

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 1141/2019

Date of Institution ... 12.09.2019

Date of Decision ... 16.06.2021

Sajid Iqbal Constable No. 382 District Police Karak,
Presently Village & P.O Nari Panos Tehsil Banda Daud Shah
District Karak.

... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa Peshawar and
two other.

... (Respondents)

Mr. QAZI SAJID UD DIN,
Advocate

--- For appellant.


MR. USMAN GHANI,
District Attorney

--- For respondents.

MR. SALAH-UD-DIN ---
MR. ATIQ-UR-REHMAN WAZIR ---


MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGEMENT:

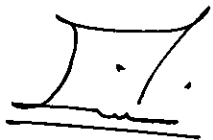

SALAH-UD-DIN, MEMBER:- The appellant has preferred the instant Service Appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 17.08.2019 passed by the Regional Police Officer Kohat, whereby major penalty of time scale for the period of three years, awarded to the appellant by the District Police Officer Karak was upheld and the departmental appeal of the appellant was rejected.

2. Brief facts forming the background of the instant Service Appeal are that the appellant is serving as Constable in Police Department. Disciplinary proceedings were initiated against the appellant on the

allegations that as per report of SDPO Takht-e-Nasrati, the appellant alongwith deceased Constable Bismillah Jan No. 142 were on duty when the opponent of one Najeeb Ullah S/o Aqal Daraz R/o Karri Dhand District Karak made firing, resulting in causing of injuries to the appellant as well as death of Constable Bismillah Jan and Aqal Daraz; that proper case FIR No. 14 dated 07.01.2017 under sections 302, 324, 109, 353, 427/34 PPC read with section 7-ATA was registered against the accused and statement of the appellant as eye witness of the occurrence was recorded in Daily Diary, in which he supported the version of the occurrence as recorded in the FIR but in his statement recorded before the court, the appellant deviated from his own statement recorded under section 161 Cr.PC, due to which the case was badly damaged; that the deviation of the appellant from his 161 Cr.P.C statement depicted irresponsible behavior of the appellant in the discharge of his official obligations, amounting to gross misconduct. Charge sheet and statement of allegations were issued to the appellant by appointing SDPO Takht-e-Nusrati as inquiry officer. The appellant submitted written defense in reply to the charge sheet issued to him. On conclusion of inquiry, District Police Officer Karak imposed major penalty of time scale for 03 years upon the appellant vide order dated 31.12.2018, which was challenged through filing of departmental appeal, however the same was also rejected vide order dated 17.08.2019, hence the instant Service Appeal.


3. Learned counsel for the appellant has contended that the disciplinary action was wrongly and illegally taken against the appellant on the ground that while recording his statement before the court, he has deviated from his earlier statement recorded under section 161 Cr.P.C; that the appellant has not deviated from his version regarding the occurrence and has put forward a true ocular of the occurrence in his statement recorded before the court on oath; that the culprits of the occurrence were not known to the appellant and this fact was mentioned by him in his 161 Cr.P.C statement but the investigating officer has from his own side mentioned in the later part of the statement that the appellant charged so and so accused for commission of the offence; that the culprits were admittedly not known to the

appellant, therefore, it was not possible for the appellant to charge them by name in his 161 Cr.P.C statement; that the inquiry proceedings were also conducted in a mechanical way as no name of the inquiry officer is mentioned in the charge sheet and statement of allegations; that although an inquiry officer was appointed for inquiry in to the matter, however the copy of inquiry report was neither provided to the appellant, nor the same is available on the record; that the departmental appeal of the appellant was also rejected without assigning any cogent and legal reasons and even opportunity of hearing was not provided to the appellant; that the appellant has been awarded major penalty of time scale for 03 years, however this type of punishment is no where mentioned in Rule-4 of Police Rules, 1975, which mentions the types of major and minor punishments, which could be awarded to an accused. Reliance was placed on 2020 SCMR 1245.

 4. On the other hand learned District Attorney has argued that being injured eye witness of the occurrence, the appellant recorded his statement under section 161 Cr.P.C, wherein he supported the version of the complainant as narrated in the FIR, however while recording his statement before the court, the appellant dishonestly deviated from his 161 Cr.P.C statement for the purpose of favouring the accused in earning his acquittal; that due to dishonest deviation of the appellant from his true statement recorded under section 161 Cr.P.C, the prosecution case was badly damaged and the accused got acquitted; that besides the murder of one Aqal Daraz, Constable Bismillah Jan was also martyred in the unfortunate incident but the accused was acquitted due to dishonest statement of the appellant recorded at the trial; that all the inquiry proceedings were conducted against the appellant in accordance with Police Rules, 1975, and the impugned penalty has been rightly awarded to the appellant.

5. Arguments heard and record perused.

6. A perusal of record would show that according to FIR lodged by complainant Najeeb Ullah S/o Aqal Daraz, he alongwith his father Aqal Daraz Constable Bismillah Jan and Driver Moeen Ullah S/o Azad Khan as well as the appellant were returning back after attending the court of

Additional Sessions Judge Takht-e-Nusrati, when in the meanwhile the accused namely Sana-ul-Haq, Asfar and Iqtidar started firing at them upon the abatement of Almas and Muhammad Naeem, resulting in causing of death of Aqal Daraz and Constable Bismillah Jan as well as causing of injuries to the appellant. During the investigation, statement of the appellant was also recorded under section 161 Cr.P.C, which is in line with the prosecution story as narrated by the complainant in the FIR, however in his 164 Cr.P.C statement recorded before the court, the appellant negated presence of the complainant on the spot, which fact led to the initiation of disciplinary action against the appellant.

7. It is well settled law that the statement of an accused or any witness recorded under section 161 Cr.P.C is having no evidentiary value in the eye of law. Section 162 Cr.P.C provides that no statements made by any person to a Police Officer in course of an investigation shall be used for any purpose except by the accused and for the purpose of contradicting the witness as provided by section-140 of Qanun-e-Shahadat order. The wisdom behind 162 Cr.P.C is that the witness should be free to make statement before the court, unhampered by anything which he might have stated or might have been made to state to the police. While going through the statement of the appellant recorded under section 161 Cr.P.C, it can be observed that it is mentioned therein that three young persons made firing with Pistol, who can be identified by the appellant. This portion of 161 Cr.P.C statement indicates that the accused were not known to the appellant, however in the later portion of the statement, it is mentioned that the appellant charged the accused Asfar, Iqtidar, Sana-ul-Haq for firing at them upon the abatement of Almas and Muhammad Naeem. When the culprits were admittedly not known to the appellant, it cannot be believed that the appellant would have charged the accused by name in his 161 Cr.P.C statement.

8. The judgment rendered by the learned judge Anti-Terrorism Court Kohat Division Kohat would show that one Zahoor Ahmed Subject Specialist GHSS Shah Salim was examined as C.W during the trial, who affirmed that on the relevant day, the complainant Najeeb Ullah had appeared for attempting Chemistry paper in GHSS Shah Salim, the


timing of which were from 09:00 A.M to 11:00 A.M. Similarly, the learned judge Anti-Terrorism Court has given so many other reasons for reaching the conclusion that the presence of the complainant on the spot at the relevant time was doubtful. In this scenario, the stance of the appellant regarding the non presence of the complainant namely Najeeb Ullah on the spot rings true. Furthermore, the learned judge Anti-Terrorism Court has observed on page 25 of the judgment that nothing was available on the record to show that the appellant has negated the presence of the complainant for some extraneous consideration. During the inquiry too, no evidence whatsoever was brought against the appellant, which could in any way hint that his statement before the court was recorded for the purpose of any sinister design.

9. The inquiry proceedings are also tainted with serious lapses. The name of the inquiry officer is not mentioned in the charge sheet and statement of allegations. The appellant has categorically stated in his appeal that the accused was not provided any opportunity to defend himself during the inquiry and the same was conducted one sided. The respondents have not brought anything on the record to show that the inquiry officer had associated the appellant with the inquiry proceedings. Furthermore, no cogent incriminating material has been brought against the appellant in support of the allegations of misconduct leveled against him, therefore, the penalty imposed upon the appellant is legally not sustainable and is liable to be set-aside.

10. In light of the above discussion, the appeal in hand is allowed by setting-aside the penalty awarded to the appellant and he is held entitled to all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.06.2021


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
16.06.2021

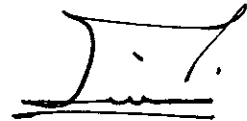
Appellant alongwith his counsel Mr. Qazi Sajid Ud Din, Advocate, present. Mr. Usman Ghani, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the penalty awarded to the appellant and he is held entitled to all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.06.2021



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

18.08.2020 Due to summer vacations, the case is adjourned to
26.10.2020 for the same.



Reader

26.10.2020 Proper D.B is on Tour, therefore, the case is
adjourned for the same on 21.12.2020 before D.B.


Reader

21.12.2020 Counsel for appellant is present. Mr. Kabirullah Khattak,
Additional Advocate General, for the respondents is also present.
Due to COVID-19, the case is adjourned to 12.03.2021 for the
same.

12.3.21


Reader
*D.B is not available, therefore the case
is adjourned to 16.6.2021 for the same.*



T

06.02.2020

Appellant in person and Addl. AG alongwith Amir Hussain, PASI for the respondents present.

Representative of respondents has furnished parawise comments, which are placed on record. To come up for rejoinder and arguments on 01.04.2020 before the D.B.


(Ahmad Hassan)
Member

01.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 09.06.2020 for same as before.


Reader

09.06.2020

None present on behalf of the appellant. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Notices be issued to appellant and his counsel for attendance and arguments for 18.08.2020 before D.B.


(Mian Muhammad)
Member


(M. Amin Khan Kundi)
Member

21.10.2019

Counsel for the appellant present.

Contends that penalty imposed upon the appellant by way of major punishment of time scale for three (03) years is not provided in the Khyber Pakhtunkhwa Police Rules, 1975 (as amended in 2014). The impugned orders dated 31.12.2018 as well as 17.08.2019 are therefore, not sustainable. It is also contended that acquittal of accused in the criminal case recorded through FIR No.14 dated 17.01.201 was not attributable to the statement of the appellant as transpired for the judgment of trial court.

In view of arguments by learned counsel and available record, the instant appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/ comments on 23.12.2019 before S.B.

Appellant Deposited
Security & Process Fee
23/10/19



Chairman

23.12.2019

Appellant in person present. Addl: AG alongwith Mr. Amir Hussain , PASI for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 06.02.2020 before S.B.





Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1141/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 12/09/2019 | <p>The appeal of Mr. Sajid Iqbal presented today by Qazi Sajid-ud-Din Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2- | 13/09/19 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21/10/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Appeal No. 1141/2019

Sajid Iqbal Constable No. 382 District Police Karak. (Appellant)

VERSUS

Inspector General of Police KPK, Peshawar etc (Respondents)

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Dated: 12/09/2019

Appellant
Sajid Iqbal
0313-2809048

Through

Sajid
Qazi Sajid Uddin
Advocate Kohat

①

THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 1141/2019

Diary No. 1243

Dated 12-9-2019

Sajid Iqbal Constable No.382 Distt: Police Karak,
Presently Village & P.O. Nari Panos Tehsil Banda Daud Shah Distt:
Karak: (Appellant)

Versus

1. Inspector General of Police KPK Peshawar.
2. Deputy Inspector General of Police Kohat Region Kohat.
3. Distt: Police Officer, Karak. (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUN KHWA
SERVICE TRIBUNAL ACT AGAINST THE IMPUGNED ORDER DT:17-8-
2019 WHEREIN THE PUNISHMENT OF TIME SCALE FOR THE PERIOD
OF THREE YEARS AWARDED BY THE DISTT: POLICE OFFICER KARAK
(RESPONDENT NO.3) WAS UNJUSTIFIABLY UPHeld BY THE DEPUTY
INSPECTOR OF POLICE KOHAT REGION KOHAT (RESPD NO.2).

Respectfully Sheweth,

With great respect, the appellant may be allowed to submit the
following for your kind and sympathetic consideration:-

Filed to-day

Registrar

12/9/19

FACTS:

1. That the appellant was enrolled as constable in the year 2007.
2. That the appellant during his service successfully qualified the A1, B1 & and Lower School Courses and presently serving as LHC at Toll Plaza Karak.
3. That during service the appellant performed a number of duties/ assignments which were sensitive & risky in nature. The appellant faced anti social elements with bravery.

4. That due to the keen interest of the appellant in service, he performed to the satisfaction of his seniors and in accordance with law and merits.
5. That to the utter surprise of the appellant, charge sheet and statement of allegations were served upon the appellant wherein it was alleged that "as per report of SDPO Takht-e-Nasrati, you constable Sajid Iqbal No.382 were injured during duty hours due to the firing of opponents of Najeeb Ullah S/o Iqbal Daraz R/o Kari Dhand Tehsil Takht-e-Nasrati Distt: Karak while constable Bismillah Jan No.142 was martyred on the spot, as a result of which proper case vide FIR No.14 dated 07-01-2017 U/Ss 302, 324, 109, 34, 353, 427 PPC, 7-ATA was registered against the nominated accused. Furthermore, you constable Sajid Iqbal No.382 were also eye witness of the incident. Your first statement was recorded by the I.O in the Daily Diary was in favour of FIR. Later on you Constable Sajid Iqbal deviated from your own statement recorded before the court. Resultantly the case was badly affected and damaged which is quite adverse on your part and shows your irresponsible behaviour in discharging of your official obligations". (The Charge sheet and statement of Allegation are annexure A & B)
6. That the appellant denied charges leveled against him in his reply to the charge sheet. (Copy of reply is annexure-C)
7. That the departmental enquiry was initiated against the appellant, which resulted in punishment. The appellant vide order dt:31-12-2018 issued by the Distt: Police Officer Karak ~~and~~ was awarded the punishment of time scale for three years. (Copy of order is enclosed as annexure-D)

8. That upon the punishment order the appellant moved a departmental appeal before the Deputy Inspector General of Police Kohat Region Kohat, wherein the punishment awarded by the respondent No.3 was challenged. (Copy of appeal is annexure-E)
9. That the Deputy Inspector General of Police vide order dt:17-8-2019 rejected appeal of the appellant and upheld order of the Distt. Police Officer Karak. (Copy of the order is enclosed as annexure-F)
10. That the impugned order consists of legal and factual infirmities, therefore, the order is not sustainable in the eyes of law. The appellant has the following reservations upon the impugned order which in the interest of law and justice may be considered sympathetically.

GROUND OF APPEAL:

- a. That the impugned punishment order of the Deputy Inspector General Kohat Region Kohat is against law, facts and evidence on record, hence it is not sustainable in the eyes of law.
- b. That it has been alleged that the appellant favoured the prosecution in his first statement recorded in the Daily Diary. In fact this allegation is absolutely wrong because it is a normal practice that statement U/S 161 Cr.PC is always written in the case Diary instead of the Daily Diary secondly the I.O. did not consult the appellant while recording his statement U/S 161 Cr.PC. He at his own recorded the said statement on behalf of the appellant. However, in the court

statement, the appellant narrated, true and un rebuttable facts. (Copy of the case diary is annexure-G)

- c. That it is wrong to allege that on account of the appellant the case was damaged. If record is perused it will reveal that investigation of the case was very weak and there were other factors which made the case worth acquittal in the eyes of law.
- d. That stance taken by the appellant in the above para is supported by the judgment of the learned Anti Terrorism Court Kohat who at Page-21 has opined that "The medical version is not in line with the prosecution stance which negates the mode and manner of the commission of offence". While at another place i.e. Page-25 of the judgment the learned Court has declared that "There is nothing on file to suggest that PW-14 (The appellant) has exonerated the accused facing trial and negated the presence of complainant for some extraneous consideration". If the allegation against the appellant would be true then undoubtedly the learned trial court would have passed adverse remarks against the appellant but in the court record nothing like this is available which leads a prudent person to the result that the case was not damaged due to the statement of the appellant but in fact by the investigation. Thus allegation against the appellant has not been proved and the punishment has become at nullity in the eyes of law/ rules. (Copy of the judgment is annexure-H)
- e. That during enquiry the appellant was not provided opportunity to defend himself.

- f. That the enquiry proceedings were conducted one sided and in arbitrary manner and thus have vitiated the entire enquiry proceedings.
- g. That the punishment of time scale awarded to the appellant is neither mentioned in the list of minor nor in the list of major punishments of the Police Rules 1975 (Amended 2014). Hence punishment is illegal ab-initio and has got no force in the eyes of law.
- h. That the appellant is a law abiding person. Whatever was witnessed, the appellant narrated the same in his statement. The appellant cannot imagine to deviate from the law /rules.
- i. That the appellant has been condemned unheard.
- j. That the punishment order does not fulfill the ends of justice, hence it is not sustainable in the eyes of law.

PRAYER:

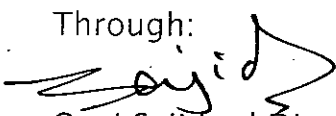
It is, therefore, humbly prayed that the impugned order of punishment being not in accordance with law/ rules may be set aside and the appellant may be restored to his old position as before the order of punishment with all back benefits.

Dated 12-09-2019.

Yours Obediently,


Sajid Iqbal (Appellant)

Through:


Qazi Sajid ud Din Advocate

(6)

THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Sajid Iqbal Constable No.382 Distt: Police Karak. (Appellant)

Versus

Inspector General of Police KPK Peshawar etc.

(Respondents)

Service Appeal

AFFIDAVIT

I, Sajid Iqbal Constable No.382 Distt: Police Karak,

Presently Village & P.O. Nari Panos Tehsil Banda Daud Shah Distt:

Karak do hereby solemnly affirm that the contents of the appeal is

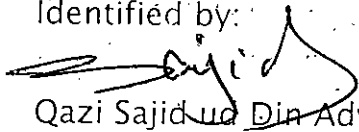
true and correct to the best of my knowledge and belief and

nothing has been concealed from this honourable court.

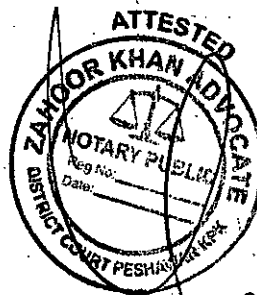


Deponent

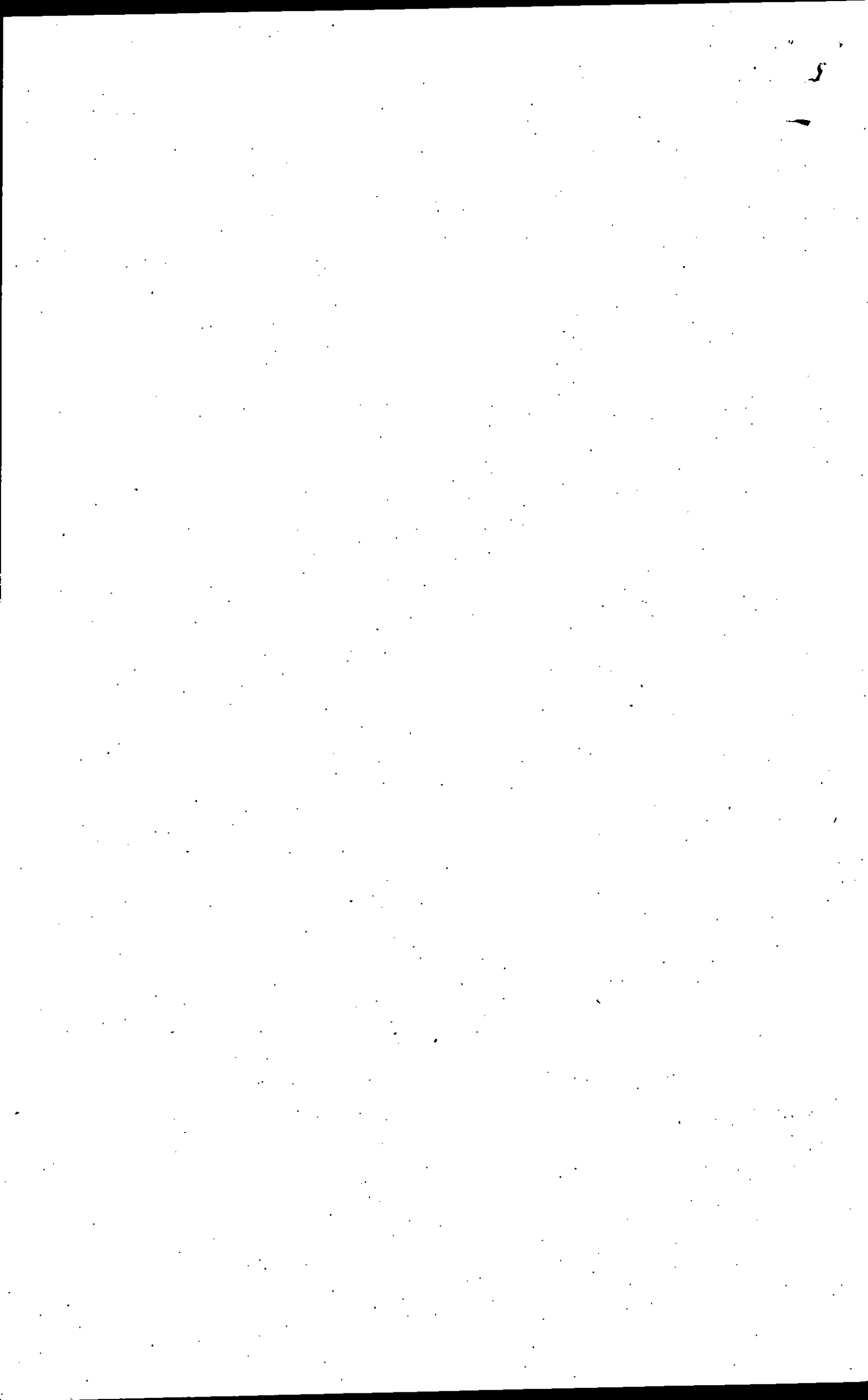
Identified by:



Qazi Sajid ud Din Advocate



12 SEP 2019



THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Sajid Iqbal Constable No.382 Distt: Police Karak. (Appellant)

Versus

Inspector General of Police KPK Peshawar etc.
(Respondents)

Service Appeal

ADDRESSES OF THE PARTIES

Appellant:

Sajid Iqbal Constable No.382 Distt: Police Karak,
Presently Village & P.O. Nari Panos Tehsil Banda Daud Shah Distt:
Karak.

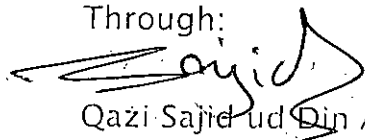
Respondents:

1. Inspector General of Police KPK Peshawar.
2. Deputy Inspector General of Police Kohat Region Kohat.
3. Distt: Police Officer, Karak.

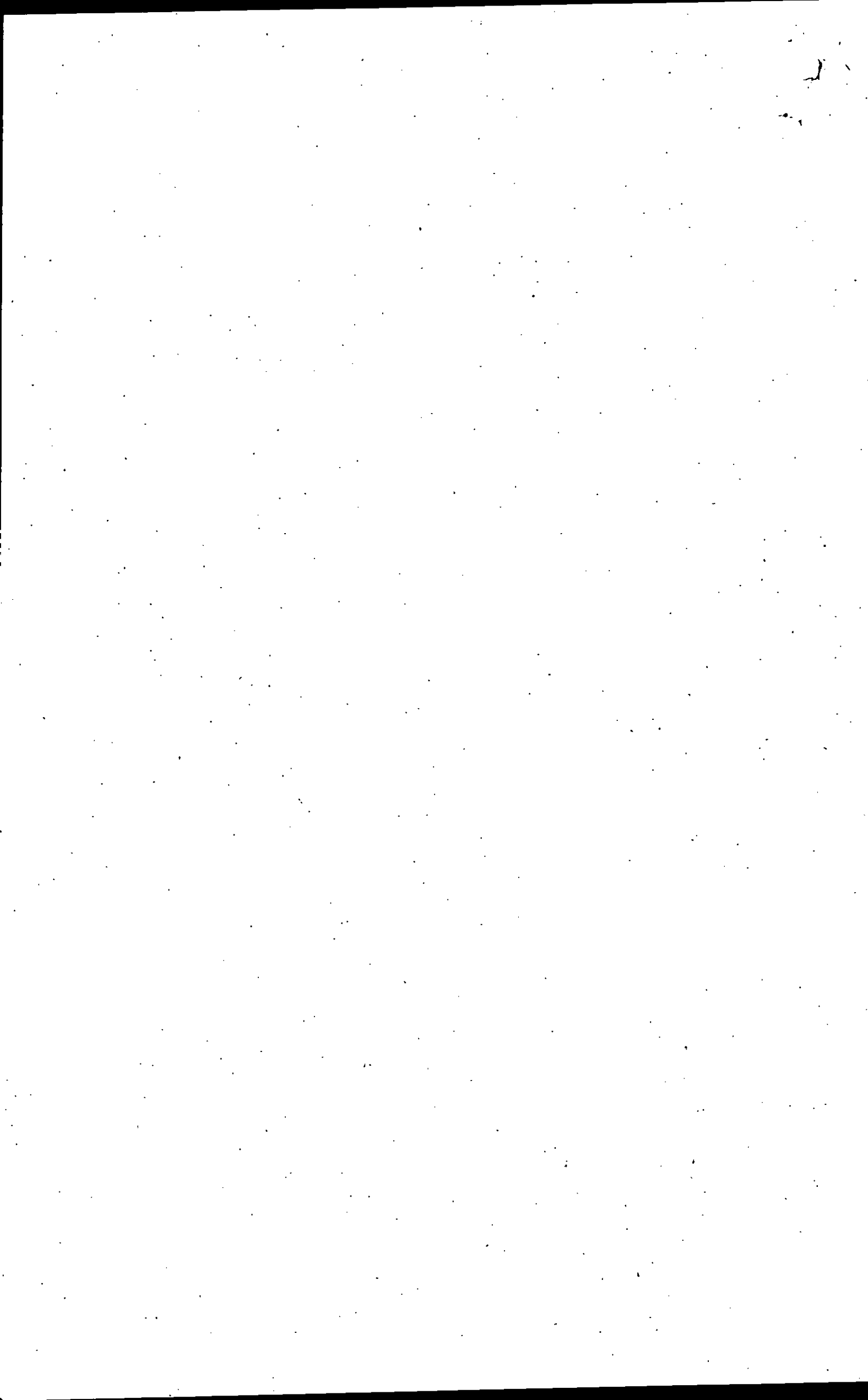
Sajid Iqbal (Appellant)

Dated 12-09-2019.

Through:



Qazi Sajid ud Din Advocate



No. 361 /PA(Enq)

Dated 19/1/2018

"A"

CHARGE SHEET

I, NAUSHER KHAN, District Police Officer, Karak as a competent authority, hereby charge you Constable Sajid Iqbal No. 382 Police Lines Karak follow:-

"As per report of SDPO, Takhta Nasrati, you Constable Sajid Iqbal No. 382 were injured during duty hours due to the firing of opponents of Najeeb Ullah s/o Aqal Daraz r/o Karri Dhand while Constable Bismillah Jan No. 142 was martyred on the spot, as a result of which a proper case vide FIR No. 14 dated 07.01.2017 u/s 302, 324, 109, 34, 7ATA, 353, 427 PPC PS YKS was registered against the nominated accused. Furthermore, you Constable Sajid Iqbal No. 382 were also eye witness of the incident. Your first statement was recorded by the I.O in Daily Diary was in favour of FIR. Later on, you Constable Sajid Iqbal deviated from your own statements while recorded before the court. Resultantly, the case was badly affected and damaged which is quite adverse on your part and shows your irresponsible behavior in discharging of your official obligations.

1. This action on your part is against the service discipline and amounts to gross misconduct. By the reason of your commission/omission, constitute miss-conduct under Police disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department, you have rendered your-self liable to all or any of the penalties specified in Police Rule-1975 ibid.

2. You are, therefore, required to submit your written defense within 07-days of the receipt of this charge sheet to the enquiry Officer SDPO/ZN is hereby appointed for the purpose of conducting enquiry.

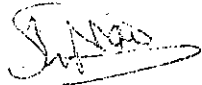
Your written defense if any should reach to the Enquiry Officer within a stipulated period failing which shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

3. Intimate whether you desire to be heard in person.

4. A statement of allegation is enclosed.

Attested to be
the true copy of
the original.

Sajid
Advocate


District Police Officer, Karak

A

9

"B"

DISCIPLINARY ACTION

I, NAUSHER KHAN, District Police Officer, Karak as a competent authority, is of the opinion that Constable Sajid Iqbal No. 382 Police Lines Karak has rendered himself liable to be proceeded against on committing the following act / commission within the meaning of Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department.


STATEMENT OF ALLEGATIONS

"As per report of SDPO, Takhte Nasrati, Constable Sajid Iqbal No. 382 were injured during duty hours due to the firing of opponents of Najeeb Ullah s/o Aqal Daraz r/o Karri Dhand while Constable Bismillah Jan No. 142 was martyred on the spot, as a result of which a proper case vide FIR No. 14 dated 07.01.2017 u/s 302, 324, 109, 34, 7ATA, 353, 427 PPC PS YKS was registered against the nominated accused. Furthermore, Constable Sajid Iqbal No. 382 was also eye witness of the incident. His first statement was recorded by the I.O. in Daily Diary was in favour of FIR. Later on, Constable Sajid Iqbal deviated from his own statement while recorded before the court. Resultantly, the case was badly affected and damaged which is quite adverse on his part and shows his irresponsible behavior in discharging of his official obligations.

This act on his part is against service discipline and amounts to gross misconduct."

1. The enquiry Officers SDPO/TN in accordance with provision of the Police Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department may provide reasonable opportunity of hearing to the accused official, record his finding and make within 10-days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

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


District Police Officer, Karak

No. 362 / PA(Enq), dated 19.11 /2018.

Copy to:-

1. The enquiry Officers for initiating proceeding against the accused under the Provision of the Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department.
2. Constable Sajid Iqbal No. 382 Police Lines Karak,

Attested to be the
true copy of the
original.

Sajid
Advocate

33

"C"

بحوالہ چارج شیٹ انگریزی نمبر (Enq) PA/361 مورخہ 19/11/2018 موصولہ 21/11/2018 بحالیہ
جناب ڈسٹرکٹ پولیس آفیسر صاحب کرک معروض ہوں کہ من سائل پر الزام لگایا گیا ہے کہ بحوالہ رپورٹ
SDPO تخت نصرتی ضلع کرک من کانسٹیبل ساجد اقبال جو کہ مقدمہ علت نمبر 14 مورخہ 07/01/2017 جرم
302, 324, 109, 34, 353, 427 PPC و 7ATA تھانہ یعقوب خان شہید میں نجیب اللہ کے مخالفین کی
فائرنگ سے مجروح ہوا تھا جبکہ کانسٹیبل بسم اللہ جان نمبر 142 شہید ہوا تھا اور روزنامچہ میں تحریر کردہ بیان FIR کی
تائید میں تھا۔ جبکہ بعد ازاں من کانسٹیبل نے عدالت کے روبرو قلمبند شدہ بیان میں سابقہ بیان سے انحراف کیا۔ جس کی
وجہ سے مقدمہ مذکورہ بالا کو شدید نقصان پہنچا ہے۔ اور یہ امر من کانسٹیبل اپنے فرائض منصبی کی ادائیگی میں غیر ذمہ دارانہ
رویہ کی عکاسی کرتا ہے۔

جناب عالی! چارج شیٹ میں لگائے گئے الزامات غلط نہیں پر مبنی ہیں۔ کیونکہ من کانسٹیبل نے اپنے سابقہ بیان
زیر دفعہ 161 CrPC سے کوئی انحراف نہ کیا ہے۔ عدالت کے روبرو بیان میں من کانسٹیبل نے واقعہ کا آنکھوں
دیکھا حال اپنے سابقہ بیان کی طرح وہ ایسا اور جس کو عدالت نے ریکارڈ بھی کیا۔

۲۔ یہ کہ ان بیان زیر دفعہ 161 CrPC کو نمور بخوردیسا جانے تو من کانسٹیبل نے اس میں پہلے ہی سے
صاف ظاہر کر دیا ہے کہ ملزمان کو شکل سے پہچان سکتا ہوں۔ لیکن اس کے بعد تفتیشی افسر نے بیان کے آخر
میں ملزمان کے نام تحریر کر کے ظاہر کیا کہ من کانسٹیبل ان کے خلاف دعویٰ دائر کرتا ہے۔ یہ امر قابل غور ہے
کہ جب بیان کے پہلے حصہ من کانسٹیبل نے کہا کہ وہ ملزمان کو شکل سے پہچان سکتے ہیں تو بیان کے دوسرے
حصہ میں کیونکر ممکن ہے کہ من کانسٹیبل نے ملزمان کا نام لے کر مقدمہ میں چارج کیا۔ اس تضاد سے ثابت
ہوتا ہے کہ بدینتی من کانسٹیبل کی نہیں بلکہ تفتیشی افسر کی تھی۔ اگر اس کی بدینتی نہ ہوتی تو وہ اس طرح کا تضاد
بھرا بیان متعلقہ من کانسٹیبل صفحہ مثل پر نہ لگاتا۔

۳۔ جس طرح من کانسٹیبل نے بیان 161 CrPC میں کہا کہ وہ ملزمان کو شکل سے پہچان سکتا ہے بالکل اسی
طرح من کانسٹیبل نے اپنے عدالتی بیان میں اسی طرح کا بیان ریکارڈ کرایا۔

۴۔ یہ کہ با دوران تفتیش مقدمہ ملزمان کی شناخت پریڈ بھی ہوئی تھی۔ لیکن اس میں بھی من کانسٹیبل نے ملزمان
شناخت نہیں کر سکا تھا۔

۵۔ یہ کہ مقدمہ مذکورہ تا حال زیر سماعت عدالت انسدادی دستگیر دی کو ہاٹ میں زیر سماعت ہے۔ اور مقدمہ
مذکورہ کا فیصلہ ہونا بقایا ہے تو ایسی صورت میں فیصلہ سے قبل کیسے یہ فرض کیا گیا کہ من کانسٹیبل کے بیان سے
مقدمہ مذکورہ کو نقصان پہنچا ہے۔ یہ تو عدالت کا فیصلہ آنے پر معلوم ہوگا کہ آیا مقدمہ کو نقصان صرف من
کانسٹیبل بیان پر ہوا یا اس میں دیگر عوامل بھی شامل تھے۔ چارج شیٹ میں یہ فرض کر لینا کہ مقدمہ کو من کانسٹیبل
کے بیان پر نقصان پہنچا ہے۔ قبل از وقت قیاس آرائی ہے۔ جس کو قانون کی نظر میں کوئی وقعت حاصل نہ
ہے۔

(جاری ہے)

Attested to be
the true copy of
the original.
Sd/-
Ato Deane

۶۔ یہ کہ من کانسٹیبل کے خلاف کارروائی میں انتہائی جلد بازی / سرت کا مظاہرہ کیا گیا ہے۔ حالانکہ بہترین طریقہ یہ تھا کہ عدالت انسداد دہشت گردی کے فیصلہ کا انتظار کیا جاتا اور ان کے فیصلہ کی روشنی میں کارروائی عمل میں لائی جاتی۔ فیصلہ کی عدم موجودگی میں من کانسٹیبل کے خلاف انضباطی کارروائی قانون اور ضابطہ کے مطابق نہ ہے۔

۷۔ یہ کہ من کانسٹیبل نے محکمہ پولیس میں 12 سال کے ملازمت مکمل کر لیے ہیں اور اس دوران کبھی بھی نہ انضباطی کارروائی کا سامنا کیا۔ اور نہ ہی ہم چوں قسم کے الزامات من کانسٹیبل پر لگائے گئے ہیں۔ اور نہ ہی کبھی قانون کا ضابطہ سے روگردانی کا سوچا ہے۔

سائل نے ملازمت قانون کے مطابق اور افسران صاحبان کی اطمینان کے مطابق کی ہے۔ اور آئندہ بھی فرائض میں قانون اور ضابطہ کے مطابق ادا کرتا رہوں گا۔

لہذا استدعا ہے کہ الزامات برخلاف من کانسٹیبل قانون اور ضابطہ نہ ہونے اور قبل از وقت ہونے کی وجہ سے من کانسٹیبل پر قانوناً غیر موثر ہے۔ بدیں وجہ دست بستہ عرض ہے کہ چارج شیٹ برخلاف من کانسٹیبل بلا مزید کارروائی داخل دفتر ہونے کا حکم صادر فرمائیں۔ سائل من کانسٹیبل تازیت دعا گور ہے گا۔

العارض

ساجد اقبال نمبر LHC-382۔ حال متعینہ جیل گارد۔ کرک

ORDER

My this Order will dispose off the departmental enquiry against Constable Sajid Iqbal No. 382 of this district Police.

Facts are that as per report of SDPO, Takhte Nasrati, Constable Sajid Iqbal No. 382 were injured during duty hours due to the firing of opponents of Najeeb Ullah s/o Aqal Daraz r/o Karri-Dhand while Constable Bismillah Jan No. 142 was martyred on the spot, as a result of which a proper case vide FIR No. 14 dated 07.01.2017 u/s 302, 324, 109, 34, 7ATA, 353, 427 PPC PS YKS was registered against the nominated accused. Furthermore, Constable Sajid Iqbal No. 382 was also eye witness of the incident. His first statement was recorded by the I.O in Daily Diary was in favour of FIR. Later on, Constable Sajid Iqbal deviated from his own statement while recorded before the court. Resultantly, the case was badly affected and damaged which is quite adverse on his part and shows his irresponsible behavior in discharging of his official obligations.

He was issued Charge Sheet and Statement of allegations. Mr. Muhammad Ashraf SDPO B.D.Shah was appointed as an Enquiry Officer to conduct proper departmental enquiry and submitted his findings within the stipulated time.

The Enquiry Officer declared that accused Constable Sajid Iqbal No. 382 accompanied with Constables Bismillah Jan and Aqal Daraz (accused) was returning from Court after hearing. Meanwhile, nominated accused in FIR opened fire upon them, as a result of which accused Constable Sajid Iqbal No. 382 sustained injuries while Constable Bismillah Jan and Aqal Daraz (accused) were expired on the spot. Accused Constable Sajid Iqbal No. 382 recorded his statement before the I.O u/s 161 Cr.PC denoted the accused. Later on, he was deviated from his own statements while recorded in the court u/s 164 Cr.PC. During Identification Parade, he was also deliberately avoided to identify the accused Sana Ul Haq. Although, the Police official was martyred and he was also sustained injuries in the said incident, his deviation from his own statement shows his pressure or cowardice. Due to which the court releases the accused. Accused Constable found guilty of the charges. Therefore, the E.O recommended him for a major punishment.

Keeping in view of the available record and facts on file, perusal of enquiry papers and the recommendations of the Enquiry Officer, he is found guilty of the charges. Therefore, in exercise of power conferred upon me, I, **NAUSHER KHAN**, District Police Officer, Karak is hereby imposed a major punishment of "Time Scale" for 03 years upon Constable Sajid Iqbal No. 382 with immediate effect.

OB No. 695
Dated 31/12/2018

[Signature]
District Police Officer, Karak

Attested to be the true copy of the original.
[Signature] Advocate

THE HONOURABLE DEPUTY INSPECTOR GENERAL OF POLICE "E"
KOHAT REGION KOHAT

APPEAL UNDER RULE 11 OF THE POLICE RULES 1975 (AMENDED 2014) AGAINST THE IMPUGNED ORDER OF WORTHY DISTRICT POLICE OFFICER KARAK DATED 31-12-2018, RECEIVED ON 01-2019 VIDE WHICH THE APPELLANT HAS BEEN AWARDED MAJOR PUNISHMENT OF TIME SCALE FOR THREE YEARS.

Respected Sir,

With great respect and veneration, the appellant submits the following in connection with his appeal. The appellant may kindly be allowed to submit for your kind and sympathetic consideration:-

FACTS:

1. That the appellant was enrolled as constable in the year 2007.
2. That the appellant during his service qualified the A1 and Lower School Courses and presently servicing as LHC at Toll Plaza Karak.
3. That during service performed a number of duties/ assignments which were sensitive/ risky in nature.
4. That during to the keen interest of the appellant, he has performed to the satisfaction of his seniors and in accordance with law / merits.
5. That to the utter surprise of the appellant, charge sheet and statement of allegations were served upon the appellant wherein it was alleged that "as per report of SDPO Takht-e-Nasrati, you constable Sajid Iqbal No.382 were injured during duty hours due to the firing of opponents of Najeeb Ullah S/o

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Sajid Advocate

Iqbal Daraz R/o Kari Dhand while constable Bismillah Jan No.142 was martyred on the spot, as a result of which proper case vide FIR No.14 dated 07-01-2017 U/Ss 302, 324, 109, 34, 353, 427 PPC, 7-ATA was registered against the nominated accused. Furthermore, you constable Sajid Iqbal No.382 were also eye witness of the incident your first statement was recorded by the I.O in the Daily Diary was in favour of FIR. Later on you Constable Sajid Iqbal deviated from your own statement recorded before the court. Resultantly the case was badly affected and damaged which is quite adverse on your part and shows your irresponsible behaviour in discharging of your official obligations”.

- 6. That the departmental enquiry initiated against the appellant resulted in punishment and was awarded the punishment of time scale of three years.
- 7. That upon the punishment order the appellant has respectfully the following legal / factual reservations which have made the punishment order questionable.

Grounds:

- a. That the impugned punishment order of the Worthy District Police Officer Karak is not accordance with law, facts and evidence on record, hence it is not sustainable in the eyes of law.
- b. That it has been alleged that the appellant favoured the prosecution in his first statement recorded in the Daily Diary. In fact this allegation is absolutely wrong because it is a normal practice that statement U/S 161 Cr.PC is always written in the case Diary instead of the Daily Diary secondly

the IO did not consult the appellant while recording his statement U/S 161 Cr.PC. He at his own hand writing the said statement on behalf of the appellant. However, in the court statement the appellant narrated true and un rebuttable facts.

- c. That it is wrong to allege that on account of the appellant the case was damaged. If record is perused it will reveal that investigation of the case was very weak and there were other factors which made the case worth acquittal in the eyes of law.
- d. That stance taken by the appellant in the above para is supported by the judgment of the learned Anti Terrorism Court Kohat who at Page-21 has opined that "The medical version is not in line with the prosecution stance which negates the mode and manner of the commission of offence". Which at another place Page-25 of the judgment the learned Court has declared that "There is nothing on file to suggest that PW-14 (The appellant) has exonerated the accused facing trial and negated the presence of complainant for some extraneous consideration". If the allegation against the appellant would be true then undoubtedly the learned trial court would have passed adverse remarks against he appellant but in the court record nothing like this is available which leads a prudent person to the result that the case was not damaged due to the statement of the appellant but in fact by the investigation. Thus allegation against the appellant has not been proved and the punishment has become at nullity in the eyes of law/ rules.
- e. That during enquiry the appellant was not provided opportunity to defend himself.

- f. That the enquiry proceedings were conducted one sided and in arbitrary manner and thus has vitiated the entire enquiry proceedings.
- g. That the punishment of time scale awarded to the appellant is neither mentioned in the list of minor nor in the list of major punishments of the Police Rules 1975 (Amended 2014). Hence when punishment is badly legally defective and has got no force in the eyes of law.
- h. That the appellant is a law abiding person. Whatever was witnessed the appellant narrated the same in his statement. The appellant cannot imagine to deviate from the law / result.
- i. That the appellant has been condemned unheard.
- j. That the punishment order does not fulfill the ends of justice, hence it is not sustainable in the eyes of law.

Prayer:

It is, therefore, humbly prayed that the impugned order of punishment being not in accordance with law/ rules may be set aside and the appellant may be restored to his old position as before the order of punishment. The appellant will remain obedient to you throughout life and pray for your long life and prosperity.

Dated 07-02-2019.

Yours Obediently,
[Signature]
Sajid Iqbal (Appellant)
No.382
Toal Plaz Kark.

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~~XXXXXXXXXX~~
"F" HION

POLICE DEPTT:


ORDER.

This order will dispose of a departmental appeal, moved by Constable Sajid Iqbal No. 382 of Operation Karak against the punishment order, passed by DPO Karak vide OB No. 695, dated 31.12.2018 whereby he was awarded major punishment of time scale for the period of 03 years for the allegations of producing contradictory statement before the court which resulted acquittal of accused.

He preferred an appeal to the undersigned, upon which comments were obtained from DPO Karak and his service record was perused. He was also heard in person in Orderly Room, held in this office on 07.08.2019. During hearing, the appellant did not advance any plausible explanation in his defense.

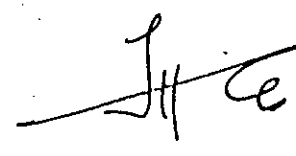
I have gone through the available record and came to the conclusion that the allegations leveled against the appellant are proved and the same has also been established by the E.O in his findings. Therefore, his appeal being devoid of merits is hereby rejected.

Order Announced
07.08.2019

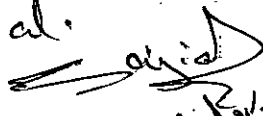

(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region. ✗

No. 7.325 /EC, dated Kohat the 17/08 /2019.

Copy for information and necessary action to the DPO Karak w/r to his office Memo: No. 6096/LB, dated 26.04.2019. His service roll and Fauji missal is returned herewith.


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region. ✗

Attested to be the true copy of the original.


Sajid Advocate.

(18)

پولیس فارم 25 (1)

جی

رپورٹ ضمنی حصہ دوم (اندرونی)

0313-2809048

عمل سید سے تعلق

مقامی عدالت میں ایک مقدمہ چل رہا ہے جس میں سید کا نام ہے۔

سید کا پتہ 7/17 کوٹلی سٹیٹ ایجنسی کے پاس ہے۔

سید کے ساتھ ایک لڑکی بھی ہے جس کا نام ہے۔

سید نے ایک بار عدالت میں حاضری دی تھی۔

سید کے بارے میں مزید جاننے کے لیے عدالت سے پتہ چلے گا۔

سید کے ساتھ ایک لڑکی بھی ہے جس کا نام ہے۔

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سید کے ساتھ ایک لڑکی بھی ہے جس کا نام ہے۔

سید نے ایک بار عدالت میں حاضری دی تھی۔

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IN THE COURT OF MR. ABDUL BASEER JUDGE, ANTI-TERRORISM
COURT KOHAT DIVISION KOHAT.

CASE NO.14 OF 2017

The State (through Najeeb Ullah S/o Aqal Daraz
Khan).

..... Versus.....

Sana Ul Haq S/o Shams Ul Haq R/o Chatha Banda, Takht-e-
Nusrati, District Karak.....(Accused)

| | |
|---------------------|------------|
| Date of Institution | 16.03.2018 |
| Date of Decision | 30.11.2018 |

JUDGEMENT:-

The accused named above is charged in case FIR No. No.14 dated 07.01.2017 U/Ss 302/324/353/427/34/109 PPC/7ATA P.S Yaqoob Khan Shaheed District Karak and has faced trial before this court.

Brief facts of the case are that complainant Najeeb Ullah reported the matter to the police that after attending their case before Additional Sessions Judge Takht-e-Nusrati, he alongwith his father (Aqal Daraz), Constables Bismillah Jan No.142, Sajid Iqbal No.352 were on the way back for village in Motorcar bearing registration No. GTD/23 being driven by Moeen Ullah, when reached to Shah Salim Adda situated at Takht-e-Nusrati Bazar the road was blocked. The complainant deboarded from the car and saw that accused

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30/11/18

True copy of the original.
Sajid Advocate

ACCEPTED TO BE TRUE COPY FIR No. 14 of No 14 of 2017 dated 07.01.2017

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facing trial alongwith accused Asfar, Iqtidar were present there who started firing at them at the instance of Almas and Naeem. As a result, father of complainant namely Aqal Daraz and Constable Bismillah Jan got hit and died on the spot while Constable Sajid Iqbal got injured. That he luckily remained unhurt. He was empty handed and could not retaliate their firing and accused escaped from the spot. They have previous blood-feud enmity. Thus he charged the accused for the murder of Aqal Daraz and Constable Bismillah and injured Sajid Iqbal for the commission of the crime. Hence upon the report of complainant this case was registered on the basis of murasila EX PA/1 vide FIR EX PA.

After registration of FIR the investigation of this case was entrusted to PW-7 Muhammad Yousaf Inspector, on receipt of the information, went to the place of occurrence, where on the spot, PW Fakhar Zaman produced the copy of FIR. The complainant was summoned to the spot, he prepared the site plan Ex PB on the pointation of the complainant. During the spot inspection, from the motorcar bearing No.23/GTD from left side of the rear seat i.e. from the place of deceased Bismillah Jan FC blood through cotton was collected, which was sealed into parcel No.1. On the right side of the rear seat i.e. from the place of deceased Aqal Daraz blood through cotton was also secured, which was sealed into parcel No.2. From the front seat i.e. from the place

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ATTESTED TO BE TRUE COPY Case No.14 of Smt Ujjay of 2017
 EXAMINER,
 COPYING AGENCY
 COURT
 NO. 14
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of the injured constable Sajid Iqbal FC blood through cotton was also collected which was sealed into parcel No.3, the same were taken into possession vide recovery memo Ex PW-7/1 in the presence of marginal witnesses. From the places allotted to the accused, 16 empties of 9MM, 01 empty of 30 Bore and 01 missed live round of 30 bore lying in scattered condition were secured and after signing the same, they were sealed into parcel No.4 and were taken on the recovery memo Ex PW-7/2 in the presence of marginal witnesses. From the floor of the rear seat of motorcar No.23/CDT, 02 pressed bullet were secured which were sealed into parcel No.05, this fact was also entered into the footnote of the site plan. The 02 recovered pressed bullets along with the motorcar were taken into possession vide recovery memo Ex PW-7/3 in the presence of marginal witnesses. The geo-fencing was also done on the spot and 12 pictures Ex P-1 to Ex P-12 of the motorcar were also taken, which are available on the file. He also got recorded supplementary statement of complainant Najeeb Ullah u/s 161 Cr.P.C on the spot. He went for the search of the accused but in vain. Thereafter, he went to Civil Hospital Takht-e-Nasrati. Injured constable Sajid Iqbal was already referred to KDA Hospital Karak. However, Rehmatullah SHO produced one Kalashnikov bearing No.3900693, along with bandolier, one fixed and two spare chargers containing 90 live rounds of

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7.62 bore; the same Kalashnikov was provided to injured constable Sajid Iqbal. One Kalashnikov bearing No.4618580, with one fixed and two spare charger along with bandolier containing 90 live rounds of 7.62 bore which was provided to deceased constable Bismallah Jan (the handgrip and sling were having cut marks) before departing from PS Shah Salim along with constable Sajid Iqbal in connection with providing security to Aqal Daraz. One double barrel rifle bearing No.79778 along with bandolier containing 24 live rounds of 12 bore, along with licence copy bearing No.2990TN in the name of Aqal Daraz were produced by SHO Rehmatullah which he taken into his possession from the motorcar No.23/GTD. All the aforesaid arms and ammunicions along with licence copy were taken into possession vide recovery memo Ex PW-7/4. From the hospital he turned up to PS YKS, where he recorded statements u/s 161 Cr.P.C of officials witnesses along with the driver of the motorcar namely Moeen Ullah. He also drafted application addressed to the Arm Expert for the examination of the recovered arms & ammunicions. the application is Ex PW-7/5. PW constable Muhammad Subhan produced the blood stained garments of deceased Aqal daraz, consisting of one coat, qameez, shalwar and banyan, having corresponding bullet marks, which were sealed into parcel No.06. Similarly, blood stained garments of deceased Bismiallah Jan was also produced by him consisting

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No. 14 Case No 14 of Samad 1 Day of 2017

EXAMINER

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of official sweater, official qameez shalwar and official cap having cut marks, the same were sealed into parcel No.7. Similarly, blood stained garments of Constable Sajid Iqbal consisting of official sweater and banyan, were sealed into parcel No.8. One sealed phial containing 03 pressed bullets recovered from the body of deceased Aqal Daraz provided by the doctor, was also produced by constable Subhan and were sealed into parcel No.9. All the aforesaid blood stained garments and phial were taken into possession vide recovery memo Ex PW-7/6. He placed on the file the injury sheet, inquest reports and PM reports. He also got recorded statements of the marginal witnesses u/s 161 Cr.P.C. He also drafted applications in respect of the parcel No.1, 02, 03, 06, 07 and 08, containing the blood secured from the places of the injured and deceased and blood stained garments. The applications in this respect are Ex PW-7/7 to Ex PW-7/8, results whereof are Ex PZ and Ex PZ/1. He also drafted application to FSL in respect of parcel No.4 containing the empties recovered from the places of the accused and one missed live round, the application is Ex PW-7/9 and result whereof is Ex PZ/2. He also prepared the list of LRs of deceased Aqal Daraz Ex PW-7/10. He also placed on the file the true copy of DD No.7, dated 07.01.2017, Ex PW-7/11, the application of deceased Aqal Daraz Ex PW-7/12, and the photo copy of FIR No.12 Ex PW-7/13. He placed on the file

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the photocopy of the licence of Double Berrel rifle of the deceased Aqal Daraz, which is placed on file. He recorded statements u/s 161 Cr.P.C of the marginal witnesses, Moharrir namely Sadiq Ullah and dead body identifier. He placed on the file the report of Arms Expert and sealed the arms and ammunitions in the respective parcels. In KDA hospital Karak, the injured constable Sajid Iqbal who was discharged on 09.01.2017, produced his discharge slip Ex PW-7/14 and also produced a piece of bullet, which according to him was handed over to him by the doctor, recovered after being surgically operated from his body, which he took into his possession vide recovery memo Ex PW-7/15. He recorded statements u/s 161 Cr.P.C of Sajid Iqbal and marginal witness of the recovery and Arms Expert. He also drafted application in respect of the examination of motorcar bearing.No.23/GTD from the official mechanic, the application is Ex PW-7/16 and his report in this respect is Ex PW-7/17. He also prepared the list of legal heirs of deceased Bismillah Jan FC, which is Ex PW-7/18. He also recorded statements u/s 161 Cr.P.C of I.Rs of the deceased. He obtained CDR in respect of mobile No. 0343-9804051 of acquitted accused Muhammad Naeem consisting of three sheets Ex PW-7/18, in respect of mobile No.0302-5010570 of acquitted accused Almas consisting of 40 sheets Ex PW-7/19, mobile No.0346-9295149 consisting of two sheets Ex PW-7/20 of P.O accused Iqtidar, mobile

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IR No.14 Case No.14 of Sama Ullah of 2017

ENGINEER
POLICE STATION KARAK

No.0341-4932895 of accused facing trial Sana ul Haq consisting of 05 sheets Ex PW-7/21. He initiated proceedings u/s 204 and 87 Cr.P.C against the accused vide his application Ex PW-7/22 and Ex PW-7/23. He placed on the file un-executed warrants and third copy of each proclamation notice. He recorded statement u/s 161 Cr.P.C of the DFC. After completion of investigation, he submitted complete challan Ex PW-7/24. Accused Asfar Khan expired in case FIR No.46, dated 11.2.2017, of PS Domail and accused Almas and Naeem after facing trial were acquitted. He also recorded statements of complainant Najeeb Ullah and Arif Ullah u/s 161 Cr.P.C. The accused facing trial Sana ul Haq applied for his BBA, which was recalled and he issued his card of arrest Ex PW-7/25. On the same day, he produced him before this court on police remand; vide his application Ex PW-7/26, for which four days custody was granted. He interrogated and investigated the accused. On founding the accused volunteered, he led the police party to the place of occurrence, where he pointed out all the respective places; to this effect the pointation memo Ex PW-7/27 was prepared. PW-7 searched the house of the accused Sana ul Haq with the hope of recovery of weapon of offence, but in vain. The search memo is Ex PW-7/28. Accused Sana ul Haq recorded his statement u/s 161 Cr.P.C. He produced him before the learned Judicial Magistrate for recording of confessional statement of

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the accused facing trial vide his application Ex PW-7/29 but the accused refused to confess his guilt and he was remanded to judicial lockup.

After completion of investigation, PW-7 Mohammad Yousaf Inspector submitted supplementary challan against the accused facing trial. Formalities under section 265(c) Cr.PC were complied with, copies were delivered to the accused & counsel, thereafter the charge was framed to which the accused pleaded not guilty and claimed trial.

Dr. Ijaz Ahmed General Surgeon DHQ Karak was examined as PW-9 who performed the surgery of Sajid Iqbal and recovered a bullet from him and handed over the same to him. In this respect, the discharge slip is Ex PW-7/14.

Dr. Abid Malook was examined as PW-10 who on 07.01.2017, at 12:00 PM, has examined injured namely Sajid Iqbal and found firearm injury at the back. Patient was haemodynamically stable. First aid given. Neurologically intact and referred to DHQ Karak. The nature of injury was simple. The medico-legal report is Ex PW-10/1.

On 07.01.2017, at 12:30 PM, he has conducted the PM examination of the dead body of Bismillah Jan S/o Noora Jan R/o Orbashi Karak, aged about 51/52 years, identified by Rashid Ullah ASI and Umar Dad and found the followings: -

A well built middle aged male body, blood stained clothes with no rigor mortis developed.

Abid Malook
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1. An entry wound of 1/4x1/4 inch over vertex region leading to an exit of about 4x6 inch on the frontal bone.
2. An entry wound of 1/4 x1/4 inch over right arm on the medial side with exit of 1/2x1/2 inch on the medial side of arm.
3. Graze wound of 1/2x1 inch on anterior medial aspect of left thigh.
4. An entry wound of 1/4x1/4 inch on medial side of the right thigh with exit on anterior side of 1/2x1/2 inch of right thigh.
5. Bruise over left elbow.
6. Right hand little finger fractured at distal interphalangean joint.
7. Multiple small injuries two in number bruise type on the left thigh.

Cranium and Spinal Card: Damaged.

Thorax: Normal, intact.

Abdomen: Normal.

Muscles Bones and Joints: Parietofrontal bone fractured; distal right little phalanx fractured.

Opinion: *Deceased died due to injuries to vital organs like brain and major vessels like femoral artery plus vein.*

Probable time between injury and death:
within ten minutes.

Amir
35/11/18

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COPYING AGENCY, AND I-TECHNOLOGY

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Between death and Post Mortem:

Within one hour.

The PM report is Ex PM.

On 07.01.2017, at 01:45 PM, he has also conducted the PM examination of the dead body of Aqal Daraz S/o Sarfaraz R/o Kari Dand Karak, aged about 69/70 years, identified by Syed Nawaz and Hazrat Amin and found the followings: -

A well built old aged male body, blood stained clothes with no rigor mortis developed.

1. An entry wound of 1/4x1/4 inch at sub-occipital later to the left medial side with exit of about 1/2x1/2 inch on anterior aspect of left side of the neck.

2. An entry wound of 1/4 x1/4 inch below 2cm from the first wound on left lateral side of the neck with exit of 1/2x1/2 inch on the anterior side of the neck.

3. An entry wound of 1/4x1/4 inch on the left arm with no exit.

4. Graze wound 1cm below the first two wounds.

5. An entry wound of 1/4x1/4 inch 2cm below lower border left scapula with an exit of 1x1 inch on the epigastric region.

6. Below and lateral to the wound No.5, there is another wound of 1/4x1/4 inch with no exit.

7. An entry wound of 1/4x1/4 inch on the middle of the right thigh with no exit.

Cranium and Spinal Card:

Normal

Amin
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EXAMINER
CORPUS MORTUARIUM

169
S-12-2018

Thorax: 6th, 10th ribs injured, lower pole of left lung injured with pleura injury.

Abdomen: Stomach, diaphragm, epigetric wall injured.

Muscles Bones and Joints: 6th, 10th ribs injured.

Opinion: Deceased died due to injuries to major blood vessels, vital organs like lungs.

Probable time between injury and death:

Within ten minutes.

Between death and Post Mortem: Within two hours.

The PM report is Ex PM/I.

Brief resume of other prosecution evidence is as under: -

Sakhi Rehman SHO appeared as PW-01 who upon receiving information about the occurrence, incorporated the report of complainant report in the shape of murasila, Ex PA/I. He sent the murasila to the PS for registration of the case. He prepared the injury sheets and inquest reports of the deceased namely Aqal Daraz and Bismillah Jan Constable No.142. Ex PW-1/I to Ex PW-1/4. He also prepared the injury sheets of injured Sajid Iqbal Constable, Ex PW-1/5.

Hazrat Amin S/o Surat Amin was examined as PW-2 who identified the dead body of deceased Aqal Daraz S/o Sarfaraz R/o Kiri Dhand on 07.01.2017, in the hospital before

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CORPUS MORTUUM, DISTRICT HOSPITAL

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the doctor and the police. His statement u/s 161 Cr.P.C. was also recorded by the I.O.

Rasheed Ullah ASI was examined as PW-3 who identified the dead body of deceased constable Bismillah Jan before the police and doctor in the hospital. On 07.01.2017, His statement u/s 161 Cr.P.C was recorded by the I.O.

Arif Ullah S/o Sher Nawaz appeared as PW-4 who on the eventful day, had gone to Tehsil Court Takht-e-Nasrati in connection with his nephew Sifat Ullah's domicile. He parked his motorcycle outside the court premises, five persons namely Asfar, Iqtidar, Sana ul Haq, Almas and Muhammad Naeem were conversing with each other they will not let Aqal Daraz alive today. He told to Najeeb Ullah about the conversation of the above name persons. Then they went to the gate of Tehsil Courts where Najeeb Ullah disclosed the name of those five persons. Najeeb complainant directed him to leave the courts as they were provided with the security. When he reached his village, he came to know regarding the occurrence.

Muhammad Zaman Amourer examined as PW-5 who on the application of the I.O, inspected/examined the case property in the case in hand i.e. one double barrel rifle bearing No.79778 along with a bandolier, the barrel of the rifle was damaged due to fire shot, one Kalashnikov bearing No.4618580 along with ammunitions and the hand grip was

Arif Ullah
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having a cut and the sling was also having cut mark, a Kalashnikov 3900693 along with ammunitions, which was in working condition. He submitted his report in this respect, Ex PW-5/1.

Sadiq Ullah HC/Moharrir was examined as PW-6 who was posted as Moharrir at PS Shah Salim, Karak. In connection with case FIR NO.112, dated 21.09.2015, u/s 302/203/201/34 PPC of PS Shah Salim, which was pending in the court of Additional Session Judge Karak, Aqal Daraz had submitted a written application to the high ups for providing security, upon which order No.61/2016 was issued Aqal Daraz was provided security on each and every date. On 07.01.2017, Aqal Daraz along with his son Najeeb Ullah came to the PS Shah Salim and requested for providing security, on the previous date he was also provided security. Upon request of Aqal Daraz, Constable Bismillah Jan No.142 and Sajid Iqbal No.382 were directed/deputed to accompany them for their security. Departure of the said constable was entered in DD No.07, dated 07.01.2017 by him. After the occurrence, he also provided the true copy of the said DD, copy of the application of Aqal Daraz to the I.O. Application of Aqal Daraz, DD No.7, and copy of FIR No.12 are available on the file. His statement u/s 161 Cr.P.C was recorded by the I.O.

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EXAMINER,

CORPORATE AGENCY, ANTI-TERRORISM

FIR No. 14 Case No. 14 of Sami Ullah of 2017

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Muhammad Yousaf Inspector was examined as PW-7 who is the investigation officer of the instant case.

Zahid Ullah ASI examined as PW-8 who on receipt of murasila, chalked out the FIR Ex PA.

Dr. Ijaz Ahmed was examined as PW-9 who performed the surgery of Sajid Iqbal and recovered a bullet from him and handed over the same to him.

Dr. Abid Malook was examined as PW-10 who examined injured Sajid Iqbal as well as conducted the Post Morton of deceased Aqal Daraz and Constable Bismillah Jan.

Najeeb Ullah S/o Aqal Daraz examined as PW-11 who is the complainant in the instant case and narrated the same facts as mentioned in the FIR.

Rehmat Ullah SI examined as PW-12 who during the days of occurrence, was posted as SHO at PS Shah Salim Karak. On the relevant day, receiving information regarding the occurrence, reached to the spot and on the spot, he recovered one Kalashnikov bearing No.4618580 with fixed charger along with two spare charger, bandolier containing 90 live rounds of 7.62 bore, similarly, he also recovered one rifle 12 bore bearing No.79778 along with Kamar band containing 24 live rounds along with a licence in the name of Aqal Daraz from the motorcar bearing registration No.23/CTD. The rifle and Kalashnikov were having bullet marks. Similarly, he also took into his possession the official Kalashnikov from injured

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Sajid Iqbal in the hospital along with two spare charger and bandolier containing 90 live rounds of 7.62 bore. All the above mentioned arms and ammunitions were handed over to the I.O in the hospital. His statement u/s 161 Cr.P.C was recorded by the I.O.

Balkayaz No.317 examined as PW-13 who is witness to the recovery memo EX 7/15 through which the I.O took into possession piece of spent bullet Ex P-18 which was recovered during operation by the doctor and produce by injured Sajid Iqbal. His statement u/s 161 Cr.P.C was recorded by the I.O.

Sajid Iqbal No.382 examined as PW-14 who is the alleged injured eyewitness of the occurrence. He was declared as hostile witness and learned PP was also given an opportunity of cross examination.

Moeen Ullah S/o Azad Khan examined as PW-15 who on the day of occurrence, visited Aqal Daraz now deceased at his house. He took Aqal Daraz and his son to PS Shah Salim. SHO of PS Shah Salim deputed two constables to accompany them. From the PS, they went to Degree Collage which is situated at the opposite side of PS. Son of Aqal Daraz entered the collage and waited for him outside. He spent about an hour or one and half hour in the collage and came out. Then they went to the Takhte Nusrati-Courts. He debaorded them outside the main gate of the courts. He

Amir Khan
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IR No. 14 Case No.14 of Sona U.II Eq of 2017

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Amir Khan
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waited outside and Aqal Daraz and his son went inside the court premises. After court proceedings, he again boarded Aqal Daraz and his son along with security personnel's towards home. When they reached the adda, traffic was jam there, and the road was blocked and tractor Trolley was parked there. Son of Aqal Daraz de-boarded from the car and during this firing started at them from the backside of the car and he jumped out from the car and ran away from the spot. He has not seen any of the accused with his own eyes.

Muhammad Faheem DFC No.81 was examined as PW-16 who is marginal witness to the recovery memo Ex PW-7/4 through which the I.O took into possession one Kalashnikov bearing No.3900693, along with bandolier, one fixed and two spare chargers containing 90 live rounds of 7.62 bore, the same Kalashnikov was provided to injured constable Sajid Iqbal Ex P-18/1 and one Kalashnikov bearing No.4618580, with one fixed and two spare charger along with bandolier containing 90 live rounds of 7.62 bore which was provided to deceased constable Bismillah Jan (the handgrip and sling were having cut marks) Ex P-19, one double barrel rifle bearing No.79778 along with bandolier containing 24 live rounds of 12 bore, along with licence copy bearing No.2990TN in the name of Aqal Daraz Ex P-20 were produced by SHO Rehmatullah, which he taken into his possession from the motorcar No.23/ GTD. He is also witness

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to the recovery memo Ex PW-7/6 through which the I.O took into possession blood stained garments produced by constable Muhammad Subhan of deceased Aqal Daraz, consisting of one coat, qameez, shalwar and banyan, having corresponding bullet marks, which were sealed into parcel No.06 Ex P-21, blood stained garments of deceased Bismillah Jan was also produced by him consisting of officials sweater, officials qameez shalwar and official cap having cut marks, the same were sealed into parcel No.7 Ex P-22, blood stained garments of constable Sajid Iqbal consisting of official sweater and banyan, were sealed into parcel No.8 Ex P-23, one sealed phial containing 03 pressed bullets recovered from the body of deceased Aqal Daraz provided by the doctor, were sealed into parcel No.9 Ex P-24. He is also witness to search memo of accused Sana ul Haq Ex PW-16/1 and other accused Ex PW-16/2. His statement u/s 161 Cr.P.C was recorded by the I.O.

Qayyum Khan FC 47 was examined as PW-17 who examined one motorcar bearing registration No.23/GTD and issued his report. The application of the I.O is already exhibited as Ex PW-7/16 and his report is already exhibited as Ex PW-7/17. His statement u/s 161 Cr.P.C was recorded by the I.O.

Muhammad Ali Khan S/o Bismillah Jan was examined as PW-18 who is the son of deceased Bismillah Jan

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File No. 14 Case No. 14 of Sana ul Haq of 2017

EXAMINER
GENERAL INVESTIGATIVE
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constable. He charged the accused for commission of the offence. He was also examined by the I.O u/s 161 Cr.P.C.

Bahadar Nawaz DFC No.55 was examined as PW-19 who was entrusted with warrants u/s 204 Cr.P.C against accused (i) Asfar (ii) Iqtidar sons Muhammad Naeem, (iii) Muhammad Naeem (iv) Almas sons of Sher Abbas and (v) Sana ul Haq S/o Shams ul Haq all R/o Gandari Khattak, Takht-e-Nasrati, Karak, he searched for the accused in their villages and surrounding areas in order to arrest them but they were avoiding their lawful arrest, hence, he has returned the warrants Ex PW-19/1 to Ex PW-19/5, unexecuted along with his reports Ex PW-19/6 to Ex PW-19/10. He was also entrusted with proclamation notices under section 87 Cr. P.C against the above named accused. He has complied in accordance with law and prescribed procedure. He has returned third copy of each notice along with his reports. The proclamation notices are Ex PW-19/11 to Ex PW-19/15 and his reports at the back of the proclamation notices are Ex PW-19/16 to Ex PW-19/20.

Muhammad Subhan Constable NO.5203 was examined as PW-20, who during the days of occurrence, was posted at PS YKS Karak. On 08.01.2017, the doctor handed over to his blood stained Kot, shalwar-qameez and banyan of deceased Aqal Daraz and blood stained jersey shalwar-qameez and cap of deceased Bismillah Jan having cut

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EXAMINER
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marks, blood stained jersey banyan of injured Sajid Iqbal and one phial containing 03 spent bullets. He handed over the above mentioned articles to the I.O in the PS in presence of marginal witnesses. His statement u/s 161 Cr.P.C was recorded by the I.O.

PWs Syed Nawaz, Umar Dad constable, Fakhar Zaman LHC, Abdul Rehman No.1339, Abdul Zakoor and Iran Badshah were abandoned by prosecution being un-necessary.

On closure of prosecution evidence statement of accused U/S 342 Cr.PC was recorded wherein he repudiated the prosecution allegation and professed his innocence, he neither wished to produce defence nor he wanted to give statement on oath as contemplated u/s 340 (2) Cr.PC. However Zahoor Ahmad Subject Specialist who was examined as Court witness in the trial of acquitted co-accused Muhammad Naeem and he had brought school record of complainant showing his presence in the school on the day of occurrence. The relevant record was exhibited in the previous trial therefore for clarification regarding presence of complainant, Zahoor Ahmad SS was again summoned as Court Witness and parties were given an opportunity to cross examine the said witness.

I have heard the arguments of the learned counsel for accused facing trial and Sr. PP for the state assisted by counsel for complainant and gone through the entire record.

Amir
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EXAMINER,
MUTTERI COURT,
ROHAT.
FIR No. 14 Case No. 14 of Sana U Haq of 2017
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The learned Sr. PP for the state assisted by counsel for complainant argued that accused is involved in heinous offence of murdering two persons including one police official. Accused facing trial is directly charged in the FIR and the FIR is registered promptly after the occurrence without any delay and specific role is attributed to accused facing trial. That Prosecution has produced direct ocular as well as circumstantial evidence against the accused facing trial. Medical version supports the prosecution's stance. The accused facing trial has made pointation of the place of occurrence. Due points have been allocated to accused. Blood stain garments and earth alongwith empties have been recovered from the place of occurrence. Prosecution's evidence is worth reliance and no infirmity or in consistency is found in prosecution's evidence. That prosecution has successfully bring home charge against the accused facing trial.

Conversely, the learned counsel for the accused stated that the prosecution has miserably failed to prove their case against the accused. That injured Sajid Iqbal has negated the presence of complainant at the spot while according to Driver of motorcar bearing registration No. GTD/23 the accused could not be identified. CW-1 Zahoor Ahmad has also endorsed the fact that complainant was present in the school on the day of occurrence. Complainant has charged the

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 14 Case No. 14 of Sama U I Haq of 2017

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accused due to previous blood feud enmity. The medical version is not in line with the prosecution stance which negates the mode and manner of the commission of offence.

No recovery or discovery has been effected from the possession of accused facing trial or on his pointation. The accused facing trial has not confessed his guilt. The case is full of doubts and benefit of doubt has to be given to the accused facing trial.

1. In the present case prosecution had to prove that on 07.01.2017 at 11:45 hour near Shah Salim Stop Takht-Nusrati Bazar within the criminal jurisdiction of PS Yaqoob Khan Shaheed the accused facing trial alongwith absconding co-accused in furtherance of common intention opened fire on complainant party as a result of which two persons namely Aqal Daraz and constable Bismillah Jan were hit and died on the spot while Sajid Iqbal constable received fire arm injuries. That the accused facing trial alongwith co-accused obstructed and deter the local police in discharge of their official duty and cause damage to Motorcar No GTD/23 which resulted in creating a sense of fear and insecurity in society.

2. As Per prosecution's version three witnesses i.e. complainant PW-11, the injured eye witness namely Sajid Iqbal PW-14 and driver of the car bearing registration No. GTD/23 namely Moeen Ullah PW-15, were present at the spot at the time of occurrence. Out of said three witnesses two

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i.e. PW-14 & PW-15 have not charged the accused for the commission of offence on the ground that they have not seen them at the relevant date & time. In this scenario the complainant turns out to be the sole witness who has allegedly seen the accused facing trial while firing at the complainant party. Evidence of the complainant has to be scrutinized with great care & caution for the reason that he is son of one of the deceased Aqal Daraz and his testimony was disbelieved in earlier trial to the extent of acquitted co-accused namely Muhammad Naeem. Co-accused Almas has also been discharged in the present case and the said orders have not been assailed before the Higher forum. In the present case, prosecution had to establish the presences of the complainant at the spot. Moeen Ullah PW-15 has verified the presence of complainant at the spot. The evidence of PW-11 & PW-15 if read in juxta position it would be revealed that both these witnesses had deposed in their statements before the local police recorded u/s 161 Cr.PC that from the house of the deceased Aqal Daraz, they went to PS Shah Salim and from the PS Shah Salim they directly went to courts at Takht-e-Nusrati. When these witnesses were examined in the court they stated that from PS Shah Salim they went to Higher Secondary School Shah Salim. The complainant entered the collage where he spent about one & half hour and came out, where after they went to Takht-e- Nusrati Courts. The fact of

Aqil Daraz
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going to the Higher Secondary School Shah Salim and waiting for one & half hour was introduced for the first time in evidence before the court. Likewise, the fact of blocking of road with Tractor Trolley is also an improvement in evidence. These improvements are drastic one which are touching merits of the case for the reason that defense had raised a plea that on the day & time of occurrence, the complainant was not present at the place of occurrence rather he was present in his collage and appeared in his pre-board exams. Zahoor Ahmad Subject Specialist G.H.S.S Shah Salim was examined as CW for clarification of the factum of presence of the complainant. CW produced the attendance register EX CW-1/1, date sheet EX CW-1/2. Chemistry paper attempted by complainant EX CW-1/3 and paper attendance of complainant (Najeeb Ullah) EX CW-1/4. The witness stated that the paper started at 9:00 AM and finished at 11:00 AM. He admitted in his cross examination that Chemistry paper EX CW-1/3 is attempted in a technical and nice manner giving paragraphs and heading to every question. Questions were solved with black ink while heading were given with blue marker. The witness further admitted that, one must consume more time on solving paper in such pattern. The witness also admitted that as per rules, if any student wants to leave early, he will have to give an application to the head master/principal or any other teacher but the present complainant had not submitted any application

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for short leave. Class fellows, officials of school/collage or teachers have also not testified regarding early exit of complainant from his collage/school on the relevant day. I have also personally gone through the paper which is attempted in such manner that it gives no impression that the complainant was in any kind of hurry while answering the questions. In normal course when police officials, driver and father of a student are waiting outside the collage/school. He would try to attempt his paper in haste especially when the exam is not of great significance. The witness CW-1 has replied to a question put forward by the prosecution, that a student could not be detain on the basis of subject exam.

3. The investigation officer PW-7 has categorically stated in his cross examination that as per his investigation, the complainant namely Najeeb Ullah and deceased Aqal Daraz after obtaining the security from PS Shah Salim directly went to Tehsil Court Takht-e-Nusrati and after attending the Court, the occurrence took place. The Investigation officer negated the suggestion that complainant went to G.H.S.S Shah Salim before the occurrence. PW-6 has also negated the visit of complainant and police personal who were deputed on security of the deceased Aqal Daraz to G.H.S.S Shah Salim. The distance between P.S Shah Salim & Tehsil Court Takht-e-Nusrati Karak could approximately be covered within 30/35 minutes. If complainant had visited G.H.S.S Shah Salim,

A. W. Khan
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K. A. Khan
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remained there till closing hours of his paper and then went to Tehsil Court Takhi-e-Nusrati, appeared before the court and after that they had returned then it would not be possible that the occurrence might have taken place at 11:45 AM. This fact supports the contention of PW-14 who is the injured eye witness, regarding non availability of the complainant at the relevant time. He was declared as hostile witness and prosecution was also afforded an opportunity to cross examine the said witness but even then nothing was extracted from his mouth to slightly indicate that either complainant or the accused facing trial was present at the spot. By declaring the said witness as hostile the court issued an alert call not only to the witness but also to the learned counsel but even then the witness did not mention the name of complainant among his companions who were present with the deceased at the time of occurrence. PW-14 is the star witness in the case for the reason that complainant has admitted his presence at the spot and he has received injuries as a result of alleged occurrence. There is nothing on file to suggest that PW-14 has exonerated the accused facing trial and negated the presence of complainant for some extraneous consideration. Moreover, PW-15 has though verified the presence of complainant but in his cross examination he stated that for a while, he turned his face back but the accused were unable to be identified, how

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the complainant managed to do so is a question which could not be clarified.

4. The prosecution version is that the accused fired at the motorcar from its rear side. If this is true then the bullet marks on motorcar bearing Registration No.GTD/23 and injuries on the person of deceased should have been from the back side but according to the M.V.E report EX PW-7/17, at Sr. 8,9,10 the bullet marks are from the right side. Moreover according to the Post Mortem report of Aqal Daraz entry No.3 on the person of said deceased is from left while entry No.7 on the person of deceased Aqal Daraz is from front. Similarly, in case of the deceased Bismillah Jan entry wounds on the person of deceased are from front side. The facts that all bullet marks on car are not from the back side and the locals of some of the injuries on the person of deceased are from right and front, negates the complainant/prosecutions contention.

5. The complainant & PW-15 have not even received a single scratch rather they have escaped unhurt despite the fact that complainant alleged to be present on the spot in a straight line of the accused without any visual obstruction. The firing lasted for 4/5 minutes and neither the surrounding place nor the Tractor Trolley with which the road was allegedly blocked was hit as there were no bullet marks on any of them. It is a natural phenomena that if the father of a person is killed in

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such a manner or if double murder is committed in the car of a person. Then in that eventuality the son or driver would be the first person to reach the deceased after the assailant leave the place but in the present case the complainant or the driver have not identified the dead bodies before the local police or the doctor. Their cloths were not stained with blood of the deceased. Though it is mentioned in Murasila EX PA/1 and FIR EX PA that the matter was reported at about 12:10 PM in Civil Hospital to SHO Sakhi Rehman but when he appeared in the witness box and recorded his statement on oath he stated in his examination in chief that upon receiving *ing* information about the occurrence he alongwith other police officials reached to the spot where the complainant reported the matter. Complainant PW-11 in his cross examination stated that after firing they remained on the spot for 20/25 minutes and it took them one hour in scrutiny of the documents. PW-1 has negated the fact of reporting the matter in Civil Hospital. PW-12 Rehmat Ullah who took into possession the official Kalashnikov from injured Sajid Iqbal in the hospital stated in his cross examination that he had not seen the complainant despite the fact that he remained there for 40 minutes. He categorically stated that injured and deceased were there in the hospital and he had seen them. The above referred facts make the presence of complainant at the spot doubtful.

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FIR No. 19 Case No. 14 of Sam. U. I. of 2017

EXAMINER,
 COPYING AGENCY, KARACHI

6. Even PW-10 Dr. Abid Malook has stated that on 07.01.2017 at 12:00 hours he examined the injured Sajid Iqbal after preparation of the injury sheet. If the injury sheet of Sajid Iqbal was prepared before 12:00 Noon then why the report was delayed for more than ten minutes and why the report of injured was not considered. It is in the evidence that Civil Hospital is situated at a close distance from the Police Station even then 40 minutes were consumed in registration of FIR and one hour in handing over copy of FIR to the I.O. The PM report was handed over to investigation officer on the next day of occurrence. This fact indicates deliberation and consultation in reporting the matter.

7. The complainant in his cross examination stated that at the time of preparation of site plan, he brought the witness Arif Ullah whose statement was recorded by the I.O at the spot and then it was read over. PW-4 Arif Ullah in his cross examination negated the complainant contention of recording his statement before local police on the day of occurrence during spot inspection rather he admitted that his statement was recorded after 22 days of the occurrence and during these days he had made no effort to get record his statement. The investigation officer has admitted that narration regarding presence of accused with acquitted co-accused outside the court premises was not proved and co-accused Almas was

Arif Ullah
30/11/18

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 Case No 14 of Sami Ullah of 2017

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of PW-11 & PW-4 are not consistent on material facts and they have not furnished a true, straight forward and frank narration as such their statements cannot be considered worth reliance to the extent of accused facing trial.

8. It is admitted that no specific recovery has been shown from the place allotted to the accused facing trial in the site plan. In the site plan 16 empties of 9 MM and one empty of 30 bore alongwith missed bullet of 30 bore have been shown recovered from the places near all the accused. These empties were received in FSL on 16.04.2017 while the occurrence took place on 07.01.2017. The Investigation officer conceded in his cross examination that these empties remained with Moharrir of the PS during these 09 days. He could not provide any explanation for late dispatch of the empties to FSL which would create doubt about its safe custody. According to FSL report EX PZ/2 16 empties of 9 MM bore crime empties marked C. to C16 were fired from different 9MM bore weapons but it is not explained that can the number of weapon used in the offence be more than two or not? Complainant stated in his cross examination that except for site plan and statement of Arif Ullah no other document was neither read over to him by the KBI staff nor scribed in his presence. Through his cross examination the complainant has negated the preparation of recovery memos EX PW-7/1 to

Arif Ullah
30/11/18

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FB No. 14 Case No. 14 of Sama Ullah of 2017

EXAMINER

MOHARRIR OF POLICE STATION

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EX PW-7/3 at the spot. This is a negation of prosecution's version.

9. The piece of spent bullet which was recovered during operation from injured Sajid Iqbal and taken into possession vide recovery memo as well as 03 pressed bullets recovered from the body of deceased Aqal Daraz EX:PW-7/15 were not sent to FSL for an opinion as to whether it was of 30 bore, 9MM bore or any other weapon.

10. The prosecution has failed to recover any weapon from possession of accused facing trial or at his pointation. The complainant has not specified the kind of fire arm used by the accused facing trial. Prosecution relied upon the pointation of place of occurrence by the accused facing trial and in this respect placed on file pointation memo EX:PW-7/27. Record reveals that the place of occurrence was in knowledge of the investigation officer prior to pointation by accused. As according to him he had reached there even before receiving copy of the FIR. Moreover no recovery or discovery is effected as a result of the alleged pointation by the accused facing trial. Site plan was also prepared prior to pointation. As a result of alleged pointation by accused facing trial prosecution has not established that information conveyed by accused led to the discovery of some fact, which was unknown to the police and it was for the first time derived from the accused. The alleged pointation in no manner

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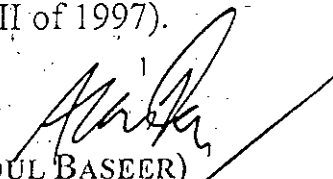
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connect the accused facing trial with the commission of offence, therefore article 40 of the Qanoon-e-Shahdat, 1984 is not attracted and pointation memo EX PW-7/27 has no evidentiary value to form circumstantial evidence against the accused.

11. The prosecution has collected CDR data alleging the presence of accused at the spot but the investigation officer has not obtained any certificate from any mobile franchise to ascertain the fact that whether the CDR showing the number is in the name of accused facing trial or not? Investigation officer has not even recorded the statements of any franchise official to ascertain the said fact. He has not taken into possession any SIM from personal possession of the accused to establish the fact that the number mentioned in the CDR was in the possession of the accused facing trial at the time of commission of offence.
12. The nutshell of the above discussion is that prosecution has badly failed to prove its charge against the accused facing trial therefore, the accused facing trial namely Sana Ullah S/o Shams Ul Haq is hereby acquitted from the charges leveled against him. He is in custody and shall be released forthwith if not required in any other case.
13. File be consigned to Hon'ble Peshawar: High Court Peshawar U.S 25(2) ATA 1997 (Act No XXVII of 1997).

ORDER ANNOUNCED:
November 30th, 2018.


 (ABDUL BASEER)
 Judge Anti-Terrorism Court,
 Kohat Division, Kohat

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LR No. 14 Case No. 14 of Sana Ullah of 2017

CLERK


ANTI-TERRORISM COURT

2018

CERTIFICATE

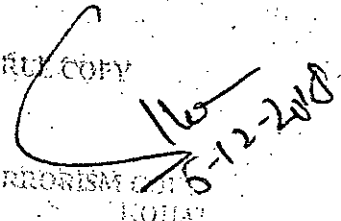
Certified that this Judgment consists of (32) pages, every page has been singed and corrected by the undersigned whenever necessary.

ORDER ANNOUNCED:
November 30th, 2018.


(ABOUL BASEER)
Judge Anti-Terrorism Court,
Kohat Division, Kohat

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EXAMINER,
ANTI-TERRORISM COURT
KOHAT


11/30/18
5-12-2018

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service appeal No. 1141//2019
Constable Sajid Iqbal No. 382

... Appellant

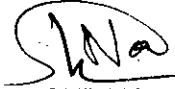
VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa & Others

... Respondents

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| 9. | Copy of statement of the appellant recorded u/s 164 Cr.PC | B | 6 |
| 10. | Affidavit | | 7 |


Respondents
Through Representative
District Police Officer
Karak

①
BEFORE THE HONORABLE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1141/2019

Sajid Iqbal constable No. 382

....Appellant

VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa, & Other

...Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth: -

Parawise comments on behalf of respondents are submitted as under:-

Preliminary Objections:

- a) That the appellant has got no cause of action.
- b) That the appellant has got no locus standi.
- c) That the appeal is not maintainable in the present form.
- d) That the appellant estopped to file the instant appeal for his own act.
- e) That the appellant has not come with clean hands to his honorable Tribunal.

FACTS

1. Pertains to record, hence no comments.
2. Para No. 2 of the appeal is irrelevant, hence no comments.
3. Par NO. 3 of the appeal is also irrelevant, hence no comments.
4. Mentioned bad entries if any in light of his service appeal.
5. The appellant was injured eyewitness of case FIR No. 14 dated 07.01.2017, u/ss 302, 324, 353, 427, 109, 34 PPC read with 7 ATA Police Station Yaqoob Khan Shaheed, District Karak. In the said incident, one constable named Bismillah Jan was martyred, one Aqal Daraz was killed and the appellant sustained firearms injuries. The appellant was eyewitness of the incident, identified the accused and recorded statement in favor of prosecution during the course of investigation. The case was challaned for trial before the Honorable Anti-Terrorism Court, Kohat Division. During course of trial, the appellant appeared as marginal prosecution witness, wherein he resiled from his statement recorded during investigation. Therefore, the appellant was declared as hostile witness by the Public Prosecutor. The appellant vitiated the prosecution case by recording willfully contradictory statements. The

Conduct of appellant as a marginal PW was discussed in the judgment by Honorable Judge. Resultantly, the charge accused was acquitted by the Honorable Court vide its judgment dated 30.11.2018. Hence, the appellant was proceeded with departmentally by respondent No. 3. **Copies of statement of the appellant recorded u/s 161 CrPC & before the Honorable court are annexure A & B.**

6. Reply submitted to the charge sheet / statement of allegation was without any substances and found unsatisfactory by the inquiry officer and competent authority i.e respondent No. 3.
7. The appellant had committed a gross professional misconduct, which resulted in acquittal of accused directly charged for the murder of one Aqal Daraz, Constable Bismillah Jan and causing fatal arm injuries to the appellant. For the reasons mentioned above, the appellant was deserved another major punishment, but the respondent No. 3 had taken a lenient view while imposing punishment on the appellant.
8. Pertains to record, hence no comments.
9. The departmental appeal of the appellant was without merit and after fulfilling all codal formalities, it was rightly rejected by the respondent NO.2.
10. Incorrect, legal and speaking orders were passed by the respondent No. 2 & 3.

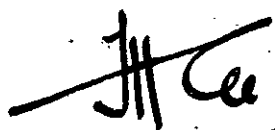
GRONDS:-

- a. Incorrect, the order was passed in accordance with law & rules by respondent No. 2 & 3.
- b. Incorrect, the appellant deliberately resiled from the statement recorded before the Police. Therefore, the appellant was declared a hostile witness by Public Prosecutor during trial of the case.
- c. Incorrect, the role / conduct of the appellant being a marginal prosecution witness was discussed in the judgment by the Honorable Judge ATC Kohat. The appellant deliberately initiated the prosecution case in order to extend undue favor to the accused, which resulted in his acquittal.
- d. Pertains to record, however, the appellant was declared a hostile witness by the prosecution, which proved that the appellant had willfully contradicted in his statements.
- e. Incorrect, the appellant was associated with the inquiry proceedings.
- f. Incorrect, inquiry was conducted in accordance with law & rules.
- g. Incorrect, the punishment is described in column No. 2 of schedule-1 of the Khyber Pakhtunkhwa Police Rules 1975 (amendment 2014).
- h. Incorrect, the appellant had willfully contradicted his statements in a heinous case in which two persons including a constable have lost their precious lives

③

i. Incorrect, the appellant was not condemned unheard.
j. Incorrect, the punishment awarded to the appellant is commensurate to the charge established against him.

In view of the above, it is prayed that the appeal may graciously be dismissed.



Dy: Inspector General of Police,
Kohat, Region
(Respondent No. 3)



Inspector General of Police,
Khyber Pakhtunkhwa,
(Respondent No.1)



District Police Officer,
Karak
(Respondent No. 3)

Annexure "A"

پولیس فارم ۲۵-۵۴ (۱)

رپورٹ ضمنی حصہ سوم (اندرونی)

0313-2809048

382 عدالت عالیہ کے جج صاحبان کے ساتھ

۲۰۱۷ء میں ہونے والے واقعات کے بارے میں جانکاری کے لیے

تعمیراتی کاموں کے بارے میں جانکاری کے لیے ۱۷/۷ کو متعلقہ محکمہ کے سربراہان کو

سراہی اور سربراہان کی حوالہ دہی کے لیے درخواستیں جمع کرائی گئیں۔

۲۳ مئی ۲۰۱۷ء کو سربراہان کی حوالہ دہی کے لیے درخواستیں جمع کرائی گئیں۔

۲۵ مئی ۲۰۱۷ء کو سربراہان کی حوالہ دہی کے لیے درخواستیں جمع کرائی گئیں۔

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۰۱ جون ۲۰۱۷ء کو سربراہان کی حوالہ دہی کے لیے درخواستیں جمع کرائی گئیں۔

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۱۱ جون ۲۰۱۷ء کو سربراہان کی حوالہ دہی کے لیے درخواستیں جمع کرائی گئیں۔

۱۳ جون ۲۰۱۷ء کو سربراہان کی حوالہ دہی کے لیے درخواستیں جمع کرائی گئیں۔

۱۵ جون ۲۰۱۷ء کو سربراہان کی حوالہ دہی کے لیے درخواستیں جمع کرائی گئیں۔

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حدت ریسرچ سوسائٹی - طبی سائنسوں کی تحقیق کی ہے۔
 ڈیڑھ لاکھ روپے - صبر ایسا قدرتی ہے۔
 100 روپے کی قیمت پر - صبر ایسا قدرتی ہے۔
 340 روپے کی قیمت پر - صبر ایسا قدرتی ہے۔
 500 روپے کی قیمت پر - صبر ایسا قدرتی ہے۔

2) عدالت نے 317 روپے کی قیمت پر صبر ایسا قدرتی ہے۔
 317 روپے کی قیمت پر صبر ایسا قدرتی ہے۔
 317 روپے کی قیمت پر صبر ایسا قدرتی ہے۔
 317 روپے کی قیمت پر صبر ایسا قدرتی ہے۔

3) عدالت نے 317 روپے کی قیمت پر صبر ایسا قدرتی ہے۔
 317 روپے کی قیمت پر صبر ایسا قدرتی ہے۔
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 317 روپے کی قیمت پر صبر ایسا قدرتی ہے۔

4) عدالت نے 317 روپے کی قیمت پر صبر ایسا قدرتی ہے۔
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 317 روپے کی قیمت پر صبر ایسا قدرتی ہے۔
 317 روپے کی قیمت پر صبر ایسا قدرتی ہے۔

حدت عمرہ کے سونے - حبیب اللہ نے جو کھری ہے یہ -
 وہ درست ہے - صدیق علی علیہ السلام نے یہ -
 نہ لکھا ہے کہ اس کو بکھریا ہے -
 اور اس کو بکھریا ہے -
 اس کو بکھریا ہے -
 اس کو بکھریا ہے -
 اس کو بکھریا ہے -

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Annexure "B"

Statement of Sajid Iqbal No.382, PS City, District Karak.
(On Oath)

Q-1: Whether complainant namely Najeeb Ullah was with you in motorcar bearing registration No.23/GTD on the relevant day and time of occurrence, which is shown in the FIR as 07.01.2017 at about 11:45 AM?

A: Complainant Najeeb Ullah had not accompanied us and he was not present on the day and time of occurrence.

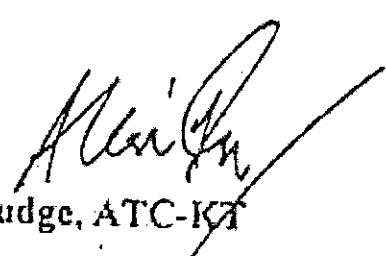
Q-2: Whether on the relevant day and time of occurrence the road was blocked through tractor trolley or not?

A: It is incorrect that the road was not blocked due to tractor trolley, however, the road was blocked.

Q-3: Have you been pressurized, induced or threatened by the accused party, not to record evidence against them?

A: I have recorded my statement on oath today and even in the previous trial without any pressure, inducement or threat. I have recorded a true and voluntary statement before the court despite the fact that my high ups have initiated inquiry against me and I have been wrongly penalized for that.

RO & AC
Dated:06.07.2017


Judge, ATC-KT



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BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service appeal No. 1141//2019
Constable Sajid Iqbal No. 382

... Appellant


VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa & Others

... Respondents

AFFIDAVIT

I, the undersigned respondent No. 03, do hereby solemnly affirm and declare on oath on behalf of respondents, that the contents of Parawise comments are true & correct to the best of our knowledge and belief, and nothing has been concealed from this Honorable Court.


~~DISTRICT POLICE OFFICER,
KARAK~~
(Respondent No. 3)
*District Police Officer
Karak*

فائل

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۳ مجموعہ ضابطہ فوجداری

تھانہ: لیقوہب خان شہید ضلع: کرکر

نمبر: 14 8

تاریخ وقت وقوعہ: ۰۱/۱۷/۰۷ وقت: ۱۱:۴۵ بجے

| | |
|----|---|
| ۱۔ | تاریخ وقت رپورٹ: <u>۰۱/۱۷/۰۷</u> وقت: <u>۱۲:۱۰</u> بجے |
| ۲۔ | نام و سکونت اطلاع دہندہ: <u>مستغنیث نجیب اللہ ولد عقل دراز عمر ۱۷ سال سکڑ کرما ڈھنڈ</u> |
| ۳۔ | مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو: <u>353</u> |
| ۴۔ | جائے وقوعہ فاصلہ تھانہ سے اور سمت: <u>PPC 302/324/109/34/FATA</u> |
| ۵۔ | نام و سکونت ملزم: <u>نور شاہ سلیم آڈھہ واقعہ تخت لہر تھی بازار بھابھہ تقریباً ۲ فرلانگ جنوب شرقاً</u> |
| ۶۔ | کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو: <u>پیسنگی حسرت اسلم ہر پور پور چار ماہانہ</u> |
| ۷۔ | تھانہ سے روانگی کی تاریخ و وقت: <u>بطور اسپیشل رپورٹ</u> |

ابتدائی اطلاع نیچے درج کرو۔

پیسو وقت ایک تقریباً فراسلم بھابھہ میں

ہدست نشیمل عبدالرحمن ۱۳۳۹ جوہر چورچورہ درخت خیل میں خرر تھانے لکانہ میں تھانہ میر

تھانے اطلاع ملنے پر فوراً مع نعوز پولیس سائیکل سوار سیکال تخت لہر تھی میں مقتولین عقل دراز ولد سرور

عمر ۶۹ سال سیکہ کرما ڈھنڈ نشیمل بسم اللہ جان ۱۴۲ ولد نور جان عمر ۵۱/۵۲ سال سیکہ کرما ڈھنڈ

تھانہ شاہ سلیم خورہ نشیمل ساجد اقبال ۳۸۲ عمر ۲۷/۲۸ سال ولد عقل سید سیکہ کرما ڈھنڈ

تھانہ شاہ سلیم موجود پائر محقق مقتولین خورہ سیمہ نجیب اللہ ولد عقل دراز عمر ۱۷ سال سیکہ کرما ڈھنڈ

یوں رپورٹ کرنا صحیحہ اور مزید در والد ام عقل دراز سیکہ جان ۱۴۲ ساجد اقبال ۳۸۲

سواری جوڑ مار بٹ ۲۰۲۸ یہ قبیل ڈر فورہ جنین اللہ ولد آزاد خان سیکہ زرین قلع لہر تھی بھابھہ

ایڈیشنل سٹیشنر جمع تخت لہر تھی آسائے بعد تاڑم پٹی سیکہ امیں جو والد ام عقل دراز ملے تقریباً پولیس نشیمل

بسم اللہ جان ۱۴۲، ساجد اقبال ۳۸۲ جوڑ مار بٹ بٹا میں سوار سیکہ بٹا بٹا بٹا بٹا بٹا بٹا بٹا

مقام باہ سیکہ توریڈ بند تھانے جوڑ مار بٹ سے بھی آڑر ڈھنڈا سیمان اسپرہ افندار لیسراں حمد نعیم

سناد الحق ولد نا معلوم ساکنان لہر تھی بھابھہ، کھلر نعیم کسیراں سیکہ عباس ساکنان

گندریی خورہ کئی بار پر ہم پر بار بارہ قتل اسلم آسائے سے فائرنگ شروع کی جنہیں فائرنگ سے لالہ

عقل دراز البسم اللہ جان، ساجد اقبال گندریی بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا

بسم اللہ جان بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا بٹا

تھانہ گھوڑا سیکہ جیح ملزوان بھابھہ یازار میں شدید زخمی ہوئے ہم خوش قسمتی سے بچ گئے جسے میں خالی ہاتھ

عداوت سابقہ شرم قتل قاتل کے دشمنی ہے وقوعہ ہذا میرٹھ عداوت خیر میرٹھان کا چشمہ دہریہ

میں والد ام عقل دراز نشیمل بسم اللہ جان کے قتل اور نشیمل ساجد اقبال کے زخمی ہونا

اور لینگ، ہماری اہم پر بار بارہ قتل فائرنگ لہر تھی بھابھہ سیکہ بٹا بٹا بٹا بٹا بٹا بٹا

خوف ہراس پھیلانے کا دعویٰ ہر ہر نشان و ٹوکھا خیب اطلاع کارروائی پولیس حسب لفظ سائل

رپورٹ و لیا باہ کر مار ڈھنڈا ہر نشان و ٹوکھا خیب اطلاع کارروائی پولیس حسب لفظ سائل

PTO

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1022 /ST

Dated 29/06/2021

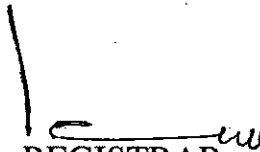
To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Karak.

Subject: - JUDGMENT IN APPEAL NO. 1141/2019, MR. SAJID IQBAL.

I am directed to forward herewith a certified copy of Judgement dated 16.06.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.