


FORM OF ORDER SHEET

Court of _____

Appeal No. 958/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/07/2024	<p>The appeal of Mr. Waqas Ahmad resubmitted today by Sardar Muhammad Waqar Advocate. It is fixed for preliminary hearing before touring Single Bench at A.Abad on. 23.07.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

Before the Service Tribunal Khyber Pakhtunkhwa Peshawat

Respected Sir,

As per objection pointed out by Office Assistant of this Tribunal following objections were raised:-

1. According to sub-rule 4 of rule-6 of Khyber-Pakhtunkhwa Service Tribunal Rules 1974 respondent No. 1 & 5 are un-necessary/ improper parties in light of the rules and on the written direction of the Worthy Chairman the above mentioned respondents be deleted/ struck out.
2. Appeal has not been flagged/ marked with annexures marks.
3. Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal be placed on it.
4. Annexures of the appeal are not in sequence
5. Three copies/sets of the appeal along with annexures i.e. complete in all respect for tribunal and one for each respondent may also be submitted with the appeal.

In compliance of the directions, above mentioned objections are hereby removed, but for removal of objection No. 3 appellant has submitted application before department for getting copy of charge sheet etc but unfortunately except show cause notice (copy is attached), rest of the copies were not provided by the department, hence objection cannot be removed as whole due to non-provision of said documents by the department. Furthermore first page of the appeal which was attested by the Office Assistant of the Tribunal is also attached with the corrected memorandum of appeal.

SARDAR MUHAMMAD WAQAR
Advocate High Court Abbottabad.
Contact No. 0345-9596898


Sardar Muhammad Waqar
Advocate High Court
Contact +92 345 9596898

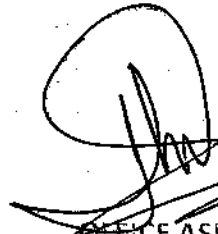
The appeal of Mr. Waqas Ahmad received today i.e on 04.07.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no. 1&5 are un-necessary/improper parties, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal be placed on it.
- 4- Annexures of the appeal are not in sequence be annexed serial wise as mentioned in the memo of appeal.
- 5- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal.

No. 296 /Inst./2024/KPST,

Di. 04-07 /2024.

Sardar Muhammad Waqar Adv.
High Court A.Abad.


4/7/24
OFFICE ASISTANT
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

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

Service Appeal No. 958 /2024

Waqas Ahmad son of Muhammad Zulfiqar, resident of Jhaffar Tehsil & District Abbottabad, Ex-Constable No.1041 District Police Abbottabad.

...APPELLANT

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

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7.	Copy of FIR	106	"H"
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...APPELLANT

Through

Dated: 03/07/2024

(Sardar Muhammad Waqar)
Advocate High Court, Abbottabad
Contact No. 0345-9596898


Sardar Muhammad Waqar
Advocate High Court
Contact +92 345 9596898

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

Service Appeal No. 958 /2024

Waqas Ahmad son of Muhammad Zulfiqar, resident of Jhaffar Tehsil & District Abbottabad, Ex-Constable No.1041 District Police Abbottabad.

...APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. _____

Dated 04-07-2024

1. Govt. of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer (RPO), Hazara Region, Abbottabad.
4. District Police Officer, Abbottabad.
5. District Accounts Officer, Abbottabad.

...RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974, FOR DECLARATION TO THE EFFECT THAT ORDER BEARING OB NO.88 DATED 07/04/2023 ISSUED BY RESPONDENT NO.4, WHEREBY, THE APPELLANT WAS AWARDED THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE ON THE BASIS OF INVOLVEMENT IN A CRIMINAL CASE FIR NO.165, DATED 17/02/2022 UNDER SECTION 302/34 PPC READ WITH SECTION 15-AA KPK, POLICE STATION MIRPUR,

1

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 958 /2024

Waqas Ahmad son of Muhammad Zulfiqar, resident of Jhaffar Tehsil & District Abbottabad, Ex-Constable No.1041 District Police Abbottabad.

...APPELLANT

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer (RPO), Hazara Region, Abbottabad.
3. District Police Officer, Abbottabad.

....RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974, FOR DECLARATION TO THE EFFECT THAT ORDER BEARING OB NO.88 DATED 07/04/2023 ISSUED BY RESPONDENT NO.3, WHEREBY, THE APPELLANT WAS AWARDED THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE ON THE BASIS OF INVOLVEMENT IN A CRIMINAL CASE FIR NO.165, DATED 17/02/2022 UNDER SECTION 302/34 PPC READ WITH SECTION 15-AA KPK, POLICE STATION MIRPUR, DISTRICT ABBOTTABAD AND AGAINST THE ORDER NO. 3060/PA DATED 06/06/2024

PASSED BY RESPONDENT NO. 2 ARE ILLEGAL, UNLAWFUL, AGAINST THE LAW, FACTS, CIRCUMSTANCES, PERVERSE, ARBITRARY, WITHOUT LAWFUL JURISDICTION, AGAINST THE RULES AND POLICY ON THE SUBJECT AND INEFFECTIVE UPON THE RIGHTS OF THE APPELLANT.

PRAYER: ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE IMPUGNED DISMISSAL ORDER DATED 07/04/2023 ISSUED BY RESPONDENT NO.3 & ORDER NO. 3060/PA DATED 06/06/2024 PASSED BY RESPONDENT NO. 2 MAY GRACIOUSLY BE SET-ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED IN SERVICE WITH ALL BACK BENEFITS IN THE INTEREST OF JUSTICE. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEM APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

Respectfully Sheweth:-

The facts forming the background of service appeal are arrayed as under;-

1. That the appellant got appointment as Constable in District Police Abbottabad.

2. That the appellant has served the department with honesty, dignity and for the utmost satisfaction of his superiors and has left no stone unturned.
3. That the appellant was wrongly involved in a criminal case registered vide FIR No.165, dated 17/02/2022 under Section 302/34 PPC read with Section 15-AA KPK, Police Station Mirpur Abbottabad.
4. That after awarding punishment, the respondent No.3 constituted inquiry committee into the matter of appellant and without giving opportunity of hearing on the basis of so-called inquiry awarded major punishment of dismissal from service to the appellant vide order OB No.88, dated 07/04/2023. Copy of impugned order dated 07/04/2023 alongwith show cause notice etc are annexed as Annexure "A".
5. That in the meanwhile, the appellant being aggrieved from his conviction and sentenced awarded vide judgment dated 25/01/2023 by the court of learned Additional Sessions Judge-VI, Abbottabad, filed the Criminal Appeal before the Honourable Peshawar High Court Abbottabad Bench. The Honourable Peshawar High Court Abbottabad Bench after hearing the arguments set-aside the convictions and sentence awarded to the appellant acquitted the appellant vide judgment dated 14/05/2024. Copies of criminal appeal No.

27-A/2023 & 28-A/2023 alongwith judgments dated 14/05/2024 are annexed as Annexure "B", "C".

6. That after commencement of trial the appellant alongwith others were convicted under Section 302-B PPC and sentenced to imprisonment for life as Tazeer vide judgment dated 25/01/2023 passed by the learned Additional Sessions Judge-VI/Judge MCTC Abbottabad. Copy of order MCTC dated 25/01/2023 is annexed as Annexure "D".
7. That after acquittal from the so-called charges leveled against the appellant, the appellant filed departmental appeal before the respondent No.2.
8. That the respondent No.2, vide order No.3060/PA dated 06/06/2024 disposed off the appeal of the appellant being time barred, the order of the said appeal was communicated to the appellant on 29/06/2024. Copy of departmental appeal and order No. 3060 dated 06/06/2024 alongwith application are annexed as Annexure "E", "F".
9. That, thereafter, the appellant has also filed an appeal before the respondent No.1 but the grievances of the appellant has not redressed. Copy of departmental appeal is annexed as Annexure "G".

10. That feeling aggrieved from the order OB No.88, dated 07/04/2023 issued by respondent No.3 and order No. 3060 dated 06/06/2024 passed by respondent No. 2 the appellant seeks indulgence of this Honourable Court by filing instant appeal, inter-alia, on the following grounds;-

GROUND:-

- a) That the appellant has unblemished service record and has always discharged his duties with full of devotion, dedication, honesty and for the satisfaction of his superiors.
- b) That the impugned removal/dismissal from service order dated 07/04/2023 of respondent No.3 and order No. 3060 dated 06/06/2024 are illegal, unlawful, perverse, arbitrary, against the law on the subject, hence, liable to be set-aside.
- c) That impugned act of respondents is illegal, unlawful, without lawful authority, against the principle of natural justice, hence, ineffective upon the rights of the appellant.
- d) That, the respondent No.2 has committed a grave error by overlooking the material available on record as for as acquittal of the appellant from the so-called criminal case on the basis of which the respondent No.3 has issued the impugned order of dismissal from service of the appellant.

- e) That infact initially the said criminal case was registered against the unknown persons by the complainant (wife of the deceased). Later on the appellant was charged/involved in the said case with malafide intentions on the part of complainant, therefore, the Honourable Peshawar High Court Abbottabad Bench after perusal of the record available on file set-aside the convictions and sentenced and acquitted the appellant honourably from the charges leveled against him. Copy of FIR is annexed as Annexure "H".
- f) That at the time of dismissal from the service, the appellant was confined in Judicial Lockup and was not aware about his dismissal from service or procedure prescribe for filing the appeal against the dismissal order, nor the appellant was intimated neither was given opportunity of hearing before issuance of the impugned dismissal order.
- g) That after acquittal/setting aside the conviction/sentenced awarded to the appellant, the appellant approached to the office of respondent No.3 and inquired about his suspension order. The officials of the office of respondent No.3 informed the

appellant about the dismissal from service, thereafter, the appellant filed departmental appeal against the impugned order before the respondent No.2.

- h) That it is worth to note here that, according to the Khyber Pakhtunkhwa Esta Code 2011 when a Govt. Servant is honourably acquitted in a departmental inquiry or trial in court the period of absence from duty on account of the suspension, dismissal or removal from the service has to be treated as period spent on duty. Thus, the impugned dismissal order dated 07/04/2023 of respondent No.3 and order in departmental appeal are liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits.
- i) That the appellant is the only bread earner of his family and his no other source of livelihood and is solely dependent on his service in the respondent department, therefore, he is entitled to be reinstated.
- j) That the appellant has been dismissed from service without following the prescribed procedure, without lawful justification and jurisdiction. Therefore, the impugned order of dismissal of the appellant is liable to be set-aside.

- k) That this tribunal should not fold up of its hands while granting relief to the aggrieved appellant as the appellant committed no offence or misconduct.
- l) That there is no other prompt, efficacious remedy, available to the appellant except the instant appeal.

It is, therefore, humbly prayed that on acceptance of the instant service appeal, the impugned dismissal order dated 07/04/2023 issued by respondent no.3 & order no. 3060/pa dated 06/06/2024 passed by respondent no. 2 may graciously be set-aside and the appellant may kindly be reinstated in service with all back benefits in the interest of justice. Any other relief which this Honourable Tribunal deem appropriate in the circumstances of the case may also be granted to the appellant.

Dated: 03/07/2024

Through

...APPELLANT

 Sardar Muhammad Waqar
 Advocate High Court
 Contact +92 345 9596898

(Sardar Muhammad Waqar)
 Advocate High Court, Abbottabad
 Contact No. 0345-9596898

VERIFICATION:-

Verified on oath that the contents of foregoing service appeal are true and correct to the best of our knowledge and belief and nothing has been concealed therein from this Honourable tribunal.

...APPELLANT



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

Service Appeal No. _____/2024

Waqas Ahmad son of Muhammad Zulfiqar, resident of Jhaffar Tehsil & District Abbottabad, Ex-Constable No.1041 District Police Abbottabad.

...APPELLANT

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, *Waqas Ahmad son of Muhammad Zulfiqar, resident of Jhaffar Tehsil & District Abbottabad, Ex-Constable No.1041 District Police Abbottabad*, do hereby solemnly affirm and declare that the contents of foregoing service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

DEPONENT

y

ORDER

Ant-A

16
APR 16
& A

This office order will dispose-off the departmental enquiry against FC Waqas No. 1041. He while posted at PS Mirpur, found involved in case FIR No. 165 dated 17-02-2022 U/S 302 PPC PS Mirpur which leads to gross misconduct on his part.

He was issued with Charge Sheet along with statement of allegations by Addl: SP Abbottabad vide his office Endst: No. 61/ PA dated 11-03-2022 and DSP Galiyat was appointed as Enquiry Officer. He conducted proper departmental enquiry against the delinquent official and recorded statements of all concerned. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein allegations have been proved against delinquent official. He was issued Final Show Cause Notice. On 25-01-2023 Additional Session Judge-IV Abbottabad awarded him sentenced to suffer and undergo life imprisonment U/S 302 (b) PPC as Ta'zir.

Therefore, in exercise of the powers vested in the undersigned Police Disciplinary Rules-1975 (Amended 2014), I, Umar Tufail, PSP, District Police Officer, Abbottabad, as a competent authority, am constrained to award him the major punishment of Dismissal from service with immediate effect.

Order announced.

OB No. 88

Dated 7-4-23

District Police Officer
Abbottabad

No. 1937-38 dated 07/04/23.
CC.

1. OASI, DPO Office Abbottabad, alongwith Enquiry containing 14 pages for completion of record.
2. Pay Officer.

TC
Sardar Muhammad Waqar
Advocate High Court
Contact +92 345 9596898

(10-A)

OF THE ADDL: SUPERINTENDENT OF POLICE, ABBOTTABAD

No. 79 /PA, Dated Abbottabad, the 18/04/2022

FINAL SHOW CAUSE NOTICE
(Unit RULE (3) KPK Police Rules, 1975 AMENDED 2014)

That you FC Waqas No. 1041 have rendered yourself liable to be proceeded under Rule 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) for following misconduct:-

That you while posted at PS Mirpur, found involved in case FIR No. 165 dated 17-02-2022 u/s 302 PPC PS Mirpur which lead to gross misconduct on your part.

2. That by reason of above, as sufficient material is placed before the undersigned therefore it is decided to proceed against you in general Police proceedings without aid of Enquiry Officer.

That the misconduct on your part is prejudicial to good order of discipline in the Police force

2. That your retention in the police force will amount to encouragement of inefficient and indiscipline officer in the force.


4. That by taking cognizance of the matter under enquiry, the undersigned as Competent Authority under the said Rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the Rules.

5. You are, therefore, called upon to Show Cause as to why you should not be dealt in accordance Police Rule for the misconduct referred above.

6. You shall submit reply to this Show Cause Notice within 07 days of the receipt of the notice failing which an ex parte action shall be taken against you.

7. You are further directed to inform the undersigned that whether you wish to be heard in person or not.

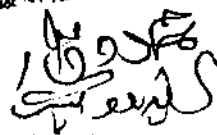
8. Grounds of action are also enclosed with this notice.


Addl: Superintendent of Police,
Abbottabad.

Received by _____

Dated / /2022

CTC
Sardar Muhammad Waqas
Advoct High Court
Contact: 992 345 9596898



(10 - B)

OFFICE OF THE ADDL: SUPERINTENDENT OF POLICE, ABBOTTABAD

No. 79 /PA, Dated Abbottabad, the 18/04/2022

GROUNDS OF ACTION

That you FC Waqas No. 1041 committed following misconduct:-

That you while posted at PS Mirpur, found involved in case FIR No. 165 dated 17-02-2022 u/s 302 PPC PS Mirpur which lead to gross misconduct on your part.

By reasons of above you have rendered yourself liable to be proceeded under Khyber Pakhtuakhwa Police Rules 1975 (amended 2014), hence these grounds of action.

— Sd —
Addl: Superintendent of Police,
Abbottabad.

CTC

Sardar Muhammad Waqar
Advocate High Court
Contact: +92 345 9596898

محمد وقار
ادوکیٹ ہائی کورٹ

(10-C)

محترم جناب ڈسٹرکٹ پولیس آفیسر ضلع ایبٹ آباد

درخواست بہرہ حصول نقول دستاویزات

(Charge sheet/Statement of allegation, inquiry report and reply)

ازاں کنسٹیبل وقاص احمد ولد محمد ذوالفقار بیلٹ نمبر کی 1041 ملازم ڈسٹرکٹ پولیس ایبٹ آباد۔

جناب عالی!

ملتمس ہوں کہ برخلاف سائل مقدمہ عدالت نمبر 165 مورخہ 17 فروری 2022ء بجرم 302/34 ت- پ و 15AA KPK تھانہ میر پور ایبٹ آباد، درجن رجسٹرڈ ہوا جس میں ایک ہفتہ بعد بذریعہ تمہ بیان سائل مع سہ دیگر ملازمین محکمہ پولیس چارج کیے گئے تھے جس میں ٹرائل کورٹ نے سائل کو مع سہ ملازمین محکمہ پولیس تھانہ میر پور کو سزا عمر قید با مشقت اور جرمانہ کا حکم صادر فرمایا تھا جس پر مورخہ 7 اپریل 2023ء کو جناب نے سائل دو دیگر اراں کو ملازمت سے برخاست کرنے کا حکم جاری فرمایا تھا۔

مقدمہ عنوان بالا میں سزا کے خلاف سائل مع دیگر اراں نے اپیل عدالت عالیہ پشاور ہائیکورٹ ایبٹ آباد چیخ دائر کی تھی جس میں عدالت عالیہ پشاور ہائی کورٹ ایبٹ آباد چیخ ایبٹ آباد نے ٹرائل کورٹ کا فیصلہ کا اہم قرار دیا اور تمام ملازمین (پولیس ملازمین) کو مقدمہ میں بے گناہ قرار دیتے ہوئے حکم بریت جاری فرمایا۔

سائل کو اپیل کے لئے مذکورہ بالا دستاویزات کی نقول درکار ہے جس کے حصول کے لئے سائل جناب سے عرض پرداز ہے۔

جناب سے استدعا ہے کہ درخواست حد ذکر کو منظور فرماتے ہوئے سائل کی مصدقہ نقول

Charge sheet/Statement of allegation, inquiry report and reply

فراہم کی جاویں۔

الرقوم :- 05 جولائی 2024ء

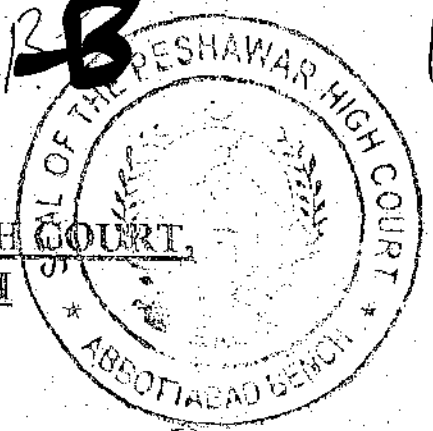
کنسٹیبل وقاص احمد بیلٹ نمبر 1041

ملازم محکمہ پولیس ضلع ایبٹ آباد

رابطہ نمبر :- 0345-5296898

CTC
Sardar Muhammad Waqar
Advocate High Court
Contact: 0345-5296898

1 **Amr 14/28** **u**
BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH



Cr. Appeal No. 27 -A/2023

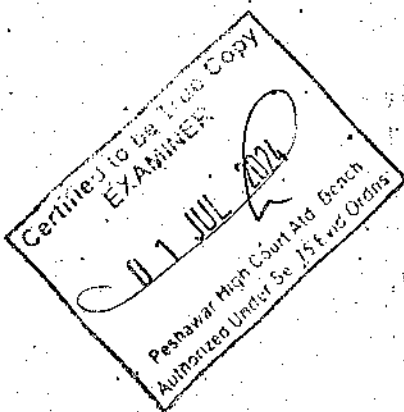
1. Waqas Ahmed son of Muhammad Zulfiqar, resident of Jahafar, Tehsil & District Abbottabad.
2. Abdul Qadeer son of Muhammad Yaqoob, resident of Nagri Bala, Tehsil & District Abbottabad.
3. Muhammad Iniran son of Muhammad Bashir, resident of Badyal, Tehsil & District Abbottabad, (Now all confined in District Jail, Haripur).

...CONVICT/ APPELLANTS

VERSUS

1. The State.
2. Sumaira Bibi widow of deceased Dildar, resident of Kasaki, presently Jhangi Qazian, Tehsil & District Abbottabad, (*complainant*).

... RESPONDENTS



CASE FIR NO. 165 DATED 17.02.2022
UNDER SECTION 302/34 PPC POLICE
STATION MIRPUR DISTRICT
ABBOTTABAD.

APPEAL; UNDER SECTION 410 CR.PC,
AGAINST THE IMPUGNED JUDGMENT
DATED 25.01.2023 PASSED BY LEARNED
ADDITIONAL SESSIONS JUDGE-VI/ JUDGE
MCTC ABBOTTABAD, WHEREBY, THE

FILED TO
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
27/7/24

LEARNED TRIAL COURT CONVICTED THE APPELLANTS UNDER SECTION 302 (B) PPC AND SENTENCED TO SUFFER AND UNDERGO LIFE IMPRISONMENT AS TAZIR. THE CONVICT/ APPELLANTS SHALL PAY RS. 200,000/- EACH AS COMPENSATION UNDER SECTION 544-A CR.PC TO THE LEGAL HEIRS OF DECEASED AND THE COMPENSATION SHALL BE RECOVERABLE UNDER SECTION 544-A (2) CR.PC AS ARREARS OF LAND REVENUE OR OWING TO WANT PROPERTY OF CONVICT/ APPELLANTS TO UNDERGO SIX MONTHS SI IN CASE OF DEFAULT BY EACH CONVICT.

PRAYER: ON ACCEPTANCE OF INSTANT APPEAL THE IMPUGNED JUDGMENT DATED 25.01.2023 PASSED BY LEARNED ADDITIONAL SESSIONS JUDGE-VI/ JUDGE MCTC, ABBOTTABAD MAY KINDLY BE SET-ASIDE AND THE CONVICT/ APPELLANTS BE ACQUITTED FROM THE CHARGES LEVELED AGAINST THEM.

Certified to be true copy
 EXAMINED
 01/11/23
 Peshwar High Court and Bench
 Abbottabad, U.P.O. No. 15, East Street

ADDITIONAL REGISTRAR
 PESHAWAR HIGH COURT
 ABBOTTABAD BENCH
 21/11/23

Respectfully Sheweth; -

Brief facts of the case are as under:-

1. That according to the contents of FIR, the complainant Mst. Sumaira Bibi widow of the deceased Dildar alias Pappu on 17.02.2022 at about 20:30 hours alongwith her brother-in-law namely Shafiq alias Banka son of Rafique reported the matter to the local plice at ATH, Abbottabad; that at about 7.00PM her husband went to Bazar for fetching fruit and milk for children and while leaving the house he also took along his 9 MM licensed pistol. After 20 or 25 minutes she called her husband, who told her that he would return soon. After a while once she called him again, her husband did not attend the calls. However, after a while once she again made a call on his cellular phone, some unknown attended the call and inquired that who is she? Whereupon she said that she is the wife of Pappu, to which he again inquired that which Pappu and she told the attendant that Pappu is the owner of cellular phone then he disclosed that her husband is lying in ATH and may have met heart attack. On this she

RECEIVED
17 FEB 2022
11:00 AM
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
17/2/22

alongwith her brother-in-law went to the Hospital where she found her husband lying dead on a stretcher having fire arm injuries on his back and hand on the right side. That her husband had enmities and some has murdered him through firearms. At the moment she cannot nominate anyone in particular but want him to be examined through autopsy/ postmortem and charged unknown for the commission of offence. Hence, the present case. Copy of FIR is annexed as Annexure "A".

2. That later on complainant/ respondent No. 2 recorded her supplementary statement under Section 164 Cr.PC before the Judicial Magistrate, wherein she charged the present convict/ appellant as accused for the commission of offence.

3. That on completion of investigation, complete challan submitted against the convict/ appellants and they were summoned and after compliance of Section 265-C formal charged was framed against convict/ appellants under Section 302/34 PPC, to which they pleaded not guilty.

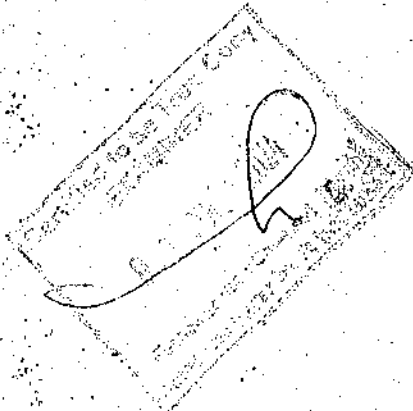
Certified to be True Copy
 EXAMINER
 01 JUL 2024
 Peshawar High Court And Bench
 Authorized Under Sec. 75 Evd Ordos.

FILED TODAY
 ADDITIONAL REGISTRAR
 PESHAWAR HIGH COURT
 ABBOTABAD BENCH
 21/7/23

- 4. That in support of his case, the prosecution produced as many as fifteen witnesses and recorded accordingly.
- 5. That after completion of prosecution evidence, the convict/ appellants were examined under Section 342 Cr.PC, wherein they professed innocence and false implication.
- 6. That after hearing the arguments, the learned trial court convicted and sentenced the convict/ appellants as noted above vide impugned judgment dated 25.01.2023. Attested copy of the judgment dated 25.01.2023 is attached as Annexure "B".
- 7. That the convict/ appellants feeling aggrieved with the judgment of the learned trial court dated 25.01.2023 approaches this Honourable Court for setting aside the same, inter-alia, on the following grounds:-

GROUNDS:

- (a) That convict/ appellants are innocent and have been implicated falsely in this case and the prosecution has produced no



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 ABBOTTABAD BENCH
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independent witnesses to connect the convict/ appellants with the commission of offence.

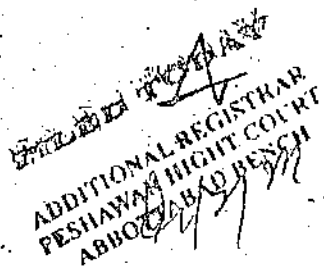
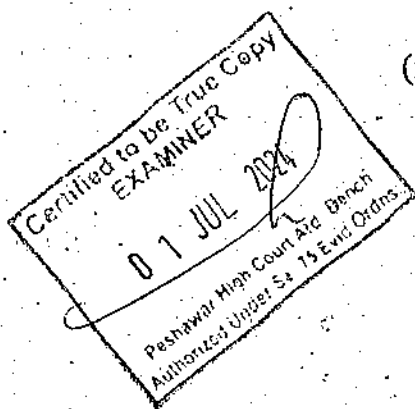
(b) That the impugned judgment of learned trial court is suggestive of the fact that the same was pronounced without proper vetting of the evidence led by the prosecution. The conclusion so drawn by the trial court manifestly shows that trial court has bypassed the legal principles settled by the superior courts for the appreciation of evidence and it apparently appears that the trial court has mis-read and mis-appreciated the evidence so produced by the prosecution which resulted in the erroneous conclusion to which trial court reached. Hence, the same is not maintainable in the eye of law and is liable to be set-aside.

(c) That the impugned judgment of learned trial court convicting the appellant is against law and facts of the case. The learned trial court made a complete departure from the well-settled principle relating to the safe

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administration of the criminal justice and has taken into consideration irrelevant and inadmissible evidence, which is in itself extra legal approach shown by the trial court.

- (d) That none was charged in the FIR, later on the appellants were involved in the cause due to service rivalry.
- (e) That no empty shell was recovered from the spot. Alleged recovery of pistol has got no evidentiary value.
- (f) That the so-called eye witnesses namely Waqas Yousaf has not charged anyone by name nor any identification parade was conducted. Statement of said witness is contradicted by the other evidence produced by the prosecution.
- (g) That the so-called CCTV footage has got no evidentiary value nor the same was brought



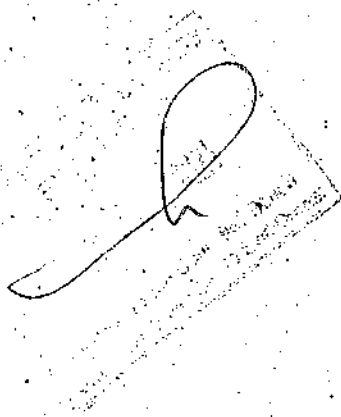
and proved in accordance with law. Anyhow the same also negates the prosecution case.

- (h) That the medical officer who conducted the PM examination categorically stated that in suspected cause of death is other than fire arm injury.
- (i) That learned trial court has convicted and sentenced the appellants on the conjectures and surmises, hence the impugned judgment is liable to be set-aside.
- (j) That the prosecution case is full of doubts, dishonest improvements and all the PWs contradicts each other on material points.
- (k) That the alleged recovery of two pistols is false and fabricated one. No empty shell was recovered from the spot, hence recovery of pistols has got no evidentiary value. Moreover no license was produced to prove that 9mm pistol belonged to deceased.

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- (l) That prosecution has badly failed to prove its case against the convict/ appellants beyond any shadow of reasonable doubt, therefore, the convict/ appellants may be acquitted honorably of the charges leveled against them in the instant case.
- (m) That the appellants have been charged in the instant case with malafide intention.
- (n) That there are material contradictions in the statement of witnesses which however were not considered by the learned trial court, while awarding capital punishment.
- (o) That learned trial court misinterpreted the relevant Articles of Qanoon-e-Shahadat, 1984 as well as the settled law of Apex Courts on the subject.



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PESHAWAR HIGH COURT
ABBOTTABAD BENCH

(p) That the conviction and sentence of the appellants is legally and factually not maintainable because principle of appreciation of evidence laid down by the superior courts has not been followed in true perspective.

(q) That every doubt arisen in the prosecution case has been resolved in favour of prosecution against the principle of justice. That learned trial court has gravely erred in recording conviction against the appellants.

(r) That, anyhow, the prosecution has miserably failed to bring home charge against the appellant beyond shadow of reasonable doubt.

(s) That looking from any angle, the impugned judgment is not maintainable in the eye of law.

(t) That the other points shall be argued at the time of arguments.

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 ABBOTTABAD BENCH
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It is, therefore, humbly prayed that on acceptance of instant appeal the impugned judgment dated 25.01.2023 passed by learned Additional Sessions-VII/ Judge MCTC, Abbottabad may kindly be set-aside and the convict/ appellants be acquitted from the charge leveled against them.

Dated: 31/1/2023

ThroughCONVICT/ APPELLANTS

(Signature of Fazal-I-Haq Abbasi)

(FAZAL-I-HAQ ABBASI)
Senior Advocate Supreme Court
of Pakistan

(Signature of Awais Abbasi)

(AWAIS ABBASI)

&

(Signature of Saad Abbasi)

(SAAD ABBASI)
Advocates High Court, Abbottabad

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31/1/2023
PESHAWAR DISTRICT JUDGE
ABBOTTABAD BENCH

VERIFICATION

Verified that the contents of the foregoing appeal are true and correct as per information furnished by my client and nothing has been suppressed from this Honourable Court.

Dated: 31/1/2023

(Signature of Fazal-I-Haq Abbasi)

(FAZAL-I-HAQ ABBASI)
Senior Advocate Supreme Court
of Pakistan

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PESHAWAR HIGH COURT
ABBOTTABAD BENCH
31/1/23

BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

Cr. Appeal No. _____ -A/2023

Waqas Ahmed son of Muhammad Zulfiqar, resident of Jahafar, Tehsil & District Abbottabad & others.

...CONVICT/ APPELLANTS

VERSUS

The State & another.

... RESPONDENTS

CRIMINAL APPEAL

AFFIDAVIT

I, *Muhammad Fiaz son of Mishal Khan, resident of Mohalali Karmuti Jahafar, Tehsil & District Abbottabad, (Attorney for convict/ appellant),* do hereby declare on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Court.

37405-2762620-2

AFFIDAVIT

S.No: 615/615 Receipt No: 615

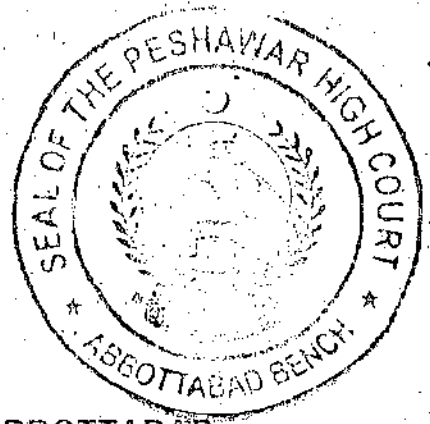
DEPONENT

Certified that the above was verified on Solemn affirmation Attd before me on this 31 day of June 2023, by M. Fiaz S/o Mishal Khan who is personally known to me.

Notary Public
Peshawar High Court Abbottabad Bench

31/6/23

ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH



Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

Cr. Appeal No. 27-A/2023

JUDGMENT

Date of hearing.....14.05.2024.....

Appellants (Waqas Ahmad & 02 others) By M/s. Fazal-e-Haq Abbasi and Awais Abbasi, Advocates.

Respondents. (State) Mr. Muhammad Khurshid Tanoli, Advocate and (Complainant) By Mr. Yasir Rafiq Awan, Advocate.

MUHAMMAD FAHEEM WALI, J.- At a trial held by learned Additional Sessions Judge-VI/ Judge MCTC Abbottabad in case FIR No. 165 dated 17.02.2022 registered under Sections 302 / 34 PPC at Police Station Mirpur District Abbottabad, appellants (1) Waqas Ahmad, (2) Abdul Qadeer and (3) Muhammad Imran, after having been found guilty for committing murder of deceased (Dildar alias Papu), have been convicted under Section 302 (b) PPC and sentenced to life term imprisonment with a fine of Rs.2,00,000/- each, payable to legal heirs of deceased under Section 544-A Cr.P.C, or in default to suffer further six (06) months S.I with benefit of Section 382-B Cr.P.C vide impugned judgment dated 25.01.2023, hence, they have filed the instant

appeal against their convictions and sentences.

2. Since the learned trial court has also convicted Musawar Anwar son of Muhammad Anwar vide same impugned judgment dated 25.01.2023 and sentenced him to life imprisonment with a fine of Rs.2,00,000/- payable to legal heirs of deceased under Section 544-A Cr.P.C, or in default to suffer further six (06) months S.I, therefore, he has also filed Cr.Appeal No. 41-A/2023 against his conviction and sentence. Similarly, according to prosecution the weapon of offence i.e. 30-bore pistol was also statedly recovered from one of the appellants namely, Waqas Ahmad, hence, he was also convicted under Section 15 of the Khyber Pakhtunkhwa Arms Act, 2013 and sentenced to two (02) years S.I with a fine of Rs.10,000/- or in default to suffer further one month S.I with benefit of Section 382-B Cr.P.C and his sentences were ordered to run concurrently with the punishment awarded to him in the main case, therefore, he has also filed Cr.Appeal No. 28-A/2023 against his

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conviction and sentence. Likewise, aggrieved of the impugned judgment dated 25.01.2023 complainant (Mst. Sumaira Bibi) has also filed **Cr.Revision.No. 11-A/2023** for enhancement of sentences of the appellants from life imprisonment to normal penalty of death. As all referred appeals and criminal revision have arisen out of same FIR bearing No. 165 dated 17.02.2022, therefore, in order to avoid repetition, we propose to decide all these matters together through this single judgment.

3. According to prosecution story, as explained in FIR (Ex.PW-6/1), on 17.02.2022 at 20:30 hours complainant Mst. Sumaira Bibi (PW-11) while lodging report in the Emergency Ward of ATH to Zubair Khan, ASI (PW-04) alleged that on the fateful day at 19:00 hours her husband Dildar alias Papu (deceased then alive) had left his house for Bazar in order to fetch fruit and milk for children and while leaving the house he also stated to have taken along his 9-MM licensed pistol. She stated to have contacted him after 20 / 25 minutes and the deceased told her that he would return soon, however, again

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when she had contacted her husband, his phone remained unattended and then after a while when again she made a call, some unknown person attended the same and on her query she was informed that the deceased had been lying in ATH due to heart failure. As per crime report, complainant stated that she alongwith her brother-in-law namely, Shafiq alias Banka, had rushed to hospital and found her husband lying dead on the stretcher, having firearm injuries on his back and hand on the right side. The complainant disclosed to the police that her husband was having enmities with numerous people, however, at the moment, she could not nominate anyone in particular rather shown her no objection over postmortem examination of her husband, hence, the FIR ibid was charged against unknown culprit (s).

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4. On conclusion of investigation, challan was submitted before the learned trial court. Formal charge was framed against the appellants, to which they pleaded not guilty and claimed trial. In order to prove its case, prosecution produced fifteen (15) witnesses,

whereafter accused were examined under Section 342 Cr.P.C, wherein they denied the allegation and professed innocence, however, they neither opted to be examined on oath nor produced evidence in their defence. At the conclusion of trial, learned trial Judge convicted and sentenced the appellants vide impugned judgment as mentioned above. Aggrieved from judgment of learned trial court, appellants have filed this and the connected appeals.

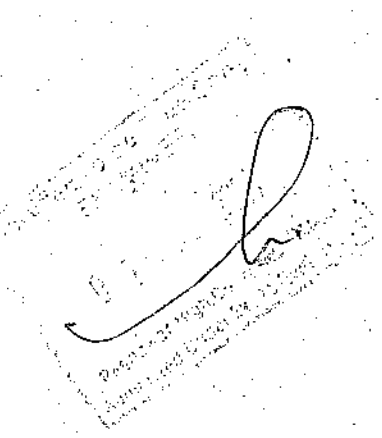
5. We have heard arguments of learned counsel for the parties as well as learned State counsel and gone through the record with their valuable assistance.

6. Though the learned trial Court passed a guilty verdict, yet this being the appellate Court is under the bounden duty to assess and re-assess the available evidence on the file and to appreciate as to whether the learned trial Court was correct in its approach by convicting the appellants. In order to ascertain as to whether the impugned judgment is based on proper reasoning and that the learned trial Court correctly applied its

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judicial mind to the facts and circumstances of the case keeping in view the evidence available on the file, so we deem it essential to thrash out the evidence so as to avoid miscarriage of justice.

7. It appears from record that initially no one was charged in first information report for commission of the offence, however, during investigating when the I.O collected CCTV footages and presumed that murder of Dildar alias Papu had been committed by the appellants, thus, the complainant (Mst. Sumaira Bibi) and her brother-in-law (Shafiq alias Banka) got recorded their supplementary statements on the 7th day of the occurrence i.e. on 24.02.2022 wherein they nominated the appellants for committing murder of deceased. In this case neither the complainant nor her brother-in-law themselves had seen the occurrence but according to report made by the complainant when she contacted the deceased on his cellular phone, the same was picked up by unknown person, who disclosed to her that the deceased had developed heart attack and

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lying at ATH (Ayub Teaching Hospital) and when she alongwith her brother-in-law had reached the hospital found the dead body of her deceased husband, lying on the stretcher. However, the prosecution has produced Waqas Younas in support of its case by alleging that he had last seen the deceased. This witness while appearing in the witness box as PW-13 stated that on the day of occurrence he was present in his house at the time in-between *Maghrib* and *Isha* when he heard the sound of two (02) fire shots, upon which he had statedly come out of his house and noticed a person while running ahead whereas two persons were chasing him, thus, he also started following them. According to his examination-in-chief, when he reached near them, he noticed the person, running ahead, lying in unconscious condition in the corner of a vacant plot while the two persons, chasing him, were standing near to him and upon his inquiry about their identity, they stated to have disclosed to him to be the government servants, whereafter a police constable, wearing police uniform, also

8.

Waqas Younas
PW-13

Witness Examination
Date: _____
Time: _____

arrived at the spot, thereafter, he left the spot. This witness further stated that on the next day of occurrence, the Investigating Officer came to the spot and on his pointation prepared the site plan (Ex.PW-13/1), whereafter his statement under Section 161 Cr.P.C was recorded. During his cross-examination, this witness stated that he had noticed three persons, however, it was dark and all the three persons wrapped themselves in *shawls*, thus, he could not identify them. The ocular account set up by the prosecution that Waqas Younis had last seen the deceased in the company of appellants is of no credence to be relied upon as he, during his cross-examination, admitted that he had not identified the persons, running ahead and chasing as they were wrapped in *shawls*. Besides, after arrest of the appellants the prosecution was required to conduct identification parade, so as to strengthen its case against the appellants. From the above evaluation, it has become clearer than crystal that the prosecution has miserably failed to

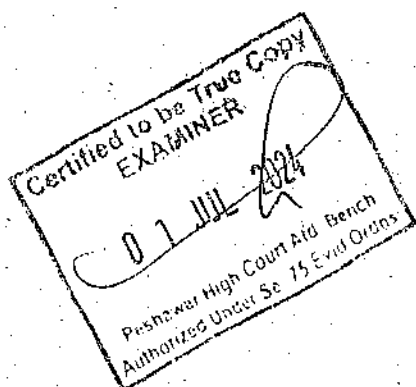
prove the ocular account beyond any shadow of doubt.

8. So far as motive for the crime is concerned, as the complainant while reporting the crime has failed to set up any specific motive except that her husband (the deceased) was having enmities with many people. If so, then without ocular account and other corroboratory circumstantial or direct evidence, how it could be ascertained that the appellants had committed the murder of her husband due to enmity most particularly when there is no specific motive mentioned neither in first information report nor in the court statement with the appellants.

9. Another limb of the story as set up by the prosecution is statement of Muhammad Farooq, SI/OII (PW-14). As per his statement, he has obtained the CCTV footage of the ATH whereby the present appellants, who were four in numbers were seen. One of them was statedly seen in uniform alongwith the dead body of the deceased. Be that as it may, but pronounced aspect of the matter is that mere producing any footage of CCTV as a

piece of evidence in the court is not sufficient to be relied upon unless and until the same is proved to be genuine. The Hon'ble Supreme Court of Pakistan while delivering its verdict in the case of *"Asfandyar & another Vs. Kamran & another"* reported as **2016 SCMR 2084** has held that in order to prove the genuineness of such footage, it is incumbent upon the defence or prosecution to examine the person who prepared such footage from the CCTV system, while, in the case in hand the said persons could not be examined. Hence, on this score the CCTV footage relied upon by the prosecution is also of no worth credence. Relevant paragraph of the ibid judgment is reproduced below for ready reference: -

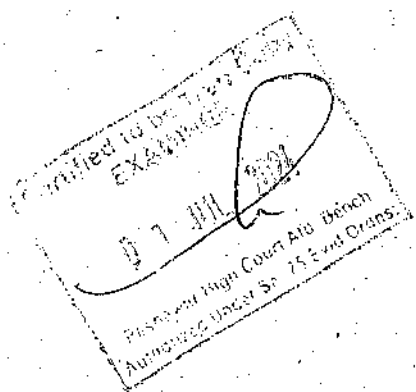
"Mere producing any footage of C.C.T.V. as a piece of evidence in the Court is not sufficient to be relied upon unless and until the same is proved to be genuine. In order to prove the genuineness of such footage it is incumbent upon the defence or prosecution to examine the person who prepared such footage from the C.C.T.V. system. So we modify the impugned judgment to the extent



that the accused is at liberty to produce evidence and prove the same strictly in accordance with the provisions of the Order, 1984 and it will not confine only to the Article 79 of the Order, 1984."

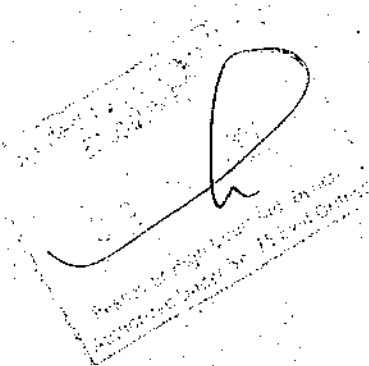
10. Otherwise too, as the appellants were police officials and admittedly posted at Police Station Mirpur whereas the occurrence had also been taken place in the same vicinity, therefore, their presence as shown in the CCTV footage in the area while performing their official duty is also not exceptional.

11. So far as recovery of weapon of offence i.e. 30-bore pistol alongwith 9MM pistol of the deceased on the pointation of appellant Waqas Ahmad is concerned, suffice it to say that no doubt according to recovery memo (Ex.PW-14/14), allegedly, both the pistols were stated to have been recovered from the appellant on his pointation on 26.02.2022 but prominent aspect of the matter is that as per Register No.19 the Investigating Officer had deposited the said pistols alongwith other parcels in the

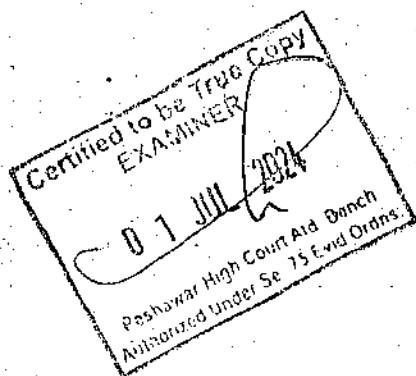


Malkhana on 19.02.2022, which makes the recovery doubtful as how it is possible that seven (07) days prior to the recovery of both the *ibid* pistols the same had been shown deposited in the *Malkhana*. Besides, no doubt as per FSL report both the pistols were shown in working condition but as no empty could be recovered from the spot so as to affirm that whether any firing was made with the said pistols or not, is yet a begging question, thus, the FSL report is of no help to prosecution.

12. Another intriguing aspect of the matter is that the doctor (Dr. Ejaz-ul-Haq, CMO ATH) while appearing in the witness box as PW-07 stated in his report that though firearm injuries had been found on the person of deceased but the cause of death was not firearm but due to some other reason. This factum further fortified his statement as the Investigating Officer had not recovered any blood stained earth from the spot. On one hand the complainant alleged that the appellants had committed murder of deceased through firearm while on the other hand the doctor opined the cause of death to

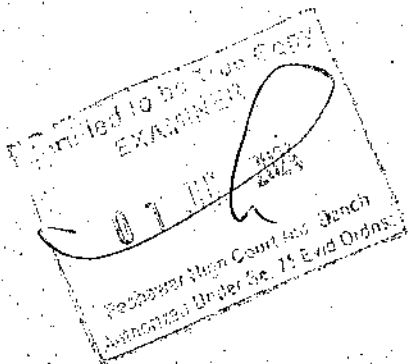


have been occurred due to some other reason and not owing to firearm injuries, sustained by the deceased, coupled with the fact that nothing incriminating material in the shape of bloodstained earth could have been recovered from the spot, thus, in such a scenario the prosecution has failed to prove its case through medical evidence. It is settled law that medical evidence by itself cannot identify the accused and it can only prove the seat and nature of injuries, the cause of death, type of weapon etc but such evidence cannot be considered in isolation for conviction of accused in absence of trustworthy ocular account or circumstantial evidence of convincing nature forming an unbroken chain to connect the accused with murder of deceased, which is not available in the present case. Reliance is placed on the judgments reported by Hon'ble Supreme Court of Pakistan in the case of "*Altaf Hussain Vs. Fakhar Hussain and another*" reported as 2008 SCMR 1103 and in the case of "*Muhammad Ashraf and others Vs. The State*" reported as 1998 SCMR 279.



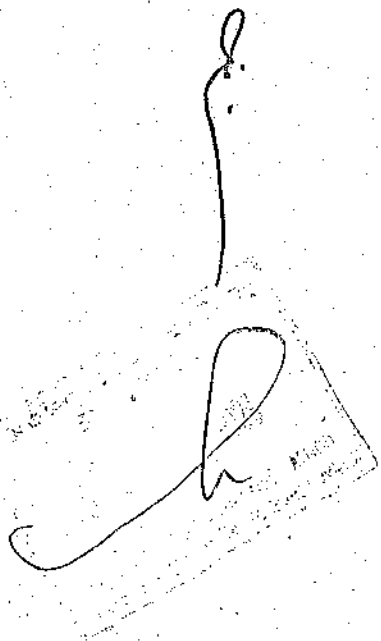
13. Last but not the least, it is pertinent to mention here that although brother-in-law of complainant namely, Shafiq alias Banka allegedly verified the report of the complainant, however, he was abandoned by the prosecution. Thus, best evidence was withheld by prosecution which leads us to draw an adverse inference in terms of Article 129(g) of the Qanun-e-Shahadat Order, 1984, that said witness, although closely related to deceased, perhaps wanted to disclose real facts of the occurrence before the trial court but his account was not supporting the version of prosecution. Guidance is sought from the judgment rendered by Hon'ble Supreme Court of Pakistan in the case of "*Muhammad Rafique and others Vs. The State and others*" reported as 2010 SCMR 385.

14. There is no two opinion about the fact that the cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree and sufficient enough to dispel the apprehension of the Court with regard to the implication of



innocent persons alongwith guilty one by the prosecution, otherwise, the golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient to acquit the accused, giving him/them benefit of doubt because bundle of doubts are not required to extend the legal benefit to the accused. In this regard, reliance is placed on a view held by the Supreme Court of Pakistan in case of "*Riaz Masih alias Mithoo Vs. State*" reported as NLR 1995 Cr.SC 694.

15. The overall impact of what has been discussed above, the prosecution has miserably failed to establish its case against the appellants beyond a ray of doubt, which should have been resolved in favour of the accused, however, the learned trial Court while convicting the appellants vide impugned judgment has not adhered to the celebrated principles enunciated for dispensation of criminal justice. Accordingly, this and the connected criminal appeals, mentioned above, are allowed, their convictions and sentences awarded are set



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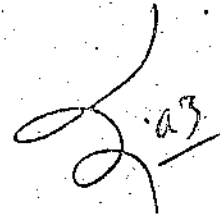
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aside and resultantly, the appellants are acquitted of the charges levelled against them. They shall be released forthwith, if not required to be detained in any other case.

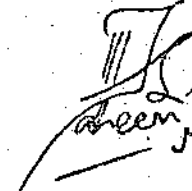
16. Since we have set aside the convictions and sentences awarded to the appellants, therefore, the connected criminal revision for enhancement of their sentences has become infructuous, which stands dismissed accordingly.

17. Above are the detailed reasons of our short orders of even date.

Announced:
14.05.2024



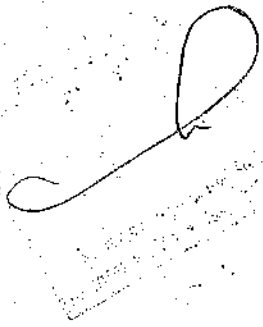
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JUDGE

Hon'ble Mr. Justice Muhammad Ijaz Khan
Hon'ble Mr. Justice Muhammad Faheem Wali

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BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH



Cr. Appeal No. 28 -A/2023

Waqas Ahmed son of Muhammad Zulfiqar, resident of Jahafar, Tehsil & District Abbottabad.

...CONVICT/ APPELLANT

VERSUS

The State

... RESPONDENT

CASE FIR NO. 165 DATED 17.02.2022 UNDER SECTION 15AA-KPK, POLICE STATION MIRPUR, DISTRICT ABBOTTABAD.

APPEAL UNDER SECTION 410 Cr.PC, AGAINST THE IMPUGNED JUDGMENT DATED 25.01.2023 PASSED BY ADDITIONAL SESSIONS JUDGE-VI/ JUDGE MCTC ABBOTTABAD; WHEREBY, THE LEARNED TRIAL COURT CONVICTED THE APPELLANT UNDER SECTION 15-AA KPK AND SENTENCED THERE-UNDER TO SIMPLE IMPRISONMENT FOR TWO YEAR WITH FINE OF RS.10,000/-, FAILING WHICH TO SUFFER

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Peshawar High Court, 1st Bench
Abbottabad Under Sec. 15 Extra Order.

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PESHAWAR HIGH COURT
ABBOTTABAD BENCH

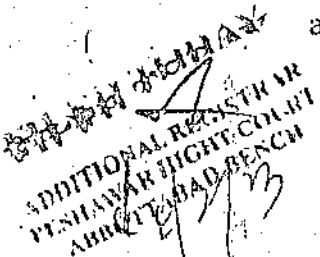
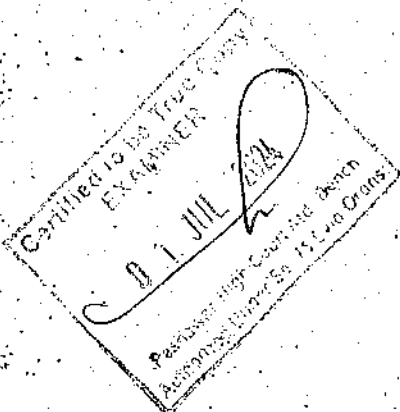
FURTHER ONE MONTH S.I. BENEFITS OF SECTION 382-B CR.PC IS EXTENDED TO THE CONVICT/ APPELLANT. BOTH THE SENTENCES SHALL RUN CONCURRENTLY.

PRAYER: ON ACCEPTANCE OF INSTANT APPEAL THE IMPUGNED JUDGMENT 25.01.2023 PASSED BY ADDITIONAL SESSIONS JUDGE-VI/ JUDGE MCTC, ABBOTTABAD MAY KINDLY BE SET-ASIDE AND THE CONVICT/ APPELLANT BE ACQUITTED FROM THE CHARGE LEVELED AGAINST HIM.

Respectfully Sheweth; -

Brief facts of the case are as under:-

1. That the contents of the case are that, during the investigation of main case FIR No. 165, dated 17.02.2022 under Section 302/34 PPC, Police Station Mirpur, Abbottabad, convict/ appellant was arrested and during interrogation of the convict/ appellant, one pistol 30 bore without licensed has been recovered fro the tin box of the convict/ appellant and thereafter, Section 15AA-KPK was added with the main case.



2. That later on challan under Section 15AA-KPK was separated from the main case and submitted before the court for trial of convict/ appellant.
3. That thereafter, the convict/ appellant was summoned, who was produced in custody, and proceeding under Section 265-C was complied with and charge was framed against the convict/ appellant to which he pleaded not guilty.
4. That in order to prove the case, the prosecution produced as many as five PWs and recorded accordingly.
5. That after closure of prosecution's evidence, the statement of convict/ appellant was recorded under Section 342 Cr.PC, wherein he professed innocence and refuted the charge leveled against him.
6. That after hearing the arguments, the learned trial court convicted and sentenced the convict/ appellant as noted above vide impugned judgment dated 25.01.2023. Attested copy of the judgment dated 25.01.2023 is attached as Annexure "A".

Certified to be True
 EXAMINED
 07 JUL 2023
 Peshawar High Court And Bench
 Authorized Under Sec 75 E and Ordns.

توبہ
 ADDITIONAL JUDGE IN
 PESHAWAR HIGH COURT
 ABBOTTABAD BENCH

7. That the convict/ appellant feeling aggrieved with the judgment of the learned trial court dated 25.01.2023 approaches this Honourable Court for setting aside the same, inter-alia, on the following grounds:-

GROUND:

(a) That the impugned judgment of learned trial court is suggestive of the fact that the same was pronounced without proper vetting of the evidence led by the prosecution. The conclusion so drawn by the trial court manifestly shows that trial court has bypassed the legal principles settled by the superior courts for the appreciation of evidence and it apparently appears that the trial court has mis-read and mis-appreciated the evidence so produced by the prosecution which resulted in the erroneous conclusion to which trial court reached. Hence, the same is not maintainable in the eye of law and is liable to be set-aside.

Certified to be a true and correct copy of the original as per the order of the Court dated 25.01.2023.
Peshawar High Court and District Court Peshawar Under Sec 75 Evd Ord.

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTABAD BENCH
21/7/23

(b) That the impugned judgment of learned trial court convicting the appellant is against law and facts of the case. The learned trial court made a complete departure from the well-settled principle relating to the safe administration of the criminal justice and has taken into consideration irrelevant and inadmissible evidence, which is in itself extra legal approach shown by the trial court.

(c) That no empty shell was recovered from the spot. Alleged recovery of pistol has got no evidentiary value.

(d) That the recovery is planted and dubiously procured and as such of no legal effect.

(e) That appellant has been charged in the instant case with malafide intention.

(f) That no independent witness was produced by the prosecution, which could connect the convict / appellant with the commission of offence.

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 EXAMINER
 01 JUL 2024
 Bahawalpur Court and District
 Sessions Judge No. 13 Extra Order

~~FILED TODAY~~
 ADDITIONAL REGISTRAR
 PESHAWAR SAUGHT COL RT
 AHROTABAD PESHAWAR

(g) That, the recoveries have been planted against the convict/appellant in connivance with complainant party.

(h) That despite the availability of independent local witnesses, the prosecution did not bother to associate them as a witness, which casts serious doubts on the prosecution story.

(i) That the IO of the case dishonestly investigated the case with collusion of complainant party.

(j) That there are improvements and contradictions in the statements of PWs produced before the trial court.

(k) That learned trial court misinterpreted the relevant Articles of Qanoon-e-Shahadat, 1984 as well as the settled law of Apex Courts on the subject.

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D. J. I. A. 2023
PESHAWAR HIGH COURT
Abbottabad Bench

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
21/7/23

(l) That the conviction and sentence of the appellants is legally and factually not maintainable because principle of appreciation of evidence laid down by the superior courts has not been followed in true perspective.

(m) That every doubt arisen in the prosecution case has been resolved in favour of prosecution against the principle of justice.

That learned trial court has gravely erred in recording conviction against the appellant.

(n) That the convict/ appellant is previously non-convicted in any criminal case.

(o) That, anyhow, the prosecution has miserably failed to bring home charge against the appellant beyond shadow of reasonable doubt.

(p) That looking from any angle, the impugned judgment is not maintainable in the eye of law.

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ADDITIONAL REGISTRAR
 PESHAWAR HIGH COURT
 ABBOTTABAD BENCH
 2/7/73

(q) That the other points shall be argued at the time of arguments.

It is, therefore, humbly prayed that on acceptance of instant appeal the impugned judgment 25.01.2023 passed by Additional Sessions Judge-VI/ Judge MCTC, Abbottabad may kindly be set-aside and the convict/ appellant be acquitted from the charge leveled against him.

Dated: 31/1/2023

Through

....CONVICT/ APPELLANT

(Signature)

(FAZAL-I-HAQ ABBASI)
Senior Advocate Supreme Court
of Pakistan

(Signature)

(AWAIS ABBASI)

(Signature)

(SAAD ABBASI)
Advocates High Court, Abbottabad

Examined to be True Copy
EXAMINER
01/01/2023
Peshawar High Court Aid Bench
Authorized Under Sec 75 Evid Ordns.

VERIFICATION

Verified that the contents of the foregoing appeal are true and correct as per information furnished by my client and nothing has been suppressed from this Honourable Court.

Dated: 31/1/2023

(Signature)

(FAZAL-I-HAQ ABBASI)
Senior Advocate Supreme Court
of Pakistan

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
21/1/23

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**BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH**

Cr. Appeal No. _____ -A/2023

Waqas Ahmed son of Muhammad Zulfiqar, resident of Jahafar, Tehsil & District Abbottabad.

...CONVICT/ APPELLANT

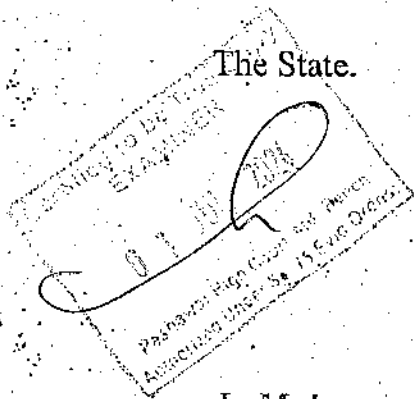
VERSUS

The State.

... RESPONDENT

CRIMINAL APPEAL

AFFIDAVIT



I, *Muhammad Fiaz son of Mishal Khan, resident of Mohalah Karmuti
Juhafar, Tehsil & District Abbottabad, (Attorney for convict/ appellant),*

do hereby declare on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Court.

3705-2762620-3

AFFIDAVIT

S.No: *67/67* Receipt No: *617*

DEPONENT

Certified that the above was verified on Solemn affirmation *AKK* before me on this

31 day of *Jan* 20023, by

M. Fiaz S/o *Mishal Khan*

of *Mohalah Karmuti, Jahafar, Tehsil & District Abbottabad*

who is personally known to me

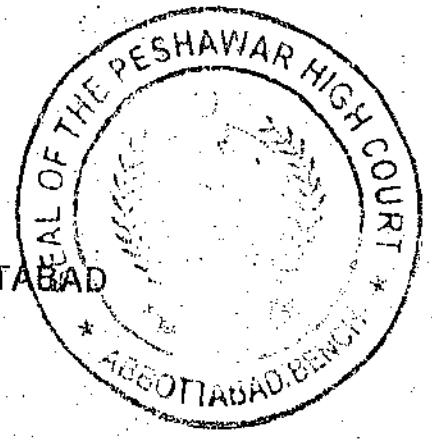
Notary Public (General)

Peshawar High Court Abbottabad Bench

31/1/23

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

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Judgment Sheet
IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH
JUDICIAL DEPARTMENT

Cr. Appeal No. 28-A/2023

JUDGMENT

Date of hearing.....14.05.2024.....

Appellant (Waqas Ahmad) By M/s. Fazal-e-Haq Abbasi and Awais Abbasi, Advocates.

Respondents (State) By Mr. Muhammad Khurshid Tanoli, Advocate.

MUHAMMAD FAHEEM WALI, J.- For

reasons to be recorded later, this appeal is allowed. Conviction and sentence of the appellant namely, Waqas Ahmad son of Muhammad Zulfiqar, recorded by learned Additional Sessions Judge-VI / Judge MCTC Abbottabad vide judgment dated 25.01.2023 in case FIR No. 165 dated 17.02.2022 registered under Section 15 of the Khyber Pakhtunkhwa Arms Act, 2013 at Police Station Mirpur District Abbottabad, is set-aside and he is acquitted of the charge, leveled against him. He be set free from Jail forthwith, if not required in any other case.

Announced:
14.05.2024.

JUDGE


JUDGE

Hon'ble Mr. Justice Muhammad Iqbal Khan
Hon'ble Mr. Justice Muhammad Faheem Wali

Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr. Appeal No. 28-A/2023

JUDGMENT



Date of hearing: 14.05.2024

Appellant (Waqas Ahmad) By M/s. Fazal-e-Haq Abbasi and Awais Abbasi, Advocates.

Respondents. (State) Mr. Muhammad Khurshid Tanoli, Advocate.

MUHAMMAD FAHEEM WALI, J.-. For

reasons recorded in our detailed judgment of even date in the connected Cr. Appeal No. 27-A/2023, this appeal is allowed. Conviction and sentence of the appellant (Waqas Ahmad son of Muhammad Zulfiqar) is set-aside and he is acquitted of the charge, levelled against him. He be set free from Jail forthwith, if not required in any other case.

Announced:
14.05.2024.

JUDGE

JUDGE

Hon'ble Mr. Justice Muhammad Ijaz Khan
Hon'ble Mr. Justice Muhammad Faheem Wali

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Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr. Appeal No. 27-A/2023

JUDGMENT

Date of hearing..... 14.05.2024.....

Appellants (Waqas Ahmad & 02 others) By M/s. Fazal-e-Haq Abbasi and Awais Abbasi, Advocates.

Respondents: (State) Mr. Muhammad Khurshid Tanoli, Advocate and (Complainant) By Mr. Yasir Rafiq Awan, Advocate.

MUHAMMAD FAHEEM WALI, J.- At a trial held by learned Additional Sessions Judge-VI/ Judge MCTC Abbottabad in case FIR No. 165 dated 17.02.2022 registered under Sections 302 / 34 PPC at Police Station-Mirpur District Abbottabad, appellants (1) Waqas Ahmad, (2) Abdul Qadeer and (3) Muhammad Imran, after having been found guilty for committing murder of deceased (Dildar alias Papu), have been convicted under Section 302 (b) PPC and sentenced to life term imprisonment with a fine of Rs.2,00,000/- each, payable to legal heirs of deceased under Section 544-A Cr.P.C, or in default to suffer further six (06) months S.I. with benefit of Section 382-B Cr.P.C vide impugned judgment dated 25.01.2023, hence, they have filed the instant

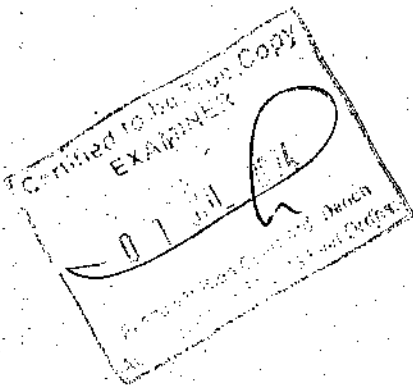
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01 JUN 2024
Peshawar High Court, Abbottabad Bench
Authorised Officer / Examining Officer

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appeal against their convictions and sentences.

2. Since the learned trial court has also convicted Musawar Anwar son of Muhammad Anwar vide same impugned judgment dated 25.01.2023 and sentenced him to life imprisonment with a fine of Rs.2,00,000/- payable to legal heirs of deceased under Section 544-A Cr.P.C, or in default to suffer further six (06) months S.I, therefore, he has also filed Cr.Appeal No. 41-A/2023 against his conviction and sentence. Similarly, according to prosecution the weapon of offence i.e. 30-bore pistol was also statedly recovered from one of the appellants namely, Waqas Ahmad, hence, he was also convicted under Section 15 of the Khyber Pakhtunkhwa Arms Act, 2013 and sentenced to two (02) years S.I with a fine of Rs.10,000/- or in default to suffer further one month S.I with benefit of Section 382-B Cr.P.C and his sentences were ordered to run concurrently with the punishment awarded to him in the main case, therefore, he has also filed Cr.Appeal No. 28-A/2023 against his



conviction and sentence. Likewise, aggrieved of the impugned judgment dated 25.01.2023 complainant (Mst. Sumaira Bibi) has also filed Cr.Revision No. 11-A/2023 for enhancement of sentences of the appellants from life imprisonment to normal penalty of death. As all referred appeals and criminal revision have arisen out of same FIR bearing No. 165 dated 17.02.2022, therefore, in order to avoid repetition, we propose to decide all these matters together through this single judgment.

3. According to prosecution story, as explained in FIR (Ex.PW-6/1), on 17.02.2022 at 20:30 hours complainant Mst. Sumaira Bibi (PW-11) while lodging report in the Emergency Ward of ATH to Zubair Khan, ASI (PW-04) alleged that on the fateful day at 19:00 hours her husband Dildar alias Papu (deceased then alive) had left his house for Bazar in order to fetch fruit and milk for children and while leaving the house he also stated to have taken along his 9-MM licensed pistol. She stated to have contacted him after 20 / 25 minutes and the deceased told her that he would return soon, however, again

EXHIBIT
No. 11-A/2023
Cr. Revision
Mst. Sumaira Bibi
17.02.2022

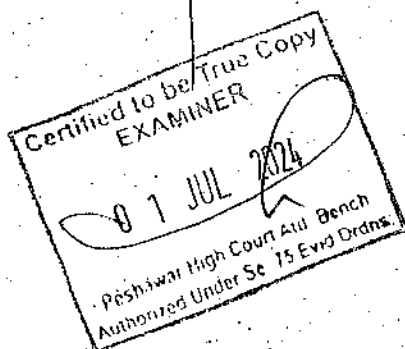
when she had contacted her husband, his phone remained unattended and then after a while when again she made a call, some unknown person attended the same and on her query she was informed that the deceased had been lying in ATH due to heart failure. As per crime report, complainant stated that she alongwith her brother-in-law namely, Shafiq alias Banka, had rushed to hospital and found her husband lying dead on the stretcher, having firearm injuries on his back and hand on the right side. The complainant disclosed to the police that her husband was having enmities with numerous people, however, at the moment, she could not nominate anyone in particular rather shown her no objection over postmortem examination of her husband, hence, the FIR ibid. was charged against unknown culprit (s).

4. On conclusion of investigation, challan was submitted before the learned trial court. Formal charge was framed against the appellants, to which they pleaded not guilty and claimed trial. In order to prove its case, prosecution produced fifteen (15) witnesses,

whereafter accused were examined under Section 342 Cr.P.C, wherein they denied the allegation and professed innocence, however, they neither opted to be examined on oath nor produced evidence in their defence. At the conclusion of trial, learned trial Judge convicted and sentenced the appellants vide impugned judgment as mentioned above. Aggrieved from judgment of learned trial court, appellants have filed this and the connected appeals.

5. We have heard arguments of learned counsel for the parties as well as learned State counsel and gone through the record with their valuable assistance.

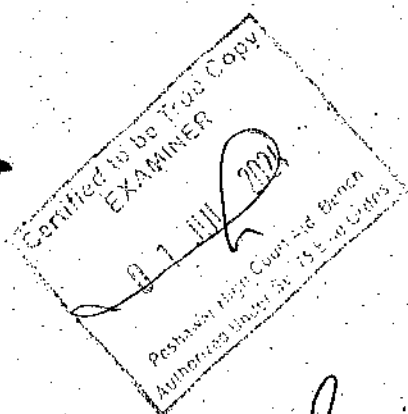
6. Though the learned trial Court passed a guilty verdict, yet this being the appellate Court is under the bounden duty to assess and re-assess the available evidence on the file and to appreciate as to whether the learned trial Court was correct in its approach by convicting the appellants. In order to ascertain as to whether the impugned judgment is based on proper reasoning and that the learned trial Court correctly applied its



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judicial mind to the facts and circumstances of the case keeping in view the evidence available on the file, so we deem it essential to thrash out the evidence so as to avoid miscarriage of justice.

7. It appears from record that initially no one was charged in first information report for commission of the offence, however, during investigating when the I.O collected CCTV footages and presumed that murder of Dildar alias Papu had been committed by the appellants, thus, the complainant (Mst. Sumaira Bibi) and her brother-in-law (Shafiq alias Banka) got recorded their supplementary statements on the 7th day of the occurrence i.e. on 24.02.2022 wherein they nominated the appellants for committing murder of deceased. In this case neither the complainant nor her brother-in-law themselves had seen the occurrence but according to report made by the complainant when she contacted the deceased on his cellular phone, the same was picked up by unknown person, who disclosed to her that the deceased had developed heart attack and



lying at ATH (Ayub Teaching Hospital) and when she alongwith her brother-in-law had reached the hospital found the dead body of her deceased husband, lying on the stretcher. However, the prosecution has produced Waqas Younas in support of its case by alleging that he had last seen the deceased. This witness while appearing in the witness box as PW-13 stated that on the day of occurrence he was present in his house at the time in-between *Maghrib* and *Isha* when he heard the sound of two (02) fire shots, upon which he had stately come out of his house and noticed a person while running ahead whereas two persons were chasing him, thus, he also started following them. According to his examination-in-chief, when he reached near them, he noticed the person, running ahead, lying in unconscious condition in the corner of a vacant plot while the two persons, chasing him, were standing near to him and upon his inquiry about their identity, they stated to have disclosed to him to be the government servants, whereafter a police constable, wearing police uniform, also

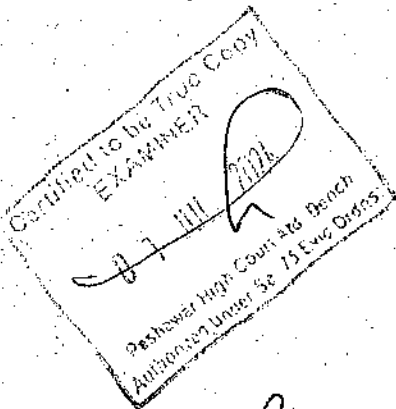
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 01 JUL 2001
 Peshawar High Court And Bench
 Authorized Under Sec 75 E and O.S. 1973

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arrived at the spot, thereafter, he left the spot. This witness further stated that on the next day of occurrence, the Investigating Officer came to the spot and on his pointation prepared the site plan (Ex.PW-13/1), whereafter his statement under Section 161 Cr.P.C was recorded. During his cross-examination, this witness stated that he had noticed three persons, however, it was dark and all the three persons wrapped themselves in *shawls*, thus, he could not identify them. The ocular account set up by the prosecution that Waqas Younis had last seen the deceased in the company of appellants is of no credence to be relied upon as he, during his cross-examination, admitted that he had not identified the persons, running ahead and chasing as they were wrapped in *shawls*. Besides, after arrest of the appellants the prosecution was required to conduct identification parade, so as to strengthen its case against the appellants. From the above evaluation, it has become clearer than crystal that the prosecution has miserably failed to



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prove the ocular account beyond any shadow of doubt.

8. So far as motive for the crime is concerned, as the complainant while reporting the crime has failed to set up any specific motive except that her husband (the deceased) was having enmities with many people. If so, then without ocular account and other corroboratory circumstantial or direct evidence, how it could be ascertained that the appellants had committed the murder of her husband due to enmity most particularly when there is no specific motive mentioned neither in first information report nor in the court statement with the appellants.

Submitted to the Hon'ble
JUDGE
MADRAS HIGH COURT
CHENNAI
18/11/2015

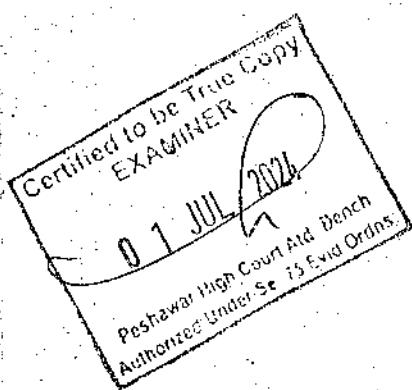
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9. Another limb of the story as set up by the prosecution is statement of Muhammad Farooq, SI/OII (PW-14). As per his statement, he has obtained the CCTV footage of the ATH whereby the present appellants, who were four in numbers were seen. One of them was statedly seen in uniform alongwith the dead body of the deceased. Be that as it may, but pronounced aspect of the matter is that mere producing any footage of CCTV as a

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piece of evidence in the court is not sufficient to be relied upon unless and until the same is proved to be genuine. The Hon'ble Supreme Court of Pakistan while delivering its verdict in the case of "Asfandyar & another Vs. Kamran & another" reported as 2016 SCMR 2084 has held that in order to prove the genuineness of such footage, it is incumbent upon the defence or prosecution to examine the person who prepared such footage from the CCTV system, while, in the case in hand the said persons could not be examined. Hence, on this score the CCTV footage relied upon by the prosecution is also of no worth credence. Relevant paragraph of the ibid judgment is reproduced below for ready reference: -

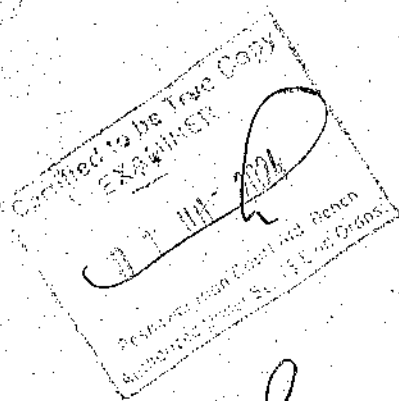
"Mere producing any footage of C.C.T.V. as a piece of evidence in the Court is not sufficient to be relied upon unless and until the same is proved to be genuine. In order to prove the genuineness of such footage it is incumbent upon the defence or prosecution to examine the person who prepared such footage from the C.C.T.V. system. So, we modify the impugned judgment to the extent



that the accused is at liberty to produce evidence and prove the same strictly in accordance with the provisions of the Order, 1984 and it will not confine only to the Article 79 of the Order, 1984."

10. Otherwise too, as the appellants were police officials and admittedly posted at Police Station Mirpur whereas the occurrence had also been taken place in the same vicinity, therefore, their presence as shown in the CCTV footage in the area while performing their official duty is also not exceptional.

11. So far as recovery of weapon of offence i.e. 30-bore pistol alongwith 9MM pistol of the deceased on the pointation of appellant Waqas Ahmad is concerned, suffice it to say that no doubt according to recovery memo (Ex.PW-14/14), allegedly, both the pistols were stated to have been recovered from the appellant on his pointation on 26.02.2022 but prominent aspect of the matter is that as per Register No.19 the Investigating Officer had deposited the said pistols alongwith other parcels in the




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Malkhana on 19.02.2022, which makes the recovery doubtful as how it is possible that seven (07) days prior to the recovery of both the *ibid* pistols the same had been shown deposited in the *Malkhana*. Besides, no doubt as per FSL report both the pistols were shown in working condition but as no empty could be recovered from the spot so as to affirm that whether any firing was made with the said pistols or not, is yet a begging question, thus, the FSL report is of no help to prosecution.

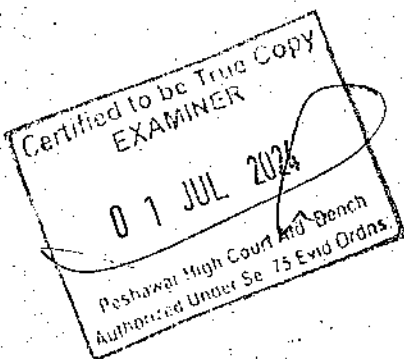
12. Another intriguing aspect of the matter is that the doctor (Dr. Ejaz-ul-Haq, CMO ATH) while appearing in the witness box as PW-07 stated in his report that though firearm injuries had been found on the person of deceased but the cause of death was not firearm but due to some other reason. This factum further fortified his statement as the Investigating Officer had not recovered any blood stained earth from the spot. On one hand the complainant alleged that the appellants had committed murder of deceased through firearm while on the other hand the doctor opined the cause of death to

have been occurred due to some other reason and not owing to firearm injuries, sustained by the deceased, coupled with the fact that nothing incriminating material in the shape of bloodstained earth could have been recovered from the spot, thus, in such a scenario the prosecution has failed to prove its case through medical evidence. It is settled law that medical evidence by itself cannot identify the accused and it can only prove the seat and nature of injuries, the cause of death, type of weapon etc but such evidence cannot be considered in isolation for conviction of accused in absence of trustworthy ocular account or circumstantial evidence of convincing nature forming an unbroken chain to connect the accused with murder of deceased, which is not available in the present case. Reliance is placed on the judgments reported by Hon'ble Supreme Court of Pakistan in the case of "*Altaf Hussain Vs. Fakhar Hussain and another*" reported as 2008 SCMR 1103 and in the case of "*Muhammad Ashraf and others Vs. The State*" reported as 1998 SCMR 279.

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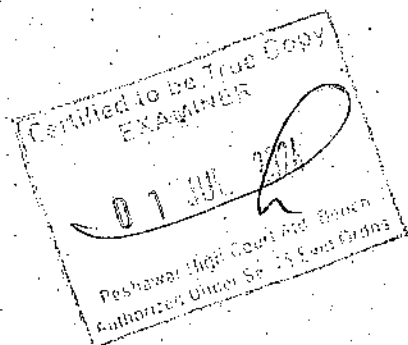
13. Last but not the least, it is pertinent to mention here that although brother-in-law of complainant namely, Shafiq alias Banka allegedly verified the report of the complainant, however, he was abandoned by the prosecution. Thus, best evidence was withheld by prosecution which leads us to draw an adverse inference in terms of Article 129(g) of the Qanun-e-Shahadat Order, 1984, that said witness, although closely related to deceased, perhaps wanted to disclose real facts of the occurrence before the trial court but his account was not supporting the version of prosecution. Guidance is sought from the judgment rendered by Hon'ble Supreme Court of Pakistan in the case of "*Muhammad Rafique and others Vs. The State and others*" reported as 2010 SCMR 385.

14. There is no two opinion about the fact that the cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree and sufficient enough to dispel the apprehension of the Court with regard to the implication of



innocent persons alongwith guilty one by the prosecution, otherwise, the golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient to acquit the accused, giving him/them benefit of doubt because bundle of doubts are not required to extend the legal benefit to the accused. In this regard, reliance is placed on a view held by the Supreme Court of Pakistan in case of "*Riaz Masih alias Mithoo Vs. State*" reported as NLR 1995 Cr.SC 694.

15. The overall impact of what has been discussed above, the prosecution has miserably failed to establish its case against the appellants beyond a ray of doubt, which should have been resolved in favour of the accused, however, the learned trial Court while convicting the appellants vide impugned judgment has not adhered to the celebrated principles enunciated for dispensation of criminal justice. Accordingly, this and the connected criminal appeals, mentioned above, are allowed, their convictions and sentences awarded are set



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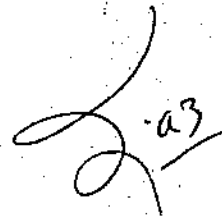
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aside and resultantly, the appellants are acquitted of the charges levelled against them. They shall be released forthwith, if not required to be detained in any other case.

16. Since we have set aside the convictions and sentences awarded to the appellants, therefore, the connected criminal revision for enhancement of their sentences has become infructuous, which stands dismissed accordingly.

17. Above are the detailed reasons of our short orders of even date.

Announced:
14.05.2024.



JUDGE



JUDGE

Hon'ble Mr. Justice Muhammad Ijaz Khan
Hon'ble Mr. Justice Muhammad Fahem Wali.

'Sail, SCS'

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Hon'ble Mr. Justice Muhammad Ijaz Khan
Hon'ble Mr. Justice Muhammad Fahem Wali

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ANNEXURE



IN THE COURT OF MUHAMMAD UMER-AL-FAROOQ KHAN, ADDL. SESSIONS JUDGE-VI/JUDGE MCTC ABBOTTABAD.

Sessions Case No. 05/VII of 2022

Date of commencement of trial: 29.03.2022

Date of Decision: 25.01.2023

THE STATE

Through:-

Sumaira Bibi widow of Deceased Dildar R/O Kasakai present Jhangi Qazian (Complainant)

CTC

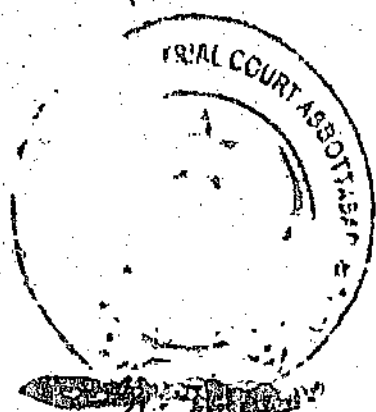
Sardar Muhammad Waqar
Advocate High Court
Contact: +92 345 9596898

VERSUS

1. Waqas Ahmad son of Muhammad Zulfiqar R/O Jahiafar
2. Musawar Anwar son of Muhammad Anwar R/O Aziz Bang presently Jhangi Syedan
3. Abdul Qadeer son of Muhammad Yaqoob R/O Nagri Bala
4. Muhammad Imran son of Muhammad Bashir R/O Badyal

(Accused facing trial)

CASE FIR NO. 165 DATED 17.02.2022 U/S 302/34 PPC POLICE STATION MIRPUR, TEHSIL AND DISTRICT ABBOTTABAD.



JUDGMENT

3. 7. 2023

EXAMINED
Sd/- & Special
Abbottabad

1. Accused are facing trial in case FIR No. 165 Dated 17.02.2022. U/S 302/34PPC Police Station Mirpur, Tehsil and District Abbottabad.

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2. FIR (Ex:PW.6/1) registered on the strength of *Murasila* Ex.PW.4/1, manifest that the complainant Mst. Sumaira Bibi widow of the deceased Dildar alias Pappu on 17.02.2022 at about 2030 hour along with her brother-in-law namely Shafiq alias Banka son of Rafique reported the matter to the local police at ATH Abbottabad, that at about 7.00 PM her husband went to Bazar for fetching fruit and milk for children and while leaving the house he also took along his 9 MM licensed pistol. After 20 or 25 minutes she called her husband, who told her that he would return soon. After a while once she called him again, her husband did not attend the calls. However, after a while once she again made a call on his cellular phone, some unknown attended the call and inquired that who is she?; whereupon She said that she is the wife of Pappu, to which he again inquired that which Pappu and she told the attendant that Pappu is the owner of cellular phone then he disclosed that her husband is lying in ATH and may have met heart attack. On this she along with her brother-in-law went to the Hospital where she found her husband lying dead on a stretcher having fire arm injuries on his back and hand on the right side. That her husband had enmities and someone has murdered him through firearms. At the moment she cannot nominate anyone in particular but want him to be examined through autopsy/postmortem and charged unknown for the commission of offence. Her report was reduced in writing in the shape of *Murasila* Ex:PW 4/1 while carcass of deceased under the custody of constable Sami Ullah No.658/ATH was handed over to Doctor for postmortem whereas, *Murasila* was sent to Police Station through constable Gul Rehman No.45 for

CTC

Sardar Muhammad Waqar
 Advocate High Court
 Contact +92 345 9596898

Handwritten signature and date: 17/02/23

Seal of the Trial Court Abbottabad

EXHIBIT
 AND
 ATTACHED

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registration of FIR. Thus, on the report of the complainant (PW.11) the FIR was registered against unknown accused.

3. Later, in due course of proceedings through investigation, complainant recorded her supplementary statement U/S 164 Cr.P.C on 24.02.2022 before the Judicial Magistrate concerned which is Ex.PW.11/1, wherein, she charged the accused facing trial for the commission of the offence.

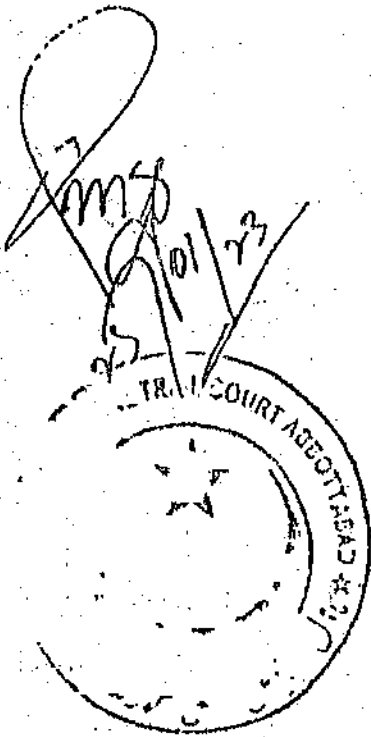
4. After completion of investigation, the complete *challan* was put in the court on 29.03.2022. The accused were summoned. Accused Waqas Ahmad produced, in custody while accused Imran, Musawar Anwar and Abdul Qadeer on bail, appeared before the court.

5. Formalities under section 265-C Cr.P.C were complied with and formal charge of the accused was framed under section 302/34 PPC on 25.6.2022, to which they did not plead guilty and claimed trial.

6. In support of their contention, prosecution produced fifteen witnesses whereas the rest were abandoned being unnecessary. The gist of prosecution's evidence is canvassed here in below;

7. Shah Nawaz FC No.44, PW-1, who took the sealed parcels of the instant case to the FSL Peshawar and laboratory of Khyber Medical College vide road certificate Ex.PW.1/1 to Ex.PW.1/3. He is also the marginal witness of the recovery memo Ex.PW.1/4 and also took the parcel to the FSL vide receipt Ex.PW.5/1.

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EXAMINER
Magistrate & Sessions Judge
Abbottabad

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His statement was also recorded by the IO under Section 161 Cr.P.C.

8. Shabir Ahmad FC No. 63, PW-2, states that he is the marginal witness of the recovery memo Ex.PW.2/1 vide which the accused Imran led the police party to his home and on his pointation the IO recovered Carry Van/Dabba bearing No. 2259-LED and disclosed that in the said vehicle he took the deceased Dildar with the help of his friends to ATH Abbottabad. The recovery memo is correct and correctly bears his signature and that of co-marginal witness. His statement was also recorded by the IO.

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9. Samiullah FC No. 658, PW-3, states that on 17.02.2022 Zubair Khan ASI handed him the dead body of deceased for post mortem examination. After the examination the doctor handed over to him PM report of the deceased along with a big plastic bottle in sealed condition having 5 small bottles containing liver, small intestine, stomach, bullet and heart. The doctor also handed over to him blood stained garments of the deceased containing Shalwar, Qameez and white Banyan which were also in sealed condition. All the above articles were handed over to the IO in ATH Hospital who sealed the same into parcel No.1 and 2 by affixing monogram of FA. The IO prepared the recovery memo Ex.PW.3/1 which correctly bears his signature and that of co-marginal witness.

10. Zubair Khan ASI PW.4 appeared and he stated that on 17.02.2022, he was on patrolling/gasht in Mobile-II, where, he received information from the police station

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that a dead body has been brought to ATH Hospital. On the said information he rushed to the hospital where the complainant Mst. Sumaira Bibi reported the matter and was reduced into *Murasila* Ex.PW.4/1 by him. Whereafter, obtained her signatures on the said *Murasila* and that of verifier namely, Shafique Alias (Banka). The dead body along with injury sheet Ex.PW.4/2 and inquest report Ex.PW.4/3 were also prepared by him and handed over to Samiullah FC for PM examination. The *Murasila* was sent to the police station for the registration of the case through constable Gul Rahman FC No. 45.

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EXAMINER
 Justice & Session Judge
 PESHAWAR

11. Abdul Wahid Moharrir Malkhana, PW5 appeared and stated that on 22.02.2002 he handed over parcels of the instant case along with parcels of other cases to constable Shah Nawaz for transmitting the same to the FSL Peshawar vide Road Certificate receipt No. 76/21, 77/21 and 78/21. The said constable returned the road certificate bearing No. 76/21 after delivering the parcel in FSL Peshawar but due to the close of Laboratory of Khyber Medical College, returned the receipt No. 77/21 and 78/21. However, on 24.02.2022, he again sent the parcel of receipt No. 78/21 through constable Shah Nawaz to KMC Peshawar. On return he handed over the receipt along with parcel No.4 the sealed parcel to him in the PS. He is also the marginal witness of the recovery memo Ex.PW.1/4 vide which the IO took into possession one big jar having 5 small bottles containing liver, small intestine, stomach, spent bullet/lead and heart, which were also sent to the FSL vide receipt No. 78/21. After taking the small bottle from the big jar, laboratory handed over the said jar to the constable who

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brought the same to the police station which was sealed into parcel No.3-A by affixing monogram of FA. The recovery memo is correct and correctly bears his signature. That he also sent Parcel No.3-A to the FSL on 25.02.2022 vide receipt No. 79/21. The IO also recorded his statement. On 28.02.2022, he also sent parcel No.4 and 6 to the FSL vide receipt No. 80/21 through constable Jehanzeb FC No.55, which is Ex.PW.5/1. On 30.11.2022 this PW was again examined and he produced original register No. 19 wherein entries were made at serial No. 1748 in respect of the case property which is Ex.PW.5/A.

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 Authority

12. Hakeem Khan ASI appeared as PW.6 who registered the present FIR Ex.PW.6/1 on receipt of *Murasila* which correctly bears his signature.

13. Dr. Mohammad Ejaz-ul-Haq, ATH Hospital, PW-7 stated that: -

On 17.02.2022 at 08.15 PM, He examined the dead body of the deceased Dildar alias Papu son of Muhammad Rafique brought by police. The dead body was identified by Muhammad Shafique and Mohsin Ali. On examination, he found the following: -

EXTERNAL APPEARANCE:-

Middle aged man lying on PM table with supine position wearing light grey colour Shalwar Qamis and white color vest, rigor mortis developed mildly

WOUNDS:-

1. Entry wound on right posterior compartment of arm with inverted edges and inverted margins.
2. Exit wound on right posterior compartment of arm with averted margins.

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3. Entry wound on right lower and lateral border of scapula near axilla. No exit wound.

CRAUIUM AND SPINAL CORD

No Fracture seen.

THORAX:-

All intact.

Pericardium and heart. Specimen sent for FSL

ABDOMEN:-

1. Walls. Intact

2. Peritoneum: Intact

3. Mouth, pharynx and esophagus Intact.

4. Diaphragm : Intact

5. Stomach and its contents. Stomach contents sent to FSL

6. Pancreas: Intact

7. Small intestine and their contents:- Samples sent for FSL

8. Large intestine and their contents. Fecal material was present.

9. Liver. Sample sent for FSL

10. Spleen:- Intact.

11. Kidneys: Intact

12. Bladder:- Intact

13. Organs of generation external and internal. Intact

MUSCLES, BONES, JOINTS

Injury, to right arm and right shoulder lower and lateral border scapula near axilla.

Disease of deformity : Nil

Fracture:- Nil

Dislocation: Nil

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COURT ABBOTS

VERA MIREY

2023

VERA MIREY
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Abbottabad

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REMARKS:

Firearm injury but not grievous or life threatening condition. Suspected cause of death is other than firearm injury. Final report of death will be furnished after FSL report. Sample were taken and handed over to police for FSL analysis in the following manner.

- Bottle No.1 Liver
- Bottle No.2 Small intestine
- Bottle No.3 Stomach contents
- Bottle No.4 Bullet
- Bottle No.5 heart.

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PROBABLE TIME THAT ELAPSED:-

Between injury and death:- 30 to 45 minutes approximate.

Death and Postmortem:- 02 to 03 hour approximate.

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Post mortem report along with clothes of the deceased was handed over to the police. Has seen his postmortem report Ex PM which is in his handwriting, correct and correctly bears his signature which is Ex.PW.7/1

Constable Gul Rehman FC No. 45 PW-8, stated that he was on gasht along with Zubair ASI. On receiving information, he alongwith Zubair Khan ASI, went to ATH, where, Zubair Khan ASI drafted the report of the complainant in the shape of *Murasila* which was handed over to him for taking the same to the police station for the sake of registration of the case..

Stamp: 30 JAN 2023

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 District & Session Judge
 Abbotabad

15. Saeed Ahmad IHC, PW-9, stated that on 19.02.2022 after receiving USB from ATH Hospital by the IO, he obtained pictures from the said USB through private computer and sealed the same into parcel No.3 by affixing monogram of FA and prepared the recovery memo Ex.PW.9/1 in his

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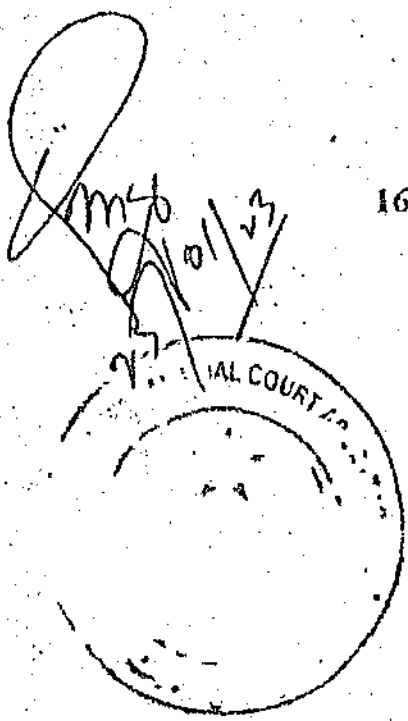
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presence and in the presence of marginal witnesses. On 26.02.2022, the accused facing trial disclosed that they can rightly point out their presence at the spot. Firstly, accused Waqas made pointation of the place of occurrence and place of the deceased and the IO made entry with red ink, the pointation memo is Ex.PW.9/2. Thereafter, accused Masood Anwar made pointation vide pointation memo Ex.PW.9/3. The accused Abdul Qadeer also made pointation of the place of the accused, deceased and eye witness Waqas Younas vide pointation memo Ex.PW.9/4. Accused Muhammad Imran also pointed out the place of Carry Van No. 2259-LED and owned the carry van, in this respect the IO also made addition in site plan with red ink. The pointation memo is Ex.PW.9/5.

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16. Constable Jehanzeb FC No.55 PW-10, stated that on 19.02.2022, after receiving the USB from ATH Hospital by the IO and obtaining picture from the said USB, sealed the same in to parcel No.3 Ex.P.1 by affixing monogram of FA and prepared the recovery memo Ex.PW.9/1 in his presence and other marginal witness which correctly bears his signature. On 26.02.2022, during interrogation in the presence of DSP and SHO, accused Waqas disclosed that he is ready to hand over 30 bore pistol through which he made firing upon the deceased and also pointed out the pistol 9-MM of the deceased which was with the deceased. On this information the accused led the police party to the barracks of constables and opened corrugate box which was lying on Northern side of his cot and handed over 9-MM pistol and 30 bore pistol. The 30 bore pistol belonged to the accused Waqas. The 9-MM pistol was loaded with 6 live rounds and it bears the No. T-6472-12-AF, 00240. The

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 ADVOCATE
 HIGH COURT
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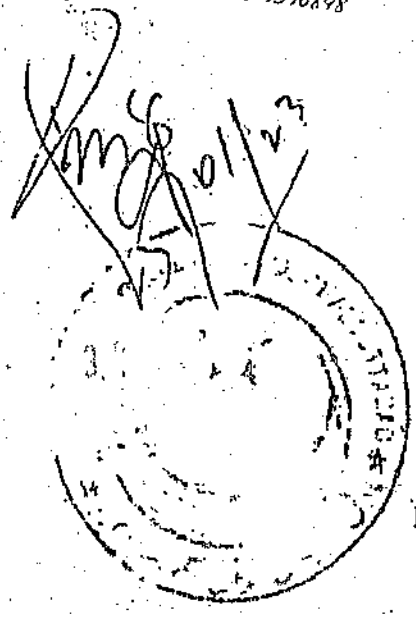
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same was sealed into parcel No.4 Ex.P.2. The six live rounds were also sealed into parcel No. 5 Ex.P.3. The 30 bore pistol was also sealed into parcel No.6 Ex.P.4. The IO also prepared the recovery memo Ex.PW.10/1 which correctly bears his signature and that of co-marginal witness. On 26.02.2022 the accused Musawar Anwar disclosed in the presence of DSP and SHO that he can hand over the mobile/cellular phone belonging to the deceased which was kept in the barrack of constables. And on the pointation of the accused the IO recovered the said mobile phone from the front pocket of Uniform shirt which was hanged on the western wall of the barrack. The same mobile was dual sim. The same was sealed in to parcel No.7 Ex.P.5 and prepared the recovery memo Ex.PW.10/2 which also bears his signature. On 28.02.2022 the Moharrir of the PS handed over to him the parcels of the case in hand for taking the same to the FSL vide receipt No. 80/21 already exhibited Ex.PW.5/1. The IO also recorded his statement.

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30 JAN 2023

EXAMINER
 District & Sessions Judge
 Multan

17. Sumaira Bibi, PW-11, complainant of the case appeared and she reiterated the same facts as mentioned by her in her report and statement recorded under Section 164 Cr.P.C.
18. Mohsin Ali, PW-12 who identified the dead body of the deceased namely Dilar alias Papu. The IO prepared the receipt of the dead body and took his signature and other witnesses which is Ex.PW.12/1.
19. Waqas Younas, PW-13, appeared and stated that he was present in his house at the time falling between Maghreb

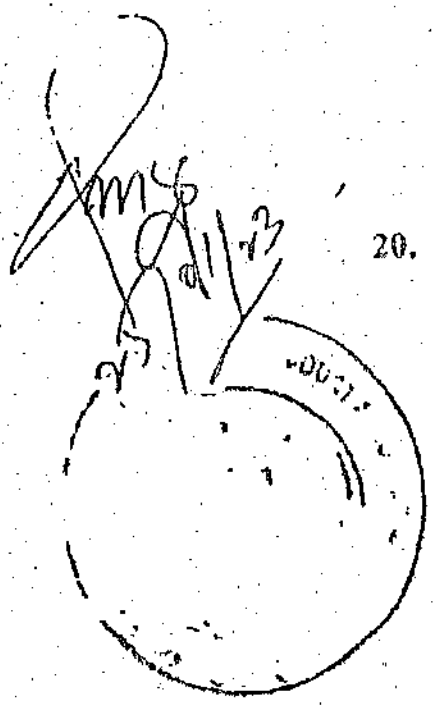
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and Isha and heard noise of two fire shots on which he instantly came out from his house. He saw a person was running a head towards Upper Street and two persons followed him to that street. He also followed them to see who they are. When he reached there, the person who was running a head was lying in unconscious condition in the corner of vacant plot. The persons who were chasing him, were also standing there with him. He inquired about their identity and they disclosed that they are government servants. After some time police constables who was wearing police uniform came there and he left the spot. On the next day of occurrence IO came to the spot and on his pointation prepared the site plan Ex.PW.13/1 His statement was also recorded by the IO.

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20. Muhammad Farooq, PW-14, stated that after the registration of the case investigation was handed over to him. He recorded the statement of Gohar Rahman FC No. 45 under Section 161 Cr.P.C. He visited the ATH Hospital Abbottabad on 18.02.2022, where constable Sami-Ullah FC No. 658 produced him the PM report of the deceased and one big plastic bag in sealed condition having five small sealed boxes containing liver, small intestine, stomach, bullet and heart. These articles were taken out by the doctor from the dead body of the deceased at the time of postmortem examination. The said constable also produced the blood stained garments of the deceased to him. The PM report was placed on file while the big box was sealed in to parcel No.1 for FSL. The clothes of the deceased were also sealed in to parcel No.2 Ex.P.6. He prepared the recovery memo Ex.PW.3/1 in the presence of marginal witnesses. He also applied to the Director ATH

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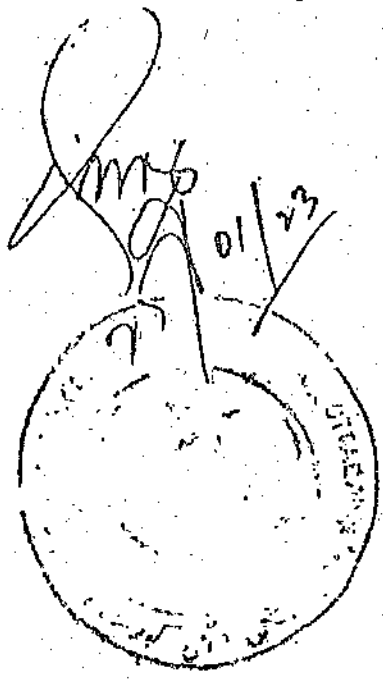
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Abbottabad for providing the CCTV Footage from 18.00 hours to 19.15 hours for clarification as to who brought the deceased Dildar alias Papu. The application is Ex.PW.14/1. On the said day, he visited Jhangi Qazian and Jhangi Syedan to inquire about the occurrence and unknown accused where he came to know that the occurrence took place at Lambi Dheri and on making query at Lambi Dheri he came to know that Waqas Younas was the eye witness of the occurrence. He summoned him who came to the spot and on his pointation prepared the site plan Ex.PW.13/1. The Hospital authorities provided him the CCTV footage in USB wherefrom he developed the pictures and placed on file which are five (05) in number as Ex.PW.14/2. The USB was sealed into parcel No.3 Ex.P.1 and prepared the recovery memo Ex.PW.9/1 in the presence of marginal witnesses. Vide application Ex.PW.14/4 and Ex.PW.14/5 he applied for obtaining the CDR of the accused and that of the deceased. On 20.02.2022 from CCTV footage it has come into his knowledge that the occurrence has been committed by the accused facing trials who are all police officials. I discussed the matter with the high ups and complainant party was summoned for 22.02.2022 and the matter was brought into their notice. The complainant party went to the spot and met the eye witness and after getting satisfaction on 24.02.2022, he recorded the statement of the complainant, Shafique alias Banka and Amraizan Bibi (mother of the deceased) under Section 161 Cr.P.C and on 24.02.2022, their statements were recorded under Section 164 Cr.P.C vide his application Ex.PW.14/6. On 24.02.2022 Parcel No.1 containing one big size box in sealed condition was sent by the doctor which also containing small boxes having liver, small intestine,

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31 Jan 2023

EXAMINED
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 Abbottabad

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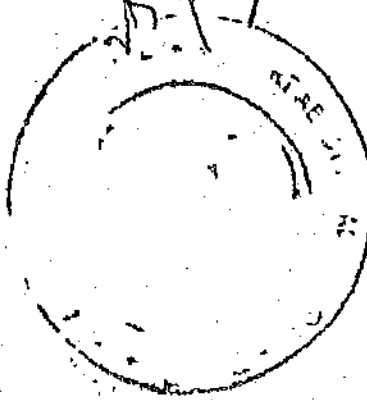
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stomach, spent bullet and heart which were sent to the FSL vide receipt No. 78/21 to KMC, out of which parcel No.4 was returned by the KMC while the remaining were retained. The said parcel was handed over to him and again sealed into parcel No.3-A Ex.P.7 and prepared the recovery memo Ex.PW.1/4. Vide application Ex.PW.14/7 he applied to the DPO Abbottabad for grant of permission for the arrest of the accused facing trial being the police officials. On 24.02.2022 he vide his application Ex.PW.14/8 issued Parwana for nomination of the accused in the case in hand. He arrested the accused and issued the card of arrest as Ex.PW.14/9 to Ex.PW.14/12. Vide application Ex.PW.14/13 he obtained three (03) days police custody of the accused from the court. During investigation of the case, the accused Waqas Ahmad disclosed that the pistol 30 bore which he used for the commission of the offence and pistol 9-MM of the deceased was lying in the tin box in constables' barrack. The accused led the police party to the said barracks and on his pointation the pistol 9-MM and 30 bore pistol were recovered. The pistol 30 bore belongs to the accused while 9-MM pistol of the deceased was contained six (06) live rounds. The said 09-MM pistol was sealed into parcel No.4 Ex.P2 while rounds were sealed into parcel No.5. The pistol 30 bore was also taken into possession and sealed into parcel No.6 Ex.P.4. In this regard he prepared the recovery memo Ex.Pw.14/14 in the presence of marginal witnesses. During interrogation of the accused Musawar Anwar he disclosed that the mobile phone which was in possession of the deceased at the time of occurrence was with him and lying in his official shirt in barrack of the constable and thus on his pointation the same was recovered from the front pocket of the shirt of the accused.

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On inspecting mobile, the same was found to be OPPO mobile black in colour having IMEI 863235041512557 and IME 863235041512540. The said mobile was dual SIM. The same was sealed in to parcel No.7 Ex.P.5 and prepared the recovery memo Ex.PW.14/15. The accused facing trial also led the police party to the place of occurrence and made pointation of the place of occurrence which was found in accordance with already prepared site plan. The note with red ink on the site plan is Ex.PW.14/16. During interrogation the accused Imran disclosed that the Suzuki bearing No. LED-2259, which was used in the commission of the offence, is his ownership. That all the four accused made pointation of the spot of occurrence turn by turn and they have pointed out their points, and that of the deceased and in this respect pointation memos were prepared in the presence of marginal witnesses. The same were already exhibited. The accused Imran also pointed out the place of parking of the Suzuki Carry No LED-2259 which was shown in point No.A, with red ink. On the same date on the pointation of the accused Imran the Suzuki Carry was also recovered from his house and in this respect the recovery memo Ex.PW.2/1 was prepared in the presence of marginal witnesses. The IO also added Section 15-AA in the case in hand vide Ex.PW.14/17. Vide application Ex.PW.14/18 to Ex.14/21 he sent the parcels of the instant case for examination to the laboratory. He also placed on file the CDR report Ex.PW.14/22. According to the CDR the presence of the accused was found at the place and time of occurrence. The report of FSL in respect of 09.MM pistol and 30 pistol was also placed on file as Ex.PW.14/23 which are reported to be in proper working condition. The report Ex.PW.14/24 in respect of one metallic piece is also

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placed on file. The report of FSL Ex.PW.14/25 is also placed on file which is in positive for human blood. Report of KMC regarding liver, small intestine, stomach and heart is also placed on file as Ex.PW.14/26, and has been reported to be negative for poisons/drugs. The copy of the registration book in respect of the Suzuki Carry was also produced to the IO by accused Imran which is Marked-A. Copy of register 19 is Ex.PW.14/27. Vide application Ex.PW.14/28 he sent parcel No.4 and 6 to the laboratory in respect of workable condition or not. Vide application Ex.PW.14/29 he produced the accused before the court for recording their confessional statements which was refused and were sent to judicial lockup. List of LRs of the deceased is Ex.PW.14/30. He also attested receipts of delivering dead body Ex.PW.12/1. He also recorded statements of the PWs under Section 161 Cr.P.C. The IO also placed on file different DDs including the DDs of the departure of the accused facing trial from the police station are Ex.PW.14/31 to Ex.PW. 14/53. After completion of investigation handed over the case file to the SHO for submission of *challan* against the accused facing trial.

C.T.C

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21. Tahir Saleem SHO, PW-15, submitted complete *challan* Ex.PW.51/1 against the accused which correctly bears his signatures.
22. Remaining all PWs were abandoned by APP for the state and private counsel for the complainant.
23. After completion of prosecution evidence, the accused were examined under section 342 Cr.P.C, wherein, they professed innocence and false implication, however, they

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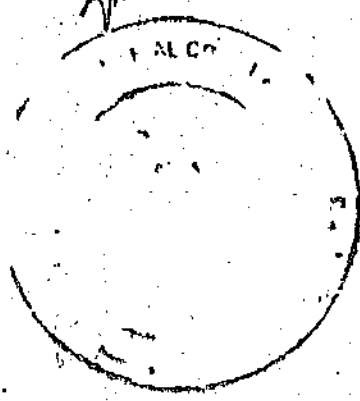
did not opt to be examined on Oath under section 340 (2) Cr.P.C, neither wished to produce evidence in their defence.

24. Arguments of Learned Counsel were heard and file perused with their valuable assistance.

25. Tale manifested in prosecution version as unleashed in the report of complainant (PW-11) that her husband Dildar alias Papu on the eventful evening had left the house in pursuit to purchase fruits and milk for children. Motivated by conscience and enmities, he also took along his 09-MM pistol for his protection. After some time when the complainant made a contact on the mobile phone of her husband, she was informed by someone that due to heart attack her husband is lying in ATH Hospital, upon which she rushed to the hospital with her brother in law namely Shafique where he found her husband lying dead having fire arm injury on his person. Being unaware with the mode and manner of occurrence, she initially charged no one in her report for the commission of the offence. However, later she recorded her statement under Section 164 Cr.P.C, where charged the accused facing trial for the commission of the offence on her being satisfied.

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Sardar Muhammad Usman
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26.

After the registration of the case, investigation of the case was handed over to Muhammad Farooq Oll (PW.14). As per the FIR the accused were unknown and there was no eye witness of the occurrence, therefore, at first instant the IO went to the Hospital where the dead body was brought for postmortem examination. The person and the vehicle in which the dead body was brought to the hospital was not

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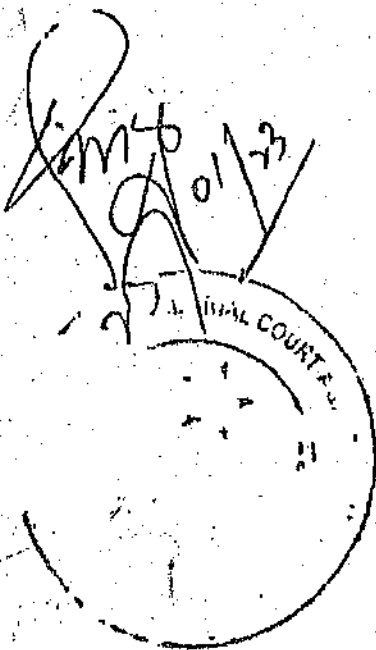
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available in the hospital therefore, the IO first approached to the Director of the Hospital for obtaining the footage of CCTV camera for confirmation of the fact that who brought the dead body to the hospital. Besides this the IO also inquired about the occurrence in the vicinity of the area where the occurrence took place. Eventually, he learnt that the occurrence took place at Lambi Dheri and was also witnessed by one Waqas Younas. The IO summoned the said eye witness of the occurrence and on his pointation he prepared the site plan of the place of occurrence. After obtaining the CCTV footage from the Hospital in USB and developing the said photos from USB, IO reached to an insurmountable conclusion that the occurrence has been committed by the accused facing trials, who are police officials. Thus, in furtherance of his conviction and belief developed in view of evidence that had surfaced in the course of investigation, he after bringing all the details on record and to the notice of complainant party and his High ups, booked the accused facing trials in the instant FIR, arrested them in the case at hand while complainant also getting satisfaction, charged all the accused named above for the commission of offence.

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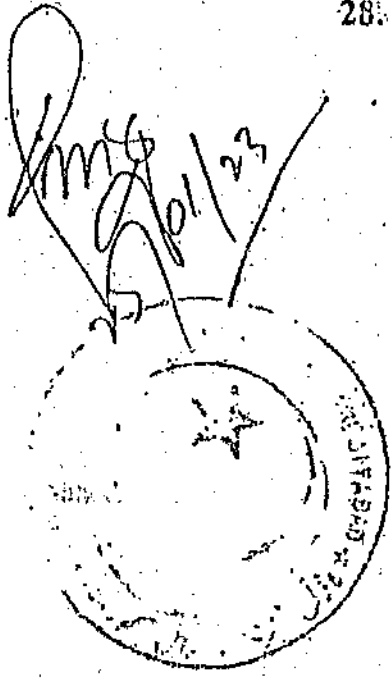
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 Below the stamp, there is a stamp that reads 'EXAMINED' and 'NOTED' with some illegible text.

27. Bird eye view of events as detailed above would certainly take a prudent mind towards a case based on circumstantial evidence. Wherefrom, during the course of investigation it also came to the fore that at the relevant time, the occurrence was also witnessed by an eye witness, namely, Waqas Younas (PW.13). However, said witness also did not see anyone firing at the deceased Dildar (Alias) Pappu except for hearing the fire shots, deceased running a head and followed by two individuals and lately, found said deceased lying in a plot in an upper street while

two persons standing by the said, who disclosed their identity to be Government Servants on query of witness and leaving the crime scene upon noticing an individual in uniform. Except this statement, there is no other direct evidence against the accused facing trails and the whole case of the prosecution is hovering around the facts based on circumstances that had sprouted immediately after the occurrence. Since, there is no second opinion to the fact that Dildar (Alias) Pappu died on the eventful day and was found lying on stretcher of Ayub Teaching Hospital Abbottabad.

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28. In Criminal Administration of Justice once the matter fortifies upon circumstantial evidence, the yardstick of probabilities, its intrinsic worth and animus of witness has to be synchronized. Since, it is always the burden of prosecution to prove its case beyond reasonable doubts on the basis of legally accepted evidence. Resultantly, each and every circumstance from the stage of its infancy till its final conclusion shall be so consistent while forming a chain that shall be continued in shape, every ring of it must attach the other magnetically to draw a conclusion with the corpus delict at initial and neck of accused at the last. While keeping in view the principle as above, their Lordships in the Chambers of August Apex Court of Pakistan while considering similar facts in Case titled Azeem Khan and Another Vs Mujahid Khan and others reported in 2016 SCMR 274, 2015 SCMR 155 framed the following guidelines for appreciation of evidence in such like cases;

- i. Whether the circumstances from which the conclusion is to be drawn are fully established. The

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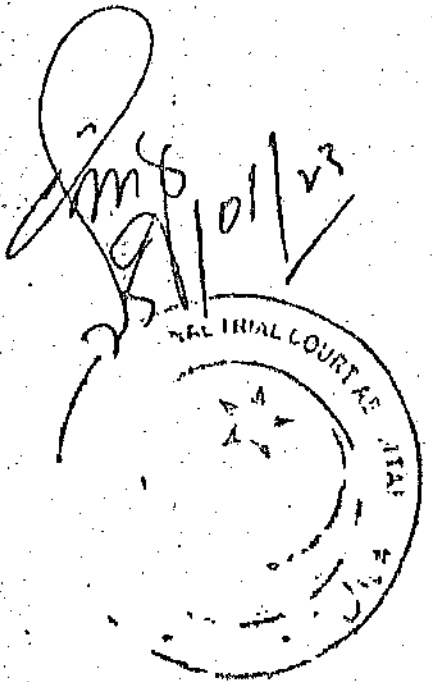
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circumstances concerned must or should and not may be established;

- ii. Whether the facts so established is consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- iii. Whether the circumstances are of conclusive nature and tendency;
- iv. Whether the same exclude every possible hypothesis except the one to be proved;
- v. Whether there is a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, and
- vi. Whether the chain is connected and the different piece of circumstantial evidence had made one chain, an unbroken one where one end of it touched the crime and other neck of the accused.

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29. Bearing the said contours at the fore, once the case of prosecution as propounded is analyzed, it appears rather indispensable for prosecution to establish presence of eye witness Waqas Younas (PW.13) on the crime scene in the natural probabilities. Notwithstanding, the damage caused to the other party, as loss should not be a touchstone for believing or not believing evidence, while basic test for the court is the intrinsic value or worthy statement. Admittedly, Waqas Younas is not the interested witness of the case because neither he is related to any of the party nor any ill will could be brought on record to foist and concoct a story of

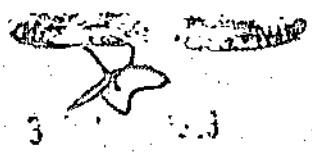
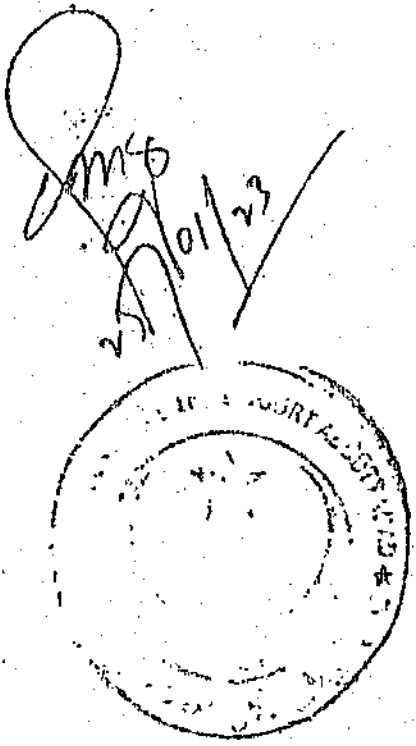
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 EXAMINER
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occurrence, rather he is totally an independent person. In his examination in chief he has admitted that on hearing the fire shot he came out from his house and saw a person is running ahead towards Upper Street and two persons followed him. That he also followed them and when reached there, he saw that a person running ahead was lying at the spot in unconscious condition and the persons chasing him were standing there with him. On inquiry they disclosed their identity to be government servant. In the meanwhile another police constable came there after some time whereupon the witness left the crime scene. It was on the next day that he pointed out the place of occurrence to the IO. This PW was cross examined by the defense counsel and he was only cross examined on the point that there was dark and he could not identify the identity. But the most important aspect is that this PW.13 has frankly admitted that the site plan was prepared at his instance by the IO, however, the learned defense counsel has not cross examined/ rebutted this version of the said eye witness, which clearly indicate the fact of his presence at the spot. PW.13 has given the points to the deceased, and accused in the manner on which he saw them. All the accused during interrogation of the case led the police party to the place of occurrence and they also made pointation in the line of site map made at the instance of eye witness Waqas Younas (PW-13). At that time all the accused have confirmed the points which were given to them by the eye witness Waqas Younas. Besides, the time and place of occurrence was also left un-rebutted, while excluding possibility regarding hypothesis that eye witness was not present at the spot at the relevant time. Thus, his presence stands proved.

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 Waqas Younas

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Moreover, this PW being a natural witness has deposed the fact which he has seen at the relevant time and the same could not be discarded on the mere points of darkness and identity of the accused.

30. The other leg of circumstances that lead to establish hypothesis consistent with the guilt of accused is that all the accused are police officials. To which effect the first and foremost factum that has been brought on record by the IO is the absence of accused from their official duties in the shape of daily dairies of their departure from the police station. On the relevant day the accused Imran (Wireless operator) left the police station at 16.30 hour on the pretext of personal work at Bazar Abbottabad. The entry in regard was made in DD No.21 dated 17.02.2022 Ex.PW.14/33. On the same day the accused Musawar and Waqas also left the police station at about 16:45 hours for the purpose of taking tea at complex Hospital. Entry in this respect is available in DD No. 23 dated 17.02.2022 Ex.PW.14/32. This shows that at the relevant day and time the three accused namely Imran, Waqas and Musawar left the police station for flimsy reasons and such absence from their duty lead to the ultimate conclusion that they had hatched a plan jointly for the commission of the offence. It is also evident from DD No.34 Ex.PW.14/34 that the above named accused returned to the police station at about 22.00 hours i.e., after the commission of the offence. As per the post mortem report Ex.PW.7/1 the time between death and post mortem of deceased Dildar is about 2 to 3 hours approximately. The time of death as per the FIR is given 1930 hour. All these facts show that during the above period the

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accused facing trial were not on duty rather they were out of police station.

31. Though it is established on record that the accused facing trial namely Imran, Waqas and Musawar were not present on their respective duties rather they were away from the police station during the time of occurrence, then the question that would poke a prudent mind that what were their locations during the time of their absence from the police station? To answer this question, the IO collected the CDR Data of the accused facing trial Ex.PW. 14/22 (14 sheets) which reflect the presence of the accused facing trial at the spot along with the deceased. There is no denial of the fact that the IO has not confirmed the SIM number from the concerned company, that in whose name the said numbers are registered, but at the same time it is also not denied by the accused facing trial that the numbers as mentioned in the CDR DATA were not in their use or do not belong to them. Said certainly also lead to an un-rebuttable conclusion to establish the presence of the accused facing trial on the crime scene at the relevant time.

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Imran
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32. It is also worth highlighting, that the dead body of the deceased was shifted to the Hospital by the accused in Suzuki Carry Van bearing No. LED-2259. The said Suzuki Carry belongs to the accused Imran which was also recovered by the local police on his pointation and the registration book of the vehicle was also produced to the IO by the accused Imran. The IO of the case collected CCTV footage from the Hospital, the photograph of the same is available on the case file as

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Ex.PW.14/2 (4 in number). The perusal of the photograph clearly indicate that the dead body was brought by the police officials in Suzuki Carry and then it was shifted to stretcher, and took the dead body inside the Hospital. The astonishing fact of the case is that when the dead body was brought to the hospital by the accused from the place of occurrence, they being police officials, were under an obligation by default to report the matter either to police station or their officer commanding i.e., SHO PS Mirpur in respect of the commission of a cognizable offence of murder within the meaning of Section 154 of the Cr.P.C that they had found a dead body and have evacuated the same to the Hospital. Instead, they left the dead body abandoned stealthy and vanquished. Such an act of a police official who is also duty bound by virtue of his post to keep peace and harmony in the society, would cogently establish his guilt. Thus, the shifting of the dead body of the deceased to the hospital, which fact got support from the CCTV footage, by itself is sufficient to prove the presence of the accused facing trial at the spot of occurrence. If for the sack of arguments it is presumed that the accused were not present at the spot, then how they received information regarding the occurrence, how they went to the spot and shifted the dead body of the deceased to the police station. No explanation to answer said questions are available in the folds of instant file/record. Said has rather woven a chain of evidence not leaving any reasonable ground for the conclusion consistent with the innocence of the accused facing trials and adversely show all human probability that accused are responsible for the murder of deceased Dildar.

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33. It is also the case of the prosecution, that at the time of occurrence, the deceased was carrying a pistol of 09-MM bore and a mobile phone. During interrogation of the accused Waqas Ahmad, he informed the IO regarding the presence of the 09-MM Pistol with him in the barrack of constable. Thus, on his pointation the IO recovered the said Pistol 09-MM from corrugated tin box of the accused lying in the constable barrack. The recovery of the pistol mentioned above from the possession of the accused Waqas Ahmad shows that after the occurrence the said pistol were retained by accused Waqas Ahmad, which further confirm the nexus of the accused with the factum of crime and commission of the offence. It is also on record that the mobile Phone OPOO belonging to the deceased Dildar was also recovered from the front pocket of the accused Musawar Anwar from his shirt of Police Uniform on his pointation, hanging in the Police Barrack. The presence of the belongings of the deceased with the accused Waqas Ahmad and Musawar Anwar, further complete the chain of circumstantial evidence towards the commission of the offence by the accused facing trial.

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34. It is also on record that the IO during interrogation of the case, on the pointation of the accused Waqas Ahmad, recovered one 30 bore pistol from the tin box of the accused named above, lying in the barrack of police station being used for the commission of the offence. The said pistol was sent to the FSL and as per the report of the FSL Ex.PW.14/23 the same was found in working condition. Thus, the FSL report also supports the version of the prosecution.

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35. The learned defense counsel mainly stressed on the point that pointation of the accused in the police custody is inadmissible in the evidence and that the police was already in knowledge of the place of occurrence and had prepared the site plan of the place of occurrence. Admission under Article 40 of Qanoon-e-Shahadat 1984 must lead to discovery of some new facts or result in recovery of property of the case and in the present case, initially no one was charged for the commission of the offence by the complainant, therefore, to bring on record the real fact the accused were interrogated by the IO and on their pointation the new recovery of 30 bore pistol being the weapon of offence, recovery of 9.MM pistol and mobile phone belonging to the deceased was made and these facts were not in the knowledge of the IO rather the same were unearthed on the disclosure of the accused facing trial. Conversely, in the circumstances the plea as taken above is not worth consideration, hence, not taken.

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36. The crux of the above discussion and evidence produced by the prosecution is that after the registration of the case the IO obtained footage of the persons who brought the dead body of the deceased to the Hospital and on the strength of the said footage the accused facing trial were nominated as an accused in the case in hand. During interrogation the accused made pointation of the place of occurrence one by one and they have confirmed their points in the site plan already prepared by the IO on the instance of one Waqas Younas (PW.13). On the pointation of accused Imran Suzuki

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Carry was recovered from his house being his ownership. The registration card of the vehicle is placed on file as Mark-A which confirms the ownership of accused Imran. The 30 bore pistol used for the commission of the offence was also recovered from the barrack of the constable on the pointation of the accused Waqas Ahmad along with the pistol 9-MM belonging to the deceased. The mobile phone of the deceased was also recovered on the pointation of accused Musawar Anwar from the front pocket of his police Uniform. The dead body of the deceased was also taken to the hospital by the accused facing trial without informing the police station regarding the commission of a cognizable offence. Admittedly the accused facing trials are police officials, but on the relevant day they left their duties on delicate reasons and returned to the police station after the registration of the present FIR. Hence, all these facts connect the chain with the deceased which goes to the neck of the accused facing trial. It is pertinent to mention here that four persons were charged for the commission of the murder of the deceased, however, the evidence produced by the prosecution shows the joint hand of all the accused because as stated above that all the accused left their duty on the day of occurrence and came to the police station after the registration of the case, which fact confirm that the accused facing trial had the common intention for the doing of such act and it is also established from evidence collected by the IO that it was pre-arranged plan hatched by the accused facing trials in furtherance of common intention and under section 34 PPC accused are equally responsible for the act done by co-accused with whom accused facing trial

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had shared common intention. For ready reference section 34 PPC is reproduced herein below;

Section 34. When a criminal act is done by several persons; in furtherance of common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone.

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Advocate High Court
Contact: 492 545 9596898

37. From above discussion on various aspect of the case, it is proved that the accused facing trial have committed the murder of the deceased Dildar alias Papu through firearm weapon, which fact is duly proved from circumstantial evidence collected by the investigating agency.

38. In such a circumstance on the basis of stated piece of evidence produced by the prosecution, this court has reached to the conclusion that the prosecution has succeeded in bringing home the guilt of the accused facing trial beyond shadow of doubt and are convicted as under.

39. All the accused facing trial namely,

- i. Waqas Ahmad son of Zulfiqar
 - ii. Musawar Anwar son of Muhammad Anwar.
 - iii. Abdul Qadeer son of Muhammad Yaqoob, and;
 - iv. Muhammad Imran son of Muhammad Bashir;
- are sentenced to suffer and undergo life imprisonment u/s 302(b) PPC as Ta'zir.

40. The convicts shall pay Rs,200,000/ each as compensation u/s 544-A Cr.P.C to the legal heirs of deceased and the compensation shall be recoverable u/s 544-A (2) Cr.P.C as arrears of land revenue or owing to want of property of

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convicts, to undergo Six-month SI in case of default by each convict.

NOTE: Copy of this judgment is delivered to all the convicts free of cost, against their signatures on the margin of order sheet.

41. That the convict accused Waqas Ahmad is in custody while the remaining convicts are present on bail before the court, therefore, their bail stands recalled and sureties are discharged from the liability of bail bonds. They are taken into custody and all the convicts are remanded to jail to serve and undergo the sentence awarded to them. Benefit of Section 382-B PPC is also extended to accused Waqas Ahmad and other convicts. Copy of this judgment be sent to DPP Abbottabad u/s 374 Cr.P.C and also to Worthy Additional Registrar Honourable Peshawar High Court, Abbottabad Bench. Case property be kept intact till the decision of appeal. File be consigned to the record room after necessary completion and compilation.

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Announced
25/01/2023

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25/01/23

Muhammad Umar Al Farooq Khan
Addl: Sessions Judge-VI
/Judge MCTC Abbottabad.

CERTIFICATE.

Certified that this judgment consists of 28 pages. Each page has been read, signed and corrected by me wherever necessary.

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Muhammad Umar Al Farooq Khan
Addl: Sessions Judge-VI
/Judge MCTC Abbottabad.

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Anex A

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ANNEXURE

IN THE COURT OF MUHAMMAD UMER AL FAROOQ
ADDITIONAL SESSIONS JUDGE-VI/MCTC ABBOTTABAD

13

Case File No. 6/15-AA of 2022

Date of Institution 24.03.2022
Date of Decision 25.01.2023

THE STATE

VERSUS

Waqas Ahmed son of Muhammad Zulfiqar resident of
Jahafar Tehsil and District Abbottabad.

(Accused facing trial)

Sardar Muhammad Waqar
Advocate High Court
Contact +92 345 9596898

CASE FIR NO. 165 DATED 17.2.2022 U/S 15-AA PPC
POLICE STATION Mirpur TEHSIL AND DISTRICT
ABBOTTABAD.

JUDGMENT

Handwritten notes and stamps including a date '27/01/23' and a circular stamp from the Model Criminal Trial Court Abbottabad.

1) Accused Waqas Ahmad has faced trial in this Court in case FIR
No. 165 dated 17.2.2022u/s 15 of Arms Act, registered at Police
Station Mirpur, Abbottabad.

2) Brief facts of the prosecution case are that during investigation
of main case FIR No,165dated.17.2.2022under Section 302/34
PPC of PS Mirpur, Abbottabad; accused was arrested and during
interrogation of the accused, on his pointation the IO of the case
recovered one pistol 30 bore without license from the tin box of

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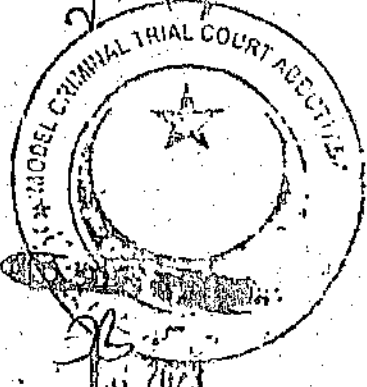
the accused facing trial lying in the barrack of constables in the police station and thus, Section 15-AA was added with the main case, however being a different statute of law, later on *challan* under Section 15-AA was separated from the main case and submitted before the court for trial of the accused named above.

3) The accused was summoned, who was produced in custody, proceedings under Section 265-C Cr.P.C complied with and charge was framed against the accused to which he pleaded not guilty and claimed trial. In order to prove its case the prosecution has produced as many as five (05) PWs and following is the gist of their statements: -

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PW-1 Jehanzeb PC No. 55 appeared who stated that during interrogation of the main case under Section 302/34 PPC the accused facing trial disclosed that the pistol 30 bore which was used by him for the commission of the offence is lying in the barrack of constable in the police station. On the said information he along with the IO and other police party in the company of the accused went to the said barrack and from the corrugated box, which was lying on northern side of the cot of the accused facing trial, the accused took out the 30 bore pistol belonging to him with one 9-MM pistol belonging to the deceased and produced the same to the IO which was taken into possession vide recovery memo Ex.PW.2/1. The said 30 bore pistol was sealed into parcel No.6 Ex.P.4. The recovery memo is correct and correctly bears his signature.

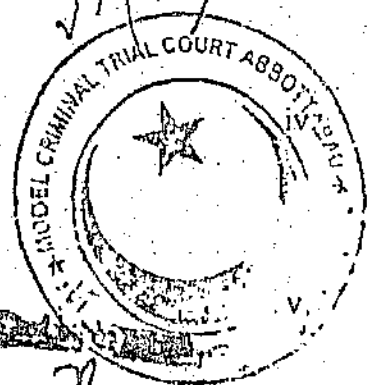
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- ii. Hakeem Khan ASI examined as PW-2 who registered the FIR Ex.PW.2/1 against the accused which correctly bears his signature. The original of the same is available on the main case file.
- iii. Muharamad Farooq SI/OII appeared as PW.3 and he also stated that during interrogation the accused Waqas disclosed that the pistol 30 bore which was used by him for the commission of the offence is lying in the barrack of the police station in his corrugated tin box. The accused led the police party to the said place and took the pistol in question from the box lying beneath his cot and produced the same to him which was taken into possession by him vide recovery memo Ex.PW.1/2 and sealed into parcel No.6. The remaining statement is related to the main case, therefore, no need to reproduce here.

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Abdul Wahid Moharrir appeared as PW.4, to whom the parcel were handed over and sent the same to the FSL for examination.

Tahir Saleem SHO examined as PW-5 who submitted complete *challan* against the accused.

4) Prosecution closed its evidence on 30.11.2022 and thereafter statement of accused u/s 342 Cr.P.C. was recorded wherein, he again professed innocence and refuted the charge leveled against him. However, he neither wished to be examined on oath u/s 340(2) Cr.P.C nor produced evidence in his defense.

5) I have heard, Learned Dy.PP for the state and Learned Counsel for accused and gone through the record.

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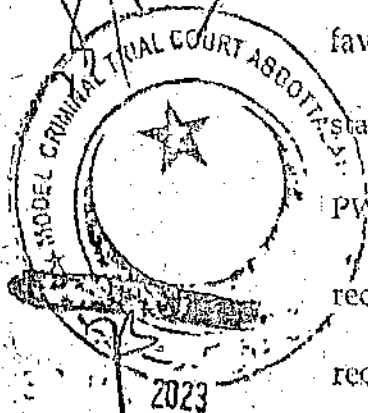
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6) The prosecution case rests upon the statement of PW-1 & PW-3. PW-3 recovered the 30 bore pistol on the pointation of the accused facing trial from box lying in the barrack beneath his cot. Recovery memo was prepared in the presence of marginal witnesses which is Ex.Pw.1/2. As the recovery of pistol is made inside the police station from the barrack of the constables, therefore, exclude the possibility of non-association of private PWs. The pistol in question was sent to the FSL and it was reported by the FSL that the same was found in working condition. The same is Ex.PW.3/8. PW.1 the marginal witness of the recovery memo also supported the version of the complainant. He was also cross examined at length but nothing favourable could be extracted from his mouth to favor the stance of the accused. The defense has not cross examined these PWs on the point of recovery, the place of recovery, the time of recovery, but rather admitted the arrest of the accused and recoveries. The PWs were cross examined but nothing contradictory has been brought on the record or anything else favoring the defense. The report of FSL also corroborate the statement of PWs. Thus, the prosecution has proved the recovery of unlicensed pistol of 30 bore on the pointation of the accused. , therefore, accused namely, Waqas Ahmad is found guilty for possessing unlicensed pistol and sentenced to suffer 2 years SI and to pay fine of Rs. 10,000/- failing which he will

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suffer further one-month SI, Benefit of Section 382-B Cr.P.C. is extended to accused. Both the sentences shall run concurrently i.e punishment awarded u/s 302/34 PPC and this case under FIR No. 165/17/02/2022. Accused is in custody, be sent to jail alongwith conviction warrant to suffer his sentence. The 30 bore pistol in question stands confiscated to the state and be disposed off as per law after expiry of period of appeal/revision. File be consigned to record room after necessary completion and compilation.

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Advocate High Court
Contact: 492-545 9596898

Announced
25/01/2023

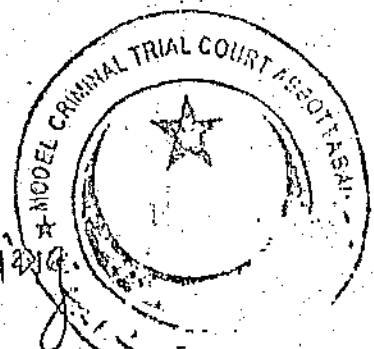
Muhammad Umar Al Farooq Khan
Addl: Sessions Judge-VI
/Judge MCTC Abbottabad.

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3 JAN 2023 CERTIFICATE:

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Muhammad Umar Al Farooq Khan
Sessions Judge
Abbottabad

Certified that this judgment consists of 05 pages. Each page has been read, signed and corrected by me wherever necessary.



Muhammad Umar Al Farooq Khan
Addl: Sessions Judge-VI
/Judge MCTC Abbottabad

NO. 1752 DATE 30-01-23

D. of Presentation Application _____

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Name of Copies! Bill

Date of Preparation of Copy 30-01-23

Date of Delivering of Copy 30-01-23

محترم جناب ڈپٹی انسپکٹر جنرل پولیس ہزارہ ڈویژن ایبٹ آباد

اپیل منجانباً نہ بر خلاف حکم برطرفی اپیلانٹ کانسٹیبل نمبری 1041 تحت آرڈر بک نمبری 88/23 مصدرہ 07 اپریل 2023ء مجتاریہ ڈسٹرکٹ پولیس آفیسر ایبٹ آباد ہمیں قرار دیکر اپیلانٹ مع سے کس دیگر اہل کو مقدمہ علت نمبری 165 مورخہ 17 فروری 2022ء بجرم 302/34 ت پ 15A.A. KPK تھانہ میرپور میں بذریعہ تسمہ بیان چارج کیا گیا تھا جس پر ٹرائل کورٹ نے اپیلانٹ مع سے کس ملازمین محکمہ پولیس تھانہ میرپور ایبٹ آباد کو محررہ 25 جنوری 2023ء سزا عمر قید بامشقت و جرمانہ کا حکم صادر کیا جس کی روشنی میں من اپیلانٹ کو ملازمت سے ڈس کر دیا گیا تھا ٹرائل کورٹ کے فیصلہ کے خلاف اپیلانٹ مع دیگر اہل نے عدالت عالیہ پشاور ہائیکورٹ ایبٹ آباد بینچ میں اپیل دائر کی جس کو منظور فرماتے ہوئے عدالت عالیہ نے محررہ 14 مئی 2024ء کو ٹرائل کورٹ کا فیصلہ کالعدم قرار دے دیا اور اپیلانٹ مع و دیگر اہل کو مقدمہ میں بیگناہ قرار دیتے ہوئے باعزت بری کر دیا بدین وجہ جناب سے استدعا ہے کہ من اپیلانٹ کی تاخیر اپیل بوجہ ناکر وہ گناہ میں پابند سلاسل ہونے معاف فرمائی جاوے اور عدالت عالیہ پشاور ہائی کورٹ ایبٹ آباد بینچ کے فیصلہ و حکم کو مد نظر رکھتے ہوئے حکم برطرفی تحت آرڈر بک نمبری 88/23 محررہ 07-04-2023 کو کالعدم و منسوخ کیا جاوے اور ذیل وادری فراہم کی

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6/16/24

جاوے۔

EIC
Sardar Muhammad Waqar
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صدر حکم بحال کیے جانے ملازمت بمعہ تنخواہ و انگریمنٹ و صدر حکم باہمیہ

الف :-

عمر برطرفی شامل سروس کیے جائے۔

صدر حکم دوائے جانے سابقہ بقایا جات (عمر برطرفی ازناہ اپریل 2023ء تا بحالی و آئندہ)

ب :-

بمعہ سالانہ اضافہ و دیگر مراعات برطابق قانون۔

جناب عالی! منوجبات اپیل ذیل عرض ہیں:-

1- یہ کہ مقدمہ علت نمبر 165 مورخہ 17 فروری 2022ء بحرام 302/34.PPC ت-پ و 15AA KPK تھانہ میر پور ایبٹ آباد درج رجسٹرڈ ہوا جس میں ایک ہفتہ بعد مورخہ 24 فروری 2022ء بذریعہ تہہ بیان اپیلانٹ مع سہ کس دیگر ملازمین محکمہ پولیس چارج کیے گئے۔ (نقل ایف۔آئی۔آر لف ہے)

2- یہ کہ مقدمہ عنوان مبنی بر بدعتی تھا جس میں اپیلانٹ و دیگر سہ کس ملازمین محکمہ پولیس کو ساز باز کر کے بذریعہ تہہ بیان چارج کیا گیا اور بگس ریکوریاں ڈالنے ہوئے حقائق کے برعکس خود ساختہ بیان لزمان زبردفعہ 161 ض ف ریکارڈ بر مشل لگائے گئے۔

3- یہ کہ اپیلانٹ مورخہ 01-04-2011 سے محکمہ پولیس میں بطور ملازم اپنے فرائض و ذمہ داریاں سرانجام دیتا آ رہا ہے جس کو ساز باز کر کے مذکورہ بالا مقدمہ میں ملوث کیا گیا جس پر ٹرائل کورٹ نے مورخہ 25 جنوری 2023ء کو من اپیلانٹ سمیت دیگر افسران کو سزا سنائی تھی جس کی روشنی میں من اپیلانٹ کو مورخہ 7 اپریل 2023ء تحت آرڈر ایک نمبری 88 محکمہ سے برطرف کیا گیا تھا۔ (نقل حکم بر طرفی لف ہے)

4- یہ کہ اپیلانٹ معد دیگر افسران نے فیصلہ مصدرہ 25 جنوری 2023ء بجاریہ ٹرائل ماڈل کورٹ ایڈیشنل سیشن جج VI کے خلاف پشاور ہائی کورٹ ایبٹ آباد بیچ ایبٹ آباد میں اپیل دائر کی جسکو منظور فرماتے ہوئے عدالت عالیہ نے مورخہ 14 مئی 2024ء کو ٹرائل کورٹ کا فیصلہ کا اہتمام قرار دے دیا اور من اپیلانٹ معد دیگر افسران کو مقدمہ میں بے گناہ قرار دیتے ہوئے باعزت بری کیے جانے کا حکم صادر فرمایا۔ (نقل اپیل و فیصلہ لف ہے)

5- یہ کہ اپیلانٹ پر لگایا گیا الزام غلط ثابت ہو چکا ہے اور اپیلانٹ کو جس جرم کے الزام کی پاداش میں برطرف کیا گیا تھا اس میں اپیلانٹ بے گناہ ثابت ہو چکا ہے نیز حسب احکم عدالت عالیہ ٹرائل کورٹ کا فیصلہ منسوخ ہو چکا ہے بدین وجہ اپیلانٹ کی تاخیر اپیل بوجہ ناکردہ گناہ میں بند جوڈیشل جیل ہری پور ہونے معاف فرمائی جاوے اور عدالت عالیہ کے فیصلہ و حکم مصدر 14 مئی 2024ء کی روشنی میں من اپیلانٹ کو محکمہ سے برطرف کیے جانے کا فیصلہ منسوخ کیا جاوے۔

6- یہ کہ اپیلانٹ کو ملازمت پر بحال کیے جانے کا حکم صادر فرماتے ہوئے برطرف کیے جانے کا عرصہ سروس میں شامل کیا جاوے اور تمام بقایا جات تنخواہ مع انگریمنٹ سالانہ دلوائے جانے کا حکم صادر فرمایا جاوے۔

Sanam Muhammad Shauq
Advocate Supreme Court
Contact No. 385 984938

یہ کہ اس بابت کوئی امر قانونی مانع نہ ہے۔

یہ کہ عدالت عالیہ پشاور ہائی کورٹ ایبٹ آباد بج ایبٹ آباد نے مورخہ 14 مئی 2024ء اپیل منظر فرماتے ہوئے فیصلہ دیکھ کر حکم صادر فرمایا ہے بدین وجہ اپیل ہذا اندر مہیا ہے جس پر جناب کوہاٹ و فیصلہ کرنے کے مکمل اختیارات ہیں۔

لہذا جناب سے استدعا کی جاتی ہے مستظوری اپیل ہذا حکم بر طرفی مخرہ 07 اپریل 2023ء منجاریہ ڈسٹرکٹ پولیس آفیسر ایبٹ آباد کو کالعدم قرار دیتے ہوئے منسوخ فرمایا جاوے اور اپیل منظر کو سابقہ پوزیشن پر سب سے تنخواہ و انگریمنٹ بحال کرتے ہوئے عرصہ بر طرفی کو سر دس میں شامل کیا جاوے نیز سابقہ بقایا جات سب سے سالانہ اضافہ سمیت تمام مراعات بمطابق قانون فراہم کیں جاویں تاکہ قانون و انصاف کے تقاضے پورے ہو سکیں۔ نیز دیگر داورسی جو کہ قرین انصاف ہو وہ بھی فراہم کی جاوے۔

المرقوم:- 03 جون 2024ء

وقاص احمد ولد محمد ذوالفقار بیلٹ نمبری 1041

ملازم محکمہ پولیس ڈسٹرکٹ ایبٹ آباد۔

رابطہ نمبر:- (0345-5296898)

Sanjeev Muhammad Ali
Advocate
Contact: 992-965-9591/778



Am F 102

OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

☎ 0992-9310021-22

☎ 0992-9310023

✉ r.rpohazara@gmail.com

NO: 3060 /PA DATE: 6 /06/2024

To: District Police Officer,
Abbottabad

Subject: DEPARTMENTAL APPEAL

Memo

The competent authority has examined and filed the departmental appeal submitted by Ex-Constable Waqas Ahmad No. 1041 of Abbottabad district against the punishment of dismissal from service awarded by District Police Officer, Abbottabad vide OB No. 88 Dated 07-04-2023 being badly time barred.

The applicant may be informed accordingly.

Office Superintendent
REGIONAL POLICE OFFICER
HAZARA REGION (ABBOTTABAD)

CTC
Sardar Muhammad Waqar
Advocate High Court
Contact +92 345 9596898

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بخدمت جناب انسپکٹر جنرل آف پولیس خیبر پختونخواہ پشاور

محکمہ ایپیل بر خلاف حکم مورخہ 06/06/2024 جس کی رو سے جناب ریجنل پولیس آفیسر (RPO) ہزارہ ریجن ایسٹ آباد نے ایپل ایپلٹ خارج فرمادی۔

جناب عالی! مکتوبات ایپل ذیل عرض ہے۔

1- یہ کہ مقدمہ عدالت نمبر 165 مورخہ 17/02/2022 بجرائم PPC 302/34 تپ و 15 AA KPK تھانہ میرپور ایسٹ آباد درج رجسٹرڈ ہوا جس میں ایک ہفتہ بعد مورخہ 24/02/2022 بذریعہ تتمہ بیان ایپلٹ مع سہ کس دیگر ملازمین محکمہ پولیس چارج کیے گئے۔ (نقل FIR لف ہے)۔

2- یہ کہ مقدمہ عدالت نمبر 161 ض ف ریکارڈ بر مشل لگائے گئے۔
یہ کہ مقدمہ عدالت نمبر 161 ض ف ریکارڈ بر مشل لگائے گئے۔
بذریعہ تتمہ بیان چارج کیا گیا اور بوگس ریکورڈیاں ڈالتے ہوئے تھانہ کے برعکس خود ساختہ بیان ملزمان

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Advocate High Court
Contact: 99-345-9596898

3- یہ کہ ایپلٹ محکمہ پولیس میں بطور ملازم اپنے فرائض و ذمہ داریاں سرانجام دیتا آ رہا ہے جس کو ساز باز کر کے مذکورہ بالا مقدمہ میں ملوث کیا گیا جس پر ٹرائل کورٹ نے مورخہ 25/02/2023 کو من ایپلٹ ہمسیت دیگران کو من اسنادی تھی جس کی روشنی میں من ایپلٹ کو مورخہ 17/04/2023 تحت آرڈر بک نمبر 88 محکمہ سے برطرف کیا گیا تھا۔ (نقل حکم بر طرفی لف ہے)۔

4- یہ کہ ایپلٹ مع دیگران نے فیصلہ مورخہ 25/02/2023 جاریہ ٹرائل ماڈل کورٹ ایڈیشنل سیشن جج VI- کے خلاف پشاور ہائی کورٹ ایسٹ آباد بیج ایسٹ آباد میں ایپل دائر کی جسکو منظور فرماتے ہوئے عدالت عالیہ نے مورخہ 14/05/2024 کو ٹرائل کورٹ کا فیصلہ کالعدم قرار دے دیا اور من ایپلٹ مع دیگران کو مقدمہ میں بے گناہ قرار دیتے ہوئے باعزت بری کیے جانے کا حکم صادر فرمایا۔ (نقل ایپلٹ و فیصلہ لف ہے)۔

5- یہ کہ ایپلنٹ پر لگایا گیا الزام ثابت ہو چکا ہے اور ایپلنٹ کو جس جرم کے الزام کی پاداش میں برطرف کیا گیا تھا اس میں ایپلنٹ بے گناہ ثابت ہو چکا ہے نیز حسب الحکم عدالت عالیہ ٹرائل کورٹ کا فیصلہ منسوخ ہو چکا ہے بدیں وجہ ایپلنٹ کی تاخیر اپیل بوجہ ناکردہ گناہ میں بند جوڈیشل جیل ہری پور ہونے معاف فرمائی جاوے اور عدالت عالیہ کے فیصلہ و حکم محررہ 14/05/2024 کی روشنی میں من ایپلنٹ کو محکمہ سے برطرف کیے جانے کا فیصلہ منسوخ کیا جاوے۔

6- یہ کہ ایپلنٹ کو ملازمت پر بحال کیے جانے کا حکم صادر فرماتے ہوئے برطرف کیے جانے کا عرصہ سروس میں شامل کیا جاوے اور تمام بقایا جات تنخواہ مع انکریمنٹ سالانہ دلوائے جانے کا حکم صادر فرمایا جاوے۔

7- یہ کہ اس بابت کوئی امر قانونی مانع نہ ہے۔

8- یہ کہ عدالت عالیہ پشاور ہائی کورٹ ایبٹ آباد بیٹج ایبٹ آباد نے مورخہ 14/05/2024 ایپلنٹ کی اپیل منظور فرماتے ہوئے فیصلہ و حکم صادر فرمایا ہے۔ بدیں وجہ اپیل ہذا انڈر معیاد ہے جس پر جناب کو سعادت و فیصلہ کرنے کے مکمل اختیارات ہیں۔

9- یہ کہ قبل ازیں حکم متدعو یہ مورخہ 07/04/2023 کے برخلاف جناب ریجنل پولیس آفیسر ہزارہ ریجن ایبٹ آباد اپیل دائر کی گئی جو بوجہ زائد المیعاد ہونے کے خارج فرمادی گئی۔ نقل حکم مورخہ 06/06/2024 لف ہے۔

لہذا استدعا ہے کہ بمظہوری اپیل ہذا حکم برطرفی سائل محررہ 07/04/2023 مجاریہ ڈسٹرکٹ پولیس آفیسر ایبٹ آباد کو کالعدم قرار دیتے ہوئے منسوخ فرمایا جاوے اور ایپلنٹ کو سابقہ پوزیشن پر بمعہ تنخواہ و انکریمنٹ بحال کرتے ہوئے عرصہ برطرفی کو سروس میں شامل کیا جاوے۔ نیز سابقہ بقایا جات بمعہ سالانہ اضافہ سمیت تمام مراعات بمطابق قانون فراہم کیں جاویں تاکہ قانون و انصاف کے تقاضے پورے ہو سکیں۔ نیز دیگر ددرسی جو کہ قریں انصاف ہو وہ بھی فراہم کی جاوے۔

المرقوم؛ 2024/

CTC
Sardar Muhammad Waqar
Advocate High Court
Contact 992 505 9596898

وقاص احمد ولد محمد ذوالفقار پبلٹ نمبری 1041 ملازم محکمہ پولیس ڈسٹرکٹ ایبٹ آباد۔۔۔۔۔ (سائل)

رابطہ نمبر: 0345-5296898

10/5/24

Annex-A

BETTER COPY

17

ابتدائی اطلاعی رپورٹ

کونٹر (فائل) ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 152 مجموعہ ضابطہ نو جداری
تھانہ میرپور
ضلع ایبٹ آباد

نمبر علیت 165 وقت وقوعہ 17/02/2022 وقت قریب 19:30 بجے

1	تاریخ وقوعہ رپورٹ 17/02/2022 وقت 20:30 بجے	چاکیدگی پرچہ 17/02/2022 وقت 21:10 بجے
2	نام و سکونت اطلاع دہندہ مستغیث	مسماة سمیرا بی بی زوجہ دلدار عرف بیو قوم اعوان سکنتہ کسکی حال جھنگلی ایبٹ آباد
3	مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو	زیر دفعہ 15-AA KPK r/w PPC 302/34
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت	دیہہ جھنگلی مغرب فاصلہ 67 کلومیٹر تھانہ
5	نام و سکونت ملزم	
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	برسیدگی تحریری مراسلہ پر مقدمہ قائم ہوا
7	تھانہ سے روانگی کی تاریخ و وقت	

ابتدائی اطلاع چھپے درج کرو

یوقت صدر تحریری مراسلہ اذان مستغیث مندرجہ خانہ نمبر 2 بوساطت زیر خانہ ASI بدست کنستبل گل رحمن 45 موصول ہو کر ذیل ہے۔
بخدمت افسر صاحب تھانہ میرپور رپورٹ مسماة سمیرا بی بی زوجہ دلدار عرف بیو قوم اعوان عمر 31/32 سال سکنتہ کسکی حال جھنگلی قاضیاں
17/02/2022 وقت 20:30 بجے یا مشول دیور شفیق عرف بانکا دلدر رفیق سکنتہ حال ٹھنڈا چوا کے ہمراہ نعش خاندانم دلدار عرف بیو کے امیر نعشی وارڈ
ATH میں رپورٹ کرتی ہے کہ آج شام قریب 07:00 بجے خاندانم گھر سے بچوں کے لئے دودھ فروٹ لینے کے لئے دکان جھنگلی روڈ کی طرف
گیا اور جاتے ہوئے اپنا ہسٹل 9MM لائسنس دار بھی ساتھ لے کر گیا۔ تقریباً 20/25 منٹ بعد میں نے کال کی تو دلدار نے کہا کچھ دیر تک آتا
ہوں کچھ دیر بعد دوبارہ کال کرتی رہی مگر جواب نہ ملا پھر کچھ دیر بعد کال کی تو بیو کے موبائل سے کسی نے کال ایبٹ آباد کی اور مجھے کہا کہ آپ کون ہے میں
نے کہا کہ میں بیو کی بیوی ہوں تو اس نے کہا کہ کون بیو میں نے کہا جس کا موبائل ہے تو مذکورہ شخص نے کہا کہ اس کو شاید ایک ہوا ہے جو پبلکس
ہسپتال میں ہے اس اطلاع پر میں صدر دیور شفیق عرف بانکا ہسپتال پہنچی دیکھا کہ میرا خاندانم دلدار عرف بیو فوت شدہ ستر پچہ پڑا ہوا تھا جسکی کرا اور بازو
میں دائیں جانب زخم کے نشانات موجود ہیں میرا خاندانم دشمندار تھا کسی نے اسلحہ آتشیں سے فائرنگ کر کے قتل کر دیا ہے۔ سر بدست مجھے کسی پر کوئی
شک و شبہ نہ ہے۔ نعش کا پوسٹ مارٹم کروانا چاہتی ہوں میں خاندانم کو فائرنگ کر کے قتل کرنے کا برخلاف اسم و مسکن نام معلوم شخص / اشخاص دعوی دار ہوں۔
رپورٹ سن لی ہے جو کہ درست ہے۔ العبد و سخطہ اردو ہمرائی دیور شفیق عرف بانکا نے رپورٹ کی تائید کی۔ العبد و سخطہ انگریزی حسب گفتہ سائلہ
رپورٹ درج صدر ہو کر پڑھ کر سنائی دسمبھائی گئی جو رپورٹ کنندہ اور ہمرائی دیور اش شفیق نے درست تسلیم کر کے دستخط ثبت کیئے ملاحظہ بلدان نعش
سے تفصیل زخمات درج نقشہ ضرر و ضرر صورت حال ہو کر نعش مقتول برائے پوسٹ مارٹم زیر حفاظت کنستبل سید الشہ 658/ATH حوالہ ڈاکٹر صاحب کی جاتی
ہے۔ مضمون رپورٹ سے سر بدست صورت جرم بالائی پائی جا کر مراسلہ بغرض قاضی مقدمہ بدست کنستبل گل رحمن 45 ارسال تھانہ ہے۔ افسران
بالا کو بذریعہ ایلی فون اطلاع دی گئی۔ وقوعہ ہذا کی اطلاع دوران گشت پا کر ATH پہنچ کر رپورٹ ضبط تحریر میں لائی جا کر مراسلہ بطور نیشنل رپورٹ
گزارش ہے۔ مقدمہ درج رجسٹر کر کے حوالہ OII صاحب کیا جاوے۔ دستخط انگریزی زیر خانہ ASI تھانہ میرپور 17/02/2022 کارروائی تھانہ۔
موصول مراسلہ پر مقدمہ مجرم بالا قائم ہو کر نقل پرچہ معدمہ مراسلہ بغرض تفتیش حوالہ DTV منٹاف کیا جاتا ہے۔ پرچہ بطور نیشنل رپورٹ گزارش ہے۔

حکیم خان

MHC-PS-Mirpur

17-02-2022

محمد علی صاحب

High Court Bar Association

11th Nov 2007
 13/10/07-556518-5

جنوبی عدالت سب سے متعلقہ ہے۔

جنوبی عدالت سب سے متعلقہ ہے۔

جنوبی عدالت سب سے متعلقہ ہے۔

13/10/07-556518-5
 High Court Bar Association

High Court Bar Association
 13/10/07-556518-5

وکیلانہ

High Court Bar Association Abbottabad

Name of Advocate				
2	0	1	8	1
HCBA Reg No.				
8	3	3	-	A
Place of Practice				
13/10/07-556518-5				

Rs. 200/-



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