

BEFORE THE HONOABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2311/2023

Gul Azam.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa Through secretary Home & Tribal Affairs, Civil Secretarial, Peshawar.
2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. The Regional Police Officer, Kohat Region Kohat.
4. The District Police Officer, District Orakzai, Orakzai Head quarter, Hangu.

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Deponent

04-04-2024

S.B

Peshawar

P-1

BEFORE THE HONOABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2311/2023

Gul Azam.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa Through secretary Home & Tribal Affairs, Civil Secretarial, Peshawar.
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3. The Regional Police Officer, Kohat Region Kohat.
4. The District Police Officer, District Orakzai, Orakzai Head quarter, Hangu.

Parawise comments by Respondents

Respectfully sheweth:.

Preliminary objection:.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 11647

Dated 06-03-2024

- i. That the appellant has got no cause of action.
- ii. That the appellant has got no locus standi to file the instant appeal.
- iii. That the appellant is bad for misjoinder and non-joinder of necessary parties.
- iv. That the appellant is estopped by his own conduct to file the instant appeal.
- v. That the appeal is badly time bared and not maintainable in its present forum.
- vi. That the appellant has not comes to the Honorable Tribunal with clean hands.

Facts:.

1. Pertains to service record of the appellant, hence no comments.
2. After promulgation of 25th constitutional amendment, Services of erstwhile /Khassadar personnel have been absorbed in Khyber Pakhtunkhwa Police in accordance with Khyber Pakhtunkhwa Khassadar Force Act, 2019 and Khassadar Force (absorption in the Khyber Pakhtunkhwa Police) Rules, 2019. Hence, the appellant was absorbed in Khyber Pakhtunkhwa Police, newly Merged district Orakzai.
3. That after induction in Khyber Pakhtunkhwa Police appellant being member of the disciplined Force was under Obligation to perform his duty in accordance with the law and rules. However he involved himself in a criminal case vide FIR #1115 U/S 302/324/337-D/337-F(iii)/148/149 PPC, Police station MRS District Kohat.
4. Incorrect, the appellant was directly charged in the commission of Murder Vide FIR No.1115 dated 02/08/2019 U/S 302/324/337-D/337-F(iii)/148/149PPC, Police station MRS District Kohat, on account of which he was proceeded against departmentally. (Copy of charge sheet attached as Annexure "A").

5. Incorrect, and misleading. On 02/08/2019 one Bakhtiar s/o Ghairat khan Lodged FIR No.1115 dated 02/08/2019 u/s 302/324/337-D/337-F(iii)/148/149ppc Police station MRS Kohat wherein he charged the appellant along With co- accused for the murder of his brother and attempt on his life which is based on facts (copy of FIR is attached as annexure "B")
6. Incorrect, the appellant had not surrendered himself before the law. After Commission of offence, he avoid his arrest, however arrested by the local Police of district Kohat after five days of the occurrence, which clearly shows that appellant is fully connected with the commission of heinous offence no doubt.
7. Para Pertains to the criminal proceedings of trail court, however it is well settled principle of administrative law that criminal and departmental proceeding are two separate processes with distinct purposes. Both can proceed independently. During departmental enquiry appellant was found guilty and recommended by the enquiry officer for major punishment (Copy of enquiry report is attached as Annexure "C").
8. Para pertain to court proceeding, hence needs no comments.
9. Incorrect, the appellant was found guilty in the departmental enquiry. Therefore the appellant was rightly dismissed from service in accordance with law and rules (Copy of dismissal order dated 29/12/2020 is attached as annexure "D")
10. Para is correct to the extent of filing of departmental appeal. However, the appellant authority i.e respondent No.3 rightly rejected the departmental appeal of appellant being devoid of merits. (Copy of appellant order dated 21/05/2021 is attached as annexure "E").
11. Para is correct to the extent of filing of revision, however the same was rejected being time barred.(Copy of decisional order dated 20/12/2022 is attached as annexure "F")
12. That appellant was found guilty during the departmental enquiry and rightly dismissed from service in accordance with the relevant law /rules after observing all codal formalities and the instant appeal is time barred hence liable to be dismissed on the following grounds.


Grounds:

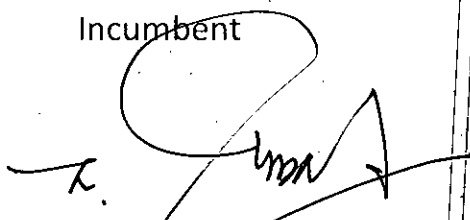
- A. Incorrect, the orders of respondents are legal, speaking one and passed in accordance with the relevant law/rules after observing all codal formalities.
- B. Incorrect, the dismissal order of appellant is in accordance with law and facts of instant case while the appellate and revisional authorities have rightly rejected the appeal revision of appellant being devoid of merits and badly time barred.

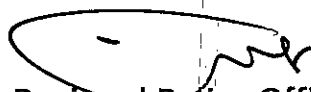
- D. Incorrect, the appellant was found guilty during the departmentally proceeding, however criminal proceedings has no bearing on the departmental proceedings.
- E. Incorrect, the appellant was properly served with charge sheet and statement of allegation and after observing all legal and codal formalities, the appellant was dismissed from service. Charge sheet and statement of allegation served upon the appellant is self explanatory similarly finding report of enquiry officer is also self-explanatory, wherein the charge /allegation leveled against the appellant has been established and he was found guilty of the charges.
- F. Incorrect. Reply already given vide paras above.
- G. Incorrect. The appellant was found guilty during departmentally proceedings, hence rightly dismissed from Service.
- H. Incorrect. The orders of respondents are quite legal in according with rules.
- I. That respondent No.2 has dismissed the revision of appellant being badly time barred, hence the instant appeal is also time barred, therefore appellant is not entitled for condonation of delay.
- J. The respondent may also be allowed to advance other arguments during the course of arguments.


Prayers:.

In view of the above, it is prayed that the appeal being devoid of merits and time barred may graciously be dismissed with cost, please.


District Police Officer
Orakzai
 Respondent No.4
 (SALAH UDDIN KUNDI)
 Incumbent


DIG/Legal, CPO
 For Inspector General of Police,
 Khyber Pakhtunkhwa, Peshawar
 Respondent No.2
 (DR.MUHAMMAD AKHTAR ABBAS)
 Incumbent


Regional Police Officer,
Kohat
 Respondent No.3
 (SHER AKBAR)PSP,S,ST
 Incumbent


Additional chief secretary
 Home & T.As Department
 Government of Khyber Pakhtunkhwa
 Respondent No.1
 (ABID MAJEED)
 Incumbent
Additional Chief Secretary
Home & T.As Department
Khyber Pakhtunkhwa.

BEFORE THE HONORABLE, SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

SERVICE APPEAL No.2311/2023

Gul Azam

VERSUS

1. Government of Khyber Pakhtunkhwa Through secretary Home & Tribal Affairs, Civil Secretarial, Peshawar.
2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. The Regional Police Officer, Kohat Region Kohat.
4. The District Police Officer, District Orakzai, Orakzai Head quarter, Hangu.

AFFIDAVIT

I, Salah Uddin Kundi District Police Officer Orakzai, do her by solemnly affirm on oath that the comments of para-wise comments on behalf of respondents no.1 to 4 are correct to the best of my knowledge and belief nothing has been concealed from this Honorable Tribunal.

It is further state on oath that in this para-wise comments, the answering respondents have neither been place ex-parte nor their defense as struck of cost.

06 MAR 2024



District Police Officer Orakzai
(Salah Uddin Kundi)
Respondent No.4

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Annexure
"A"

No. 208 Enquiry
Dated 28/01/2020

CHARGE SHEET

I, SALAH UD DIN, District Police Officer, Orakzai as a competent authority, hereby charge you Gul Azam s/o Said Noor Shah of Sheikhan tribe as follow:-

"You FC: Gul Azam s/o Said Noor Shah of Sheikhan tribe was suspended for being charged/involved in case FIR No. 1115 dated 02.08.2019 under section 302.324.148.149 PPC police station MRS district Kohat.. Being a member of Police Force such act on your part is against service discipline and amount to gross misconduct."

7. 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 yourself liable to all or any of the penalties specified in Police Rule-1975 ibid.

8. You are, therefore, required to submit your written defense within 07-days of the receipt of this charge sheet to the enquiry Officer Mr. Daswar Ali DSP Hqs Orakzai 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.

District Police Officer, Orakzai

ATTESTED
DSP/Legal

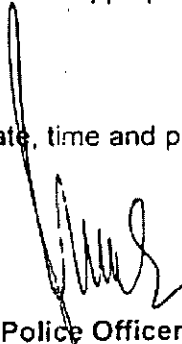
DISCIPLINARY ACTION

I, SALAH UD DIN, District Police Officer, Orakzai as a competent authority, is of the opinion that FC Muhammad Asif s/o Pehlwan of Mishti tribe 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


"FC: Gul Azam s/o Said Noor Shah of Sheikhan tribe was suspended for being charged/involved in case FIR No. 1115 dated 02.08.2019 under section 302.324.148.149 PPC police station MRS district Kohat.. Being a member of Police Force such act on his part is against service discipline and amount to gross misconduct."

1. The enquiry Officers Mr. Daswar Ali DSP Hqrs Orakzai 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, Orakzai

No. 209 / Enquiry, dated 28/9/2020
 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. FC Gul Azam s/o Said Noor Shah of Sheikhan tribe.


ATTESTED
 DSP/Legal

0

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع رپورٹ نمبر 1115/2019

وقت: 11:15
مقام: MRS
تاریخ: 27/08/19

1	تاریخ: 27/08/19 وقت: 21:40	پولیس کی 27/08/19 وقت: 22:30
2	مقام: گھنٹہ گھر	مقام: گھنٹہ گھر
3	مقام: گھنٹہ گھر	مقام: گھنٹہ گھر
4	مقام: گھنٹہ گھر	مقام: گھنٹہ گھر
5	مقام: گھنٹہ گھر	مقام: گھنٹہ گھر
6	مقام: گھنٹہ گھر	مقام: گھنٹہ گھر
7	مقام: گھنٹہ گھر	مقام: گھنٹہ گھر

ابتدائی اطلاع یہ ہے کہ ... (Detailed handwritten report text in Urdu, describing an incident involving a person and a vehicle, mentioning details like 'KOD' and '15/16').

ATTESTED
DSP/L

Signature

نمبر لاہور

P-8

ANNEX "C"

3/8

درہنہ آفشی ملازمین تقسیم اسلام آباد ضلع حاضری رپورٹ ASI 110 صفحہ 8

دن 18:00 گنتی ملازمین کی ڈیوٹی از فارغ ملازمین گنتی میں موجود رہے۔ ڈیوٹی ملازمین پر اس وقت تقسیم کر کے مناسب طور پر دی گئی کنٹینر محل انعام

حوالہ ملازمین صفحہ 7
شده رخصت پر مقررہ جتنی آج حاضری تھی
حاضر نہ آیا۔ جس کے ذریعہ رپورٹ غلط حاضری
دیج رہا ہے جس کے نقل پر علیحدہ وارڈ بک
لغرض کارروائی انہیں بالائی خدمت ارسال
کی جائے گی۔ پھر سنانے ضروری حکم اصلاح
گنتی پر رضت کی گئی۔

نقل عدالت لاہور

Sub: Ahi
M. H. P. S. ...
26/9/18



ATTESTED
DSP/L

(1)

P. 32
9

ORDER

Constable Gul Azam s/o Said Noor Shah r/o Rangin Khel Sheikhan Lower Orakzai of this district Police is hereby suspended for being charged/ involved in case FIR No. 1115 dated 02.08.2019 Under Section 302,324, 148,149 PPC Police station MRS District Kohat with immediate effect.

Mr. Daswar Ali, DSP Hqrs is appointed as Enquiry Officer to conduct proper departmental preliminary enquiry against him and to submit his findings within stipulated period.

O.B.No 365
Dated 21/08 /2019

District Police Officer, Orakzai

Copy of above is forwarded for information to:

1. The Superintendent of Police, Investigation, Wing, Kohat
- ✓ 2. DSP Hqrs for necessary action.

113 no DSP, 1st

3-4
ATTESTED
DSP/L

بیان اذان کنستبل گل انعام ولدہ - لاہور شاہ

جناب عالی

حوالہ چارج شیٹ نمبر 208 مورخہ 28/05/2018 جاری دفتر 200/200/200

معروض خدمت میں کنستبل گل انعام کو مقدمہ علامت نمبر 115 مورخہ 28/05/2018

زیر دفعہ 302/324 پولیس سٹیشن MRS کوہٹ میں ملزم

ٹھکانہ ہے جس وقت وقوعہ رونمایا، ملزم اپنے گھر پر موجود تھا۔ اس

وقوعہ کے متعلق تحقیق کرتی علم نہیں اور ملزم خلف غلط دعویٰ داری کرتی ہے۔
میں باگناہ میں اور مجھے شدید ذہنی پریشانی ہے۔ اور میرا بہت نقصان ہوا ہے۔
یہی میرا بیان ہے۔



گل انعام ولدہ

کہ اس سزا کے متعلق کیا فیصلہ ہوگا؟

سزا کا بار، وقوعہ کے دن آپ کیا تھے؟

جواب: گھر پر موجود تھا۔

سزا کے بارے میں اس وقت کی سزا کتنی تھی، یا پھر عافیت تھی؟

جواب: نہیں تھی، دن کی چھٹی بجے، مرن ڈسپنڈری دی تھی۔

سزا کے بارے میں آپ کی ڈیوٹی کیا تھی؟

جواب: کل پر پھرتی تھی، جس پر تھی۔

ATTESTED
DSP/L

فون نمبر - 9607261-333

صہنا عالی!

حوالہ: جامع شہداء بڑی 2008ء، 252/2008، جہاں لہ جناب DPO صاحب اور بڑی

سب ڈیل اعلیٰ خان تھانہ صدر، والدہ پولیس لائن اور کبوتری معرواں خدمت ہوں۔ کہ مورخہ 28/8/2008ء کو شہداء بالہ عبیر (302/321 PPC تھانہ R.C. کیمپات FIR نمبر 1115 درج رجسٹر ہو چکا تھا۔ مذہبی مقدمہ اپنے بہادر امان اللہ کی قتل اور اپنی قبر وصیت کا دعویٰ لیا تھا۔ مذکورہ والدہ منسپل تقریباً 5 دن پولیس پرینڈ بعد مورخہ 7/9/2008 کو باضابطہ گرفتار کیا گیا۔ مورخہ 28/8 کو عدالت سے ضمانت پر رہا ہوئے۔ اس سلسلے میں سب ڈیل اعلیٰ خان در دفتر ہذا بلڈ ٹرا نکابیان تکبند کر دیا۔ اور بیان میں نمایاں کر دیا۔ کہ بوقت وقوعہ میں اپنے گھر پر موجود تھا، جو کہ جائے وقوعہ سے بہت دور تھا۔ اور اپنی بے گناہی ثابت کرنے کیلئے مذہبی دو گویان پیش کیے۔ فلپس بات نفع ہے۔ مذہب اس سلسلے میں عدالت مقدمہ سے ضمنی رپورٹیں حاصل کی گئی۔ جو کہ ہمراہ لف انکوائری ہے۔ نیز مورخہ 28/8 کو جناب DPO صاحب اور کرنل ملہ زمت سے فارغ معطل کیا۔ مذہب 12/12 سے روزانہ پولیس لائن میں غیر حاضری کی رپورٹ درج ہو کر مورخہ 2/6 کو حاضری پر ما نقل بد ہمراہ لف ہے۔

اصل حقائق: سب ڈیل اعلیٰ خان جو کہ خود کو بے گناہ کہتا ہے، لیکن حالت و واقعات ایسی تھی کرتا ہے۔

شہداء امان اللہ دسی کے 1/5 کے ضمنی پرچہ کے صفحہ 3 پر جو آخری سوال کیا گیا ہے اس کے جواب میں مذکورہ والدہ منسپل خاموش ہوا۔ کوئی جواب نہ دے سکا۔ دونوں طرف سے قتل مقدمہ کی دستاویزی جلی آرہی تھی۔ سوال و جواب میں منسپل مذکورہ والدہ نے اپنے والد کی قتل کا شک مقول امان اللہ کے گھرانے پر کرتا ہے۔ اور مذہب یہ کہ وقوعہ میں جبر و اختیار دلہ بھرت خان جو کہ وقوعہ کا چشم دید گواہ بھی ہے۔ رو بہ و منسپل بالہ پر دعویداری کرتا ہے۔ حالات و واقعات سے ثابت ہوتا ہے کہ عدالت میں کچھ کالہ ہوتا ہے۔ اور مذکورہ والدہ منسپل اس تمام واقعہ میں ملوث رہا ہے۔

رائے انکوائری آفیسر، سردست دسیوں عدالت میں از سماعت ہے، منسپل بالہ ضمانت پر رہا ہو کر پولیس لائن اور کرنل ملہ زمت سے ڈھونڈی دے رہا ہے۔ قبل از ڈھونڈی 16 دن لائن سے غیر حاضریا۔ عام تر حالت واقعات کو مد نظر رکھتے ہوئے منسپل مذکورہ والدہ کا ثابت ہو کر میجر پنشنٹ کی سفارش بجا ہے۔ رپورٹ کی گزارش ہے۔

SDPO UPPER

Dismissed from Service.

ATTESTED DSP/L

29/12

1



OFFICE OF THE DISTRICT POLICE
OFFICER ORAKZAI

P. 97
12
Annexure
"D"

OFFICE ORDER:-

The order will dispose off the departmental enquiry conducted against Constable Gul Azam s/o Said Noor Shah of Sheikhan tribe under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

Constable Gul Azam s/o Said Noor Shah was charged/involved in FIR No. 1115 dated 02.08.2019 U/S 302/324/148/149 PPC PS MRS District Kohat.

He was suspended vide order OB No. 365 dated 21.08.2019 and DSP HQrs was nominated as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer vide his finding and found him guilty of the charges leveled against him, and recommend him for major punishment.

These act of the accused official earned bad name to a discipline force on one hand and involved himself in criminal act.

In view of the above and available record, i reached to the conclusion that the accused official was involved in criminal act. Therefore, these charges leveled against accused Constable Gul Azam s/o Said Noor Shah have been established beyond any shadow of doubt. Therefore, in exercise of powers conferred upon me under the rules ibid, a major punishment of "dismissed from service with immediate effect" is imposed on accused Constable Gul Azam s/o Said Noor Shah with immediate effect. Kit etc issued to the Constable be collected.

Announced ^{OB No} 1234
Dated 29/12/2020


DISTRICT POLICE OFFICER, ORAKZAI

No 285 /EC/OASI Dated 29/12 /2020.

Copy of above to the:-

1. The Regional Police Officer, Kohat.
2. DSP HQrs.
3. SDPo Upper for collection of items and clearance.
4. Pay Officer/SRC/OHC/Reader for necessary action.


DISTRICT POLICE OFFICER, ORAKZAI


ATTESTED
DSP/L

34/A

P-13
ANNEX
"E"

POLICE DEPTT:

KOHAT REGION

ORDER.

This order will dispose of an appeal preferred by Ex-Constable Gul Azam of Orakzai district against the punishment order, passed by DPO Orakzai vide OB No. 1234, dated 29.12.2020 whereby he was awarded major punishment of dismissal from service on the allegations of his involvement in criminal case vide FIR No. 1115, dated 02.08.2019 u/s 302/324/148/149 PPC PS MRS Kohat.

Comments as well as relevant record were requisitioned from DPO Orakzai which was perused. After perusing the relevant record and allegations leveled against the appellant, it is ascertained that the regular enquiry has been conducted into the matter. The appellant was also heard in person in O.R held in this office on 20.05.2021. During hearing the appellant did not advance any plausible explanation in his defense to prove his innocence.

Above in view, the undersigned reached to the conclusion that the allegations leveled against the appellant are fully proved. Hence, the impugned order passed by DPO Orakzai is justified, upheld and the appeal being devoid of merits is hereby dismissed.

Order Announced
20.05.2021

Mohammad Zafar Ali
(MOHAMMAD ZAFAR ALI) PSP
Region Police Officer,
Kohat Region.

No. 6465 /EC, dated Kohat the 21/05 /2021.

Copy to District Police Officer, Orakzai for information and necessary action w/r to his office Memo: No. 660/SRC, dated 19.02.2021. His Service Book + Enquiry File is returned herewith.

- 2. The appellant concerned.

Mohammad Zafar Ali
(MOHAMMAD ZAFAR ALI) PSP
Region Police Officer,
Kohat Region.

District Police Officer
Orakzai

AH
AF

[Signature]
ATTESTED
DSP/L

P-304
Annex "F"

SS/B



SS Annex 121

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

No. S/ 1348 /22, dated Peshawar the 16/12/2022.

To: The Regional Police Officer,
Kohat.

Subject: REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Gul Azam No. 1370 of district Orakzai against the punishment of dismissal from service awarded by DPO/ Orakzai vide Indst: 285/EC/OAST, dated 29.12.2020, being badly time barred.

The applicant may please be informed accordingly

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(AFSAR JAN)
Registrar,

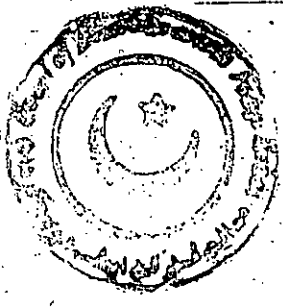
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

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IN THE COURT OF AMIER ALI,
JUDGE MODEL CRIMINAL TRIAL COURT/AS-JIL KOWAT.



Sessions Case No. 139 of 2021

Date of institution : 16.09.2020
Date of transfer in: 08.11.2021
Date of decision : 28.09.2022

The State through Bakhtiar Ali s/o Ghairat Khan r/o District Orakzai presently at Baqi Zai, Kohat

Versus

1. Wakeel Khan s/o Zahoor Khan r/o District Orakzai presently at Billitang, Kohat
2. Muhammad Masood s/o Hakeem Shah
3. Muhammad Basheer s/o Sher Dil Caste Sheikhan District Orakzai presently at Billitang
4. Said Umar s/o Shakeel r/o District Orakzai presently at Shaheeda Banda
5. Gul Azam s/o Haji Said r/o District Orakzai
6. Talib Jan s/o Gul Chaman r/o District Orakzai
7. Muhammad Hussain s/o Wakeel r/o District Orakzai presently at Shaheeda Banda, Janna

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(Accused facing trial)

CHARGED U/S 302/33-1/337-D/337-F(II) 158/149 P.P.C. VIDE P.P.C. NO. 1115 DATED 02.08.2019 POLICE STATION M/35, K.P. D.I.

- Mr. Azhar Ali, Senior Public Prosecutor, for the State
- Syed Fawad Hussain Advocate for the complainant
- Mr. Imtiaz Shihwarw Advocate for the accused Muhammad Hussain and Talib Jan
- Malik Ahmad-e-Azam Advocate for accused Muhammad Hussain, Talib Jan, Said Umar

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Dr. Ameer Ajam Advocate for accused Masood Khan and

Muhammad Kamran Iqbal Advocate for accused Gul Azam Khan

JUDGEMENT

Brief facts of the case are, Hakeem Khan ASI Incharge Police Post Mills area (PW.2) of police station MRS on receiving information reached the emergency room of DHQ hospital KDA, Kohat where the dead body of deceased Aman Ullah s/o Ghairat Khan was lying present along side the dead body were injured Bakhtiar and Waheed Ullah sons of Ghairat Khan, out of whom, injured Bakhtiar (son of the deceased) reported that his brothers Aman Ullah (deceased) and Waheed Ullah (injured) had gone to Hangu, when they were returning, they called him (complainant) to come at Tappi Chowk on motorcycle. Upon which, he left his house for bringing to home on motorcycle from Tappi Chowk, where they were present. Aman Ullah (deceased) was seated on driving seat of motorcycle whereas in the middle he (complainant) was seated and Waheed Ullah was seated behind him. When they reached at the place of occurrence (mentioned in the *Mirasila* as metal road Baqi Zai near house of one Khair Muhammad) there accused Gul Azam s/o Haji Sadi Noor Shah was already present, in the meanwhile, accused Muhammad Hussain s/o Wakeel, Basheer s/o Sher Dil and Said Umar s/o Shakeel came on a Honda motorcycle while accused Shahab s/o Shakeel (whose name was later on substituted with Talib Jan s/o Gul Chaman), Wakeel Khan s/o Zahoor Shah and Muhammad Masood s/o Hakeem Shah also came on motorcycle, accused Gul Azam raised "Lalkara" to kill, on which accused Basheer, Said Umar, Wakeel Khan, Muhammad Masood, deboarded from their motorcycles and started indiscriminate firing at the complainant party with their pistols with the intention to commit the murders, as a result, Aman Ullah got hit and died at the spot, complainant Waheed Ullah sustained firearm injuries. Motive behind the

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occurrence was previous blood feud. Report of the complainant was reduced in the form of Murasila Ex.PA/1 wherein time of occurrence is mentioned as 1950 hours and time of report is mentioned as 2140 hours. The Murasila was sent to the police station, on the basis of which instant case FIR Ex.PA was registered at 2230 hours.

2. After requisite investigation and legal formalities, initially challan was submitted against the accused facing trial Gul Azam, Talib Jan and Muhammad Masood (accused Muhammad Masood procured ad-interim pre-arrest bail on 06.08.2019 which was recalled on 30.10.2019, thereafter, he was arrested) whereas challan within the meaning of Section 512 Cr.P.C. was submitted against the co-accused Muhammad Hussain, Basheer, Said Umar and Wakeel. Later on, Muhammad Hussain, Said Umar and Wakeel were arrested at different intervals and supplementary challans to their extent were submitted, moreover, accused facing trial Basheer who was absconding was arrested by Interpol Doha, Qatar and on 04.04.2022 he was handed over to Rizwan Ullah SI at Islamabad Airport and supplementary challan to his extent was submitted. The accused facing trial were summoned, out of whom, accused Wakeel Khan, Said Umar, Muhammad Masood and Basheer produced in custody from District Jail, Kohat whereas accused Muhammad Hussain, Talib Jan and Gul Azam present on bail, after compliance of provisions of section 265(c) Cr.P.C, formal charge was framed against them to which they pleaded not guilty and claimed trial. It is pertinent to mention here that the case was fixed for arguments, however, perusal of charge already framed revealed that there was a formal defect in the charge already framed as therein though the presence of all the accused at the spot of occurrence was mentioned and all the accused at the spot of occurrence was mentioned and all the accused were charged for forming unlawful assembly. However, while leveling charge against the accused Bashir, Syed Umar, Wakeel Khan and Masood for effective firing at the complainant party resulting in murder of deceased and firearm injuries to the complainant

MAJIBUR ALI
Judge Criminal Trial Court
Kohat

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Bakhtiar Khan and injured Waheed Ullah the rest of accused i.e. Wakeel Khan, Talib Jani, Gul Azam and Muhammad Hussain were not charged for sharing common object with the accused charged for firing therefore altered charge was framed on 19.09.2022. On the same date the Prosecution as well as the accused were enquired as to whether they wish to re-examine or further cross-examine any of the witnesses already examined, however, neither the prosecution nor the defense wanted to re-examine or further cross-examine any of the witnesses already examined. To this effect, statements of learned Sr. PP and learned counsels for the accused were recorded.

3. The prosecution in order to prove guilt of the accused, produced and examined 21 witnesses, brief account of the prosecution evidence is as under:

PW-1 Dr. Fazl ur Rehman stated that he is well conversant with the handwriting and signature of Dr. Imran Afridi (now dead), who on 02.08.2019 conducted post mortem examination on the dead body of deceased Aman Ullah and his report Ex.PM consists of six pages including pictorial, inquest report of the deceased also bears the endorsement of Dr. Imran Afridi:

PW-02 Hakeem Shah ASI is the reporting officer who in the emergency room found the dead body of deceased Aman Ullah and injured Bakhtiar and Waheed Ullah. Injured/complainant Bakhtiar reported the matter to him which he reduced into writing in the shape of murasila, Ex.PA/1. One Bait Ullah verified the report of the complainant and signed the same as verifier. He prepared the injury sheets of Bakhtiar and Waheed Ullah, Ex.PW.2/1 and Ex.PW.2/1. He also prepared injury sheet, Ex.PW.2/3 and inquest report, Ex.PW.2/4 of the deceased Aman Ullah and left the dead body of deceased under the escort of constables Muhammad Noor No. 14 and Mubashir Hussain No. 1210. He is also witness to the search memo, Ex.PW.2/5.

AMER ALI
Judge (Additional Criminal Trial Court)
Kohat

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III. PW-03 Islam ud din SI has submitted final report u/s 173 Cr.P.C. against accused Gul Azam, Muhammad Masood and Talib Jan. Similarly, he also submitted final report within the meaning of Section 512 Cr.P.C. against the accused Muhammad Hussain, Basheer, Said Umar and Wakeel Khan, he also submitted supplementary report against them.

IV. PW-04 Iqbal Khan SI after rejection of pre-arrest bail of accused Masood Khan and Talib Jan arrested them vide card of arrest Ex.PW.4/1. He cursorily interrogated them and on the next day, he vide his application, Ex.PW.4/2, produced them before the Magistrate with the request of police custody, which was allowed. He interrogated the accused and on expiry of police custody, he vide his application, Ex.PW.4/3 again produced the above named accused before the Magistrate with further police custody but his request was turned down and the accused were sent to judicial lock up. After completion of investigation, he handed over the case file to the SHO for submission of challan against the accused.

V. PW-05 Imran Khan IHC is the marginal witness recovery memo, Ex.PW.5/1, vide which Hakeem Khan ASI produced one black colour motorcycle CD-70, belonging to the deceased, to the IO. He is also marginal witness to the recovery memo, Ex.PW.5/2, vide which the IO took into possession one .30 bore pistol No. 29025262 alongwith fixed and spare magazines containing ten live rounds of the same bore, produced to him by the Muharrar and the IO sealed the same into parcel. The said pistol was recovered in case FIR No. 292 dated 18.04.2020 u/s 15AA of Pw Janna, Khatia from accused Said Umar. He is marginal witness to the pointation memo, Ex.PW.5/3 vide which the accused Said Umar led them to the spot of occurrence and pointed out the same. He is also marginal witness to the pointation memo, Ex.PW.5/4, vide which

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Magistrate (Additional Criminal Trial Court)
Rahat

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the accused Wakeel Khan led them to the spot of occurrence and pointed out the same.

VI. PW-06 Saqib Ullah No. 54 handed over eight parcels by the I.O for sending the same to the FSL which he took to the FSL via road certificate Ex.PW.6/1 and handed over the same to the FSL authorities. He was also entrusted with warrants u/s 204 Cr.P.C. against the accused Muhammad Hussain, Bashir, Said Umar, Wakeel Khan and Talib Jan. He went to the houses of the accused and searched them there and in the surrounding areas but they were not found and were avoiding their legal and lawful arrest so he returned the warrants as unexecuted with his reports on the back of the same. The warrants are Ex.PW.6/2 to Ex.PW.6/6, whereas his reports on the back of the same are Ex.PW.6/7 to Ex.PW.6/11, respectively. He was also entrusted with proclamation notices u/s 87 Cr.P.C. against the above named accused. He proceeded with the same according to law and returned third copy of each notice to the Court with his reports on the back of the same. The proclamation notices are Ex.PW.6/12 to Ex.PW.6/16, whereas his reports on the back of the same are Ex.PW.6/17 to Ex.PW.6/21, respectively.

VII. PW.7 Ayat Ullah SHO submitted complete challan against all the accused.

VIII. PW.8 Aftab Ahmad ASI incorporated the contents of murasifa in shape of FIR, Ex.PA.

IX. PW.9 Sareer-ud-din SI on 12.01.2021 arrested accused Muhammed Hussain s/o Wakeel Khan and issued his card of arrest Ex.PW.9/1.

PW.10 Dr. Sohail Adnan on 02.08.2019 examined injured Wakeel Ullah s/o Ghairat Khan and submitted medico-legal report

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Ex.PW.10/1. On the same date, he also examined injured Bakhtiar Khan s/o. Chairat Khan and submitted report Ex.PW.10/1.

XX. PW.11 Riaz Hussain Si is the investigating officer who deposed that after the arrest of accused Said Umar by SHO PS Jarra was handed over to him for investigation/interrogation. He cursorily interrogated the above named accused and on the following day of his arrest, he produced him before the Magistrate vide his application, Ex.PW.11/1 with the request of five days police custody, which was allowed and two days custody was granted. He interrogated the accused and during the course of interrogation, he led them to the spot of occurrence and pointed out the same vide pointation memo. The Muharrar of the PS also handed over to him one pistol 30 bore along with fixed and spare magazines containing ten rounds of the same bore, recovered from the accused and for which separate case u/s 15-AA vide FIR No. 292 was already registered. In this respect, he prepared re-recovery memo. He then sent the above said pistol to the FSL along with the crime empties, the result whereof is Ex.PZ. On expiry of police custody, he vide his application, Ex.PW.11/2, again produced accused Said Umar before the Magistrate with the request of four days further police custody, which was turned down and the accused was sent to judicial lock up. Thereafter, accused Wakeel Khan was arrested by the SHO and was handed over to him. He vide his application, Ex.PW.11/3 produced the accused Wakeel Khan before the Magistrate with the request of seven days police custody, which was allowed and two days police custody was granted. He interrogated the accused and during the course of interrogation, he led them to the spot of occurrence and pointed out the same vide pointation memo. On expiry of police custody, he vide his application, Ex.PW.11/4, again produced accused Wakeel Khan before the Magistrate with the request of five days more police

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Magistrate for District Trial Court,
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custody, which was turned down and the accused was sent to judicial lock up.

XII. PW.12 Muhammad Rafique JHC is the marginal witness to the recovery memo, Ex.PW.12/1, vide which the IO during the spot inspection secured blood stained earth from the spot of occurrence and sealed the same into parcels No. 1 and 2, Ex.P-1 and Ex.P-2, respectively. He is marginal witness to the recovery memo, Ex.PW.12/2, vide which the IO during the spot inspection recovered ten crime empties of 9MM, two crime empties of 22 bore, three crime empties .30 bore and one magazine containing four rounds of .30 bore and sealed the same into parcels No. 3 to 6, Ex.P-3 to Ex.P-6, respectively. He is also marginal witness to the recovery memo, Ex.PW.12/3, vide which the IO took into possession blood stained garments of deceased Aman Ullah and one plastic bottle containing one spent bullet and sealed the same into parcels No. 7 and 8, Ex.P-7 and Ex.P-8, respectively. He is marginal witness to the recovery memo, Ex.PW.12/4, vide which the IO took into possession blood stained garments of injured Bakhtiar Khan and Waheed Ullah and sealed the same into parcels No. 9 and 10, Ex.P-9 and Ex.P-10, respectively.

XIII. PW.13 Humayun Khan SHO formulated supplementary report against accused Bashir.

XIV. PW.14 Zain-ul-Abideen ASI deposed that after the arrest of accused Muhammad Hussain, he was handed over to him for inter-mention. He vide his application, Ex.PW.14/1 produced him before the Magistrate with the request of seven days police custody, which was allowed and one day custody was granted. He interrogated the accused and during the course of interrogation he led them to the spot of occurrence vide policeation memo, Ex.PW.14/2. He vide his application, Ex.PW.14/3 again produced accused Muhammad Hussain before the Magistrate with the

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Magistrate (Deputy Criminal Trial Court,
Rawal

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request of further five days police custody, which was turned down and the accused was sent to judicial lock up.

XV. PW.15 Qismat Khan SHO arrested the accused Said Umar and Wakeel Khan vide card of arrest. Ex.PW.15/1 and Ex.PW.15/2.

XVI. PW.16 Ha'keem Shah s/o Said Shah r/o Jarma is the co-villager of deceased Aman Ullah who identified the dead body of deceased before the doctor and police in the KDA hospital. Kohat.

XVII. PW.17 Bakhtiar Ahmed is the complainant and the brother of deceased Aman Ullah and injured Waheed Ullah. On 02.08.2019, his brother namely Aman Ullah and Waheed Ullah had gone to the District Hangu. On their return from Hangu, Aman Ullah called him to come to the Tappi Chowk on motorcycle. When he reached the Tappi Chowk, Aman Ullah and Waheed Ullah were present at Tappi Chowk. All of them left Tappi Chowk for their house on one motorcycle, Aman Ullah was driving the motorcycle, he was seated behind him while Waheed Ullah was sitting behind him. When they reached the place of occurrence at 1950 hours, Gul Azam was standing there. In the meanwhile, two motorcycles arrived at the spot. In the meanwhile, accused Muhammad Hussain, Said Umar and Bashir came who were riding a motorcycle, accused Wakeel, Masood and Talib Jan came on another motorcycle. At the time of lodging of report, he had incorrectly mentioned the name of accused Talib Jan as Shahab and later on, came to know that in fact the name of said accused was Talib Jan and not Shahab. The accused Gul Azam raised *Lalkani* to kill on which accused Said Umar, Bashir, Masood and Wakeel after dismounting from their motorcycles started firing with their respective pistols at them. Due to the firing of the accused, Aman Ullah sustained injuries and died at the spot, he and Waheed Ullah were also injured due to the firing of the accused. The accused decamped from the spot on their motorcycles. They remained at

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the spot for about 1 to 1 1/2 hour. Again stated that they remained at the spot for half an hour. Then they were shifted to the hospital. after reaching the hospital, the police also came later on, in the hospital, he lodged the report in the hospital before the police which he thumb impressed and his maternal uncle namely Bait Ullah verified the report. Motive behind the occurrence was previous blood feud.

XVIII. PW.18 Waheed Ullah is the brother of deceased Aman Ullah and injured complainant Bakhtiar. On.02.08.2019, he and his brother namely Aman Ullah had gone to the District Hangu. On their return from Hangu, Aman Ullah called his brother Bakhtiar to come to the Tappi Chowk on motorcycle. They waited at Tappi Chowk for Bakhtiar for about 10 minutes. Thereafter, Bakhtiar came on a motorcycle. All of them left Tappi Chowk for their house on one motorcycle, Aman Ullah was driving the motorcycle, Bakhtiar was seated behind him while he was sitting behind Bakhtiar. When they reached the place of occurrence, Gul Azam was standing there, in the meanwhile, two motorcycles arrived at the spot. Gul Azam raised *Lalkara* to kill on which accused Muhammad Bashir, Saad Umar, Masood and Wakeel Khan started firing at them. Due to the firing of the accused, Aman Ullah sustained injuries and died at the spot, he and Bakhtiar were also injured due to the firing of the accused. Then he and Bakhtiar were shifted from the spot to the KDA hospital in a rickshaw. He and Bakhtiar remained in the KDA hospital for about half an hour and then they were referred to L.R.H. Peshawar. Motive behind the occurrence was previous blood feud.

PW.19 Bait Ullah Khan s/o Khan Wazir is the verifier of report who after receiving information regarding the occurrence through mobile phone call went to the spot of occurrence where the dead body of the deceased Aman Ullah was lying and complainant Bakhtiar and injured Waheed Ullah were present critically injured.

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He put Bakhtiar and Waheed Ullah in a rickshaw and took them to the hospital where Bakhtiar lodged report regarding the occurrence which he verified.

XX. PW.20-Rizwan Ullah SI is the investigating officer of the instant case. he prepared site plan. Ex.PB on his own observation as the injured were in the hospital. During the spot inspection, he secured and took into his possession blood stained earth from Point-A and Point-B which he sealed into parcel No.1 & 2, Ex.P-1 and 2 and took the same into his possession vide recovery memo. He also secured and took into his possession 10 empties of 9MM from Point-C, two empties of 22 bore from Point-B and three empties of .30 bore from Point-E and one charger having four live rounds of .30 bore from Point-F. he sealed the aforesaid recovered items into parcels No.3 to 6, Ex.P-3 to P-6 and took the same into his possession vide recovery memo. After the spot proceedings, he returned to the police station there the Constable Mubashir produced the last worn blood stained garments of the deceased Aman Ullah and one sealed bottle containing one spent bullet recovered from the body of deceased Aman Ullah. He sealed the last worn blood stained garments and the bottle into Parcel No.7, Ex.P-7 and P-8 and took the same into his possession vide recovery memo. Constable Mubashir also produced the injury sheet, inquest report and PM report of deceased Aman Ullah and he placed the same on file. Constable Noor Muhammad also produced the blood stained garments of the injured Bakhtiar and Waheed Ullah which he sealed into parcel No.9 and 10 Ex.P-9 and 10 and took the same into his possession vide recovery memo. The constable Noor Muhammad also produced the injury sheet of Bakhtiar and Waheed Ullah with the report of doctor. He handed over all the aforesaid parcels to the Muharrar namely Aftab MLC for keeping the same in his safe custody. He also attached list of legal heirs of

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deceased Ex.PW.20/1. He also raided the house of accused Syed Umar and Shahab-ud-din but in vain to this effect, he prepared the search memo Ex.PW.20/2. He also raided the house of accused Gul Azam but in vain, to this effect, he prepared the search memo Ex.PW.20/3. In the PP Mills area Hakeem Khan ASI produced the Hi-Speed motorcycle CD-70, black colour engine No.RMI-1821142, chassis No.SR 711638376 without registration number of the complainant party which he took into his possession. Said motorcycle is Ex.P-11. He dispatched parcel No.1, 2, 7, 9 and 10 containing blood stained earth and blood stained garments, parcel No.3, 4 and 5 containing the recovered crime empties to the FSI alongwith his application Ex.PW.20/4 and Ex.PW.20/5 through a special messenger namely Saqib Khan via road certificates results whereof are Ex.PZ and Ex.PZ/1. On 06.08.2019, the accused Masood had applied for his ad-interim BBA and submitted his bail bonds in this respect. He issued memo. Ex.PW.20/6 regarding the correction the name of accused mentioned as Shahab in the FIR to Talib Jan. On 07.08.2019, the accused Gul Azam was arrested by Fayyaz Khan SHO and he was handed over to him alongwith card of arrest. He cursorily interrogated him, on the following day i.e. 08.08.2019 he produced the accused Gul Azam vide his application Ex.PW.20/7 before the learned Judicial Magistrate for obtaining police custody which was allowed for one day. On 08.08.2019, he made additions in the site plan, already prepared at his own instance, on the pointation of the complainant, the said additions are Ex.PB/1. On 09.08.2019, after expiry of police custody, he again produced accused Gul Azam before the learned Judicial Magistrate vide his application Ex.PW.20/8 seeking his further custody but the same was refused and the accused was sent to judicial lockup. On 08.08.2019, he had also applied for issuance of warrants u/s 204 Cr.P.C. against the accused Muhammad Hussain.

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Basheer, Syed Umar, Wakeel and Talib Jan vide his application Ex.PW.20/9 which were duly issued and he handed over the same to DFC Saqib for execution, however, the same were returned un-executed as the said accused were avoiding their arrest, therefore, he vide his application, Ex.PW.20/10 applied to the Judicial Magistrate concerned for issuance of proclamation notices u/s 87 Cr.P.C. which were accordingly issued and he handed over the same to DFC Saqib for affixation. Accused Muhammad Basheer who was absconding was arrested by Interpol from Doha, Qatar and on 04.04.2022, he was handed over to him at Islamabad Airport, he formally arrested him and issued his card of arrest Ex.PW.20/11 and also took into his possession his passport vide recovery memo Ex.PW.20/12. On the same day, he brought him to F.O. and produced him before the learned Judicial Magistrate vide his application Ex.PW.20/13 seeking his police custody which was allowed for three days. During police custody, he interrogated him, he was willing to point out the spot of occurrence therefore he led him to the spot of occurrence and pointation memo in this respect is Ex.PW.20/14. After expiry of three days police custody he again produced him before the learned Judicial Magistrate vide his application Ex.PW.20/15 seeking his further police custody, however, further police custody was declined and he was sent to judicial lockup, he submitted supplementary challan to the extent of the accused Muhammad Basheer.

XVII. PW.21 Fayyaz Khan SHO on 07.08.2019 arrested the accused Gul Azam vide card of arrest Ex.PW.21/1, he also submitted supplementary challan against the accused Muhammad Hussain, the parcel No.1 in case FIR No.292 dated 08.04.2020 u/s 15-AA PS.Jamia Ex.P-12

After closing of prosecution evidence statements of the accused were recorded under section 342 Cr.P.C. They denied the

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allegations, claimed innocence and contended to have been falsely charged. They did not opt to be examined on oath nor produced defense evidence.

10. Arguments of learned Sr. PP for the State assisted by private counsel for the complainant and defence counsels with reference to the evidence brought on the file have been heard and the record perused.

11. Learned Sr. PP for the State assisted by private counsel for the complainant argued that the accused facing trial are directly charged in the report lodged by the complainant regarding the occurrence. The complainant himself was injured during the occurrence therefore his presence at the spot of occurrence cannot be doubted. Similarly, the presence of eyewitness Waheed Ullah also sustained firearm injuries during the occurrence thus establishing his presence also at the spot of occurrence. The report was lodged within 02 hours of occurrence by the injured complainant in the hospital considering that besides the deceased the complainant as well as the eyewitness Waheed Ullah had sustained firearm injuries in a rural area therefore sufficient time would have been consumed in making arrangements for shifting them to the hospital, said time lapse between the occurrence and report has been sufficiently explained by the complainant, eyewitness Waheed Ullah as well as the verifier of the report PW. Bait Ullah thus the crime report is to be considered as promptly lodged which rules out any probability of false implication after deliberation and consultation. The parties were previously locked in blood feud enmity therefore the accused were known to the complainant as well as the eyewitness. The occurrence took place at dusk time, thus, there was sufficient light to make possible identification of the accused. The recovery of blood and crime empty establishes the spot of occurrence. Moreover, empties of different caliber were recovered from the spot of occurrence which confirms that the accused effectively fired at the complainant party. The postmortem report of the deceased coupled with MLCs of the complainant and injured further

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corroborates the ocular account as the same confirms factum of multiple firearm injuries sustained by the complainant party. The prosecution through direct ocular account duly supported by corroboratory evidence has proved the guilt of both the accused facing trial. Minor discrepancies are bound to occur in each and every case. In the instant case, there is overwhelming ocular account furnished by the injured complainant and injured eyewitness. As regards the discrepancy of the post mortem conducted prior to lodging of report, it was argued that the same would have created a doubt if the complainant was not himself injured and the same would have implied that the post mortem was conducted prior to report as attendance of the complainant was being procured which is not the matter in the instant case. Any discrepancy between the site plan and medico-legal evidence should also be overlooked as humans when under attack through firearms and when bullets are being fired at them cannot be expected to remain stationary as statues. Moreover, the complainant party should not be made to suffer for any inefficiency by the police at the time of lodging of report or during investigation. Though, the role of effective firing is attributed only to 04 accused, however, all the accused had come together to the spot of occurrence and formed unlawful assembly for committing the murders of the complainant party in furtherance of their common object thus all the accused are equally liable to be convicted for committing the murder of deceased as well as attempting at the lives of complainant and eyewitness resulting in firearm injuries to them.

12. On the other hand, learned defence counsels have argued that the report lodged by the complainant is result of deliberation and consultation which is evident from the fact that though the dead body of the deceased was available in the hospital as per post mortem report at 08:45PM and the post mortem was conducted at 09:00PM, the report was not lodged till 09:40PM for which there is no plausible justification. Similarly, the complainant and injured were medically examined at

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08:40PM after issuance of their injury sheets by the police. Similarly, in the inquest report the first two columns have been left blank while in the column No.3 no time is mentioned. The medico-legal evidence does not support the ocular account and the site plan regarding the direction from which the complainant party was fired at. The occurrence took place at 1950 hours in the month of August and at that time darkness prevails; however, no source of light is mentioned either in the FIR nor in the site plan nor even any such source of light was taken into possession during investigation. The Prosecution evidence is also silent about who and how the dead body of the deceased was shifted from the spot of occurrence to the hospital as no witness has stated anything about it. The misidentification of the accused is evident from the application which the complainant himself submitted for substituting the name of accused Shahab s/o Shakeel whom he had charged in his initial report with that of accused Talib Jan as in the said application the complainant had stated that the accused were not well known to him as they were not in contact with the accused for a long time.

FINDINGS: -

Criminal law in the instant case was set in motion on the basis of crime report lodged by the complainant/PW.17 which was reduced in the form of *Murasila* Ex.PA/1 by Hakeem Khan ASI-PW.2 wherein time of occurrence is mentioned as 1950 hours while the time of report is mentioned as 2140 hours, the first intriguing aspect of the case is that though in the *Murasila* the time of report is mentioned as 2140 hours, however, as per the post mortem report, the time of examination of the dead body is mentioned as 09:00PM (2100 hours); the time of arrival of the dead body is mentioned as 08:45PM (2045 hours). Similarly, the MLC Ex.PW.10/1 of the injured Waheed Ullah which was scribbled beneath the injury sheet Ex.PW.2/2 (purportedly prepared by PW.2 Hakeem Khan ASI) the time of his examination is mentioned as 08:40PM (2040 hours) similarly, the MLC Ex.PW.10.2 pertaining to the complainant Bakhtiar

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which was scribed in the same manner beneath the injury sheet Ex.PW.10/2 also mentions his time of examination as 08:40PM (2040 hours).

It is strange to note how the post mortem of the deceased could have been conducted at 2100 hours prior to lodging of report which is shown lodged at 2140 hours as it is common practice that first the report is lodged thereafter inquest report is prepared and then the dead body is referred for post mortem examination under police docket (injury sheet). however, in the instant case as per post mortem report Ex.PM the post mortem of the deceased had commenced 40 minutes prior to the lodging of the report.

15. It is pertinent to note that the complainant during cross-examination by the accused Wakeel, Talib Jan, Said Umar, Rasheed and Muhammad Hussain stated that they had reached the hospital at 2040 hours, however, he stated that the doctor was not present at the time of their arrival, who came later on and he denied that the doctor examined him at 2040 hours rather made a volunteered statement that he lodged the report at 2040 hours, relevant portion of his cross-examination is hereby reproduced:

"We had reached the hospital at 2040 hours. The doctor was not present at the time of our arrival, he came later on, the doctor did not examine me at 2040 hours. Witness volunteered that I lodged the report at 2040 hours."

16. It is not just that the post mortem of the deceased was conducted prior to lodging of the report but also that though in the report the specific type of firearms with which the accused were armed is mentioned i.e. pistol, however, in the inquest report Ex.PW.2/4 the type of weapon is mentioned simply as firearm without specification of the specific type of firearm. Similarly, columns No.1 and 2 of the inquest report have been left blank in column No.3 no time is mentioned.

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Criminal Trial Court,
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17. All these facts taken together cast considerable doubts over the mode, manner as well as time of lodging of report which was ultimately incorporated in the FIR. The benefit of any doubt in lodging of report/FIR must invariably be extended to the accused as has been held time and again by the Superior Courts in various case laws, in this respect wisdom has been derived from case laws reported as *2008 PLD Supreme Court 349*, *2011 SCMR Page 45*, *2016 MLD 1*, *2004 SCMR 1185* wherein the Superior Courts have held that the FIR being a corner stone of the prosecution case to establish the guilt of the accused has a very significant role to play and any doubt in lodging of FIR gives rise to a benefit in favour of the accused. The said doubts also lead to an inference that the FIR was lodged after deliberation, consultation and preliminary investigation.

18. It was none else but the complainant himself who made doubtful the report lodged by him as in his report the complainant is initially shown to have mentioned the name of one Shahab s/o Shakeel as one of the accused, later on, the name of said Shahab was substituted with accused facing trial Talib Jan s/o Gul Chaman. In his examination in chief the complainant/PW.17 stated that he had incorrectly mentioned the name of accused Talib Jan as Shahab and later on came to know that in fact the name of said accused was Talib Jan and not Shahab. In this respect, the complainant has failed to explain as to how he came to know that the actual name of the accused whom he had charged was Talib Jan and not Shahab, in this respect, statement of the I.O/PW.20 is relevant as he stated during cross-examination that the complainant had moved an application dated 06.08.2019 to the SP Investigation which was marked to him wherein the complainant had stated that the accused were known to him by face, however, as the complainant party was not having any relation with the accused since long, therefore, he had charged Shahab instead of the accused Talib Jan in the FIR as the accused Talib Jan was known to the complainant by face but his name was not

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known to him. Relevant portion of the cross-examination of the I.O is hereby reproduced as under;

"It is correct that the complainant had submitted an application to the SP Investigation, Kohat dated 06.08.2019, copy of which is available on file which was marked to me by the SP Investigation for necessary legal action. It is correct that in the said application the complainant had stated that the accused were known to him by face, however, as the complainant party was not having any relation with the accused since long, therefore, he had charged Shahab instead of the accused Talib Jan in the FIR as accused Talib Jan was known to the complainant by face but his name was not known to him"

19. In this respect, the statement of complainant PW.17 during cross-examination is noteworthy as he stated that he had actually named accused Talib Jan at the time of lodging of report but the police changed it later on, relevant portion of his cross-examination is hereby reproduced:

"Witness volunteered that I had told the police about the actual name of the accused as Talib Jan at the time of lodging of report but the police changed it later on."

Said statement of the complainant is nothing but a dishonest improvement which casts aspersions over his testimony and credibility.

20. The entire evidence is absolutely silent about the mode and manner in which the dead body of the deceased was shifted from the spot to the hospital as neither the complainant nor the injured eyewitness nor PW.19 who besides being verifier of the report shifted the complainant and injured from the spot to the hospital have uttered anything about it. The I.O/PW.20 also stated during cross-examination that he did not ascertain as to how and who shifted the deceased from the spot to the hospital.

MAJ. GEN. (R) (Retd.)
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21. The complainant party at the time of occurrence was allegedly travelling on a motorcycle, as per the I.O the said motorcycle was produced to him by Hakeem Khan ASI/PW.2 which he/I.O took into possession vide recovery memo Ex.PW.5/1, however, PW.2 Hakeem Khan ASI who also recorded the report of the complainant has not uttered even a word about taking into possession the said motorcycle nor he (PW.2) has prepared any recovery memo regarding taking into possession said motorcycle. Though, the complainant stated during cross-examination that their motorcycle was damaged due to firing, however, in the recovery memo Ex.PW.5/1 there is no mentioning of the motorcycle was in damaged condition. Even though, the deceased as well as the two injured sustained firearm injuries while riding the said motorcycle no blood marks are shown observed on the said motorcycle as per the recovery memo Ex.PW.5/1.

22. The medico-legal evidence in the form of post mortem report Ex.PM of the deceased and the MLCs of injured and complainant do not corroborate rather contradicts the site plan as according to the site plan Ex.PB prepared by the I.O at his own observation (to which additions were made later, on the pointation of complainant). The blood is shown at points No. A, B, the complainant party is shown traveling from West towards East and the crime empties were shown recovered from points No. C, D, E and a spare magazine having 04 live rounds of .30 bore is shown recovered from point No. F, points No. C, D, E, R towards the North of points No. A, B while point No. F is towards the West of point No. E. hence, additions in the site plan were later on made on the pointation of the complainant and the presence of complainant party while driving motorcycle towards their house is shown at the same spots from where blood was recovered, presence of the accused Basheer, Said Umar who are attributed the role of firing is shown at point No. H which is in front of the motorcycle of the complainant party slightly towards their left side. presence of accused Basheer also attributed the role of firing is shown at

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Point No. 5 towards their left side towards front and presence of accused Said Umar is shown at Point No. 5 towards the left of the complainant party, thus, as per the site plan the complainant party was fired at predominantly from their left side which is further affirmed from the statement of the complainant/PW.17 who stated during cross-examination that their motorcycle was damaged on the left side due to firing. As per the post mortem report Ex.PM the deceased who as per the ocular account was driving the motorcycle sustained 03 entry wounds first of which is at right auditory meatus (at the skull near the right ear) having corresponding exit wound on the left auditory meatus (at the skull near the left ear), the second entry wound was sustained by him on right lower chest having no exit wound as the bullet was retrieved while the third entry wound was on the right upper hip having corresponding exit wound on the right lateral aspect of thigh meaning that the deceased who was then driving the motorcycle was fired at from the right side whereas no accused is shown towards the right side of the complainant party. The MLC Ex.PW.10/2 of the complainant shows firearm injuries on both hands and sides of cheeks without elaboration as to whether the same were exit or entry wounds, similarly, he sustained another injury at the back of neck, similarly, as per MLC Ex.PW.10/1 the injured Waheed Ullah sustained 03 "penetrating" bullet injuries on upper front of abdomen, 02 on lower back of chest, 02 grazing wounds on left shoulder and 01 at the vertex of head.

22. Even though, in the instant case the ocular account has been furnished by two injured witnesses including the complainant, however, there is plethora of case law that mere stamp of injury on the person of a witness though may confirm his presence at the spot of occurrence but the same is not conclusive proof of the credibility of such witness, reference in this respect is made to dicta of Apex Supreme Court reported vide 2011 5 SCMR 323 and 2007 SCMR 670.

23. It is cardinal principle of administration of criminal justice that a single meaningful doubt is enough to warrant the acquittal of

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accused, in the instant case, the guilt of accused facing trial could not be established beyond shadow of reasonable doubt.

25. Thus, the guilt of accused facing trial Wakeel Khan, Said Umar, Muhammad Masood, Basheer, Muhammad Hussain, Talib Jan and Gul Azam have not been proved beyond reasonable doubt and they are entitled to be acquitted by extending them benefit of doubt, hence, they are hereby acquitted. Accused Wakeel Khan, Said Umar, Muhammad Masood and Basheer are in custody, they be set free if not required in any other case while accused Muhammad Hussain, Talib Jan and Gul Azam are on bail, their sureties are discharged from the liability of bail bonds.

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26. Case property be kept intact till the expiry of period of appeal/revision and thereafter be disposed of accordingly.

27. File be consigned to the Sessions record room after its necessary completion and compilation.

Pronounced in open Court and given under my hand and the seal of the Court on this 28th day of September, 2022.

Amer Ali

AMER ALI
Judge Model Criminal Trial
Court/ASJ-II, Kohat

CERTIFICATE

Certified that this judgment of mine consisting of 22 pages, each of which has been read, signed and corrected by me wherever necessary.

Amer Ali

AMER ALI
Judge Model Criminal Trial
Court/ASJ-II, Kohat

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BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER

PAKHTUNKHWA PESHAWAR

SERVICE APPEAL No.2311/2023


Gul Azam

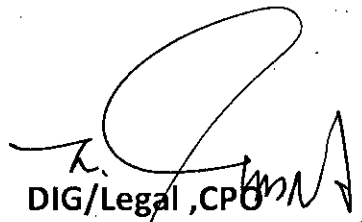
VERSUS


1. Government of Khyber Pakhtunkhwa Through secretary Home & Tribal Affairs, Civil Secretarial, Peshawar.
2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. The Regional Police Officer, Kohat Region Kohat.
4. The District Police Officer, District Orakzai, Orakzai Head quarter, Hangu.


AUTHORITY LETTER

I, Sikandar Hassan (DSP Legal) District Orakzai, as hereby authorized to file the para wise comments and any other registered documents in the Honorable Tribunal on behalf of respondents/defendant and pursue the appeal as well.


District Police Officer
Orakzai
Respondent No.4
(SALAH UDDIN KUNDI)
Incumbent


DIG/Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No.2
(DR. MUHAMMAD AKHTAR ABBAS)
Incumbent


Regional Police Officer,
Kohat
Respondent No.3
(SHER AKBAR PSP, ST
Incumbent


Additional chief secretary
Home & TA's Department
Government of Khyber Pakhtunkhwa
Respondent No.1
(ABID MAJEED)
Incumbent
Additional Chief Secretary
Home & T.As Department
Khyber Pakhtunkhwa.