INDEX

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO	INSTITUTION	ORIGINAL INSTITUTION	DECISION	PAGES
2040/23	-	11.10.2023	10.05.2024	107

Abdul Wahab VS Police Department

Sr.No.	Page No.	No. of Pages	Documents
		Part-A	
1	01 - 05	05	Judgment
2	06 - 07	02	Order Sheets
3	08 - 48	41	Appeal
4	49 - 49	01	Wakalatnama
5	50 - 102	53	Reply of R 1-4
6	103 - 106	04	Notices
7	107 - 107	01	Challan
8	-		
9	-		
10	-		
11	-		
12	-		
		Part-B	
1	-		
2	-		
3	-		

Total Pages in Part-A	107
Total Pages in Part-B	0

Muharir Compilation

29/5/24

Incharge Judicial Branch

astonishing to note that the same enquiry also conducted in slip slipshod manners and declared me guilty of the charges.

8. Thereafter, the Commandant FRP KP, Peshawar, neither issued me Show Cause Notice nor given me an opportunity of personal hearing, in the light of natural justice was not provided to me and punished harshly me by issuing the impugned order, wherein I was discharged from service vide order No. 434-39/PA dated 28.08.2020,

GROUNDS:-

a. The impugned order passed by the Commandant FRP, KP Peshawar is injustice, harsh, arbitrarily and against the law rules.
b. A one sided enquiry has been conducted against me on malified, as no chance for defence offered by the enquiry officer/committee or by the competent authority, during the course of enquiry.
c. It is pertinent to mentioned here that on promotion I was transferred to Traffic Peshawar and subsequently my pay was attached with the office of the District Police Officer Chitral and I was retained in FRP.
d. According to ESTA-CODE-2011 Section-7A (REVISION):-
   (2) If, in the light of the findings in the proceedings taken against the Government servant in terms of rule 8(A), the borrowing authority is of the opinion that any penalty should be imposed on him, it shall transmit to the lending authority the record of the proceedings and thereupon the lending authority shall take action prescribed in these rules.
e. According to E & D Rules-2011 Section-16 Sub-Section (2):-
   (2) If, in the light of findings of the proceedings taken against the accused in terms of sub rules (1), the borrowing organization is of the opinion that a penalty may have to be imposed on him, it shall transmit the record of the proceedings to the lending organization, and the competent authority in the lending organization shall thereupon take action against the accused under rules 14.

That I innocent and belongs to a poor family and as being the only bread earner for my kids and ailing/aged parents as well.

Prayers:-

Keeping in view aforementioned facts and submission it is, therefore, requested that the instant appeal may kindly be accepted and I may kindly be reinstated in service with all back benefits please. I shall be prayed for your long life and prosperity.

Your's Obediently,

4/09

(Fawad Khan)
Ex-Stenographer FRP HQrs:
Peshawar

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No.2040/2023

Date of presentation of Appeal.....11.10.2023
Date of Hearing.....10.05.2024
Date of Decision.....10.05.2024

Abdul Wahab S/O Wakeel Akbar, Ex-Constable R/O Cast Mula Khel, Tapa Qutab Khel, Mazari Ghari, P/o Ghaljo Tehsil Upper District Orakzai .....***(Appellant)***

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Home & Tribal Affairs, Civil Secretariat 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 Headquarter, Hangu.....(***Respondents***)

Present:
Mr. Muhammad Ilyas Orakzai, Advocate .....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney....For respondents

.....

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO.278/EC/OASI DATED 28.12.2020 OF RESPONDENT NO.4 AS WELL AS AGAINST THE APPELLATE ORDER NO.9915-16/EC KOHAT DATED 14.09.2023 OF RESPONDENT NO.3, WHEREBY THE APPEAL OF THE APPELLANT WAS DISMISSED AND UPHELD THE ORDER OF RESPONDENT NO.4.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case are that appellant was initially appointed in the Levy Force of District Orakzai as Sepoy in the year 2005; that after 25th Constitutional Amendment, Khasadar Force was absorbed in the Khyber

Pakhtunkhwa Police Force, accordingly, the appellant's services were also absorbed in the Khyber Pakhtunkhwa Police; that while serving in the Police Department, FIR No.888 dated 12.06.2019 was registered under Section 302/324/337-D/452/34 PPC, Police Station, MRS, District Kohat; that the appellant allegedly surrendered himself before the law, whereby, he was convicted in the said FIR by the trial court, which conviction was challenged before the Peshawar High Court, Peshawar, and the Peshawar High Court vide judgment dated 07.06.2023, acquitted the appellant; that after acquittal, he was released from jail on 22.06.2023 and approached the office for assumption of duty but there he received the impugned dismissal order dated 28.12.2020.

2. Feeling aggrieved, he filed departmental appeal on 24.07.2023, which was rejected on 14.09.2023. Therefore, the appellant filed the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant and learned Deputy District Attorney for respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the

learned Deputy District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record shows that appellant was serving in the Police Department when an FIR No.888 dated 12.06.2019 was registered against him under Sections 302/324/337-D/452/34 PPC, Police Station, MRS, District Kohat. Accordingly, he was tried and the Trial Court (The Additional Sessions Judge-III Kohat) convicted him in the said FIR vide order dated 21.12.2020. The conviction order of the Trial Court was challenged by the appellant before the Peshawar High Court, Peshawar and the Peshawar High Court, Peshawar vide order dated 07.06.2023, acquitted the appellant. However, the District Police Officer, Orakzai vide impugned order 28.12.2023 had dismissed the appellant from service.

7. The impugned order dated 28.12.2023 shows that the appellant has been dismissed only on the basis of the FIR lodged against the appellant. The appellant has annexed the judgment of the Peshawar High Court, Peshawar regarding his acquittal. Record shows that no inquiry had been conducted in the matter. He had also not been not asked to prove his innocence regarding his alleged misconduct. Even admittedly no show cause notice was issued after the alleged inquiry. The record is silent in respect of proper inquiry, show cause notice, which shows that no proper inquiry was conducted and all the proceedings were done against the rules. Appellant was not afforded an opportunity of cross examination or even personal hearing as is required under rules rendering the entire

departmental action fruitless and constraining the Tribunal to remit the matter back to the Competent Authority to conduct proper inquiry.

8. Keeping in view the entire record, we are left with no option but to accept this appeal and by setting aside the impugned orders and reinstating the appellant for the purpose of proper inquiry to be conducted within 90 days of the receipt of this judgment. Needless to mention that the appellant shall be duly associated with the inquiry proceedings, providing him opportunity of cross examination and then proceeding and concluding the same in accordance with law and rules. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of May, 2024.*

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

Muazem Shah

(5)

10.01.2024 1. Junior to counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present.

2. Reply/comments on behalf of respondents submitted through office on 05.01.2024 which is placed on file. Copy of the same handed over to junior of learned counsel for the appellant. To come up for arguments on 10.05.2024 before D.B. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)

S.A #.2040/2023
ORDER
Kamranullah

10 May. 2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are left with no option but to accept this appeal and by setting aside the impugned orders and reinstating the appellant for the purpose of proper inquiry to be conducted within 90 days of the receipt of the judgment. Needless to mention that the appellant shall be duly associated with the inquiry proceedings, providing him opportunity of cross examination and then proceeding and concluding the same in accordance with law and rules. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

3. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of May, 2024.

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman

Mehrozem Shah

Order Sheet

(6)

27th Nov.2023

01. Counsel for the appellant present. Mr. Anwar Habib, Addl. Advocate General for the respondents present.

02. Reply/comments on behalf of the respondents not submitted. Learned AAG requested for some time. Granted. To come up for reply/comments on 19.12.2023 before the S.B. Parcha Peshi given to the parties.

(Fareeha Paul)
Member(E)

Fazle Subhan, P.S

19th Dec. 2023

01. Junior to counsel for the appellant present. Mr. Asif Masood Ali Shah, DDA for the respondents present.

02. Reply/comments on behalf of the respondents not submitted. Learned DDA requested for time to contact the respondents for submission of reply/comments. Granted. To come up for reply/comments on 10.01.2024 before the S.B. Parcha Peshi given to the parties.

(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S

(7)

FORM OF ORDER SHEET

Court of _____

Appeal No. 2040/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	
1-	11/10/2023	The appeal of Mr. Abdul Wahab presented today by Mr. Muhammad Ilyas Orakzai Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 17-10-2023 Parcha Peshai is given to the counsel for the appellant. By the order of Chairman REGISTRAR
	17th Oct,2023	01. Learned counsel for the appellant present. Preliminary arguments heard. 02. Points raised need consideration. The appeal is admitted for regular hearing subject to all just and legal objections by the other side. The appellant is directed to deposit security fee within ten days. Thereafter respondents be summoned through TCS, the expenses of which be deposited by the appellant within three days. To come up for reply/comments on 27-11-23 before S.B. P.P. given to learned counsel for the appellant. (Muhammad Akbar Khan) Member (E)

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Abdul Wahab **Versus** Govt: of KPK & others

..... Appellant .....Respondents

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

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

Name:- Muhammad Ilyas Orakzai, ASC

Signature:- _____

Dated:- 23-09-2023

(9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

SCANNED KPST Peshawar

Service Appeal No:- 2040 /2023

Abdul Wahab **Versus** Govt: of KPK & others

..... Appellant .....Respondents

INDEX

S#	Description of the Documents	Annex	Pages
1.	*Grounds of Service Appeal*	*	1-6
2.	*Affidavit*	*	7
3.	*Addresses of parties*		8
4.	*Copy of Absorption Notification*	"A"	9-10
5.	*Copy of FIR*	"B"	11-12
6.	*Copy of the judgment dated 07/06/2023 of Peshawar High Court*	"C"	13-35
7.	*Copy of dismissal order*	"D"	36
8.	*Copy of appeal and order dated 14/09/2023*	"E"	37-39
9.	*Wakalat Nama*		40

Dated:- 23/09/2023

Appellant

Through:-

Muhammad Ilyas Orakzai
Advocate Supreme Court

(10)

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Khyber Pakhtukhwa
Service Tribunal
Diary No. 8236
Dated 11/10/23

Service Appeal No:- 2040 /2023

Abdul Wahab S/o Wakeel Akbar, Ex-Constable R/o Cast Mula Khel, Tapa Qutab Khel, Mazari Ghari, P/o Ghaljo Tehsil Upper District Orakzai.
.... Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Civil Secretariat, 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 Headquarter, Hangu.

................................Respondents

Filed to-day
Registrar
11/10/23

◆ ◆ ◆

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO 278/EC/OASI DATED 28/12/2020 OF RESPONDENT NO 4 AS WELL AS AGAINST THE APPELLATE ORDER NO 9915-16/EC KOHAT DATED 14/09/2023 OF RESPONDENT NO 3, WHEREBY THE APPEAL OF THE APPELLANT WAS DISMISSED AND UPHELD THE ORDER OF RESPONDENT NO 4.

Respectfully Sheweth:-

1. *That the appellant was joined the Levy Force of District Orakzai as Sepoy in the year, 2005.*

2. *That after 25th amendment, the appellant's district i.e. Orakzai the then Orakzai Agency was also merged like other agencies in Khyber Pakhtunkhwa Province, after merger the Khasadar Force are absorbed in Khyber Pakhtunkhwa Police Force in the year, 2019 and the appellant was properly absorbed in Khyber Pakhtunkhwa Police vide Notification dated 23/07/2020.* ***(Copy of Absorption Notification is attached as annexure "A")***

3. *That after being inducted into service, the appellant has been the most obedient, hardworking & sincere subordinate and never left any stone unturned in fulfillment of his duties and responsibilities.*

4. *That throughout his service carrier, the appellant has never been awarded minor or major punishment.*

5. *That unfortunately the appellant was enroped in a false and concocted case vide FIR No 888 dated 12/06/2019 u/s 302/324/337-D/452/34 PPC, Police Station MRS, District Kohat.* ***(Copy of FIR is attached as annexure "B").***

6. *That after lodging the ibid case the appellant being a law abiding citizen and a member of police department, had surrendered before the law.*

7. *That after surrendering, the appellant was behind the bars, till the conclusion of trial, that after conclusion of trial the appellant was convicted by the learned trial court and thereafter the appellant filed Criminal Appeal against the conviction before Peshawar High Court, Peshawar, whereby the appellant was acquitted vide judgment dated 07/06/2023.* ***(Copy of the judgment dated 07/06/2023 of Peshawar High Court is attached as annexure "C").***

8. *That after acquittal the appellant was release from jail on 22/06/2023 and soon after the appellant wants to resume his duty and approach to the office of respondent No 4 on 24/06/2023, but astonishingly the office of respondent No 4 handed over a dismissal order dated 28/12/2020 to the appellant.* ***(Copy of dismissal order is attached as annexure "D").***

9. *That against the above impugned order dated 28/12/2020 of respondent No 4, the appellant preferred an appeal before the respondent No 3 on 24/07/2023, which was rejected on 14/09/2023, whereby upheld the punishment awarded by the*

respondent No 4. ***(Copy of appeal and order dated 14/09/2023 are attached as annexure "E").***

10. *That feeling aggrieved from both the impugned orders of respondents No 3 & 4, the appellant filed the instant Service Appeal on the following grounds, inter alia:-*

Grounds:-

A. *That the both the impugned dismissal orders of respondents No 3 & 4 are illegal, against the facts and law, liable to be set aside.*

B. *That the impugned dismissal order as well as that order of the appellate authority are cubical, void ab-initio, unwarranted and are liable to be set aside.*

C. *That after acquittal of the appellant, the charges of the alleged crime is not proved, as per settled law every acquittal is Honourable acquittal, but the respondents instead of giving benefit of acquittal, dismissed the appellant representation which is not allowed by the law.*

D. *That in case of the appellant, no show cause notice or statement of allegation or charge sheet were personally served upon the appellant, thus appellant remained unheard*

and the order consequent to such a legally defective order as of no legal effect, the law treats such order illegal, void ab-initio.

E. *That the appellant has served the department for more then 15 years, while the appellant is deprived from his bread and butter alongwith his family on the basis of alleged criminal case, the competent court of law after considering the evidence, acquitted the appellant from the charges, but for unknown reasons, the respondents have refused to give benefit of acquittal on technical ground.*

F. *That the under the principle of natural justice, fair play and equity, the appellant is entitled for restoration into service.*

G. *That from all prospective, the dismissal order as well as that of the appellate authority's order are illegal, wrong, unwarranted, hence liable to be set aside.*

H. *That if any delay in fling of departmental appeal is found, may kindly be condoned for the ends of justice.*

I. *That the appellant reserves the right to agitate any other ground at the time of arguments.*

It is, therefore, respectfully prayed that on acceptance of this Service Appeal, the impugned dismissal order dated 28/12/2020 of respondent No 4 as well as the appellate order dated 14/09/2023 of respondent No 3 may kindly be set aside and the appellant may kindly be re-instated on his service with all back benefit.

Dated:- 23/09/2023

Appellant

Through:-

Muhammad Ilyas Orakzai
Advocate Supreme Court

16

(7)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Service Appeal No._____/2023

Abdul Wahab.....**Appellant**

Versus

Govt. of KP & others.....**Respondents**

AFFIDAVIT

I, Abdul Wahab S/o Wakeel Akbar R/o Qom Mula Khel Tapa Qatab Khel, Mazari Garhi, Post Office Ghaljo, Tehsil Upper Mohmand Orakzai, Agency, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

CNIC: 21604-6059008-1
Cell: 0337-8037937

ATTESTED
IMRAN KHAN ADVOCATE
Oath Commissioner
High Court Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No:- ________/2023

Abdul Wahab	**Versus**	Govt: of KPK & others
.... Appellant		..........Respondents

✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧

ADDRESSES OF PARTIES

APPELLANT

Abdul Wahab S/o Wakeel Akbar, Ex-Constable R/o Cast Mula Khel, Tapa Qutab Khel, Mazari Ghari, P/o Ghaljo Tehsil Upper District Orakzai.

RESPONDENTS

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Civil Secretariat, 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 Headquarter, Hangu.

Dated:- 23/09/2023

Appellant

Through:-

Muhammad Ilyas Orakzai
Advocate Supreme Court

(9) Annex-A

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT.

NOTIFICATION

Peshawar dated the, 23/7/2020

No.SO(Police)HD/SMY 2019 Merged Area/ 1012 - 1013 In pursuance of the provisions contained in section 9 of the Khyber Pakhtunkhwa Levies Force Act, 2019 (Khyber Pakhtunkhwa Act No.XXXV of 2019) read with rule 3 of the Levies Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019, the Home and Tribal Affairs Department, with the prior approval of the Cabinet and on the recommendation of the Provincial Police Officer, hereby orders absorption of the following members of Levies Force of Orakzai Tribal District in the Khyber Pakhtunkhwa Police with effect from the date of the initial appointment of the said members:

S#	Name with parentage	Previous Rank	Rank in which absorbed
1.	Khan Muhammad s/o Khan Zaman	Sepoy BS-5	Constable BS-7
2.	Javid Hussain s/o Khial Afzal	Sepoy BS-5	Constable BS-7
3.	Abdul Wahab s/o Wakil Akbar	Sepoy BS-5	Constable BS-7
4.	Muhammad Tariq s/o Sahil Khan	Sepoy BS-5	Constable BS-7
5.	Sajid Rehman s/o Khanab Khan	Sepoy BS-5	Constable BS-7
6.	Abdul Janan s/o Jumma Khan	Sepoy BS-5	Constable BS-7
7.	Said Marjan s/o Burhan-u-Din	Sepoy BS-5	Constable BS-7

2. The above absorption shall be subject to the following terms and conditions:

(i) Their services shall be governed under the Khyber Pakhtunkhwa Police Act, 2017 and the rules made thereunder.

(ii) A member shall not be entitled for absorption, if he has resigned from Levies Force Service or has been terminated from the Service ibid on account of misconduct, inefficiency or any other grounds or has been retired from Service under the Federal Levy Force (Amended) Service Rules 2013; before commencement of the Khyber Pakhtunkhwa Levies Force Act, 2019 (Khyber Pakhtunkhwa Act No. XXXV of 2019).

(iii) Their services shall be considered regular and they shall be eligible for pension and deduction of General Provident fund in terms of the Khyber

Attested

Pakhtunkhwa Civil Servant Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973).

(iv) Their seniority shall be determined in accordance with rule 6 of the Levies Force (Absorption in Khyber Pakhtunkhwa Police) Rules 2019.

(v) They shall undergo training as provided in rule 5 of Levies Force (Absorption in Khyber Pakhtunkhwa Police) Rules, 2019.

Secretary
to Government of the Khyber Pakhtunkhwa
Home and Tribal Affairs Department

No. & date even.

CC to:

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa.
3. Regional Police Officer, Kohat.
4. District Police Officer Orakzai Tribal District.
5. District Commissioner Orakzai Tribal District
6. PS to Chief Secretary Government of Khyber Pakhtunkhwa
7. PS to Secretary, Home & TAs Department, Khyber Pakhtunkhwa
8. PS to Special Secretary-II, Home & TAs Department, Khyber Pakhtunkhwa
9. PS to Secretary, Establishment Department, Khyber Pakhtunkhwa
10. Manager Printing Press for notifying the same in the official gazette.
11. Office record file.

Section Officer (Levies & Khasadars)

20

(11) Annex-B

فارم نمبر 23.5 (1)

ابتدائی اطلاع رپورٹ

کوڈ 81791133 - 023

(فائنل) ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 ضابطہ فوجداری

تھانہ MRS ضلع کراچی

نمبر 888 تاریخ و وقت وقوعہ 12/6/19 بتت 02:30 بجے

1	تاریخ و وقت رپورٹ	12/6/19 بتت 04:00 بجے چاکیسرگی پر بتت 12/6/19 بتت 04:50 بجے
2	نام و سکونت اطلاع دہندہ و مستغیث	مسماۃ شہناز بی بی زوجہ محمد طارق عمر 30/31 سال ساکنہ اورنگزیب اسٹریٹ حال میالانوالی کالونی
3	مختصر کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو	PPC 302-324-452-34
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت	چاکیسرگی راستہ میالانوالی کالونی
5	نام و سکونت ملزم	فضل ولد خان وزیر ساکنان اورنگزیب اسٹریٹ حال میالانوالی کالونی
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	برآمدگی اسلحہ پر چہ زیادہ جاتا ہے۔
7	تھانہ سے روانگی کی تاریخ و وقت	بطور سپیشل رپورٹ

ابتدائی اطلاع نیچے درج کرو: استغاثہ ایک تحریری مراسلہ بخدمت جناب بفرید الدین ASI انچارج چوکی ملزم ایریا بدست کانسٹیبل حیات اللہ 2340 بطور سپیشل رپورٹ موصول ہو کر نازل ہے۔ اسیسر انچارج تھانہ صاحب اطلاع KDA پر حال کراچی آیا۔ ایک جنس نزع میں مجروح مسماۃ شہناز بی بی زوجہ محمد طارق عمر 30/31 سال درست ہوش حواس میں دیکھا مقتول محمد طارق ولد خیال بادشاہ عمر 34 سال ساکنان اورنگزیب اسٹریٹ حال میالانوالی کالونی موجود پایا۔ مسماۃ شہناز بی بی رپورٹ کرتی ہے کہ آج تقریباً 12 بجے محمد طارق اپنے گھر خود کے مکان کے برآمدہ میں خراب شدہ حالت میں برآمدہ کا تھا۔ کہ اچانک بالا پستول لوٹنے کی آواز ہوئی جس سے میں نے ہر کر دیکھا کہ کسی نوجوان ولد وکیل کو میرے اندر جبکہ کسی فضل ولد خان وزیر ساکنان اورنگزیب اسٹریٹ حال میالانوالی کالونی کو دیوار پر موجود تھا۔ شوہر کو جیسے ہی چارپائی سے اٹھا تو کسی نوجوان نے ان پر ہتھیار پستول بارادہ قتل فائرنگ کی میں نے کسی نوجوان کو پکڑنے کی کوشش کی تو نوجوان نے مجھ پر بارادہ قتل فائرنگ کی جس نے کسی نوجوان کو پکڑنے کی کوشش کی تو نوجوان نے مجھ پر بارادہ قتل فائرنگ کی جس سے فائرنگ سے شوہر کے گلے کے مقام پر جان لگی ہوا جبکہ میں ابھی فائرنگ سے لگ کر زخمی ہوئی بعد فائرنگ کے دونوں ملزمان فرار ہو گئے وجہ عداوت سابقہ قتل مقتول کی رنجش ہے۔ مقدمہ ہذا میرے علاوہ گھر میں موجود بچوں کا چشم دید ہے۔ میں اس تحریر سے اور شوہر کی قتل کا ہر خلاف ہر دو ملزمان بالا و سربراہ ہوں نشان انگوٹھا مسماۃ شہناز واحد ولد محمد طارق نے رپورٹ بالا کی تائید کی نشان انگوٹھا راقم الحروف کانسٹیبل پولیس جس نے مقدمہ سائلہ رپورٹ درج بالا ہو کر پڑھ کر سنایا سمجھایا گیا درست تسلیم کر کے زیر رپورٹ خود نشان انگوٹھا ثبت کیا جبکہ تائید کنندہ نے بھی نشان انگوٹھا ثبت کی جس کی تصدیق کرتا ہوں مقتول کے کاغذات قبرگاہ اور فرد جرم کالفتہ خود مرتب کر کے زیر خدمت محمد فیض اللہ 214 حوالہ ڈاکٹر لیڈی ڈاکٹر صاحبہ کیے جاتے ہیں مضمون رپورٹ سے صورت جرم بالا کی پائی جا کر مراسلہ بطور سپیشل رپورٹ P.T.O

[illegible] کیس [illegible] ارسال تھانہ [illegible] بلدیہ جاکیسنگی پرچہ کے نقل
FIR [illegible] نمبر [illegible] حوالہ [illegible] شامل پرچہ ایگزیبٹ [illegible]
[illegible] بلدیہ [illegible] 12/6/19 [illegible] مراسلہ [illegible] درج بالا
[illegible] بالا [illegible] FIR [illegible] مراسلہ [illegible] تفتیش حوالہ
[illegible] شامل کیا جاتا ہے۔ پرچہ [illegible] رپورٹ گزارش ہے

ASI - MR
12-6-19

[illegible]	تاریخ رپورٹ
[illegible]-6-19	[illegible]
[illegible]6.19	[illegible]
[illegible]6.19	[illegible]
[illegible].6.19	[illegible]
[illegible]-6-19	۵
[illegible]-6-19	[illegible]
	[illegible]

[illegible]

تاریخ [illegible] روانگی بالان
[illegible] رپورٹ [illegible] اور [illegible]
[illegible] بالان کیا گیا۔

[illegible] 6/7/19 [illegible] 661
[illegible] ASJ [illegible]

دستخط

عہدہ

نوٹ: اطلاع کے نیچے اطلاع دہندہ کا دستخط ہوگا۔ یا اس کی مہر یا نشان لگایا جائے گا۔ اور اگر تحریر کنندہ اجزائے اطلاع کا دستخط بطور تصدیق ہوگا۔
حروف الفبائی سرخ روشنائی سے بالمقابل نام ملزم یا مشتبہ علی الترتیب واسطے بلشرگان علاقہ تحریر یا رسالہ یا افغانستان جہاں موزوں لکھنا چاہیے۔

Attested

22

(13) Annex-C

Opening Sheet for Criminal Appeals (Section 419 Criminal Procedure Code)

IN THE PESHAWAR HIGH COURT, PESHAWAR

(JUDICIAL DEPARTMENT)

Appellate side_____ Criminal Case No:_____/2020

District	Date of filing petition	Whether filed by Appellant in person or by pleader or agent	Stamp on petition of appeal
Kohat	26.12.2020	Jalal-ud-din Akbar Azam Khan(Gara) Advocate, Peshawar	Nil

Abdul Wahab S/O Wakeel Khan

R/O Orakzai Agency, presently Hangu District, Hangu.....*Appellant*

VERSUS

1. Mst. Shahnaz Bibi W/O Muhammad Tariq

   R/O Orakzai Agency, (presently Miangan Colony, Kohat) District, Kohat

2. The State.....*Respondents*

Criminal Appeal U/S.410 Cr.P.C from the order of:	The learned Additional Sessions Judge-III, Kohat
Dated:	21.12.2020
Charge U/Ss:	302/324/337-D/34 PPC (FIR No.888, dated 12.06.2019, PS Cantt, District, Kohat)
Sentences:	i)U/S302(b) PPC to life imprisonment R.I and to pay Rs.100,000/- as fine and to be paid as compensation U/S 544 Cr.PC to the legal heirs of the deceased ii) U/S 324 PPC to 10 years R.I and a fine of Rs.50,000/ or in default 06 month S.I iii)U/S 337-DPPC to 07 years R.I and a fine of Rs.50,000/- or in default 06 months S.I Sentneces to run concurrently, with benefit of S.382-B Cr.PC extended

GROUNDS OF APPEAL ARE ATTACHED

ATTESTED
EXAMINER
Peshawar High Court

(14)

GROUNDS:

1. That the order and judgment of the learned trial Court convicting the appellant is against law and facts on the file. Hence, untenable.

2. That the learned trial Court has not appreciated the prosecution evidence in its correct legal and factual spectrum which has caused grave miscarriage of justice.

3. That the appellant has no motive to commit the delict. A false motive was advanced by the complainant party against him and that also stood not proved.

4. That keeping in view the circumstances of the case then available, preliminary investigation has preceded the report.

5. That the report made by the complainant, Mst. Shahnaz Bibi(PW11) is, evidently, an off-spring of external prompting.

6. That the injury on the person of the injured is that of availability, but not of reliability. The instant incident has not occurred in the manner as depicticed by the complainant.

ATTESTED
EXAMINER
Peshawar High Court

7. That the appellant has not absconded. He was avoiding his arrest on account of fear and false implication in the instant case. However, later he surrendered voluntarily for treatment according to law.

8. That, anyhow, the prosecution has miserably failed to prove its case against the appellant beyond shadow of a reasonable doubt.

It is, therefore, humbly prayed that on acceptance of this appeal, the order and judgment of the learned trial Court dated 21.12.2020 convicting the appellant and sentencing him i)U/S302(b) PPC to life imprisonment R.I and to pay Rs.100,000/- as fine and to be paid as compensation U/S 544 Cr.PC to the legal heirs of the deceased, ii) U/S 324 PPC to 10 years R.I and a fine of Rs.50,000/_or in default 06 month S.I and iii)U/S 337-DPPC to 07 years R.I and a fine of Rs.50,000/- or in default 06 months S.I, may graciously be set aside and he be acquitted.

Abdul Wahab
Appellant,

Through

Jalal Din

1. Jalal-ud-din Akbar Azam Khan(Gara)

2. Ayub Zaman

3. Muhammad Khan

4. Aftab-ud-din
Advocates

ATTESTED
EXAMINER
Peshawar High Court

25

(16)

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

Cr.A No. 1030-P of 2020
Abdul Wahab
Vs
The State & another

Date of hearing: **07.06.2023.**

Appellant (s) by: M/s Shabbir Hussain Gigynai & Dr. Amir Ajam Khattak, Advocates

State by: Malik Haroon Iqbal, AAG

Complt: by: Muhammad Khalid, son of the complainant.

JUDGMENT

SAHIBZADA ASADULLAH, J.- Through this judgment, we intend to decide the instant criminal appeal as well as the connected **Cr.R No.03-P of 2021** titled **"Mst. Shahnaz Bibi Vs Abdul Wahab etc"** as both the cases are the outcome of one and the same judgment dated 21.12.2020 passed by the learned Additional Sessions Judge-III, Kohat, whereby the learned judge has convicted and sentenced the appellant being found guilty of the offence, charge in case FIR No.888 dated 12.06.2019 under sections 302/324/337-D/34PPC, Police Station Cantt: District, Kohat in the following manner;

> **"Under section 302 (b) PPC convicted and sentenced the appellant to imprisonment for life with fine of Rs.100000/- (one lac) for the murder of deceased Muhammad Tariq.**
> **Under section 324 PPC convicted the appellant for making an attempt of the murder of complainant Mst. Shahnaz and**

ATTESTED
EXAMINER
Peshawar High Court

sentenced him to 10 (ten) years R.I with fine of Rs.50,000/- (fifty thousand) as compensation, in default whereof he further to suffer 06 (six) months simple imprisonment.

Under Section 337-D PPC for murderous assault and causing injuries to complainant Mst. Shahnaz convicted and sentenced the appellant to 07 (seven) years R.I with fine of RS.50,000/- (fifty thousand) as compensation.

The sentences of the imprisonment shall run concurrently. Benefit of Section 382-B Cr.P.C has been extended to the appellant. The amount of fine if realized shall be paid to the shari legal heirs of the deceased as compensation under section 544-A Cr.P.C."

2. The precise facts of the instant case as per first information report are that on 12.06.2019 at 04:50 the complainant namely Mst. Shahnaz Bibi reported the matter in injured condition in emergency room at KDA Hospital, Kohat alongwith the dead body of her husband that she (the complainant) alongwith her husband Muhammad Tariq now deceased, alongwith children were asleep in the veranda of their house. The electricity bulb of the veranda was switched on at the relevant time i.e. 02:30 AM, she heard the voice of bolt of pistol, woke up from sleep and saw that accused Abdul Wahab s/o Wakeel found present inside the house, whereas the co-accused namely Fazal s/o Khan Wazir was present on the wall of their house, as both the accused are the residents of Orakzai Agency presently at Hango, and when her husband rose from his cot (charpai), in the meanwhile accused Abdul Wahab opened firing at

him with the intention to kill him and during this interregnum she tried to catch hold of the accused, but the accused also fired at her and due to fire shots of the accused his husband got hit and died on the spot, whereas she received injuries on her body. The accused after firing decamped from the place of incident. Motive behind the occurrence was stated to be previous blood feud. The occurrence has witnessed by the children in the house, including her. She charged the accused for the murder of her husband as well as causing injuries to her. Hence, the ibid FIR.

3. After arrest of the accused and completion of investigation, case was put in Court where the appellant was indicted to which he pleaded not guilty and claimed trial. Prosecution, in order to prove its case, produced and examined as many as 14 witnesses, whereafter statement of the accused was recorded under section 342 Cr.P.C wherein he professed his innocence. The learned trial Court, after full-fledged trial, found the appellant guilty of the charge and while recording his conviction sentenced him as mentioned above, hence this appeal.

4. Arguments heard and record gone through

5. In the incident the deceased lost his life whereas the complainant received serious injuries,

both the dead body of the deceased, and the injured complainant were shifted to the hospital, where the complainant reported the matter. The report was made to PW-2, who reduced the report of the complainant in the shape of murasila and thereafter the injury sheets and inquest report were prepared. The dead body of the deceased was sent to the doctor for postmortem examination, whereas the injured complainant was examined by the doctor and her medico legal certificate was prepared. The investigating officer after receiving copy of the FIR visited the spot and prepared the site plan. During spot inspection the investigating officer collected blood through cotton from the respective places of the deceased and the injured complainant, whereas two empties of .30 bore alongwith live cartridges were collected near from the place, where the accused-appellant was standing. It is pertinent to mention that during spot inspection a solar bulb was taken into possession, which was declared as the source of identification. The recovered empties were sent to the laboratory and therefrom a report was received, telling that the same were fired from one weapon. The co-accused Fazal Janan was arrested and also the appellant, when his bail before arrest was recalled. During interrogation the appellant

disclosed his presence, on the night of incident, in Hango Police Line, being posted as ASI over there. The appellant also submitted an application regarding his innocence and the same was investigated. The investigating officer recorded the statements of all concerned and they tendered affidavits in favour of the appellant, so much so, the investigating officer collected the call data record, where the appellant is shown present at the place of his duty. Though the police opined regarding the innocence of the appellant, yet the learned trial Court did not agree with the same and as such the trial concluded in holding the appellant guilty and the co-accused innocent.

6. The learned trial Court took into consideration the material aspects of the case and applied its judicial mind to the evidence on file and the statements of the witnesses. The learned trial Court after feeling satisfied, convicted the appellant and acquitted the co-accused, but this being the Court of appeal is under the bounded duty to re-visit the record of the case and to re-appreciate the statements of the witnesses, so that miscarriage of justice could be avoided. True that in the instant case we have before us an injured eyewitness with the stamp of injuries, but we cannot forget the presence

of the eyewitness at the stated time, in the house in question, but what this Court is to see is; as to whether she told the whole truth and as to whether the incident occurred in the mode, manner and at the stated time. On one hand we have the injured eyewitness, the widow of the deceased, and in the like circumstances substitution is a rear phenomenon, but on the other we have an accused who came forward with a specific plea of his innocence, so this Court must walk with care to fix the liability and to determine the innocence of the appellant.

7. The points for determination before this Court are that; as to whether the incident occurred in the mode, manner and at the stated time; as to whether the complainant received injuries at the hands of the appellant and that the appellant was duly identified; as to whether the deceased and injured were shifted to the hospital soon after the incident and that the matter was promptly reported; as to whether the complainant was conscious, oriented in time and space and as to whether her injuries did permit her to report the matter and as to whether the prosecution succeeded in bringing home guilt against the appellant. There is no denial to the fact that the incident occurred inside the house of the deceased,

where the deceased was done to death and the complainant received serious injuries on her body. There is no denial to the fact that the dead body of the deceased and the injured were shifted to the hospital, where the matter was reported, but we cannot forget that the incident occurred in the odd hours of the night and that by the time the darkness had prevailed, so this is for the prosecution to tell that how the appellant was identified and that how co-accused who was present on the top of the wall, could be seen from such a long distance. In order to appreciate this particular aspect of the case, we deem it essential to go through the statements of the witnesses. The complainant was examined as PW-11, who stated that on the night of occurrence she alongwith her husband and other inmates were sleeping in the house; that she got up on hearing the sound of pushing of bolt of the pistol by the accused; that the accused fired at her husband who died on the spot, then the accused fired at her which caused her injuries; that thereafter the dead body of the deceased was shifted to the hospital and the matter was reported. Similarly, Mst. Rabia was examined as PW-10, who stated that on the night of occurrence she alongwith other inmates of the house were sleeping in the Veranda of the house; that it was

about 02:30 AM when she heard the voice of firing and cries of her mother-in-law and her father-in-law; that she saw a person duly armed with pistol present at the house, who fired at the complainant and the deceased; that the firing made by the accused proved fatal to the deceased, while the complainant got injured; another person was also present on the wall of the house; that the accused who fired at Mst. Shahnaz Bibi and her father-in-law was one Abdul Wahab; that site plan was prepared on her pointation and the motive was previous blood feud between the parties and that the accused were identified in the light of the bulb installed in the veranda of the house. This is interesting to note that when the statement of PW-10 was recorded by the investigating officer under section 161 Cr.P.C, she in her statement did not mention the names of the accused. It is further interesting to note that PW-10 in her cross-examination categorically stated that the accused was not known to her. We are to see that when the accused-appellant was not known to her, then she by herself did not identify that the accused was Abdul Wahab and even it suggests that the appellant was not known to her previously, as she did not belong to the village to which the accused-appellant belonged. This is for the prosecution to tell that how the co-

accused was identified, who was present on the wall behind a tree, with no light at the place of his presence. This is surprising that both the accused are charged by name by the complainant when she reported the matter. The complainant was asked regarding the material aspects of the case and regarding her familiarity with the appellant and the other. She categorically stated that on one hand she is a pardanashin lady, whereas on the other she had no relation with the accused. As the age of the complainant is shown as 31 years and the history of the blood feud is given as 10/15 years, so it is yet to be ascertained as to whether complainant ever visited the village and she ever came across the appellant prior to the present incident. The very statement of the complainant makes us believe that she had no acquaintance with the appellant and also with the co-accused. When there was no relationship between the parties and that when both the parties were not on visiting terms and that when the blood feud has a history of more than ten years, then whether in such eventuality the complainant was able to identify the appellant and that she knew their names. The conflict between the statements of the witnesses and there no familiarity with the accused, is a circumstance to which this Court cannot close its

eyes, as the incident occurred in the dark hours of the night, then the identity of the accused is a must and this is for the prosecution to convince that they were duly identified.

8. This is surprising that the accused selected the odd hours of night and this is again surprising that how the appellant could know, that how the deceased was available at point No.1 in the veranda. As the site plan depicts that all the inmates were lying in the veranda in their respective cots (charpai) and that cot of the deceased was lying to the west. The complainant was examined regarding the manner she woke up, regarding the manner the deceased was fired at and regarding the manner she attempted to catch hold of the appellant, but the explanation tendered by the complainant is hard to be believed, when the site plan is taken into consideration. The site plan depicts that apart from the complainant her other two sons, the deceased and one Mst. Rabia were available in the house on the night of occurrence, but surprisingly apart from the complainant no other inmate of the house, including her sons, actively participated in chasing the appellant. The complainant disclosed that after receiving firearm injuries the deceased fell on the ground, and breathed his last. She further disclosed

that after the deceased was fired at, the accused-appellant fired at her as well and after receiving firearm injuries, she fell to the ground and she again stood up and struggled to catch hold of the accused, but could not. While reporting the matter, though the complainant stated that after the deceased was fired at, she struggled to catch hold of the appellant, but she could not and as a result of her active attempt, she was fired at. This portion of her statement is of great significance, as she was fired only by the accused when she tried to catch hold of him, but when her Court statement is taken into consideration, she stated that first she was fired at, she fell to the ground, she stood up and she tried to catch hold of the appellant, but she could not. When the report of the complainant and her Court statement are taken into consideration, then the relevant portion of her Court statement has damaged the prosecution case beyond repair. As by the time when she did not make an attempt to catch hold of the appellant, then there was no need for the accused to fire at her, as the accused had already achieved the desired goal, but if her Court statement is taken to be correct, then the complainant is to tell that why she was fired at when she had not attempted to catch hold of the appellant. This is for this Court to ascertain that once the

complainant received two serious injuries on her body and fell to the ground, whether in that eventuality she had the ability to stand up and to chase the appellant with the sole purpose to catch hold of him. We are not persuaded with this portion of her statement and we are not convinced that after receiving firearms injuries complainant was having the ability to rise and run. The complainant by herself went in self contradiction, as her report and her Court statement tells two different stories regarding the manner in which the incident occurred and regarding the mode in which the appellant left the house.

9. Another intriguing aspect of the case is the identification of the accused, the investigating officer during spot inspection observed a solar light installed at point "E" in the veranda and the same was declared to be the source of identification. This is surprising that the people of the house were sleeping in the veranda and it was 02:30 AM midnight, when they were fast asleep what need was there to keep the light on, rather at such time the lights are off, so that good sleep could be enjoyed. Even otherwise when the appellant was not known to the complainant and the eyewitness, whether in such eventuality the identification in the light of the bulb would serve the purpose, our answer is in emphatic

no. As admittedly, the complainant and the eyewitnesses were not on visiting terms with the accused and as admittedly the complainant and the eyewitness were married to the house with no relation with the accused and his family, so in such eventuality it was obligatory for the investigating officer to make arrangement for the identification parade. Another interesting aspect of the case is the identification and recognition of the co-accused who was present on the top of the wall. The site plan depicts that from such a long range his identification was not possible and even the record is silent as to what interest, the co-accused, had in the enmity of the parties. The record is silent regarding his status, his involvement and his interest in the matter. The identification of two different accused at two different places in the odd hours of the night, is a circumstance that has created dents in the prosecution case and that has shattered the veracity of the witnesses. As the witnesses admitted that they were not on visiting terms with the opposite side and that the blood feud between the parties goes back to 10/15 years, so in such eventuality the identity of the appellant is a question that remained unresolved, we are fortified from the judgment reported as **"2019 M**

L D 1966", titled **"JUMO and 4 others Versus The STATE"**, which is reproduced herein below:-

> **"They have even failed to give the details of the motorcycle of the culprits, deceased and of their own. Undeniably, the culprits were not on visiting terms with the eye-witnesses including injured. The occurrence lasted more or less for five minutes and that too when incriminate firing was made by the perpetrators as such identification of the appellants in such a situation also raises suspicion upon the probability of the ocular account furnished by them."**

The prosecution is to tell that when the sons of the complainant were present at the house, why they did not make efforts like their mother and that why they did not come forward as eyewitnesses of the incident. Though PW-12, Wahid i.e. son of the complainant, verified the report of the complainant, but interestingly when he was examined, he did not confirm the manner in which the incident occurred and he did not utter a single word, that he too, identified the accused and that the incident occurred in the manner as was disclosed by the complainant. This is more interesting to note that when PW-12 was cross-examined, he stated that complainant reported the matter in the morning when she gained consciousness. He further disclosed that the report was made when the light prevailed. As PW-12 is the real son of the complainant and the deceased, so it

cannot be held that he was extended concession to the appellant, rather he told the truth and the truth is that, that at the time of arrival to the house the complainant was not in senses. The doctor who examined the complainant was examined as PW-7, she stated that when the complainant was brought to her, she disclosed that she was fired at by unknown accused and even in her cross-examination she confirmed that it was the complainant who told that she was fired at by unknown accused. When the statement of PW-12 is read in juxtaposition with the statement of the complainant and the statement of the doctor, no ambiguity is left that the complainant did not come forward with the whole truth, rather she concealed the material facts, both from the investigating officer as well as from the Court of law. This concealment of facts on part of the complainant has gone deep to the roots of the prosecution case.

10. The medical evidence is in conflict with the ocular account. The manner in which the deceased and the complainant were fired at, does not get support from the medical evidence, as in both the cases the projectile travelled from up to downward, had the deceased and the complainant were fired at from the place assigned to the appellant, then the same would pierce through the body. True that

medical evidence is confirmatory in nature and in case of trust worthy, confidence inspiring evidence, the same plays a little role but once the Court comes to a conclusion that the eyewitness account is either suffering from infirmities or the witnesses concealed the real facts, then in such eventuality the conflict between the two will go to the roots of the prosecution case and in such eventuality it is the prosecution to suffer. As in this particular case the statements of the witnesses in respect of the injuries caused and the medical evidence are not on one page, so this conflict between the two can only and only be counted towards the appellant and its benefit must be extended to him. The situation in hand is dealt with by this Court in case titled **"Haneef Ullah alias pentar and four others Vs Habib ur Rehman and three others (2021 YLR 899)**, which reads as follows:-

> **"The seat of injuries on persons of the deceased and the places of the assailants where they were standing at the time of firing find no support from the medical evidence, as one of the deceased had received two firearm injuries from the back side whereas the other from left to right, whereas the circumstances suggest that the deceased were facing the accused at the time of incident. One of the deceased received an entry wound from his right with its exit to left which further belies the stance of the prosecution, had he been facing the accused or having his back exposed to the accused then either the entry would have been on the front or back, but not from left to right, so it can safely be held that the medical evidence does not support the case of prosecution."**

ATTESTED
EXAMINER
Peshawar High Court

11. The motive was alleged as previous blood feud between the parties, but in that respect neither the complainant could bring on record independent evidence, nor the investigating officer could record the statements of independent persons, so this Court lurks no doubt in mind that the prosecution failed to prove the motive. As the motive was alleged by the prosecution, so the prosecution was under the bounden duty to prove the same. True that weakness or absence of motive hardly plays a role in the acquittal of an accused charged, but when the motive is the constituent part of the prosecution story, then under all circumstances the prosecution must prove the same and its failure will help none but the appellant. Even otherwise, the prosecution failed to prove that why both the accused attracted to the spot when one of the acquitted accused, had nothing in common with motive, as the cause of killing was the previous blood feud and once on record the same was not brought, then the prosecution is at the losing end.

12. The appellant soon after his arrest submitted an application to the police high-ups for fair investigation. In his application he disclosed that on the night of incident he was posted in Police Lines, Hango and that he was present at the place of his

duty. The inquiry was initiated and an inquiry officer was deputed for the purpose. The statements of numerous officials were recorded and even they tendered affidavits in that respect. The bona-fide of the appellant can be gauged from the fact that soon after the occurrence he applied for bail before arrest and at the same time he submitted an application regarding his innocence. The inquiry officer also collected the call data record, where the appellant was shown present in Police Line, Hango and that the same evidence went unrebutted. Even the investigating officer opined regarding the innocence of the appellant. True that the plea of alibi will hardly play a role to discredit the eyewitness account, but when the plea taken appeals to a prudent mind and when the plea is duly verified, then in those circumstances the same can be taken into consideration. As on one hand the prosecution came forward with twisted and concealed facts, whereas on the other the medical evidence does not support the eyewitness account, then in such eventuality the plea of the appellant can be taken into consideration, more particularly, when the same set of evidence has been disbelieved in respect of the acquitted co-accused. The plea of alibi was taken into consideration in case titled "**TASADDAQ HUSSAIN alias**

IDNAN Versus The STATE and others", (2019 P Cr. L J Note 160), which is reproduced herein below:-

> **"It is important to mention here that co-accused Falak Sher, who was attributed the role of making fatal fire shot at the deceased was arrested later on and died in the judicial lockup. The appellant, from the day one, took the plea of alibi that he was running the business of pesticide, remained away from his house in connection with receiving the amount of pesticides. This plea of the appellant was further verified by the peoples of the vicinity to whom he had met at the relevant time. Different persons from the vicinity as well as from the appellant's work place joined the investigation in this regard and out of them, three persons appeared as defence witnesses in order to verify the appellant's presence with them at the time of occurrence. Admittedly, ipse dixit of the police opinion is not binding upon the Court, however, if the said opinion is based on sound material and the evidence collected in support of the innocence of the accused is well founded then the same could be taken into consideration in support of the other pieces of evidence."**

13. The cumulative effect of what has been stated above, leads this Court nowhere but to hold that the prosecution could not succeed in bringing home guilt against the appellant. The impugned judgment is suffering from inherent defects and the learned trial Court while passing the impugned judgment misdirected itself, both in law and on facts of the case, which calls for interference. The instant criminal appeal is allowed, the impugned judgment is

set aside and the appellant is acquitted of the charge. He shall be released forthwith if not required to be detained in any other case.

14. Now diverting to the **Criminal Revision No.03-P/2021** titled **"Mst. Shahnaz Bibi Vs Abdul Wahab etc"** through which the complainant has requested this Court for enhancement of the sentence. When once the appeal against conviction has been accepted and once the impugned judgment has been set aside, so in that eventuality the instant criminal revision would hardly proceed and the same is dismissed as such.

Announced
07.06.2023.

JUDGE

JUDGE

"Ihsan PS"
(DB) Mr. Justice Ishtiaq Ibrahim & Mr. Justice Sahibzada Asadullah

CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanoon-e-Shahadat Act 1984
22 SEP 2023

No. 9949
Date of Presentation of Application 22-09-2023
No of Pages 23-P
Copying fee
Total 92-00
Date of Preparation of Copy 22-09-2023
Date of Delivery of Copy 22-09-2023
Received By Zoffat

45

(36) Annex-D

OFFICE OF THE DISTRICT POLICE OFFICER ORAKZAI

OFFICE ORDER:-

The order will dispose off the departmental enquiry conducted against Constable Abdul Wahab s/o Wakeel Akbar under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

Constable Abdul Wahab s/o Wakeel Akbar was charged/involved in case FIR No. 888 dated 12.06.2019 U/S 302/324/452/34 PPC PS MRS District Kohat.

He was suspended vide order OB No. 606 dated 26.09.2019 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 Abdul Wahab s/o Wakeel Khan 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 Abdul Wahab s/o Wakeel Khan with immediate effect. Kit etc issued to the Constable be collected.

Announced No. 1228
Dated 28/12/2020

DISTRICT POLICE OFFICER, ORAKZAI

No 278 /EC/OASI Dated 28/12 /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

46

(37) Annex-E

بحضور جناب RPO صاحب کوہاٹ ڈویژن کوہاٹ

عبدالوہاب ولد وکیل اکبر سکنہ قوم ملاخیل تپہ قطب خیل، مزاری گڑھی، ڈاکخانہ غلجو تحصیل اپر ضلع اورکزئی ----------سائل

بنام

سرکار

علت نمبر:888، مورخہ 12/6/2019، جرم:PPc 302/324/452/34 تھانہ MRS

اپیل بنارضگی حکم مورخہ 28/12/2020 سیریل نمبر 278 از جناب ڈسٹرکٹ پولیس آفیسر ضلع اورکزئی جس کی رو سے جناب DPO اورکزئی نے سائلان/اپیلانٹ کو انکی سروس سے Dismiss (برخاست) کیا گیا ہے۔ (مصدقہ نقل حکم لف ہے)۔

استدعائے اپیل: بمنظوری اپیل ہذا چونکہ سائل/اپیلانٹ کو عدالت عالیہ پشاور ہوئی کورٹ پشاور نے بذریعہ کریمنل اپیل نمبر 1030-P/2020 مورخہ 07-6-2023 کو مقدمہ مذکورہ بالا/FIR سے سائل/اپیلانٹ کو بری کیا گیا ہے۔ نیز سائل/اپیلانٹ کو تمام تر مراعات بمعہ تنخواہ بھی جاری کی جائے۔
(نقل حکم پشاور ہائی کورٹ پشاور بعنوان "عبدالوہاب بنام سرکار" لف ہذا ہے)۔

جناب عالی! اپیلانٹ حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ سائل/اپیلانٹ کے خلاف مذکورہ FIR مسماۃ شہناز بی بی زوجہ محمد طارق سکنہ اورکزئی حال میاں گان کالونی کوہاٹ درج کی تھی۔ (نقل FIR لف ہے)۔

۲۔ یہ کہ سائل/اپیلانٹ میں مذکورہ FIR میں گرفتار کیا گیا۔

۳۔ یہ کہ بعد از گرفتاری سائل/اپیلانٹ کو عدالت ایڈیشنل سیشن جج-III کوہاٹ میں مورخہ 21/12/2020 کو مذکورہ جرم میں عمر قید کی سزا سنائی گئی (نقل حکم لف ہے)۔

۴۔ یہ کہ سائل/اپیلانٹ حکم عدالت ASJ-III مورخہ 21/12/2020 کے خلاف کریمنل اپیل عدالت عالیہ پشاور ہائی کورٹ پشاور میں بذریعہ SRA نمبر 1030-P/2020 دائر کی جو کہ بعد از سماعت عدالت عالیہ پشاور ہائی کورٹ پشاور میں حکم/فیصلہ عدالت ASJ_III کوہاٹ مورخہ 21/12/2020 کو کالعدم قرار دیا جا کر سائل/اپیلانٹ کو پشاور ہائی کورٹ پشاور نے مورخہ 07-06-2023 کو بری کیا گیا اور ساتھ ہی سائل/اپیلانٹ کے خلاف جو کریمنل ریویشن (Enhancement) جو کہ کمپلنٹ مسماۃ شہناز بی بی نے دائر کی تھی وہ بھی عدالت عالیہ پشاور ہائی کورٹ پشاور نے خارج کی ہے۔ تو بدیں وجہ بھی سائل/اپیلانٹ کے خلاف مزید کسی قسم کا مقدمہ درج نہ ہے۔

Attested

۵۔ یہ کہ سائل/اپیلانٹ کو مستغیث مقدمہ نے اپنی پہلی بیان میں ہرگز چارج نہیں کیا تھا۔

۶۔ یہ کہ سائل/اپیلانٹ اپنے سروس کارڈ سیریل نمبر 77 وبلٹ نمبر 879 کے مطابق رینک ASI تھا۔ جبکہ DPO اورکزئی نے سائل/اپیلانٹ کو اپنے آرڈر میں صرف کانسٹیبل ظاہر کیا ہے حالانکہ سائل/اپیلانٹ بطور رینک ASI تھا۔

۷۔ یہ کہ سائل/اپیلانٹ نے اپنے دوران سروس تقریباً 18 سال میں کسی بالا آفسران کو کسی قسم کی کوئی شکایت کا موقع نہیں دیا گیا اور نہ ہی سائل/اپیلانٹ کے خلاف کوئی شکایت درج ہے اور سائل/اپیلانٹ کی بعد از بحالی سروس بھی کسی قسم کا شکایت کا موقع بالا آفسران کو نہیں دیگا۔

۸۔ یہ کہ سائل/اپیلانٹ باقاعدہ شادی شدہ اور بال بچے دار شخص ہے۔ مذکورہ نوکری کے علاوہ ذرائع معاش آمدن بھی نہ ہے۔

۹۔ یہ کہ سائل/اپیلانٹ نے اپیل بروقت جمع نہ کر سکا کیونکہ سائل/اپیلانٹ جیل میں تھا اور مذکورہ مقدمہ کی سزا کاٹ رہا تھا۔

لہذا استدعا ہے کہ سائل/اپیلانٹ کا اپیل منظور کیا جا کر سائل/اپیلانٹ کی سروس پر دوبارہ بحال کرنے اور سائل/اپیلانٹ کی تمام مراعات بمعہ تنخواہ جاری کرنے کے احکامات صادر فرمایا جائے۔

عرضی

مورخہ: 24/7/2023

عبدالوہاب ولد وکیل اکبر سکنہ قوم ملاخیل تپہ قطب خیل، مزاری گڑھی، ڈاکخانہ غلجو تحصیل اپر ضلع اورکزئی

ORDER.

This order will dispose of the departmental appeal preferred by **Ex-Constable Abdul Wahab** of district Orakzai against the order of District Police Officer, Orakzai whereby he was awarded major penalty of dismissal from service vide OB No. 1228 dated 28.12.2020. Brief facts of the case are that the appellant was found involved in a criminal case vide FIR No. 888, dated 12.06.2019 u/s 32 / 324 / 452 / 34 PPC PS MRS Kohat. The appellant was awarded punishment of life sentence by the Court of Addl: District and Sessions Judge-III Kohat vide order dated 21.12.2020. The appellant lodged criminal petition in Peshawar High Court against the order of ASJ-III Kohat which was accepted and the order of ASJ-III was set-aside. He was dealt with departmentally on the above charges which culminated in major punishment of dismissal from service.

Proper departmental enquiry proceedings were initiated against him and DSP HQrs: Orakzai was nominated as Enquiry Officer. The Enquiry Officer after fulfillment of codal formalities submitted his findings wherein the appellant was found guilty of the charges leveled against him. He was, therefore, recommended for major penalty under the relevant rules.

Keeping in view the recommendations of the Enquiry Officer and the above cited circumstances, the defaulter official was awarded major punishment of dismissal from service under the relevant rules by the District Police Officer, Orakzai vide OB No. 1228 dated 28.12.2020.

Feeling aggrieved from the order of District Police Officer, Orakzai, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in the office of the undersigned on 12.09.2023. During personal hearing the appellant did not advance any plausible explanation in his defense. By involving himself in heinous criminal activities, the delinquent officer has rendered himself unfit for retention in a disciplined law enforcing agency. The allegations leveled against him have been established beyond any shadow of doubt. Moreover, the appeal of the appellant is badly time-barred by 02-years and 08 months.

Foregoing in view, I, **Sher Akbar, PSP, S.St, Regional Police Officer, Kohat,** being the appellate authority, am not inclined to interfere in the order of punishment passed by DPO Orakzai. Hence, the appeal of Ex-Constable Abdul Wahab is hereby **rejected** being devoid of merit and badly time-barred.

Order Announced
12.09.2023

Regional Police Officer,
Kohat Region

No. 9915-16 **/EC, Dated Kohat the** 14/08 **/2023**

Copy forwarded to District Police Officer, Orakzai for information and necessary w/r to his office Memo: No. 1167/EC, dated 10.08.2023. His Service Record is returned herewith.

2. The appellant, Ex-Constable Abdul Wahab of district Orakzai.

Attested

(40)

وکالت نامہ

بعدالت جناب خیبر پختونخوا سروس ٹریبونل پشاور

ضلع:- اورکزئی

مقدمہ فوجداری/دیوانی

منجانب:- اپیلانٹ

علت ---------- مورخہ ---------- جرم ---------- تھانہ ----------

عبدالوہاب بنام گورنمنٹ خیبر پختونخوا وغیرہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے

محمد الیاس اورکزئی ایڈوکیٹ سپریم کورٹ آف پاکستان مقرر کرکے

اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث و فیصلہ برحلف دیئے جواب دعویٰ اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکورہ کریں۔

لہذا وکالت نامہ لکھ دیا تا کہ سند رہے۔

المرقوم:- 23 ماہ ستمبر 2022ء

العبد

العبد

بمقام پشاور کیلئے منظور ہے۔

Attested & Accepted

Muhammad Ilyas Orakzai

Advocate Supreme Court of Pakistan

SC Enrollment No:- 5801

BC No:- 10-3471

CNIC 14101-0798923-7

Cell 0333-9191892

SCANNED KPST Peshawar

عبدالوہاب ولد وکیل اکبر سکنہ خوشی شہ خیل مرزا کلی اورکزئی ایجنسی

BEFORE THE HONORABLE KHYBER PAKH

SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL No.2040/2023

ABDUL WAHAB .....APPELANT

VERSUS

SCANNED KPST Peshawar

5/1/24

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribunal affairs, Civil Secretariat 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 Headquarter, Hangu.

INDEX

S.No	Description of documents	Annexures	Pages
1	Parawise Comments	-	1-3
2	Copy of FIR	A	4
3	Copy of judgement of Additional session judge III,Kohat dated 21/12/2020	B	05-23
4	Copy of Judgment Peshawar high court ,Peshawar dated 07/06/2023	C	24-43
5	Copy of order by respondent No.03 dated14/09/2023 .	D	44
6	Copy of order respondent No.o4 dated 28/12/2023	E	45
7	Copies of inquirt	F	46-48
8	Copies of departmental appeal of appellant	G	49-50
8	Affidavit	-	51
9	Authoity	-	52

10-1-2024

Peshawar

Deponent

51

P-1

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL No.2040/2023
ABDUL WAHAB .....APPELANT

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribunal affairs, Civil Secretariat 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 Headquarter, Hangu.

Parawise Comments by Respondents.

Respectfully Sheweth:-

Preliminary Objection:-

i. That the appellant has got no cause of action.
ii. The appellant has got no locus standi to file the instant appeal.
iii. That the appeal is bad for misjoinder and non-joinder of necessary parties.
iv. That the appellant is estopped to file the instant appeal for his own act.
v. That the appeal is bad in eyes of law and not maintainable.
vi. That the appellant has not approached the honourable 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 levies/ Khassadar personnel have been absorped in Khyber Pakhthunkhwa Police in accordance with Khyber Levies Force Act,2019 and Levies Force (Absorption in the Khyber Pakhtunkhwa Police) Rules, 2019.Hence, the appellant was absorped in Khyber Pakhtunkhwa Police, newly merged district Orakzai.
3. Irrelevant, as the appellant being member of the disciplined force was under obligation to perform his duty in accordance with the law and rules.
4. Incorrect, the appellant was directly charged in the commission of murder vide FIR No.888. Hence previous service record had no concern with the appeal of appellant.
5. Incorrect and misleading. On 12/06/2019 one shahnaz w/o Muhammad Tariq lodged FIR No.888 dated 12/06/2019 u/s 302/324/452/34 PPC Police Station MRS Kohat wherein she charged the appellant alongwith his co-

accused for the murder of his husband and attempt on his life. (Copy of FIR is attached as annexure "A") Subsequently he was convicted by the learned Trial Court.

6. Incorrect, the appellant had not Surrendered himself before the law. After commission of offence, the appellant was absconder, but was arrested by the local Police of district Kohat which clearly shows that the appellant is connected with the commission of heinous offence.
7. The appellant after conclusion of trial was convicted by the trial court of Additional Session judge-III, Kohat whereby the appellant was sentenced to imprisonment of life with fine of Rs. 1,00,000/- for the murder of deceased Muhammad Tariq. Similarly, the appellant was also convicted u/s 324 PPC for the offence of attempted murder of complainant Mst Shahnaz and sentenced to suffer rigorous imprisonment for ten years with fine in shape of compensation of Rs 50,000 and the appellant was also convicted under section 337-D for murderous assault and causing injuries to complainant Mst shahnaz and sentenced to suffer rigorous imprisonment for seven years with fine in shape of compensation of Rs.50,000.The conviction had proved that the appellant had committed the offence.Hence the appellant was dismissed from service by the respondent N0.04.Later on, the appellant filed criminal appeal against his conviction before hon'ble Peshawar High Court whereby the appellant was acquitted on technical grounds.Which does not mean that the appellant is not involved in the commission of offence. Moreover, judicial proceeding and departmental proceeding go side by side. One does not affect the other. Copy of the judgement dated 21/12/2020 of Additional Session judge III, Kohat is attached as annexure "B" while copy of the judgement dated 07/06/2023 of Peshawar High Court is attached as annexure "C".
8. Correct to extent of dismissal order of the appellant already dismissed vide proceeding peruse. However,Criminal proceedings and departmental proceedings are distinct in nature and run side by side. Therefore decision of one authority is not binding on other. Moreover, complainant has directly charged the appellant with his co-accused in the commission of offence and mere acquittal of accused in a criminal case does not amount to his innocence.
9. Correct to the extent that the appellant authority rightly rejected departmental appeal of appellant being devoid of merits and badly time barred.
10. Incorrect, the appellant was found involved in offence of heinous nature thus committing a grave misconduct. Therefore the appellant was dismissed from service in accordance with law and the instant appeal is liable to dismissed on the following grounds.

Grounds;-

A. Incorrect, the impugned orders are legal, speaking one and passed in accordance with the relevant law / rules after observing all codal formalities.

B. Incorrect, both the orders of Respondent No.3 & 4 are in accordance with law and facts of instant case. Copies of orders are attached as annexure "D" and "E".

C. As replied above, criminal and departmental proceedings are distinct in nature and run side by side.

D. Incorrect, the charge sheet served upon the appellant is self- explanatory. Similarly finding report of inquiry officer is also self-explanatory, wherein the charge/allegation levelled against the appellant has been established and he was held guilty of the charges. Copies of inquiry is attached as annexure "F".

E. Incorrect. The appellant was charged for serious offence and earned bad name to a disciplined force.

F. Incorrect, the appellant was convicted in a murder case and was sentenced to life imprisonment by the learned trial court of Additional Session Judge (v) kohat. Hence the appellant is not entitled for restoration into service.

G. Incorrect, the appellant was proceded departmentally by the respondent No.04 in accordance with relevant law/rules.

H. The appellant was dismissed from service on 28/12/2020 while the appellant lodged his departmental appeal on 24/07/2023 after a considerable time of delay, hence cannot be condoned .Copy of dismissal order is already attached as annexure "D and "E" while copies of departmental appeal is attached as annexure "G".

I. The respondents may also be allowed to advance other grounds during the course of arguments.

Prayer:-

In view of the above ,it is prayed that the appeal contrary to facts, law and rules, devoid of merits and not maintainable may graciously be dismissed with cost, please.

(SALAH U DDIN KUNDI)
District Police Officer,
Orakzai
(Respondent No.4)

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

M.ABID MAJEED
(ADDITIONAL CHIEF SECRETARY)
Government of Khyber Pakhtunkhwa
Home & TA's Department,Peshawar
(Respondent No.1)

Additional Chief Secretary
Home & T.As Department
Khyber Pakhtunkhwa.

(DR.MUHAMMAD AKHTAR ABBAS)PSP
DIG/LEGAL,CPO
For inspector General of Police,
Khyber pakhtunkhwa ,Peshawar
(Respondent No.2)

54

A-4

ضلع

MRS

نمبر

888	تاریخ و وقت رپورٹ 6/12/19
تاریخ و وقت وقوعہ 6/12/19 وقت 08:30 بجے	
نام و سکونت اطلاع دہندہ و مستغیث	6/12/19 وقت 08:30 بجے چاکسدگی ہر چک تھانہ
مختصر کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو	مسماۃ شہناز بی بی زوجہ طارق ساکنہ اور کرنی ایجنسی میاں چنوں
	302-324-452 PPC 34
جائے وقوعہ فاصلہ تھانہ سے اور سمت	
نام و سکونت ملزم	حامد از ان محمد طارق راجپوت میاں چنوں
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج رجسٹر کرنے میں توقف ہوا ہو تو وجہ بیان کرو۔	فضل ولد خان وزیر ساکنان اورکزئی ایجنسی حال میاں چنوں
تھانہ سے روانگی کی تاریخ و وقت	برآمدگی مراسلہ پر دیا جاتا ہے

ابتدائی اطلاع نیچے درج کرو

المورخ مسئل رپورٹ

مورخہ ایک تحریری مراسلہ جناب نوید احمد ASI انچارج چوکی ملز ایریا بدست کنسٹبل حیات اللہ 234 بطور مسئل رپورٹ موصول ہوا جس کا خلاصہ درج ذیل ہے۔ انسپکٹر انچارج تھانہ صدر اطلاع KDA مسئل کرتے آیا ایجنسی روم میں مجروحہ مسماۃ شہناز بی بی زوجہ محمد طارق بعمر 30 سال درست بازو حوض میں جبکہ مقتول محمد طارق والد خیال بادشاہ بعمر 45 سال ساکنان اورکزئی ایجنسی حال میاں چنوں کا لاش موجود پایا مسماۃ شہناز بی بی رپورٹ کرتی ہے کہ میں نے شوہر ام مقتول محمد طارق، بچوں کے گھر خود کے برآمدہ میں خوابیدہ تھی برآمدے کا بجلی بلب آن تھا۔ قریب بالا پستول برآمد کی آواز ہر بند سے بیدار ہو کر دیکھا کہ سسر وہاب ولد وکیل گھر کے اندر جبکہ سسر فضل ولد خان وزیر ساکنان اورکزئی ایجنسی حال ہنگو دیوار پر موجود تھا۔ شوہر ام جیسے ہی چارپائی سے اٹھا تو سسر وہاب نے ان پر بذریعہ پستول باارادہ قتل فائرنگ کی میں نے سسر وہاب کو پکڑنے کی کوشش کی تو وہاب نے مجھ پر باارادہ قتل فائرنگ کی جبکہ فائرنگ سے شوہر ام موقع پر جاں بحق ہوا جبکہ میں اس فائرنگ سے محفوظ رہی یا فائرنگ کے دوران مسماں فرار ہونے وجہ دراز سابقہ قتل مقاتلہ کی دشمنی ہے۔ دفعہ 302 تعزیرات علاوہ گھر میں موجود بچوں کا چشم دید ہے۔ میں اپنی مجروحیت اور شوہر ام کی قتل کا برخلاف ہر دو ملزمان بالا و جو بیدارہ ہوں نشان انگوٹھا مسماۃ شہناز واجب الارز محمد طارق نے رپورٹ بالا کی تائید کی نشان انگوٹھا واجب کارروائی پولیس حسب گفتہ سائلہ رپورٹ درج بالا ہر سہ ملزمان کو سنایا سمجھائی گئی درست تسلیم کر کے زیر رپورٹ خود نشان انگوٹھا ثبت کیا جبکہ تائید کنندہ نے بھی نشان انگوٹھا ثبت کی جس کی پس الصدر لیتی کرتا ہوں پستول کے 2 فائر فائر اور قبرو کالشت ضرب مرتب کر کے زیر حفاظت کنسٹبل فیض اللہ 2340 حوالہ ڈاکٹر تیزی ڈاکٹر صاحبہ کیا جاتا ہے۔ مزید معروض رپورٹ ہے مجروحہ بالا کی بالا جا کر [illegible]

بذریعہ کنسٹیبل حیات اللہ 2340 ارسال تھانہ ہے بعد چاک پیسگی پرچہ کی نقل
FIR مراسلہ بغرض تفتیش حوالہ KBi شامل پرچہ ہذا انگریزی لزیہ امر Asi
انچارج چوکی ملزاپریا 12/6/19 کارروائی تھانہ آمدہ مراسلہ ہذا طرف درج بالا بمعہ
کاپی پرچہ مجرائم بالا چاک بمعہ نقول FIR مراسلہ بغرض تفتیش حوالہ
KBi شامل کیا جاتا ہے۔ پرچہ بطور اسپیشل رپورٹ گزارش ہے

Asi - MPs
12-6-19

55

P. 5

Annexure "B"

IN THE COURT OF FARZINA SHAID, ADDITIONAL SESSIONS JUDGE-III, KOHAT

SESSION CASE NO. SC-30/20 OF 2019

Date of original institution: 06/02/2020

Date of decision: 21.12.2020

The State

vs

1. **Abdul Wahab s/o Wakeel Khan agad about 34 years &**
2. **Fazal Janan s/o Khan Wazir aged about 62/63 years both residents of Orakzai Agency presently Hangu.**

(Accused facing trial)

Case FIR No. 888 Dated: 12/06/20219 Under Sections 302/324/337-D/34 PPC, Police Station Cantt, KOHAT

JUDGMENT

1. Accused persons, named above, faced trial in the above mentioned case on the charges that they on 12/06/2019 at 02.30 Hours, at Miangan Colony, within the criminal jurisdiction of Police Station Cantt, Kohat, while duly armed with firearms trespassed the house of complainant, committed Qatl-i-Amd of deceased Muhammad Tariq by firing at him effectively, attempted at the life of complainant (Shahnaz Bibi) effectively and committed Jaifah to Mst: Shahnaz Bibi.

Farzana 21.12.20 Shaid Additional Sessions Judge-III

Attested

ATTESTED TO BE TRUE COPY
21 NOV 2023
EXAMINED COPING BRANCH KOHAT

2. According to Murasila (Ex.PA/1) followed by an FIR (Ex.PA), complainant/injured Mst: Shehnaz Bibi w/o Muhammad Tariq r/o Orakzai Agency alongwith the dead body of her husband, reported the matter in Emergency Ward of DHQ Hospital, KDA Kohat to the effect that at about 02.30 hours, she alongwith her husband namely Muhammad Tariq were sleeping in the veranda of her house in the light of bulb, meanwhile she woke up on hearing the voice of loading of a pistol and saw that one Wahab s/o Wakeel was standing inside their house with pistol and one Fazal Manan s/o Khan Wazir r/o Hangu was present on the wall duly armed and as her husband woke up, one Abdul Wahab started indiscriminate effective firing upon her husband with his pistol due to her husband died on the spot and in order to safe her husband she tried to stop Abdul Wahab but she also got bullet injuries. Both the accused decamped from the spot after the occurrence. The motive for the occurrence is previous blood feud enmity. Hence, the present FIR.

3. After completion of usual investigation, complete challan was sent up for trial. The accused persons were summoned. Copies of relevant documents within the meaning of Section 265-C Cr.PC were supplied to the accused and on 27/02/2020 formal charge against the accused were framed to which they pleaded not guilty and claimed trial, so the case was posted for prosecution evidence.

4. The prosecution, in order to prove and substantiate its case against the accused, produced and examined as many as sixteen (14) PWs. The sap of the prosecution evidence is given below:-

21.12.20

Attested

PW-1 is the statement of Dr. Abdul Samad MO DHQ, Kohat who on 12.06.2019 at 04.00 AM I conducted autopsy on the dead body of deceased Muhammad Tariq son of Khial Bad Shah r/o Miangan Colony, Kohat aged about 45/46 years and found the following:-

External Examination-

1. Single entry wound in oral cavity piercing lower lip, lower jaw and tracking mandible going downward toward right side.
2. Single exit wound at the base of neck right side.

Internal Examination:

Muscles, Bones, Joints: Lower lip injured. Mandibular fractured. Remarks. In my opinion the cause of death of deceased is injury to major blood vessels in neck leading to hemorrhage and ultimately cardio pulmonary arrest.

Probable time between injury & death - 10 to 15 minutes.

Probable time between death and P.M. - within 2 to 3 hours.

PW-2 is the statement of Naveed Khan ASI who on the day of occurrence was present in P.P. Mills Area where received the information regarding occurrence that the injured and dead body were taken to KDA hospital. He came to KDA hospital where dead body of deceased Muhammad Tariq was lying. Complainant injured Mst.Shahnaz Bibi reported the matter to him which he reduced in shape of Murasila Ex.PA/1. The complainant after admitting her report as correct thumb impressed the same while one Wajid Khan also thumb impressed the same as attestifier of report. He also prepared injury sheet of injured Mst.Shah Naz Bibi which is Ex.PW.2/1. He also

21.12.20

Attested

prepared injury sheet and inquest report of deceased Muhammad Tariq which are Ex.PW.2/2 & Ex.PW.2/3 respectively.

PW-3 is the statement of Imran Khan IHC who is marginal witness to the recovery memo Ex.PW.3/1 vide which the I.O. took blood Ex.PI from place of deceased Muhammad Tariq and sealed the same in parcel No.1. The IO also took blood Ex.P2 from the place of injured Mst.Shahnaz Bibi and sealed the same in parcel No.2, while from the place of accused recovered two empties of 30-bore Ex.P3 and one live round Ex.P4 and sealed the same in parcel No.3. He is also marginal witness to the recovery memo Ex.PW.3/2 vide which the I.O. took into possession one bulb Ex.P4 which was lit on the northern side in between the two rooms in veranda. He is also marginal witness to the recovery memo Ex.PW.3/3 vide which the I.O. took into possession last worn blood stained clothes of the deceased which are Ex.P5 and sealed the same in Parcel No.4 alongwith the blood stained clothes of injured Mst.Shahnaz Bibi Ex.P6 which were sealed in parcel No.5, brought by constable Faizullah from the hospital. His statement was recorded by the I.O.

PW-4 is the statement of Rizwan Ullah OII who during those days was posted at PS MRS, Kohat. He conducted partial investigation in the instant case. Vide application Ex.PW.4/1, produced the accused Fazal Janan before the court for obtaining his further custody but the application was turned down and the accused was committed to judicial lockup. He recorded his statement u/s 161 Cr.P.C. On recall of BBA of accused Abdul Wahab he formally arrested him vide card of arrest Ex.PW.4/2. He

21.12.20

produced him before the court for physical custody vide application Ex.PW.4/3; one day custody was granted; on expiry of which he again produced him before the court vide application Ex.PW.4/4 for further custody but his application was turned down and the accused was committed to judicial lockup. He also recorded statement of accused Abdul Wahab u/s 161 Cr.P.C. He drafted application Ex.PW.4/5 for obtaining proclamation notices of absconding accused. He recorded statement of concerned DFC. He received FSL results Ex.PZ and Ex.PZ/1 and placed the same on file.

PW-5 is the statement of Muhammad Javed IHC who during those days was posted at PS MRS, Kohat being DFC. He was entrusted with the execution of warrants issued u/s 204 Cr.P.C. against accused Fazal Jan. He searched for accused on the given address and found that accused was willfully avoiding his lawful arrest and there was no likelihood of his arrest or appearance before the court in the near future. Therefore, he returned the warrants unexecuted alongwith his report on its back which correctly bears his signature. The warrant is Ex.PW.5/1, while his report overleaf the warrant is Ex.PW.5/2. Similarly, he also carried out the compliance of process issued u/s 87 Cr.P.C. against the above named accused. In this respect the proclamation notice is Ex.PW.5/3, while his report overleaf the same is Ex.PW.5/4, which correctly bears my signature.

PW-6 is the statement of Rifaqat Ali FC who during those days was posted in PS MRS, Kohat. He took the parcels of the instant case to the FSL. He handed

Attested

P 10

over the same to FSL examiner and received endorsement on road certificate Ex.PW.6/1. He is also marginal witness to recovery memo Ex.PW.3/1 Ex.PW.3/2 and Ex.PW.3/3 (already exhibited) and to the extent of recovery memos statement of Imran has already been recorded before the court. His statement was recorded by the I.O. u/s 161 Cr.P.C.

PW-7 is the statement of lady doctor Sadaf Ijaz WMO who on 12.06.2019 examined the patient Shahnaz Bibi wife of Tariq aged about 31 years r/o Miangan Colony, Kohat and found the following:-

Patient referred to Casualty with firearm injury at home by some unknown person. She received two shots over her both breast. On right breast entry wound is 2 x 2 cm on right breast alongwith nipple and exit wound 2 x 3 cm on medial lateral quadrant. Other shot is on left breast; entry is 2 x 2 cm on medial quadrant and exit is 2 x3 cm on lateral upper quadrant. Both shots are bleeding actively. Shifted to Operation theater. Antiseptic dressing done. Patient was stable vitally and well oriented in time, place and person. Shifted to surgical ward for observations.

B.P. 100/80 mm Hg. Pulse 74 p.m. Temperature 98.6 F.

Nature of injuries - firearm and grievous

Kind of weapon used - pistol

Probation duration of injury - 2 to 3 hours.

21.12.20

Attested

ATTESTED TO BE TRUE COPY
21 NOV 2023
EXAMINED COPING BRANCH KOHAT

PW-8 is the statement of Abdul Rauf ASI who during those days was posted as ASI PS MRS, Kohat. On receipt of Murasila he chalked out FIR Ex.PA.

PW-9 is the statement of Islam Nisar SI who during those days was posted in PS MRS, Kohat. Investigation was entrusted to him. He proceeded to the spot where he prepared site plan Ex.PB on the pointation of Mst.Rabia eyewitness. He recorded the statements of PWs. During spot inspection he took into possession blood through cotton ExP-1 from the place of deceased Muhammad Tariq and sealed the same in parcel No.1. and blood through cotton Ex.P2 was recovered from the place of injured Shahnaz Bibi from Point-B and sealed the same in parcel No.2. He also took into possession two empties of 30-bore Ex.P3 freshly fired alongwith one live round of 30 bore from the place of accused Abdul Wahab and sealed the same in parcel No.3. The recovery memo to this effect is Ex.PW.3/1 (already exhibited). Similarly, he took into possession vide recovery memo Ex.PW.3/2 (already exhibited) vide which solar bulb Ex.P4 was recovered from the place of occurrence. Vide recovery memo Ex.PW.3/3 (already exhibited) he took into possession the blood stained garments consists of banyan, shalwar Ex.P5 and sealed the same in parcel No.4, sent by the doctor through constable Faizullah. The blood stained garments of the injured Shahnaz Bibi consists of three (Chadars), qamees having cut marks, shalwar Ex.P6 and sealed the same in parcel No.5.1 prepared the list of legal heirs Ex.PW.9/1. He vide application Ex.PW.9/2 sent the parcels to the FSL through Constable Refaqat Ali No.46. As the accused were absconding, therefore, he initiated proceedings u/s 204

21.12.20

Attested

Cr.P.C. against Fazal Janan vide application Ex.PW.9/3. Thereafter he handed over the case file to Amanullah SI for further investigation.

PW-10 is the statement of Rabia who stated that on the day of occurrence he alongwith other inmates of the house were sleeping in the veranda of the house. It was about 2.30 AM and the bulb was lit (on) when she heard the voice of firing and cries of her mother in law Mst.Shahnaz Bibi and her father in law Muhammad Tariq. She saw that a person duly armed with pistol was present in the house who fired upon her father in law and thereafter fired on her mother in law. Due to such firing her father in law Muhammad Tariq died on the spot, while her mother in law Mst.Shahnaz Bibi got injured. The other person was present on the wall of the house. The person who fired at Mst.Shahnaz Bibi and Muhammad Tariq was Abdul Wahab. The site plan was prepared on her pointation. Motive for the occurrence is previous blood feud enmity. She charge the accused for the commission of offence.

PW-11 is the Statement of Mst.Shahnaz Bibi (injured) widow of Muhammad Tariq who is stated that on the night of occurrence at about 2.30 AM she alongwith her husband and other inmates were sleeping in their house. She woke up with the voice of pushing of bolt of the pistol by the accused. Thereafter the accused fired at her husband Muhammad Tariq and he died on the spot. Then the accused fired at her due to which she sustained injuries. Thereafter she alongwith the dead body of the deceased were shifted to the hospital in Ambulance. She remained admitted in the hospital for three days and on the

Attested

fourth day she was discharged from the hospital. She reported the matter to the local police in the hospital which was incorporated in the shape of Murasila. Motive for the occurrence was previous blood feud enmity. The Murasila is Ex.PA/1. She is eyewitness of the occurrence. Shecharge the accused for the commission of offence.

PW-12 is the statement of Muhammad Wahid s/o Tariq who stated that he verified the report of her mother who reported the matter to the local police in the hospital. The report was read over to him and thereafter he thumb impressed the report as a token of its correctness.

PW-13. Statement of Ayatullah Khan S.I. SHO who submitted complete challan Ex.PW.13/1 against accused Abdul Wahab and Fazal Janan.

PW-14 is the statement of Fayyaz SHO who during those days was posted in PS MRS, Kohat. On completion of investigation he submitted complete challan against accused Abdul Wahab and Fazal Janan which is Ex.PW.14/1.

5. After the closure of prosecution evidence, statements of accused U/s 342 Cr.PC were recorded, wherein they professed innocence; however, they were neither ready to be examined on oath nor wished to produce evidence in their defense.

6. Learned counsel for the complainant assisted by APP for the state contended that the accused persons are directly charged in the promptly lodged FIR with specific role of

firing given to accused facing trial, which excludes chances of consultation and deliberations. That the occurrence is of night time but a bulb was on in the veranda, in the light of which complainant recognized the accused persons as the accused were co-villagers of the deceased and known to the complainant party so there is no chance of mis-identification. That certain recoveries like blood stained earth from the spot, blood stained clothes and empties in the case, which were sent to FSL and in respect of the same, positive FSL report has been received, collected and placed on file. That medico legal report also corroborates the site plan. He stressed that all the above-mentioned materials, connect the accused facing trial, with the commission of offence. It was further argued that occurrence has been witnessed by eye-witnesses/family members of the deceased, so no malafide could be pointed out. That motive set out also fully established. That the accused has been charged in a promptly lodged report and all the witnesses have deposed against the accused facing trial and nothing has been brought on record which could give any benefit to the accused. The learned counsel prayed that accused may be given exemplary punishment.

7. Whereas, on the other hand, learned defense counsel on behalf of accused contended that the accused are totally innocent and falsely been implicated in the present case with malafide intention after consultation and due deliberation. That the whole story of the prosecution is a concocted one, as it is an unseen occurrence and is a case of no evidence. He further contended that the injuries on the body of the deceased does not corroborate the site plan and submitted that the very story of the prosecution is dis-believable. That there are lots of contradictions in the

21.12.20

Attested

statements of PWs, which create doubt and benefit of doubt, must be given to accused. That accused persons being innocent may kindly be exonerated from the charges leveled against them and be honorably acquitted.

8. I have heard the arguments of learned APP for the State assisted by learned counsel for complainant and that of learned defense counsel and also perused the available record carefully.

9. It is cardinal principle of criminal law and jurisprudence that every accused is innocent unless proves otherwise and a very heavy duty is rested with the prosecution to prove its case beyond any shadow of doubt. The nature and line of evidence as well as line of arguments adopted by the prosecution displays that the prosecution is basing its case against the accused on direct ocular account, motive, medical evidence and circumstantial evidence.

10. Perusal of record shows that in initial report complainant Mst Shahnaz Bibi contended that on 12-06-2019 at 02:30am, she alongwith her husband namely Muhammad Tariq and other inmates were sleeping in the veranda of their house. The accused facing trial Abdul Wahab and Fazal Janan trespassed into their house and in furtherance of common intention committed Qatli amd of Muhammad Tariq and attempted to commit Qatli Amd of complainant and also committed jaifah to her. FIR i.e. EXPW PA shows that it is night occurrence and matter was reported to police at 04:00 am at KDA Hospital. This shows that report was promptly lodged and available evidence nowhere indicates that it was lodged after due consultation. Besides,

21.12.20

Attested

complainant being of age and wife of deceased was legally competent to make the same.

11. DIRECT OCULAR ACCOUNT

Ocular count in this case is rendered by the complainant Mst Shahnaz (P.W-11) and Mst Rabia (P.W-10). Complainant as P.W-11 narrated the same story as is incorporated in murasila Ex.P.A/1 and F.I.R Ex.P.A. Complainant as P.W-11 before the court stated that she alongwith her husband and other inmates of house were sleeping in their house, when she woke up on hearing the pistol being bolted. She saw the accused person, who fired at her and her husband effectively. Her husband died on the spot while she received firearm injuries on both her breasts. Stamp of injuries on the body of this witness is not denied. It is also not disputed that complainant and accused reside together in the same house. Relationship of accused and deceased being spouses is also not disputed and it is also an admitted fact that the crime house belongs to complainant. This witness has been subjected to a very lengthy, searching and cumbersome cross-examination, but she remained stick to her deposition.

P.W-10, daughter-in-law of the complainant, who is admittedly residing in the same house, sharing common compound with the complainant, has deposed as P.W-10 and stated to be an eye witness to the occurrence. In her examination in chief, she fully supported P.W-11. She was also cross-examined at sufficient length but could not be shattered on material and particular points. This witness has vehemently denied the suggestion that she has falsely

21-12-20

Attested

P. 17

deposed against the accused persons. As such, the testimony of this witness also goes un-rebutted and provides full support and strength to the deposition of complainant P.W-11. So, the ocular account furnished by P.W-11 and P.W 10 is fully in line with each other and renders a very true and natural account of the occurrence.

The stamp of two injuries on the front part of body of the complainant i.e. on her breasts confirms her stance that she while trying to save her husband was hit and it eliminates any possibility of her being not present on the scene of occurrence. The joint residence of both P.Ws with deceased makes them a natural witness and their presence at the relevant time on the scene of crime is quite natural and credible. The occurrence has taken place at 02.30 at night time of the month of June/extreme summer season and naturally people in such hot weather prefer to sleep outside in open air. Though P.W-10 is the daughter-in-law of the complainant, however, it is by now more than settled that the testimony of an eyewitness cannot be brushed aside merely on the ground of his being related to the complainant party. In this particular case the unfortunate incident has taken place inside the residential house of the deceased and it is but natural that inmates of the house and not strangers must have witnessed the occurrence, therefore, P.W-10 and PW-11 who are admittedly residing in the same house are the most reliable natural and also truthful witnesses of the occurrence and particularly when they has no ill will towards the accused to depose false against them. So, the prosecution has been successful in furnishing strong ocular evidence regarding the commission of offence by the accused.

21.12.20

Attested

P.S.T. (19)

12. MEDICAL EVIDENCE

Medical evidence is furnished by P.W-1 Abdul Samad medical officer DHQ Kohat, who conducted autopsy on the dead body of deceased Muhammad Tariq and P.W-7 Dr.Sadaf Ijaz WMO DHQ Kohat, who examined the injured complainant Mst Shanaz. P.W-7 found two fire arm entry wounds on both the breasts of the complainant, whereas PW01 found single entry wound in oral cavity piercing lower lip, lower jaw and tracking mandible going downward toward right side on the deceased and single exit wound at the base of neck right side. Cause of death is stated to be injury to major blood vessels in neck and leading to hemorrhage and ultimate cardio pulmonary arrest. The time of occurrence, time of report and time of medical examination as well as autopsy fully commensurate with each other and in this manner the statements of both these P.Ws are fully in line with the ocular count and establishing case against the accused.

13. CIRCUMSTANTIAL EVIDENCE.

Prosecution relied on the following circumstantial evidence against the accused facing trial, Site plan, number of injuries and recoveries.

In site plan Ex.P.B deceased is shown at point No. 1 in the varanda of complainant/deceased house and accused Wahab has been shown at point No. 6, while complainant and eyewitness at points No. 2 and 3 while other inmates of house at point No 4 and 5 respectively. Accused Wahab

Attested

had denied the site plan and his presence and pressed that he was present on duty at the relevant time as he being a police official. He relied upon CDR record but the same got no evidentiary value as one can leave his mobile anywhere. No CCTV footage available on record. Moreover, during investigation as per zimni No 02, he was found not to be on duty at the time of occurrence. So this circumstantial evidence supports the prosecution case.

The fire shots at the person of the deceased and the complainant is also another very strong circumstance. Deceased was shot from front and complainant while trying to stop the accused Wahab and to save her husband also received on front part of her body i.e. both breasts. So, the nature, manner and number of injuries on the persons of both complainant and deceased are also strong circumstances strengthening the case of prosecution.

P.W-2, P.W-3, P.W-5 and P.W-06 have deposed about the recovery of bloodstained garments, blood stained earth, empties of 30 bore. According to the statements of these P.Ws, blood stained garments of the deceased and complainant/injured were recovered vide recovery memo i.e. Ex.P.W. 3/3, blood stained earth from the place of deceased and injured and two spent bullets while one live bullet of 30 bore from the point near accused Wahab were recovered vide recovery memo Ex.P.W. 3/1. Blood stained earth from the place of the deceased proves that the deceased was done to death at this point and the presence of the accused as per site plan gets support from this recovery. Although the crime weapon is not recovered but according to the report of FSL the empties of .30 bore recovered from the spot were fired from one and same

21-12-20

Attested

pistol and the role of firing is attributed only to accused Abdul Wahab. All these recoveries prove that the deceased was done to death by fire shots and also the complainant was injured and as such this is a strong circumstantial evidence in the hands of prosecution.

14. **MOTIVE**

It is alleged in the initial report that accused persons trespassed the house of the complainant with common intention and accused facing trial Abdul Wahab fired at the deceased and complainant/injured. The motive as incorporated in the F.I.R is previous blood feud enmity, which could not be proved. It has been settled by now that weakness or absence of motive or failure to prove, it is not fatal to prosecution. Any weakness in the motive would not come to the rescue of the accused. Reliance is placed on PLJ 2001 SC 1225, 2019 YLR 59 and 2012 YLR 1325, Peshawar.

15. **ROLE OF ACCUSED FAZAL JANAN.**

As regard to accused Fazal Janan facing trial, his role is quite different from that of accused Abdul Wahab as he had not been given role of firing at the relevant time. He was shown present on wall as per the first information report and was shown at point 07 as per site plan i.e. wall. He has neither been given an active role of firing nor planning about murder. There is no convincing evidence connecting this accused with the commission of offence. The prosecution has not been able to prove even common

21.12.20

Attested

intention on part of this accused. The mere presence of this accused on the wall of deceased house does not make him guilty and the evidence on record is not giving any role to this accused. The complainant and the eyewitness are not directly charging him for the murder. Now this is the job of prosecution to establish circumstances connecting him with the occurrence but the circumstances speak otherwise. Had there been any common intention on his part, this would have been supported by an unimpeachable evidence.

16. In view of the direct ocular account, direct nomination of the accused Abdul Wahab in the F.I.R for effective firing, there would be no possibility of false implication of present accused. Nothing brought up on record that the deceased had enmity with any other person/s in the area, who might have committed his murder. There is nothing on record to support allegations of false implication of present accused in this episode. Minor contradictions in evidence could be of no avail to defense, if the case was found to be proved. The eye-witness are inmates of deceased house and complainant got severely injured in the occurrence. Even, solitary statement of a witness could be enough to warrant conviction as was held in a case reported in (*2004 PCr.LJ 1129*).

17. The aforementioned detail discussion leads me to the irresistible conclusion that prosecution has been able to prove case FIR No 888 u/s 302/324/337-D PPC against the accused facing trial namely Abdul Wahab s/o Wakeel Khan and accused facing trial is hereby held guilty for the

Faqira 21.12.20

Attested

commission of offence alleged against him. Though the accused has fired at the complainant effectively and also done the deceased to death, but, as the motive though alleged but was not proved, therefore, the same can be considered as mitigating circumstance in his favour calling for the award of lesser punishment than the normal one prescribed for the commission of offence proved against him. For this reason I desist from awarding death penalty to the accused Abdul Wahab and hence convict the accused u/s 302-B PPC and sentence him to imprisonment for life along with fine of Rs. 1,00,000/- for the murder of deceased Muhammad Tariq.

18. He is further convicted under sections 324 PPC for attempted murder to complainant Mst Shahnaz and sentenced to suffer R.I for ten years (10) with fine in shape of compensation of Rs. 50,000/-, in default thereof, to suffer six (6) months simple imprisonment.

19. He is further convicted under sections and 337-D P.P.C. for murderous assault and causing injuries to complainant Mst Shahnaz and sentenced to suffer R.I for seven years (07) with fine in shape of compensation of Rs. 50,000/-, in default thereof, to suffer six (6) months simple imprisonment.

20. The sentences of the imprisonment shall run concurrently. Benefit of section 382-B Cr.P.C is also extended to the accused. The amount of fine if realized, the same shall be paid to the Shari legal heirs of the deceased as compensation u/s 544-A Cr.P.C.

Attested

21. Accused Abdul Wahab is in custody, be sent to District Jail, Kohat, alongwith the conviction warrant for serving out his sentence. A copy of this judgment is delivered to the accused free of cost within the meaning of section 371 Cr.P.C. The prosecution has also been given copy of the judgment u/s 373 Cr.P.C.

22. Whereas, the prosecution failed to prove the charges levelled against the accused **Fazal Janan** s/o Khan Wazir r/o Orakzai presently at Kohat, who is hereby acquitted of the charges leveled against him in the instant case i.e. FIR No. 888 dated 12/06/2019 u/s 302/324/34 PPC PS Cantt, Kohat. He is on bail, his bail bonds stand cancelled and sureties are discharged from their liabilities.

23. Case property be kept intact till the expiry of period fixed for revision/appeal.

24. Record be transmitted back while file of this Court be consigned to the record room after its completion and compilation.

ANNOUNCED
21/12/2020

FARZINA SHAID
Addl. Sessions Judge-III, KOHAT.
Additional District & Session Judge III
Kohat

CERTIFICATE.

Certified that this judgment is consisting of ~~eighteen~~ nineteen **(19)** pages. Each page has been read over and signed by me after making necessary corrections therein.

FARZINA SHAID
Addl. Sessions Judge-III, KOHAT.
Additional District & Session Judge III
Kohat

Attested

P2(4)

Annexure-"C"

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

Cr.A No. 1030-P of 2020
Abdul Wahab
Vs
The State & another

Date of hearing: **07.06.2023.**

Appellant (s) by: M/s Shabbir Hussain Gigynai & Dr. Amir Ajam Khattak, Advocates

State by: Malik Haroon Iqbal, AAG

Complt: by: Muhammad Khalid, son of the complainant.

JUDGMENT

SAHIBZADA ASADULLAH, J.- Through this judgment, we intend to decide the instant criminal appeal as well as the connected **Cr.R No.03-P of 2021** titled **"Mst. Shahnaz Bibi Vs Abdul Wahab etc"** as both the cases are the outcome of one and the same judgment dated 21.12.2020 passed by the learned Additional Sessions Judge-III, Kohat, whereby the learned judge has convicted and sentenced the appellant being found guilty of the offence, charge in case FIR No.888 dated 12.06.2019 under sections 302/324/337-D/34PPC, Police Station Cantt: District, Kohat in the following manner;

> **"Under section 302 (b) PPC convicted and sentenced the appellant to imprisonment for life with fine of Rs.100000/- (one lac) for the murder of deceased Muhammad Tariq.**
> **Under section 324 PPC convicted the appellant for making an attempt of the murder of complainant Mst. Shahnaz and**

Attested

ATTESTED
EXAMINER
Peshawar High Court

P-25

sentenced him to 10 (ten) years R.I with fine of Rs.50,000/- (fifty thousand) as compensation, in default whereof he further to suffer 06 (six) months simple imprisonment.

Under Section 337-D PPC for murderous assault and causing injuries to complainant Mst. Shahnaz convicted and sentenced the appellant to 07 (seven) years R.I with fine of RS.50,000/- (fifty thousand) as compensation.

The sentences of the imprisonment shall run concurrently. Benefit of Section 382-B Cr.P.C has been extended to the appellant. The amount of fine if realized shall be paid to the shari legal heirs of the deceased as compensation under section 544-A Cr.P.C."

2. The precise facts of the instant case as per first information report are that on 12.06.2019 at 04:50 the complainant namely Mst. Shahnaz Bibi reported the matter in injured condition in emergency room at KDA Hospital, Kohat alongwith the dead body of her husband that she (the complainant) alongwith her husband Muhammad Tariq now deceased, alongwith children were asleep in the veranda of their house. The electricity bulb of the veranda was switched on at the relevant time i.e. 02:30 AM, she heard the voice of bolt of pistol, woke up from sleep and saw that accused Abdul Wahab s/o Wakeel found present inside the house, whereas the co-accused namely Fazal s/o Khan Wazir was present on the wall of their house, as both the accused are the residents of Orakzai Agency presently at Hango, and when her husband rose from his cot (charpai), in the meanwhile accused Abdul Wahab opened firing at

ATTESTED
EXAMINER
Peshawar High Court

P-26

him with the intention to kill him and during this interregnum she tried to catch hold of the accused, but the accused also fired at her and due to fire shots of the accused his husband got hit and died on the spot, whereas she received injuries on her body. The accused after firing decamped from the place of incident. Motive behind the occurrence was stated to be previous blood feud. The occurrence has witnessed by the children in the house, including her. She charged the accused for the murder of her husband as well as causing injuries to her. Hence, the ibid FIR.

3. After arrest of the accused and completion of investigation, case was put in Court where the appellant was indicted to which he pleaded not guilty and claimed trial. Prosecution, in order to prove its case, produced and examined as many as 14 witnesses, whereafter statement of the accused was recorded under section 342 Cr.P.C wherein he professed his innocence. The learned trial Court, after full-fledged trial, found the appellant guilty of the charge and while recording his conviction sentenced him as mentioned above, hence this appeal.

4. Arguments heard and record gone through

5. In the incident the deceased lost his life whereas the complainant received serious injuries,

Attested

P-1

both the dead body of the deceased, and the injured complainant were shifted to the hospital, where the complainant reported the matter. The report was made to PW-2, who reduced the report of the complainant in the shape of murasila and thereafter the injury sheets and inquest report were prepared. The dead body of the deceased was sent to the doctor for postmortem examination, whereas the injured complainant was examined by the doctor and her medico legal certificate was prepared. The investigating officer after receiving copy of the FIR visited the spot and prepared the site plan. During spot inspection the investigating officer collected blood through cotton from the respective places of the deceased and the injured complainant, whereas two empties of .30 bore alongwith live cartridges were collected near from the place, where the accused-appellant was standing. It is pertinent to mention that during spot inspection a solar bulb was taken into possession, which was declared as the source of identification. The recovered empties were sent to the laboratory and therefrom a report was received, telling that the same were fired from one weapon. The co-accused Fazal Janan was arrested and also the appellant, when his bail before arrest was recalled. During interrogation the appellant

P2(3)

disclosed his presence, on the night of incident, in Hango Police Line, being posted as ASI over there. The appellant also submitted an application regarding his innocence and the same was investigated. The investigating officer recorded the statements of all concerned and they tendered affidavits in favour of the appellant, so much so, the investigating officer collected the call data record, where the appellant is shown present at the place of his duty. Though the police opined regarding the innocence of the appellant, yet the learned trial Court did not agree with the same and as such the trial concluded in holding the appellant guilty and the co-accused innocent.

6. The learned trial Court took into consideration the material aspects of the case and applied its judicial mind to the evidence on file and the statements of the witnesses. The learned trial Court after feeling satisfied, convicted the appellant and acquitted the co-accused, but this being the Court of appeal is under the bounded duty to re-visit the record of the case and to re-appreciate the statements of the witnesses, so that miscarriage of justice could be avoided. True that in the instant case we have before us an injured eyewitness with the stamp of injuries, but we cannot forget the presence

Attested

ATTESTED
EXAMINER
Peshawar High Court

P-29

of the eyewitness at the stated time, in the house in question, but what this Court is to see is; as to whether she told the whole truth and as to whether the incident occurred in the mode, manner and at the stated time. On one hand we have the injured eyewitness, the widow of the deceased, and in the like circumstances substitution is a rear phenomenon, but on the other we have an accused who came forward with a specific plea of his innocence, so this Court must walk with care to fix the liability and to determine the innocence of the appellant.

7. The points for determination before this Court are that; as to whether the incident occurred in the mode, manner and at the stated time; as to whether the complainant received injuries at the hands of the appellant and that the appellant was duly identified; as to whether the deceased and injured were shifted to the hospital soon after the incident and that the matter was promptly reported; as to whether the complainant was conscious, oriented in time and space and as to whether her injuries did permit her to report the matter and as to whether the prosecution succeeded in bringing home guilt against the appellant. There is no denial to the fact that the incident occurred inside the house of the deceased,

Attested

ATTESTED
EXAMINER
Peshawar High Court

P-50

where the deceased was done to death and the complainant received serious injuries on her body. There is no denial to the fact that the dead body of the deceased and the injured were shifted to the hospital, where the matter was reported, but we cannot forget that the incident occurred in the odd hours of the night and that by the time the darkness had prevailed, so this is for the prosecution to tell that how the appellant was identified and that how co-accused who was present on the top of the wall, could be seen from such a long distance. In order to appreciate this particular aspect of the case, we deem it essential to go through the statements of the witnesses. The complainant was examined as PW-11, who stated that on the night of occurrence she alongwith her husband and other inmates were sleeping in the house; that she got up on hearing the sound of pushing of bolt of the pistol by the accused; that the accused fired at her husband who died on the spot, then the accused fired at her which caused her injuries; that thereafter the dead body of the deceased was shifted to the hospital and the matter was reported. Similarly, Mst. Rabia was examined as PW-10, who stated that on the night of occurrence she alongwith other inmates of the house were sleeping in the Veranda of the house; that it was

Attested

ATTESTED
EXAMINER
Peshawar High Court

P-31

about 02:30 AM when she heard the voice of firing and cries of her mother-in-law and her father-in-law; that she saw a person duly armed with pistol present at the house, who fired at the complainant and the deceased; that the firing made by the accused proved fatal to the deceased, while the complainant got injured; another person was also present on the wall of the house; that the accused who fired at Mst. Shahnaz Bibi and her father-in-law was one Abdul Wahab; that site plan was prepared on her pointation and the motive was previous blood feud between the parties and that the accused were identified in the light of the bulb installed in the veranda of the house. This is interesting to note that when the statement of PW-10 was recorded by the investigating officer under section 161 Cr.P.C, she in her statement did not mention the names of the accused. It is further interesting to note that PW-10 in her cross-examination categorically stated that the accused was not known to her. We are to see that when the accused-appellant was not known to her, then she by herself did not identify that the accused was Abdul Wahab and even it suggests that the appellant was not known to her previously, as she did not belong to the village to which the accused-appellant belonged. This is for the prosecution to tell that how the co-

Attested

accused was identified, who was present on the wall behind a tree, with no light at the place of his presence. This is surprising that both the accused are charged by name by the complainant when she reported the matter. The complainant was asked regarding the material aspects of the case and regarding her familiarity with the appellant and the other. She categorically stated that on one hand she is a pardanashin lady, whereas on the other she had no relation with the accused. As the age of the complainant is shown as 31 years and the history of the blood feud is given as 10/15 years, so it is yet to be ascertained as to whether complainant ever visited the village and she ever came across the appellant prior to the present incident. The very statement of the complainant makes us believe that she had no acquaintance with the appellant and also with the co-accused. When there was no relationship between the parties and that when both the parties were not on visiting terms and that when the blood feud has a history of more than ten years, then whether in such eventuality the complainant was able to identify the appellant and that she knew their names. The conflict between the statements of the witnesses and there no familiarity with the accused, is a circumstance to which this Court cannot close its

Attested

ATTESTED
EXAMINER
Peshawar High Court

P-33

eyes, as the incident occurred in the dark hours of the night, then the identity of the accused is a must and this is for the prosecution to convince that they were duly identified.

8. This is surprising that the accused selected the odd hours of night and this is again surprising that how the appellant could know, that how the deceased was available at point No.1 in the veranda. As the site plan depicts that all the inmates were lying in the veranda in their respective cots (charpai) and that cot of the deceased was lying to the west. The complainant was examined regarding the manner she woke up, regarding the manner the deceased was fired at and regarding the manner she attempted to catch hold of the appellant, but the explanation tendered by the complainant is hard to be believed, when the site plan is taken into consideration. The site plan depicts that apart from the complainant her other two sons, the deceased and one Mst. Rabia were available in the house on the night of occurrence, but surprisingly apart from the complainant no other inmate of the house, including her sons, actively participated in chasing the appellant. The complainant disclosed that after receiving firearm injuries the deceased fell on the ground, and breathed his last. She further disclosed

Attested

ATTESTED
EXAMINER
Peshawar High Court

P-94

that after the deceased was fired at, the accused-appellant fired at her as well and after receiving firearm injuries, she fell to the ground and she again stood up and struggled to catch hold of the accused, but could not. While reporting the matter, though the complainant stated that after the deceased was fired at, she struggled to catch hold of the appellant, but she could not and as a result of her active attempt, she was fired at. This portion of her statement is of great significance, as she was fired only by the accused when she tried to catch hold of him, but when her Court statement is taken into consideration, she stated that first she was fired at, she fell to the ground, she stood up and she tried to catch hold of the appellant, but she could not. When the report of the complainant and her Court statement are taken into consideration, then the relevant portion of her Court statement has damaged the prosecution case beyond repair. As by the time when she did not make an attempt to catch hold of the appellant, then there was no need for the accused to fire at her, as the accused had already achieved the desired goal, but if her Court statement is taken to be correct, then the complainant is to tell that why she was fired at when she had not attempted to catch hold of the appellant. This is for this Court to ascertain that once the

Attested

ATTESTED
EXAMINER
Peshawar High Court

P-95

complainant received two serious injuries on her body and fell to the ground, whether in that eventuality she had the ability to stand up and to chase the appellant with the sole purpose to catch hold of him. We are not persuaded with this portion of her statement and we are not convinced that after receiving firearms injuries complainant was having the ability to rise and run. The complainant by herself went in self contradiction, as her report and her Court statement tells two different stories regarding the manner in which the incident occurred and regarding the mode in which the appellant left the house.

9. Another intriguing aspect of the case is the identification of the accused, the investigating officer during spot inspection observed a solar light installed at point "E" in the veranda and the same was declared to be the source of identification. This is surprising that the people of the house were sleeping in the veranda and it was 02:30 AM midnight; when they were fast asleep what need was there to keep the light on, rather at such time the lights are off, so that good sleep could be enjoyed. Even otherwise when the appellant was not known to the complainant and the eyewitness, whether in such eventuality the identification in the light of the bulb would serve the purpose, our answer is in emphatic

ATTESTED
EXAMINER
Peshawar High Court

Attested.

P-16

no. As admittedly, the complainant and the eyewitnesses were not on visiting terms with the accused and as admittedly the complainant and the eyewitness were married to the house with no relation with the accused and his family, so in such eventuality it was obligatory for the investigating officer to make arrangement for the identification parade. Another interesting aspect of the case is the identification and recognition of the co-accused who was present on the top of the wall. The site plan depicts that from such a long range his identification was not possible and even the record is silent as to what interest, the co-accused, had in the enmity of the parties. The record is silent regarding his status, his involvement and his interest in the matter. The identification of two different accused at two different places in the odd hours of the night, is a circumstance that has created dents in the prosecution case and that has shattered the veracity of the witnesses. As the witnesses admitted that they were not on visiting terms with the opposite side and that the blood feud between the parties goes back to 10/15 years, so in such eventuality the identity of the appellant is a question that remained unresolved, we are fortified from the judgment reported as **"2019 M**

ATTESTED
EXAMINER
Peshawar High Court

P-97

L D 1966", titled **"JUMO and 4 others Versus The STATE"**, which is reproduced herein below:-

> **"They have even failed to give the details of the motorcycle of the culprits, deceased and of their own. Undeniably, the culprits were not on visiting terms with the eye-witnesses including injured. The occurrence lasted more or less for five minutes and that too when incriminate firing was made by the perpetrators as such identification of the appellants in such a situation also raises suspicion upon the probability of the ocular account furnished by them."**

The prosecution is to tell that when the sons of the complainant were present at the house, why they did not make efforts like their mother and that why they did not come forward as eyewitnesses of the incident. Though PW-12, Wahid i.e. son of the complainant, verified the report of the complainant, but interestingly when he was examined, he did not confirm the manner in which the incident occurred and he did not utter a single word, that he too, identified the accused and that the incident occurred in the manner as was disclosed by the complainant. This is more interesting to note that when PW-12 was cross-examined, he stated that complainant reported the matter in the morning when she gained consciousness. He further disclosed that the report was made when the light prevailed. As PW-12 is the real son of the complainant and the deceased, so it

Attested

ATTESTED
EXAMINER

P-18

cannot be held that he was extended concession to the appellant, rather he told the truth and the truth is that, that at the time of arrival to the house the complainant was not in senses. The doctor who examined the complainant was examined as PW-7, she stated that when the complainant was brought to her, she disclosed that she was fired at by unknown accused and even in her cross-examination she confirmed that it was the complainant who told that she was fired at by unknown accused. When the statement of PW-12 is read in juxtaposition with the statement of the complainant and the statement of the doctor, no ambiguity is left that the complainant did not come forward with the whole truth, rather she concealed the material facts, both from the investigating officer as well as from the Court of law. This concealment of facts on part of the complainant has gone deep to the roots of the prosecution case.

10. The medical evidence is in conflict with the ocular account. The manner in which the deceased and the complainant were fired at, does not get support from the medical evidence, as in both the cases the projectile travelled from up to downward, had the deceased and the complainant were fired at from the place assigned to the appellant, then the same would pierce through the body. True that

Attested

ATTESTED
EXAMINER
Peshawar High Court

P-99

medical evidence is confirmatory in nature and in case of trust worthy, confidence inspiring evidence, the same plays a little role but once the Court comes to a conclusion that the eyewitness account is either suffering from infirmities or the witnesses concealed the real facts, then in such eventuality the conflict between the two will go to the roots of the prosecution case and in such eventuality it is the prosecution to suffer. As in this particular case the statements of the witnesses in respect of the injuries caused and the medical evidence are not on one page, so this conflict between the two can only and only be counted towards the appellant and its benefit must be extended to him. The situation in hand is dealt with by this Court in case titled **"Haneef Ullah alias pentar and four others Vs Habib ur Rehman and three others (2021 YLR 899)**, which reads as follows:-

> **"The seat of injuries on persons of the deceased and the places of the assailants where they were standing at the time of firing find no support from the medical evidence, as one of the deceased had received two firearm injuries from the back side whereas the other from left to right, whereas the circumstances suggest that the deceased were facing the accused at the time of incident. One of the deceased received an entry wound from his right with its exit to left which further belies the stance of the prosecution, had he been facing the accused or having his back exposed to the accused then either the entry would have been on the front or back, but not from left to right, so it can safely be held that the medical evidence does not support the case of prosecution."**

ATTESTED
EXAMINER
Peshawar High Court

P-90

11. The motive was alleged as previous blood feud between the parties, but in that respect neither the complainant could bring on record independent evidence, nor the investigating officer could record the statements of independent persons, so this Court lurks no doubt in mind that the prosecution failed to prove the motive. As the motive was alleged by the prosecution, so the prosecution was under the bounden duty to prove the same. True that weakness or absence of motive hardly plays a role in the acquittal of an accused charged, but when the motive is the constituent part of the prosecution story, then under all circumstances the prosecution must prove the same and its failure will help none but the appellant. Even otherwise, the prosecution failed to prove that why both the accused attracted to the spot when one of the acquitted accused, had nothing in common with motive, as the cause of killing was the previous blood feud and once on record the same was not brought, then the prosecution is at the losing end.

12. The appellant soon after his arrest submitted an application to the police high-ups for fair investigation. In his application he disclosed that on the night of incident he was posted in Police Lines, Hango and that he was present at the place of his

ATTESTED
EXAMINER
Peshawar High Court

P-(31)

duty. The inquiry was initiated and an inquiry officer was deputed for the purpose. The statements of numerous officials were recorded and even they tendered affidavits in that respect. The bona-fide of the appellant can be gauged from the fact that soon after the occurrence he applied for bail before arrest and at the same time he submitted an application regarding his innocence. The inquiry officer also collected the call data record, where the appellant was shown present in Police Line, Hango and that the same evidence went unrebutted. Even the investigating officer opined regarding the innocence of the appellant. True that the plea of alibi will hardly play a role to discredit the eyewitness account, but when the plea taken appeals to a prudent mind and when the plea is duly verified, then in those circumstances the same can be taken into consideration. As on one hand the prosecution came forward with twisted and concealed facts, whereas on the other the medical evidence does not support the eyewitness account, then in such eventuality the plea of the appellant can be taken into consideration, more particularly, when the same set of evidence has been disbelieved in respect of the acquitted co-accused. The plea of alibi was taken into consideration in case titled "**TASADDAQ HUSSAIN alias**

Attested

ATTESTED
EXAMINER
Peshawar High Court

IDNAN Versus The STATE and others", (2019 P Cr. L J Note 160), which is reproduced herein below:-

P-27

> "It is important to mention here that co-accused Falak Sher, who was attributed the role of making fatal fire shot at the deceased was arrested later on and died in the judicial lockup. The appellant, from the day one, took the plea of alibi that he was running the business of pesticide, remained away from his house in connection with receiving the amount of pesticides. This plea of the appellant was further verified by the peoples of the vicinity to whom he had met at the relevant time. Different persons from the vicinity as well as from the appellant's work place joined the investigation in this regard and out of them, three persons appeared as defence witnesses in order to verify the appellant's presence with them at the time of occurrence. Admittedly, ipse dixit of the police opinion is not binding upon the Court, however, if the said opinion is based on sound material and the evidence collected in support of the innocence of the accused is well-founded then the same could be taken into consideration in support of the other pieces of evidence."

13. The cumulative effect of what has been stated above, leads this Court nowhere but to hold that the prosecution could not succeed in bringing home guilt against the appellant. The impugned judgment is suffering from inherent defects and the learned trial Court while passing the impugned judgment misdirected itself, both in law and on facts of the case, which calls for interference. The instant criminal appeal is allowed, the impugned judgment is

ATTESTED
EXAMINER
Peshawar High Court

P-(43)

set aside and the appellant is acquitted of the charge. He shall be released forthwith if not required to be detained in any other case.

14. Now diverting to the **Criminal Revision No.03-P/2021** titled **"Mst. Shahnaz Bibi Vs Abdul Wahab etc"** through which the complainant has requested this Court for enhancement of the sentence. When once the appeal against conviction has been accepted and once the impugned judgment has been set aside, so in that eventuality the instant criminal revision would hardly proceed and the same is dismissed as such.

Announced
07.06.2023.

JUDGE

JUDGE

Ihsan PS*
(DB) Mr. Justice Ishtiaq Ibrahim & Mr. Justice Sahibzada Asadullah

89696

Date of Presentation of Application 13/6/2023
No of Pages 23
Copying fee
Total 92-00
Date of Preparation of Copy 13/6/2023
Date of Delivery of Copy 13/6/2023
Received Rs 92

CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of the Qanoon-e-Shahadat Act 1984
19 JUN 2023
Attested

(2) Annexure "D"

P(44)

ORDER.

This order will dispose of the departmental appeal preferred by **Ex-Constable Abdul Wahab** of district Orakzai against the order of District Police Officer, Orakzai whereby he was awarded major penalty of dismissal from service vide OB No. 1228 dated 28.12.2020. Brief facts of the case are that the appellant was found involved in a criminal case vide FIR No. 888, dated 12.06.2019 u/s 32 / 324 / 452 / 34 PPC PS MRS Kohat. The appellant was awarded punishment of life sentence by the Court of Addl: District and Sessions Judge-III Kohat vide order dated 21.12.2020. The appellant lodged criminal petition in Peshawar High Court against the order of ASJ-III Kohat which was accepted and the order of ASJ-III was set-aside. He was dealt with departmentally on the above charges which culminated in major punishment of dismissal from service.

Proper departmental enquiry proceedings were initiated against him and DSP HQrs: Orakzai was nominated as Enquiry Officer. The Enquiry Officer after fulfillment of codal formalities submitted his findings wherein the appellant was found guilty of the charges leveled against him. He was, therefore, recommended for major penalty under the relevant rules.

Keeping in view the recommendations of the Enquiry Officer and the above cited circumstances, the defaulter official was awarded major punishment of dismissal from service under the relevant rules by the District Police Officer, Orakzai vide OB No. 1228 dated 28.12.2020.

Feeling aggrieved from the order of District Police Officer, Orakzai, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in the office of the undersigned on 12.09.2023. During personal hearing the appellant did not advance any plausible explanation in his defense. By involving himself in heinous criminal activities, the delinquent officer has rendered himself unfit for retention in a disciplined law enforcing agency. The allegations leveled against him have been established beyond any shadow of doubt. Moreover, the appeal of the appellant is badly time-barred by 02-years and 08-months.

Foregoing in view, I, **Sher Akbar, PSP, S.St, Regional Police Officer, Kohat,** being the appellate authority, am not inclined to interfere in the order of punishment passed by DPO Orakzai. Hence, the appeal of Ex-Constable Abdul Wahab is hereby **rejected** being devoid of merit and badly time-barred.

Order Announced
12.09.2023

Regional Police Officer,
Kohat Region

No. 9915-16 **/EC, Dated Kohat the** 14/09 **/2023**

Copy forwarded to District Police Officer, Orakzai for information and necessary w/r to his office Memo: No. 1167/EC, dated 10.08.2023. His Service Record is returned herewith.

2. The appellant, Ex-Constable Abdul Wahab of district Orakzai.

EC

District Police Officer
Orakzai

Office of the DPO, District Orakzai
Diary No. 1392
Date 22-09-23

Attested

95

Annexure-"E"

P-45

OFFICE OF THE DISTRICT POLICE
OFFICER ORAKZAI

OFFICE ORDER:-

The order will dispose off the departmental enquiry conducted against Constable Abdul Wahab s/o Wakeel Akbar under the Khyber Pakhtunkhwa, Police Rules, (Amended 2014) 1975.

Constable Abdul Wahab s/o Wakeel Akbar was charged/involved in case FIR No. 888 dated 12.06.2019 U/S 302/324/452/34 PPC PS MRS District Kohat.

He was suspended vide order OB No. 606 dated 26.09.2019 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 Abdul Wahab s/o Wakeel Khan 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 Abdul Wahab s/o Wakeel Khan with immediate effect. Kit etc issued to the Constable be collected.

Announced No. 1228

Dated 28/12/2020

DISTRICT POLICE OFFICER, ORAKZAI

No 278 /EC/OASI Dated 28/12 /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

96

Annexure - "F"

P-46

OFFICE OF THE DISTRICT POLICE OFFICER
ORAKZAI

0925-690257

RDER

Constable Abdul Wahab s/o Wakeel Akbar of Mullah Khel tribe of this district Police is hereby suspended being charged/ involved in case vide FIR No. 888 dated 12.06.2019 under section 302/324/452/34 PPC PS 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 606
Dated 26/08/2019

District Police Officer, Orakzai

No. 1375 /EC dated Orakzai the 26/08/2019

Copy of above is forwarded for information to:

1. The Superintendent of Police, Investigation, Wing, Kohat w/r to his office letter No. 3108/GC: dated 19.09.2019.
2. DSP Hqrs for necessary action.

Attested

THE DISTRICT POLICE OFFICER

P-47

جناب عالی!

بحوالہ آرڈر نمبر 1375 مورخہ 26.09.2019
جناب عبدالوہاب ولد وکیل اکبر قوم ملاخیل
جاریہ دفتر جناب DPO صاحب لوئر کرم

معروض خدمت ہوں کہ مورخہ 12.06.2019 کو تھانہ MRS
کوہاٹ علت نمبر 888 مسماۃ شہناز بی بی زوجہ محمد طارق کی مدعیت
میں بجرم 452PPC، 302، 324/34 درج رجسٹر ہوا
مذکورہ بالا ASI کے خلاف ٹرائل انڈر مین عدالت ہے۔ ابھی تک
ملزم مذکورہ جیل میں ہے اور باوثوق ذرائع سے معلوم ہوا ہے کہ
مذکورہ کنسٹیبل کو 25 سال قید بامشقت کی سزا ہوئی ہے۔

رائے انکوائری آفیسر:-

ASI مذکورہ پولیس ملازم ہے جو کہ اس طرح کے گھناؤنے جرم
میں ملوث ہے جو کہ محکمہ پولیس کی بدنامی کا باعث ہے۔ چونکہ
عدالت نے کنسٹیبل کو سزا دی ہے۔
لہٰذا عبدالوہاب ولد وکیل اکبر کے خلاف Major Punishment
کی سفارش کی جاتی ہے۔

رپورٹ عرض ہے۔

Dismissed from Service with immediate effect.

SDPO UPPER
22.12.020

24/12/2020
Attested

(37) Annexure "G"
P-49

بحضور جناب RPO صاحب کوہاٹ ڈویژن کوہاٹ

عبدالوہاب ولد وکیل اکبر سکنہ قوم ملاخیل تپہ قطب خیل، مزاری گڑھی، ڈاکخانہ غلجو تحصیل اپر ضلع اورکزئی ----------سائل

بنام

سرکار

علت نمبر:888، مورخہ 12/6/2019، جرم: 302/324/452/34 PPc تھانہ MRS

اپیل بنارضگی حکم مورخہ 28/12/2020 سیریل نمبر 278 از جناب ڈسٹرکٹ پولیس آفیسر ضلع اورکزئی جس کی رو سے جناب DPO اورکزئی نے سائلان/اپیلانٹ کو انکی سروس سے Dismiss (برخاست) کیا گیا ہے۔ (مصدقہ نقل حکم لف ہے)۔

استدعائے اپیل: بمنظوری اپیل ہذا چونکہ سائل/اپیلانٹ کو عدالت عالیہ پشاور ہوئی کورٹ پشاور نے بذریعہ کریمنل اپیل نمبر 1030-P/2020 مورخہ 07-6-2023 کو مقدمہ مذکورہ بالا/FIR سے سائل/اپیلانٹ کو بری کیا گیا ہے۔ نیز سائل/اپیلانٹ کو تمام تر مراعات بمعہ تنخواہ بھی جاری کی جائے۔
(نقل حکم پشاور ہائی کورٹ پشاور بعنوان "عبدالوہاب بنام سرکار" لف ہذا ہے)۔

جناب عالی! اپیلانٹ حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ سائل/اپیلانٹ کے خلاف مذکورہ FIR مسماۃ شہناز بی بی زوجہ محمد طارق سکنہ اورکزئی حال میاں گان کالونی کوہاٹ درج کی تھی۔ (نقل FIR لف ہے)۔

۲۔ یہ کہ سائل/اپیلانٹ میں مذکورہ FIR میں گرفتار کیا گیا۔

۳۔ یہ کہ بعد از گرفتاری سائل/اپیلانٹ کو عدالت ایڈیشنل سیشن جج-III کوہاٹ میں مورخہ 21/12/2020 کو مذکورہ جرم میں عمر قید کی سزا سنائی گئی (نقل حکم لف ہے)۔

۴۔ یہ کہ سائل/اپیلانٹ حکم عدالت ASJ-III مورخہ 21/12/2020 کے خلاف کریمنل اپیل عدالت عالیہ پشاور ہائی کورٹ پشاور میں بذریعہ SRA نمبر 1030-P/2020 دائر کی جو کہ بعد از سماعت عدالت عالیہ پشاور ہائی کورٹ پشاور میں حکم/فیصلہ عدالت ASJ_III کوہاٹ مورخہ 21/12/2020 کو کالعدم قرار دیا جا کر سائل/اپیلانٹ کو پشاور ہائی کورٹ پشاور نے مورخہ 07-06-2023 کو بری کیا گیا اور ساتھ ہی سائل/اپیلانٹ کے خلاف جو کریمنل ریویشن (Enhancement) جو کہ کمپلنٹ مسماۃ شہناز بی بی نے دائر کی تھی وہ بھی عدالت عالیہ پشاور ہائی کورٹ پشاور نے خارج کی ہے تو بدیں وجہ بھی سائل/اپیلانٹ کے خلاف مزید کسی قسم کا مقدمہ درج نہ ہے۔

Attested

Attested

۵۔ یہ کہ سائل/اپیلانٹ کو مستغیث مقدمہ نے اپنی پہلی بیان میں ہرگز چارج نہیں کیا تھا۔

۶۔ یہ کہ سائل/اپیلانٹ اپنے سروس کارڈ سیریل نمبر 77 وبلٹ نمبر 879 کے مطابق رینک ASI تھا۔ جبکہ DPO اورکزئی نے سائل/اپیلانٹ کو اپنے آرڈر میں صرف کانسٹیبل ظاہر کیا ہے حالانکہ سائل/اپیلانٹ بطور رینک ASI تھا۔

۷۔ یہ کہ سائل/اپیلانٹ نے اپنے دوران سروس تقریباً 18 سال میں کسی بالا آفسران کو کسی قسم کی کوئی شکایت کا موقع نہیں دیا گیا اور نہ ہی سائل/اپیلانٹ کے خلاف کوئی شکایت درج ہے اور سائل/اپیلانٹ کی بعد از بحالی سروس بھی کسی قسم کا شکایت کا موقع بالا آفسران کو نہیں دیگا۔

۸۔ یہ کہ سائل/اپیلانٹ باقاعدہ شادی شدہ اور بال بچے دار شخص ہے۔ مذکورہ نوکری کے علاوہ ذرائع معاش آمدن بھی نہ ہے۔

۹۔ یہ کہ سائل/اپیلانٹ نے اپیل بروقت جمع نہ کر سکا کیونکہ سائل/اپیلانٹ جیل میں تھا اور مذکورہ مقدمہ کی سزا کاٹ رہا تھا۔

لہذا استدعا ہے کہ سائل/اپیلانٹ کا اپیل منظور کیا جا کر سائل/اپیلانٹ کی سروس پر دوبارہ بحال کرنے اور سائل/اپیلانٹ کی تمام مراعات بمعہ تنخواہ جاری کرنے کے احکامات صادر فرمایا جائے۔

مورخہ: 24/7/2023

عرضی

عبدالوہاب ولد وکیل اکبر سکنہ قوم ملاخیل تپہ قطب خیل، مزاری گڑھی، ڈاکخانہ غلجو تحصیل اپر ضلع اورکزئی

Attested

Attested

BEFORE THE HON'BLE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service appeal no. 2040/2023

Abdul wahab

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary Home & Tribunal Affairs, Civil Secretariat Peshawar.
2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. The Regional Police, Kohat Region, Kohat.
4. The District Police Officer, District Orakzai Headquarter, Hangu.

AFFIDAVIT

I, Salah Uddin Kundi District Police Officer Orakzai, do hereby solemnly affirm on oath that the contents 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 is struck of cost.

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

ATTESTED
Syed Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL No.2040/2023
ABDUL WAHAB .....APPELANT

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribunal affairs, Civil Secretariat 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 Headquarter, Hangu.

AUTHORITY LETTER

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

(SALAH U DDIN KUNDI)
District Police Officer,
Orakzai
(Respondent No.4)

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

M. ABID MAJEED
(ADDITIONAL CHIEF SECRETARY)
Government of Khyber Pakhtunkhwa
Home & TA's Department,Peshawar
(Respondent No.1)

Additional Chief Secretary
Home & T.As Department
Khyber Pakhtunkhwa.

(DR.MUHAMMAD AKHTAR ABBAS)PSP
DIG/LEGAL,CPO
For inspector General of Police,
Khyber pakhtunkhwa ,Peshawar
(Respondent No.2)