


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

Appeal No. 201/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29/01/2024	<p>The appeal of Mr. Tausif Ahmad resubmitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshi is given to counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

13  
The appeal of Mr. Tausif Ahmad received today i.e on 18.01.2024 is incomplete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days

- 1- Departmental appeal and revision petition is unsigned.
- 2- Affidavit is not attested by the Oath Commissioner.
- 3- Copy of departmental appeal is not attached with the appeal be placed on it.
- 4- Page nos. 20, 47, 50 to 59 and 74 of the appeal are illegible which may be replaced by legible/better one.

No. 137 /S.T

Dt. 19-1 /2024.

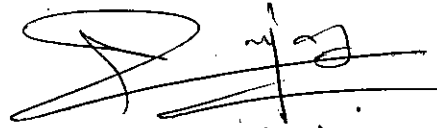


REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Saadullah Khan Marwat Adv.  
High Court at Peshawar.

Sir,

Re - submitted after removing  
the objections.



29/1/24.

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. 201 /2024

Tausif Ahmad

versus

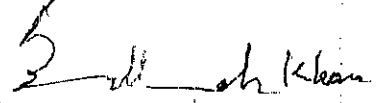
DPO & Others

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Through

Appellant

  
Saadullah Khan Marwat  
Advocate,  
21-A Nasir Mansion,  
Shoba Bazaar, Peshawar.  
Ph: 0300-5872676

Dated.16-01-2024

**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. 201 /2024

Tausif Ahmad S/O Nawaz Khan,  
R/O Adam Zai, Lakki Marwat.  
Ex-Constable (LHC) No. 411,  
Police Line Lakki Marwat . . . . . Appellant

**Versus**

1. District Police Officer,  
Lakki Marwat.
2. Regional Police Officer,  
Bannu Region Bannu.
3. Provincial Police Officer,  
KP, Peshawar . . . . . Respondents

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974  
AGAINST OB NO. 462 DATED 04-10-2022 OF R.  
NO. 01 WHEREBY APPELLANT WAS DISMISSED  
FROM SERVICE WITH EFFECT FROM 07-09-2022  
RETROSPECTIVELY OR OFFICE ORDER NO. 2083  
/ EC DATED 04-07-2023 OF R. NO. 02 WHEREBY  
REPRESENTATION OF APPELLANT WAS  
REGRETTED OR OFFICE ORDER NO. 3077-82  
DATED 22-12-2023 OF R. NO. 03 WHEREBY THE  
BOARD REJECTED THE REVISION PETITION OF  
APPELLANT FOR NO LEGAL REASON:**

**Respectfully Sheweth;**

1. That appellant was initially appointed as Constable on 09-12-2002 and was serving the department to the best of the ability and without any complaint.

2. That on 02-06-2017, when appellant was on duty at Police Line, Lakki Marwat was involved in criminal case No. 197 Police Station Tajori u/s 324/34 PPC by the enemies. (Copy as annex "A")
3. That on information of the said incident to the high-ups at Lakki Marwat, appellant was put behind the Quarter Guard and when charged at 09:00 PM, was handed over to the local police.
4. That on 16-11-2017, appellant was dismissed from service by R. No. 01 on implication in criminal case. (Copy as annex "B")
5. That on 13-05-2020, appellant finally filed Bail Application before Peshawar High Court, Bannu Bench which came up for hearing on 15-06-2020 and was then released on bail by the hon'ble court. (Copies as annex "C" & "D")
6. That appellant filed appeal before R. No. 02 for reinstatement in service which was accepted on 10-08-2020 and order of dismissal from service was modified into minor punishment of censure. (Copies as annex "E" & "F")
7. That on the other hand, trial into the matter was initiated and after recording pro and contra evidence appellant was convicted and sentenced for life imprisonment and fine of Rs. 10, 00,000/- etc. vide judgment dated 07-09-2022. (Copy as annex "G")
8. That thereafter appellant filed Criminal appeal on 13-09-2022 before the Peshawar High Court, Bannu Bench for acquittal. (Copy as annex "H")
9. That on conviction by the court of ASJ Lakki Marwat, appellant was dismissed from service on 04-10-2022 with effect from 07-09-2022 by R. No. 01 retrospectively. (Copy as annex "I")
10. That the said criminal appeal came up for hearing on 08-03-2023 and then the hon'ble court was pleased to set aside the conviction and sentence of appellant vide judgment dated 08-03-2023. (Copy as annex "J")

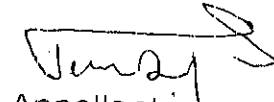
11. That thereafter appellant filed departmental appeal on 17-04-2023 before R. No. 02 which was regretted vide order dated 04-07-2023. (Copies as annex "K" & "L")
12. That on 13-07-2023, appellant filed Revision Petition before R. No. 03 for setting aside order of R. No. 02 which was rejected by the Board on 22-12-2023. (Copies as annex "M" & "N")

Hence this appeal, inter alia, on the following grounds:-

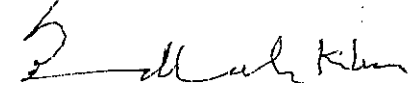
**GROUND S:**

1. That at the day of occurrence, appellant was on duty in police line, he was put in quarter guard on receiving information of the incident by the authority and was then handed over to local police station Tajori after registration of the FIR.
2. That though appellant was convicted by the Trial Court but the said conviction and sentenced was set aside by the hon'ble High Court vide judgment dated 08-03-2023.
3. That after remitting the acquittal judgment of the High Court to the respondents, it was incumbent upon them to reinstate him on service with all back benefits what to speak of regret of his departmental appeal by R. No. 02 as well as by R. No. 03.
4. That appellant was implicated in the case with all members of his family on account of enmity, but at the same time, appellant was on duty and the authority handed over to local police on charge in FIR of Police Station Tajori.
5. That apart from the aforesaid facts no enquiry was conducted in the matter what to speak of providing him opportunity of cross examination, service of Final Show Cause Notice and self-defense.
6. That the impugned orders of the authorities are in total disregard of law on the subject and are based on malafide by not securitizing the criminal record of appellant.


It is, therefore, most humbly prayed that on acceptance of appeal, orders dated 04-10-2022, 04-07-2023 and 22-12-2023 of the respondents be set aside and appellant be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

  
Appellant

Through

  
Saadullah Khan Marwat

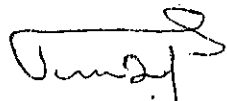
  
Arbab Saiful Kamal

  
Amjad Nawaz  
Advocates.

Dated 16-01-2024

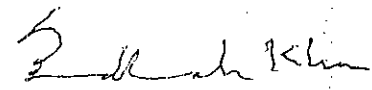
### AFFIDAVIT

I, Tausif Ahmad S/O Nawaz Khan, R/O Adam Zai, Lakki Marwat. Ex-Constable (LHC) No.411, Police Line Lakki Marwat (Appellant), do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief.

  
DEPONENT

### CERTIFICATE:

As per instructions of my client, no such like Service Appeal has earlier been filed by the appellant before this Hon'ble Tribunal.

  
ADVOCATE

ابتدائی اطلاعی رپورٹ

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

ضلع لکی مروت

تھانہ تجوڑی

تاریخ وقت وقوع 2.6.17 وقت 19:00 بجے

نمبر 197

۱۔ تاریخ و وقت رپورٹ 2.6.17 وقت 22:10	چاکیدگی 2.6.17 وقت 23:00 بجے
۲۔ نام سکونت اطلاع دہندہ مستغیث	محبت اللہ ولد نواز خان سکنہ خونداد آدمزئی عمر 36/37 سال
۳۔ مختصر کیفیت جرم (معدہ دفعہ) حال اگر کچھ لیا گیا ہو۔	PPC 324/34
۴۔ جانے وقوعہ ناصیہ تھانہ سے اور سمت	نزد خانہ مدعی واقع خونداد خیل آدمزئی جانب مشرق جنوب بفاصلہ قریب 8/9 کلومیٹر از تھانہ
۵۔ نام سکونت ملزم	۱۔ نادر خان ۲۔ شریف اللہ پسران عمر ۳۔ دل جان ولد شریف ۴۔ عباس ولد نادر خان سکنائے خونداد خیل آدمزئی
۶۔ کارروائی جو تفتیش سے متعلق کی گئی اگر اطلاع کرنے میں توقف و تاویجہ بیان کرہ	برسیدگی مراسلہ رپورٹ پر چودیا گیا
۷۔ تھانہ سے روانگی کی تاریخ و وقت	برسبیل ڈاک

ابتدائی اطلاع نیچے درج کروا کر اس وقت ایک تحریری مراسلہ رپورٹ منجانب حمزہ علی ASI بغرض قانچی مقدمہ بدست کنسٹیبل صفی اللہ 541 موصول ہو کر ذیل ہے۔ رپورٹ... محبت اللہ ولد نواز خان سکنہ خونداد خیل آدمزئی عمر 36/37 سال موبائل 9368871-0343 آج مورخہ 2.6.17 بوقت 22:10 بجے بحالت، بحرحیث، ہمراہ مجروح ہمراہی رشتہ دار اش سکندر خان ولد مظفر خان سکنہ دیہہ اش بمقام ایمر جنسی روم سول ہسپتال تجوڑی رپورٹ کرتا ہے کہ امروز عصر تقاضا دیلہ میں معہ ہمراہی ام سکندر خان، بیٹھک خود کے سامنے چارپائی پر گپ شپ میں مصروف تھے۔ کہ اس دوران بوقت قریب 19:00 بجے سیان ۱۔ نادر خان ۲۔ شریف اللہ پسران عمر ۳۔ دل جان ولد شریف ۴۔ عباس ولد نادر خان سکنائے دیہہ ام آئے جو مسلحہ کاشکوف ہاتھ اور آتے ہی چاروں کسان متذکرہ بالا نے ہم پر بہ نیت قتل فائرنگ شروع کی جسکی فائرزوں سے میں معہ ہمراہی ام سکندر خان لگ کر شدید زخمی ہوئے۔ ملزمان بعد وقوعہ سے چل گئے ہم بوجہ خالی ہاتھ کچھ نہ کر سکے۔ میں معہ ہمراہی سکندر خان کو فوراً رشتہ داران دیہہ والوں نے بغرض علاج معالجہ سول ہسپتال تجوڑی لے آئے۔ وجہ عداوت برادر ام توصیف اللہ اور ملزمان کے مابین تنازعہ مستورات ہے۔ میں اپنی اور ہمراہی سکندر خان کی مروضیت با نیت قتل فائرنگ کرنے کا برخلاف ہر چار کسان متذکرہ بالا دعویدار ہوں۔ العبد نشان انگوٹھا میں سسی سکندر خان ولد مظفر خان رپورٹ بالا کی تائید کرتا ہوں۔ العبد نشان انگوٹھا کارروائی پولیس حسب گفتہ سائل رپورٹ حرف، بحرف درج بال، ہو کر پڑھ کر سنایا سمجھایا گیا۔ صورت رپورٹ کو درست تسلیم کر کے زیر رپورٹ خود اپنا نشان انگوٹھا ثبت کیا اسی طرح سکندر خان نے رپورٹ بالا کی تائید میں اپنا انگوٹھا ثبت کیا۔ جسکی میں تصدیق کرتا ہوں۔ مجروحین کے نقشہ ضرر علیحدہ علیحدہ مرتب کر کے زیر حفاظت کنسٹیبل تاج علی 459 حوالہ ڈاکٹر صاحب کیا جاتا ہے۔ مضمون رپورٹ سے صورت جرم PPC 324/34 کی پائی جا کر رپورٹ بحوالہ مقدمہ علت 196 مورخہ 2.6.17 جرم PPC 302-324/34 تھانہ تجوڑی کی کر اس مقدمہ ہے۔ اور مدعی تائید کنندہ مقدمہ ہذا پر کو اس مقدمہ میں دعویداری ہو چکی ہے۔ جسکو کر اس مقدمہ میں حسب ضابطہ گرفتار کیا۔ مراسلہ رپورٹ بغرض قانچی مقدمہ بدست کنسٹیبل صفی اللہ 154 ارسال تھانہ ہے۔ تفتیش کا بندوبست کیا جاوے۔ دستخط انگریزی حمزہ علی ASI مورخہ 2.6.17 کارروائی تھانہ پس برسیدگی مراسلہ رپورٹ پر چہ جرم بالا چاک، ہو کر نفل FIR بغرض تفتیش حوالہ KBI سٹاف کیا جاتا ہے۔ پرچہ گزارش ہے۔

MMC/ Tajori

02.06.17

Affidavit

Delivan Affidavit



ORDER.

My this order will dispose off the departmental enquiry against LHC Tauseef Ahmad No. 411 while posted BDS Staff Police Lines Lakki was found to indulge in the following allegations:-

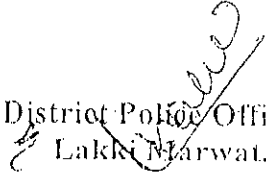
1. That he Constable Tauseef Ahmad No. 411 while posted at Police Lines Lakki Marwat has been an criminal case vide FIR No. 196 dated 02.06.2017 u/s 302/324/34 PPC PS Tajori.
2. That this all speaks of gross misconduct on his part and liable to be punished under Police Rule-1975.

Mr. Afsar Khan DSP/ HQrs: Lakki was appointed as Enquiry Officer. The enquiry officer after conducting proper departmental enquiry into the matter and submitted his finding report vide his Memo: No. 465 dated 10.10.2017 wherein the allegations were proved against him and recommended him for major punishment. The delinquent police officer was served with final show cause notice and reply was also found unsatisfactory.

Keeping in view of above, the allegations have been proved against him beyond any shadow of doubt. His retention in police force is neither beneficial for the state nor for the department.

Therefore, I Khalid Hamdani DSP, OPM, District Police Officer, Lakki Marwat exercise the powers vested in me under KPK Police Rule-1975, hereby award him major punishment of dismissal from service with immediate effect. He is directed to deposit all the government articles allotted to him to the concerned branches immediately.

O.B No. 4941  
Dated 16/11 - 2017.

  
District Police Officer,  
Lakki Marwat.

C 7

13-05-20

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT**  
**BANNU BENCH**

Cr. Misc/B.A No. 227 - B /2020

1. Muhammad Nawaz s/o Mir Ghaffar
  2. Tauseef Ahmad
  3. Mohib Ullah sons of Nawaz Khan r/o Khoidad Khel Adam Zai, Tehsil & District Lakki Marwat. (Presently in District Jail Lakki Marwat)
- \_\_\_\_\_ Accused / Petitioners.

Versus

1. The State.
2. Nadir Khan s/o Mumreez Khan r/o Isa Khel Adam Zai, Tehsil & District Lakki Marwat. (Complainant)

\_\_\_\_\_ Respondents.

**BAIL PETITION UNDER SECTION 497 CR.P.C FOR**  
**RELEASE OF THE ACCUSED / PETITIONERS ON**  
**BAIL TILL FINAL DISPOSAL OF CASE.**

*Case FIR No. 196*

*Charged U/Ss: 302/324/34 PPC,*

*Dated: 02-06-2017,*

*Police Station: Tajori.*

**Respectfully Sheweth;**

1. That the accused/ petitioners along-with other co-accused have falsely been charged by complainant of the instant case registered vide FIR No. 196 dated 02/06/2017 w/s 302/324/34 PPC P.S Tajori. (Copy and better copy of FIR are

2. That another FIR was also registered of the same occurrence against the complainant / respondent No.2 and others. (copy of FIR No. 197 along with better copy are Annexure C & D)
3. That petitioners/accused was arrested on 02/06/2017 by the local police and until now the accused/petitioners are behind the bar and the trial is pending before the court of learned Addl: Session Judge-III / MCTC Lakki Marwat and is fixed for evidence on /05/2020.
4. That previously on 27-08-2019 this Honourable Court in Criminal Misc: Bail Petition No. 2143-P / 2019 dismissed the bail petition of the petitioners on statutory ground and directed the learned trial court to conclude trial within two months and also stated that failing in compliance the accused / petitioners are at liberty to file fresh bail petition. (Copy of order dated 27-08-2019 is Annexure-E)
5. That the leaned trial court failed to complete trial within the specified / directed period of two months, therefore, the accused/petitioners moved bail petition for their release before the learned Trial Court which was dismissed vide order dated 11/05/2020. (Copy of bail petition & its dismissal order is annexed as annexure "F" & " G")
6. That now the accused/ petitioners feeling aggrieved from the order of learned trial court and also being innocent, seeks the indulgence of this Hon'ble court, again through the instant bail petition, inter-alia, on the following grounds:-

**Grounds:-**

- A. That the impugned order of the learned court below is not according to law facts and circumstances of the case and also the grounds taken in the bail petition and refused the bail concession to the accused / petitioners, on the ground alien to the statute.
- B. That earlier in Criminal Bail Application before this Hon'ble Court, the bail was not granted to the petitioners / accused, however direction was issued to the trial Court to conclude the trial within a period of two months but after more than five months the said order was not complied with and the trial is still pending

concession of bail.

- 9
- C. That almost three years had been elapsed but the trial of the instant case is not yet completed and the material witnesses are yet to be examined. Moreover the delay occurred in the conclusion of the trial cannot be attributed to the accused / petitioners or any one acting on their behalf.
- D. That the order sheets of the trial would reveal that the case was adjourned on numerous occasions, mostly due to non-availability of the witnesses and it is more likely that the trial will be delayed due to current coronavirus situation.
- E. That the law confers right to an accused person under 3<sup>rd</sup> proviso to section 497 Cr.P.C and as such right cannot be denied to an accused on any ground whatsoever except the grounds given in 3<sup>rd</sup> proviso to section 497 Cr.P.C.
- F. That the accused / petitioners are behind the bars since their arrest dated 02/06/2017 and refusal of bail to the accused / petitioners. In these circumstances refusal of bail to the accused / petitioners would amount to pre-trial punishment, which is not the scheme of law, therefore, the accused / petitioners having no fault on their part are entitled for concession of bail.
- G. That it is pertinent to mention that other co-accused Sikandar Khan died in jail. It is pertinent to mention that the complainant party in cross case are admitted to bail on statutory ground, hence the present petitioners / accused are also entitled to be released on bail.
- H. That the accused / petitioners are not previously convicted offenders for an offence punishable with death or imprisonment for life, neither are they desperate or dangerous criminals nor accused of any act of terrorism punishable with death or imprisonment for life.
- I. That accused / petitioners are ready to furnish bail bonds according to the court satisfaction.
- J. That the counsel for the accused / petitioners may kindly be allowed to submit further grounds during the hearing of the instant bail petition.

Filed Today

ATTESTED

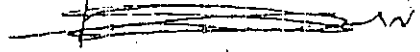
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Therefore, in these circumstances it is very humbly prayed that on acceptance of the instant bail petition, the accused / petitioners may graciously be granted the concession of bail, till the disposal of the case.

Dated: 13-05-2020

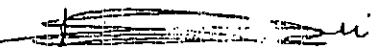
Accused/Petitioners

Through Counsel

  
Salah-ud-din Marwat  
Advocate, High Court.  
Lakki Marwat.

Certificate

Certified that according to instruction of my client the accused / petitioners had previously filed bail petition on statutory ground before this Hon'ble Court which was dismissed with directions to complete trial within two month and as the trial is not completed in specific period, the accused / petitioners filed instant bail petition.

  
Salah-ud-din Marwat  
Advocate, High Court.  
Lakki Marwat.

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**BANNU BENCH.**

(Judicial Department)

Cr. Misc:BA No. 227-B of 2020

Muhammad Nawaz etc:

Vs:

The State etc:

**JUDGMENT**

Date of hearing 04/6/2020.

For Petitioner:- Mr.Salah-ud-Din Marwat, advocate.

For State:- Mr.Shahid Hameed Qureshi, AAG.

For Complainant:-Mr.Muhammad Yaqub Khan advocate.

MUSARRAT HILALI, J.- Petitioner namely- Muhammad Nawaz

s/o Mir Ghaffar, Tauseef Ahmad and Mohib Ullah sons of Nawaz

Khan, seek their release on bail through instant bail petition on

statutory ground in case F.I.R No. 196 dated 02/6/2017, registered

U/Ss- 302/324/34 P.P.C, at PS, Tajori, District, Lakki Marwat.

2- According to the contents of the F.I.R, allegedly the

accused/petitioners along with their co-accused Sikandar duly armed

with Kalashnikovs fired at complainant party with intention to

commit their Qatl-e-amd, as a result of which, Abbas Khan, Dil Jan

and complainant got hit thereby Abbas Khan and Dil Jan died on

**ATTESTED**

12  
the way to hospital. Dispute of women-folk served as motive for the offence.

3- Arguments heard and record perused.

4- Perusal of the record reveals that accused/petitioner Muhammad Nawaz was arrested on 07.6.2017 while accused/petitioners No-2 & 3 were arrested on 02.6.2017. The record further reveals that earlier bail petition No. 408-B/2017 filed by the accused/petitioners was dismissed on merits by this Court on 11.12.2017. Similarly, another bail application filed by the accused/petitioners on the ground of statutory delay was also dismissed by this Court on 07.3.2018. The record further shows that charge against the accused/petitioners was framed on 20.3.2018 and till 08.7.2019 only three prosecution witnesses were examined. The accused/petitioners again filed an application for grant of bail on the ground of delay in conclusion of trial, however, the same was dismissed by this Court on 27.8.2019 with direction to the learned trial court to conclude the trial within two months by adopting coercive measures for the attendance of the PWs, but the said direction of this Court was never followed as the record of the case was received by the learned trial court on 20.9.2019 and as per

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direction of this Court, the trial should have been completed till 20.11.2019, however, in these two months; the case of accused/petitioners was fixed before the learned trial court on 20 dates and only two prosecution witnesses namely-ASI Hamza and Dr. Muhammad Younis were examined on 25.10.2019, while on the remaining 19 dates, the prosecution witnesses remained absence. Even thereafter till 14.01.2020, only one PW was examined, meanwhile, the case was entrusted to Model Criminal Trial Court (MCTC) on 14.01.2020. On receipt of the record, the learned MCTC directed that the case shall proceed from 30.1.2020 till 01.02.2020, however, till 20.3.2020, the case was adjourned 11 times, but none was examined and finally on 28.3.2020, due to outbreak of COVID-19, the courts became non-functional and only urgent matters were heard.

5. From the details of the proceedings given herein above, it appears that learned Additional Sessions Judge-II, Lakki Marwat ignored the direction of this Court and let the case to proceed like a civil matter. It has been noted that prosecution has forgotten its cardinal duty to produce the prosecution witnesses on the date fixed



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5- From the details of the proceedings given herein above, it appears that learned Additional Sessions Judge-II, Lakki Marwat ignored the direction of this Court and let the case to proceed like a civil matter. It has been noted that prosecution has forgotten its cardinal duty to produce the prosecution witnesses on the date fixed

conclusion of the trial within time. The learned trial court can also not take COVID-19 as an excuse as the time of conclusion of the trial as per direction of this court expired before the spread of COVID-19.

6- It is an admitted position in the instant case that the petitioners are behind the bar for the last about three (03) years and the delay in conclusion of trial is not attributed to accused and no ground is available with prosecution to decline the bail to the petitioners on the statutory ground.

7- For what has been discussed herein above, the instant bail petition is allowed on the ground of delay in conclusion of trial and the accused/petitioners are admitted to bail, provided they furnishes bail bonds in the sum of Rs.5,00,000/- (Rupees Five Lacs)each, with two sureties, each in the like amount to the satisfaction of Illaqa /Duty Judicial Magistrate, concerned.

These are the detailed reasons of short order of the even date.

Announced.  
04/6/2020.

CERTIFIED TO BE TRUE COPY

  
15.06.2020  
Examiner

Peshawar High Court Gannu Bench  
Authorised Under Article 87 of  
The Qanun-e-Shahadat Ordinance 1984

محرمت جناب RPO صاحب بیٹوں ریشہ بیٹوں

عنوان

اپریل بحوالہ پولیس رولز باب 16 فقرہ 29 و فقرہ 14 پولیس رولز 1925ء  
بابت عالی ملزمت پیر از تاریخ بر خاستگی سے  
جناب عالی

- 1. مسائل ذیل گزارشات سب سے پہلے جناب حجاز اپریل سماعت کنندہ  
تاریخ سے ادنیٰ عاجز ماتحت اسٹیڈیٹ عارضہ ذکر ناچاہتے ہیں
- 2. یہ کہ بروز وقوع وقت وقوع میں پولیس لائن میں موجود تھا، FIR کہ  
تائید کیلئے مجھے غیر حاضر کیا گیا، حالانکہ القاف کے تصانیف الیسا کرنے کی  
اجازت نہیں دیتا ہے۔
- 3. یہ کہ FIR نقشہ موقعہ و بیانات 16 ضاف گوان میں کاغذ تصاد پائیے  
یہ کہ میں نے بیان 16 ضاف میں اپنے با قصوری کا اور اپنے اوپر غلطی کا  
کا صاف دو مشورک الفاظ میں کیا تھا، کہ مجھ پر غلطی اور با بنیاد دعویٰ  
ہوئی ہے، صرف بنیاد اور سرکاری ملزما پولیس ہونے کا ناظر مجھ پر اس وجہ سے  
دعویٰ کی ہے، کہ میری ملزمت قرار ہو جائے۔
- 4. یہ کہ سپریم کورٹ و عالی کورٹ اپنے مقصد فیصلوں میں یہ تلقین کرتا ہے  
کہ ملزما کو فوق پر تفتیش کہ جائے، جو اس کے لحاظ سے جیسے عالی کورٹ  
کہ لیاقت شاہ کا فیصلہ جو "و میں نکلتا تھا، خصوصاً کور پر مفعول  
ہے، اور اپنے فیصلے میں جیسے صاحب نے یہ تائید کہی ہے، کہ اگر  
(5.0) ملزما کو فوق پر تفتیش نہ کریں، تو پیر اسٹیڈیٹ میں ہر ایک  
کافر ضا بنیاد ہے، کہ 09 (5.0) کہ مطلق حکم نہ کا اور اسی کریں۔
- 5. یہ کہ بالا اعلیٰ کورٹ کے فیصلوں کا باوجود اور میرے استہزاء کے ہونے  
میں (5.0) کے آنگینے ہوئے چھپ کے FIR سے تائید میں تفتیش کی ہے

جو الفاف کے تقاضوں اور انسانی ہمدردی کے قوانین کی عسر کجا خلا فاورز کی ہے۔  
 حالانکہ مالوں کے مطابق (E.O) پابندی کے ۲۰۱۶ حقیقت پر مبنی تفتیش  
 عمل میں لائی۔ ملزم کا موقف پر تفتیش کرنے تاکہ سچائی اور حقیقت  
 منظر عام پر آسکے۔

7 یہ کہ وقوعہ 18:45 بجے اور رپورٹ 21-30 بجے کا ہے۔ جو تقریباً 2 3/4 گھنٹے  
 تاخیر سے رپورٹ ہوئی ہے۔ اور FIR میں تاخیر کا وجہ بھی بتایا گیا ہے۔  
 یہ شخصوں کے صباہ سے تاخیر اس بات کا نشانہ دہی کرتا ہے کہ ملزم  
 مقدمہ اور اس دیگر اسٹیشنز پر پہنچنے میں تاخیر ہوئی ہو اور اس کے  
 مدعو پر غلط دعوے درج کیے گئے۔

8 یہ کہ نا قابل فہم امر یہ ہے کہ فیضان (Fazan) (ملاشٹن لوف) 2-6-2017  
 سرکار کی طرف سے 2-6-2017 کو پولیس لائین ٹکڑوں میں پرست  
 سٹر لائز 'AS1' اپنا رج BDS سرکاری کون میں جمع کی ہے۔ اور اپنا رج کون  
 نے نہ معلوم کہ یہ کیسا وجہ پر میرے دوست کا 3/6 جمع ہونا لگا کر لیا ہے۔  
 9 یہ کہ ملزم مقدمہ بالا کے اپنے عدالتی بیان میں یہ لکھا ہے کہ محمد زمان نے  
 پولیس لائنوں میں دورانِ طرفہ وقوعہ (E.O) کو تفتیش کے متعلق پلڑیاں  
 دئے تھے۔ حالانکہ محمد زمان نے اس سے بالکل عہدہ پر آ رہا ہے جس کا  
 جو ملزمی رولنگ گواہ کو اسٹیمارٹ کرتا ہے۔

10 اور اس لحاظ سے مرملٹ 2 و مرملٹ 36 اور نا چ 2-6-2017 پولیس لائن  
 لائنوں حفضل ہے۔

11 یہ کہ مقدمہ بالا کا اس مقدمہ ملٹ 2-6-2017 321-34 جس میں  
 ملزم کے بارے سے 2 بندے زخمی ہوئے تھے۔ بھی ہے۔

12 یہ کہ (E.O) ملزم کے وکیل کے براہ کرا پر جواب دیا گیا کہ اس نے ملزم کو تفتیش  
 سرکار کی 'AS1' متعلق کسی قسم تفتیش لڑی ہے۔

13 یہ کہ اسے ملزم سے ایک بار قبیل جو قبیل قبیل میں لگا بطور دھوڑت

حساب RPO صاحب بتوں ایچ بیوں کو جو جیل سپرنٹنڈنٹ کا دستخط شدہ تھا آپ  
 صاحب نو صوف کو گزارش کر چکا ہوں اور اس وقت اسپیشل سماعت لکھنؤ آبادی  
 کے لیے حکم کیا گیا کہ ملزمان کے تھریٹنگ اور صرف کی ملاقات سے سماعت منظور  
 ہونے پر سفر آجائے۔ جواب اسپیشل لکھنؤ کے ذریعے اسٹندیا کرتا ہوں۔ کمر عی  
 تاریخ 16-11-05 سے ملزمان کے لیے حکم D.P.O صاحب لکھنؤ  
 قرار دیا جائے۔

14) یہ کہ مجھ اسپیشل لکھنؤ کے لیے دیگر 3 ملزمان کی سماعت ٹال دینے کی کوشش پشاور  
 ایچ بیوں کے 4-6-05 کو قتل کیا گیا۔

15) یہ کہ جوڈیشل پالیسی کے تحت چلانے والے کا دن کے اندر دینا منظور ہوا  
 نہ ملے گا۔ 28-6-05 / 26 جوڈیشل پالیسی کے تحت چلانے والے کا دن دیا گیا۔  
 جوڈیشل پالیسی کے حقیقت پر صبح میں آتا ہے۔

16) یہ کہ تمام ملزمان کی تلو فہم طور پر غیر علم فوہو دی گئی ہیں عمل سے لائی گئی ہیں  
 جن کو جہاں واقع نہیں دیا گیا۔ جو میرا قانونی حق نہیں تھا۔ اس کے ساتھ  
 میری حق تلفی ہوئی ہے۔

17) یہ کہ انکو لکھنؤ اسپیشل کا فائنڈنگ رپورٹ نہ دیا گیا ہے۔ جو میرا حق نہیں تھا۔  
 اس کے اس سلسلے میں میرا حق تلف ہو گیا ہے۔

18) یہ کہ D.P.O صاحب لکھنؤ نے مجھے پست کا موقوف نہیں دیا ہے اور اس میں میری  
 موقوف کو شامل ہے جو کوئی نہیں ہے۔ اور اس کے بعد میری بیاد میں اس کے  
 تلفین کرتا ہے کہ اس کے لیے کوئی پست کرنے اور اس کا موقوف کرنے کی تلفین کرتا ہے۔

(۱۹) یہ کہ پولیس اور نواب ۱۶ فقرہ ۲۶ یہ تاکسید کرتا ہے کہ پولیس آفیسر الزام  
علیہ کو (E.O) الزام علیہ کو گواہی کے بیانات کے تصدیق شدہ صفت کا لکھنا  
جو صحیح اس وقت سے محرم رکھا گیا ہے۔ حالانکہ انفارمیٹو ایکٹ کا رو سے چاہیے تھا  
کہ صحیح انکو انکار کا نام آد دستو نیرت کے نقول (E.O) فراہم کرے

(۲۰) یہ کہ سٹیبل محمد نواز جو بطور پولیس میں ہے، سابقہ حال معطل ہے، اور صحیح  
صورت سے برخواست کیا گیا ہے۔ حالانکہ پولیس اور نواب ۱۶ فقرہ ۳  
یہ تاکسید کرتا ہے کہ اس پولیس آفیسر پر جرم قابل دست الزامی کے لحاظ  
سے دعوہ دراصل ہو جائے، عدالت فیصلہ دے گا اس کے مطابق حکم دے گا کہ پولیس  
کا وہ پیشتر تک رکھا جائے،

(۲۱) یہ کہ عدالت سرورس شیری بیرونک و دیگر عدالتوں کا مقدمہ فیصلے سے لقمینا کی ہو  
کہ اگر کسی علیزم کے متعلق (F.R) دعوہ ہو جائے، جب تک الزام عدالت میں ثابت  
نہ ہو جائے، تب تک علیزم بے قصور ہے۔

عالمی جاہل قیما بے قصور ہوں، جو یہ غلط دعوہ دراصل ہوتی ہے ان  
جناہ وال میں بے قصور کو اپنے عقل مسلم کے رو سے وسیع سے کہ سطح پر  
غور سے ان فرما کر میرے آپیل کو منظور فرما کر ساریج برخواستگی سے  
میزرفت میں حال ان کے بعد ان کے و اعانت دینے کا افضل حکم ہمارے فرما کر معاف  
فرمائیں کہ زبردستی ان کو ان زمین کے کسی بھی حصے پر معاف کرنا صحیح رہا  
چاہتوں کا ٹیکس نہیں کیا ہے

لوٹ کے میرا ۱۸ سال علیزم کا شروع ہے، پولیس اور سرورس لقمینا کرتا ہے  
کہ علیزم پولیس آفیسر کے پیش کا حقوہ کا فائدہ ہے حالانکہ عدالت  
العارضہ

سائل: لو کہیف المہر برخواست شدہ سٹیبل الزام اور لوٹور جاہل شدہ آدمی  
ضلع بکرہ کے قاضی مجور ہیں۔

F

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30-8-20

Dist. Bannu

PANNU REGION

ORDER

My this order will dispose off departmental appeal, preferred by Ex-THC Tauseef Ahmad No.413 of district police Lakki Marwat, where-in, he has prayed for setting aside the order of major punishment of "dismissal from service", imposed upon him by DPO Lakki Marwat, vide O2 No.494 dated 16.11.2017.

Service record, comments received from DPO Lakki Marwat and inquiry file of the appellant was perused. The appellant was also heard in person in orderly room and his instant departmental appeal was accepted.

Therefore, I, Abdul Ghafoor Afridi, Regional Police Officer, Bannu Region Bannu, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules, 1975 (amended in 2014) hereby modify the punishment of "dismissal from service" into minor punishment of "Censure".

ORDER ANNOUNCED

1/8

(ABDUL GHAFQOR AFRIDI) PSP  
Regional Police Officer  
Bannu Region, Bannu

no. 2609/10, dated Bannu the 10/08/2020

10/8/20

Copy to District Police Officer, Lakki Marwat for information and n/a action along with service record of the appellant for record in office which may be acknowledged please.

1/8

(ABDUL GHAFQOR AFRIDI) PSP  
Regional Police Officer  
Bannu Region, Bannu

10/8/20

G 1 21 7-9-22

**IN THE COURT OF MAH JABEEN, ASJ-III  
MODEL CRIMINAL TRIAL COURT (MCTC), LAKKI MARWAT**

MCTC Case No.....17/SC of 2018  
Date of original institution.....20-02-2018  
Date of Institution in MCTC.....18-01-2020  
Date of decision.....07-09-2022

**The State through:**

Nadir Khan s/o Mumraiz Khan r/o Isa Khel Adamzai Tehsil &  
District Lakki Marwat.

.....(Complainant)

**VERSUS**

- (1) Tauseef s/o Nawaz Khan (on bail)  
(2) Mohibullah s/o Nawaz Khan (on bail)  
(3) Muhammad Nawaz s/o Mir Ghaffar (on bail)  
r/o Ghulam Khel Adamzai Tehsil & District Lakki  
Marwat.....(Accused facing trial)  
(4) Sikandar Khan s/o Muzaffar (now dead)  
r/o Ghulam Khel Adamzai Tehsil & District Lakki  
Marwat.....(Accused now dead)

07-09-22  
Mah Jabeen  
Addl. Sessions Judge-III MCTC  
Lakki Marwat

Case FIR No.196 Dated: 02.06.2017 U/Ss 302-324-337A(i)-34 PPC,  
PS Tajori, District Lakki Marwat

**JUDGMENT:**

1. Accused named above faced trial in the instant case.
2. Brief facts of the prosecution case are that on 02.06.2017 at 21:30 hours, Nadir Khan (injured complainant), being present in Civil Hospital Tajori alongwith dead bodies of his son Abbas Khan & nephew Dil Jan, reported to police that his niece Mst. Shamshada Bibi was married to Tauseef; that some three months ago relations between the spouses became strained; that on the eventful

**ATTESTED**

EXAMINER  
District & Sessions Judge  
Lakki Marwat.



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evening, he alongwith his son Abbas Khan & nephew Dil Jan went to the house of his niece situated at Ghulam Khel Adamzai in order to conciliate the matter; that on reaching near the house of Tauseef at about 18:45 hours, Tauseef, Mohibullah sons of Nawaz Khan, Muhammad Nawaz s/o Mir Ghaffar & Sikandar s/o Muzaffar, duly armed with Kalashnikovs came out of the baithak and on seeing the complainant party, all four accused started firing at them with intent to commit their Qatl-e-Amd, as a result Abbas Khan & Dil Jan got hit and fell down while he received injury on his head. After the commission of offence, accused decamped from the spot. Motive has been described as dispute over women folk. Hence the FIR.

3. As consequence of registration of crime report, investigation ensued. After completion of investigation challan, complete challan was submitted by the prosecution for trial. All four accused were in jail, so they were summoned from jail, who were produced in custody and copies of record & documents were handed over to them in compliance of 265-C Cr.PC. They were indicted for the offences u/s 302-324-337A(i)-34 PPC to which they pleaded not guilty and claimed trial. Hence trial commenced.

4. It is pertinent to mention here that after framing of charge and during the course of trial, accused Sikandar Khan s/o Muzaffar met his natural death in District Jail Lakki Marwat and in this respect report Jail Superintendent is available on the case file and vide order sheet No.43 dated 24.09.2019, proceedings against the accused Sikandar Khan were abated on his death.

**ATTESTED**

Examiner to  
District & Session Judge  
Lakki Marwat

07.09.22  
Mah Jabeen  
Addl: Sessions Judge-III MCTC  
Lakki Marwat

5. In order to establish its case against both the accused facing trial, the prosecution produced & examined as many as 11 witnesses. Gist of the prosecution evidence followed by detailed discussion is as under:

(i) PW-1 is the statement of Muhammad Sangeen MHC #439, who had incorporated contents of Murasila into FIR Ex.PW1/1.

(ii) Ayaz Khan SI was examined as PW-2, who had submitted complete challan against accused on 28.06.2017 and verified his signature thereon.

(iii) PW-3 is the statement of Riaz Khan #317, who had escorted the injured, dead bodies of deceased alongwith their injury sheets & inquest reports to produce them before the doctor, for medical examination and for PM examination. After PM examination the last worn bloodstained garments of both the deceased alongwith their PM reports were handed over by him to the I.O on the spot. He also affirmed his statement recorded by I.O.

(iv) Hamza Ali ASI was examined as PW-4. As per his statement at 21:30 hours complainant Nadir Khan in injured condition at emergency room of Civil Hospital Tajori, in presence of dead bodies of deceased Abbas Khan & Dil Jan reported the matter to him, which he scribed in shape of Murasila Ex.PA/1, signed by complainant as token of correctness. He had also prepared injury sheet of injured & inquest reports of both the deceased which are Ex.PW4/1 to 4/5 respectively. He handed over the dead bodies for PM examination to constable Riaz No.317 and the injured Nadir

ATTESTED

Examiner In  
District & Session Judge

07.09.22  
Mah Jabeen  
Add: Sessions Judge-III MCIC  
Lakki Marwat

Khan for medicolegal examination to constable Ehsanullah No.310.

He verified his signatures on above mentioned documents.

(v) PW-5 is the statement of Dr. Yousaf MO. As per his statement, on 02-06-2017 he medically examined injured Nadir Khan produced by Constable Rayaz No.317 and found the following:

1. A graze type wound 2 inch x 1 cm over the vertex. Underlying bone was not exposed, wound stitched and ASD done.

Probable duration of injury three to four hours.

Kind of weapon used .....firearm injury.

Nature of injury .....simple

He verified his signatures on MLC report Ex:PW5/1 and his endorsement on injury sheet Ex.PW5/2.

He further stated that on the same date he conducted the PM examination of deceased Abbas Khan produced by constable Rayaz No.317 identified by Qayyam ud Din and Aslam Khan and

found the following:

External appearance:

A young body wearing shalwar qamis and bunyan which were blood stained, PML starting appearing and rigor mortus can be felt.

Wounds:

1. One entry wound of firearm 1x1 cm, mid of lateral aspect of left arm.
2. One exit wound of firearm size 2x2 inch on front of left shoulder just above left axilla.

ATTESTED

EXAMINED  
District & Sessions Judge  
Lahore

07.09.22  
Maha Jabeen  
Addl: Sessions Judge-III MCTC  
Lahore

3. Entry wound 1x1 cm on left side of front of chest one inch above left nipple.
4. One exit wound size 2x1 cm on right upper back below scapula.
5. One entry wound 1x1 cm on right auditory canal straight away.
6. One exit wound 2x2 cm on upper part of left side of neck, below left mandible.
7. One entry wound 1x1 cm on left lower back 3x4 inch above interia superior alex spine line.
8. One exit wound 2x2 cm on right lower abdomen.
9. One entry wound 1x1 cm on mid of right upper buttock.
10. One exit wound 3x1 inch upper part of medial aspect of right thigh.
11. One entry wound 1x1 cm on mid of posterior aspect of right thigh.
12. One exit wound 1x2 cm anterio lateral aspect of right thigh.



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Cranium and spinal cord: Skull injured.

Thorax: walls, ribs and cartilages, pleura injured, lungs, pericardium and blood vessel injured.

Abdomen: Walls, peritoneum, mouth esophagus injured, small and large intestine injured.

Muscle, bones and joints: Related muscles and bones injured. Neck and skull injured.

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Opinion: In his opinion the deceased has got firearm injury causing injury to the vital organs leading hemorrhage shock and death.

Time between injury and death.....within half an hour.

Time between death and PM..... 02 to 03 hours.

He verified his signatures PM report consisting of six sheets including pictorial Ex.PW5/5 and his endorsement on injury sheet Ex.PW5/3 & inquest report Ex.PW5/4

He further stated that on the same date he also conducted the PM examination of deceased Dil Jan produced by constable Rayaz No.317 identified by Qayyum ud Din and Irfanullah and found the following:

External appearance: A young body wearing shalwar qamis which were blood stained, PML appeared and rigor mortus can be felt.

Wounds:

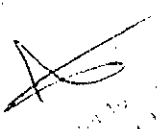
1. One entry wound of firearm 1x1 cm, on lateral aspect of left upper forearm.
2. One exit wound of firearm size 1x2 cm on medial aspect of upper forearm.
3. One entry wound of firearm 1x2 cm on mid of lateral aspect of left chest.
4. One exit wound of firearm 2x2 cm lateral aspect of lower chest
5. One entry wound 1x1 cm above the mid of right shoulder



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6. One exit wound of fire arm 1x half inch lateral aspect of right upper chest just below the right auxilla.
7. One entry wound 1x1 cm on dorsal aspect of right hand.
8. One exit wound 1x2 cm on palmer aspect of right hand at the same level.
9. One entry wound of firearm 1x1 cm on anterio lateral aspect of upper thigh.
10. Exit wound 2x2 cm posterior lateral aspect of right upper thigh
11. Entry wound 1x1 cm right lower back.
12. Exit wound 2x2 cm on anterior aspect of right abdomen at the level of umbilicus 3 to 4 inch lateral to umbilicus.

Cranium and spinal cord: Normal

Thorax: Walls, pleura and ribs injured, right and left lungs, pericardium and heart and blood vessel injured while rest organs normal.

Abdomen: Walls, peritoneum, diaphragm, stomach, small and large intestine, liver, spleen were injured while rest were normal.


Muscle, bones and joints: Related muscles and bones injured. Right femur fractured.

Opinion: In his opinion the deceased has got firearm injury causing injury to the vital organs leading to hemorrhage shock and death.

Time been injury and death.....within one hour.

Time between death and PM..... 03 to 04 hours.

**ATTESTED**

  
Examiner  
District & Session Judge  
Lakki Marwat

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He verified his signatures on the report consisting of six sheets including pictorial Ex.PW5/8, his endorsement on injury sheet Ex.PW5/6 & inquest report Ex.PW5/7.

(vi) Nadir Khan s/o Mamraiz Khan was examined as PW-6, who is the complainant of the present case. As per his statement his niece namely Mst. Shamshada Bibi was married to accused Tausif and some 3 months prior to the occurrence strained relations were developed between spouses and at the date of occurrence he alongwith his son Abbas Khan & nephew Dil Jan started towards the house of Tausif for settlement of the dispute. At about 18:45 hours when they reached near the house of Tausif accused Tausif, Mohibullah, Muhammad Nawaz & Sikandar duly armed with Kalashnikovs came out of their baithak and started firing at them, as a result his Abbas Khan & Dil Jan got hit and fell down on the ground whereas he sustained injuries on his head and the accused decamped from the spot. His son Abbas Khan died at the spot whereas Dil Jan succumbed to the injuries on the way towards Civil Hospital Tajori. His report was recorded at Civil Hospital Tajori on 02.06.2017 at 21:30 hours, duly signed by him. He further stated that I.O prepared site plan at his instance and during spot inspection I.O took into possession bloodstained earth from places of both the deceased and were sealed into separate parcels and I.O prepared recovery memo to this effect, to which he is the marginal witness. He further stated that I.O also took into possession 21 empty shells of 7.62 bore from the places of all accused and same were sealed into



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parcel and I.O also took into possession bloodstained garments of both the deceased which were sealed into separate parcel and prepared recovery memo to which he is the marginal witness. His statement was recorded by the I.O on the spot.

(vii) PW-7 is the statement of Irfanullah s/o Rehmanullah, who had identified the dead body of deceased Dil Jan before police as well as before the doctor.

(viii) Abdul Muneem ASHO was examined as PW-8, who had investigated the present case. As per his statement on 02.06.2017 on receipt of copy of FIR, he proceeded to the spot and prepared site plan Ex.PW8/1 at the pointation of complainant. During spot inspection he took into possession bloodstained earth from the place of deceased Abbas Khan, some bloodstained earth from the place of deceased Dil Jan and sealed it into parcels No.1 & 2 vide recovery memo Ex.PW8/2 in presence of marginal witnesses. During spot inspection he also secured 21 empties of 7.62 bore Ex.P-1 from the

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places of all accused, each empty was signed and sealed all into parcel No.3 and prepared recovery memo Ex.PW8/3. Similarly during spot inspection he took into possession bloodstained shirt Ex.P-2, shalwar Ex.P-3 of white color belonging to deceased Abbas, bloodstained Qamis Ex.P-4, shalwar Ex.P-5 belonging to deceased Dil Jan produced by Constable Riaz Khan #317 and prepared

**ATTESTED**

recovery memo Ex.PW8/4. He further stated that on 14.06.2017 he took into possession one Kalashnikov bearing No.(313)56-1461038

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Ex.P-6 alongwith empty fitted magazine which was issued to



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accused Tauseef Khan #411/BDS by Koth Incharge Noor Kamal ASI on 23.02.2017 and on 03.6.2017 the same was deposited in general Koth by Incharge BDS and the same was taken into possession and was sealed into parcel No.6 in the presence of marginal witnesses vide recovery memo Ex.PW8/5. After the recalling of BBA of accused Muhammad Nawaz on 23.6.2017 he issued his card of arrest Ex.PW8/6 and on 14.06.2017 he applied for departmental proceedings against accused Toaseef Ahmad vide application Ex.PW8/7 who was dismissed subsequently from the service. Likewise he also applied for departmental proceedings against accused Constable Muhammad Nawaz vide application Ex.PW8/8. He had also placed on file Naqal Mad No.108 DD dated 01.06.2017 Ex.PW 8/9 in respect of departure of accused Muhammad Nawaz, Mad No.27 dated 04.06.2017 Ex.PW8/1 in respect of absentia of accused Constable Muhammad Nawaz and naqal Mad No.19 dated 02.06.2017 Ex.PW8/10-A in respect of absentia of accused Toaseef Khan. The case property i.e bloodstained articles & empties were handed over to the Moharrir for onward transmission to FSL vide applications Ex.PW8/11 & Ex.PW8/12. He had also placed on file the Raseed Rahdari No.336/21 & 337/21 as Ex.PW8/13 & Ex.PW8/14 respectively. He had also placed on file Mad No.25 dated 06.07.2017 in respect of departure of constable Umar Ayaz No.767 through route certificate No.336/21 & 337/1 for FSI Peshawar which is Ex.PW 8/15 and had also placed on file mad No.20 of DD dated 09.07.2017 which is

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Ex.PW 8/16. He recorded the statements of PWs and after completion of investigation he handed over the case file to SHO for submission of challan. He verified his signatures on above mentioned documents.

(ix) PW-9 is the statement of Nasrullah Khan SI, who had placed on file FSL results in respect of bloodstained garments of deceased & injured which are Ex.PK & Ex.PK/1 respectively.

(x) Noor Kamal Khan ASI was examined as PW-10. As per his statement on 23.02.2017 one Kalashnikov having No.313 56-1461038 alongwith empty fit magazine and ammunition was issued officially to Constable Toseef Ahmad No.411 BDS and was deposited back the same on 3.6.2017 through incharge BDS in the general Koth, and he produced the original register in this respect, copy of the relevant page is Ex.PW10/1 (original seen and returned). He stated that on 14.06.2007 he handed over the said Kalashnikov alongwith fit empty magazine to the I.O which was taken into possession by the I.O, vide recovery memo already Ex.PW8/5. His statement to this effect was also recorded by the I.O u/s 161 CrPC.

(xi) PW-11 is the statement of Samiullah Naib Koth DPO Office Lakki. As per his statement on 14.06.2017 in his presence Noor Kamal Khan ASI Incharge General Koth handed over to the I.O one Kalashnikov alongwith empty fit magazine, earlier issued to constable Toaseef No.411 BDS, was taken into possession by the I.O in his presence. He sealed the same in parcel and taken into

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possession vide recovery memo already Ex.PW8/5. His statement was recorded by the I.O u/s 161 CrPC.

(xii) Sher Nawaz Khan ASI was examined as CW-1, who stated that on 02.06.2017 he was absent from his duty and in this respect his absence has been noted in the DD vide Naqal Mad No.19 dated 02.06.2017, then at about 23.55 hours on 02.06.2017 he resumed duty in police line Lakki vide Mad No.27 dated 02.06.2017 wherein he also given the reason that he was with one police official namely Zia ud Din of village Kalan and in this respect the entry was made vide Mad No.19 & 27 Ex.CW1/1 and on 03.06.2017 he deposited Kalashnikov, issued to Toseef Khan constable, in general Khoth.

6. After closure of prosecution evidence, statements of accused facing trial were recorded u/s 342 Cr.PC when the incriminating evidence was put to them to explain the circumstances under which they were put. They could not offer any explanation excepting by professing their innocence and that they have falsely been implicated in the present case. However, they neither wished to be examined on oath nor wanted to produce defence evidence.

7. Mr. Masood Adnan advocate representing complainant party argued that all the accused facing trial have directly been charged in promptly lodged FIR; that accused facing trial are directly charged for the commission of offence with active role of firing upon complainant party and being co-villagers of complainant and both the deceased, there is no chance of false charge against accused; that

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strong prosecution evidence is there in shape of ocular account; that circumstantial evidence in shape of postmortem report, recoveries, site plan, FSL reports fully supports the prosecution case; that prosecution has proved the charges against accused facing trial beyond shadow of any reasonable doubt, and maintained that accused deserves conviction and capital punishment.

8. On the other hand Mr. Salah-ud-Din advocate learned defense counsel argued that all the accused facing trial are innocent and have falsely been charged in the instant case without any solid motive; that the report was lodged after preliminary investigation, with consultation and deliberation of the complainant and police; that ocular account, circumstantial evidence, site plan and medical evidence do not support prosecution case; that there are material contradictions and discrepancies in prosecution evidence; that there exist serious dents in the prosecution case and the prosecution has failed to prove the charges against all the accused facing trial, hence seeks acquittal of the accused.

9. Arguments advanced at the bar heard and case file carefully consulted with valuable assistance of the learned counsel for the parties.

10. Having heard arguments advanced at the bar and consulted the record, it is reflected that complainant Nadir Khan in injured condition reported the commission of offence to the local police which was duly signed by him verified by Hamza Ali ASI (PW-4). In his report the complainant has charged the accused facing

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trial alongwith co-accused Sikandar Khan (now dead) duly armed with Kalashnikovs for firing at the complainant party with intention to kill them. Resultantly, Abbas Khan, Dil Jan & complainant got hit. Abbas Khan died on the spot while Dil Jan on way to hospital succumbed to his injuries. The complainant was assigned specific role of effective firing to accused named above as a result of which Dil Jan & Abbas Khan lost their lives while complainant got injured. The complainant has explained the motive to which has become the reason/cause of occurrence. In addition to report of complainant, PWs have re-iterated the same narration as set forth by the complainant. In the circumstances heavy burden lies on the defence to shatter the testimonies of PWs & repudiate the report of complainant.

11. It is settled principle of criminal law that the prosecution has to prove its case beyond reasonable doubts and if there is any doubt or dent in prosecution case then its benefit must be given to accused. If the case of prosecution is proved through cogent & confidence inspiring evidence and there is no material contradiction & distrust in it, then minor discrepancies cannot prevent an accused from conviction. Keeping in view the above preposition, the evidence of the prosecution be analyzed to evaluate as to whether the prosecution has established the charge through consistent & connected chain of direction & circumstantial evidence against the accused or not in order to arrive at just decision of the case.

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Signature  
 District Judge  
 Lakki Marwat

12. If the entire evidentiary account is scrutinized, no doubt there are minor lapses and inconsistencies in the same especially when the occurrence dates back to almost five years. It is medically proven that human memory is usually transitory and it cannot recollect all the events & happenings with precision but the main features of an incident always remain in the memory when it comes to question of ocular account. It has been held by the worthy superior courts in plethora of judgments that minor contradictions can be ignored in the interest of justice. Reliance can be placed on the following judgment of august Superior Court:

2014 PCrLJ 885

*'Term "Contradiction"---Meaning---"Contradiction" used in criminal administration of justice, would mean "those conflicts in the evidence of the witnesses which touching and disturbing the root of the charge", became minor contradictions were bound to creep with the passage of time'.*



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13. As regards the motive, it has been held to be dispute over women folk between accused Tauseef & complainant. It has been cogently explained in the FIR that the niece of the complainant Nadir Khan was married to accused Tauseef Khan, who has contracted the second marriage due to which the relations between the spouses got strained and she was putting up with her parents. The complainant alongwith deceased Abbas Khan & Dil Jan visited the baithak fo Tauseef to bring about reconciliation between the spouses.

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This fact was re-iterated by the complainant (PW-6) in his statement

in detail. He was cross examined at length but the complainant remained consistent & confirmed. The motive has been impliedly admitted by the accused party in their cross FIR No.197 dated 02.06.2017 u/s 324/337F(ii)(iii)/34 PPC PS Tajori, whereby the motive was stated to be dispute over women folk. It has been held by the worthy superior courts that motive is not considered to be *sine qua non* for proving the offence but when the prosecution takes some specific motive then it is bound to prove it. In the instant case, the prosecution has sufficiently proved the motive which became cause of offence.

14. Admittedly, the report of complainant and statement of complainant (PW-6) are the primary pieces of evidence. The case of prosecution mainly hinges upon the report of complainant, his statement recorded as PW-6, statement of medical officer (PW-5) who has conducted postmortem of both the deceased and medically examined the complainant (injured), Investigating Officer (PW-8) who has conducted pre & post arrest investigation alongwith other important witnesses the recovery memos, pointation memos etc.

15. The perusal of testimonies of all the star witnesses of prosecution would reveal that they remained consistent in their depositions on most vital aspects of the prosecution case. The complainant Nadir Khan who has lodged report and who is the eyewitness of the instant case as rest of his companions Abbas Khan & Dil Jan had expired as a result of firearm injuries during the occurrence, has affirmed his stance as taken in his report. He was



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**Mah Jabeen**  
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subjected to scathing cross examination but his testimony remained un-shattered and un-impeached. He remained consistent on material points regarding the mode & manner of the crime, spot/venue & time of occurrence, lodgment of report by him in hospital in injured condition, explaining the investigation proceedings, preparation of site plan, recoveries from the spot etc. The defence has failed to create any sort of dent in his testimony. The medical /postmortem report of deceased and injured (Ex.PW5/5, Ex.PW5/8) recovery of 21 crime empties of 7.62 bore from the spot vide recovery memo Ex.PW8/3, recovery of weapon of offence i.e Kahashnikov vide recovery memo Ex.PW8/5, bloodstained garments of deceased Abbas Khan & Dil Jan vide recovery memo Ex.PW8/4, bloodstained earth from the places of deceased, medico-legal report of injured Ex.PW5/1, longstanding abscondence of accused and attribution of specific role of deadliest firing upon the complainant party, establishment of motive, the absence of any fetal dent, have made

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 Addl: Sessions Judge-III MLC  
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the case of prosecution reliable in all aspects. No doubt, the eyewitness who is complainant in the present case also got injured in the occurrence, is the real father of deceased Abbas Khan and uncle of deceased Dil Jan but his testimony cannot be discarded merely on the score of close relationship especially when he is himself victim of the incident and was not proved to be adverse to the accused party.

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16.  
 Examiner  
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Further the medical evidence in the shape of medico legal report and postmortem report also supports the version of prosecution. As per MLC the deceased Abbas Khan & Dil Jan



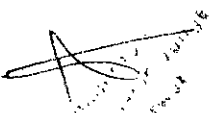
received firearm injuries which became cause of their death. As per report, the accused were duly armed with Kalashnikov vide recovery memo (Ex.PW8/5) 21 empties of 7.62 bore were recovered from the spot. Similarly the weapon of offence Kalashnikov has been recovered which as per record was SMG rifle issued to accused Tauseef Khan officially, being police official and on the eventful night he deposited back the said rifle in general Koth after the occurrence. FSL report regarding bloodstained earth & last worn garments of deceased Ex.PK further strengthens the stance of prosecution. Similarly as per FSL Ex.PK/1 eleven crime empties of 7.62 bore were fired from the SMG rifle No.313-56-1461038 while the remaining 10 crime empties were fired from other weapons also forfeits the stance of the prosecution that firing was made by more than one person. All these facts prove that the ocular account furnished by the PWs is trustworthy and reliable.

17. The above scrutiny of prosecution evidence leads this court to inescapable conclusion that the prosecution case is based on strong report, oral, circumstantial and medical evidence. There is complete harmony & uniformity in the narration of star witnesses of prosecution on all material points. The prosecution has produced cogent, strong & confident inspiring evidence against the accused facing trial and has succeeded to prove its case against the accused facing trial beyond reasonable doubt and up to the hilt.

18. It has now been established from evaluation of record that it were the accused facing trial Tauseef Khan, Mohibullah Khan,

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 District Judge  
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Muhammad Nawaz & Sikandar (now dead) who had committed the murder of deceased Abbas Khan & Dil Jan and attempted at the life of complainant Nadir Khan. However it is difficult to sort out which of the fire shot of the four proved fatal & became cause of death of the deceased and from whose fire shot complainant sustained injuries, therefore, the imposition of death penalty cannot be resorted to in the situation.

19. Resultantly, the accused facing trial Tauseef Khan, Mobibullah & Muhammad Nawaz are hereby found guilty of offence u/s 302(b) PPC and are thus convicted and sentenced to life imprisonment on two counts as taazir for causing death of deceased Abbas Khan & Dil Jan. The convicts are also liable to payment of compensation of Rs.10,00,000/- under section 544-A Cr.PC to the legal heirs of each deceased in equal share. In default of payment the convicts shall undergo SI for a time period of 6 months or it shall be recovered as an arrear of land revenue. They are also convicted u/s 324 PPC and sentenced to undergo imprisonment of two years. They are also liable to fine of Rs.5000/- each to be payable to injured/complainant, in default of payment thereof to further suffer 15 days SI. They are also convicted u/s 337A(i) PPC and sentenced for imprisonment of one month and also liable to payment of sum of Rs.5000/- as "Daman", each, to be payable to injured/complainant or in default of payment thereof to further suffer 15 days SI. The benefit of section 382 (b) Cr.PC is extended to convicts Tauseef Khan, Mohibullah & Muhammad Nawaz. They are on bail, hence

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Mah Jabeen  
Addl. Sessions Judge-III MCTB  
Lakki Marwat

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they be taken into custody and be sent to jail alongwith their conviction warrants to serve the above sentences. Their bail bonds stands cancelled and their sureties are absolved from liability of bail bonds.

20. Case property be dealt with in accordance with law but after expiry of period of appeal/revision. Copy of this judgment is supplied to convicts free of cost u/s 371 Cr.PC and their thumb impression obtained on the margin of order sheet. Copy of judgment be also delivered to prosecution u/s 373 Cr.PC. File be consigned to record room after its completion and compilation.

Announced  
07-09-2022

Mah Jabeen  
Addl: Sessions Judge-III MCTC,  
Lakki Marwat  
(Mah Jabeen)  
ASJ-III/Judge MCTC,  
Lakki Marwat.

CERTIFICATE:

It is certified that this judgment comprises on twenty " (20) pages, each page has been checked, corrected and signed by me wherever it was necessary.

Mah Jabeen  
Addl: Sessions Judge-III MCTC,  
Lakki Marwat  
(Mah Jabeen)  
ASJ-III/Judge MCTC,  
Lakki Marwat.

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Application received on 15-1-24

Copying Fee deposited on

Judgment received on 15-1-24

No. of pages 20 pages

Copying fee

Search fee

Urgent fee

Name of Applicant

Copy delivered on 15-1-24

Copy delivered to 15-1-24

Name of Examiner

ATTESTED  
E. Khatun  
District & Sessions Judge  
Lakki Marwat

د. احسان

15/01/24

H 41 13-9-22  
D  
**BEFORE PESHAWAR HIGH COURT BENCH BANNU**

Cr.A. No. 17013 /2022



1. Tauseef
2. MohibUllah both S/O Nawaz Khan
3. Muharnmad Nawaz S/O Mir Ghaffar residents of GhulamKhelAdamzai District LakkiMarwat \_\_\_\_\_ (Appellants /Convicts)

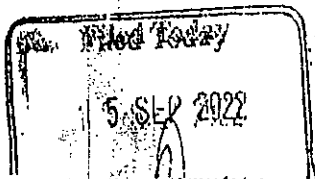
Versus

1. The State,
2. Nadir Khan S/O Mumraiz Khan resident of Isa KhelAdamzai District LakkiMarwat.( complainant) \_\_\_\_\_ (Respondents)

CASE F.I.R. 196  
U/Ss 302/324/337 A (i)/34 PPC

DATED 02-06-2017  
P/ S: Tajori

APPEAL U/S 410 CR.PC AGAINST THE ORDER/JUDGEMENT OF LEARNED ADDITIONAL SESSIONS JUDGE-III, LAKKI MARWAT DATED 07.09.2022 WHEREBY THE APPELLANTS/ CONVICTS WERE SENTENCED U/S 302 (B) TO LIFE IMPRISONMENT ON TWO COUNTS AS TAZIR FOR CAUSING DEATH OF DESEASED ABBAS KHAN & DIL JAN AND PAYMENT OF 10,00,000/- AS COMPENSATION TO BE PAID TO THE LEGAL HEIRS OF EACH DECEASED IN EQUAL SHARE OR IN DEFAULT THE APPELLANT SHALL UNDERGO S.I FOR SIX MONTHS OR IT SHALL BE RECOVERED AS AN ARREAR OF LAND REVENUE, CONVICTED U/S 324 PPC AND SENTENCED TO UNDERGO IMPRISONMENT OF TWO YEARS AND FINE OF 5000 EACH TO BE PAYABLE TO INJURED/COMPLAINANT, IN DEFAULT OF PAYMENT THEREOF TO FURTHER SUFFER 15 DAYS SIMPLE IMPRISONMENT, CONVICTED U/S 337 A (i) PPC AND SENTENCED TO



EXAMINED  
PESHAWAR HIGH COURT  
BANNU BENCH

(42)

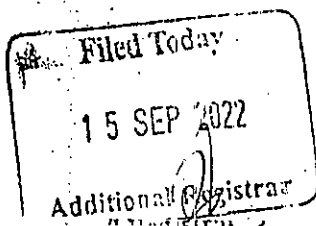
IMPRISONMENT OF ONE MONTH AND ALSO LAIBLE TO PAYMENT OF RS 5000/- AS DAMAN EACH TO BE PAYABLE TO INJURED/ COMPLAINANT OR IN DEFAULT OF PAYMENT THEREOF TO FURTHER SUFFER 15 DAYS SIMPLE IMPRISONMENT.

PRAYER IN APPEAL

That, by acceptance of this appeal the conviction and sentence, of the appellants may be declared null and void and the convicts/appellants may be acquitted from the charges.

Respectfully Sheweth,

1. That the Appellants/ convicts were booked along with co-accused in FIR No. 196, dated 02-06-2017 U/S 302-324-337 A(i)-34 PPC pertaining to the Police Station Tajori, District Lakki Marwat, .{Copy of FIR & Better copy of FIR are attached, marked as annex-A & B}.
2. That on the same day regarding the same event a cross case i.e FIR No 197 dated u/s 324/34 PPC pertaining to PS Tajori was also chalked out wherein two of the accused of FIR No 196 were severely injured. . (Attested copy and better copy of FIR No 197, site plan, MLC of injured/ respondent No 2 and Sikander Khan are attached, marked as annex C, D, E, F, G, respectively).
3. That after completion of investigation complete challan was submitted by the prosecution for trial. Appellants/convicts along with co accused Sikander Khan S/O Muzaffar were summoned from Jail by The Learned Trial Court and after compliance of 265-C Cr.P.C, charge was framed U/s 302-324-337 A(i)-34 PPC and regular criminal trial was commenced.
4. That it is pertinent to mention here that after framing of charge, during trial co-accused Sikander Khan s/o Muzaffar died in District Jail



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LakkiMarwatand vide order sheet No 43 dated 24-09-2019 proceedings against co-accused Sikander were abated.

5. That in order to establish its case prosecution produced and examined 11 witnesses and after closure of prosecution evidence, the statement of appellants/convicts were recorded u/s 342 Cr.P.C. After hearing arguments of both the parties, passed the impugned order/judgment dated: 07-09-2022 vide which the appellants/ convicts were sentenced and convicted u/s 302 (B) to life imprisonment on two accounts as Tazir for causing death of deceased Abbas Khan and Dil Jan and payment of 10,00,000 as compensation to be paid to the legal heirs of each deceased in equal share or in default the appellants shall undergo simple imprisonment for six month or it shall be recovered as an arrear of land revenue, convicted u/s 324 PPC and sentence to undergo imprisonment of two years and fine of 5000/- each to be payable to injured/ complainant or in default of payment thereof to further suffer 15 days simple imprisonment, convicted u/s 337 A(i) PPC and sentenced to imprisonment of one month and also liable to payment of RS 5000/- as Daman each to be payable to the injured/ complainant or In default of payment thereof to further suffer 15 days simple imprisonment.

{Attested copy of order/judgment is attached, marked as Annex-H}

6. That feeling aggrieved from the Order/Judgment of conviction, the Appellants/convicts, approaches this Hon'ble Court, for the redressal of their grievances.

### GROUNDS:

- A. That the order and judgment of the learned trial court is against law, facts and material on record, hence not tenable.
- B. That the learned trial court failed to appreciate the evidence on record while convicting the appellants/convicts.

Filed Today  
15 SEP 2022  
Administrar

ATTACHED  
EXHIBIT  
FOR THE RECORD  
The Court

- C. That the judgment of the trial court is not sustainable and tenable in the eyes of law because it is established from available record of both the cases and investigation of police officials that these two cases are cross cases; two of the accused of 196 have sustain injuries in the same incident; spots of both the occurrences are same and the present complainant has concealed certain facts in his report but the judgment of trial court delivered in judgment of FIR no 196 is silent about all the above mentioned facts.
- D. That the learned trial court has shown its indifference to the well celebrated canons of criminal justice.
- E. That the statements of the PWs are full of material contradiction and dishonest improvements but the learned trial court has not taken into consideration this aspect of the case at all.
- F. That the mode and manner as described by the complainant and alleged eye witness is totally against the facts and circumstances of the case and the injured/ complainant alleged injury is simple in nature which creates serious doubts therefore Appellant/ Convict is entitled for acquittal.
- G. That different sets of evidence like ocular account, medical evidence, circumstantial evidence and FSL report are at complete variance to each other.
- H. That there are numerous loop holes in the prosecution story, which create serious doubts regarding the prosecution story.
- I. That the Appellants/ convicts are innocent and have falsely been charged in the instant case without assigning plausible motive.

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- J. That the learned trial court mis-read the evidence as nothing has been brought on record regarding involvement of appellants/convicts, hence the said mis-reading caused great loss to the case in hand.
- K. That the order of the learned trial court has caused great miscarriage of justice. The reasoning and view taken by the learned trial court is unreasonable and conclusion arrived at is mis-interpretation of justice. The Learned Trial Court miserably failed to consider the unnatural conduct of eye-witnesses.
- L. That the Order/Judgment as a result of which the appellants/convicts were convicted/imprisoned is against law, facts and in utter disregards of material available on record, it is illegal illogical, perverse and therefore legally not tenable.
- M. That the Learned Trial Court for the conviction of appellants/convicts had operated the entire judgment on surmises and conjecture which is patently unlawful and against the evidence available on record.
- N. That the lower court wrongly appreciated the evidence, hence, the evidence would require re-appraisal, because the prosecution had failed to prove its case beyond any shadow of reasonable doubt and the conviction of appellants/convicts is the result of misreading and non-reading of evidence.
- O. Those other additional grounds will be taken at the time of oral arguments.

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**PRAYER:**

It is, therefore, prayed that by acceptance of this appeal the conviction and sentence of the appellants may be set aside & they be acquitted of the charge to meet the ends of justice.

Appellants/Convicts

Through

~~\_\_\_\_\_~~  
Salah-Ud-Din Marwat  
Advocate High Court  
Lakki Marwat

Dated: 13/09/2022

**Note :**

As per instruction of my clients/Appellants, no such appeal against conviction has earlier been filed before this August Court.

~~\_\_\_\_\_~~  
Advocate.

Certificate = It is further certified that notice of filing of instant Criminal Appeal petition has been given to complainant as per notification and directions of this honorable Court.

~~\_\_\_\_\_~~  
Advocate,

Filed Today  
15 SEP 2022  
Additional Registrar



I 47 4-10-22

(4)

**OFFICE OF THE  
DISTRICT POLICE OFFICER  
LAKKI MARWAT**  
Ph# 0969-538240 Fax# 0969-538244  
E-mail: [dpolakki1@gmail.com](mailto:dpolakki1@gmail.com)

**ORDER**

LHC Tauseef Ahmad No.411 while posted at BDS Staff Police Lines Lakki Marwat was charged in a criminal case vide FIR No.196 dated 02.06.2017 u/s 302/324/34 PPC PS Tajori and was arrested on 03.06.2017.

In this regard, he was issued charge sheet based upon summary of allegations and DSP/Hqrs, Lakki Marwat was appointed as Enquiry Officer. The Enquiry Officer after conducting proper enquiry submitted his findings, wherein, the allegations leveled against him were proved. He was also served with Final Show Cause Notice to this effect and his reply to the FSCN was also found unsatisfactory. Therefore, the then DPO Lakki Marwat awarded him major punishment of dismissal from service vide OB No.494 dated 16.11.2017.

Bail was granted to him by the Apex court Bannu on 04.06.2020 on the ground of delay in conclusion of trial. After bail, he preferred an appeal to RPO Bannu for setting aside the dismissal order of DPO Lakki Marwat. The then RPO Bannu re-instated him into service and modified the major punishment of dismissal from service into minor punishment of Censure vide order Endst: No.2609/EC dated 10.08.2020.

Now, he has been convicted for life imprisonment /fine by Adcl. Session Judge No.III Model Criminal Trial Court (MCTC), Lakki Marwat and sent to Sub Jail Lakki Marwat in the above cited case vide order sheet dated 07.09.2022.

In this regard, guidance was also asked from RPO Bannu vide this office letter No.11090/EC dated 14.09.2022. In response, RPO Bannu provide guidance vide his letter No.3893/EC dated 03.10.2022 that "Rule No.8 of Police Rules, 1975 is clear on the subject matter. Please proceed accordingly".

Consequent upon, convict for life imprisonment/fine from the court and in the light of guidance of RPO Bannu vide letter: No. quoted above, I, Zia-ud-Din Ahmed PSP, District Police Officer, Lakki Marwat in exercise power vested me in Rule No.8 of Police Rules, 1975, LHC Tauseef Ahmad No.411 of this District Police is hereby dismissed from service with effect from 07.09.2022.

OB No. 462 /

Dated 04 /10/2022

No 11734-38 /Dated Lakki Marwat 04/10/2022.

District Police Officer  
Lakki Marwat  
District Police Officer  
Lakki Marwat

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

1. The Regional Police Officer, Bannu Region, Bannu w/r to letter No. quoted above.
2. Superintendent of Police, Invst: Lakki Marwat wr to his letter No.1362 dated 08.09.2022.
3. HC, EC, PO & OHC for necessary action.

J  
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95-3-23  
SEAL OF PESHAWAR HIGH COURT  
پشاور ہائی کورٹ  
BANNU BENCH

**Judgment Sheet**  
**PESHAWAR HIGH COURT, BANNU BENCH**  
(Judicial Department)

**Cr. A No.170-B of 2022**

Tauseef & 2 others  
Vs.  
The State & another.

**JUDGMENT**

For Appellants: Mr. Salahuddin Marwat, Advocate.  
For Respondents: Mr. Masood Adnan, Advocate  
For State: Sardar Muhammad Asif, Asstt: AG.  
Date of hearing: 08.3.2023.

\*\*\*\*\*

**SAHIBZADA ASADULLAH, J.-** The appellants have called in question the judgment dated 07.9.2022, rendered by learned Additional Sessions Judge-III, Lakki Marwat, whereby the appellants were convicted, under section 302(b) P.P.C. and sentenced to imprisonment for life on two counts as taazir with fine of Rs.10,00,000/- each as compensation to the legal heirs of the deceased in terms of section 544-A Cr.P.C, or in default thereof to further undergo six months simple imprisonment. Under section 324 P.P.C the appellants were convicted and sentenced to imprisonment for two years S.I along with payment of compensation of Rs.5,000/- each, to be paid to the injured/complainant and in default the appellants shall further undergo 15 days S.I. Under section 337-A(i) P.P.C, the appellants were convicted and sentenced

ATTESTED  
EXAMINER  
Peshawar High Court  
Bannu Bench

imprisonment to one month and also liable to payment of sum of Rs.5000/- as "Daman", each to be payable to injured/complainant or in default of payment thereof to further suffer 15 days S.I. Benefit of section 382-B Cr.P.C was extended in favour of convict/appellants.

2. The complainant, Nadir Khan moved criminal revision petition No.47-B/2022 for enhancement of sentence of appellants. Since both the matters have arisen out of the same judgment, therefore, we intend to decide the same through this common judgment.

3. Brief facts of the case as per contents of F.I.R are that on 02.6.2017, at 21:30 hours, injured/complainant being present with dead bodies of his son Abbas Khan and nephew Dil Jan, reported to police that his niece Mst. Shamshada Bibi was married to Tauseef. Some three months ago, relation between the spouses became strained. On the eventful day, he along with his son Abbas Khan and nephew Dil Jan were going to the house of his niece, situated at Ghulam Khel Adamzai, in order to conciliate the matter. on reaching near the house of Tauseef, at about 18:45 hours, Tauseef, Mohibullah sons of Nawaz Khan, Muhammad Nawaz son of Mir Ghaffar and Sikandar son of Muzaffar, duly armed with Kalashnikovs, came out from Baitak of Tauseef and on seeing the complainant party, all the accused started firing at them

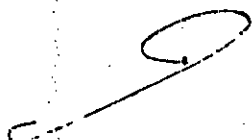
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P.O. & S.O. of the Court  
Muzaffargarh

with the intention to kill. Resultantly, Abbas Khan and Dil Jan got hit and fell down on the ground while he received injury on his head. Accused after commission of the offence decamped from the place of incident. Motive has been disclosed as dispute over womenfolk, hence the ibid F.I.R.

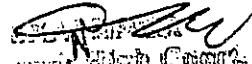
4. After completion of investigation, prosecution submitted challan against the accused for trial. After compliance of provisions of section 265-C Cr.P.C, charge was framed against the accused/appellants under sections 302/324/337-A(i)/34 P.P.C to which they pleaded not guilty and claimed trial. During the course of trial, accused Sikandar Khan met his natural death and in this respect Jail Superintendent furnished his report vide order sheet dated 24.9.2019, as such proceedings against accused Sikandar Khan were abated. The prosecution in support of its case produced as many as 11 witnesses. On close of prosecution evidence statements of accused was recorded under section 342 Cr.P.C, wherein they professed innocence and false implication, however, neither they opted to be examined on oath as provided under section 340(2) Cr.P.C, nor wished to produce defence evidence. After hearing arguments, the learned trial Court vide impugned judgment dated 07.9.2022, sentenced the accused /appellants as mentioned above, hence, the instant appeal against the judgment of conviction.

5. We have heard learned counsel for the parties alongwith learned A.A.G for the State at length and with their valuable assistance, the record was gone through.

6. The tragedy claimed the lives of two innocent persons and led to an injury to the complainant. The complainant along with dead bodies was shifted to the hospital where the matter was reported and the appellants were charged for the death of the deceased and the injury caused to the complainant. After report of the complainant the injury sheet and inquest reports along with injury sheet of the complainant were prepared and thereafter the complainant was referred to the doctor for his medical examination, who was examined by the doctor and his medico-legal certificate was prepared. The dead bodies were sent to the doctor and the doctor conducted autopsy on the dead bodies. The investigating officer after receiving copy of the F.I.R visited the spot, but the spot proceedings could not be conducted as by then, the complainant was not available. It was on the next date i.e. 03.6.2017 when the site plan was prepared on the pointation of the complainant. During spot inspection the investigating officer collected blood stained earth from the respective places of the deceased and 21 empties of 7.62 bore lying scattered, from the places of the accused. It is pertinent to mention that on the same day, two out of the accused also received fire arm



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Public Notary High Court  
Kolkata District

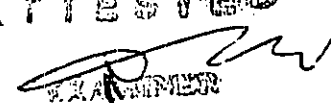
injuries, who were shifted to the same hospital, where out of the injured accused Mohibullah reported the matter in respect of the injuries caused to him and to his co-accused Sikandar. Both the injured were examined by the doctor and their medico-legal certificates were prepared. The report made by the accused Mohibullah was incorporated in F.I.R No.197, where Nadir, Sharifullah son of Mumraiz, Dil Jan son of Sharifullah and Abbas son of Nadir were charged for the injuries caused. It is interesting to note that the copy of F.I.R No.197 was also received by the investigating officer, who was present on the spot in connection with the investigation of case F.I.R No.196. During spot inspection in case F.I.R No.197, the investigating officer collected 15 empties of 7.62 bore from the places assigned to the accused and also collected blood stained earth from the places, where the injured after receiving fire arm injuries, fell down. On one hand the injured/complainant of case F.I.R No.197 was taken into custody along with injured Sikandar in the hospital whereas, complainant of case F.I.R No.196 was also arrested in case F.I.R No.197. It is pertinent to mention that on the day of incident i.e. on 02.6.2017 the accused/ appellant Tauseef, who was serving in police department attached with Bomb Disposal Squad, was arrested and was confined in quarter guard of the Police Lines. The record further tells that on 03.6.2017 the

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Attending High Court,  
Bannu Bench

official Kalashnikov belonging to the accused Tauseef was taken out from his box by one Sher Nawaz Khan ASI and the same was handed over to the incharge BDS who deposited the same in the Koth and was handed over to the investigating officer on 14.6.2017. It is interesting to note that investigating officer addressed an application to the Director General Forensic Science Laboratory on 14.6.2017, asking an opinion regarding the recovered weapon and the collected empties, but the same were received to the laboratory on 06.7.2017. The laboratory report was received where out of 21 empties, 11 were shown to have been fired from the recovered weapon, whereas the remaining were disclosed to have been fired from different weapons. All the accused except the accused Sikandar, as he died during trial, after their arrest faced the trial and on conclusion of the trial, they were convicted and sentenced, feeling aggrieved the instant criminal appeal.

7. True that in the incident two persons lost their lives and the complainant got injured, but equally true that from the other side too, two received fire arm injuries on the vital parts of their bodies and in such eventuality, it is essential for this Court to see as to whether the incident occurred in the mode, manner and at the stated time and as to whether both the sides came forward with the whole truth. True that the learned trial Court dealt with the matter comprehensively and that after

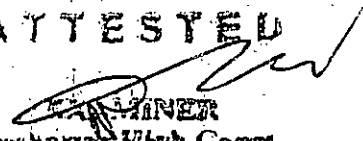
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Peshawar High Court  
Peshawar District



application of its judicial mind convicted the accused charged, but it is equally true that this being the Court of appeal is under the boundened duty to revisit the record of the case and to re-appreciate the already appreciated evidence, so that miscarriage of justice could be avoided. As the incident occurred in front of the house of the convict/appellants, where they too got seriously injured, so the attending circumstances of the present case has increased both, the anxiety and obligation of this Court to go deep to the roots of the prosecution's case, so that miscarriage of justice could be avoided.

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8. The learned trial Court while handing down the impugned judgment dealt with the matter comprehensively and that it was mostly, the place of incident, the motive and the injuries caused to the complainant which persuaded it to convict, but at the same time little attention was paid to the injuries caused to two of the accused/appellants and the attending circumstances of the present case. In order to gain clarity, we deem it essential to scan through the record once again; and to dig out as to whether the approach of the learned trial Court was correct; and that the finding rendered down was in accordance with law and finds support from the evidence on record.

**ATTESTED**  
  
**CLERK**  
**High Court**  
**Madras Bench**

9. In order to comprehend the circumstances of the case, we deem it essential to go through the inter-se relationship between the parties. It is on record that two nieces of the complainant, who happened to be the sisters of one of the deceased, were married in the house of the convict/appellants i.e. one Shamshada Bibi was married to the convict/ appellant Tauseef whereas another to his brother in the same house. It is the case of the prosecution that owing to strain relationship between Tauseef and his wife, the complainant party was compelled to go and effect a compromise between the spouses and that on reaching to the place of incident the tragedy occurred, where the deceased lost their lives and the complainant got injured. As in the same incident two from the accused side received serious injuries on the most vital parts of their bodies, so the question which needs determination at the earliest is, as to what were the actual circumstances which led both the sides to the use of lethal weapons and that in what fashion the incident occurred. We at this juncture are not in a happy mood to hold that some of the accused were not present on the spot, as seat of injuries on the convict/ appellants is a circumstance which tells that they were present on the spot at the time of incident, but what concerns us, is that what prompted the parties to fire on each other which put both the sides in trouble.

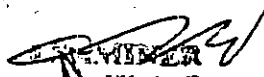
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*[Signature]*  
 Judge for High Court  
 District Court

10. To begin with, we would like to go through the statement of the complainant who appeared before the trial Court as PW-6. The complainant stated that on the day of incident he along with deceased left their house to the village of the accused to effect a compromise between the accused Tauseef and his wife, as the convict/ appellant Tauseef had contracted second marriage which turned to be the basis of strained relationship between the spouses; that soon they reached near the house of the accused, all the accused duly armed, started firing at them which led to the death of the deceased and injury to the complainant; that after receiving fire arm injury, he and the dead bodies were lying on the ground and that it was after 40 minutes of the incident that cots were arranged, the deceased were shifted and on availability of Datsun/pick-up, the dead bodies and the complainant were shifted to the hospital, where the matter was reported. It is interesting to note that the complainant, right from the beginning till the end, maintained silence regarding the injuries caused to the accused and while reporting the matter, he suppressed this material aspect of the case. From the spot 21 empties of 7.62 bore were collected from the places of convicts/appellants and blood stained earth from places of the deceased, but also in the counter case i.e. F.I.R No.197, 15 empties were

ATTESTED

  
WITNESS  
Allahabad High Court,  
Allahabad Bench

collected from the places assigned to the complainant and the deceased and blood stained earth from the places of the injured, which indicates that if on one hand two persons lost their lives and the complainant received injuries, then on the other two accused also received serious injuries on their bodies. In order to substantiate this particular aspect of the case, we went through the statement of the investigating officer. The investigating officer was examined as PW-8, who stated that after receiving copy of the F.I.R he visited the spot, but could not prepare the site plan as the complainant was not available; that on the very next day on the availability of the complainant he prepared site plan and effected the recoveries from the spot. This witness further confirms that on the same day he also prepared the site plan in case F.I.R No.197 and that recoveries were also effected and in that respect the recovery memos were prepared. The investigating officer was categorical in holding that both the cases are the cross-cases. The investigating officer was examined on material aspects of the case, more particularly, the arrival of the complainant party to the spot and their active participation in firing. The investigating officer admitted that the complainant side came to the spot duly armed and that from their firing two of the appellants received serious injuries. The investigating officer also


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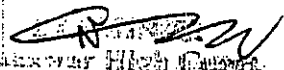
mentioned in the site plan the respective places of the injured/ appellants, from-where blood stained earth was collected. Even during spot inspection the investigating officer noticed bullet marks on the walls of the Baitak of accused Tauseef. It is interesting to note that when the complainant was cross-examined he introduced another story by disclosing that, he was told that when the accused committed the offence, they left the spot and after covering a distance of 30 minutes, reached Kharoba, where his nephews were already present duly armed, fired at them and that it was from their fire-shots, the convicts/ appellants received fire arm injuries. He further disclosed that none of the appellants received injuries on the spot and that they never fired at the accused party. If we admit to what the complainant stated regarding the occurrence at Kharoba then, it is for the complainant to convince, that who informed his nephews regarding the occurrence and the decamping of the appellants towards Kharoba. It is of prime importance to note that no site plan regarding the incident at Kharoba was prepared and even the investigating officer did not visit the place, where allegedly the accused/ appellants received fire arm injuries. When the investigating officer was asked regarding this particular aspect of the case, he categorically denied any incident to have occurred at

ATTESTED

  
Attesting High Court,  
Bonnai Beach


Kharoba. When such is the state of affairs, we lurk no doubt in mind in holding that the complainant has concealed the real facts. The conscious attempt of the complainant to introduce another story regarding the injuries caused to the appellants, clearly tells that the incident did not occur in the mode and manner as disclosed by the complainant. The scribe who was examined as PW-4 stated that on the day of incident he along with police constables was on Gasht and after receiving information regarding the arrival of the dead bodies to the hospital, he reached to the hospital, where the complainant reported the matter; that after preparation of the injury-sheet and inquest report, the complainant was sent to the doctor for his medical examination and the dead bodies for post mortem examination; that soon thereafter the injured/ appellants were brought to the hospital where the convict/ appellant Mohib Ullah reported the matter which was taken in shape of murasila. During cross-examination he admitted both the cases as cross cases. The injured were examined by the doctor, their medico-legal certificates were prepared, the doctor mentioned the duration of injuries on the bodies of both the injured from 2 to 3 hours, and when this time is taken in juxtaposition with the time of occurrence, it confirms that the injured received the injuries at the time given by the complainant in case FIR No.196.

ATTESTED

  
 District Judge  
 District Court

11. We are to determine that which of the parties is responsible and which not, and in order to determine the responsibilities of the parties concerned, we deem it essential to re-visit the motive and the purpose of visiting the place of incident by the complainant and the deceased. The record tells that all the three left their house to mediate between the spouses as their relation had turned bad and when the statement of the complainant is taken into consideration, there too, he disclosed that the convict/appellant Tauseef had entered into second marriage which turned to be the basis of strained relationship between the spouses, so they visited the place to settle the differences. But the record does not support the stance of the complainant. If the complainant and others had an intention to bring the spouses at ease, then instead of leaving their house a little earlier from breaking the fast, they would have either waited to break their fast or would have gone much earlier to the house of Tauseef to negotiate, but the hasty leaving of their house confirms their intention and it was because of such a haste that the unwanted incident occurred. The complainant admitted in his Court statement that prior to leaving their house they did not inform Tauseef and his family of their arrival to their house, for the purpose, but when they reached to the place of incident they were fired

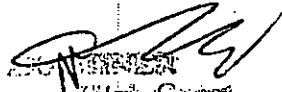
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 Attestor  
 High Court  
 (Name Deeds)

at. This is still astonishing that when convict/ appellant Tauseef and his family were not informed regarding their arrival, then how on reaching to the spot they were fired at, as by that time neither an altercation had taken place between the parties nor the parties sat to settle the differences. If the motive is the one which has been given by the complainant then, the incident did not occur in the manner given by the complainant, but what we can assess from the attending circumstances of the present case, is that, that the parties went in altercation, the situation went from bad to worse and the complainant side who was duly armed started firing and as a result the accused party resorted to firing as well. If the intention was to negotiate then the complainant would have visited the spot unarmed, but the collection of empties from the places of the complainant party is another circumstance which tells that the complainant side visited the spot with the sole purpose to kill. Given the bullet marks on the walls of the Baitak of the convict/ appellant Tauseef is another circumstance which clarify the active involvement of the complainant and deceased in firing as well. The seat of injuries on body of the convict/appellants confirms that these were not self inflicted. Right from the beginning till the end the complainant struggled hard to make believe that it was the

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Witness of High Court.  
Muzum Choudh



accused party who fired at them and they never involved in the episode and that no firing was made from their side. The complainant was blowing hot and cold in the same breath, as on one hand he denies the incident to have occurred in the manner as disclosed by the investigating officer, whereas on the other, he admitted the injuries on the bodies of the convict/ appellants, but at the hands of his nephews, away from the place of incident, but the recoveries of empties from the places assigned to them and the blood stained earth from the places of the injured/ appellants confirm their participation in the incident, and a circumstance which cannot be ignored. From the attending circumstances of the present case, this Court is firm in its belief that both the sides suppressed the real facts and consciously attempted to create an atmosphere of uncertainty.

12. It was argued from the complainant's side that the injuries received by the convict/ appellants cannot be taken in favour of the defence as in such eventuality, it was the obligation of the defence to take a plea from the very beginning, which it did not and that when a plea is not taken the Court by itself cannot appreciate that aspect of the case. We are not convinced with what the learned counsel for the complainant submitted, as the circumstances of the present case by itself are sufficient to tell that it was the complainant

ATTESTED

  
J. S. JINDAL  
District Judge  
Haryana High Court  
Gurgaon Bench

side who attracted to the spot, duly armed and that it was their this intention which led to the tragedy, so in such eventuality the possibility cannot be excluded that it was the complainant side, who went aggressor, that too, by the time when the fast was yet to be broken. In case titled "Abdur Rahim Vs. the State" (2021 YLR Note 139), it has been held that:

*"The factum of suppression of real facts of the appellant by both the sides, are the circumstances suggesting the act of firing by the appellant to have been committed in exercise of his defence, the benefit of which can be extended to him irrespective of the fact that he did not specifically take that plea during trial. Reliance is placed on case titled "Ghulam Fareed v. The State" (2009 SCMR 929), wherein it has been held that:*


*"The appellant did not raise this plea during trial either in his statement under section 342, Cr.P.C. or at the time when the prosecution witnesses were subjected to cross-examination. There is no bar to raise such plea despite having not taken the said*

ATTESTED

*[Signature]*  
 Justice  
 High Court  
 Bench

*plea specifically during trial, and the court can infer the same from the evidence led during trial, if the same is tenable. However, to justify such an inference, in favour of the accused who stands convicted on a murder charge and sentenced to death, his conduct during the occurrence should fall within the parameters of private defence, as codified in the Pakistan Penal Code."*

13. The cumulative effect of what has been discussed above, leads this Court nowhere, but to hold that there was aggression on part of the complainant and that the appellants were to retaliate. As the complainant side exceeded the limits and the accused realized a threat to their lives, so in that eventuality one side received serious injuries, whereas the other got two dead and one injured. True that casualties from one side are higher than the other, but it is equally true that these are not the casualties which should be the determining factor, rather this is the attitude of the parties which must be taken into consideration and as the convicts/appellants too received serious injuries on the most vital parts of their bodies,

ATTESTED  
  
Saddam Hussain High Court  
Gaza, Becha

so we cannot exclude the possibility that they just retaliated to save their lives. When the two versions regarding the same incident comes with the twisted facts, then courts are to decide the genuineness and the same is possible only and only when the attending circumstances of a particular case are taken into consideration, while applying the test this Court without any hesitation holds that the complainant side was the aggressor.

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14. As the complainant in his court statement introduced new story and also could not explain the circumstances which led to the incident, so in such eventuality, it is for this Court to determine the same. If we accept for a while that the purpose was to reconcile the spouses then, we failed to understand that how the accused came to know regarding their approach to the place of incident and that why instead of talking to each other, firing was made at once, which resulted into the death of the deceased and injuries to the complainant. In this particular issue two most important witnesses are the nieces of the complainant, and sisters of one of the deceased, who were married in the house. None of the ladies were produced before the investigating officer and even before the learned trial Court to confirm the stance of the complainant. This is surprising that complainant in his Court statement stated, that the sisters of the deceased attracted to the spot soon after the incident, but the investigating officer

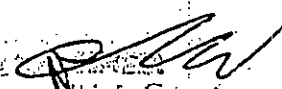
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Clerk of High Court,  
Mannu Beach

remained silent on that particular aspect of the case. If the tragedy occurred in the mode, manner and at the stated time, that too, owing to the strained relationship between the spouses, then in such eventuality, the wife of the accused/ appellant Tauseef would have deposed against her husband, with whom she was not enjoying good relations, but neither she appeared nor she was examined which in fact can be interpreted in no other manner, but that she was not ready to support the false claim of the complainant. This is surprising that despite the fact that real brother of Mst. Shamshada Bibi was killed in the incident, but till date, both the sisters are living a happy life in the house of appellants, which further negates the stance of the complainant, as in the incident motive was the most essential element and for the same the material witnesses were the sisters of the deceased, but their non-production can be taken only and only against the complainant and inference can be drawn under Article 129 (g) of Qanoon-e-Shahadat Order, 1984. In this regard, wisdom could also be derived from the judgment rendered by the Apex Court in case titled "Lal Khan Vs The State" (2006 SCMR 1846) in which it was held that:

*"The prosecution is certainly not required to produce a number of witnesses as the quality and not the quantity of the evidence"*

ATTESTED

  
 Attesting Officer  
 District Court  
 District Sindh

*is the rule but non-production of most natural and material witnesses of occurrence, would strongly lead to an inference of prosecutorial misconduct which would not only be considered a source of undue advantage for possession but also an act of suppression of material facts causing prejudice to the accused. The act of withholding of most natural and a material witness of the occurrence would create an impression that the witness if would have been brought into witness-box, he might not have supported the prosecution and in such eventuality the prosecution must not be in a position to avoid the consequence."*

15. The convict/appellant Tauscef admittedly, was serving in the police department, attached with Bomb Disposal Squad during the days of incident. The record tells that on the day of incident, he was arrested and put in quarter guard as he was charged in the instant case. This is interesting to note that on 03.6.2017, his official rifle was taken into possession from his official box, lying in police lines and the same was handed over to the investigating officer on 14.6.2017. This is for the

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*[Signature]*  
 Notary Public  
 High Court,  
 Manau Beach

prosecution to explain that how, when and wherefrom the convict/ appellant Tauseef was arrested and that who arrested him and who put him in the quarter-guard. The investigating officer was asked regarding this particular aspect of the case, but he too could not explain that who and from where the appellant was arrested. This is further surprising that record is silent that who took the official rifle in possession from possession of the convict/ appellant Tauseef and who put it into the box belonging to the accused, lying in the Police Lines, but no evidence has been collected by the investigating officer in that respect. The investigating officer mentioned one Sher Nawaz Khan, ASI that it was he who handed over the weapon to Noor Kamal, but neither the said Noor Kamal recorded statement of Sher Nawaz ASI, incharge Bomb Disposal Squad, nor the investigating officer recorded his statement under section 161 Cr.P.C. When the witnesses are silent regarding the arrest and recovery and when the witnesses could not explain that wherefrom the accused/ appellant Tauseef was arrested, then in such eventuality, this piece of evidence cannot be taken into consideration until corroborated. The investigating officer took the Kalashnikov into his possession on 14.6.2017 and on that very date an application was addressed to the Director General Forensic Science Laboratory, but surprisingly the weapon along with the

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District Judge  
 District Court  
 District Branch

recovered empties were received to the laboratory on 06.7.2017, after a considerable delay of more than one month. On one hand the witness admits that the recovered Kalashnikov was not sealed by the investigating officer and by the police official who took the same from the box, whereas on the other the collected empties and the weapon were received to the laboratory after a considerable delay of more than one month. In this respect neither the investigating officer examined Muharrir of the concerned police station nor the official who took the same to the Forensic Science Laboratory. When the most relevant witnesses have not been produced then in such eventuality this Court lurks no doubt in mind that the prosecution failed to prove safe custody of the collected empties and recovered weapon. When such is the state of affairs, this Court is not in a happy mood to take into consideration the laboratory report, against the convicts/appellants.

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16. As the unfortunate incident occurred, because of the alleged strained relation between the spouses and the purpose of visiting the place of the accused was to bridge the differences between the two, but neither Mst Shamshada Bibi was examined by the investigating officer nor another sister of the deceased who is married in the house. The investigating officer could not collect independent evidence in that respect

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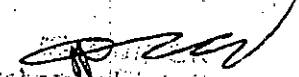
  
 Justice High Court  
 Allah Bench



and as such, the motive advanced by the complainant could not be established on record. True that absence or weakness of motive hardly plays a role to dislodge the prosecution case provided, it inspires confidence, but in the case in hand as purpose was to bridge the differences between the spouses and that it was because of this reason that the deceased lost their lives, so it was essential for the prosecution to prove the same, but it did not, which has damaged the prosecution's case beyond repair. In case titled "Muhammad Ilyas vs Ishfaq alias Munishi and others" (2022 YLR 1620), it was held that:

*"So far as motive is concerned. Though the prosecution is not under legal obligation to set up a motive. Ordinarily the absence or weaknesses of motive in murder case cannot be considered to justify the acquittal. It is well settled that once a motive is set up it is imperative for the prosecution to prove the same. On failure whereof adverse inference can be drawn against the prosecution. Reference is made to the cases of Muhammad Khan v. Zakir Hussain PLD 1995 SC 590 and Hakim Ali v. The State 1971 SCMR 432."*

ATTESTED

  
 Notary Public  
 District Court  
 District Muzaffargarh

17. The cumulative effect of what has been stated above, leads this court nowhere, but to hold that the prosecution failed to bring home guilt against the appellants and the impugned judgment is suffering from inherent defects and is lacking reasons, which calls for interference. The instant criminal appeal is allowed, the impugned judgment is set aside, and the convict appellants are acquitted of the charges. They be released forthwith, if not required to be detained in connection with any other criminal case.

18. As the criminal appeal against conviction is allowed and the impugned judgment is set aside, so the connected Criminal Revision Petition No.47-B of 2022 has lost its efficacy which is dismissed as such. These are the detailed reasons for our short order of even date.

Announced  
08.3.2023.

Date of writing of judgment:  
3<sup>rd</sup> of April, 2023

(D.B)

Hon'ble Mr. Justice Sahibzada Asadullah &  
Hon'ble Mr. Justice Muhammad Faheem Wall.

07 APR 2023  
*Whe*

*07/04/23*

CERTIFIED TO BE TRUE COPY

Examiner  
Bannu High Court, Bannu Bench  
Under Article 87 of  
Constitution of Pakistan 1973  
Shahadat Ordinance 1984

*28/01/2024*

## بخدمت جناب RPO صاحب بنوں ریجن بنوں

OB-462-04-10-2022 مجاریہ جناب ڈسٹرکٹ پولیس افسر لکی مروت

(2)

جناب عالی! ذیل گزارش کی جاتی ہے۔

1: من سائل مورخہ 09-12-2022 کو محکمہ پولیس میں بطور کنسٹیبل بھرتی ہوا ہوں۔ من سائل کا تعلیمی معیار MA عرصہ ملازمت میں مختلف قسم کے کورس بھی کی ہے۔ یعنی ہم ڈسپوزل کورس، سول ڈیفنس کورس، فنگر پرنٹ کورس علاوہ ازیں اچھی ڈیوٹی کرنے پر انصران بالا صاحبان نے مجھے کافی کچھ سرٹیفیکیشن اور انعامات سے نوازا ہے جسکے متعلق من سائل کا اعمال نامہ بلنور گواہ موجود ہے جو کہ کسی قسم کی بیڈ انٹری سے پاک ہے۔

2: من سائل پر بحوالہ مقدمہ 196 مورخہ 02-06-2017 جرم PPC 302/324 تھانہ تجوڑی ناحق دعویداری ہوئی جس سلسلے میں مجھے جوڈیشل جیل بھیجا گیا۔ جس پر جناب DPO صاحب لکی مروت نے بحوالہ OB نمبر 494 مورخہ 16-11-2017 محکمہ پولیس سے ڈیسمیسیس کیا۔

3: من سائل نے جناب RPO صاحب بنوں کو باقاعدہ اپیل کی بدیں وجہ کہ من سائل عدالت نے ضمانت پر رہا کیا۔ بحوالہ EC-2609 مورخہ 10-08-2020 جناب RPO صاحب نے مجھے بے قصور قرار کر اپنے نوکری پر بحال فرمایا۔ (آڈر کی کاپی ہمراہ لف ہے)۔

4: چونکہ من سائل کے مقدمے کا سماعت شروع تھا۔ من سائل ضمانت پر تھا عدالت سیشن جج صاحبہ نمبر 3 لکی مروت نے مجھے بحوالہ حکم مورخہ 07-09-2022 عمر قید کا حکم سنایا گیا۔ میرے متعلق بحوالہ آرڈر 11090/EC جناب رولڈر 1975 پارہ نمبر 08 کا اختیارات استعمال کر کے بحوالہ آرڈر 3893 مورخہ 03-10-2022 مجھے دوبارہ ملازمت سے ڈیسمیسیس ہونے کیلئے RPO صاحب کو بھجوا یا۔

5: جناب DPO صاحب لکی مروت نے مجھے OB No 462 مورخہ 04-10-2022 کو ڈیسمیسیس کیا۔

6: من سائل کو عدالت ہائی کورٹ پشاور بیچ بنوں نے مجھے قید سے بہ عزت بری کیا اور عدالت سیشن جج صاحب لکی مروت کا آرڈر Set Aside کیا ہے۔ جبکہ سریم کورٹ آف پاکستان (PLD-2010 SC-695) اندامین سلسلہ واضح ہے (جسکی کاپی ہمراہ لف ہے)۔

7: ہمارے پشتون کلچر میں یہ مشہور بات ہے کہ کوئی جرم علاقے میں ہو جائے۔ تو مخالف فریق گھر کے سربراہ یا سفکاری ملازم کو ضرور انولو (Involo) کرتا ہے لیکن مجھ پر کوئی ثبوت ثابت نہ ہو سکی۔ اس لئے پشاور ہائی کورٹ ہونے کے حکم پر مجھے یہ عزت بری کیا (کاپی ہمراہ لف ہے)۔

8: عدالت سپریم کورٹ آف پاکستان کا واضح آرڈر ہے کہ کریمنل کیس سے بری ہونے کی صورت میں سرکاری ملازم کو دوبارہ آل بی فیٹ بحال کیا جائے۔

لہذا استدعا ہے کہ مجھے لانگ نو کری اور چھوٹے چھوٹے بچوں کی خاطر اپنے نو کری پر بحال فرمائیں۔ تازیت دو عا گور ہونگا۔

-----العا رض۔۔ مورخہ: 17-04-2023

توصیف احمد بلٹ نمبر HC 411 ولد نواز خان سکندرم زئی تحصیل: غزنی خیال ضلع لکی مروت

Mob.No:03479832731

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4-7-23

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01/7/23

**ORDER:**

This order will dispose of departmental appeal, preferred by Ex-LIC Fuzeeff Ahmed No.411 of District Police Lakki Marwat, wherein he has prayed for setting aside the order of major punishment of "Dismissal from service", imposed upon him by DPO Lakki Marwat vide OB No.462 dated 04.10.2022 for committing the following misconduct:-

- That the appellant while posted at Police Lines Lakki Marwat was found involved in criminal case FIR No.196 dated 02.06.2017 u/s 302/324/34 PPC PS Tajori, District Lakki Marwat.

Comments, service record and enquiry file were received from DPO Lakki Marwat vide his office letter No.2034/EC, dated 27.04.2023 and perused in detail. The DPO Lakki Marwat has reported that charge sheet based upon statement of allegations was served upon the appellant and DSP Hqrs; Lakki Marwat was appointed as Enquiry Officer. The E.O conducted inquiry into the allegations and submitted findings, wherein the E.O concluded that the allegation against the appellant was proved. The appellant was also served with Final Show Cause Notice. His reply to the Final Show Cause Notice was found unsatisfactory. Therefore, he was awarded major punishment of "dismissal from service" vide DPO Lakki Marwat OB No.494 dated 16.11.2017. Aggrieved from the order, the appellant had preferred an appeal before the then RPO Bannu on account of granting bail by the Peshawar High Court Bannu Bench on 04.6.2020 for setting aside the major punishment of "Dismissal from Service". The then RPO Bannu reinstated him into service and the major punishment of dismissal was modified into minor punishment of censure vide order Endst: No.2609/EC dated 10.8.2020. On 07.9.2022 during trial of the criminal case, the appellant was convicted for life imprisonment/line by Addl Sessions Judge No.III Model Criminal Trial Court (MCTC) Lakki Marwat and sent to Sub Jail Lakki Marwat in the instant criminal case vide Order Sheet dated 07.9.2022. Therefore, he is awarded major punishment of dismissal from service w.e.from 07.9.2022 vide DPO Lakki Marwat office OB No.462 dated 04.10.2022.

The appellant was heard in person in Orderly Room held in RPO Office Bannu on 01.06.2023. His enquiry file and other connected papers were marked to DSP Legal Bannu for discussion. On 03.07.2023 after thorough discussion with DSP Legal Bannu, the plea put forward by the appellant in his appeal was not found convincing.

Therefore, I, Qasim Ali Khan, PSP, Regional Police Officer, Bannu Region Bannu, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules, 1975 (amended in 2014) hereby regret his appeal and endorse the punishment awarded to him by DPO Lakki Marwat vide OB No.462 dated 04.10.2022.

Regional Police Officer,  
Bannu Region,  
Bannu.

*[Handwritten notes and signatures]*  
APL  
BY  
21/7/23

No. 2083 /EC, dated Bannu the 04/17/2023

DPO Lakki Marwat for necessary action wr to his office file No. cited above. Complete Service Roll and Inquiry file of Ex-LIC Fuzeeff Ahmed No.411 of District Police Lakki Marwat are sent herewith for record in your office which may be used for record, please.

Regional Police Officer,  
Bannu Region,  
Bannu.

13-7-23

M - 75

پشاور

پولیس انسپکٹر جنرل آف پولیس

عنوان: درخواست دربارہ بحالی سروس کا عدم قرار دیئے جانے کا حکم OB462/4-10-2022 لیٹر-11734

38/4-10-2022 مجاریہ ڈسٹرکٹ پولیس آفیسر صاحب لگی مروت۔

جناب عالی!

دریں سلسلہ میں مسائل ذیل گزارشات عرض کرنا چاہتا ہوں۔

(1) میں مسائل مورخہ 9/12/2002 کو محکمہ پولیس میں بطور کانسٹیبل بھرتی ہوا۔

(2) میں مسائل M.A تک تعلیم یافتہ ہے۔

(3) میں مسائل نے ہم ڈسپوزل کورس وغیرہ کئی کورسز کئے ہیں۔

(4) میں مسائل کو انسٹران بالائے خدمات جانشینی سے انجام دہی کے بناء متعدد تعزینی اسناد اور نقد اعانات سے

نوازا ہے۔

(5) میں مسائل نے دوران سروس انسٹران بالا کو کسی قسم کی شکایت کا موقع نہیں دیا ہے۔

(6) میں مسائل کا سروس ریکارڈ بے داغ ہے۔

وقوع ہذا کے بارے ذیل معروضات پیش کرتا ہوں۔

(الف) میں مسائل ہم ڈسپوزل سکوڈ لگی مروت میں تعینات تھا۔

(ب) مورخہ 2/6/2017 کو میں مسائل اپنی ڈیوٹی کے سلسلہ پولیس لائن لگی مروت میں موجود تھا۔ کہ میرے

خلاف بحوالہ مقدمہ 196 مورخہ 2/6/2017 ج 34/302-324 تپ تھانہ تجوڑی دعویداری ہوئی۔

(ج) میں مسائل کو ابنداء کو اتر گاڑ ڈپولیس لائن لگی مروت میں بند کیا اور بعدہ انتہی انسپر مقدمہ ہذا کو حوالہ کر کے

جیل بھیجا گیا۔

(د) DPO صاحب لگی مروت نے بحوالہ OB 494/16-11-2017 محکمہ پولیس سے ڈیمس کیا۔

(ه) صاحب جنوں کو اپنی ہدایت کا اندازہ نہ تھا اس لئے لگی مروت میں مسائل کو سروس پر

بحالی کے احکامات صادر فرمائے۔

(و) مقدمہ کی سماعت عدالت سیشن بیج صاحب لگی مروت سے مکمل ہو کر میں مسائل کے بارے میں حکم صادر

فرمایا۔

(ر) من ساکن کو جناب I.P.U صاحب کی مروت نے بحوالہ UB 402/4-10-2022 سے ڈسمن کرنے کا حکم صادر فرمایا۔

(س) من ساکن بعدالت عالیہ ہائی کورٹ بیچ پشاور جنوں ایپل ڈائر کی۔ جو عدالت عالیہ نے بحوالہ CRA No 110-D-22/5-3-2023 من ساکن کو بابت طور پر برن کرنے اور عدالت سیشن جج صاحب کی مروت کے حکم کو Set Side کرنے کا حکم صادر فرمایا۔ فوٹو کاپی ہمراہ لف ہے۔  
عدالت عالیہ کے ریکارڈس ذیل ہیں۔

The convict/appellant Tauseef admittedly, was serving in the police department, attached with Bomb Disposal Squad during the days of incident. The record tells that on the day of incident, he was arrested and put in quarter guard as he was charged in the instant case. This is interesting to note that on 03.6.2017, his official rifle was taken into possession from his official box, lying in police lines and the same was handed over to the investigating officer on 14.6.2017. This is for the prosecution to explain that how, when and wherefrom the convict/ appellant Tauseef was arrested and that who arrested him and who put him in the quarter-guard. The investigating officer was asked regarding this particular aspect of the case, but he too could not explain that who and from where the appellant was arrested. This is further surprising that record is

officer who took the official file in possession from  
 possession of the convict/appellant Jansel and who put it  
 into the box belonging to the accused, lying in the Police  
 lines, but no evidence has been collected by the investigating  
 officer in that respect. The investigating officer mentioned one  
 Shri Narayan Khan, ASI that it was he who handed over the  
 weapon to Mohd Kamal, but neither the said Mohd Kamal  
 recorded statement of Shri Narayan ASI, incharge Bomb  
 Disposal Squad, nor the investigating officer recorded his  
 statement under section 161 Cr.P.C. When the witnesses are  
 silent regarding the arrest and recovery and when the witnesses  
 could not explain that whether the accused/appellant  
 Jansel was arrested, then in such eventually, this piece of  
 evidence cannot be taken into consideration until corroborated.  
 The investigating officer took the Katannikov into his  
 possession on 14.6.2017 and on that very date an application  
 was addressed to the Director General Forensic Science  
 Laboratory, but surprisingly the weapon along with the  
 recovered cartridges were received to the laboratory on  
 06.7.2017 after a considerable delay of more than one month.  
 On one hand the witness admits that the recovered  
 Katannikov was not sealed by the investigating officer and by  
 the police official who took the same from the box, whereas on  
 the other the collected cartridges and the weapon were received



month. In this respect neither the investigating officer examined Muharrir of the concerned police station nor the official who took the same to the Forensic Science Laboratory. When the most relevant witnesses have not been produced then in such eventuality this Court lurks no doubt in mind that the prosecution failed to prove safe custody of the collected empties and recovered weapon. When such is the state of affairs, this Court is not in a happy mood to take into consideration the laboratory report, against the convicts/appellants.

عالی جاہ! امن سائل وقوعہ ہذا سے بے گناہ ہے بلکہ سائل کے خلاف مقدمہ ہذا منصوبہ بندی اور مشورے کے ساتھ درج کروا کر فریق مخالف کے اثر سوخ کے بناء پر Plant کیا گیا ہے۔

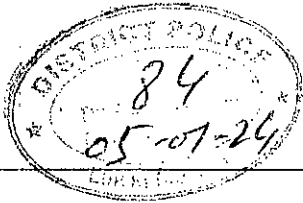
لہذا استدعا ہے کہ امن سائل کو کافی بے داغ سروس وغیرہ کے بناء بمعہ جملہ مراعات سروس پر بحالی اور جناب DPO صاحب لگی مروت کے احکامات 4-10-22/ OB 462 کو کالعدم قرار دیئے جانے کا حکم صادر فرمائیں۔  
کرم بخش ہوگی۔

مورخہ: 13-07-2023

العارض

کنسٹیبل توصیف احمد نمبر 411

موبائل نمبر: 0301-8018480



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22-12-23

OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
PESHAWAR.

03

ORDER

01-01

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-LHC Tauseef Ahmad No. 411. The Applicant was awarded major punishment of Dismissal From Service by DPO Lakki Marwat vide OB No 494, dated 16.11.2017 on the allegations that he was involved in a criminal case FIR No. 196, dated 02.06.2017 u/s 302/324/34 PPC PS Tajori and was arrested on 04.06.2017. Bail was granted to him by Apex court Bannu after which he preferred an appeal to RPO Bannu. He was reinstated into service vide Order Endst: No. 2609/EC, dated 10.08.2020. After reinstatement into service, he appealed to w/IGP for the grant of pay for the intervening period. The Appellate Board vide CPO Order Endst: No. S/2912-20/21, dated 30.06.2021 decided De-Novo Enquiry Proceeding & Proper enquiry.

He was convicted for life imprisonment by Addl: Session Judge-III Model Criminal Trial Court, Lakki Marwat. DPO Bannu awarded him Major Punishment of Dismissal from service vide OB No. 462, dated 04.10.2022. However, the judgment of ASJ-III MCTC Lakki Marwat was Set Aside and the Appellant was Acquitted of the charges and was released vide judgment dated 08.03.2023 by Peshawar High Court Bench, Bannu.

The Appellate Authority i.e. RPO Bannu rejected his Instant Appeal vide Order Endst: No. 2083/EC, dated 04.07.2023.

Meeting of Appellate Board was held on 12.12.2023 wherein petitioner was heard in person. Petitioner contended that he is innocent and that FIR is frivolous.

Perusal of enquiry papers revealed that the allegations leveled against the petitioner has been proved. The petitioner failed to submit any cogent reason in his self-defense. The Board sees no ground and reasons for acceptance of his petition, therefore, his petition is hereby **rejected**.

Sd/-

**AWAL KHAN, PSP**  
Additional Inspector General of Police,  
HQrs: Khyber Pakhtunkhwa, Peshawar.

PO TORS 3077-82 /23, dated Peshawar, the 22-12 /2023.

Copy of the above is forwarded to the:

1. Regional Police Officer, Bannu. One Service Roll, one Fuji Missal (44 pages) and Enquiry File (56 pages) of the above named FC received vide your office Memo: No. 3195/EC, dated 20.09.2023 is returned herewith for your office record.
2. District Police Officer, Lakki Marwat.
3. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.

District Police Officer  
Lakki Marwat

No 57/EC,  
dt 02/11/24

EC DPO/Lakki

**MUHAMMAD AZHAR** PSP  
AIG/Establishment,  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.

P.P.O Bannu 11/12/23

قعدت جناب سرسٹریٹ پیپر مل صوبہ سندھ پشاور

مخاتب ایڈوانس

توصیف خان نام

دعویٰ اپیل

یا علی شکر یہ ایشیا

مستند و معروضات بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی مستطاف آن مقام پشاور کیلئے اسعد اڈاس خان سرور سے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے رہی نامہ و تقریر ثالثہ و تیسرا برتلاف دینے جواب دہی اور اقبال دعویٰ اور بھروسہ ڈاگری کرنے اجراء اور وصولی چیک و روپیہ اور مرضی دعویٰ اور درخواست برتنم کی تعلیق اور اس پر دستخط کرانے کا اختیار ہوگا نیز بھروسہ عدم پیروی یا ڈاگری کی طرفہ یا اپیل کی برآمدگی اور پیروی کی طرفہ یا اپیل ٹرانسپلٹ و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ بنا کر کے کل یا بجزوی کاروائی سے واسطے اور وکیل یا مشاور قانونی کو اپنے ہمراہ یا اپنی بجائے تفرک کا اختیار ہوگا اور وکیل مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سامنے پروا غتہ منطوقہ قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام روزہ پر ہو یا عدت سے باہر ہو تو وکیل صاحب یا بند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

المرقوم 15-01-2024

القید القید القید

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ارباب نیگ انکمال  
ایڈووکیٹ

Khan  
سیدہ اللہ بیگم  
ایڈووکیٹ

توصیف خان

محمد نواز  
ایڈووکیٹ