


# FORM OF ORDER SHEET

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

**Appeal No.** 595/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	25/04/2024	<p>The appeal of Mr. Irad Ali presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 26.04.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman</p>  <p><b>REGISTRAR</b></p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: 1 Rad AG VS Government GT

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

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

Name:- نور محمد علی  
 Signature:- [Signature]  
 Dated:- [Date]

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

SERVICE APPEAL No 595 / 2024

MR. IRAD ALI

V/S

POLICE DEPTT:

**INDEX**

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal with affidavit	.....	1-5
2.	Copy of the FIR and judgment dated 10/06/2023	A&B	6-21
3.	Copy of the impugned order dated 15/12/2023	C	22
4.	Copies of the Departmental Appeal and Appellate Order 01/04/2024	D&E	23-26
5.	Vakalat Nama	.....	27

APPELLANT

THROUGH:

  
NOOR MUHAMMAD KHATTAK  
ADVOCATE SUPREME COURT

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

SERVICE APPEAL NO 595 / 2024

Mr. Irad Ali, Ex- Assistant Sub Inspector,  
Mardan Police.

..... APPELLANT

**VERSUS**

- 1- The Deputy Inspector General of Police, Mardan Region.
- 2- District Police Officer (DPO), Mardan.

..... RESPONDENTS

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 15/12/2023 VIDE LETTER NO 10466-72/PA DATED 18/12/2023, WHEREBY major PENALTY OF REDUCTION TO A LOWER STAGE WAS IMPOSED UPON THE APPELLANT AND AGAINST THE IMPUGNED APPELLATE ORDER DATED 01/04/2024 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.**

**PRAYER:**

That on acceptance of this appeal the impugned order dated 15/12/2023 vide letter dated 18/12/2023 and appellate order dated 01/04/2024 may very kindly be set aside and the appellant may kindly be restored on his original pay scale/ stage with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant with all back benefits.

**R/SHEWETH:**

**ON FACTS:**

**Brief facts giving rise to the present appeal are as under:**

1. That the appellant has performed his duties to the entire satisfaction of his superiors and there is no complaint against the appellant in his entire service career.

2. That the appellant has served the Police Department to the entire satisfaction of his superiors and has got huge service career spanning over 27 years.
3. That the allegations were levelled by the learned Model Court Mardan against the present appellant that one sided investigation was conducted by the appellant while conducting investigation in FIR No 279, dated 21/05/2018 u/s 302/34 PPC, P.S Toru, Mardan through judgment dated 10/06/2023. Copy of the FIR and judgment dated 10/06/2023 are attached as annexure.....**A&B**
4. That vide judgment dated 10/06/2023 the learned Model Court while acquitting the accused facing trial, the matter of investigation against the accused, which was supposed by the learned Model Court as one sided and the department was directed to initiate inquiry against the appellant.
5. That the respondent vide impugned order dated 15/12/2023 vide letter dated 18/12/2023 has surprisingly imposed penalty of reduction to a lower stage upon the appellant. Copy of the impugned order dated 15/12/2023 is attached as Annexure.....**C**
6. That appellant feeling aggrieved from the impugned order dated 15/12/2023 vide letter dated 18/12/2023 preferred departmental appeal before the respondents department which has been rejected through appellate order 01/04/2024 on no good grounds. Copies of the Departmental Appeal and Appellate Order 01/04/2024 are attached as annexure.....**D&E**
7. That appellant having no other efficacious remedy but to file the instant appeal on the following grounds amongst the others.

**GROUND:**

- A- That the impugned order dated 15/12/2023 vide letter dated 18/12/2023 and impugned appellate order dated 01/04/2024 issued by the respondents are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated in accordance with law and rules by the respondent department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the appellant has followed all the codal formalities of the criminal jurisprudence while conducting the investigation. The appellant prepared the site plan on the pointation of the

complainant, took blood stained earth and also blood stained clothes, prepared recovery memo, recovered the Dagger on the pointation of the accused, accused also made confession before the appellant during investigation.

- D- That it was the case of the private party/Complainant who has lodged the FIR before the other police officer, and after that investigation was handed over to the appellant, so the stance of the complainant party was already been scribed in FIR 279, dated 21/05/2018.
- E- That it is pertinent to mention here that, the court/MCTC Mardan in Judgment dated: 10.06.2023 has admitted the fact that case of the complainant was two Version, and on this point the learned additional Session Judge MCTC Mardan has acquitted the accused. So in such like circumstance action against the appellant is totally wrong because it is mandate of the criminal jurisprudence that benefit of doubt shall be extend to the accused. When the Learned Court/MCTC Mardan in Judgment dated 10/06/2023 admitted the weak of the case on the part of the complainant then observation in the judgment dated 10/06/2023 regarding defective investigation is untenable in the eyes of law and on this score alone the impugned order is liable to be set aside.
- F- That the learned Additional Session Judge MCTC Mardan, while rendering its judgment dated: 10/06/2023, regarding the non-placing on file the injury sheet and medico-legal reports of the accused, has admitted the fact in Para No 08 of the judgment that the marginal witnesses have concealed the true facts of the occurrence and also given its finding that the marginal witnesses have not stated even a single word regarding the serious head injury of the accused, so giving observation and impugned order against the appellant in such like circumstances are wrong, illegal and liable to be set aside.
- G- That the learned Additional Session Judge MCTC Mardan, while rendering its judgment dated 10/06/2023, in Para No 11 has admitted the fact that there is strong contradiction in the case of the complainant in ocular and medical evidence. When such contradiction was pointed out by the court then there was no option but to acquit the accused from the false charges, so there was no illegality and irregularity on the part of the appellant, therefore the impugned order be declared illegal and the appellant may kindly be re-instated into service with all back benefits.
- H- That there was no complaint against the appellant by the complaint of the case before the court or the high ups, it means

that the appellant has tried his best and followed all the legal requirements while conduction investigation of the case. It is pertinent to mention here that a right of transfer the investigation from the one Investigation officer to the other U/S 22-A Cr.P.C, 1898 was available to the complainant of the case/FIR but he did not opt to do so, which means that the investigation of the appellant was lawful.

- I- That neither charge sheet nor statement of allegations has been served on the appellant before issuance of the impugned order dated 15/12/2023 vide letter dated 18/12/2023.
- J- That no regular inquiry has been conducted in to the matter and it is necessary to do so that to dig out the real facts.
- K- That no chance of personal hearing and defense has been provided to the appellant before imposing the penalty.
- L- That the That the impugned order dated 15/12/2023 vide letter dated 18/12/2023 and impugned appellate order dated 01/04/2024 issued by the respondents in arbitrary and mala fide manner, therefore, the same is not tenable in the eye of law and liable to be struck down.
- M- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 15-04-2024

  
APPELLANT

THROUGH:

  
NOOR MUHAMMAD KHATTAK  
ADVOCATE SUPREME COURT

  
UMAR FAROOQ MOHMAND

  
WALEED ADNAN

  
MAHMOOD JAN

  
KHANZAD GUL  
ADVOCATES HIGH COURT

CERTIFICATE:

No such like appeal is pending or filed between the parties on the subject matter before this Honorable Tribunal.

  
Advocate

**AFFIDAVIT**

I, Mr. Irad Ali, Ex- Assistant Sub Inspector, Mardan Police, do hereby solemnly affirm and declare on oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.

  
**DEPONENT**



"A"  
 ابتدائی اطلاع رپورٹ - 6 -

جیہا انویسٹمنٹ 101-1324748-3

ابتدائی اطلاع نسبت قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۳ مجموعہ ضابطہ نو جداری

قلم نمبر	طوریہ	موضوع	معدان
279	۲۱	۱۵	۱۵
۱	تاریخ وقت رپورٹ	۱۵	۱۵
۲	نام و کنونت اطلاع دہندہ مستفیض	۱۵	۱۵
۳	مقام کیفیت جرم (معدودہ) حال اگر کچھ لیا گیا ہو۔	۱۵	۱۵
۴	جا پانے والا قلم نمبر سے اور دست	۱۵	۱۵
۵	نام و کنونت ملزم	۱۵	۱۵
۶	کارروائی جو تحقیق کے متعلق کسی اور اطلاع درج کرنے میں ترقی ہو اور وہ تو چھ بیان کرے	۱۵	۱۵
۷	قلم نمبر سے روائی کی تاریخ وقت	۱۵	۱۵

**ابتدائی اطلاع نیچے درج کرو۔** نوعیت محدود ایک تحریری مراسلہ  
 مہتاب شاہ رحمان سان ۱۵ سے دوست (مستحق) ۱۳۳۶ مورسول سو کو روخ دیں پیر مدت ۳۰۵۵ صاف ۳۰۵۵  
 طوریہ حسب اطلاع اور وہ ان مورسول کے تحت خاصہ وقت پر بلان آکر سی ایمر ایف ای ولور عبدالولی تور اسعار ۱۵/۱۵  
 سالہ سالن شہید آباد طور و جب نمٹن پسو خود یاد دہلی ۲۲/۲۲ سال پیش کر کے اتوار دلی استوار آئی وقت  
 برور مدت کر کے آئے اسرار و پیر شہداء اسمان بہتیم وقت والا قدر خود میں اور پورے کم خود کی  
 آوار میں کدیم دونوں یا پورا کدیم کیا کہ سیوام پر سیوان ہالوں پھانویب سکون پیران کدیم جان ساکنوں  
 وہ آئے خود یوں سے کڈارات خود وقت کا کڈارات سے سیوام یاد دہلی تک کو موقع پر وہاں میں پورا  
 ساکن سے کم پیر آ اور وہاں سے وہاں کدیم میں تل پھانویب وقت پر اسٹیڈ بلاو ۵۵ رو ۱۵ میں  
 خسر بہتیم کا خود یاد دہلی سے پیران یاد دہلی سے تل پھانویب وقت پر اسٹیڈ بلاو ۵۵ رو ۱۵ میں  
 بلا وہ پیران خود یاد دہلی سے پیران یاد دہلی سے تل پھانویب وقت پر اسٹیڈ بلاو ۵۵ رو ۱۵ میں  
 وقت ۱۵/۱۵ یا پورا کدیم شہداء اسمان بہتیم وقت والا قدر خود میں اور پورے کم خود کی  
 کو کے پیران بہتیم خود اور پیران کدیم سے نہ پیران کدیم وقت کو تقبل کر کے کڈارات خود کدیم  
 مورسول پورٹ سے کڈارات خود سے ڈاکٹور و پیران کدیم وقت کو تقبل کر کے کڈارات خود کدیم  
 مورسول پورٹ سے کڈارات خود سے ڈاکٹور و پیران کدیم وقت کو تقبل کر کے کڈارات خود کدیم  
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 مورسول پورٹ سے کڈارات خود سے ڈاکٹور و پیران کدیم وقت کو تقبل کر کے کڈارات خود کدیم

نمبر ۱۵-۱۵  
 ۱۵-۱۵  
 ۱۵-۱۵

"B" -7-

IN THE COURT OF SYED SHAUKAT ULLAH SHAH  
ADDL. SESSIONS JUDGE/JUDGE MCTC MARDAN.

Case No. 11/7 of 23.05.2022

Date of Original Institution.....02.04.2019  
Date of transfer to this Court.....23.05.2022  
Date of Decision.....10.06.2022

The State  
Through

Mukhtar Ali s/o Abdul Wali r/o Jamshed Abad Toru, Tehsil & District  
Mardan.....(Complainant)

Vs

1. Khalid aged about 44/45 years &
  2. Jehanzeb aged about 36/37 years sons of Karam Khan residents of  
Jamshed Abad, Toru, Tehsil & District Mardan.
- (Accused facing trial)

Charged in case FIR No. 279 Dated 21.05.2018  
U/sections 302/34 PPC of P.S Toru, Mardan.

JUDGEMENT

Facts of the case as per FIR are that on 21.05.2018,  
Shah Rasool Khan Si during patrolling duty received information about  
the occurrence and reached the place of occurrence i.e. vacant ground  
(*dhaga maidan*) near the house of complainant situated at Jamshed Abad  
Toru, where the complainant Mukhtar Ali s/o Abdul Wali at about 13:45  
hours produced to him the dead body of his son Nadir Ali and reported  
the matter to the effect that on the same day at about 13:15 hours he  
alongwith his wife Shash Begum were present in his house and they  
came out of the house on hearing noise. They saw that accused facing  
trial Khalid and Jehanzeb inflicted blows with daggers on his son Nadir  
Ali due to which his son died on the spot. Motive for the occurrence was  
previous quarrel which took place between his son and the accused

**IN THE COURT OF SYED SHAUKAT ULLAH SHAH**  
**ADDITIONAL SESSIONS JUDGE/JUDGE MCTC, MARDAN**

Case No. 11/7 of 23.05.2012

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Date of Original Institution.....02/04/2019  
 Date of transfer to this court.....23/05/2022  
 Dated of decision.....10/06/2023

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The State  
 Through  
 Iftikhar Ali S/o Abdul Wali R/o Jamshed Abad, Toru, Tehsil &  
 District Mardan.....(Complainant)

VS

1. Khalid aged sous 44/45 yours &
2. Jehnzeb aged about 36/37 per sons of Karam Khan residents  
 of Jamshed Abad, Toru, Tehsil di District Mardan.  
 (Accused facing trial)

---

Charged in case FIR No. 279 Dated 21.05.2018  
 u/sections 302/34 PPC of PS Toru, Mardan.

**JUDGMENT**

Facts of the case as per FIR, are that on 21/05/2018, Shah Rasool Khan SI during patrolling duty received information about the occurrence and reached the place of occurrence i.e. vacant ground (daga Maidan) near the house of complainant situated at Jamshed Abad Toru, where the complainant Iftikhar Ali s/o Abdul Wali at about 13:45 hours produced to the dead body of his son Nadir Ali and reported the matter to the effect that on the same day at about 13:15 hours he alongwith his wife Shash Begum were present in his house and they came out of the house on hearing noise. They saw that accused facing trial Khalid and Jehanzeb inflicted blows with daggers on his Nadir Ali due to which his son died on the spot. Motive for the occurrence was prevents quarrel which took place between his son and the accused

facing trial some days prior to the occurrence. The occurrence beside him was witnessed by his wife Shash Begum. Report of the complainant was recorded in the shape of murasila Ex PA/1 on the basis of which the above noted case FIR was registered.

2. After arrest of the accused and completion of investigation, challan was submitted against the accused. Accused facing trial were in custody and were summoned from jail. On production of accused before the Court, provisions of section u/s 265-C Cr.P.C were complied with. Charge was framed against the accused u/sections 302/34 PPC on 12.04.2019 to which they pleaded not guilty and claimed trial. The Prosecution in order to prove its case against the accused produced eight (08) witnesses which are discussed as follows:-

Shah Rasool Khan SI, was examined as PW-01. He had drafted the report of the complainant Iftikhar Ali regarding the occurrence in the shape of murasila and also prepared the injury sheet and inquest report of the deceased available on file as Ex PW-1/1 and ExPW-1/2. Thereafter he sent the murasila to the PS through Constable Inaam HC No.1357 and referred the dead body for PM examination under the escort of Constable Tanweer FC No.990. On the same day, he arrested accused Jehanzeb and Khalid and issued their card of arrest Ex PW-1/3 and Ex PW-1/4. He also prepared the injury sheet of accused Jehanzeb and recorded report of the accused Khalid regarding his injury and injuries received by accused Jehanzeb in the shape of *roznamcha* dated 21.05.2018 which is available on file as Ex PW-1/5.



facing trial some days prior to the occurrence. The occurrence beside him was witnessed by his wife Shash Begum. Report of the complainant was recorded in the shape of Murasila Ex PA/1 on the basis of which the above noted case FIR was registered.

2. After arrest of the accused and completion of investigation, Challan was submitted against the accused. Accused facing trial were in custody and were summoned from jail. On production of accused before the Court, provisions of section u/s 265-C Cr.P.C were complied with. Charge was framed against the accused u/sections 302/34 PPC on 12.04.2019 to which they pleaded not guilty and claimed trial. The Prosecution in order to prove its case against the accused produced eight (08) witnesses which are discussed as follows:-

**Shah Rasool Khan SI**, was examined as PW-01. He had drafted the report of the complainant Iflikhar Ali regarding the occurrence in the shape of Murasila and also prepared the injury sheet and inquest report of the deceased available on file as Ex PW-1/1 and Ex. PW-1/2. Thereafter he sent the Murasila to the PS through Constable Inaam HC No 1357 and referred the dead body for PM examination under the escort of Constable Tanweer FC No 990. On the same day, he arrested accused Jehanzeb and Khalid and issued their card of arrest Ex PW-1/3 and Ex PW-1/4. He also prepared the injury sheet of accused Jehanzeb and recorded report of the accused Khalid regarding his injury and injuries received by accused Jehanzeb in the shape of Roznomcha ha dated 21.05.2018 which is available on file as Ex PW-1/5.

Ghulam Arshad Constable No.3467, was produced as PW-02. He stated that during the days of occurrence he was posted at PS Toru. He is marginal witness to the recovery memo Ex PW-2/1 vide which the IO took into possession one page of report sent by Shah Rasool Khan from the place of occurrence. In this respect the recovery memo was prepared in his presence and he as well as the other co-marginal witness Javed Khan IHC signed the same. In this respect the IO also recorded his statement u/s 161 Cr.P.C.

Dr. Qazi Ali Mohay-ud-Din (retired), was produced as PW-03. On 21.05.2018, he conducted autopsy on the dead body of deceased Nadir Ali aged about 23/24 years s/o Iftikhar Ali r/o Sokay Toru, District Mardan and prepared post mortem report of the deceased Ex PM as well as endorsed the injury sheet of deceased Iftikhar Ali as Ex PM/1.

Qamar Zaman SI, was examined as PW-04. He on receipt of murasila from Shah Rasool SI through Constable Inam HC No.1357, incorporated its contents into FIR Ex PA.

Iftikhar Ali s/o Abdul Wali, who is complainant of the case was examined as PW-05. He stated that the deceased Nadir Ali was his real son, was residing with him. On the fateful day at relevant time, he and his wife Mst. Shash Begum were in their house. Meantime, on hearing of hue and cry they both came out of the house and saw that accused facing trial Khalid and Jehanzeb sons of Karam Khan were stabbing his son Nadir Ali with knives (کمانچہ) due to which his son sustained grievous injuries and died on the spot. Motive for the

**Ghulam Arshad Constable No 3467**, was produced as PW-02. He stated that during the days of occurrence he was posted at PS Toru. He is marginal witness to the recovery memo Ex PW-2/1 vide 2 which the IC took into possession one page of report sent by Shah Rasool Khan from the place of occurrence. In this respect the recovery memo was prepared in his presence and he as well as the other co-marginal witness Javed Khan IHC signed the same. In this respect the IC also recorded his statement u/s 161 Cr.P.C.

**Dr. Qazi Ali Mohay-ud-Din (retired)**, was produced as PW-03. On 21.05.2018, he conducted autopsy on the dead body of deceased Nadir Ali aged about 23/24 years s/o Iftikhar Ali r/o Sokay Toru, District Mardan and prepared post mortem report of the deceased Ex PM as well as endorsed the injury sheet of deceased Iftikhar Ali as Ex PM/1.

**Qamar Zaman SI**, was examined as PW-04. He on receipt of Murasila from Shah Rasool SI through Constable Inam HC No 1357, incorporated its contents into FIR Ex PA.

**Iftikhar Ali** s/o Abdul Wali, who is complainant of the case was examined as PW-05. He stated that the deceased Nadir Ali was his real son, was residing with him. On the fateful day at relevant time, he and his wife Mst: Shash Begum were in their house. Meantime, on hearing of hue and cry they both came out of the house and saw that accused facing trial Khalid and Jehanzeb sons Karam Khan were stabbing his son Nadir Ali with knives due to which his son sustained grievous injuries and died on the spot. Motive for the



occurrence was that a quarrel took place between his son and accused facing trial some days prior to the occurrence. The occurrence was seen by his wife Mst. Shash Begum. He made the report regarding the occurrence before the police on spot, which correctly bears his thumb impression as well the thumb impression of Taj Muhammad as endorser. The dead body of deceased Nadir Ali was shifted to Casualty MMC Hospital Mardan in a private Datsun. He charged accused facing trial for the commission of offence. On his pointation, the IO prepared site plan.

Mst. Shash Begum w/o Iftikhar Ali, recorded her statement as PW-06. She stated that the deceased Nadir Ali was her real son, was residing with her. On the fateful day at relevant time, she and her husband Iftikhar Ali were in their house. Meantime, on hearing of hue and cry they both came out of the house and saw that accused facing trial Khalid and Jehanzeb sons of Karam Khan were stabbing her son Nadir Ali with knives (ساز) due to which her son sustained grievous injuries and died on the spot. Motive for the occurrence was that a quarrel took place between her son and accused facing trial some days prior to the occurrence. Her husband made the report on spot before the local police. The IO recorded her statement u/Section 161 Cr.P.C as eye witness of the occurrence. The dead body of deceased Nadir Ali was shifted to Casualty MMC Hospital Mardan in a private Datsun. She charged accused facing trial for the commission of offence.

Irada Ali SI, who investigated the case was examined as PW-07. He stated that during the days of occurrence, he was posted at PS Turo, Mardan. After registration of FIR the case was entrusted to him

occurrence was that a quarrel took place between his son and accused facing trial some days prior to the occurrence. The occurrence was seen by his wife Mst: Shash Begum. He made the report regarding the occurrence before the police on spot, which correctly bears his thumb impression as well the thumb impression of Taj Muhammad as endorser. The dead body of deceased Nadir All was shifted to Casualty MMC Hospital Mardan In a private Datsun. He charged accused facing trial for the commission of offence. On his pointation, the IO prepared site plan.

**Mst. Shash Begum** w/o Iftikhar All, recorded her statement as PW-06. She stated that the deceased Nadir Ali was her real son, was residing with her. On the fateful day at relevant time, she and her husband Iftikhar All were in their house. Meantime, on hearing of hue and cry they both came out of the house and saw that accused facing trial Khalid and Jehanzeb sons of Karam Khan were stabbing her son Nadir Ali with knives due to which her son sustained grievous injuries and died on the spot. Motive for the occurrence was that a quarrel took place between her son and accused facing trial some days prior to the occurrence. Her husband made the report on spot before the local police. The IO recorded her statement w/Section 161 Cr.P.C as eye witness of the occurrence. The dead body of deceased Nadir All was shifted to Casualty MMC Hospital Marian in a private Datsun. She charged accused facing trial for the commission of offence.

**Irad Ali SI**, who investigated the case was examined as PW-07. He stated that during the days of occurrence, he was posted at PS Turo, Marilan. After registration of FIR the case was entrusted to him

for investigation. He proceeded to the spot and prepared site plan ExPB on the pointation of complainant. During spot inspection, he took into possession blood stained earth from the place of deceased through recovery memo ExPW-7/1 and sealed the same into parcel No.01. Vide recovery memo ExPW-7/2; he took into possession blood stained clothes of deceased consisting of Qameez, Shalwar cream colour and a white colour Danyan sent by the doctor from MMC Hospital through Constable Tanveer No.990 and sealed the same into parcel No.02 ExP-1. Both accused were arrested by Shah Rasool SI. Accused Khalid was handed over to him for investigation whereas co-accused Jahanzeb was admitted in injured condition in the hospital. He vide application ExPW-7/3 applied the Court for obtaining physical custody of accused Khalid as well as for issuance of jail warrant of accused Jehanzeb till his recovery. The said application was allowed by the Court and one day custody of accused Khalid was granted. During interrogation accused Khalid led the police party to the crime spot and made pointation of various places having relevancy to the occurrence in presence of marginal witnesses. In this regard pointation memo is available on file as ExPW-7/4. During the said pointation proceedings the weapon of offence i.e. blood stained dagger (چھری) was recovered on the pointation of accused Khalid from the Kitchen of house of accused which was taken into possession vide recovery memo ExPW-7/5 and sealed the same into parcel No.03 Ex P-2. All the parcels were prepared in presence of marginal witnesses and were duly affixed with 3x3 seals of "IR" while put one sample seal inside each parcels. During interrogation accused Khalid confessed his guilt

for investigation. He proceeded to the spot and prepared site plan Ex. PB on the pointation of complainant. During spot inspection, he took into possession blood stained earth from the place of deceased through recovery memo Ex. PW-7/1 and sealed the same into parcel No 01. Vide recovery memo Ex. PW-7/2, he took into possession blood stained clothes of deceased consisting of Qumeez, Shalwar cream colour and a white colour Banyan sent by the doctor from MMC Hospital through Constable Tanveer No .990 and sealed the same into parcel No 02 Exp-1. Both accused were arrested by Shah Rasool St Accused Khalid was handed over to him for investigation whereas co-accused Jehanzeb was admitted in injured condition in the hospital. He vide application Ex. PW-7/3 applied the Court for obtaining physical custody of accused Khalid as well as for issuance of jail warrant of accused Jehanzeb till his recovery. The said application was allowed by the Court and one day custody of accused Khalid was granted. During interrogation accused Khalid led the police party to the crime spot and made pointation of various places having relevancy to the occurrence in presence of marginal witnesses. In this regard pointation memo is available on file as Ex. PW-7/4. During the said pointation proceedings the weapon of offence i.e. blood stained dagger was recovered on the pointation of accused Khalid from the Kitchen of house of accused which was taken into possession vide recovery memo Ex. PW-7/5 and sealed the same into parcel No 03 Ex P. 2.

2. All the parcels were prepared in presence of marginal witnesses and were duly affixed with 3x3 seals of "IR" while put one sample seal inside each parcels. During interrogations, accused Khalid confessed his guilt

before him, therefore, he vide application Ex PW-7/5-A produced accused Khalid before the concerned learned Magistrate for recording confessional statement of accused however, accused Khalid refused to record his confessional statement as such he was committed to judicial lock-up. He took into possession the photocopy of report ExpW-5/1 made by accused Khalid to Shah Rasul SI for entry in DD through recovery memo which is ExpW-2/1. Vide application ExpW-7/6, he dispatched parcel No.01 containing blood stained earth and parcel No.02 containing blood stained clothes of deceased and vide application ExpW-7/7, he dispatched parcel No.03 containing blood stained dagger to the Department of Forensic Medicine Bacha Khan Medical College Mardan and the result thereof is available on file as Ex PZ which is received in positive. He also brought on record injury sheet and inquest report of the deceased. He vide application ExpW-7/9 applied the Court for issuing Zamima Bay against accused Jehanzeb which was allowed. He vide application Ex PW-7/10 applied the Court for police custody of accused Jehanzeb which was allowed and one day custody of accused Jehanzeb was granted. During interrogation accused Jehanzeb led the police party to the crime spot and made pointation of various places having relevancy to the occurrence in presence of marginal witnesses. In this regard pointation memo is available on file as ExpW-7/11. During interrogation accused Jehanzeb confessed his guilt before him, therefore, he vide application Ex PW-7/12 produced accused Jehanzeb before the concerned Magistrate for recording confessional statement of accused however, accused Jehanzeb refused to record his confessional statement

before him, "therefore, he vide application Ex PW-7/5-A produced accused Khalid before the concerned learned Magistrate for recording confessional statement of accused however, accused Khalid refused to record his confessional statement as such he was committed to judicial lock-up. He took into possession the photocopy of report Ex. PW-5/1 made by accused Khalid to Shah Rasul SI for entry in DD through recovery memo which is Ex. PW-2/1. Vide application Ex. PW-7/6, he dispatched parcel No 01 containing blood stained earth and parcel No 02 containing blood stained clothes of deceased and vide application Ex. PW-7/7, he dispatched parcel No 03 containing blood stained dagger to the Department of Forensic Medicine Bacha Khan Medical College Mardan and the result thereof is available on file as Ex. PZ which is received in positive. He also brought on record injury sheet and inquest report of the deceased. He vide application Ex. PW-7/9 applied the Court for issuing Zamima Bay against accused Jehanzeb which was allowed. He vide application Ex PW-7/10 applied the Court for police custody of accused Jehanzeb which was allowed and one day custody of accused Jehanzeb was granted. During interrogation accused Jehanzeb led the police party to the crime spot and made pointation of various places having relevancy to the occurrence in presence of marginal witnesses. In this regard pointation memo is available on file as Ex. PW-7/11. During interrogation accused Jehanzeb confessed his guilt before him, therefore, he vide application Ex PW-7/12 produced accused Jehanzeb before the concerned Magistrate for recording confessional statement of accused however, accused Jehanzeb refused to record his confessional statement

as such he was committed to judicial lock-up. He placed on file the list of legal heirs of deceased which is ExpPW-7/13. He recorded the statements of PWs u/Section 161 Cr.P.C and brought on record relevant documents. After completion of investigation, he submitted case file to SHO Andaz Khan (now retired), who submitted complete challan against accused facing trial and submitted interim challan against accused Khalid before competent Court. He was well conversant with the signature of said Andaz Khan available on the interim challan as well complete challan.

Javed Khan HC, was produced as PW-08. He deposed that during the days of occurrence, he was posted at PS Turo, Mardan. He is marginal witness to the pointation memo ExpPW-7/4 vide which accused facing trial Khalid during interrogation led the police party to the crime scene and made pointation of various places having relevancy to the occurrence. He is also marginal witness to the recovery memo ExpPW-7/5 through which during the said pointation proceedings by accused Khalid, the I.O recovered and took into possession the weapon of offence i.e. blood stained dagger (سکڑ) from a carton box from the kitchen of house of accused Khalid on his pointation and sealed into parcel No.03 in his presence as well co-marginal witnesses Taj Muhammad and Inran.

Likewise, he is also marginal witness to the pointation memo Ex PW-7/11 vide which accused facing trial Jehanzeb during interrogation led the police party to the crime scene and made pointation of various places having relevancy to the occurrence. He saw the relevant memos which correctly bear his signature as well the

as such he was committed to judicial lock-up. He placed on file the list of legal heirs of deceased which is Ex. PW-7/13. He recorded the statements of PWs u/Section 161 Cr.P.C and brought on record relevant documents. After completion of investigation, he submitted case file to SHO Andaz Khan (now retired), who submitted complete Challan against accused facing trial and submitted interim Challan against accused Khalid before competent Court. He was well conversant with the signature of said Andaz Khan available on the interim Challan as well complete Challan.

**Javed Klan HC**, was produced as PW-08. He deposed that during the days of occurrence, he was posted at PS Turo, Mardan. He is marginal witness to the pointation memo Ex. PW-7/4 vide which accused facing trial Khalid during interrogation led the police party to the crime scene and made pointation of various places having relevancy to the occurrence. He is also marginal witness the recovery memo Ex. PW-7/5 through which during he said pointation proceedings by accused Khalid, the I.O recovered and took into possession the weapon of offence i.e. blood stained dagger from a carton box from the kitchen of house of ac, used Khalid on his pointation and sealed into parcel No 03 in his presence as well co-marginal witnesses Taj Muhammad and Imran.

Likewise, he is also marginal witness to the pointation memo Ex. PW-7/11 vide which accused facing trial Jehanzeb ring interrogation led the police party to the crime scene and made pointation of various places having relevancy to the occurrence. He saw the relevant memos which correctly bear his signature as well the



(1) 8 -14-  
signatures of co-marginal witnesses. The I.O recorded his statement u/Section 161 Cr.P.C in this regard.

In his presence the I.O also secured blood stained earth from the spot and blood stained garments of deceased vide recovery memos ExPW-7/1 and ExPW-7/2 which bears the signature of PW Imran as well thumb impression of co-marginal witness Taj Muhammad however, his signature was not obtained thereon rather he was present at that moment at the spot with the IO.

3. Accused facing trial were examined within the meaning of section 342-Cr.P.C. Accused denied the charge and allegations leveled against them. They claimed innocence and false implication in this case; however, they did not opt to record statements on oath or to produce evidence in defence.

4. Arguments of learned Sr.PP for the State assisted by learned private counsel for the complainant and learned counsel for the accused heard. Record perused.

5. Perusal of record reveals that there are two different version of this case. One version is given by the complainant Ifikhar Ali/PW-05 in the FIR, wherein he charged the accused for the murder of his son Nadir Ali by stabbing him in the vacant ground in front of his house. The second version of the occurrence was reported by the accused Khalid, to Shah Rasool SI/PW-04 at the time of his arrest from his house at 1400 hours on the same day of occurrence. According to the statement of Shah Rasool Khan SI/PW-01, he arrested the accused Jehanzeb and Khalid and issued their card of arrest Ex PW-1/3 and Ex

signatures of co-marginal witnesses The IO recorded his statement u/Section 161 Cr.P.C in this regard.

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9

-15-

PW-1/4 and then prepared the injury sheet of accused Jehanzeb; that he recorded the report of accused Khalid in the shape of roznamcha dated 21.05.2018 which is Ex PW-1/5. The said report Ex PW-1/5 was also taken into possession by Irad Ali SI/PW-07, IO of the case through recovery memo Ex PW-2/1.

6. According to the contents of report Ex PW-1/5, Shah Rasool SI/PW-01 after drafting report of complainant Ifikhar Ali through murasila and sending the same to Police Station, conducted raid on the house of accused, he knocked at the door of the house of accused, accused Khalid opened the door and both the accused were found in injured condition. The accused Khalid made report to the effect that on that day he alongwith his brother injured Jehanzeb had gone to Dr. Farooq Hospital and on return when they reached near the house of complainant, Nadir (deceased), Khatir sons of Ifikhar and Ifikhar (complainant) were already present there and on seeing them they started beating them with kicks and fists and Nadir (deceased) hit them with something sharp edged whereby both of them became injured. Motive as disclosed by accused Khalid was that FIR was registered against the assailants named above regarding injuries suffered by his brother Jehanzeb. As per the contents of report Ex PW-1/5, Shah Rasool SI/PW-01 prepared injury sheets of accused Jehanzeb and Khalid. He referred both the injured to MMC Hospital Mardan under the escort of Constable Tayyab No.2604 for medico-legal opinion. Report Ex PW-1/5 was sent to PS for entry in the roznamcha through constable Tanveer No.990.

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injury. He was vomiting and was having difficulty in walking, who was already referred to Mardan Medical Complex and after treatment he was then admitted in Jail Hospital Mardan on 25.05.2018. It was also mentioned that the accused was unable to attend the Court. According to the case diary dated 21.05.2018, the IO Irad Ali SIPW-07 went to MMC Hospital Mardan, where he found that accused Khalid and Jehanzeb were under treatment in the casualty of MMC Hospital Mardan. The accused Jehanzeb was found having serious injury on his head due to which he was in unconscious condition and was unable to talk and he was then referred to LRH, Peshawar for treatment under the escort of police guard. In this respect Irad Ali SIPW-07, in his cross examination stated that accused Jehanzeb was also handed over to him but he was admitted in the hospital. He further added that he himself had seen the accused Jehanzeb in injured condition who was referred to LRH Peshawar. He tried to conceal the facts mentioned in the above mentioned case diary by stating that he cannot say that whether accused Jehanzeb was conscious at that time or otherwise. The accused Jehanzeb was ultimately produced before the Court on 29.06.2018 vide application Ex PW-7/10 for police custody and one day custody was granted. Thus it is clear from the record that the accused Jehanzeb was seriously injured and he was referred to LRH Peshawar for treatment and thereafter he remain admitted in jail hospital but even then the IO Irad Ali SIPW-07 did not bother to investigate the report of accused Ex PW-1/5 and to place on record the injury sheets and medico-legal reports of the accused. This undoubtedly shows that one sided and defective investigation was conducted by the Investigating

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Officer. Material and necessary facts about the occurrence have been concealed and the same were not brought on record by the IO.

8. The complainant Itikhar Ali/PW-05 and eye witness Mst. Shash Begum/PW-06 in their statements have also suppressed and concealed the true facts of the occurrence. They have not deposed even a single word about the injuries received by the accused Khaliid and Jehanzeb during the occurrence, especially the serious head injury of accused Jehanzeb. Complainant while making report of the occurrence did not mention about the presence of his other sons on the spot at the time of occurrence. The complainant/PW-05 and his wife Mst. Shash Begum/PW-06 in their court statements also did not mention about the presence of their other sons on the place of occurrence. However during cross examination complainant stated that all the inmates of his house heard the hue and cry on which they went out from the house and saw that the accused were stabbing the deceased with knives. He further stated that he alongwith his wife and sons came out from their house. Similarly Mst. Shashi Begum/PW-06 also has deposed in her cross examination that they all heard hue and cry and all the inmates came out from the house. The site plan is silent about the presence of other sons of the complainant on the spot of occurrence at the time of occurrence. Thus it appears that the complainant and PW-06 did not mention about the presence of their sons in order to suppress the real facts of the occurrence in which the accused also received injuries. This aspect of the case creates serious doubt about the actual mode and manner of the occurrence.

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9. Report of the occurrence was made at the place of occurrence by complainant Ifikhar Ali to Shah Rasool Khan SI/PW01 who rushed to the spot on getting information. Complainant/PW-05 in his cross examination stated that he made report to the local police on the spot. As per the contents of murasila Ex PA/1, the complainant produced the dead body of his son Nadir Ali on the spot and made report of the occurrence. The occurrence took place at 13:15 hours and report was made at 13:45 hours (after 30 minutes), so the question that the dead body of deceased was lying on the spot even after 30 minutes is not believable, as nobody would like to leave the dead body of his son in the pool of blood on the ground for 30 minutes. So the very manner in which the report was made is not free from doubts.

10. As per the contents of murasila Ex PA/1, the dead body was referred to MMC Hospital for Postmortem under the escort of Constable Tanveer No.990, but interestingly the presence of said constable is also shown in the report Ex PW-1/5 which was made by the accused Khalid. The report Ex PW-1/5 was sent to PS through the said constable Tanveer No.990 for entry in the roznamcha. In the inquest report, column No.1 about the place of death or place where dead body was found is left blank. If the inquest report was prepared on the spot by scriber of report Shah Rasool SI (PW-01), then it was not possible that column No.1 which is regarding necessary and basic information about the dead body would have been left blank. In column No.3 of inquest report, the time of death is entered as 14:15 hours with different pen and different hand writing. In the postmortem Ex PM, it is mentioned that the

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10. As per the contents of Murasila Ex PA/1, the dead body was referred to MMC Hospital for Postmortem under the escort of Constable Tanveer No 990, but interestingly the presence of said Constable is also shown in the report Ex PW-1/5 which was made by the accused Khalid. The report Ex PW-1/5 was sent to PS through the said constable Tanveer No 990 for entry in the Roznomcha. In the inquest report, column No 1 about the place of death or place where dead body was found is left blank. If the inquest report was prepared on the spot by scribe of report Shah Rasool SI (PW-01), then it was not possible that column No 1 which is regarding necessary and basic information about the dead body would have been left blank. In column No 3 of inquest report, the time of death is entered as 14:15 hours with different pen and different hand writing. In the postmortem Ex PM, it is mentioned that the

dead body was brought by relatives and not by police i.e. constable Tanveer No.990. In the inquest report neither the complainant nor his wife Mst. Shash begum/PW-06 are mentioned as identifiers of the dead body. Under these circumstances, the drafting of the report by the complainant on the spot of occurrence, preparation of injury sheet and inquest report on the spot becomes doubtful.

11. According to the report of complainant and statements of the complainant/PW-05 and eye witness/PW-06, the accused are charged with allegations that as soon as the complainant and PW-06 came out of the house they saw that the accused were inflicting blows with daggers on their son Nadar Ali. However medical evidence does not support the ocular account of the occurrence as given by complainant and PW-06 as according to the postmortem report ExPM and statement of PW-03 Dr. Qazi Ali Mohay-ud-Din, the deceased suffered a single deep sharp object wound on left side thorax. No other injury was noted on the body of deceased Nadar Ali. Thus the medical evidence rather contradicts the alleged ocular account which speaks of inflicting of numerous blows of daggers by the accused upon the deceased.

12. The weapon of offence i.e. a dagger was allegedly recovered on the pointation of accused Khalid from a carton in the kitchen of the house of accused. The said recovery was made by PW-07 Irad Ali SI in presence of marginal witnesses namely Taj Muhammad s/o Ghulam, Imran s/o Sodagar and Javed IHC. Irad Ali SI/PW-07, in his cross examination has stated that he did not knock at the door of the

dead body was brought by relatives and not by police in constable Tanveer No 990. In the inquest report neither the complainant nor his wife Mat. Shash begun/PW-06 are mentioned as identifiers of the dead body. Under these circumstances, the drafting of the report by the complainant on the spot of occurrence, preparation of injury sheet and inquest report on the spot becomes doubtful.

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house of accused as there was no door of the house. Contrary to this statement of PW-07, Shah Rasool SI/PW-01 in his report Ex PW-1/5 has mentioned that he conducted raid on the house of accused and knocked at the door which was opened by accused Khalid. This material contradiction in the statements of PW-01 and PW-07/Irad Ali SI creates serious doubt regarding the alleged recovery of dagger from the house of accused. Moreover, the two private independent witnesses of the alleged recovery of dagger were not produced and they were abandoned being won over. No sketch of the place of recovery has been prepared by the IO. The accused Khalid was arrested on the same day of occurrence from his house by Shah Rasool Khan SLPW-01 but no such recovery of weapon of offence was either made from possession of the accused or at his pointation at the time of his arrest. The FSL report Ex PZ is silent about the fact that whether the blood available on the dagger, blood stained earth and blood stained garments of the deceased were of the same group or not. Thus the alleged recovery of dagger on the pointation of accused Khalid has not been proved beyond reasonable doubt.

13. In view of the above discussion it is concluded that the prosecution case against the accused facing trial is full of doubts. The prosecution failed to prove the case against the accused beyond reasonable doubt. Hence by extending the benefit of doubt to the accused facing trial Khalid and Jehanzeb sons of Karam Khan residents of Jamshed Abad Toru, District Mardan, they are acquitted of the charge. Accused are in custody. They be set free forthwith, if not required in any other case. The case property i.e. dagger is confiscated to

house of accused as there was no dour of the bone. Contrary to the statement of PW-07, Shah Rasool S/PW-01 in his report Ex PW-1/5 has mentioned that he conducted raid on the house of accused and knocked at the door which opened by accused Khalid. This material contradiction in the statements of PW-01 and PW-07/Irad Ali SI creates serious doubt regarding the alleged recovery of dagger from the house of accused. Moreover, the two private independent witnesses of the alleged recovery of dagger were not produced and they were abandoned being won over. No sketch of the place of recovery has been prepared by the IO. The accused Khalid was arrested on the same day of occurrence from his house by Shah Rasool Khan S/PW-01 but no such recovery of weapon of offence was either made from possession of the accused on at his pointation at the time of his arrest. The FSL report Ex PZ is silent about the fact that whether the blood available on gteh dagger, bold stained earth and blood stained garments of the deceased were of the dame group or not. Thus the alleged recovery of dagger on the pointation of accused Khalid has not been proved beyond reasonable doubt.

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-21-

State and the remaining case property be disposed of according to law after the expiry of period of appeal/revision.

14. Attested copy of this judgment be sent to the learned District Public Prosecutor, Mardan within the meaning of section 373 Cr.P.C. Attested copy of this judgment also be sent to the District Police Officer, Mardan for information and necessary *action to* against SI Irad Ali, IO of the case for conducting one sided and defective investigation with intimation to this Court.

*Reasons a delay was of pages closing of*

15. File of this court be consigned to Record Room after its necessary completion and compilation.

Announced  
10.06.2023

(Syed Shaukat Ullah Shah)  
Addl: Sessions Judge/  
Judge MCTC, Mardan.

**CERTIFICATE**

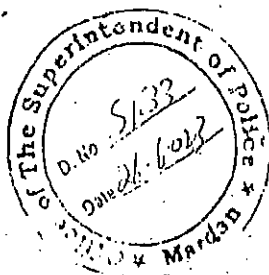
Certified that this judgment consists of (16) pages. Each page has been read, checked and signed after making necessary corrections therein.

(Syed Shaukat Ullah Shah)  
Addl: Sessions Judge/  
Judge MCTC, Mardan

*DP/PA*  
*for immediate*

*DP/PA*  
*27-6-23*

*105-9/PA*  
*26/6/23*



State and the remaining case property be disposed of according to law after the expiry of period of appeal/revision.

14. Attested copy of this judgment be sent to the learned District Public Prosecutor, Mardan within the meaning of section 173 Cr.P.C. Attested copy of this judgment also be sent to the District Police Officer, Mardan for information and necessary action against SI Irad Ali, IO of the case for conducting one sided defective investigation with intimation to this court.

15. File of this court be consigned to Record Room after its necessary completion and compilation.

Announced  
10.06.2023

Syed Shaukat Ullah Shah  
Addl: Sessions Judge/  
Judge MCTC, Mardan

CERTIFICATE

Certified that this judgment consists of (16) pages. Each page has been read, checked and signed after making necessary correction therein.

Syed Shaukat Ullah Shah  
Addl: Sessions Judge/  
Judge MCTC, Mardan



-22- "C"



(8) OFFICE OF THE  
DISTRICT POLICE OFFICER,  
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111  
Email: [dpomdn@gmail.com](mailto:dpomdn@gmail.com)

2023

No. 10466-72 /PA

Dated 18/12/2023

ORDER ON ENQUIRY OF SI IRAD ALI

This order will dispose-off a departmental enquiry under Khyber Pakhtunkhwa Police Rules 1975, initiated against SI Irad Ali (IO of case, quoted below), under the allegations that while posted at Investigation Wing Police Station Toru (now Training Wing, PDRM School Toru), proceeded against departmentally through Mr. Khalid Khan SP/Saddar Mardan vide this office Statement of Disciplinary Action/Charge Sheet No.209/PA dated 15-08-2023, on account of defective & one sided investigation of a case vide FIR No. 279 dated 21-05-2018 U/S 302/34 PPC PS Toru, resultantly, both accused namely Khalid & Jehanzeb Sons of Karam Khan of Jamshed-Abad Toru were benefitted by Honorable Additional Sessions Judge/Judge MCTC Mardan in the shape of acquittal on doubts basis vide his learned court's verdict dated 10-06-2023, who (E.O) after fulfillment necessary process, submitted his Finding Report to this office vide his office letter No.157/ST dated 14-11-2023, holding responsible the delinquent officer of grave misconduct & recommended for major punishment.

Final Order

SI Irad Ali was heard in OR on 07-12-2023, during which, he has failed to surface any cogent reasons against the allegations leveled against him, therefore, awarded him major punishment of reduction in rank with immediate effect, in exercise of the powers vested in me under Police Rules-1975.

OB No. 2448

Dated 15/12/2023

(Najeeb-ur-Rehman Bugvi) PSP  
District Police Officer, Mardan.

"D"

-23-

To  
The Worthy DIG Mardan

**Subject:** *Departmental appeal against order bearing OB No 2448 dated 15.12.2023 vide letter no 10466-72/PA dated 18.12.2023 passed by DPO Mardan whereby major penalty of reduction in rank is imposed upon the appellant which is illegal against law and facts.*

Sir,

Appellant humbly submits as under:

- 1) That appellant has performed his duty to the entire satisfaction of his superiors and there is no complaint against the appellant in his entire service career.
- 2) That appellant has served the Police Department to the entire satisfaction of his superiors and has got huge service career spanning over 27 years.
- 3) That appellant was issued a charge sheet alongwith a statement of allegation (Copy of charge sheet is Annex "A", while statement of allegations is Annex "B")
- 4) That appellant properly replied to the charge sheet. (Copy of the reply to the charge sheet is Annex "C")
- 5) That appellant was not associated with the enquiry proceedings and appellant was not afforded opportunity to cross-examine the witnesses and a one-sided arbitrary enquiry report was framed against the appellant, which is illegal, against law and facts. (Copy of the Enquiry Report is Annex "D")
- 6) That major penalty of reduction in rank with immediate effect is imposed upon the appellant vide order bearing OB No 2448 dated 15.12.2023 vide letter no 10466-72/PA dated 18.12.2023 passed by DPO Mardan which is illegal against law and facts and liable to be set aside on the following grounds: (Copy of the order dated 18.12.2023 is attached as Annex "E")

**GROUNDS:**

- A. Because the impugned order is illegal against law and facts.
- B. Because appellant is innocent and falsely charged.
- C. Because appellant has neither been associated with the enquiry proceedings nor statement of any witness has been recorded in his presence and appellant has not been associated with any enquiry.
- D. Because no specific charge is framed against the appellant and appellant right to defence has been jeopardized.
- E. Because the judgment of the Honourable Supreme Court of Pakistan referred in the inquiry report was not in field at the of occurrence as the occurrence is of 31.05.2018 whereas the

-24-

judgment of the Larger bench of the Honourable Supreme Court is announced on 23.05.2018. Even otherwise, the judgment was not properly circulated/communicated by the Department.

- F. Because lodging of FIR is the duty of the Muhariir and SHO of the Police Station concerned and after lodging of FIR, investigation officer is appointed. Recording of cross examination or lodging of the cross FIR/Roznamcha/daily diary was the duty of the SHO concerned and the appellant cannot be penalized for any omission of the SHO/Muhariir.
- G. Because the cross version was marked to another SI namely Shah Rasool and any deficiency in the inquiry or cross version cannot be attributed to the appellant and appellant has been made a scapegoat and discriminated.
- H. Because the concerned officials have been let free and appellant has been discriminated which is illegal against Article 25 and 27 of the Constitution of Pakistan 1973.
- I. Because as per Fr-29, the penalty cannot be for an indefinite period and time period has to be specified.
- J. Because appellant has got 27 years of satisfactory service career.
- K. Because appellant has efficiently conducted investigation wherein he has prepared recovery memo, send FSL report which is in positive, pointation memo which are placed on file.
- L. Because the allegation regarding the contradiction in statement is also incorrect. The appellant during his statement has stated that there was no door of the kitchen from where he recovered the case property/weapon on the pointation of accused. Whereas the statement of SI Shah Rasool was regarding the gate of the house which aspect has been ignored by the inquiry officer.
- M. Because no show cause notice has been issued whereby appellant is condemned unheard.
- N. Because appellant has not been dealt with in accordance with law and Article 4 of Constitution of Pakistan has been violated.
- O. Because appellant has been condemned unheard.

It is therefore, humbly prayed that on acceptance of this departmental appeal, impugned order bearing OB No 2448 dated 15.12.2023 vide letter no 10466-72/PA dated 18.12.2023 passed by DPO Mardan may please be set aside and appellant may please be restored to his original rank (i.e S.I) with all back benefits.

*Irada*  
(Appellant)  
Irada Ali  
A-Sub-Inspector

Dated: 02.01.2024

CC E No

-25-

ORDER.

This order will dispose-off the departmental appeal preferred by ASI Irad Ali No. 84/MR of Mardan District now presently serving at Police Training School, Swabi against the order of the then District Police Officer, Mardan, whereby he was awarded major punishment of reduction in rank vide OB: No. 2448 dated 15.12.2023. The appellant was proceeded against departmentally on the allegations that he while posted as Investigating Officer at Investigation Wing Police Station Toru, through Superintendent of Police, Saddar Division, Mardan, on account of defective and one sided investigation of a case vide FIR No. 279 dated 21.05.2018 U/S 302/34 PPC Police Station Toru. Resultantly both the accused namely Khalid and Jehanzeb Sons of Karam Khan of Jamshed-Abad Toru were got benefitted by the learned Additional Sessions Judge/Judge MCTC Mardan in the shape of acquittal on doubts basis vide his learned court's verdict dated 10.06.2023.

The enquiry Officer after fulfillment of necessary process, submitted his finding report to District Police Officer, Mardan, held responsible the delinquent officer of grave misconduct and recommended him for major punishment.

The delinquent Officer was heard in Orderly Room on 07.12.2023 by the then District Police Officer, Mardan, during which, he has failed to advance any cogent reasons in his defense, therefore, he was awarded major punishment of reduction in rank with immediate effect.

Feeling aggrieved from the order of the then District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 27.03.2024.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations against the appellant have been proved beyond any shadow of doubt. The competent authority has already taken a lenient view of the misconduct. Besides, during the course of personal hearing, he could not present any cogent justification to warrant interference in the order passed by the competent authority.

-26-

Keeping in view the above, I, Najeeb-Ur-Rehman Bugvi, PSP Regional Police Officer, Mardan, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being devoid of merit.

Order Announced.

*Najeeb*

(Najeeb-Ur-Rehman Bugvi) PSP  
Regional Police Officer,  
Mardan.

No. 107-11 /ES, Dated Mardan the 01/04 /2024.

Copy forwarded for information and necessary action to the:-

1. District Police Officer, Mardan w/r to his office Memo: No. 29/LB dated 25.01.2021. His service record is returned herewith.
3. Director, Police Training School, Swabi.
3. Superintendent of Police Investigation, Mardan.

(\*\*\*\*\*)

*Attested*

*[Signature]*

Fr (Superintendent)  
For  
Dy Inspector General of Police  
Mardan Region

*[Handwritten signature]*

**VAKALATNAMA**  
**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

Appeal No 12024

Nad Ali

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

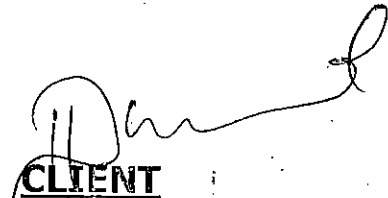
Govt

(RESPONDENT)  
(DEFENDANT)

I/We Nad Ali

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. \_\_\_/\_\_\_/202

  
**CLIENT**

**ACCEPTED**

**NOOR MOHAMMAD KHATTAK  
ADVOCATE SUPREME COURT**

**WALEED ADNAN**

**UMAR FAROOQ MOHMAND**

**MUHAMMAD AYUB**

**MAHMOOD JAN  
ADVOCATES**

&

**OFFICE:**

Flat No. (TF) 291-292 3<sup>rd</sup> Floor,  
Deans Trade Centre, Peshawar Cantt.