC, Kohat where their statements were recorded u/s 164 Cr.P.C. Vide application Ex:PW17/10 he produced complainant in the court of JMIC, Kohat where his statement was recorded u/s 164 Cr.P.C. In his statement the complainant also produced the documents regarding the motive part of the occurrence which are already available on file as Mark-A, B, C, D, E, F, J, I. He also placed on file pictures of the spot which are Ex:PW17/11 (12 in number). Through application Ex:PW9/1, he produced PW Mst. Aalia Parveen and Mst. Maria Parveen for identification of accused Riaz Ali through JMIC, Kohat. Similarly, vide application Ex:PW9/2, he produced PW Mst. Aalia Parveen and Mst. Maria Parveen for identification of accused Maisam Ali through JMIC, Kohat. Papers of identification parade were handed over to him which

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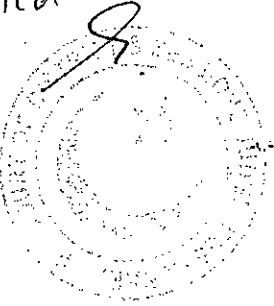
he placed on file. He also placed on file copies of complaints u/s 107/151 Cr.P.C. of the accused and the deceased Ali Muhammad Bangash. The bail bond Mark-G u/s 107/151 Cr.P.C. is available on file. Similarly, the court order in civil litigation of the deceased against accused party) is already Mark-K (8 sheets). He arrested Maisam Ali vide his arrest card Ex:PW17/12. Vide application Ex:PW17/13, he obtained one day police custody of accused Maisam Ali. Vide memo Ex:PW3/1 he took into possession the official Kalashnikov of Elite Force which was allotted to accused Maisam Ali FC No.1502. After completion of police custody he again produced the accused Maisam Ali for further police custody vide his application Ex:PW17/14 and accordingly one day further police custody was granted. He interrogated the accused. Vide his application Ex:PW17/15 he produced the accused Maisam Ali for further custody but the same was turned down. Vide application Ex:PW17/16, he applied for legal opinion of DPP concerned for addition of section 109 PPC. After obtaining the opinion through Parwana Addition Ex:PW17/17 he added section 109 PPC in the case. He also received post mortem report of the deceased. Vide



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application Ex:PW17/18 he applied for the mobile data of accused nominated in the FIR with their respective cell numbers from the concerned mobile company, received the same and placed on file which is Ex:PW17/19 consisting of 71 sheets (mark as 132 to 202). As accused Zulfiqar Ali and Mazhar Ali were avoiding their lawful arrest, vide his application Ex:PW17/20 he obtained warrants u/s 204 Cr.P.C and handed over to the DFC concerned for execution. Similarly, vide his application Ex:PW17/21 he obtained proclamation notices u/s 87 Cr.P.C. against the accused Zulfiqar Ali and Mazhar Ali and handed them over to the DFC concerned for execution. He also prepared list of LRs of deceased Ex:PW17/22. He also placed on file the FSL report Ex:PZ/2 regarding the empties and the official weapon. He placed on file the Rahdari receipts of the case properties Ex:PW1/1, Ex:PW1/2 and Ex:PW3/2. He also placed on file the letter Ex:PW15/1 addressed to the chief of police by the complainant. During the course of investigation on 24/03/2013 the high ups of the police department constituted a Joint Investigation Team (JIT) for the purpose of investigation vide office order Ex:PW17/23. He recorded statements of the PWs u/s


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161 Cr.P.C. Thereafter he was transferred from the P.S. and the case in hand was handed over to the successor in office for further investigation.

6. After close of the prosecution evidence statements of accused were recorded u/s 342 Cr.PC, wherein they professed their innocence and opted not to appear on oath u/s 340(2) Cr.PC, however, they wished to produce defence evidence.

7. In all 06 DWs were examined by the accused gist whereof is as under:-

i. **DW-1 Azmat Ullah Khan FC No. 966** in his statement says that *"as per the available record, original lying in our office, I produced copy of application Ex:DW1/1, consisting of 2 pages, and inquiry report on the strength of application, the copy of which is Ex:DW1/2, consists of 2 pages, along with copy of DD No.11 dated 28/09/2013 P.S. Kohat Cantt: which is "Mark D1" and application "Mark D2" consisting of 3 sheets. Similarly, copy of letter No.471/PA dated 21/10/2013 Ex:DW1/3.*

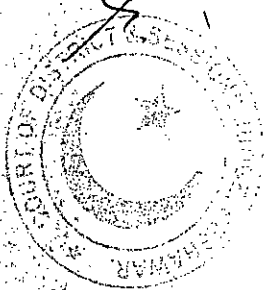
ii. **DW-2 Khalid Usman FC No. 1233** in his statement says that *"I have brought the record regarding the complaint vide copy of application Ex:DW2/1 consisting of 3 pages along with report of SHO P.S. Ustarzai dated 12/10/2010, the copy is Ex:DW2/2, along with photocopy of complaint u/s 107/151 Cr.P.C. and police report regarding theft of ATM card, which is "Mark D2/1" consisting of 2*

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pages. Similarly, report of DPO submitted to DIG Kohat is Ex:DW2/3.

iii. **DW-3 Atif Naeem Madad Moharrir** in his statement says that "I have brought Roznamcha Register dated 23/03/2013, as per Mad report No.10 dated 23/03/2013, at 13:10 hours accused Maisem Ali started Gasht along with ASI Tahir Khan. Similarly, vide Mad No.10 dated 23/03/2013 at 17:00 hours accused Maisem Ali is returned to the P.S. from Gasht, and as per Mad No.12 dated 23/03/2013 at 18:00 hours, police officials who completed their duties were counted and present in police station. Similarly as per

Mad No.14 dated 24/03/2013 at 00:50 hours accused Maisem Ali has left the P.S. along with other officials for Gasht. The copy of above mentioned DDs are Ex:DW3/1 consisting of two pages".

iv. **DW-4 Rehman Ali Record Keeper** in his statement says that "I have produced the record of Muafiz Khana, which was consigned in the year 2018 from Ishrat Ali deed writer district Kohat, copy of the same is Ex:DW4/1".

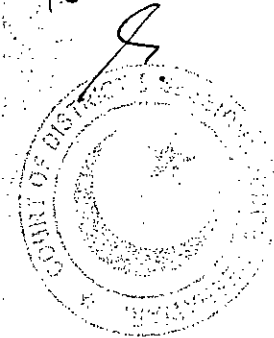
v. **DW-5 Ishrat Ali s/o Ghulam Naqi** in his statement says that "I am a deed writer in district courts Kohat. I am the deed writer of deed Ex:DW5/1 in between Ikhtlaq Hussain Kiyani and Zulfiqar Ali Butto, the same is in my handwriting, correctly bearing my signature as well as signature of the parties and witnesses".

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vi. DW-6 Ali Nasir Kiyani s/o Jamshed Ali Kiyani in his statement says that "I am witness to already Ex:DW5/1, the same is correct and correctly bears my signature".

8. Arguments heard, file perused and relevant law studied.

9. Learned defence counsel stated that the accused facing trial are innocent and have been falsely roped in the case by the complainant. The accused has produced DW-1 to DW-6 in proof of their innocence. Close relatives of the deceased who have been produced and examined by the prosecution are not independent witnesses meaning thereby that they are not worth reliance. Delay in report has not been plausibly explained by the prosecution. FIR

MUHAMMAD YOUNAS has been lodged after deliberation and consultation. No independent District & Sessions Judge, Peshawar (PHC 108-64-1) witness has been produced by the prosecution in support of the case

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in hand. No eye witness account is available in respect of the alleged offence. In the FIR, as such no one has been cited as eye witness. Recovery of blood stained pebbles and 16 empties of 7.62 bore from the alleged spot has falsely been shown and as such the FSL report is of no value. Even the official weapon of accused Maisam Ali has not matched with the 16 empties allegedly recovered from the spot. CDR available on the file is not in respect of the alleged offence. Medical evidence and site plan do not support the FIR story. The accused party does not have any grudge against the complainant meaning thereby that the alleged motive is baseless. The accused Zulfiqar Ali alias Bhutto has not remained


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absconder and at the time of occurrence he was abroad. Identification parade is of no value at all because both the accused Riaz Ali and Maisam Ali had already been shown to Mst. Alia Parveen and Mst. Maria Parveen. There are material contradictions & improvements in the statements of prosecution witnesses which rendered them untrustworthy. The prosecution failed to prove its case against the accused which means that the accused are entitled to acquittal.)

10. On the other hand, learned Sr.PP for the State assisted by learned counsel for complainant vehemently argued that with the help of straightforward, confidence inspiring and cohesive eye witness account in the shape of PW-16/ Mst. Alia Parveen, the prosecution has proved that in village Usterzai Payan on the back side of his house the deceased Ali Muhammad Bangash was murdered by accused facing trial Riaz Ali, Maisam Ali along with absconding co-accused Mazhar Ali and with the abetment/conspiracy of accused facing trial Zulfiqar Ali alias Bhutto. Accused Riaz Ali and Maisam Ali were correctly identified by PWs/eye witnesses Mst. Alia Parveen and Mst. Maria Parveen during identification parade and the PWs had not seen them before this identification parade. PW-14/Jehangir Ali Khan Bangash, PW-15/Abbas Ali Bangash (complainant) and PW-16/Mst. Alia Parveen are sons & daughter of the deceased Ali Muhammad Bangash respectively. However, close relatives are as good witnesses as any


MUHAMMAD YUNAS
 District & Sessions Judge,
 Peshawar (PHC 108-64-1)

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other person. Delay in the FIR has been plausibly explained by the prosecution. A strong motive in the shape of land dispute over Shamilat-e-Deh and proceedings u/s 107/151 Cr.PC between the parties as motive behind the occurrence has been proved. The accused party had given many a time life threats to the deceased during his life time. Site plan and medical evidence fully support the prosecution story given in the FIR. From the spot recovery of blood stained pebbles and 16 empties of 7.62 bore proves the spot alleged by the prosecution. Positive FSL report regarding blood stained pebbles and last worn clothes of the deceased lends further support to the FIR. Long and noticeable abscondance of the accused Zulfiqar Ali alias Bhutto indicates his involvement in the offence to the extent of abetment. Crime weapon has been recovered from the personal box of accused Maisam Ali FC No. 1502 in shape of Kalashnikov. The culprits were duly identified/recognized by Mst. Alia Parveen and Mst. Maria Parveen with the help of search light and hand torch at the time of occurrence. Learned Sr.PP assisted by learned counsel for complainant submitted that, in the circumstances, the accused facing trial deserve capital punishment.

11. Prosecution relies upon the following categories of evidence:-

- i. Eyewitness testimony (PW-16/Mst. Alia Parveen) & identification parade.

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MUHAMMAD YOUNAS
 District & Sessions Judge,
 Peshawar (PHC 108-64-1)

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- ii. Post Mortem report.
- iii. Recovery from the spot and FSL reports.
- iv. Site plan.
- v. Motive.
- vii. Abscondence.

12. Eye witness account:-

In criminal justice system, for proof of a crime eye witness testimony enjoys tremendous significance which may be furnished by the victim or those present on the spot at the time of occurrence.

In the present case, stand of the prosecution is that PW16/Mst. Alia Parveen and her sister Mst. Maria Parveen are eyewitnesses of the tragic murder of her father Captain (Rtd) Ali Muhammad Bangash

at the hands of the accused facing trial (Riaz Ali and his son Maisam Ali) and Mazhar Ali (absconding accused) at the abetment

of accused facing trial Zulfiqar Ali alias Bhutto. The prosecution in proof of the alleged incident produced and examined Mst. Alia

Parveen as PW-16.

PW-14/Captain Jehangir Ali Khan Bangash, PW-15/Colonel Abbas Ali Bangash (complainant) and PW-16/Mst. Alia Parveen are close relatives of the deceased i.e. sons and daughter. However, in 2005 SCMR 1958, PLDT 1996 SC 138, PLD 2001 Peshawar 112 and 2003 P. Cr. LJ Peshawar 1309 it has been observed that mere existence of relationship between the deceased and witness would not make the witness an interested one and would not be sufficient to discredit him/her. In such a situation, more care is required to

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 District & Sessions Judge,
 Peshawar (PHC 108-64-1)

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Affected to the issue only

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weigh such evidence as compared to the one produced by a witness not having any relation with the deceased/victim. Therefore, I thoroughly and carefully scrutinized their court statements.

PW-14 and PW-15 though not eyewitnesses of the occurrence have unanimously supported the FIR. PW-16 alleged eyewitness of the occurrence has also supported the FIR by saying that on the evening of 23/03/2013 at the relevant time she along with her sister Mst. Maria Parveen was preparing tea for their father and meanwhile someone knocked the back door of their house. In response, went out their father from another gate of their house.

After about 1 ½ minute they heard the report of fire shots whereupon they looked outside the house from their kitchen in the window and in search light they saw 03 persons while firing at their

Muhammad Younas
MUHAMMAD YOUNAS

District & Sessions Judge, father with Kalashnikovs. They also focused their hand torch upon Peshawar (PHC 108-64-1)

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the said three persons and clearly saw their faces. On the next day

at about 10:00 AM the police visited the spot, her (PW-16)

statement was recorded by them overthere and at their (Mst. Alia

Parveen and Mst. Maria Parveen) instance the site plan was also

prepared by the IO in presence of their brothers including

complainant where they met with their brothers after the incident.

On 30/03/2013 her statement u/s 164 Cr.P.C. was recorded. On

03/04/2013 PW-16 and her other sister Mst. Maria Parveen (though

she was not produced in the witness box) identified two of the

accused Riaz Ali and Maisam Ali in District Kohat Jail in presence

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of PW-9/Mr. Aftab Iqbal, learned JMIC Kohat. According to the site plan at the time of occurrence distance between the three accused present on the spot and PW-16 is 38, 40 & 41 paces which is supported by PW-16 in her court statement by saying that distance between the place where her father was murdered and their kitchen was about 30 paces. In presence of search light and hand torch identification of a person from this distance is very much possible particularly when people are from the same locality like the present case. Accused Maisam Ali has taken plea that on the eventful time he was on duty and was in PS being police official in support whereof he produced defence evidence in shape of DW-3/Atif Naeem Madad Moharrir PS Ustarzai Kohat. DW-3 produced extract/photocopies of Mad No.10 dated 23/03/2013 according to which at 13:10 hours accused Maisam Ali started gusht along with ASI Tahir Khan and at 17:00 hours he returned to the PS from gusht. As per Mad No.12 dated 23/03/2013 at 18:00 hours accused Maisam Ali was in PS. DW-3 in his cross examination says that accused Maisam Ali then in Elite Force was not on duty at the time of occurrence i.e. 19:30 hours of 23/03/2013 but as per record was present in PS. However, no one from the police officials/officers posted at that police station has appeared in the witness box to the effect that at the time of occurrence Maisam Ali was with him in the police station. Moreover, as mentioned above eyewitness account of the alleged occurrence in the shape of PW-16 is

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cohesive and trustworthy regarding presence of Maisam Ali on the spot at the relevant time. Thus, the plea taken by the accused Maisam Ali is not trustworthy, hence, disbelieved. DW-1/Azmat Ullah Khan FC No.966, DW-2/Khalid Usman FC No. 1233, DW-4/Rehman Ali Record Keeper District Record Room, Kohat, DW-5/Ishrat Ali s/o Ghulam Naqi Deed Writer and DW-6/Ali Nasir Kiyani s/o Jamshed Ali Kiyani have no nexus with the proof or otherwise of the subject incident.

In the FIR, lodged on 24/03/2013 at 09:00 AM names of eyewitnesses have not been disclosed by the complainant. It is to be noted that complainant posted at GHQ Rawalpindi had been informed by his brother Haidar Ali Bangash as Instructor at Cadet College Swat and he/complainant had come straight from Rawalpindi to PS Ustarzai without contacting any other person of his family. Just after one hour of the report i.e. at about 10:00 AM PW-16 and her other sister Mst. Maria Parveen in presence of their brother (complainant) claiming to have seen the occurrence gave details of the spot to the IO who accordingly prepared site plan and also recorded their statements under section 161 Cr.PC. In the circumstances, not citing his sisters in the FIR as eyewitnesses is not fatal particularly as in the FIR it is mentioned that inmates of the house after hearing firing informed their uncle living in adjacent house. Valuable guidance in this respect has been given in "Rasool Bakht Vs The State PLD 1964 (W.P.) Quetta 6". It is a rare

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phenomenon that in murder cases in place of real culprits innocent persons are charged. Presence of PW-16 and Mst. Maria Parveen being unmarried in their house during night time on the day of occurrence is natural. PW-16 was cross examined at length but could not be shattered on material points. Thus, in respect of murder of Captain (Rtd) Ali Muhammad Bangash though CDR data is not giving any clear help to the prosecution and none of the accused has confessed his guilt cohesive, unimpeachable, trustworthy and confidence inspiring eye witness account is available in the shape of court statement of PW-16.

According to PW-15/complainant, he was informed by his brother Haidar Ali Bangash posted as Instructor at Cadet College

MUHAMMAD YOUNAS Swat on 23/03/2013 at 20:16 hours about murder of their father. District & Sessions Judge, Peshawar (PHC 108-64-1) After getting due permission which in army takes some time the

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complainant left Rawalpindi for Ustarzai Kohat via Fateh Jhang road. However, as explained by him, when he reached Khushal Garh Bridge he found it closed due to which he returned back to Fateh Jhang and from there took Fateh Jhang, Attock, Peshawar, Kohat road. Reaching at about 09:00 AM on 24/03/2013 the police station Ustarzai Kohat which comes first from his house/village appeals to reason. Thus, the delay in lodging the report verified in the police station by PW-14/Captain Jehangir Ali Khan Bangash (brother of complainant) stands plausibly explained. In this respect,

ATTSTED reliance is placed on 2019 YLR 1161 [Sindh (Larkana Bench)]

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titled Ghulam Sarwar Jagirani Vs Hussain Bux Jagirani, 2015 YLR 116 [Lahore] titled Muhammad Akram Vs The State & others and Muhammad Zubair Vs State 2007 SCMR 437.

Allegations leveled by the prosecution are that murder of Captain (Rtd) Ali Muhammad Bangash had been committed at the abetment of the accused Zulfiqar Ali alias Bhutto. The offence of abetment/conspiracy according to PLD 1968 [Karachi] 853 is a substantive offence and to establish this charge in view of PLD 1970 [Karachi] 15 there must be some evidence of an overt action or omission so as to suggest a preconcert or a common design to commit a particular offence. In PLD 2001 [Lahore] 123 it has been held that evidence can even be indirect and circumstantial.

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 District & Sessions Judge,
 Peshawar (PHC 108-64-1)

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However, overhere no evidence of an overt action or omission, indirect and circumstantial evidence is available in order to suggest that in the murder of the deceased the accused Zulfiqar Ali alias Bhutto had played the role of abetment/conspiracy. Even the source of satisfaction about his alleged involvement in the crime in question has not been disclosed by the complainant or any other witness. Moreover, during the days of occurrence, accused Zulfiqar Ali alias Bhutto was abroad. He has also not confessed his guilt.

13. Post Mortem Report:-

As per post mortem report prepared by Dr. Ashfaq (PW- 8) on the basis of examination conducted on 23/03/2013 at 09:15 PM he had found on the body of the deceased the following Injuries.

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Injuries.

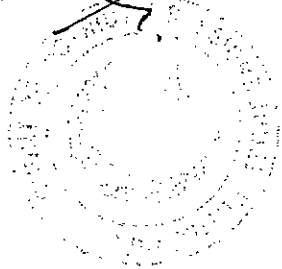
<u>Entry wounds</u>	<u>Exit wounds</u>
1. Right parietal bone (right ear) of the skull (1 cm)	1. Left occipito parietal bone of the skull (3"x 2")
2. Right iliac fossa (1cm) anteriorly	2. Posteriorly at level of L-3 vertebrae (2"x 1")
3. Anteriorly at level of 11 th rib right side (1cm)	3. Posteriorly at the level of L-1 vertebrae (1" x 1")
4. Anteriorly (right side) at the level of 5 th intercostals space (1cm)	4. Posteriorly right side at scapular region (1" x 1")
5. Anteriorly left side at the level of umbilicus (1cm)	5. Posteriorly left at lumber region (1"x 1")
6. Anteriorly left side at the level of 2 nd intercostals space (1cm)	6. Posteriorly (left) through in through (1"x 1")
7. Left axillary fold 1cm	7. Posteriorly at shoulder girdle (1" x 1/2")
8. Anteriorly at left upper thigh (1")	8. Posteriorly medially left middle thigh (1"x 1 1/2")
9. Left leg anterior laterally (1cm)	9. Posteriorly-medially left leg 1"x 1" with fracture of tibia.
10. Left foot posteriorly (1")	10. Left foot anteriorly (2" x 1")
11. Anteriorly pubic region (1cm)	11. Posteriorly at left buttock (1"x 1")

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District & Sessions Judge,
Peshawar (PHC 108-64-1)

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12. A lacerated wound anteriorly left side of abdomen (4" x 1 1/2").

Cranium & Spinal Cord.

Fracture of parieto occipital bone of the skull & membranes are ruptured.

Thorax: Walls, ribs, cartilages, plurae, right and left lungs, pericardium, heart and blood vessels were injured.

Abdomen: Walls, peritoneum, diaphragm, stomach & its contents, small intestine and their contents, large intestine & their contents, liver, right kidney and bladder are injured.

Muscles, Bone & Joint:

Fracture of skull, left femur, left tibia and scapula.

Remarks.

12 bullet shots with its entry & exit wounds described above. Death was due to injuries to vital organs i.e. brain, heart, lungs, kidney & massive bleedings from the vessels.

Probable time between injury & death..... 05 to 10 minutes approximately.

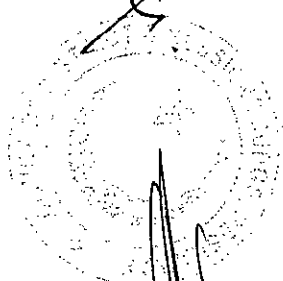
Probable time between death & PM 1 1/2 to 2 hours approximately.

PM report Ex.PM correctly bears his signature.

MUHAMMAD YOUNAS
District & Sessions Judge,
Peshawar (PHC 108-64-1)

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As observed in 2007 SCMR 1549, PLD 1976 SC 695 and 1994 SCMR 1928 Medical Evidence is confirmatory type of evidence and has got significant value in proof of hurt/murder case. In the instant case, post mortem report fully supports the prosecution case in respect of nature of injuries and cause of death being fire arm. In the FIR as well as statements of PW-15 and PW-16 it is alleged that on receiving fire arm injuries Captain (Rtd) Ali Muhammad Bangash died on the spot. The same fact is supported by the PM report as it is given therein that time between injury and death of Captain (Rtd) Ali Muhammad Bangash was 05 to 10 minutes approximately. Date and time of occurrence alleged in the FIR are also proved from medical evidence.

14. Recovery/FSL reports:-

Recovery of blood stained pebbles and 16 empties of 7.62 bore has been made by PW-17/Zeenat Hussain Inspector (Rtd) as IO from the venue of occurrence. He also secured one hand torch from the house of deceased lying in the kitchen and one search light installed outside the house of the deceased. Last worn blood stained clothes of the deceased consisting of qamees, shalwar, waistcoat and banyan brought from the mortuary after PM examination by constable Riyat Ali were taken into possession by investigation officer vide recovery memo Ex.PW2/1. PW-2/Hashmat Ali ASI as marginal witness of the said recovery memo supported the same. Blood stained pebbles, garments of the

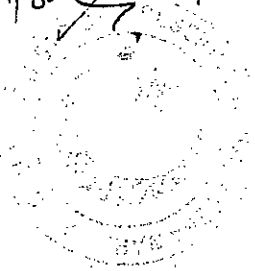
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District & Sessions Judge,
Peshawar (PHC 108-64-1)

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15. Site plan:-

In criminal cases, site plan as observed in NLR 2002 Criminal 321 Lahore is a very important document though not constituting substantive evidence. PW17/Zeenat Hussain Inspector /Investigating Officer says that he has prepared site plan on the pointation of PW-16/eyewitness and her other sister namely Mst. Maria Parveen in presence of complainant. PW-15/complainant and PW-16/Mst. Alia Parveen also say so. The site plan contains similar note. The spot alleged in the FIR and repeated in court statements of eyewitness (PW-16) and PW-17/IO is proved from this document. In this document, 03 accused, the deceased and PW-16 besides Mst: Maria Parveen have been shown on the spot at the relevant time as alleged in the FIR and repeated in the prosecution evidence.

16. Motive:-

As per FIR, motive behind the occurrence in question is land /property dispute between the parties. PW-14/Captain Jehangir Khan Bangash, PW15/complainant and PW16/Mst. Alia Parveen fully supported the FIR in this respect. They were cross examined at length but could not be shattered. Copies of civil litigation and proceedings u/s 107/151 Cr.PC between the parties are available on the file. PW-14 & PW-15 further told that the accused party had many a time given life threats to their father in his life time. Thus, the alleged motive has been established by the prosecution.



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However, it has been observed in 2008 P.Cr.LJ 405 Lahore, PLD 2004 SC 44 and 2005 SCMR 427 that inadequacy or weakness or even absence of motive will not adversely affect the prosecution if the case is otherwise proved.

17. Abscondence :-

As per record, proceedings u/s 204 Cr.PC and u/s 87 Cr.PC were carried out against accused Zulfiqar Ali alias Bhutto and challan for proceedings u/s 512 Cr.PC was also submitted. However, in view of 1999 SCMR 1220, 1995 SCMR 1373-1627, PLD 1995 [Peshawar] 155 and PLD 2004 [Peshawar] 20, abscondence of an accused can never remedy the defects in the prosecution case because it is neither necessarily indicative of guilt nor is ever sufficient by itself to bring home guilt against an accused. As such, his previous abscondence due to absence of other incriminating evidence does not provide any support to the prosecution case.

18. In PLJ 2006 Criminal Cases Peshawar 359 (DB) it has been held that while convicting an accused person for an offence particularly in a case of capital punishment court has to be fully convinced that in the prosecution case there is not even the slightest doubt. Considering the above mentioned factual & legal position that coherent oral account, recovery of blood stained pebbles, 16 empties of 7.62 bore, hand torch, search light from the spot, confirmatory medical evidence, supporting site plan, positive FSL

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Magistrate & Sessions Judge,
Peshawar (PHC 108-64-1)

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report regarding blood stained articles and motive are available in support of the prosecution case it stands established beyond any shadow of doubt that the accused facing trial Riaz Ali and his son Maisam Ali have committed the murder of Captain (Rtd) Ali Muhammad Bangash.

19. As observed in 2005 P Cr.L.J 1939 Peshawar when offence of murder/Qatl-e-Amd is established maximum sentence therefor will have to be given. However, for murder of Captain (Rtd) Ali Muhammad Bangash charge has been proved against 02 persons due to which capital punishment will not be proper meaning thereby that accused facing trial Riaz Ali and Maisam Ali should be given lesser punishment.

20. Resultantly, in the case FIR No.80 dated 24/03/2013 u/ss 302/109/34 PPC at police station Usterzai, Kohat, each of the accused Riaz Ali s/o Nadar Ali and Maisam Ali s/o Riaz Ali is convicted u/s 302(b)/34 PPC and sentenced to the extent of imprisonment for life as Ta'zir. Each shall pay Rs.200,000/- (Two lac) as compensation to LRs of the deceased in view of section 544-A Cr.PC, in default whereof each shall undergo further six months SI. Benefit of section 382-B Cr.PC is extended to the convicts. They are on bail, taken into custody and sent to Central Jail, Peshawar along with conviction warrants to serve the sentence awarded to them.

ADAMAD YOUNAS
& Sessions Judge,
Wazir (PHC 108-64-1)
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21. However, for want of proof, the accused facing trial Zulfiqar Ali alias Bhutto is acquitted of the charge of abetment/conspiracy leveled against him. He is on bail, he and his sureties are discharged from the liabilities of bail bonds.

22. So far as the case against the absconding accused Mazhar Ali s/o Nadar Ali r/o Usterzai Payan, Kohat is concerned, in light of the evidence available, prima facie case exists against him. Therefore, he is declared proclaimed offender. Perpetual non-bailable warrant of his arrest be issued against him. His name be entered in the Register maintained for the POs. Case property be kept intact till his arrest and trial.

23. Copy of this judgment consisting of 36 (thirty six) pages is given to the convicts free of cost. They in this respect thumb impressed the order sheet. File be consigned to record room after completion and compilation.

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true copy.*



Announced
13-10-2020.

[Signature]
MUHAMMAD YOUNAS,
Sessions Judge, Peshawar.

13 OCT 2020

CERTIFICATE

Certified that this judgment consists of thirty six (36) pages. Each page has been read, checked, corrected where necessary and signed by me.

[Signature]
MUHAMMAD YOUNAS,
Sessions Judge, Peshawar

13 OCT 2020

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51 (1)

IN THE PESHAWAR HIGH COURT, PESHAWAR

Cr. Appeal. No. _____/2020

1. Riaz Ali S/o Nadar Ali
2. Maisam Ali Riaz Ali both residents of Ustarzai Payan, Tehsil and District Kohat..... (Accused/Appellant)

VERSUS

1. The State.
2. Abbas Ali Bangash S/o Ali Muhammad Bangash R/o Ustarzai Payan, Tehsil and District Kohat.....(Complainant/Respondent)

CASE F.I.R NO. 80, DATED 24/03/2013 CHARGE U/S 302, 34, 109 PPC, POLICE STATION USTARZAI, KOHAT.

APPEAL U/S 410 CR.PC AGAINST THE JUDGMENT DATED 13/10/2020 OF LEARNED SESSIONS JUDGE, PESHAWAR, WHEREBY THE LEARNED TRIAL COURT CONVICTED AND SENTENCE BOTH THE APPELLANT U/S 302(b)/34 PPC TO LIFE IMPRISONMENT AS TAZIR WITH FINE OF RS.200,000/- (TWO LAC) EACH AS COMPENSATION TO THE LEGAL HEIRS OF DECEASED UNDER SECTION 544-A CR.PC, IN DEFAULT OF PAYMENT 6 MONTH SI. BENEFIT OF SECTION 382 (B) CR.PC IS EXTENDED TO THE APPELLANTS.

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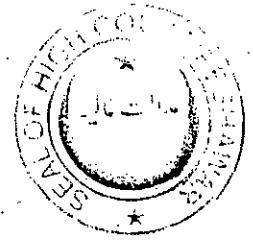
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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

Cr.A No. 861-P/2020

CONSOLIDATED JUDGMENT

Date of hearing: **28.02.2023**



Appellant (Riaz Ali and Maisam Ali) by: Syed Abdul Fayaz & Mr. Muzahir Hussain (Kohat), Advocates.

Respondents: (the State) by: Mr. Muhammad Nisar, Addl. AG and (complainant) by Mr. Hussain Ali, Advocate.

MOHAMMAD IBRAHIM KHAN, J.— This

singled-out judgment shall dispose of criminal appeal No. 861-P/2020 titled *Riaz Ali & another vs the State & another*, criminal appeal No. 141-P/2020 titled *The State vs Riaz Ali & another*, criminal appeal No. 919-P/2020 titled *Abbas Ali Bangash vs Zulfiqar alias Bhutto*, and criminal revision No.140-P/2020 titled *Abbas Ali Bangash vs Riaz Ali & others*. All arise out of a loner judgment dated 13.10.2020 passed by the learned Sessions Judge, Peshawar in Sessions Case No. 02/SC of 2014 trial held of FIR No.

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EXAMINER
PESHAWAR HIGH COURT

80 dated 24.03.2023 under sections 302-34-109 PPC registered at Police Station Ustarzai, District Kohat.

2. The contents of the murasila followed by registration of first information report are that on 24.03.2012 complainant Abbas Ali Bangash reported the matter to the effect that while performing his duties as Major in Pakistan Army at GHQ, Rawalpindi, he received information that on 23.03.2013, his brother Haider Ali Bangash, posted as Instructor at Cadet College, Swat, at about 19:25 hours went out on right side door of his house when someone knocked at the 2nd door towards the barren fields. After at about 1.5 minutes, the inmates heard firing shots from back side of the house hence, on telephonic call, his uncle namely Taj Muhammad came to their house, who found the dead body of Ali Muhammad Bangash in the barren fields. After arrival from Rawalpindi, the complainant charged accused Zulfiqar Ali alias Bhutto, Mazhar Ali and Riaz Ali for the murder of his brother. Motive behind the

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**ATTENDED
EXAMINER
P. O. High Court**

Ali and Maisam Ali guilty of the charges levelled against them while accused Zulfiqar alias Bhutto was acquitted of the charges of abatement/conspiracy. The sentences are:

Accused Riaz Ali son of Nadar Ali and Maisam Ali son of Riaz Ali are convicted u/s 302(b)/34 PPC and sentenced to the extent of imprisonment for life as Tazir. Each shall pay Rs.200,000/- (two lac) as compensation to LRs of the deceased in view of section 544-A CrPC, in default whereof, each shall undergo further six months SI.

Benefit of Section 382-B Cr.PC was also extended to them"

5. We have heard arguments of learned counsel for the appellants/respondents, learned Addl. AG on behalf of the State assisted by private counsel for complainant and perused the record with their valuable assistance.

6. While hearing learned counsels for the parties in this criminal appeal as well as in the connected appeals and criminal revision, it was pointed out that while each

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EXAMINER
PESHAWAR**

accused facing trial on examination under section 342 CrPC was put a specific question "Do you want to produce defense evidence?" The answer whereof copied in verbatim have named Ishrat Ali, Arz Navees of District Kohat, Record Keeper of Judicial Record Room, Kohat, Record Keeper of DPO Office Kohat, Ali Nasir Kiyani son of Jamsheed Ali Kiyani r/o Usterzai Kohat, Record Keeper of DIG Complaint Cell, Record Keeper of Police Station Usterzai and the inquiry report from DPO Office Kohat regarding their false involvement. While the statement of the defense witnesses were examined, they are DW-1 Azmat Ullah Khan FC No. 966 Record Keeper Complaint Cell DIG Office, Kohat, Khalid Usman FC No. 1233, Record Keeper DPO Office Kohat, DW-3 Atif Naeem, Madad Moharrar P.S Usterzai, Kohat, DW-4 Rehman Ali, Record Keeper Muhafiz Khana Kohat, DW-5 Ishrat Ali son of Ghulam Naqi Deed Writer and DW-06 Ali Nisar Kiyani son of Jamshed Ali Kiyani whereafter, there is no statement of

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EXAMINER
P.O. DISTRICT COURT

learned Defence Counsel pertaining to closure of the defense evidence but presumed to have been closed.

7. It was the dire requirement that all such defense witnesses should have been examined for each accused facing trial. Neither verbatim copies in triplicate are available nor there is any order of the learned trial court to the effect that all such defense witnesses are examined for all the three accused facing trial as have been examined only once. When this anomaly rather illegality was pointed out, the learned counsels for the parties were confronted with, they readily accepted it and have proposed that if at all this legal infirmity is not cured with either triplicate copies of these defense witnesses with an order of the learned trial court or such defense witnesses are to be examined separately as witnesses in defense for each accused facing trial then certainly God forbids on conviction, it will be difficult to prove that each accused was given an opportunity of producing separately of the defense witnesses

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EXAMINER
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or at least either consent be obtained when these witnesses are examined on behalf of all the accused and the learned trial court has to furnish verbatim copies of each defense witnesses' statement in triplicate.

8. Learned counsel for the parties are agreed, let to cure this anomaly, the conviction of each accused Riaz Ali and Maisam, awarded to them through the impugned judgment be set aside and the matter be sent back to the learned trial court to follow the observations in the preceding para.

9. In view of the above, while setting aside the impugned conviction and sentence, criminal appeal No. 861-P/2020 titled *Riaz Ali & another vs the State & another* stands disposed of accordingly.

10. So far as criminal appeal No.141-P/2020 titled *The State vs Riaz Ali & another*, criminal appeal No. 919-P/2020 titled *Abbas Ali Bangash vs Zulfiqar alias Bhutto*, and criminal revision No.140-P/2020 titled *Abbas Ali Bangash vs Riaz Ali & others* are concerned, since, the main

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judgment dated 13.10.2020 on remand of the case has been set aside hence, these appeals and revision petition stand dismissed, being infructuous.

11. Before parting with this judgment, needless to mention that accused-appellants Riaz Ali and Maisam Ali, prior to announcement of the impugned judgment which has been set aside, were on bail therefore, their previous status is restored, who be released forthwith on bail on already bail bonds being revived while the acquitted accused Zulfiqar Ali alias Bhutto will also join the trial, whose bail bonds are also revived.

Announced.
Dt: 28.02.2023

JUDGE

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Muhammad Flaz (D.B.) Hon'ble Mr. Mohammad Ibrahim Khan, J
Hon'ble Mr. Justice Ijaz Anwar, J

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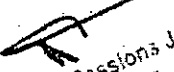
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No. of Pages 167
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Date of Preparation of Copy 14/3/2023
Date of Delivery of Copy 14/3/2023

BEFORE THE COURT OF ASHFAQUE TAJ
SESSIONS JUDGE, PESHAWAR.

Case No. 690/SC of 2023

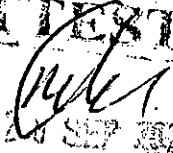
The Original Institution in Distt: Kohat: 24/10/2013.
The earlier Judgment: 13/10/2020
Remand of case to this court is of: 28/02/2023.
Date of Decision: 16/09/2023.

State Versus 1) Riaz Ali s/o Nadar Ali,
2) Meisam Ali s/o Riaz Ali,
3) Zulfikar Ali alias Bhutto
s/o Nadar Ali all r/o
Ustarzai Payan Tehsil &
& District Kohat.
.....(on bail)
4) Mazhar Ali s/o Nadar
Ali r/o Ustarzai Payan
Tehsil & District Kohat.
.....(absconding)


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FIR No. 80.
Dated: 24/03/2013.
Sections: 302/34/109 PPC
Police Station: Ustarzai, Kohat.

- Mr Jehanzeb Khan Sr. PP for State & Mr Hussain Ali, Advocate, counsel for complainant.
- Mr Abdul Fayaz Khan, Advocate, and Mr Muzahir Hussain advocate from Kohat Bar, for accused facing trial.

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JUDGMENT:

My predecessor in office rendered a thorough judgment in this case on October 13, 2020, following the trial. The accused, Riaz Ali, son of Nadar Ali, and Meisam Ali, son of Riaz Ali, were

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found guilty under Section 302(b)/34.PPC and sentenced to life in prison as Tazir with a fine of Rs. 200,000/- (two lac) each as compensation to the LRs of the deceased under Section 544-A Cr.P.C. If they do not pay the fine, they would have to serve an additional six months. The benefit of Section 382-B Cr.P.C. was extended to the convicts.

2. However, the accused, Zulifqar Ali alias Bhutto, was acquitted of abetment and conspiracy charges. Accused Mazhar Ali, s/o Nadar Ali, who did not surrender before the law, was declared a proclaimed offender, and a perpetual non-bailable warrant of arrest was issued.

3. The Hon'ble Peshawar High Court, Peshawar, via a valued judgment passed in Criminal

- Appeal No. 861-P/2020, titled "Riaz Ali & another vs. the State & another",

- Appeal No. 141-P/2020, titled "The State vs. Riaz Ali & another,

- Appeal No. 919-P/2020, titled "Abbas Ali Bangash vs Zulfiqar alias Bhutto". And,

- Criminal revision No. 140-P/2020, titled "Abbas Ali Bangash Vs Riaz Ali & Others".

4. All arising out of the above-referred judgment dated October 13, 2020, passed by my predecessor, the learned Sessions

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7. The Hon'ble Peshawar High Court, Peshawar, has directed this court, given the observations quoted in para. 7 of the valued consolidated judgment, and for ready reference, the same is hereby reproduced:

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"It was the dire requirement that all such defense witnesses should have been examined for each accused facing trial. Neither verbatim copies in triplicate are available, nor is there any order of the learned trial court that all such defense witnesses are examined for all three accused facing trial, as they have been examined only once. When this anomaly rather illegality was pointed out, the learned counsel for the parties was confronted, they readily accepted it and have proposed that if at all this legal infirmity is not cured with either triplicate copies of these defense witnesses with an order of the learned trial court or such defense witnesses are to be examined separately as witnesses in defense for each accused facing trial then certainly God forbids on conviction, it will be difficult to prove that each accused was even an opportunity of producing separately of the defense witnesses or at least either consent be obtained when these witnesses are examined on behalf of all the accused and the learned trial court has to furnish verbatim copies of each defence witnesses' statement in triplicate".

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8. Additional statements were recorded from Riaz Ali and Meisam Ali on 20/05/2023 and Zulfiqar Ali alias Bhutto on 27/05/2023 under Section 342 Cr. PC. They expressed their intent

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not to testify under oath but to present their defence evidence and rely on defence witnesses (DWs).

9. The defence counsel requested the transposition of defence evidence for all three accused, which was granted after the complainant's counsel raised no objections. Statements of defence witnesses were then transposed in triplicate for each accused, and the defence counsel concluded their case with their statements recorded.

10. On March 24th 2013 at 09:00 hours, on the report of Abbas Ali Bangash s/o Ali Muhammad Bangash, a FIR was registered to the effect that he was posted at General Head Quarters (GHQ) Rawalpindi as a Major in the Pakistan Army, on 23/03/2013 at 20:16 hours, he was informed by his brother Haidar Ali Bangash, Instructor at Cadet College Swat, on his/complainant cell # 0300-5708179, qua the murder of their father, Capt. Ali Muhammad Bangash (retired), in his village, Ustarzai Payan Kohat. On 23/03/2013, at about 19:25 hours, someone knocked on the left yellow back door of their house, which was towards the barren field with some trees, and in response, Ali Muhammad Bangash, while having his dinner, went outside through the right door of his house. After about 1.5 minutes, the inmates of the house heard firing from the back side of the house. After that, they called Taj Muhammad, the uncle of the complainant, on the phone, and Taj

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Muhammad came to their house. The house inmates and Taj Muhammad went towards the barren fields and found Ali Muhammad Bangash lying in a pool of blood. The dead body was shifted to Civil Hospital Ustarzai, Kohat, for postmortem examination. He/complainant left Rawalpindi for Kohat via Fateh Jhang Road. He/the complainant returned from Khushal Garh Bridge as it was closed and took Fateh Jhang Attock, Peshawar, and Kohat road. He told Mujtaba Ali SHO Police Station Ustarzai on the phone to wait for him as he wanted to report the matter, and he firmly believed that his co-villagers, namely Zulfiqar Ali alias Bhutto, Mazhar Ali, and Riaz Ali, sons of Nadar Ali, were involved in the murder of his father. The motive behind the occurrence was disputed over Shamilat-e-Deh with the accused party, which was pending in court, and the culprits had given life threats to the deceased many times. The deceased had told the complainant and his other two sons, namely Haidar Ali Bangash and Jehangir Ali Bangash, that if he got killed, it would be the doing of the above-cited culprits. If Zulfiqar Ali, alias Bhutto, was abroad, he was involved in the conspiracy to murder the deceased, and the culprits belonged to the terrorist groups of Orakzai and Khurram Agency. Jehangir Ali Khan Bangash, the complainant's brother, verified that he signed the FIR. Hence, the present case.

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11. Initially, a challan was filed against Zulfiqar Ali, alias Bhutto, and Mazhar Ali under Section 512 of the Criminal Procedure Code and against the accused Riaz Ali and Meisam Ali for the contested trials. On the appearance of accused Riaz Ali and Meisam Ali in court, necessary papers were provided to them as required under Section 265-C Cr. P.C. A charge was framed, to which they pleaded not guilty and claimed trial. Based on the statement of SW-1 Dastan Ali No. 87 DFC police station Usterzai Kohat, proceedings u/s 512 Cr.P.C. were initiated against the absconding co-accused, Zulfiqar Ali alias Bhutto and Mazhar Ali, and the prosecution was allowed to lead evidence in their absence. Later, accused Zulfiqar Ali alias Bhutto was arrested, and his supplementary challan was submitted under Section 265-C Cr.P.C. The necessary documents were also provided to him. Charges against all three accused facing trial were framed, to which they pleaded not guilty and claimed trial.

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12. In the prosecution's case for a murder trial, 16 witnesses were examined. Here's a summarized overview of their testimonies:

Witness Testimonies in Summary and Exhibits in a Murder Case:

1. PW-1/Ifikhar Ali FC No.84:
 - Witness Testimony: Transported blood-stained pebbles and garments to FSL, Peshawar.

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- Exhibits: Blood-stained pebbles, blood-stained garments, parcel with 16 empties of 7.62 bores.
- His Statement: Recorded by the IO under Section 161 Cr.PC.

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2. PW-2/Hashmat Ali ASI:

- Witness Testimony: Witnessed the recovery of blood-stained garments and their sealing.
- Exhibits: Blood-stained garments.
- His Statement: Recorded under Section 161 Cr.PC.

3. PW-3/Maqbool Hussain FC No. 67:

- Witness Testimony: Witnessed the recovery of a Kalashnikov and its sealing.
- Exhibits: Kalashnikov, warrants u/s 204 Cr.PC, proclamation notices u/s 87 Cr.PC.
- His Statement: Recorded under Section 161 Cr.PC.

4. PW-4/Aman Ullah Constable No. 88:

- Witness Testimony: Witnessed the recovery of CDs and letters.
- Exhibits: Three CDs, two English letters.
- His Statement: Recorded under Section 161 Cr.PC.

5. PW-5/Dastan Ali HC No. 87:

- Witness Testimony: Witnessed various recovery memos and handled warrants/proclamation notices.

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- Exhibits: Blood-stained garments, official Kalashnikov, warrants u/s 204 Cr.PC, proclamation notices u/s 87 Cr.PC.
- His Statement: Recorded under Section 161 Cr.PC.

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6. PW-6/Mujtaba Ali SI:

- Witness Testimony: Initiated the FIR, arrested the accused, and submitted challans.
- Exhibits: FIR, card of arrest, interim challan, complete challan.

7. PW-7/Nazeer Khan SHO:

- Witness Testimony: Prepared the inquest report and injury sheet.
- Exhibits: Inquest report of the deceased, injury sheet.

8. PW-8/Dr. Ashfaq:

- Witness Testimony: Conducted a post-mortem examination, documented injuries.
- Exhibits: Post-mortem examination report, injury descriptions.

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9. PW-9/Aftab Javed, then JM:C-VI Kohat:

- Witness Testimony: Conducted identification parades of accused persons.
- Exhibits: Applications for identification parade, identification parade report.

10. PW-10/Gul Janan Inspector:

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- Witness Testimony: Submitted a supplementary challan.
- Exhibit: Supplementary challan.

11. PW-11/Naeem Ullah SI:

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- Witness Testimony: Conducted partial investigation, handled CDR evidence, and arrested an accused.
- Exhibits: Call data recording (CDR) related to a mobile phone, letters with CDR data, applications for police custody, mobile data records.

12. PW-12/Wisal PA to SP Investigation:

- Witness Testimony: Witnessed the recovery of court documents.
- Exhibit: Court documents, petitions, letters, and Google maps attached to a letter.

13. PW-13/Muhammad Azam SI:

- Witness Testimony: Handled documents and recorded statements of witnesses.
- Exhibit: Documents consisting of 205 pages.

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14. PW-14/Captain Jehangir Ali Bangash:

- Witness Testimony: endorsed the FIR and provided information regarding threats made to the deceased.
- Exhibits: Father's complaint letter to Magistrate Kohat surety bond.

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15. PW-15/Abbas Ali Bangash:

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- Witness Testimony: Recorded the FIR.
- Exhibit: FIR.

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16. PW-16/Mst. Ali Parveen:

- Witness Testimony: Provided an eyewitness account of the incident.
- Her Statement: Recorded under Section 164 Cr.PC.

These exhibits and the witnesses' testimonies constitute the prosecution's comprehensive case in the murder trial.

13. After the close of the prosecution evidence, statements of the accused were recorded under Section 342 Cr.P.C., wherein they professed their innocence and opted not to appear on oath under Section 340(2) Cr. PC, however, wished to produce defence evidence.

14. The accused called upon a total of six defence witnesses, and the critical points of their testimony are summarized as follows:

1. DW-1 Azmat Ullah Khan FC No. 966:

- Testimony: Produced various documents, including an application, an inquiry report, and DD No. 11 dated 28/09/2013.

Exhibits: Application (Ex.DW1/1), inquiry report (Ex.DW1/2), DD No.11 (Mark D1), application (Mark D2).

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2. DW-2 Khalid Usman FC No. 1233:

- Testimony: Brought records related to a complaint, such as an application, SHO P.S. Ustarzai report, and a police report regarding ATM card theft.
- Exhibits: Application (Ex.DW2/1), SHO P.S. Ustarzai report (Ex.DW2/2), police report (Mark D2/1).

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3. DW-3 Atif Naeem Madad Moharrir:

- Testimony: Presented a Roznamcha Register dated 23/03/2013 containing entries about accused Maisem Ali's activities.
- Exhibit: Roznamcha Register with entries (Ex.DW3/1).

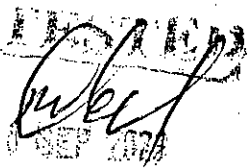
4. DW-4 Rehman Ali Record Keeper:

- Testimony: Produced records of Muafiz Khana, which were consigned in 2018 from Ishrat Ali, a deed writer.
- Exhibit: Record of Muafiz Khana (Ex. DW4/1).

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DW-5 Ishrat Ali s/o Ghulam Naqi:

- Testimony: The deed writer of a document involving Ikhtlaq Hussain Kiyani and Zulfikar Ali Bhutto was confirmed.
- Exhibit: Deed (Ex.DW5/1) with signatures of involved parties and witnesses


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6. DW-6 Ali Nasir Kiyani, s/o Jamshed Ali Kiyani:

- Testimony: As a witness, he was deposed for the accuracy of the deed above (Ex.DW5/1).
- Exhibit: Deed (Ex.DW5/1) with witness signatures

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These defence witnesses and their corresponding exhibits were presented to bolster the accused's case during the trial.

14. The defence was given the opportunity to open arguments since the defence evidence was procured.

Defense Counsel's Arguments:

- The accused are innocent and falsely implicated.
- Presented DW-1 to DW-6 as evidence of innocence.
- The prosecution's witnesses (close relatives) were deemed unreliable.
- There is no convincing justification for FIR delay.
- Lack of independent witnesses
- Disputed recovery of evidence (blood-stained pebbles, empties)
- Official weapon mismatch with recovered empties
- CDR is unrelated to the alleged offence.
- Medical evidence and site plan are inconsistent with FIR.
- The alleged motive for the crime is considered baseless.
- Accused Zulfqar Ali is not an absconder.

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- Challenged the sanctity of the identification parade.
- Prosecution witnesses are unreliable due to changing testimony.

Prosecution's Arguments:

- Reliance on Key Witness: The prosecution emphasized the testimony of PW-16, Ms. Alia Parveen, as a straightforward and convincing witness who provided a cohesive account of the murder.
- Identification Parade: Ms. Alia Parveen and her sister, Mst. Maria Parveen, correctly identified Riaz Ali and Maisam Ali during an identification parade, even though they had never seen them before.
- Credible Witnesses: The close relatives of the deceased, including PW-14 Jehangir Ali Khan Bangash, PW-15 Abbas Ali Bangash (the complainant), and PW-16 Ms. Alia Parveen, were considered credible witnesses.
- Explanation for Delay: The prosecution provided a convincing explanation for the delay in lodging the FIR, citing a solid motive related to a land dispute and legal proceedings under sections 107/151 Cr.P.C. The accused had allegedly threatened the deceased multiple times before the incident.

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- Supporting Evidence: The site plan and medical evidence supported the prosecution's version of events outlined in the FIR.
- Recovery of Empties and Blood-Stained Pebbles: The recovery of 16 empties of 7.62 bore and blood-stained pebbles at the crime scene bolstered the prosecution's case.
- FSL Report and Clothing Evidence: The positive FSL report regarding the blood-stained pebbles and the deceased's last worn clothes further corroborated the FIR's details.
- Abscondence of Accused: The noticeable abscondence of the accused, Zulfiqar Ali alias Bhutto, suggested his involvement in the crime to the extent of abetment.
- Weapon Recovery: The recovery of a Kalashnikov from the personal box of accused Maisam Ali (FC No. 1502) was presented as significant evidence.
- Identification by Searchlight: The identification of the culprits by Ms. Alia Farveen with the aid of a searchlight and hand torch at the time of the incident was highlighted as a critical aspect of the prosecution's case.
- Capital Punishment: The prosecution argued that, given the circumstances of the case, all the accused facing trial deserved capital punishment.

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These bullet points outline the main arguments presented by the prosecution.

15. After weighing the arguments of both sides and examining the record, this court believes that the following are the categories of evidence for reaching a just decision.

- i. First Information Report (FIR).
- ii. Ocular Account.
- iii. Motive.
- iv. Investigation.
- v. Defence Evidence.

16. Findings:

The primary issue for discussion and determination is that the complainant's learned private counsel, Mr. Hussain Ali, advocate, has asserted that this case was remanded with specific directives as outlined in paragraph-7 of the esteemed judgment. According to Mr. Hussain Ali, this court's scope of action was limited to adhering to these directives, rectifying any identified discrepancies, and essentially reiterating the judgment as previously issued.

However, this court respectfully disagrees with the presented arguments for the following reasons. The Honorable High Court astutely noted that there was no statement from the learned defence counsel regarding the formal closure of the defence's presentation of evidence, which was presumed to have occurred. The directives explicitly emphasized the necessity that

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all defence witnesses be examined for each accused facing trial. The case was remanded in paragraph 10 of the esteemed judgment, and the previous judgment was set aside.

It is crucial to recognize that the evaluation of the defense's testimonies cannot be conducted in isolation from the prosecution evidence that has already been introduced. On remand, this Court is obligated to comprehensively assess all available evidence, both prosecution and defence, in accordance with the directives issued by the Honorable High Court. This ensures a thorough and unbiased examination of the case, with due consideration given to the complexities and nuances presented during the trial.

When a case is remanded, it means that the lower court must review the case again, address the issues or concerns raised by the higher court, and take appropriate actions to rectify any errors or deficiencies. This may involve conducting additional hearings, reevaluating evidence, or revisiting legal arguments.

First Information Report (FIR):

In criminal cases, the First Information Report (FIR) catalyzes state action when a cognizable crime is reported. Established legal guidelines emphasize the prompt filing of an FIR as a fundamental parameter for assessing its legitimacy and accuracy. In this case, the incident transpired on March 23, 2013.

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at 19:30 hours, but the FIR was lodged on March 24, 2013 at 09:00 hours, approximately 14 hours later. Major Abbas Ali Bangash, the complainant and son of the deceased, Ali Muhammad Bangash, initiated the FIR. According to the FIR, he received word of his father's murder via a distress call from his brother, Haidar Ali Bangash. However, he encountered delays due to a traffic jam and returned to Fateh Jang, reaching PS Ustarzai on March 24, 2013, at 09:00 hours.

Without delving into other merits, this Court sees the substantial delay in reporting the matter. Several unresolved questions or issues in the FIR include:

- Why didn't the deceased's brother and complainant's uncle, Taj Muhammad, report the matter to the police?
- Why did the house occupants who called Taj Muhammad not contact the police directly?
- Why didn't the police take immediate action upon receiving the deceased's body at Civil Hospital Ustarzai?
- Why was it recorded in the FIR that the complainant directed the police not to lodge the FIR, intending to handle the matter personally?

These omissions and questions highlight that the FIR was not promptly filed as required to establish its credibility and authenticity. When charging the accused, the complainant relied

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on suspicion rather than an ocular account. Additionally, the FIR didn't mention the complainant's sisters as eyewitnesses, which later emerged as a significant aspect of the case.

Furthermore, it's noteworthy that the complainant suggested charging Zulfiqar Ali, alias Bhutto, with aiding the murder and directly holding him responsible, both based on assumptions and conjecture. These imperfections indicate that the FIR was not meticulously prepared, negatively impacting the case from the outset.

Reliance is placed on: 2009 P Cr. LJ 971 [Peshawar] titled "Hathi Khan Vs Muhammad Hashim Khan & 02 Others,

Ss. 302/324/34 —Criminal Procedure Code (V of 1898), S.417 (S-A) —Appeal against acquittal: Benefits of doubt inordinate delay of 3-1/2 hours in lodging the FIR. —Intervening period of time was consumed in consultation and deliberation before charging accused. Presence of witnesses on the spot at the time of occurrence, had become doubtful in circumstances—Medical evidence also did not corroborate the statements of eye-witnesses—Nine empties of 7.62 bore recovered from a single weapon, which could mean that assailant was one and who was that of two nominated accused, was in mystery which further suggested that witnesses had not seen the occurrence—Benefit of doubt arising in the case would go to both accused persons.

The other cases on the point of law are:

"Gulzada Vs Gul & others" [2019 P Cr.LJ 1627 (Peshawar - Mingora Bench)],

"Javed Khan Vs The State & 02 others" [2023 P Cr.LJ Note 17 (Peshawar - Bannu Bench)],

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"Zahireen & another Vs The State through AAG & others" [2023 P Cr.LJ 998 (Peshawar - Mingora Bench)], and

"Muhammad Sadiq Vs The State" [2017 SCMR 144 (Supreme Court of Pakistan)].

Eyewitness Account:

The pivotal testimonies of the complainant's sisters, Mst. Alia Parveen and Maria Parveen, were introduced into the case seven days after the incident. Both provided eyewitness accounts under Section 164 of the Cr.PC and identified the accused during an identification parade. Mst. Alia Parveen, as PW-16, recounted that on the fateful evening, they were in the kitchen preparing tea when their father was shot. From a distance, they saw the assailants firing Kalashnikov rifles while lit up by flashlights. However, questions arise regarding the credibility of this late introduction of an eyewitness account. The FIR did not initially reference their eyewitness status, and the complainant failed to inquire about the details with them or other household members when the police arrived. The decision to present her as an eyewitness likely aimed to bolster the case, originally based on circumstantial evidence.

During cross-examination, Mst. Alia Parveen admitted to not describing the culprits before the identification parade, and she mentioned an unrecorded detail about one accused wearing a police uniform during the crime. She also disclosed meeting the complainant when the police arrived, raising doubts about the

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delay in sharing her eyewitness account with him. Additionally, considering the proximity of the accused's residences, it's puzzling why Alia Parveen was unfamiliar with their faces. These circumstances cast uncertainty on the accuracy of their identification, even if other aspects of their account are considered true.

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Guidance is taken from 2009 P Cr.LJ 997 [Lahore] titled "Muhammiad Imran Vs The State".

Art. 22--Identification parade--Principle--Evidence of identification parade would lose its efficacy and cannot be relied upon if prosecution witnesses would not describe the role played by each of the accused at the time of commission of the offense. The same would be the position if prosecution witnesses, while making statements in court, would did not attribute any individual role to the accused played by them during the occurrence.

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The delay in recording the statement under 164 Cr.P.C. by the eyewitness and charging the accused for the commission of the crime is raising serious doubts in the prosecution version. The identification parade became meaningless as 7 days were sufficient to show the accused to the eyewitness.

Investigation:

In this case, the role of the investigation officer (IO) is crucial, and any lapses in their duties can significantly affect the case's integrity. The complainant, Abbas Ali Bangash (PW-15), initiated the case based on information received from his brother

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Haidar Ali, who was then posted in Swat. The source of this information remained unknown to the complainant.

Inspector Zeenat Hussain (PW-17) conducted the investigation. He revealed that another brother of the complainant, Jehangir Ali Khan, had visited the family home before reporting the incident at the police station. However, none of the sisters had informed the investigators that they had witnessed the accused individuals who are now on trial for the murder. This omission created a significant gap in the case facts.

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The IO acknowledged several deficiencies in the investigation. Notably, he had failed to conceal the faces of the accused when they were arrested and transported from the police station to the court. Moreover, the eyewitnesses, while expressing their ability to identify the culprits if presented before them, had not provided detailed descriptions or explained the roles of each accused in their statements. This omission is pivotal and impacts the case's foundation.

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Furthermore, the IO's site plan (Ex.PB) indicated the presence of obstructive trees (*Ujar Khait Darakhtan*) at the crime scene, suggesting limited visibility from the kitchen to the place of occurrence. This critical detail should have been thoroughly examined and documented during the investigation, as it directly affects the credibility of eyewitness accounts.

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It's crucial to note the recovery of spent bullet casings (empties) from the scene of the occurrence. Ideally, these empty casings should match the type of weapon used and recovered in the offence. However, in this case, the recoveries suggest that they originated from a single weapon, while charges have been levied against three individuals. This inconsistency raises doubts about the accuracy of the charges and the adequacy of the investigation.

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In summary, the failure to gather detailed descriptions from eyewitnesses before identification and the incongruity in the recoveries of spent bullet casings cast significant shadows of doubt on the case's veracity.

Guidance is derived from: 2022 P Cr.LJ 338 titled "*Alam Khan & others Vs The State*."

Motive:

The motive for the murder was allegedly a civil dispute between the complainant's father and the accused, particularly Zulfiqar Ali, alias Bhutto. The victim had reported threats from the accused in a police report, and documents confirmed the ongoing legal dispute.

However, during cross-examination, it was revealed that the deceased had not only issues with the accused but also with his own son, Abbas (complainant). Abbas denied writing letters against his father in 2010 and disagreed with certain details about his wedding, indicating strained family relations. Witnesses from

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the defence also presented evidence of tension between the victim and various family members.

The accused is facing a murder charge because of a civil dispute. The dispute was of such magnitude to cause murder that fact was not proved and is creating doubt, as, on the other hand, the complainant himself was not on good terms with his deceased father. Ultimately, the motive for the murder remained unclear, casting doubt on the prosecution's version, and it is, therefore, held not established in the circumstances.

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According to 2010 SCMR 97 titled "Noor Muhammad Vs The State":

B. Motive: When motive is alleged but not proved, then the ocular proof is required to be scrutinized with great caution. C: Motive—Prosecution though not called upon to establish motive in every case. Yet once it has set up a motive and fails to prove the same, then prosecution must suffer the consequence and not the defence.

When the motive is alleged but not proved, the ocular proof must be scrutinized with great caution. Similarly, in 2016 PCrLJ N-111 [Peshawar], the mandate set down is that prosecution, though not called upon, establish a motive in every case. Yet once it has set up a reason or motive and fails to prove the same, the prosecution must suffer the consequence and not the defence.

To sum it up, while there is evidence of a legal dispute between Abbas' father and the accused, there's also evidence of a

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complicated family relationship. This complexity makes it unclear what exactly drove the crime.

2020 P Cr. LJ 1589 [Sindh (Hyderabad Bench)] titled "Jamal Khan Vs The State" is another valuable authority on the point.

Post Mortem:-

Dr. Ashfaque RHC (PW-8) conducted a post-mortem examination and confirmed that he had performed the examination on the deceased Ali Muhammad Bangash. It is important to note that the post-mortem report primarily serves the purpose of establishing the cause of death, which, in this case, was determined to be death by fire. However, it should be emphasized that a mere post-mortem report alone is insufficient to establish the guilt of the accused in connection with the commission of the crime. To prove the accused's involvement, there must be additional incriminating and connecting evidence, which is currently lacking in this case.

Defence Evidence:-

In this murder case, the defense presented six witnesses to highlight the strained relationship between the deceased father and his son (the complainant). Their intention was to show that the father and son were not on good terms, which in turn raises questions about whether someone other than the accused could have been responsible for the murder. To support their claim, the

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defense introduced various documents through the custodian of these records.

One of the crucial pieces of evidence came from Khalid Usman (DW-2), who presented Ex.DW2/1, a three-page application, along with SHO PS Ustarzai's report dated 12/10/2010, Ex.DW2/2, and photocopies of a complaint under Section 107/151 Cr. PC. Ex.DW2/1 contained an application from the complainant himself, leveling severe accusations against his deceased father and describing him as a psychopath. The contents of this complaint indicate that the relationship between the father and son was strained and severely deteriorated. This raises doubt about the motive attributed to the accused facing trial, creating a mystery about the true motivation behind the crime.

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Further defence evidence was presented regarding Maisam Ali's presence on duty during the crucial event. DW-3 provided records to support this claim. To that extent, the defence claim remained un rebutted and shattered.

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Notably, despite being the first to approach the deceased's body, the deceased's brother did not appear as a complainant or witness in the case. The court infers a negative outcome or infraction from his absence in accordance with Article 129 of the Qanoon-e-Shahdat Order (1984), as the prosecution essentially abandoned him. This principle is based on the understanding that

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if his testimony favored the prosecution's case, he would not have been excluded from their list of witnesses.

In the current case, the prosecution has also not examined the dead body identifiers and has abandoned them as unnecessary. Reliance is placed on 2018 YLR Note 192 [Peshawar] titled "Shehriyar Vs Zair Ullah & Another".

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"--Said witness had not been shown as witnesses in the inquest report or the postmortem Report to have identified the dead body before the police and the Medical Officer.--Two other persons were shown to have identified the dead body of deceased before the police as well as before the Medical Officer, but they were abandoned by the prosecution as unnecessary. Non-production of both the identifiers of the dead body by the prosecution tended to create doubt about presence of the eyewitnesses at the spot at the time of occurrence".

17. The crux of the investigation, along with facts on the motive, medical account, defence evidence, and ocular account, have caused this court to believe that the prosecution case has severe flaws. The accused has not confessed before the court, and no recovery of the crime weapons was affected at the time of pointation by the accused facing trial.

18. It has been observed in the reported case of *Noor Shah Gul Vs Asim Ullah PLD 2015 Peshawar 01*,

"It is the cardinal principle of administration of criminal justice that prosecution is bound to prove its case beyond any shadow of a doubt; if any reasonable doubt arises in the

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prosecution's case, the benefit of the same must be extended to the accused not as a matter of grace or concession but as a matter of right."

Likewise, it is also a well-embedded principle of criminal justice that there is no need for so many doubts in the prosecution case; rather, any reasonable doubt arising out of the prosecution evidence, pricking the judicious mind, is sufficient for acquittal of the accused. The principle enshrined in Islamic Jurisprudence 1400 years ago is that "it would be better to acquit a hundred culprits than convict one innocent soul".

Now it has been transformed into the principle that "acquitting by error would be better than convicting by error". The same commandment has evolved into the theory of the benefit of the doubt, which, invariably, is extended to the accused to meet the ends of justice. The law on the point is also furnished

Muhammad Khan vs. The State, 1999 SCMR 1220, Muhammad Ikram vs. the State 2009 SCMR 230, Jihad Ali Vs Riaz Ali, 2014 P Cr.LJ 1559; Peshawar Riasat Ali vs. the State 2013 YLR 272 Lahore; and Muhammad Ashraf alias Acchee vs. The State, 2019 SCMR 652 are other valuable authorities on the point.

19. As the prosecution evidence is full of doubts about the role of the accused in the crime, they deserve straight acquittal.

20. The accused, Riaz Ali s/o Nadar Ali, Faisal Ali s/o Riaz Ali, and Zulfiqar Ali alias Bhutto s/o Nadar Ali, all r/o Ustar Zai

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Payan Tehsil & District Kohat, charged under sections 302/34/109 PPC, FIR No. 80, police station Ustarzai Kohat, dated March 24, 2013, are acquitted of the charges brought against them due to a lack of proof. The accused are out on bail, their bail bonds are revoked, and the sureties are released from their bail bond obligations.

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21. However, based on the available evidence, there is a prima facie case against accused Mazhar Ali, s/o Nadar Ali, r/o Ustarzai Payan Kohat. Therefore, he is declared a proclaimed offender. A perpetual non-bailable warrant for his arrest is issued. His name shall be entered in the register maintained for the POs. The case property shall be kept intact until his arrest and trial. However, if there appears to be any genuine request for the return of any case property, that would be dealt with accordingly.

22. Record be returned along with a copy of this judgment. Files should be consigned to record room after completion and compilation.

Announced
16/09/2023.

Ashfaq TAJ
ASHFAQUE TAJ
Sessions Judge,
District & Sessions Judge,
Peshawar

CERTIFICATE

Certified that this judgment consists of twenty nine (29) pages. Each page has been read, checked, corrected where necessary and signed by me.

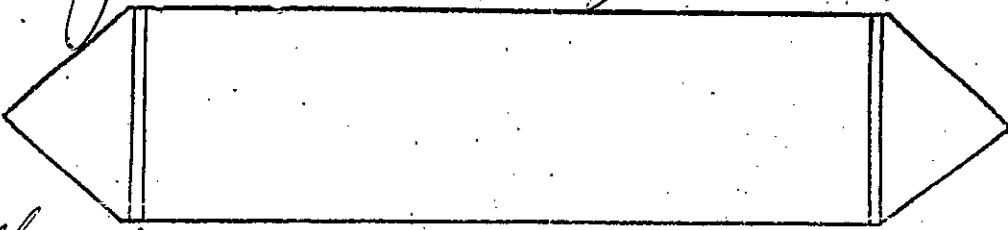
No:	54884
Date:	28-9-23
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Signature of:	<i>Ashfaq TAJ</i>
Dated of Preparation:	28-9-23
Date of Delivery:	28-9-23

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Sessions Judge, Peshawar.
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بعدالت خبر حقوقہ سکاڑہ اور



2، جانب -
بنام ای 58

صوم

موزخہ
مقدمہ
دعویٰ
جرم

Executa Rehm

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکن کارروائی متعلقہ
آن مقام کے لئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا قابل اختیار و ذمہ داری
دیکل صاحب کو راضی نامہ کرنے و تقرر نمائت فیصلہ برحلف دینے جو اب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دوزہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ ابتدا و کالت نامہ لکھ دیا کہ مسترد ہے۔

الرقوم _____ ماہ _____ 20

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کے لئے منظور ہے۔

بمقام

Asam Ali

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