

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

**Service Appeal # 2208/2023**

**Mr. Syed Dilbar Shah.....Appellant.**

**VERSUS**

**Govt: of Khyber Pakhtunkhwa & others.....Respondents.**

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**Deponent**

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

**In Service Appeal No. 2208/2023**

**Mr. Syed Dilbar Shah.....Appellant.**

**VERSUS**

**Government of KPK through Chief Secretary & Others.....Respondents.**

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NO. 01 TO 03.**

**Respectfully Sheweth,**

**Preliminary Objections:**

1. The appellant has not come to this Tribunal with clean hands.
2. The appellant is not an aggrieved person nor has any locus standi to file the present appeal.
3. That the appellant has concealed material facts from this Tribunal.
4. That the appellant is estopped by his own conduct to file the present appeal.
5. That the present appeal is against the prevailing law and rules.
6. That the appellant is not entitled for any relief, he has sought from this Honorable Tribunal.
7. That the present appeal is liable to be dismissed being devoid of any merits.
8. That the appellant was removed from service on 05-04-2016, he was released from jail on 19-04-2023 whereas he filed departmental appeal on 20-06-2023, therefore, the present appeal is hopeless time barred, hence liable to be dismissed.
9. That the present appeal is just filed by the appellant to pressurize the respondents for getting illegal and unlawful benefits.
10. That the appellant is just wasting the precious time of this Honorable Tribunal through the instant frivolous appeal.

**On Facts.**

1. Pertains to record.
2. Pertains to police record of Police Station Cantt District Bannu.
3. Correct.
4. Correct.
5. Pertains to official record.
6. Correct.
7. Incorrect, the Notification on dated 05-04-2016 is issued by the direction and approval of competent authority which is Annex-A with parawise comments. Furthermore, the appellant was removed from service on 05-04-2016, he was released from jail on 19-04-2023 whereas he filed departmental appeal on 20-06-2023, therefore, the present appeal is hopeless time barred, hence liable to be dismissed.

**On Grounds:**

A. Incorrect, the Notification dated 05-04-2016 is in accordance with law and the appellant is not an aggrieved person.

B. Incorrect, the appellant is a convicted person and after his conviction his case was forwarded to the competent authority for legal action, which was approved and also endorsed by the law department. Thereafter, the appellant was removed from service.

**(Remarks already available in Annex-A)**

C. Incorrect, hence denied in toto. The appellant is a convicted person up to the august Supreme Court of Pakistan and his case of major penalty of removal from service is covered under Rule 5 (i) (b) proviso (i) of E&D Rules, 2011.

D. Incorrect, as replied above.

E. Incorrect and not permissible under the law.

F. Incorrect, the order dated 05-04-2016 is in accordance with law.

G. Incorrect, admittedly the appellant is a convicted person up to the Supreme Court of Pakistan and therefore, the competent authority awarded his major penalty of removal from service.

H. Incorrect, the appellant has been treated in accordance with law.

I. Incorrect, the detail answer has been given above.

J. Incorrect, the reported judgment is not applicable to the appellant case. The appellant is a convicted persona and has been dult in accordance with law.

K. Incorrect and denied. The detail answer has been given above.

L. Incorrect, the appellant have been treated in accordance with law.

M. Incorrect, the said judgment is not applicable on the appellant.

N. Incorrect, the appellant is a convicted person and the same fact has never been denied by the appellant, therefore, from the available record and conviction of the appellant penalty was imposed on him under Rule 5(i) (b) proviso (i) of E&D Rules, 2011.

O. Incorrect, hence denied. The present appeal is time barred and is liable to be dismissed.

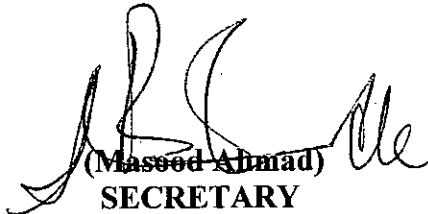
P. Incorrect and just repetition of facts which has duly answered and stated in above para's.


Q. Incorrect, hence denied in toto. The case of the appellant removal from service is covered under E&D Rules, 2011.

R. Incorrect and not applicable to the case of the appellant.

- S. Incorrect, hence denied. The appellant is a convicted person by through concurrent findings of courts below till the august Supreme Court of Pakistan.
- T. Incorrect, hence denied.
- U. Incorrect, the appeal is liable to be dismissed summarily without wastage of further time.

**It is therefore, most humbly prayed that the appeal being devoids of any merit may kindly be dismissed**

  
(Masood Ahmad)  
**SECRETARY**  
**E&SE Department Peshawar**  
**Respondent No. 01 & 02**

  
**Samina Altaf**  
**DIRECTOR**  
**Elementary & Secondary Education,**  
**(Respondent No. 03)**

**BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR**

**Service Appeal # 2208/2023**

**Mr. Syed Dilbar Shah..... Appellant**

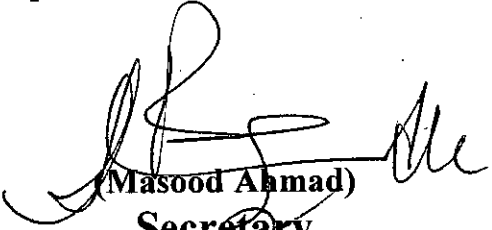
**VERSUS**

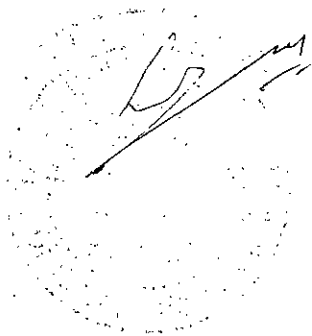
**Govt. of Khyber Pakhtunkhwa & others..... Respondents**

**AFFIDAVIT**

I, **Masood Ahmad**, Secretary, Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

**It is further, stated on oath that in this appeal the answering Respondents have neither been placed ex-parte nor has their defense been struck off.**

  
**(Masood Ahmad)**  
**Secretary**  
**E&SE Department Peshawar**





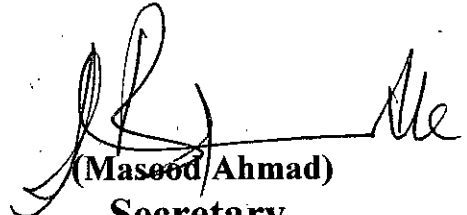
**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

**Block "A" Civil Secretariat, Peshawar**

**Phone No. 091-9211128**

**AUTHORITY LETTER**

It is certified that **Mr. Sajid Ullah, Section Officer (Litigation-II)** Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar **Service Appeal # 2208/2023 Case Titled Mr. Syed Dilbar Shah vs Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.

  
(Maseed Ahmad)  
Secretary

**E&SE Department Peshawar**



I

(66)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

(66) 4

Dated Peshawar the April 05, 2016

**NOTIFICATION**

**NO.SO(S/M)/E&SED/4-17/2017/Syed Dilbar Shah Prl. BS-19:** Consequent upon the conviction under section 302(b)/34 PPC for imprisonment of life on three counts by the Peshawar High Court Bannu Bench vide its judgement dated 26-02-2015 in criminal appeal No.53-B 2010, Syed Dilbar Shah Principal BS-19 GHS Tamab Peshawar is hereby ~~Removed from service with immediate effect~~

2. His period of absence from duty w.e.f 26-02-2015 till date is treated as unauthorized absence from duty without pay.

**SECRETARY**

**Snrds. of even No. & Date :-**

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar
2. Registrar, Peshawar High Court, Bannu Bench.
3. PSO to Chief Minister Khyber Pakhtunkhwa
4. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
5. District Education Officer (Male), Peshawar.
6. Principal GHS Tamab, Peshawar.
7. PS to Chief Secretary, Khyber Pakhtunkhwa.
8. PS to Secretary E&SE Department, Khyber Pakhtunkhwa.
9. Incharge EMISE E&SE Department.
10. Officer concerned.
11. Office order file.

  
(MUJEEB UR-REHMAN)  
SECTION OFFICER (SCHOOLS/MALE)







## ابتدائی اطلاعی رپورٹ

(فائیل) ابتدائی اطلاعی رپورٹ نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردفعہ 154 مجموعہ ضابطہ

نوجداری

ضلع پشاور

پولیس اسٹیشن: صدر

تاریخ و وقت وقوع: 03/11/2005 وقت 06:30 بجے

علت نمبر: 382

03/11/2005 بجے چاکیڈگی 03/11/2005	1	تاریخ و وقت رپورٹ
07:50,	2	نام و سکونت اطلاع دہندہ و مستغیث
گل لطیف شاہ ولد زربان شاہ سکنہ تانانخیل انور شاہ بمعر 53/55	3	مختصر کیفیت جرم (معہ دفعہ) مال اگر کچھ لیا گیا ہو
PPC 302, 323/34	4	جائے وقوعہ فاصلہ تھانہ سے اور سمت
نزد مسجد واقع خاتہ خیل انور شاہ جانب مشرق تھانہ ازبافاصلہ 1 1/2 کلومیٹر از تھانہ	5	نام و سکونت ملزم 9-4214319-17301
(1) - عبدالرشید شاہ، (2) - عمر غنی شاہ، (3) - دلبر شاہ پسران محمد سرور شاہ (4) - حکمت اللہ شاہ ولد محمد غنی شاہ ساکنان حال خیل انور شاہ	6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وجہ بیان کر دیے
برسیدگی مراسلہ پر فوراً کیا گیا	7	تھانہ سے روانگی کی تاریخ و وقت
بمंत्रی اسپیشل رپورٹ		

ابتدائی اطلاع نیچے درج کرو: تحریری مراسلہ منجانب علی عباس خان 785 کیجوٹی سٹاف سول ہسپتال بنوں بغرض قائمی مقدمہ بدست کنسٹیبل عبدالرحمان غنی 665 موصول ہو کر درج ذیل ہے رپورٹ گل نظیف شاہ

ولد زربان شاہ سکنہ حاجی خیل انور شاہ بمعر 53/52 سال نے آج مورخہ 03/11/05 بوقت 06:50 بجے نقش برادران اش مسیان گل جنت شاہ، میر سلیم شاہ، نقش پسران شاہ فیصل، لغرب برادران میر نظیف شاہ شنواری چارپائیدی بہ اداد دیہہ والدین بمقام ایمر جنسی داوسول ہسپتال بنوں ورکر گل نظیف شاہ مذکورہ غیر موجودگی برادران نظیف شاہ رپورٹ کرتا ہے کہ امروز میں معہ برادران ام گل جنت شاہ، میر سلیم شاہ میر نظیم شاہ اور پسران شاہ فیصل بعد از نماز فجر مسجد دیہہ خود سے گھر خود جا رہے تھے برادر گل جنت شاہ آگے میر سلم شاہ، شاہ فیصل

مغرب نظیف شاہ علی الترتیب کے بعد دیگرے جبکہ میں عقب روانہ تھے قریب 06:30 بجے کا وقت تھا جو نبی ہم مسجد سے نکلے تو مسلمان (1)۔ عبدالسرور شاہ، (2)۔ محمد غنی ساکنان دیہہ ام مسلح بہ کلاشکوف گھر خود کے سامنے جنہوں نے ہمیں دیکھتے ہی جملہ بالا ملزمان نے اپنے اپنے کلاشکوف سے ہم پر بہ نیت قتل اندھا دھند فائرنگ کیں۔ جن کی فائرنگ سے گل جنت شاہ، میر سلم شاہ، میر نظیف شاہ، اور شاہ فیصل لگ کر گر پڑے جبکہ میں خوش قسمتی سے بچ گیا۔ ملزمان بعد وقوعہ کو خود بھاگ گئے میں بوجہ خالی ہاتھ کچھ نہ کر سکا جب میں پاس پہنچا تو برادر ام گل جنت شاہ اور پسر ام شاہ فیصل جان بحق ہوئے تھے جبکہ برادر ام میر نظیف شاہ زخمی تھا سابقہ بمعہ زون پر ہے کہ عرصہ قریب 20/25 یوم قبل ملزمان فریق کے محمد غنی شاہ، حکمت اللہ شاہ، نعمت اللہ شاہ، اور مقتول برادر میر سلم شاہ کے ماہین ہاتھ پائی ہوئی تھی جسکی رپورٹ تھانہ میں نہیں ہوئی تھی میں برادران اش گل جنت شاہ، میر سلم شاہ اور پسر ام شاہ فیصل کے قتل برادر ام میر نظیف شاہ کی بابت قتل اور اپنے اوپر بہ نیت قتل فائرنگ کرنے کا برخلاف عبدالسرور شاہ، محمد غنی شاہ، دلبر شاہ، پسران محمد سرور شاہ اور حکمت اللہ شاہ ولد محمد غنی شاہ ساکنان دیہہ ام دعویٰ ہوں۔ وقوعہ ام برادر ام میر نظیف شاہ نے بھی خود دیکھا ہے۔ رپورٹ دیکھی جا کر غور کی جاوے العبد دستخط مغرب میر نظیف شاہ ولد زربان شاہ سکنہ حاجی خیل انور شاہ بمعر 42 سال حرف بہ حرف تائید رپورٹ بالا کرتا ہوں العبد نشان انگوٹھا کاروائی حسب گفتہ ساکنان رپورٹ حرف بہ حرف درج بالا ہو کر بہ زبان پشتو پڑھ کر سنایا سمجھایا گیا صحت رپورٹ خود کو درست تسلیم کر کے گل نظیف شاہ نے اپنا دستخط اردو جبکہ مغرب میر سلم شاہ، شاہ فیصل کے نقشہ ضرر فرد صورت حال اور میر نظیف شاہ کا نقشہ ضرر علیحدہ علیحدہ بالترتیب کر کے زیر حفاظت کنسٹیبلان امان اللہ 926 آزاد خان 965 بغرض پوسٹ مارٹم رائے علاقہ حوالہ حسب سول ہسپتال بنوں کیے جاتے ہیں مضمون رپورٹ سے صورت جرم PPC 34/32-302 کا پایا جاتا ہے مراسلہ بغرض قائمی مقدمہ بلحاظ علاقہ بدست عبدالرحمان 565 تھانہ صدر ارسال خدمت ہے دستخط انگریزی علی عباس خان 785 سول ہسپتال بنوں 03/05/2005 کاروائی برسیدگی مراسلہ پرچہ بجرٹم بالا چاک کیا جا کر نقول ایف آئی آر بغرض تفتیش حوالہ تفتیشی سٹاف کیے جاتے ہیں پرچہ بمنزل اسپیشل رپورٹ گزارش ہے۔

03/05/2005

دستخط

عہدہ

اطلاع کے نیچے دہندہ کا دستخط ہو گا یا اسکی مہر نشان لگایا جاگا اور افسر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور:

نوٹ: حرف یاب سرخ روشنائی سے بالمقابل ہر ایک ملزم یا مشتہر علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیاء یا افغانستان ہو لکھنا چاہئے۔

(89) (40)

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
BANNU BENCH**

(Judicial Department)

Cr. A No.27-B of 2009

**JUDGMENT**

Date of hearing 26.02.2015

Appellant-Petitioner Gul Nazaf Shah By Salimullah

Khan Rahzai Adv.

Respondent State By Ghulamullah Khan Gondal Adv. A.G.

Accused By Muhammad Raheem Khan Dirmekhi Adv.

**MUHAMMAD YOUNIS THAHEEM, J.---** Through

this single judgment, we intend to dispose of instant criminal appeal No.27-B of 2009 as well as connected criminal appeal No.53-B of 2010, titled as above, as both the appeals have been arisen out from one and the same FIR, and common question of facts and law in both appeals are involved.

2. Muhammad Ghani Shah, Abdul Sarwar Shah and Hikmatullah, acquitted accused, were tried by the learned Magistrate-II, Bannu in case F.I.R. No. 382, dated 03.11.2005 registered with Police Station Saddar, Bannu for an offence under section 302/324/337-F(ii)/34 PPC, read

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with section 34 PPC. The learned trial Court vide his judgment dated 14.2.2009, acquitted the respondents. The complainant of the case namely Gul Nazeef Shah preferred this criminal appeals No. 27-B of 2009 against the respondents.

3. After acquittal of accused/respondents, co-accused Dil Bar Shah who was by then declared as proclaimed offender in the judgment dated 24.2.2009 also appeared before the court of Sessions by moving his BBA petition which was turned down, hence he was also arrested by the local police, After completion of investigation and on conclusion of trial, vide impugned judgment dated 22.01.2010, the learned trial court (ASJ-IV), Bannu also acquitted the accused/respondent by giving benefit of doubt, hence instant criminal appeal No.53-B of 2010 was moved against the said judgment.

5/2

4. The prosecution story in brief is, that on 03.11.2005 at about 0650 hours, appellant Gul Nazeef Shah brought the dead-bodies of his brothers namely Gul Janat Shah, Mir Salam Shah, his son Shah Faisal and injured brother Mir Janat Shah to the "COTs" with the help of co-villagers, in the emergency ward of

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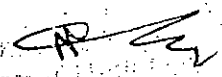
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Civil hospital, Bannu and reported the matter to the local police to the effect that on the eventful day he alongwith his brother as well as his son named above were proceeding to their house after performance of "Fajar Nimaz"; that his brother Gul Janat Shah was ahead followed by Mir Salam Shah, Shah Faisal and injured Mir Nazif Shah one after another while he (appellant/complainant) was proceeding in the back of them. At about 06.30 hours, when they came out of the mosque, then accused/respondents Abdul Sarwar Shah, Muhammad Ghani Shah, Dil Bar Shah (sons of Muhammad Sarwar Shah) and Hikmatullah Shah (son of accused/respondent Muhammad Ghani Shah), their co-villagers, duly armed with Kalashnikovs, already present in front of their house, on seeing them, started indiscriminate firing at them with their respective weapons, as a result of which, Gul Janat Shah, Mir Salam Shah, Mir Nazif Shah and Shah Fasal were hit and fell down while the complainant/appellant luckily escaped unhurt. Accused/respondents decamped from the spot after the occurrence, while the appellant being empty handed could do nothing. When the appellant/complainant attended the victims, his brothers namely

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Gul Janat Shah, Mir Salam Shah, his son Shah Faisal were expired while his brother Mir Nazif Shah was injured. Motive for the offence was that about 29/25 days prior to the occurrence, scuffle had taken place between Muhammad Ghani Shah, Hikmatullah Shah, Naimatullah Shah and deceased Mir salam Shah, which report was not made to the police. The complainant charged the respondents for the commission of offence.

5. On completion of investigation, challan was accordingly submitted against the respondents to face the trial. Learned trial Court after complying with provision under section 265-C Cr.P.C framed the charge against the respondents of the instant criminal appeal, wherein they pleaded not guilty and claimed trial.

6. The prosecution has examined thirteen witnesses in support of its allegations, the brief whereof is as under:-

Dr. Khalid Mehmood (PW-2) has conducted autopsy on the dead-bodies of Shah Faisal, Mir Shalam Shah, while Dr. Anwar Farid (PW-10) had

S. M. Farid

S. M. Farid

ATTA

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conducted autopsy on the deadbody of Gul Janat Shah and examined injured Mir Nazif Shah,

Gul Salam (PW-1) had witnessed the recovery memos, vide which, in his presence, the IO had taken into possession blood stained earth from the places of deceased Gul Janat Shah, Mir Salam Shah and Shah Faisal, while from the places of accused recovered seven empties of 7.62 bore and two spent bullets in the line of fire, as well as blood stained garments of the all the deceased respectively, which were also packed and sealed into parcels by the IO, in his presence.

Inayatullah Khan (PW-3) had identified the dead bodies of all the three deceased namely Shah faisal, Mir Salam Shah and Gul Janat Shah,

Amanullah LHC (PW-4) had escorted the dead-bodies of the deceased to the mortuary and after their autopsy by the doctors, blood stained garments of

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ATTORNEY

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all the deceased were handed over to the IO on the spot.

Inayatullah SHO (PW-5) had arrested accused Muhammad Ghani Shah on 6/12/2005, after recalling his BBA by the court.

Ali Abas Khan (PW-6) had recorded the report of the complainant in shape of murasila, prepared injury sheets and inquest reports of all the deceased and the injured and handed over to constables Amanullah and Azad Khan for escorting the same to the doctor for autopsy, while Murasila was sent to the PS for registration of case.

Azad Khan FC (PW-7) had escorted dead-body of the deceased Gul Janat Shah and injured Nazif Shah to the doctor, after doing the needful by the doctor, the PM and medicolegal reports were handed over to the IO on the spot by him.

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ATT  
*[Handwritten signature]*

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Iftekhar Ali SHO (PW-8) on receipt of  
murasila, had chalked out FIR.

Muhammad Tahir Dawar SHO (PW-9)  
had submitted challan against the accused and also  
arrested accused Himatullah Shah and Abdul Sarwar  
Shah and issued their card of arrest and also submitted  
supplementary challan against them.

Gul Nazif Shah (PW-11) is the  
complainant of the case. He has narrated same  
scenario of the case which has already been discussed  
in the early part of the judgment.

Mir Nazif Shah (PW-12) being injured  
eye witness, has also narrated under the heading  
was furnished by the complainant in his report.

Gulap Khan (PW-13) had conducted  
investigation of the instant case.

7. After closing the evidence by the prosecution,  
respondents were examined under section 342 Cr.P.C, wherein

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they stated that they are innocent and have been falsely implicated in the present case. They did not wish to be examined on oath as required U/S 342 Cr.P.C nor they opted to produce defence evidence.

8. On conclusion of trial, the learned trial court acquitted the respondents; the complainant being aggrieved has filed instant appeal against the respondents through two separate criminal appeals, which are to be disposed of by this single Judgment, as referred to herein above.

9. Learned counsel for the appellant contended that F.I.R. has been lodged with promptitude; that all the respondents were given specific role of firing on all the three deceased and injured; they were directly charged in the first information report; that the respondents were well known to the complainant; that the beads account furnished by the complainant and injured Mir Nazif Shah is uniform and consistent on all material points, while their presence on the spot could not be denied; that blood stained earth as well as the crime empties were secured from the spot, so no other exception can be taken as for as the place of

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occurrence is concerned; that medical report fully substantiate the prosecution story and that no material contradictions or discrepancies are visible between the statements of eye witnesses, but the trial Court did not appreciate this aspect of the case and as such rendered an erroneous judgment based on mis and non-reading of the evidence, adduced on behalf of prosecution witnesses.

10. On the other hand, learned counsel for the respondents vehemently opposed the arguments advanced on behalf of the complainant side and supported the impugned judgment on the grounds that the prosecution has failed to prove its case against the accused/respondents beyond any shadow of reasonable doubt; that the occurrence is of day light and admittedly there was "Eid-ul-Fitr" on the eventful day of occurrence and a large number of the people were present but no disinterested witness has come forward to depose in favour of prosecution; that there is a lot of contradictions in the statements of the PWs on material points who in their cross examination has badly shattered the prosecution case and especially made

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references to the statements of complainant and the alleged eye-witness; that dishonest investigation has been conducted in this case by Gulap Khan IO with the connivance of Hazrat Ali inspector as he was admittedly present on the spot being close relative of complainant party, therefore, the testimony of the complainant/ appellant and injured was rightly disbelieved on the ground of close relation with Hazrat Ali Inspector, who was by then present on the spot; that the occurrence has not been taken place in the mode and manner as alleged; that the material brought on record with the statements of PWs were not sufficient to hold the accused/ respondent guilty of the offence and if otherwise case of the accused is doubtful, then mere absence of accused/respondent is no ground for conviction, therefore, the impugned verdict of the learned trial Judge needs no interference.

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11. We have heard arguments of learned counsel for the parties and gone through the case file, with their assistance.

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12. Now adverting to the points raised by the learned counsel of appellants, we have to elaborate and re-appreciate the evidence available on the case file.

13. Perusal of the impugned judgments it transpires that the learned trial court did not believe the ocular account as according to it eye witnesses have been contradicted on material points, while the Post mortem report as well as medical evidence and site plan are at variance; the time of occurrence as per the trial court seems to be of dark night; motive is not proved; hence the trial court acquitted the accused/respondents.

14. According to the report, the occurrence has taken place at 6.30 a.m, the report was lodged in the hospital at 6.50 a.m which eliminate the possibility of fabrication and consultation. In such state of affairs, when two brothers Mir Salam Shah, Gul Janat Shah and Shah Faisal (son of the complainant) have been died while brother of the complainant namely Mir Nazif Shah got injured, the shifting of injured as well as the deceased to the hospital would have

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been the priority of the complainant and their kith and kins, hence the report has naturally and promptly been lodged in the hospital within (20) minutes, so in such situation exonerating real culprit and substitution of innocent people is a rare phenomena which is not to be fitting in the circumstances of the instant case.

15. The parties being residents of the same locality were known to each other. It is the day light occurrence. As per FIR, the accused are directly charged and their faces were not muffled at the time of committing offence, hence there is no question of their misidentification.

16. The record depicts that the complainant Gul Nazif shah and injured eye witness Mir Nazif Shah have recorded their statements, who are brothers interse and also the brothers of deceased Gul Janat Shah and Mir Salam Shah, while Shah Faisal is the son of the complainant/appellant, hence they being having close relation, are interested witnesses, therefore their testimony needs to be thrashed out with care and caution.

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17. The perusal of statement of complainant Gul Nazif Shah (PW-11) reveals that he <sup>has</sup> reiterated the same story which he has made at the time of report. It is clear from his statement that all of them went for performing "Fajar prayer" and further it was the day of "Eid-ul-Fitr" and usually in such like occasion, all the male family members used to go together for "Fajar" as well as Eid prayers, hence the version of the complainant is natural one and could be believed. The other eye witness Mir Nazif Shah who is also brother of deceased examined as PW-12, has also received stamp of injuries on his body. During the occurrence, the blood was recovered from his place from the spot; hence it is ample proof of his presence on the spot at the time of occurrence. In this respect, reliance may be placed in case titled "Taj ... VS ... The state" (2012 SCMR 43) wherein it is held that:-

Sarfaraz

*"We have considered the evidence of Khadam Hussain (PW-1), complainant, two injured witnesses namely Sarfaraz (PW-2) and Gulzar (PW-3). They have supported the prosecution*

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case and specially stated that the petitioner Taj had participated in the occurrence and the fire made by the petitioner had hit the deceased on the chest near neck. The injured witnesses had also received numerous injuries during the occurrence and the doctor Muhammad Ashraf (PW-16) supported the factum of injuries. Thus, their presence at the spot was established. The eye witnesses were subjected to cross-examination but nothing had come to doubt their credibility. Thus their presence was natural as they sustained injuries alongwith deceased at the time of incident.

18. The statement of complainant and eye witnesses corroborate each other on material points as there is no inconsistency in their statements. The principle of "Falsus in uno, falsus in omnibus" has been done away; rather principle of "sifting grains from the chaff" is to be applied to determine the culpability or innocence of an accused. In this respect reliance may be placed on case titled "Muhammad Hayat Khan and other..VS..The state" (2012 YLR 2360. When evidence of the complainant and eye

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witness is appreciated on the on the principle then there is no such improvement or contradiction in statements which may create any reasonable doubt. Besides both the witnesses were put to taxing and lengthy cross examination by the defence but nothing could be extracted from their mouth which may give benefit to the accused. No doubt, there are minor contradictions but it may occur due to aflex of time as the occurrence had taken place on 03-11-2005, whereas, they were examined on 5/10/2008 after more than 2 ½ years of the occurrence. Reliance is placed on case titled "*Zulfaqar Ahmad & others...VS...The state*" (2011 SCMR 492) wherein it is held that:-

*"We have observed a few contradictions in her statement which can be ignored safely being minor in nature having no substantial bearing on merits of the case. It is worth mentioning that minor contradiction do creep in with the passage of time and can be ignored".*

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19. It is settled principle of law that minor contradictions in the statements of the witnesses are to be

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over looked, however, only material contradictions are to be considered but in the instant case, there is no material contradiction or omission. Reliance is placed on case titled "*Ranjha... VS... The State*" (2007 SCMR 455), wherein it is held that:-

*"The ocular testimony of quite independent witnesses duly supported by the medical evidence, the recovery of empties from the spot, the post-mortem reports of the two deceased, prompt lodging of F.I.R without any deliberation and exaggeration as well as the attending circumstances was found truthful and confidence-inspiring, therefore, the minor discrepancy and contradiction pointed out in the statement of witnesses being immaterial would be of no significance."*

20. No doubt, the complainant and injured witnesses are close relatives with all of the deceased but their testimony on the sole ground of relationship cannot be discarded if otherwise their testimony is truthful and confidence inspiring. Reliance may be placed on titled "*Anwar Shamini*"

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and other..VS...The state" (2010-SCMR 1791), wherein it is held that:

*"It is settled principle of law that mere relationship between the witnesses and the deceased is not enough to discard their evidence. It is the duty and obligation of the court for requiring corroboration of interested witnesses then it must first ascertain whether he should be believed without corroboration. The witnesses have faced lengthy cross-examination but their veracity cannot be shaken by the defence counsel. Both the courts below have come to the conclusion that their statements are of such a nature that their testimony must be given due weight and were believed"*

21. On the same point, the august Supreme court in case titled "*Muhammad Ikram and other...VS.... The Stat*" ( 2011-SCMR-1133) and case titled "*Muhammad Aslam ..VS... The State*" (2012 SCMR 593) has held that:-

*"In the present case ocular version has been furnished through the statement of PW-6 Haq Nawaz who is real son of the deceased*

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*Muhammad Nawaz and PW-7 Ahmad Nawaz, the other eye witness who is cousin of the complainant. So, both the eye-witnesses are closely related with each other and with the deceased interse but mere relationship is not sufficient to term them as interested witnesses as there was no previous enmity between the parties"*

22. In the instant case, the complainant (PW-10) and eye witness (PW-11) could not be termed as interested witnesses and their statements are held to be truthful, confidence inspiring and believable.

23. So far as the objection of the learned counsel for the accused/respondent that as per statement of the complainant and eye witness, other persons have also attracted at the spot at the time of occurrence but no independent witness has been produced. By now it is settled law that it is prerogative of the prosecution to produce witnesses of their choice. It is the quality and not the quantity of evidence which determines the fate of the case. If evidence of single witness is truthful, trust worthy, coherent and

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confidence inspiring, then it is sufficient for conviction of the accused as in the instant case, the statement of the complainant is corroborated by the statement of the eye witness, medical evidence and site plan. Reliance is placed in case titled "*Nasrullah Khan and 2 others..VS... The State*" (2011-SCMR 613).

24. So far as the motive is concerned, that is always in the mind of the accused/assailant, whatever was in the knowledge of the complainant, he disclosed at the time of report and has also reiterated it in his court statement. The injured PW also stated the same motive and in rebuttal there is nothing on record nor the defence produced any counter motive. It is settled law that in case there is no motive or no proof after alleging, it may not be fatal for the prosecution case, if direct evidence is trust worthy and confidence inspiring. In this respect, reliance can be placed in case titled as "*Niazmuiddin.VS.. The State*" (2010 SCMR 1752).

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25. For what has been discussed above, it is established beyond any shadow of doubt, that they were the

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accused/respondents and non-else, who had committed the crime. The learned trial court has fallen in error by mis-reading and non-reading of evidence and have given undue weight to the minor discrepancies occurring in the prosecution evidence, thus both the impugned judgments of the instant criminal appeal bearing No.27-B of 2012 (titled Gul Nazif Shah..VS....Muhammad Ghani Shah and others), as well as that of connected Criminal appeal No.53 -B of 2010 (titled Gul Nazif Shah..VS... Dilbar Shah) are set aside and the accused/respondents of both the appeals referred to herein above are convicted under section 302(b)/34 PPC and sentenced to imprisonment for life imprisonment each on three counts. They will also pay Rs.5,00,000/- each as compensation under section 544-A Cr.P.C to be paid to the legal heirs of deceased or in default, they shall undergo one year S.I. On conviction under section 324/34 PPC all the respondents are sentenced to ten years R.I each and fine of Rs.25,000/- each and in default, they shall undergo further S.I for six months. They are also convicted and sentenced U/Ss 337-F(ii)/34 PPC to one year RI each and to pay

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Rs.25,000/- each as Daman or in default, to undergo three months further S.I. All the sentences shall run concurrently. Benefit of Section 382-B Cr.P.C is extended to the respondents. Respondents are present in the court, taken into custody and sent to Jail alongwith warrants for undergoing their sentences.

Announced.  
Dt:26.02.2015

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JUDGE

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**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

20/19

**PRESENT:**

Mr. Justice Asif Saeed Khan Khosa, CJ  
Mr. Justice Sajjad Ali Shah  
Mr. Justice Syed Mansoor Ali Shah

**Criminal Appeals No. 297 and 298 of 2015**

(Against the judgment dated 26.02.2015 passed by the Peshawar High Court, Bannu Bench in Criminal Appeal No. 27-B of 2009)

Muhammad Ghani Shah, etc. (in Cr. A. 297 of 2015)  
Dilbar Shah (in Cr. A. 298 of 2015)  
...Appellants

versus

The State, etc. (in both cases)  
...Respondents

For the Appellants: Malik Waheed Anjum, ASC  
(in both cases)

For the complainant: Syed Zulfiqar Abbas Naqvi, ASC  
Syed Rifaqat Hussain Shah, AOR  
(in both cases)

For the State: Barrister Qasim Wadud, Additional  
Advocate-General, Khyber  
Pakhtunkhwa  
(in both cases)

Date of hearing: 19.02.2019

**JUDGMENT**

**Asif Saeed Khan Khosa, CJ.:** Muhammad Ghani Shah and Abdul Sarwar Shah appellants in Criminal Appeal No. 297 of 2015, Dilbar Shah appellant in Criminal Appeal No. 298 of 2015 and another had allegedly murdered three persons namely Gul Jannat Shah, Mir Salam Shah and Shah Faisal and had injured another namely Mir Nazif Shah in an incident taking place at 06.30 A.M.

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Criminal Appeals No. 297 and 298 of 2015

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on 03.11.2005 in village Khana Khel Anwar Shah in the area of Police Station Saddar, District Bannu in the backdrop of a motive according to which about 20 to 25 days ago a quarrel had taken place between the parties. With these allegations the appellants and their co-accused were booked in case FIR No. 382 registered at the above mentioned Police Station during the same morning and after a regular trial the appellants were acquitted of the charge by the trial court. An appeal was filed against acquittal of the present appellants by the trial court and upon acceptance of that appeal the High Court had convicted the appellants on three counts of the charge under section 302(b), PPC read with section 34, PPC and had sentenced the appellants to imprisonment for life each on each count and to pay compensation. The appellants were also convicted and sentenced by the High Court for an offence under section 324, PPC read with section 34, PPC and also for an offence under section 337-F(iii), PPC read with section 34, PPC. Hence, the present direct appeals before this Court.

2. We have heard the learned counsel for the parties and have gone through the record of the case with their assistance.

3. In the case in hand three persons had been done to death and another had been injured in the morning of the day of Eid-ul-Fitr. The occurrence had taken place at daybreak, an FIR had been lodged in respect of the said incident within twenty minutes and post-mortem examinations of the deadbodies had also been conducted within a few hours of the incident in issue. The parties to this case were well known to each other and, thus, there was hardly any issue regarding mistaken identity. The place of occurrence was a thickly populated area and in the incident firearms had been used killing three persons and injuring another and, thus, it was inconceivable that the incident had remained unwitnessed or the culprits had remained unknown. The eyewitnesses produced by the prosecution, i.e. Gul Nazif Shah complainant (PW11) and Mir Nazif Shah (PW12) were residents of the same area and the latter was an injured eyewitness who had

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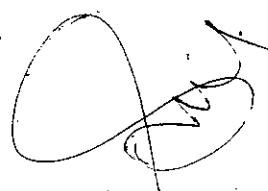
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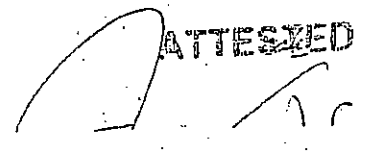
Criminal Appeals No. 297 and 298 of 2015

the stamp of firearm injuries on his body vouchsafing his presence at the scene of the crime at the relevant time. It may be true that the trial court had acquitted the present appellants but the reasons recorded by the trial court for recording their acquittal were sketchy and the same did not commend themselves for approval. It is also true that the motive set up by the prosecution was trivial and the same had remained far from being established and also that no weapon had been recovered from the custody of the appellants during the investigation. The analysis and assessment of the evidence undertaken by the High Court has been found by us to be in order warranting no interference in the same because upon our own independent evaluation of the evidence we have reached the same conclusion, i.e. that the prosecution had succeeded in establishing its case against the appellants beyond reasonable doubt. On account of lack of proof of motive and in the absence of recovery of the weapons of offence we have found the High Court to be quite justified in withholding the sentences of death from the appellants on the different counts of the charge pertaining to murder. We have, however, found that the High Court was not justified in ordering the appellants to pay compensation to the tune of Rs. 5,00,000/- each on each count of the offence of murder and in ordering that in default of payment of compensation the appellants would undergo simple imprisonment for one year each on each count.

4. For what has been discussed above these appeals are dismissed and all the convictions and sentences of the appellants recorded by the High Court are upheld and maintained except the order passed by the High Court regarding payment of compensation by the High Court on three counts of the charge pertaining to murder. It is ordered that the appellants shall pay a sum of Rs. 1,00,000/- (Rupees one hundred thousand only) each on each count of the charge of murder to the heirs of each deceased and in default of payment thereof they shall undergo simple imprisonment for six months each on each of the relevant count pertaining to murder. All the sentences of imprisonment



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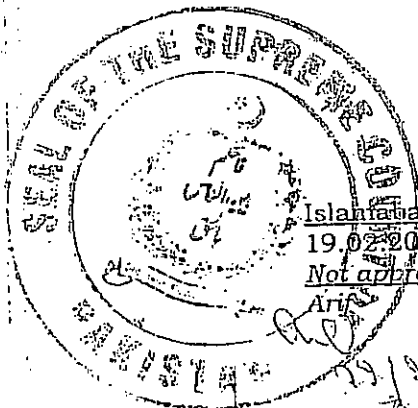
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Criminal Appeals No. 297 and 298 of 2015

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passed against the appellants shall run concurrently to each other and the benefit under section 382-B, Cr.P.C. shall be extended to them. These appeals are disposed of in these terms.



Islamabad  
19.02.2019  
Not approved for reporting.

Sd/-HCJ  
Sd/-J  
Sd/-J  
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Court Associate  
Supreme Court of Pakistan  
Islamabad

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Date of Presentation	19.02.19	
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No of Pages	500	
Registration Fee	7.00	
Copy Fee	12.00	
Court Fee	9/3/15	
Date of Completion	19.02.19	
Date of delivery of copy	19.02.19	
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Received by:		

*[Signature]*



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

Dated Peshawar, the 15-03-2024

**NOTIFICATION**

**NO.SO(Lit-II)/E&SED/1-5/2021.** The undersigned is pleased to authorize Additional Secretary (General) Elementary & Secondary Education Department to sign parawise comments, replies, implementation reports, objection petitions, civil miscellaneous applications etc on my behalf for submission before various courts of law/tribunals in the best public interest.

**SECRETARY**

Elementary & Secondary Education  
Department, Khyber Pakhtunkhwa

Endst: No. 2519-B

Dated 15-3-2024

Copy forwarded to the:-

1. Chief Secretary Khyber Pakhtunkhwa.
2. Advocate General Khyber Pakhtunkhwa.
3. Secretary Law Department.
4. Registrar Peshawar High Court Peshawar.
5. Registrar Service Tribunal Peshawar.
6. All Section Officers (Litigation) E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Additional Secretary (General) E&SE Department.
9. PAs to Deputy Secretary (Legal-I&II) E&SE Department.

(SAJID ULLAH)

SECTION OFFICER (Lit-II)