

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO. 605/2024

Hafeez-ur-Rehman Ex-FC/Driver, District Police Haripur r/o village Kalas, P.O KTS,
Tehsil & District Haripur

..... (Appellant)

VERSUS

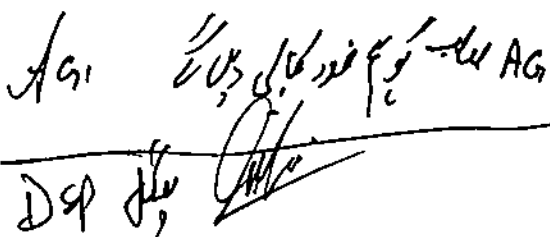
District Police Officer, Haripur and others.

..... (Respondents)

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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO. 605/2024

Hafeez-ur-Rehman Ex-FC/Driver, District Police Haripur r/o village Kalas, P.O KTS,
Tehsil & District Haripur

..... (Appellant)

VERSUS

District Police Officer, Haripur and others.

..... (Respondents)

Subject: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1,2&3.

Respectfully Sheweth.

The respondents submit as under:-

PRELIMINARY OBJECTIONS:-

1. That the instant Service Appeal is not maintainable in the present form.
2. That the appellant is estopped by his own conduct to file instant appeal.
3. That the appellant has not come to the Honorable Tribunal with clean hands.
4. That the appellant has suppressed material facts from the Honorable Tribunal.
5. That the instant Service Appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
6. That the instant Service Appeal is badly barred by law and limitation.
7. That the appellant has filed the instant service appeal just to pressurize the respondents.
8. That the orders passed by the authorities are based on facts & rules, after fulfilling all codal formalities, hence, the appeal is liable to be dismissed without any further proceedings.

OBJECTIONS ON FACTS:-

1. Incorrect, plea taken by the appellant is ill-based as the appellant Ex-Constable Hafeez-ur-Rehman No.695 while posted at Police Station Sarai Saleh District Haripur, was directly charged in case FIR No.487 u/s 302/324/148/149 PPC Police Station KTS. (*Copy of FIR is attached as annexure "A"*). The appellant was attributed specific role in commission of offence by the complainant. The appellant was proceeded against departmentally on charges of misconduct by the then District Police Officer, Haripur. He was issued show cause notice vide memo: No.169 dated: 28.10.2014, to which the appellant could not give satisfactory reply. (*Copy of show cause notice is attached as annexure "B"*). Therefore, the appellant was issued charge sheet and statement of allegations vide office Endst: No.14-15/PA dated 05.01.2015, by the then District Police Officer, Haripur. (*Copy of charge sheet and statement of allegations is attached as annexure "C"*).
2. Correct to the extent that after conclusion of trial the appellant along with other accused were held guilty of offence. Hence, the court of learned ASJ-V Haripur vide judgment dated: 17.09.2018, awarded the appellant rigorous imprisonment

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 17112

Dated 23-10-24

(2)

for 07 years u/s 324/148/149 PPC and rigorous imprisonment for 01 year with Rs.100,000/- as Arsh u/s 337-A (ii) PPC. (Copy of judgment dated: 17.09.2018 is attached as annexure "D"). Consequently, the appellant was served final show cause notice vide office Endst: No.288-291 dated: 28.09.2018. (Copy of final show cause notice is attached as annexure "E"). The appellant could not give satisfactory reply of the same. The appellant was awarded punishments by the court of law. Therefore, the charges of misconduct regarding the involvement of appellant in the offence stood prove. Hence, the appellant was dismissed from service vide OB.No.721 dated: 30.10.2019 by the then District Police Officer, Haripur. (Copy of order is attached as annexure "F").

3. Correct to the extent that the appellant preferred departmental appeal against the punishment order to the Regional Police Officer, Hazara Region, Abbottabad, who called the appellant in the Orderly Room and heard him in person. However, the appellant bitterly failed to produce even a single iota of evidence in his defense. Therefore, the Regional Police Officer, Hazara Region, Abbottabad filed/rejected departmental appeal of appellant on lawful grounds, vide office order No. 25985/PA dated 12.10.2020. (Copy of order is attached as annexure "G").
4. Plea taken by the appellant is totally bereft of any substance. As departmental proceedings & criminal proceedings are two different entities which can run parallel and the fate of criminal proceedings will have no binding effects on departmental proceedings. Furthermore, court proceedings and departmental proceedings are two different entities and can run side by side. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings. His act brought a bad name for the entire force. Similarly, the august Supreme Court of Pakistan in its judgment reported Dr. Sohail Hassan Khan & others Versus Director General (Research). Livestock and Dairy Development department, Punjab, Lahore & others (2020 SCMR 1708), held that a civil servant cannot escape from departmental proceedings or consequences, therefore, on account of the acquittal/exoneration in a criminal charge rising out of the same impugned transaction; these two are entirely different jurisdiction with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, states failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. In the case of District Police Officer, Mianwali and 02 others versus Amir Abdul Majid 2021 SCMR 420 the august Apex Court again held that a civil servant facing expulsive proceeding on departmental on departmental side on account of his indictment in criminal charge may not save his job in the event of acquittal as the department still may have reasons/ material, conscionably consider his stay in the service as inexpedient; there are additionally reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporal consequences, cooperatively, requires a higher standard of proof so as to derive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopwholes are absence of evidence sufficient enough to sustain the charge, at times occasions in failures essentially to maintain said administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of civil servant, confronted with the charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal

undoubtedly misdirected itself in reinstating the respondent, considering his acquittal as the criterion in isolation to the totality of circumstances where under he had succeeded to vindicate position.

5. Correct to the extent that the appellant filed Revision Petition before the Revisionary Authority. The same was paid due consideration and the appellant was provided opportunity of self-defense by summoning him in Orderly Room but he failed to advance any cogent justification in his defense. Therefore, his Revision Petition was filed/rejected being devoid of any legal footing. *(Copy of order is attached as annexure "H")*.
6. Incorrect, the appellant committed offence of heinous nature and thereby rendered himself not a police officer rather a criminal. He deviated from his primary duties i.e. protection of lives and liberties of citizens, rather he committed the offence which earned bad name for police department.
7. Plea taken by the appellant is not plausible rather a whimsical and fanciful one because the outcome of criminal proceedings will have no bearing effects on departmental proceedings.
8. Stance taken by the appellant is not plausible is not discussed earlier he was called in Orderly Room for personal hearing but during the course of same, the appellant bitterly failed to advance even a single iota of evidence to justify his innocence. Hence, after paying due consideration, Revision Petition of the appellant was filled/rejected by devoid any legal footing.
9. Plea taken by the appellant is not plausible rather ill-based because length of service and performance of duties with devotion & honestly does mean a clean chit for future wrong deeds.
10. Incorrect, the appellant was served with charge sheet with statement of allegations and show cause notices but he failed to defend himself. Having fulfilled all legal requirements the appellant was awarded major punishment of dismissal from service. The instant service appeal is not maintainable under the law/rules.

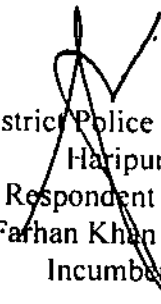
GROUND:-


- A) Incorrect, the orders of respondents dated 30.10.2019, 12.10.2020 & 22.03.2024 are quite legal, based on facts and justice, hence, the orders of departmental authorities are lawful, in accordance with principles of natural justice, facts and evidence. Therefore, the orders of punishment are lawful and maintainable.
- B) Incorrect, the appellant was given right of personal hearing and self-defense. Having fulfilled all legal requirements, the appellant was awarded major punishment of "Dismissal from Service" by the then District Police Officer Haripur.
- C) Incorrect, the appellant was dealt in accordance with law/rules. He committed misconduct, and charges were thoroughly probed in the departmental enquiry, hence, the order of punishment is quite legal and maintainable under the law/rules.
- D) Incorrect, the appellate authority did abide by the law and rules, hence, filed/rejected departmental appeal of appellant on lawful grounds and evidence. The instant service appeal is not maintainable under the law/rules. So, the order of punishment is lawful and maintainable.

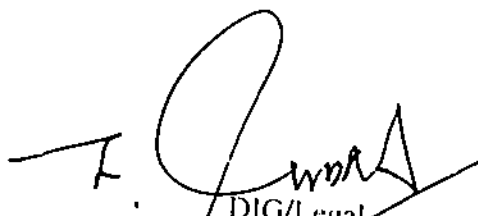
- E) Incorrect, the appellant committed gross misconduct. The allegations were thoroughly probed and appellant was found guilty of misconduct. Hence, the appellant is not entitled for the relief claimed by him.
- F) Incorrect. Stance taken by the appellant is totally bereft of any substance because the fate of criminal proceedings will have no bearing effects on the departmental proceedings.
- G) Incorrect, the service appeal is badly barred by law and limitation and not maintainable under the law/rules and the instant service appeal is liable to be dismissed.

PRAYER:-

In view of above stated facts it is most humbly prayed that the instant service appeal does not hold any legal force, may kindly be dismissed alongwith prayers with costs, please.


 District Police Officer,
 Haripur
 Respondent No.1
 Farhan Khan (PSP)
 Incumbent


 Regional Police Officer,
 Hazara Region,
 Respondent No.2
 Tahir Ayub Khan (PSP),
 Incumbent


 DIG/Legal
 For Inspector General of Police,
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No. 3)
 (DR. MUHAMMAD AKHTAR ABBAS) PSP
 Incumbent

5

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR CAMP COURT ABBOTTABAD

SERVICE APPEAL NO. 605/2024

Hafeez-ur-Rehman Ex-FC/Driver, District Police Haripur r/o village Kalas, P.O KTS, Tehsil &
District Haripur

..... (Appellant)

VERSUS

District Police Officer, Haripur and others.

..... (Respondents)

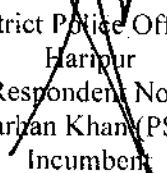
REPLY TO APPLICATION FOR CONDONATION OF DELAY IN SERVICE APPEAL
BY RESPONDENTS.


Respectfully Sheweth:-

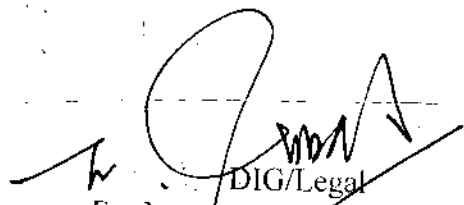
The reply to application for condonation of delay of service appeal on behalf of respondents No. 1,2 &3, is submitted as under:-

1. In reply to this para, it is submitted that the instant service appeal is badly time barred and not maintainable under the law, as the appellant lodged this service appeal beyond the period of limitation prescribed under the law.
2. Incorrect, the orders dated 30.10.2019, 12.10.2020 & 22.03.2024 of the departmental authorities are lawful, in accordance with the principle of natural justice, rules, regulations and policy, hence, these are quite legal and maintainable. The appellant/applicant has no locus-standi to file the instant service appeal.
3. Incorrect, the appellant was informed and in knowledge of orders passed by the departmental authority on his representation/departmental appeal. Therefore, the appellant/ applicant waived his right of appeal within statutory period of limitation.
4. Incorrect, the instant service appeal is badly time barred and not maintainable, which is liable to be dismissed.

In view of above, it is most humbly prayed that the instant service appeal as well as application for condonation of delay does not hold any legal force, which may kindly be dismissed with cost, please.


District Police Officer,
Haripur
Respondent No.1
Farhan Khan (PSP)
Incumbent


Regional Police Officer,
Hazara Region,
Respondent No.2
Tahir Ayub Khan (PSP),
Incumbent


DIG/Legal
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)
(DR. MUHAMMAD AKHTAR ABBAS) PSP
Incumbent

⑥

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT ABBOTTABAD

SERVICE APPEAL NO. 605/2024

Hafeez-ur-Rehman Ex-FC/Driver, District Police Haripur r/o village Kalas, P.O KTS,
Tehsil & District Haripur

..... (Appellant)

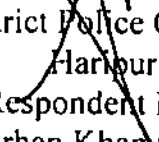
VERSUS


District Police Officer, Haripur and others.

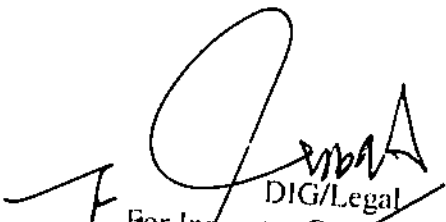
..... (Respondents)

AUTHORITY LETTER

We, the undersigned do hereby authorize Mr. Muhammad Gulzar, DSP Legal, Haripur, to submit reply in the above cited Service Appeal on behalf of answering respondents and legally do whatever is needed in the court regarding the above titled Service Appeal.


District Police Officer,
Haripur
Respondent No.1
Farhan Khan (PSP)
Incumbent


Regional Police Officer,
Hazara Region,
Respondent No.2
Tahir Ayub Khan (PSP)
Incumbent


DIG/Legal
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)
(DR. MUHAMMAD AKHTAR ABBAS) PSP
Incumbent

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO. 605/2024

Hafeez-ur-Rehman Ex-FC/Driver, District Police Haripur r/o village Kalas, P.O KTS,
Tehsil & District Haripur

..... (Appellant)

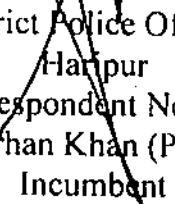
VERSUS

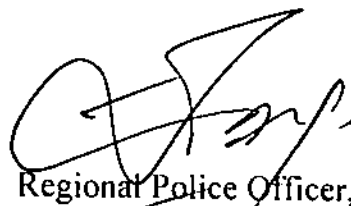
District Police Officer, Haripur and others.

..... (Respondents)

COUNTER AFFIDAVIT

We, the undersigned do hereby solemnly affirm and declare, that the contents of comments/reply, are true to the best of our knowledge & belief and nothing has been concealed from this Honorable Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been place ex-parte nor their defense has been struck off/ costs.


District Police Officer,
Haripur
Respondent No.1
Farhan Khan (PSP)
Incumbent


Regional Police Officer,
Hazara Region,
Respondent No.2
Tahir Ayub Khan (PSP),
Incumbent

DSF/LC

Attestation

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1	18/12/2019	18/12/2019	18/12/2019
2	19/12/2019	19/12/2019	19/12/2019
3	20/12/2019	20/12/2019	20/12/2019
4	21/12/2019	21/12/2019	21/12/2019
5	22/12/2019	22/12/2019	22/12/2019
6	23/12/2019	23/12/2019	23/12/2019
7	24/12/2019	24/12/2019	24/12/2019
8	25/12/2019	25/12/2019	25/12/2019
9	26/12/2019	26/12/2019	26/12/2019
10	27/12/2019	27/12/2019	27/12/2019
11	28/12/2019	28/12/2019	28/12/2019
12	29/12/2019	29/12/2019	29/12/2019
13	30/12/2019	30/12/2019	30/12/2019
14	31/12/2019	31/12/2019	31/12/2019

Handwritten signature or name.

Handwritten text in Urdu, likely a certificate or affidavit. The text is dense and covers the bottom half of the page. It appears to be a formal statement or declaration.



(10)

Annex B
DISTRICT POLICE OFFICER,
HARIPUR

No: 169 Dated 28/10/2014

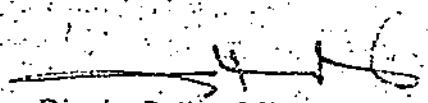
Ph. # 0995-61471 / 0995-611291
Fnx # 0995-614714
E-Mail: spharipur@gmail.com

SHOW CAUSE NOTICE

1. That you FC/Driver Hafeez No: 695 while posted at PS Sarai Saleh have rendered yourself liable to be proceeded under Rules 5 (3) of the Khyber Pakhtunkhwa, Police Rules 1975 for following misconduct;

"On 07.10.2014 FIR has been registered by one Ziafat Hussain s/o Said Rasool r/o Kalas, Haripur vides No: 487 u/s 302/324/148/149 PPC PS KTS, in which you are allegedly involved in this case, this amounts to misconduct in terms of Police Rules 1975"

2. That by reason of above, sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general Police proceedings without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force.
4. That your retention in the Police force will amount to encourage inefficient and unbecoming of good Police Officers;
5. 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.
6. You, therefore called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa, Police Rules, 1975 for the misconduct referred to above.
7. You should 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.
8. You are further directed to inform for the undersigned that wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.


District Police Officer,
Haripur

Received by _____

Dated: / /2014

Attest

DSPA/L

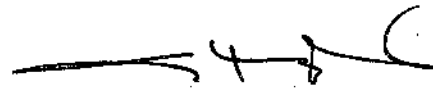
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Area 'C'

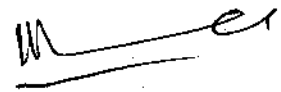
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CHARGE SHEET

- (1) I, Muhammad Khurram Rashid (PSP), District Police Officer, Haripur as competent authority, hereby charge you FC /Driver Hafeez No: 695 as enclosed statement of allegations.
- (2) You appear to be guilty of misconduct under Police Efficiency & Discipline Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the said Rules.
- (3) You are, therefore, required to submit your written defense within 07 days of the receipt of this charge sheet and statement of allegation to the Committee/Enquiry Officer as the case may be.
- (4) Your written defense, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.
- (5) Intimate whether you desire to be heard in person or otherwise.
- (6) A statement of allegations is enclosed.



(Muhammad Khurram Rashid) PSP
District Police Officer
Haripur

Attested

DSP/L

(12)

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DISCIPLINARY ACTION

I, **Muhammad Khurram Rashid (PSP)**, District Police Officer, Haripur as competent authority of the opinion that you **FC /Driver Hafeez No: 695** have rendered yourself liable to be proceeded against as you committed the following acts/omissions within the meaning of Police Efficiency & Discipline Rules 1975.

STATEMENT OF ALLEGATION

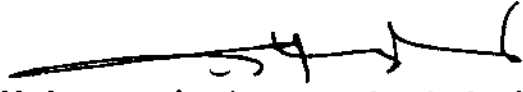
"On 07.10.2014 FIR has been registered by one Ziafat Hussain s/o Said Rasool r/o Kalas, Haripur vides No: 487 u/s 302/324/148/149 PPC PS KTS, in which you are allegedly involved in this case, this amounts to misconduct in terms of Police Rules 1975"

(2) For the purpose of scrutinizing the conduct of the said accused officer with reference to the above allegations, an Enquiry Committee consisting of the following is constituted.

DSP Inv. 1252

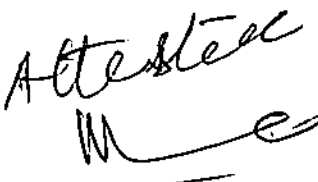
(3) The Enquiry Officer/Committee shall in accordance with the provision of this Ordinance, provide reasonable opportunity of hearing to the accused, record finding and make within 25 days of the receipt of this order, recommendation as to punishment or the appropriate action against the accused.

(4) The accused and a well conversant representative of departmental shall in the proceedings on the date, time and place fixed by the Enquiry Officer/Committee.


(Muhammad Khurram Rashid) PSP
District Police Officer
Haripur

No: 14 — 16 /PA, dated Haripur the 05 /01/2015.
Copy of above is submitted to the: -

- 1) Regional Police Officer, Hazara Region, Abbottabad please.
- 2) Enquiry Officer for initiating proceedings against the said accused under Police Efficiency & Discipline Rules 1975.
- 3) **FC /Driver Hafeez No: 695** with the direction to submit his defense within 7 days of the receipt of this statement of allegations and also to appear before the Enquiry Officer on the date, time and place fixed for the purpose of departmental proceedings.


DSP/L

District Police Officer
Haripur

IN THE COURT OF IFTIKHAR ELAHI, ADDITIONAL
SESSIONS JUDGE-V, HARIPUR

CASE No. 246/7 of 2014

Date of original institution 20-12-2014
Date of decision 17-09-2018

The State.....Versus.....1. Babu Muhammad Younis son
of Gul Zaman, 2. Hafeez Ur
Rehman s/o Fazal Ur Rehman, 3.
Ghayas Qurashi s/o Muhammad
Ilyas, 4. Fazal Rehman s/o Gul
Zaman, all residents of village
Kales, Tehsil & District Haripur
(ACCUSED FACING TRIAL)

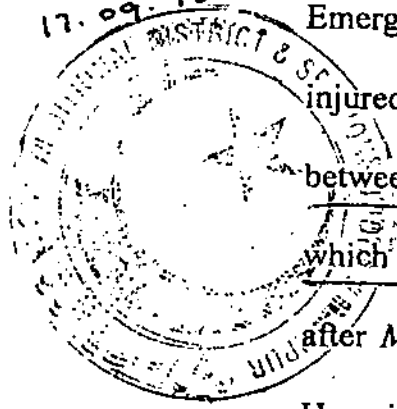


Charged under Section 302/324/148/149 PPC
Vide Case F I R No.487, Dated 07-10-2014
Registered at PS ZTS, District Haripur

JUDGEMENT:
17-09-2018

Iftikhar Elahi
Additional District
& Sessions Judge-V,
Haripur

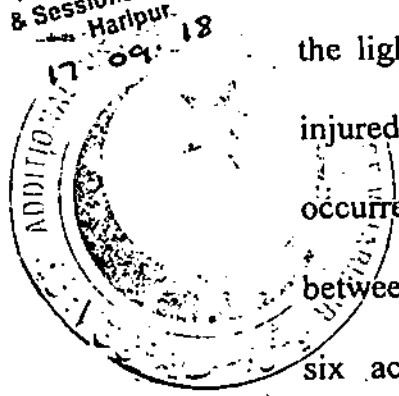
17.09.18



1. Brief facts of the case are that the complainant Ziafat
Hussain on 07.10.2014 at 09:30 PM night time made a report at
Emergency Reporting Centre of DHQ Hospital, Haripur alongwith
injured Intiaz ul Haq that today at day time, a quarrel took place
between his close relative Mubashir Nawaz and Yasir Maqbool, in
which Mubashir Nawaz became injured. That on the same day,
after Maghrab time, he along with his deceased brother Razaqat
Hussain and his first cousin Abdul Wahid went to the house of
Mubashir Nawaz in order to see him. That when after visiting

Mubashir Nawaz, they came out from his house, Imtiaz ul Haq, Sheikh Adeel and Malik Anayat also accompanied them in order to see-off. At about 08:15 pm, when they reached near Grocery Shop of Yasir Maqbool, they noticed accused Babu Muhammad Younis, Fazal Rehman, Yasir Maqbool, Ghayas, Ghazali and Hafeez Rehman duly armed with firearms standing there in the shop. Accused started firing on them. With the firing of Babu Muhammad Younis, his brother Rifaqat Hussain received injuries and died on the spot. Due to firing of other accused named above, his companions Imtiaz ul Haq, Abdul Wahid, Sheikh Adeel and Malik Anayat were hit and sustained injuries, while luckily, he remained unhurt. That the accused named above fled away from the spot after commission of offence. The occurrence was witnessed by Faisal and Abdul Shakoor besides the complainant in the light of electricity. That he with the help of other took the injured and deceased to the hospital. The motive behind the occurrence was that a quarrel has taken place on the same day between Yasir Maqbool and Mubashir Nawaz. He charged all the six accused for *Qatal-e-Amad* of Rifaqat Hussain and for attempting at the lives of others by firing. He made report to the police in shape of *Murasila* Ex. PA/1, which was sent to PS KTS, on the basis of which, FIR No. 487 dated 07.10.2014 was registered/lodged.

ایف/ای
Iftikhar Elahi
 Additional District
 & Sessions Judge-V,
 Haripur.



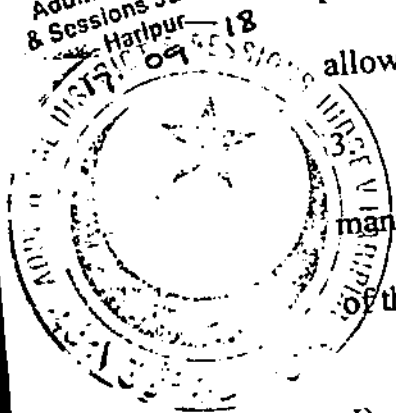
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2. After completion of investigation, complete charges were submitted against the accused. The accused were summoned and after observing legal formalities, copies were supplied to them under Section 265-C Cr.PC. On 25-02-2015, accused Babu Muhammad Younis, Hafeez ur Rehman and Ghayas Qurashi were charged sheeted to which they pleaded not guilty and claimed trial and prosecution was permitted to produce evidence. It is important to note here that during pendency of trial, accused Fazal Rehman was arrested and after submission of supplementary challan against him, he was handed over copies and charge against him was framed on 01.07.2015, to which he pleaded not guilty and claimed trial. After recording statement of SW-1 Shiraz FC/353 on 21.09.2015, accused Yasir Maqbool and Ghazali were proceeded against u/s 512 Cr.PC. Resultantly, the prosecution was allowed to produce its evidence.

In order to prove the case, prosecution has produced as many as nineteen (19) witnesses and the following is the gist of their statements:-

- 1) PW-1 Riasat Khan s/o Mehmood Khan, retired SI stated that on 07.10.2014 at 2130 hours, he had recorded the report of complainant Ziafat Hussain s/o Said Rasool aged about 42 years r/o village Kalas at Emergency Reporting Room Hospital Haripur in shape of *Murasila* Ex.PA/1. After recording the report, the same was read over to the complainant, who admitting it correct

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signed the same. The report of complainant was also endorsed by Imtiaz ul Haq s/o Ghulam Mustafa by signing the same as Rider. That he sent the *Murasila* to the Police Station for registration of F.I.R through Constable Jahangir No.316. On the same day, he had prepared the injury sheet of injured Abdul Wahid s/o Ghulam Rasool as Ex.PW1/1, injury sheet of Malik Anayatullah injured as Ex.PW1/2. Likewise, he prepared the injury sheet of injured Imtiaz ul Haq as Ex.PW1/3 and of injured Sheikh Adeel s/o Ghulam Asfia Ex.PW 1/4. PW-1 also prepared the injury sheet and inquest report of deceased Razaqat Hussain s/o Said Rasool as Ex.PW1/5 and Ex.PW1/6, respectively. All the injured mentioned above and the dead body of deceased Razaqat Hussain were produced before the Medical Officer for their medical examination and postmortem examination of the deceased Razaqat Hussain. After postmortem (PM) examination, he through receipt Ex.PW1/7 handed over the dead body of deceased Razaqat Hussain to his brother Ziafat Hussain. He received the PM examination report from the Medical Officer on 07.10.2014, besides he also received the bloodstained clothes of deceased Razaqat Hussain from the Medical Officer and handed over the same to the I.O, who took the clothes into his possession through recovery memo in presence of the witnesses.

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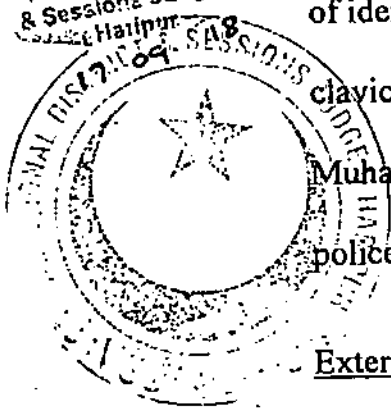
II) Zubair Khan, *Madad Moharrir*, appeared as PW-2 and stated that he handed over various parcels mentioned in receipt

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No. 161/21 and 162/21 on 15.10.2014 & 16.10.2014 to Shiraz FC/502 for onwards transmission to the FSL, Peshawar. That he had brought the original receipts No.161/21 & 162/21, copies of which are Ex.PW 2/1 & Ex.PW 2/2 respectively. That after depositing the parcels mentioned in both the receipts, FS Shiraz returned the receipts, which he placed on registered No.21 of the police station.

III) Dr. Tahir Aziz Chughtai, MO appeared as PW-3 and stated that on 07.10.2014 at 10:20 pm vide yearly No.56/2014, he conducted PM autopsy on deceased Rafaqat Hussain s/o Said Rasool Caste Sheikh Rajpoot r/o Kales, aged about 35 years, mark of identification black mole on left side of chest, 2 inches below to clavicle. Body identified by Ziafat Hussain s/o Said Rasool and Muhammad Nawaz s/o Abdul Ghafoor. Information furnished by police firearm injury.

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External appearance:

Condition of the subject:

Stout male, wearing blue *Qamees* and brown trouser with corresponding holes, signed, stamped and handed over to police.

Wound, bruises, position, size and nature

- i. Firearm injury 1 X 1 cm at right side of base of neck, 1 inch above to clavicle

- ii. Firearm injury 1/2 X 1/2 cm 1 inch below to lateral to right nipple
- iii. Firearm injury 1/2 X 1/2 cm at mid of epigastria.
- iv. Firearm injury 2 inches X 2 inches on right lateral chest at 8th rib with liver part exposed and out.
- v. Firearm injury 1/2 X 1/2 cm on left thigh, 7 inches below to iliac crest
- vi. Firearm injury 1 X 1 cm on left groin and 1 inch X 1 inch on left testes
- vii. Firearm injury 1 inch X 1 inch on right side of back 2 inches medial to scapula
- viii. Firearm injury 1 X 1 cm on left side to T-12 (adjacent)
- ix. Wound measuring 1 X 1 cm on left foot on dorsal area

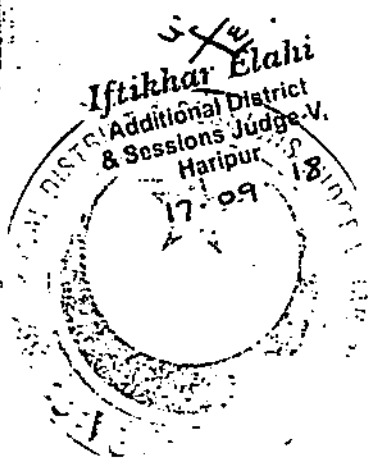
Abdomen:

Opened. Walls, peritoneum, diaphragm, stomach and its contents, small and large intestine, liver right sided, organs of generation external and internal (*left testes*) all injured. Other organs intact and healthy.

Thorax:

Opened. Walls, ribs, cartilages, pleurae, right lung, left lung and blood vessels all injured. Remaining organs intact and healthy.

Opinion:



Direct firearm injury to vital organs i.e. lung, liver, led to profuse bleeding, led to hypo volumic shock (*hemorrhagic shock*) led to cardiopulmonary arrest and death.

Time elapsed between injury and death:

05 to 10 minutes

Time elapsed between death and PM:

30 minutes to 1 hour

Injury sheet, inquest report, six pages of postmortem report and clothing signed, stamped and handed over to police. The postmortem report is Ex.PW 3/1. This witness also endorsed his signature and seal on inquest report and injury sheet, which are Ex.PW3/2 and Ex.PW3/3, respectively.

Similarly, on 07.10.2014 at 09:20 pm, vide MLC No.2267/2014, he medically examined Sheikh Adeel s/o Ghulam Asfiya aged 25 years r/o Kales, Police Station KTS, S.I Riasat Khan and mark of identification nil. On examination, he found the following:

Patient conscious/oriented, blood pressure 110/70, pulse 88 permanent.

- i. Firearm wound measuring ½ X ½ cm on left forearm 3 ½ inches below to left elbow on dorso ventral area
- ii. Firearm wound measuring ½ X ½ cm on left forearm 4 inches above to wrest joint on dorsal area



iii. Firearm injury measuring 1/2 X 1/2 cm on left side of abdomen 3 1/2 inches inferior latterly (*below and left lateral side*)

Patient seen by 'Surgeon Sarfaraz and referred to Ayub Teaching Hospital Abbottabad for treatment.

Nature of injury:

Firearm injury

Duration fresh, weapon used firearm

The report is Ex.PW 3/4.

Similarly, on the same day and time vide MLC No.2268/2014, he medically examined Sheikh Imtiaz ul Haq s/o Ghulam Mustafa aged 24 years r/o Kales, mark of identification nil, brought by S.I Riasat Khan DHQ Hospital, Haripur. On examination, he found the following.

Patient conscious and oriented

Firearm injury measuring 1/2 X 1/2 cm on left thigh 4 inches below and medial to left groin. Advised X-ray left thigh AP and lateral view.

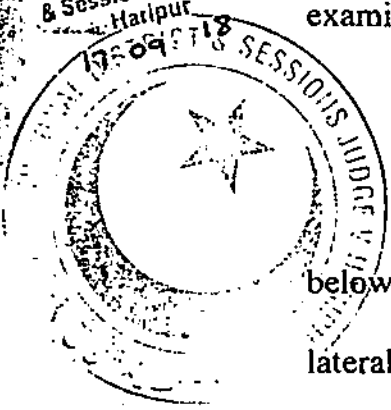
Patient admitted in male surgical ward for treatment

Nature of injury

Firearm injury

Duration Fresh, weapon used firearm

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His report is Ex.PW 3/5. X-ray report of injured Imtiaz ul Haq vide serial No.461/2014 shows foreign body present with no fracture seen. The X-ray report is Ex.PW 3/6.

Similarly, on 07.10.2014 at 09:15 pm vide MLC No.2269/2014, he medically examined Malik Anayat Ullah s/o Malik Abdul Rasheed aged about 50 years r/o Kales Police Station KTS was brought by Riasat Khan S.I. Mark of identification nil. On examination, he found the following.

Patient conscious/oriented

- i. Firearm wound measuring 1 inch X 1/2 inch on left side of face at left nasal ala.
- ii. Injury No.2 firearm wound with fresh bleeding, measuring 1/2 inches in the mouth and pallet.
- iii. Left upper incisor damaged

Patient admitted in E N T ward for treatment and opinion

Nature of injury:

Firearm injury, duration fresh, weapon used firearm

This witness endorsed his report Ex.PW 3/7 as correct. X-ray report Ex.PW 3/8 of injured Malik Anayat Ullah vide serial No.460/2014 shows fracture of skull.

Similarly, on the same day at 09:25 pm vide MLC No.2270/2014, he medically examined Abdul Wahid s/o Ghulam Rasool aged about 55 years r/o Kales. Mark of identification: Nil.

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He was brought by S.I Riasat Khan. On examination, he found the following.

Patient conscious/oriented

- i. Firearm injury 2 1/2 inches on chin (*below with bone exposed*)

Patient admitted in male surgical ward and advised X-ray skull AP and lateral view.

Nature of injury:

Firearm injury, duration fresh, weapon used firearm.

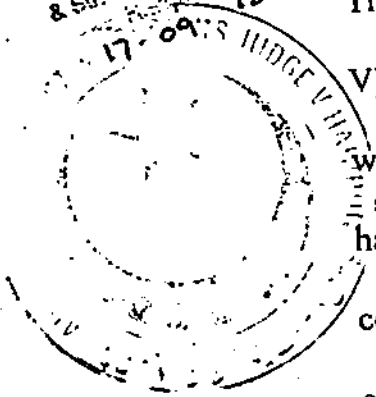
This witness endorsed his report Ex.PW 3/9 as correct.

IV) PW-4 Abdul Qadeer IHC stated that on receipt of *Murasila*, he chalked out the FIR according to the contents of the *Murasila*. The FIR is Ex.PW 4/1.

V) PW-5 Shiraz Khan FC/502 stated that in his presence as well as in the presence of Muhammad Niaz IHC, Riasat Khan S.I had produced bloodstained clothes of deceased Rifaqat Hussain consisting upon shirt Ex.P-1, and pajama "trouser" Ex.P-2 having corresponding cut marks of bullet handed him over by the medical officer. The I.O packed and sealed the same into parcel and prepared recovery memo Ex.PW 5/1, which correctly bears his signature beside the signature of other marginal witness Niaz IHC.

Similarly, he was entrusted with the warrant of arrest u/s 204 Cr.PC against accused Yasir Maqbool, Fazal ur Rehman, and

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Ghazali for execution. He made search of all the three accused but could not find them in their native village and surrounding area. He obtained the statement of co-village Sajjad Hussain s/o Muzaffar and after his report on the reverse, returned the three warrants mentioned above as unexecuted. The warrants are Ex.PW 5/2 to Ex.PW 5/4, respectively whereas his reports on the reverse of these warrants are Ex.PW 5/5 to Ex.PW 5/7 respectively. That he was again entrusted with proclamation notices issued u/s 87 Cr.PC against accused Ghazali, Fazal ur Rehman and Yasir Maqbool, which are Ex.PW 5/8 to Ex.PW 5/10, respectively. He had visited the native village of the accused and affixed one copy of proclamation notice on the gates of the houses of all the three accused, whereas one copy was affixed on the notice board of the Court of Judicial Magistrate and returned one copy each along with report on the reverse of proclamation notices, which are Ex.PW5/11 to Ex.PW5/13, respectively. PW-5 also obtained the signature of co-villager Sabir Zaman s/o Muhammad Seddique on all the three notices whereas in respect of notices affixed on the notice board of the Court, he obtained the signature of Ahsan No. 117 Naib Court of JM-I, Haripur. Both these persons verified the proceedings by putting their signatures on the reverse of notices.

That on 15.10.2014 vide road certificate/receipt 161/21 already exhibited as Ex.PW 2/2, various parcels mentioned in it

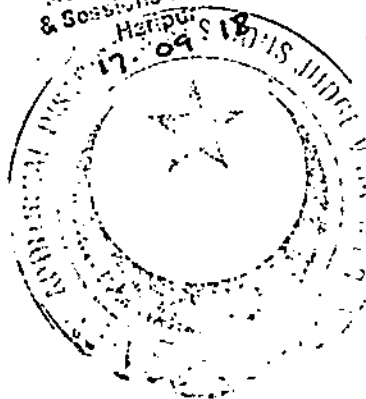
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were handed over to PW-5 for onward transmission to the Chemical Examiner, FSL Peshawar. After depositing the same in the laboratory, he returned the road certificate 161/21 to the *Moharrir* of the Police Station. The witness further stated that through receipt No.162/21 on 16.10.2014, various parcels mentioned therein were also handed over to him for onward transmission to Firearms Expert, FSL Peshawar through receipt already exhibited as Ex.PW. 2/1. He returned the receipt and handed over to the *Moharrir*. This witness also took parcels No.12, 13, 14 and 15 on 06.11.2014 through road certificate No.180/21 and deposited the same with the Chemical Examiner, FSL Peshawar; copy of road certificate No.180/21 is Ex.PW5/14. On 06.11.2014, he took parcel No.16 and parcel No.5 to Firearms Expert, FSL Peshawar, which were returned by the Firearms Expert vide road certificate No.179/21 Ex.PW 5/15. On 07.11.2014, he again took parcel No.16 and 5 and deposited the same with Firearms Expert, FSL Peshawar vide road certificate No.181/21 Ex.PW 5/16.

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VI) PW-6 Rashid Husain s/o Ghareeb Hussain stated that he is marginal witness to recovery memo Ex.PW 6/1, vide which Mubashir Nawaz had produced the bloodstained clothes of injured Imtiaz ul Haq consisting of *Shalwar* Ex.P-3, *Shirt* Ex.P-4. Similarly, bloodstained garments of Sheikh Adeel consisting of *Shalwar* Ex.PW-5 and *Shirt* Ex.P-6 beside the bloodstained

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Shalwar and shirt of injured Malik Anayat Ex.P-7 and Ex.P-8 and one Shirt bloodstained of injured Abdul Wahid Ex.P-9. The clothes of all the injured were packed and sealed into separate parcels. The I.O obtained his signature on the recovery memo beside the signature of other marginal witness.

VII) PW-7 Ziafat Hussain s/o Haider (*complainant*) stated that on 07-10-2014 at 02:00 pm, day time a quarrel took place between Mubashir Nawaz and Yasir Maqbool in which Mubashir Nawaz became injured. On the same day, after *Maghrab* time, he along with his deceased brother Rifaqat Hussain and first cousin Abdul Wahid have gone to the house of Mubashir Nawaz in order to see him. When after visiting Mubashir Nawaz, they came out from his house, Imtiaz ul Haq, Sheikh Adeel and Malik Anayat also accompanied them in order to see-off. At about 08:50 pm, when they reached near grocery Shop Yasir Maqbool, they noticed accused Babu Muhammad Younis, Fazal Rehman, Yasir Maqbool, Ghayas, Ghazali and Hafeez Rehman duly armed with firearms standing there in the shop. Accused started firing on them. With the firing of Babu Muhammad Younis, brother of complainant namely Rifaqat Hussain received injuries and died on the spot. Due to firing of other accused named above, his companions Imtiaz ul Haq, Abdul Wahid, Sheikh Adeel and Malik Anayat were hit and sustained injuries. Luckily, he remained unhurt. Accused named above fled away from the spot.

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Besides complainant, injured Faisal and Abdul Shakoor also witnessed the occurrence in the light of electricity. That he with the help of other took the injured and deceased to the hospital. The motive behind the occurrence was that a quarrel has taken place on the same day between Yasir Maqbool and Mubashir Nawaz. Complainant charged all the six accused for *Qatal-e-Amad* of Razaqat Hussain and for attempting at the lives of others by firing. He made his report to the police as Ex. PA/1. The witness further stated that on the following day, the IO visited the spot and on his pointation, prepared the site plan. During spot inspection in his presence and on his pointation, the IO recovered and took into possession blood from the place of presence of the dead body of the deceased beside six empties of .30 bore were also taken into possession from the place showing for the presence of accused Babu Younis. The IO packed and sealed into separate parcels. Similarly, IO also took into possession 02 empties of .30 bore from the place shown for accused Yasir and packed the same into parcel. Likewise, IO also took into possession 3/3 empties of .30 bore from the places shown for accused Ghazali and Ghayas and also packed and sealed into parcels. The IO also took into possession 02 empties of .30 bore each from the places shown for accused Fazal Rehman and Hafeez and packed the same into parcels. The IO also took into possession an electric bulb and sealed into parcel. The IO recovered and took into possession 10

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empties of .30 bore and 1 empty of 7.62 bore from nearby place of occurrence and were also packed and sealed into parcels. A recovery memo was prepared in respect of all these articles. He also identified the dead body of his deceased brother Rifaqat before the police as well as before the medical officer prior to PM examination. After PM examination, the dead body was handed over to him through receipt already Ex. PW 1/7.

VIII) PW-8 is Imtiaz ul Haq s/o Ghulam Mustafa, who stated that on 07-10-2014, he along with Malik Anayat and Sheikh Adeel were present in the house of Mubashir Nawaz in order to visit him in connection with injuries sustained by him in the occurrence taken place in the day time. In their presence Rifaqat Hussain, Ziafat Hussain and Abdul Wahid also came there for the same purpose. After sometime, they left the house of Mubashir Nawaz for proceedings to their houses. He was accompanying with Sheikh Adeel, Rifaqat Hussain, Ziafat Hussain and Abdul Wahid and when reached near Yasir *Karyana* store, in the meanwhile accused Babu Younis having .30 bore pistol with him came out from the shop and started firing at Rifaqat Hussain with intent to commit his murder. As result of firing made by accused Babu Younis, Rifaqat Husain sustained firearm injures and fell down upon which he came near to him to left him, in the meanwhile accused Yasir Maqbool attempted at his life by firing at him with .30 bore pistol. He sustained 02 firearm injuries in between his

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both thighs. As result of firing made by accused Fazal Rehman, Hafeez, Ghazali and Ghayas on his companions as result of which Abdul Wahid, Sheikh Adeel and Malik Anayat also sustained firearm injuries. He charged all the accused for *Qatal-e-Amad* of Rifaqat Hussain, attempt to commit *Qatal-e-Amad* of his life and at the lives of Abdul Wahid, Sheikh Adeel and Malik Anayat. He was medically examined in the hospital. The report made by complainant Ziafat Hussain was also verified by him by putting his signature as rider on it. After initial examination in DHQ Haripur, he was referred to ATH Abbottabad for further treatment where he remained 10/12 days for treatment.

IX) PW-9 Sheikh Adeel s/o Ghulam Asfiya stated that on the day of occurrence, he along with Malik Anayat and Imtiaz ul Haq were present in the house of their relative Mubashir Nawaz in order to see him in connection with his injuries. In their presence in the house of Mubashir Nawaz, Rifaqat Hussain, Ziafat Hussain and Abdul Wahid also came there to see Mubashir Nawaz. After sometime they all mentioned above left the house of Mubashir Nawaz and started proceeding to their houses. On their way when they reached to the grocery shop of accused Yasir Maqbool, in the meanwhile, accused Babu Younis having pistol with him made firing at Rifaqat with his pistol, as result of which Rifaqat sustained injuries and fell down on ground. They tried to leave him in the meanwhile accused Ghayas and Ghazali made firing at PW-

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9 with their respective pistols. With the bullet of accused Ghazali he was hit and injured at his abdomen while with the firing of accused Ghayas; he sustained injuries on his left arm on two places and also at his armpit. Due to firing of accused Fazal Rehman, Hafeez Rehman, Yasir Maqbool, his companions Malik Anayat, Sheikh Imtiaz and Abdul Wahid sustained firearm injuries. PW-9 charged all the accused for the commission of offence. He was medically examined by the doctor. After initial treatment in DHQ Haripur, he was referred to ATH Abbottabad for further treatment, where he remained 09 days under treatment.

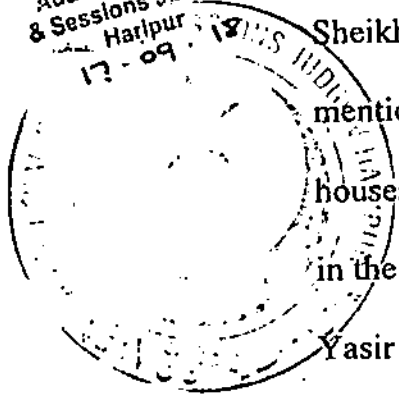
X) PW-10 Malik Anayat s/o Malik Abdul Rasheed stated that on the day of occurrence, he along with Sheik Adeel and Imtiaz ul Haq were present in the house of Mubashir Nawaz to visit him in connection with his injuries. In their presence Rifaqat Hussain, Ziafat Hussain and Abdul Wahid also reached there for the same purpose. After sometime, they all mentioned above left the house of Mubashir Nawaz for their own houses and when reached near grocery of accused Yasir Maqbool, in the meanwhile accused Babu Younis came out from the shop of Yasir having pistol with him started firing on Rifaqat, who on receiving of firearm injuries fell down on ground and expired. When they tried to left Rifaqat from the ground in the meanwhile accused Yasir, Ghayas, Ghazali, Hafeez and Fazal Rehman made firing with pistols on them. As result of firing made by accused Fazal Rehman, he

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received injury on left side face about the upper lip. While with the firing of accused Yasir Maqbool, Ghayas, Ghazali and Hafeez, his companions Sheikh Adeel, Imtiaz ul Haq and Malik Abdul Wahid also sustained firearm injuries. He charged all the accused for the commission of offence. PW-10 was medically examined by the doctor at DHQ Hospital. After initial treatment in DHQ Haripur, he was referred to ATH Abbottabad for further treatment, where he remained 07 days under treatment.

XI) Abdul Wahid s/o Ghulam Rasool appeared in the witness box as PW-11 and stated that on the day of occurrence, he along with Rifaqat Hussain and Ziafat Hussain went the house of Mubashir Nawaz in order to see him in connection with injuries he received. In meanwhile, Imtiaz ul Haq, Malik Anayat and Sheikh Adeel also came there. After some time, they all mentioned above left the house of Mubashir Nawaz for their own houses and when reached near grocery of accused Yasir Maqbool, in the meanwhile accused Babu Younis came out from the shop of Yasir having pistol with him started firing on Rifaqat, who on receiving of firearm injuries fell down on ground and expired. When they tried to lift Rifaqat from the ground in the meanwhile accused Yasir, Ghayas, Ghazali, Hafeez and Fazal Rehman made firing with pistols on them. As result of firing made by Hafeez Rehman, he received injury beneath of his chin. As result of firing made by accused Ghayas, Ghazali, Yasir Maqbool and Fazal

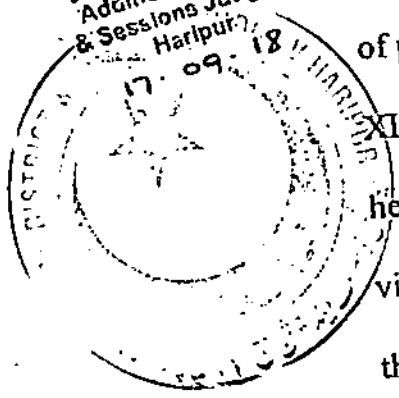
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Rehman, Imtiaz Sheikh Adeel and Malik Anayat sustained fire and
injures. PW-11 charged all the accused for the commission of
offence. He was medically examined by the doctor at D.H.O.
Hospital.

XII) PW-12 Muhammad Ahsan s/o Abdul Fatah stated that he is
marginal witness to the recovery memo Ex. PW 12/1 vide which
in his presence as well as in presence of other marginal witness,
accused Muhammad Ghayas while in handcuff led the police/IO
to the graveyard of the village and from bushes he took out and
produced one pistol .30 bore as weapon of offence. The IO put his
initial with nail on the pistol, packed and sealed the same into
parcel in his presence as well as in the presence of co-marginal
witness. IO prepared recovery memo, which bear his signature as
well as signature of co-marginal witness. The IO prepared sketch
of place of recovery of pistol.

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XIII) PW-13 Babar Nawaz s/o Muhammad Nawaz stated that that
he along with co-marginal witness Danish Gul was present in
village Kales, when a police mobile and a private Suzuki reached
there. In the private Suzuki, accused Younis was in police custody
with handcuff, who alighted from the vehicle. Police asked them
to associate them as accused Younis wanted to produce weapon of
offence of murder case. Accused Younis in handcuff went to his
house asked the inmate and women folk of his house to be get
aside for observing *Parda*. Thereafter, accused Younis led the

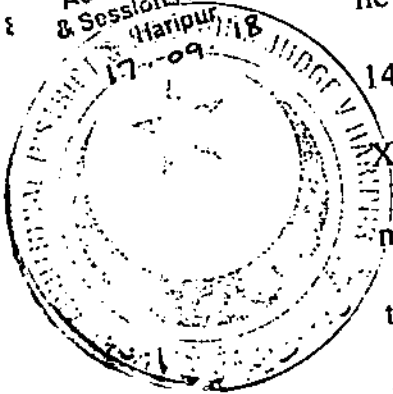
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police party including PWs to his residential room and from beneath the mattress of his bed; he took out 30 bore pistol and produces the same to the IO. On checking, it found loaded with three bullets and smell of fresh discharge was coming out from the pistol. Accused disclosed that it was the same .30 bore pistol with which he committed *Qatal e Amad* of deceased Rafaqat. The IO put his initial on the body of pistol with nail and then packed and sealed the same in the parcel. Pistol is Ex. P2. Recovery memo is Ex. PW 13/1. The IO also prepared sketch of the place of recovery of .30 bore pistol and recorded his statement as well as statement of co-marginal witness Danish under section 161 Cr.PC.

XIV) PW-14 Muneer Khan, Inspector stated that on 16.10.2014, he has submitted interim challan Ex.PW 14/1 and on 01.11.2014, he has submitted complete challan against the accused as Ex.PW 14/2. Both the documents correctly bear his signatures.

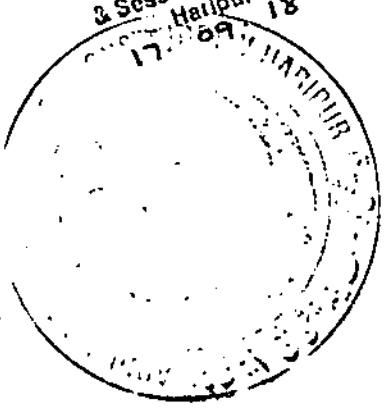
XV) PW-15 Faisal Rasool s/o Ghulam Rasool stated that he is marginal witness to the recovery memo Ex.PW 15/1, vide which the IO in his presence as well as in the presence of co-marginal witness Abdul Shakoor during spot inspection on the pointation of Ziafat Hussain took into his possession blood through cotton from the place of presence of deceased, packed and sealed the same into parcel Ex.PB. Similarly, on the pointation of complainant Ziafat the IO further took into possession 06 empties of .30-bore from the place shown for the presence of accused Babu Younis, whi

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were packed & sealed into parcel Ex. PC after putting his initials. Thereafter, the IO proceeded towards the place shown for the presence of accuse Yasir, wherefrom 02 empties of .30-bore were secured and packed & Sealed into parcel Ex. PD. The IO also took into possession 03 empties of .30-bore from the place shown for the presence of accused Ghayas Qurashi, which were packed & sealed into parcel Ex.PE. Similarly, the IO also took into possession three empties of .30-bore from the place shown for the presence of accused Ghazali and packed and sealed into parcel Ex.PF. The IO took into possession 02 empties of .30-bore from the place of accused Fazal Rehman and packed and sealed into parcel Ex.PG. From the place shown for the presence of accused Hafeez-ur-Rehman, the IO recovered and took into possession 02 empties of .30-bore, which he packed & sealed into parcel Ex.PH. The IO took into his possession an energy saver bulb from beneath the ceiling of the shed of the shop, which he sealed and packed into parcel Ex. PI. From near the *Dera* of Sher Gul and in front of the street/lane, the IO took into possession 10 empties of .30-bore and one empty of 7.62 bore and packed & sealed into parcel Ex. PJ. To this effect, the IO prepared recovery memo Ex.PW 15/1 in his presence as well as in the presence of co-marginal witness Abdul Shakoor. Thereafter, the IO prepared site plan on the pointation of complainant Ziafat Hussain.

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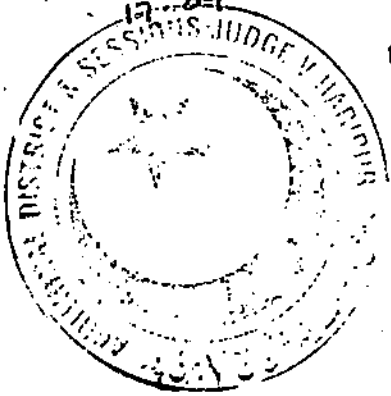
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XVI) PW-16 Constable Seddique No.645 appeared and stated that he is marginal witness to the recovery memo Ex.PW 16/1, vide which the SHO of PS KTS arrested accused Fazal ur Rehman and on his personal search, one mobile phone Nokia beside one currency note of Rs. 500/- denomination were recovered from the pocket of accused. The SHO prepared the recovery memo Ex.PW 16/1, which correctly bears his signature beside the signature of co-marginal witness FC Sajjad.

This witness is also marginal witness to the recovery memo Ex.PW 16/2, through which the IO Javed ASI on the pointation of accused Fazal Rehman while in custody led the police near Dheenda Road near Soka. Accused took out and produced one .30-bore pistol from the bushes as weapon of offence. The .30-bore pistol was having 03 bullets in its magazine. The IO put his signature with nail on the pistol and thereafter, packed & sealed the same into parcel. The IO prepared recovery memo Ex.PW 16/2 to this effect, which correctly bears his signature beside the co-marginal witness Sharafat Khan IHC. Pistol .30-bore is Ex.P (K).

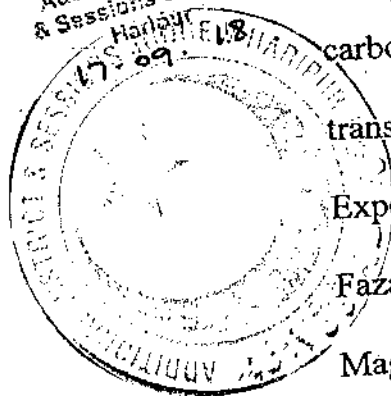
XVII) PW-17 Muhammad Javed ASI stated that on 16.05.2015, accused Fazal Rehman s/o Gul Zaman was arrested by SHO Khan Afsar. He had recorded the statements of Constable Seddique and Constable Sajjad, both marginal witnesses to the recovery memo prepared by the SHO. On 17.05.2015, vide

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application Ex.PW 17/1, he had produced accused Fazal Rehman before Judicial Magistrate and obtained his two days physical custody. IO interrogated the accused during the custody period and on 18.05.2015, accused during interrogation made disclosure about the weapon of offence. On this disclosure, the accused while in police custody lead him and the police witnesses to Soka, Dheenda and from the bushes nearby the road of Dheenda Soka, he took out and produced one .30-bore pistol as weapon of offence, which he took into possession and found three live bullets in its magazine. IO put his initial with nail on the pistol .30-bore without number Ex.P (K) and packed and sealed the same into parcel No. 17. He prepared recovery memo to this effect already exhibited as Ex.PW 16/2. He recorded the statements of both the marginal witnesses u/s 161 Cr.PC. IO handed over the docket, carbon copy Ex.PW 17/2 to the *Moharrir* of the PS for onwards transmission of parcel No.17 alongwith parcels No. 6 to Firearm Expert, FSL Peshawar. Vide application Ex.PW 17/3, the accused Fazal Rehman was sent to judicial lockup by the Judicial Magistrate.

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XVIII) PW-18 Khan Afsar Khan SHO stated that on 16.05.2015, he had arrested absconding accused Fazal Rehman from Dheenda Soka and issued his card of arrest Ex.PW 18/1. At the time of arrest of accused Fazal Rehman, he conducted his personal search, during which, from the side pocket of his shirt, he

has recovered one mobile phone cell *Nokia* beside one currency note of Rs. 500/- denomination. This witness also prepared recovery memo already exhibited as Ex.PW 16/1. He handed over the accused to the IO. After completion of investigation, he had submitted supplementary challan against the accused Fazal Rehman as Ex.PW 18/2. He had submitted separate challan against accused Fazal Rehman u/s 15 AA as Ex.PW 18/3.

XIX) Muhammad Munir Khan, Inspector CTD Abbottabad, appeared as PW-19 and deposed that he remained posted as subordinate with late SI Sardar Ajmal at various police stations and acquainted with his handwriting and signatures, who has been died his natural death during the pendency of trial. In this case, investigation was conducted by late Sardar Ajmal SI. Today, he has seen the recovery memo Ex.PW 15/1 (*already exhibited*), vide which, during spot inspection late Sardar Ajmal SI, took into possession blood through cotton, packed & sealed the same into parcel No.1 already exhibited as Ex.PB from the place shown for the presence of deceased. Similarly, he also recovered six empties of .30-bore Ex. PC from the place shown for the presence of accused Babu Younis, packed & sealed the same into parcel No.2. He took into possession two empties of .30-bore Ex. PD from the place shown for the presence of accused Yasir Maqbool, packed and sealed the same into parcel No.3. Likewise, from the place shown for the presence of accused Ghazali, he secured three

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empties of .30-bore Ex.PF, packed and sealed the same into parcel No.3, whereas from the place shown for the presence of accused Ghayas Qurashi, he also took into possession three empties of .30-bore Ex.PE and packed and sealed the same into parcel No.5. From the place shown for the presence of accused Fazal ur Rehman, he took into possession two empties of .30-bore Ex.PG, packed & sealed the same into parcel No.6, while from the place shown for the presence of accused Hafeez ur Rehman, two empties of .30-bore Ex.PH were recovered and sealed into parcel No.7. From Point-C, he took into possession, 10 empties of .30-bore and 01 empty of 7.62 bore lying in scattered position in the radius of 05 square feet, the same were packed and sealed into parcel No.9 as Ex. PJ. He also took into possession one electric bulb Ex. PI, packed & sealed the same into parcel No.8. These recoveries were effected by SI Sardar Ajmal through recovery memo Ex.PW 15/1 in presence of marginal witnesses, whose signatures are available on the recovery memo. Today, he has seen Ex.PW 15/1, which is in the handwriting of Sardar Ajmal SI and correctly bears his signature on it. Site plan prepared by SI Sardar Ajmal is Ex.PW 19/1, which is in the handwriting of late Sardar Ajmal SI including footnotes and drawing, bearing his signature on it correctly. SI Sardar Ajmal vide recovery memo Ex.PW 5/1 (already exhibited) took into possession bloodstained cloth of deceased Razaqat Hussain consisting upon shirt P(1) and Pajama

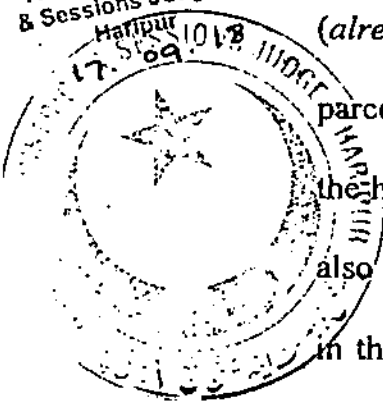
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P(2) (already exhibited) and prepared recovery memo to this effect in presence of marginal witnesses, which is in the handwriting of the said SI bearing his signature on it correctly. SI Sardar Ajmal through recovery memo (already exhibited) Ex.PW 6/1 took into his possession bloodstains clothes of injured Babu Intiaz ul Haq consisting upon *Shalwar* P(3) and shirt P(4), also of injured Sheikh Adeel, bloodstained *Shalwar* P(5) & shirt P(6). Similarly, through the same recovery memo, he also took into possession bloodstained *Shalwar* P (7) and shirt P (8) of injured Malik Anayat. He packed & scaled the same into separate parcel and prepared the recovery memo, which is in his handwriting bearing his signature correctly. Through recovery memo (already exhibited) Ex.PW 13/1, SI Sardar Ajmal recovered and took into possession one .30-bore pistol produced by accused Babu Younis (already exhibited) Ex.P(2) and packed and sealed the same into parcel and prepared the recovery memo to this effect, which is in the handwriting of said SI bearing his signature correctly. He has also prepared the sketch of this recovery as Ex.PW 19/2, which is in the handwriting of SI Sardar Ajmal including its drawing and bears his signature correctly. Vide application Ex.PW 19/3, SI Sardar Ajmal obtained warrant u/s 204 Cr.PC against accused Fazal Ur Rehman, Ghazali, Ghayas Qurashi and Yasir Maqbool on 10.10.2014. Vide his application Ex.PW 19/4; SI Sardar Ajmal obtained one day police custody in respect of accused Hafeez Ur

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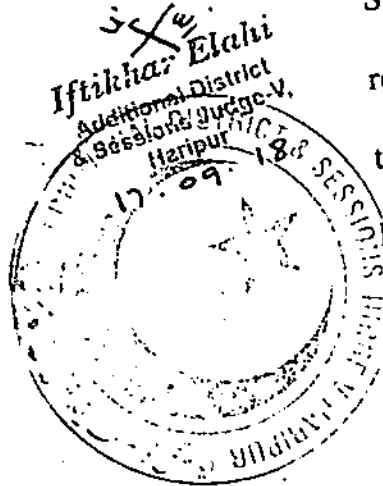


Rehman. Application correctly bears his signature. Vide carbon copy of application Ex.PW 19/5; Sardar Ajmal furnished information to the high ups in respect of arrest of Hafeez Ur Rehman, driver of PS Sarai Saleh, in police department. Vide carbon copy of *Parwana* issued by SI Sardar Ajmal, Section 15 AA was added against accused Babu Younis. *Parwana* is Ex.PW 19/6. He produced accused Babu Younis for recording his confessional statement vide application Ex.PW 19/7 before the Judicial Magistrate. SI Sardar Ajmal (*late*) placed on record warrant u/s 204 Cr.PC issued against accused Ghayas Qurashi as Ex.PW 19/8. Vide his card of arrest dated 13.10.2014 issued by the said IO as Ex.PW 19/9 in respect of accused Ghayas Qurashi. Vide carbon copy of application for obtaining CDR of accused Yasir Maqbool, Ghazali, Fazal Ur Rehman and Muhammad Ghayas Qurashi Ex.PW 19/10; letter was addressed to the quarter concerned with the details of their IME. Similarly, police authorities were informed about the arrest of accused Muhammad Ghayas Qurashi, who was employed as Electrician in Police Line, Haripur through carbon copy of application Ex.PW 19/11. SI Sardar Ajmal also placed on record warrant u/s 204 Cr.PC issued against accused Yasir Maqbool as Ex.PW 5/2 (*already exhibited*), against Fazal ur Rehman as Ex.PW 5/3 (*already exhibited*) and against Ghazali Ex.PW 5/4 (*already exhibited*) containing the reports on their reverse. Similarly, proclamation notices u/s 87

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Cr.PC issued against accused Ghazali, Fazal ur Rehman and Ya Maqbool (*already exhibited*) as Ex.PW 5/8, Ex.PW 5/9 & Ex.PW 5/10 respectively having reports on their reverse. These proclamation notices were obtained from the Judicial Magistrate vide application Ex.PW 19/12 by SI Sardar Ajmal. Vide application Ex.PW 19/13, the said IO obtained police custody in respect of accused Muhammad Ghayas Qurashi on 30.10.2014 from Judicial *Illaga* Magistrate. Vide pointation/recovery memo (*already exhibited*) as Ex.PW 12/1, the said IO took into possession weapon of offence i.e. .30-bore pistol (*already exhibited*) as Ex.P (1) on the pointation of accused Muhammad Ghayas Qurashi. Recovery memo correctly bears the signature of SI Sardar Ajmal. He also prepared the sketch of the place of recovery as Ex.PW 19/14 in respect of the recovery effected on the pointation of accused Ghayas Qurashi, which correctly bears his signature on it. Vide application Ex.PW 19/15; SI Sardar Ajmal produced accused Ghayas Qurashi for recording his confessional statement before Judicial Magistrate. SI Sardar Ajmal placed on record various documents/treatment record of Ayub Teaching Hospital regarding all the injured. Vide carbon copies of applications addressed to FSL, Peshawar, parcels No. 7 & 9 were sent vide application Ex.PW 19/16, parcel No.3,4,5 & 6 were sent to FSL, Peshawar through application Ex.PW 19/17. Vide carbon copy of application Ex.PW 19/18, parcel No.1 and



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parcel No.10 were sent to Chemical Examiner, FSL Peshawar for analysis and opinion. Similarly, through application Ex.PW 19/11, parcels No.12, 13, 14 & 15 were dispatched to Chemical Examiner, FSL Peshawar for analysis. Whereas, through application Ex.PW 19/20, parcels No.2 & 11 were sent to Firearms Expert, FSL Peshawar for analysis. SI Sardar Ajmal vide his application Ex.PW 19/25, also dispatched parcels No. 16 & 5 to Firearms Expert, FSL Peshawar. SI Sardar Ajmal placed on record, Chemical Examiner's report in respect of parcels No.1 & 10 as Ex.PW 19/21 and Firearms Expert report in respect of parcels No.2 & 11 as Ex.PW 19/22. Similarly, he also placed on record Chemical Examiner's report in respect of parcels Nos.12, 13, 14 & 15 as Ex.PW 19/23 and Firearm Expert report in respect of parcel No.16 & 5 as Ex.PW 19/24. During his investigation, SI Sardar Ajmal also recorded the statements of all the PWs and accused u/s 161 Cr.PC and on completion of investigation, handed over the case file to the SHO for sending complete challan for trial of the accused.

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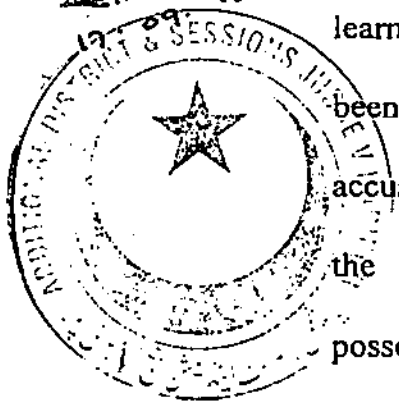


4. After closing the prosecution evidence, the accused facing trial were examined u/s 342 Cr.PC, wherein accused facing trial denied the allegations of the prosecution case and have refused to give statements on oath nor to produce evidence in defense.

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5. Learned APP for the State Zobia Bibi and learn counsel for the complainant Mr. Abdul Razzaq Chughta Advocate have argued that the prosecution has proved its case against the accused facing trial through trustworthy and unimpeachable inspiring evidence. He further submitted that accused were directly charged in the promptly lodged FIR, hardly leaving any scope for consultations and deliberations. Presence of injured eyewitnesses on the spot at the relevant time is proved. All the injured witnesses were cross-examined by the defense, but their evidence could not be shaken in any manner. The said witnesses had given a detail account of events leading to the murder of the deceased and receiving firearm injuries on their bodies. They were unanimous on material points and no contradiction or any improvement exists in their testimony. The learned counsel further argued that though the occurrence had been taken place at night, but prosecution witnesses identified the accused party in the light of electrical bulb, which was letting at the shop of Yasir Maqbool and the same was taken into possession by the IO vide recovery memo Ex.PW 15/1. The learned counsel added that medical evidence was in conformity with ocular account. Factum of recovery of weapon of offence stood conclusively proved and the same is also matched with the crime empties. The counsel concluded his arguments by adding that except the motive as alleged in the FIR, no enmity exists

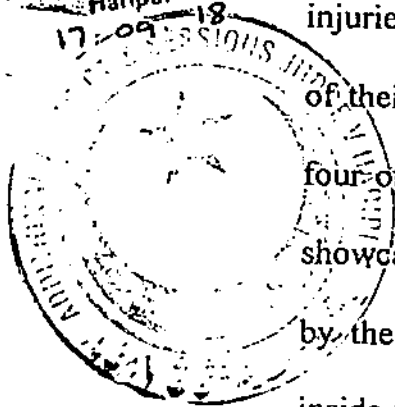
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amongst the parties and there is nothing on the record that the complainant or other witnesses have any ill will against the accused. He lastly prayed that the prosecution has proved its case beyond any shadow of doubt; therefore, the accused facing trial may be convicted and sentenced according to law.

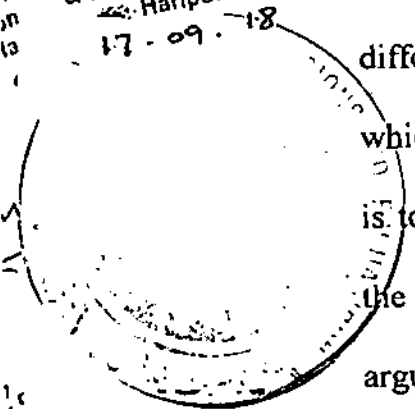
6. As against the above, learned defense counsel Mr. Maqbool Hussain Advocate has submitted that the burden of proof was on the prosecution to prove its case beyond any reasonable doubt, but the statements of prosecution witnesses are full of contradictions and there are major discrepancies regarding the mode and manner of alleged occurrence. The learned defense counsel argued that in fact, complainant party came at the shop of Yasir Maqbool, while duly armed and made indiscriminating firing on the shop of Yasir Maqbool for taking revenge of the injuries of Mubashir Nawaz, however, due to darkness on account of their own firing, deceased Rafaqat was hit and died, whereas four others sustained firearm injuries and due to their firing, the showcase and other articles were hit. This fact is fully supported by the site plan, wherein the bullet marks were shown present inside the shop; whereas the prosecution alleged that the accused party standing at shop of Yasir Maqbool made indiscriminate firing on the complainant party. The learned defense counsel further argued that house of injured PW Malik Anayatullah is situated towards north of the house of Mubashir, whereas shop of

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Yasir Maqbool is situated towards south of the house of Mubashir Nawaz. The learned defense counsel added that the lane is leading from the house of Mubashir Nawaz towards the village side, which is other then the road leading to the shop of Yasir Maqbool and said lane/road is used by the people of the vicinity and complainant during cross-examination admitted this fact that the said lane is being used by them, but even then complainant party used the road/lane leading towards the shop of Yasir Maqbool, which support the cross version of accused party. The learned defense counsel added that 10 empties of .30-bore and one empty of 7.62 bore was recovered near the house of Mubashir Nawaz, which fact alone suggests that in fact, it was complainant party, who made aggression upon the accused party. The learned defense counsel while relying on PCrLJ 2002 page 270 argued that where the prosecution has put its own version and the accused has a different story to tell regarding the same incident, the version which is more plausible and nearer to realities and common sense is to be accepted and if the version of accused is plausible, then the same may be accepted. The learned defense counsel further argued that PW-8 Imtiaz ul Haq and complainant were present at the time of scribing *Murasila*, but they have not specified the role of each accused and even PW-8 Imtiaz ul Haq has not mentioned that at whose firing, he get hit and sustained injuries, which makes the case of the prosecution doubtful. The learned defense counsel


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added that no recovery whatsoever was effected from accused Hafeez ur Rehman, whereas the pistol allegedly recovered from Fazal Rehman do not match with the crime empties and to this effect, the report of FSL is negative. The learned defense counsel added that the alleged recoveries recovered from other accused were sent to FSL with abnormal delay, which make the whole proceedings of recovery doubtful, whose benefit must go the accused being the favorite child of law. The learned defense counsel added that Faisal Rasool and Abdul Shakoor were cited as eyewitnesses of the occurrence, but Abdul Shakoor was never produced by the prosecution for deposition, whereas Faisal Rasool in his Court statement has not stated that he is eyewitness of the occurrence. Lastly, the learned defense counsel submitted that it was a night occurrence, however, the alleged recovered bulb was not sent to FSL to get report that whether it was serviceable or not. Moreover, the alleged bulb was taken into possession at Point-B, whereas the accused facing trial Fazal Ur Rehman, Hafeez Ur Rehman and Ghayas Qurashi were shown to be present at Point No.6, 7 & 8, where the accused could not be identified due to darkness. The learned defense counsel further submitted that the accused Hafeez ur Rehman and Ghayas Qurashi were not present at the spot, which fact is clear from perusal of *Naql Mad* placed on file by the accused in their statements recorded w/s 342 Cr.PC, which cannot be ignored altogether. The learned defense counsel

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while concluding his arguments added that the prosecution case is full of doubt, dishonest improvements and all the PWs contradicted each other on material points, therefore, a single infirmity creating reasonable doubt was sufficient for giving benefit of doubt to the accused facing trial. Lastly, he prayed that the prosecution has badly failed to prove its case against the accused facing trial beyond shadow of reasonable doubt; therefore, the accused may be acquitted of the charges leveled against them.

7. *I have considered the above submissions and perused the available record and evidence produced by the prosecution.*

8. Perusal of the record reveals that complainant Ziafat Hussain on 07.10.2014 at 2130 hours made a report at Emergency Reporting Center of DHQ Hospital, Haripur alongwith injured Intiaz ul Haq, wherein he charged accused facing trial alongwith absconding accused for committing murder of his real brother Razaqat Hussain and attempting at the lives of Abdul Wahid, Sheikh Adeel and Malik Anayat by firing at them with firearms.

Perusal of the record further reveals that accused Babu Muhammad Younis was specifically charged for the murder of Razaqat Hussain, whereas accused facing trial Ghayas, Fazal Rehman and Hafeez Rehman were charged for causing injuries to Sheikh Adeel, Malik Anayat and Abdul Wahid respectively and absconding accused Yasir Iqbal and Ghazali were charged for

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causing injuries to Imtiaz and Sheikh Adeel respectively. Complainant Ziafat Hussain was examined as PW-7, who narrated the same story of FIR, wherein he contended that on the fateful day, he alongwith his deceased brother Rifaqat Hussain and his cousin injured Abdul Wahid went to the house of Mubashir Nawaz in order to see him, who became injured in a quarrel, which took place between Mubashir Nawaz and Yasir Maqbool (*absconding accused*) at morning and when after visiting Mubashir Nawaz, they came out from their house, Imtiaz ul Haq, Sheikh Adeel and Malik Anayat also accompanied them in order to see off and when at 08:50 PM, they reached near grocery shop of absconding accused Yasir Maqbool, they noticed accused Babu Muhammad Younis, Fazal Rehman, Yasir Maqbool, Ghayas, Ghazali and Hafeez ur Rehman duly armed with firearms standing there in the shop, who started firing on them and with the firing of Babu Younis, his brother Rifaqat Hussain received injuries and died on the spot, whereas due to firing of other accused, his companions Imtiaz ul Haq, Abdul Wahid, Sheikh Adeel and Malik Anayat were hit and sustained injuries. Injured Imtiaz ul Haq was examined as PW-8, who while narrating the same story, added that with the firing of absconding accused Yasir Maqbool, he sustained two firearm injuries in between his both thighs. Injured Sheikh Adeel, while examining as PW-9 also narrated the same story, however, he also specifically charged accused Ghayas

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and Ghazali for causing him firearm injuries and categorically specified that with the bullet of accused Ghazali, he was hit and injured at his abdomen, while with the firing of accused facing trial Ghayas, he sustained injuries on his left arm on two places and also at his armpit. Similarly, PW-10 Malik Anayat (*injured*) and PW-11 Abdul Wahid (*injured*) narrated the same facts, however, PW-10 Malik Anayatullah specifically charged accused Fazal Rehman for causing injury on left side of face above the upper lip, whereas PW-11 Abdul Wahid in his statement specifically charged Hafeez Ur Rehman for the injury, which he received beneath of his chin.

9. All the injured witnesses including complainant charged Babu Muhammad Younis for the murder of Razaqat and all the injured witnesses are on one voice that he was Babu Younis, at whose fire, Razaqat Hussain was hit and died on the spot, whereas every injured witnesses specifically by name charged each accused independently at whose fire, they sustained firearm injuries. All these witnesses were put to lengthy cross-examination, but they remained consistent and corroborate each other almost on each aspect and even a single contradiction could not occur in their statements. Medical evidence fully supports the case of prosecution and is in line of statement of injured witnesses and ocular account. Six empties were recovered from the place, where the accused Babu Younis was shown. The weapon of

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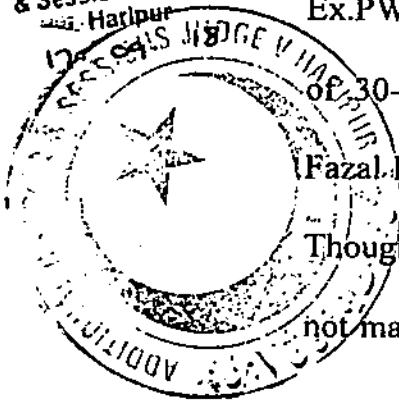
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offence was also recovered from the house of accused Babu Younis on his pointation and the same is matched with the crime empties and FSL report Ex.PW 19/22 is positive to the effect that six .30-bore crime empties were fired from the same .30-bore pistol, which was recovered on the pointation of accused Babu Younis from his house. Blood secured from the pace of occurrence is also matched with last wearing clothes of deceased. Similarly, as per site plan, 03 empties of .30-bore were recovered at Point No.6, where accused Ghayas Qurashi was shown to be present. The weapon of offence i.e. .30-bore pistol Ex.P (1) was also recovered on the pointation of accused Ghayas Qurashi from graveyard of Moza Kales vide recovery memo Ex.PW 12/1 and the same is matched with the crime empties and FSL report Ex.PW 19/24 to this effect is also positive. Similarly, 02 empties of .30-bore were also recovered at Point No.7 & 8, where accused Fazal Rehman and Hafeez Ur Rehman were shown to be present. Though the weapon of offence recovered from Fazal Rehman do not match with the crime empties and no weapon of offence was recovered from accused Hafeez Ur Rehman, but accused Fazal Rehman remained absconder for sufficient long time. Even otherwise, non recovery of crime weapon is no ground of acquittal, when the case is otherwise proved. Guidance in this regard is sought from SCMR 2009 1260, wherein his lordship held that "Although crime empties had not matched with the pistol

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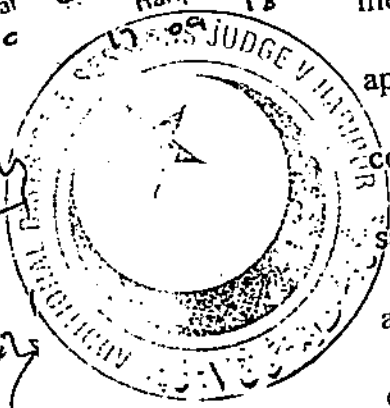
recovered from the other accused, yet it did not make his case doubtful on account of his participator in the occurrence having been fully proved by evidence on record". Similar wisdom has been taken from 2008 MLD 592 and 2012 PCrLJ 646.

10. Moreover, the time and venue of the occurrence is not denied rather the same is admitted during cross-examination. The learned defense counsel during cross-examination took the stance that in fact, complainant party came at the shop of Yasir Maqbool, while duly armed and made indiscriminating firing on the shop of Yasir Maqbool for taking revenge of the injuries of Mubashir Nawaz, however, due to darkness on account of their firing, deceased Rafaqat was hit and died, whereas four others sustained firearm injuries. The learned defense counsel in support of his stance has not produced any defense evidence. It is pertinent to mention here that the same stance has been taken by filing an application u/s 22-A Cr.PC and filing a complaint against complainant party u/s 302/324/427/440/148/149 PPC. Copies of same are available on case file as Mark-A & Mark-C, but it is astonishing that said stance has already been turned down by the competent Court and no appeal or revision has been preferred against the said orders.

11. Moreover, none of the complainant party sustained injuries from the backside rather all the injuries were caused from the front side, which also negate the story of defense. As far as the

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question of darkness and misidentification are concerned, the parties are known to each other and are of the same vicinity; hence the question of misidentification cannot be arisen in the instant case. One electric bulb Ex.P (1) was also taken into possession by the IO on the spot. The presence of electric bulb was not denied by learned defense counsel by giving suggestions that it is incorrect to suggest that the bulb was fixed on Point-B, however, the witness explained that the bulb was taken from corner of the shop. Moreover, the learned defense counsel during cross-examination admitted that shop was open and that infact, accused party made aggression on the shop of Yasir Maqbool and due to their firing, the showcase and other articles inside the shop were hit. From such admission, the Court can easily infer that the electric bulb was fixed in the shop as well as outside and were letting at the time of occurrence.

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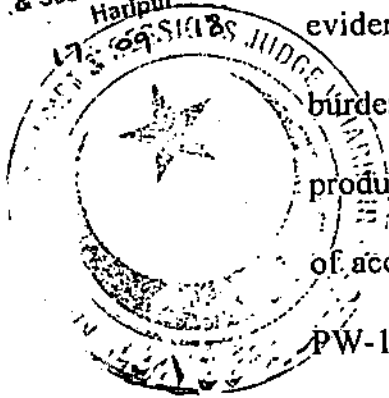


12. The presence of injured eyewitnesses on the spot at the time of occurrence could not be shattered rather the same has been admitted during cross-examination. Moreover, the statements of injured eyewitnesses are in line of statement of complainant and the prosecution case. Ocular testimony is consistent with medical evidence. Pistol recovered from the accused also matched with crime empties. The motive for the occurrence fully explained in the first information report and the same has not been denied. Close relationship of prosecution witnesses is no ground to

discard their testimonies, when ocular testimony is confidence inspiring and unimpeachable and is corroborated by medical evidence. FIR was promptly lodged and no strong reason was forthcoming to falsely implicate the accused in the case instead of real culprits. No material inconsistencies in the statements of injured eyewitnesses were point out on behalf of defense justifying rejection of their testimony.

13. The arguments of learned defense counsel that Faisal Rasool and Abdul Shakoor were cited as witnesses of the occurrence, but Abdul Shakoor was never produced by the prosecution for deposition, whereas Faisal Rasool in his Court statement has not stated that he is eyewitness of the occurrence, but this argument of learned defense counsel has no force. Firstly on the ground that it is the quality and not the quantity of evidence, which is to be considered as adjudged at trial. Since, the burden of proof lay on prosecution, it was its prerogative to produce some witnesses and abandon others for proving the guilt of accused. Secondly, the witness Faisal Rasool was produced as PW-15, but no suggestion was put to PW-15 that he is not the eyewitness of the occurrence. As far as the plea of *alibi* is concerned, no witness in defense was produced in support of their plea. The learned defense counsel during the statement of accused placed on file a copy of *Naql Mad*, but the same is not admissible being a Photostat copy. Neither the original was produced nor any

3/12/17
Iftikhar Elahi
Additional District
& Sessions Judge-V,
Haripur



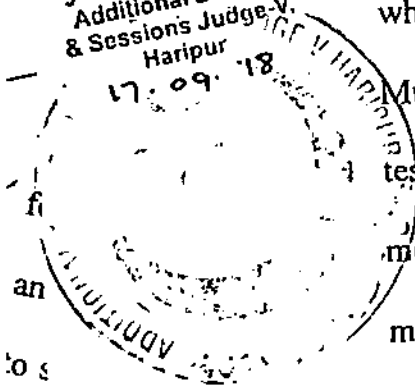
request for summoning the original register was made, hence under such circumstances, where none of the accused appeared as witness on oath nor produce any defense in rebuttal, the plea of *alibi* cannot be relied on oral assertions.

14. Presence of injured eyewitnesses on the spot at the time of occurrence has been proved and the same has also been admitted by the defense during cross-examination. Motive of the occurrence has also been proved by placing on record the case FIR No. 486 dated 07.10.2014 lodged u/s 337-A(iii)/34 PPC at PS KTS, Haripur. Mode and manner of the occurrence is also established on the record, which is in corroboration with medical evidence. Blood was secured from the spot, which is matched with the last wearing of the deceased. Not only empties were recovered from the spot, but the same also matched with the crime weapon, which was recovered on the pointation of accused Babu Muhammad Younis and accused Ghayas Qurashi. The oral testimony of eyewitnesses could not be shack, which is in line of medical and other material available on record. While keeping the material available on record alongwith the oral testimony of eyewitnesses in *juxta pose*, the Court is of the opinion that there is no one except the accused, who committed the offence.

15. So keeping in view the above facts, I am of the confirmed opinion that the prosecution has succeeded in its case beyond any shadow of doubt. Therefore, I convict the accused

Iftikhar Elahi
Additional District
& Sessions Judge
Haripur

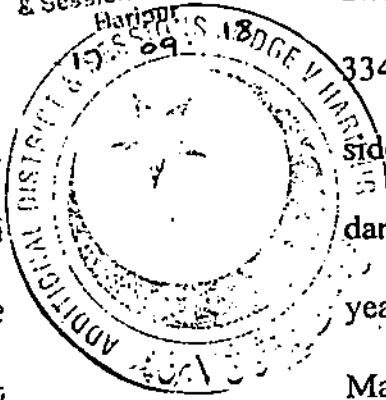
17.09.18



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facing trial namely Babu Muhammad Younis under section 302(b) of Pakistan Penal Code vide FIR No. 487 dated 07.10.2014 lodged at PS KTS, Haripur for committing *Qatal-e-Amid* of brother of deceased namely Ziafat Hussain and upon his conviction, sentenced him to life imprisonment with compensation of Rs. 2,00,000/- to be paid to the LRs of deceased u/s 544-A Cr.PC and in default of payment of compensation thereof, to undergo further imprisonment for 06 months SI. Benefit of Section u/s 382 is, however, extended to the accused Babu Muhammad Younis. Similarly, accused facing trial namely Ghayas Qurashi, Hafeez ur Rehman and Fazal Rehman are convicted u/s 324/148/149 PPC for attempting at the lives of injured Abdul Wahid, Sheikh Adeel and Malik Anayatullah and upon their conviction, sentenced them to seven years rigorous imprisonment. In addition to the sentence awarded above, the accused Fazal Rehman is also convicted u/s 334/336 PPC for causing injuries to Malik Anayatullah on the left side of his face, due to which, his left upper incisor was also damaged and upon his conviction, sentenced him to suffer three years RI and also liable to pay Rs. 2, 00,000/- as *Arsh* to injured Malik Anayatullah. The accused Hafeez Ur Rehman is also convicted u/s 337-A (ii) PPC for causing injuries to Abdul Wahid at his chin with bone exposed and upon his conviction, sentenced him to suffer one year RI and also liable to pay Rs. 1,00,000/- as *Arsh* to injured Abdul Wahid. All the sentences shall run

J. C. / W.
Iftikhar Elahi
Additional District
& Sessions Judge-V,
Haripur



concurrently. Benefit of section 382-B of the Cr.PC is extended to all the accused.

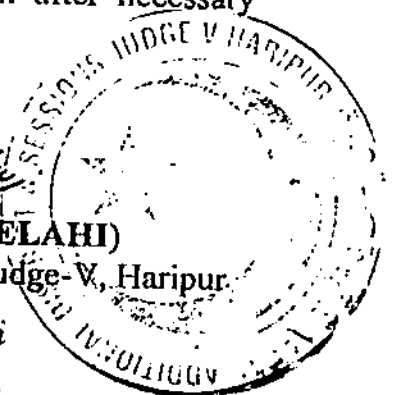
16. So far as absconding accused Yasir Maqbool and Ghazali are concerned, there is a *prima facie* case exists against them, therefore, they are declared as Proclaimed Offenders and perpetual warrant of arrest is ordered to be issued against them. The District Public Prosecutor is directed to register their names in the register of Proclaimed Offenders. Case property be kept intact till the arrest of absconding accused, after which it should be dealt with as per law. Attested copy of this judgment consisting of 44 pages is given to the accused free of cost in terms of Section 371 of the Cr.PC. To this effect, the thumb impressions of accused were taken on the margin of order sheet. Similarly, attested copy of the judgment be sent to the Incharge, Prosecution, District Haripur within the meaning of Section 373 Cr.PC as well. The accused Babu Younis is already in custody be sent to jail through separate conviction warrant whereas accused Ghayas Qurashi, Fazal Rehman and Hafcez ur Rehman are on bail. They be taken into custody and sent to jail alongwith conviction warrant to undergo their sentences.

17. File be consigned to the record room after necessary completion.

Announced
17-09-2018

(IFTIKHAR ELAHI)
Additional Sessions Judge-V, Haripur

Iftikhar Elahi
Additional District
& Sessions Judge-V,
Haripur



(56)

Annex E

(19)

FINAL SHOW CAUSE NOTICE

I, Capt: Mansoor Aman, (PSP), District Police Officer, Haripur as Competent Authority under Police Rules 1975, do hereby serve Final Show Cause Notice upon you FC/Driver Hafeez No. 695 on the following grounds:-

"On 07.10.2014 FIR was got registered by one Ziafat Hussain s/o Said Rasool r/o Kalas, Haripur vides No: 487 u/s 302/324/148/149 PPC PS KTS, in which you were allegedly involved in the case, this amounted to misconduct in terms of Police E&D Rules 1975"

(1) For the purpose of scrutinizing the conduct on your part with reference to the above allegations, you was served with Charge Sheet/Statement of allegations, Deputy Superintendent of Police, Investigation, Haripur was appointed as enquiry officer to probe the allegations vide this office Endst No. 14-16 dated 05.01.2015.

(2) The Learned Court of ASJ-V Haripur vide its judgement dated 23.08.2018, held you guilty of offence and convicted you with 07 years rigorous imprisonment in case FIR No. 487 u/s 302/324/148/149 PPC PS KTS and convicted you for 03 years imprisonment u/s 15-AA.

(3) On conviction for the offence committed by you from the court of Learned ASJ-V the charges of misconduct stand proved and being convict from court of law your retention in police force is against the law.

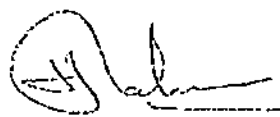
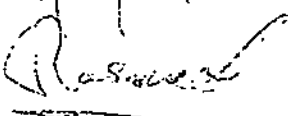
(4) Keeping in view of above allegation on your part, you are hereby called upon. To Show Cause within (07) days of the removed of this Final Show Cause notice as to why you should not be awarded major punishment under the Police Rule 1975, if your written reply is not received with in stipulated period. It shall be presumed, that you have no defense to affirm, you are also allowed to appear before the undersigned, if you so desired.


Capt: Mansoor Aman, (PSP)
District Police Officer
Haripur

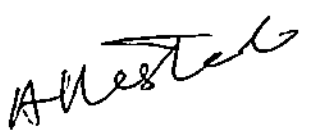

No. 288-291 / dated Haripur the 28 10 2018

Copy of above is submitted to:-

- (I) The Regional Police Officer, Hazara Region Abbottabad for favor of information, please.
- (II) SHO PS City Haripur with the direction to serve the Final Show Cause Notice on convict Hafeez in Central Prison Haripur and receive the acknowledgement from him and be sent back to this office.


11/10/2018



District Police Officer
Haripur



DSD/L

(57)

Amir F.

ORDER

FC/Driver Hafeez No.695 while posted at Police Station Sarai Saleh Haripur was charged in criminal case vide FIR No.487, u/s 302/324/148/149, PPC, Police Station KTS. The complainant Ziafat Hussain charged the accused including Police official Driver Hafeez No.695 for specific role in the commission of offense. The acts/omissions of accused police official, were misconduct under Khyber Pakhtunkhwa, Police Efficiency and Discipline Rules 1975. Therefore, he was issued show cause notice vide this office Memo No.169 dated 28.10.2014, to which the appellant could not give satisfactory reply.

The charges were of severe nature, in which accused police official was directly charged in FIR. Therefore, proper departmental enquiry was initiated by the then District Police Officer, Haripur. The accused police official was issued charge sheet and statement of allegations vide this office Endst: No.14-16/PA dated 05.01.2015. Deputy Superintendent of Police, investigation Haripur, Mr. Aziz Khan was appointed as enquiry officer, who conducted the enquiry and submitting his findings in which he held non involvement of accused police official in the occurrence. The enquiry proceeding were kept pending till decision of case by the trial court.

The court of learned ASJ-V Haripur, vide its judgment dated 17.09.2018, convicted the accused with appropriate punishments. The accused police official Driver Hafeez No.695, was convicted with rigorous imprisonment for 7 years u/s 324/148/149 PPC. Furthermore he was also awarded 01 year rigorous imprisonment for 01 year and fine Rs.1,00,000/-. u/s 337-A(ii) PPC. Therefore, he was served with final show cause notice vide this office Endst: No.288-291 dated 28.09.2018, by the then District Police Officer, Haripur. To which accused police official could not give satisfactory reply, similarly the said official was also provided findings of departmental enquiry through SP Central Prison Haripur, vide this office Memo No.7783/OHC dated 10.12.2018.

It is established fact, that the accused police official, who was charged directly in above mentioned criminal case, could not prove his innocence in the court of law. Rather he was awarded rigorous imprisonments and fine. And he is undergoing the said punishment in central prison Haripur. The punishments awarded by the court has neither been set aside, nor he was acquitted by the competent forum. In these circumstances, the finding of enquiry officer regarding the non involvement of accused in the offence, does not hold weight in eye of law. As the issue has been decided by the competent court. It held in its judgment that the prosecution has succeeded to prove the case beyond any doubt, and convicted the accused police official Driver Hafeez No.695 with appropriate punishments.

Having gone through the record, relevant evidence and the judgment of Honorable Court, It is proved that the accused police official has been convicted by the court. So, the charges of misconduct i.e involvement of accused police official Hafeez No.695 (Convict prisoner) in case FIR No.487 dated 07.10.2014, u/s 302/324/148/149 PPC, Police Station KTS, stands proved beyond any doubt. Therefore, I, Dr. Zahid Ullah (PSP) District Police Officer Haripur, being competent authority under Khyber Pakhtunkhwa, Police Efficiency and Discipline Rules 1975, am fully satisfied that the convict prisoner Driver Hafeez No.695 has committed gross misconduct. Hence, he is awarded major punishment of dismissal from service.

OB: 721
30-10-2019

Attestal
M
DSD / L

District Police Officer,
Haripur



58

Amex 61

OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

0992-9310021-22

0992-9310023

r.rpohazara@gmail.com

0345-9560687

NO: 25985 /PA DATED 12/10/2020

ORDER

This order will dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 submitted by Ex- Driver Constable Hafeez No.695 of District Haripur against the punishment order i.e. *Dismissal from Service* awarded by DPO Haripur vide OB No.721 dated 30.10.2019.

Amex 61
[Signature]

Brief facts leading to the punishment are that the appellant while posted at Police Station Sari Saleh was charged in criminal case vide FIR No.487 u/s 302/324/148/149 PPC Police Station KTS. The complainant Ziafat Hussain s/o Said Rasool charged the accused including Police official Constable Hafeez No.695 for specific role in the commission of offense.

The appellant was issued charge sheet alongwith summary of allegations vide Endst: No. 14-15/PA dated 05-01-2015 and DSP Investigation Haripur was deputed to conduct departmental enquiry, however he failed to advance any evidence in his defence before the EO. The appellant was issued final show cause notice, however he failed to advance any cogent reason in his defence. Consequently, DPO Haripur awarded him major punishment of dismissal from service. Hence, the appellant submitted this present appeal.

After receiving his appeal, comments of DPO Haripur were sought and examined/perused. It is established fact that the appellant was directly charged in the instant case and as a result convicted with rigorous imprisonment of 07 years in case u/s 324/148/149 PPC and 01 year imprisonment and fine of Rs. 100000/- in case u/s 337-A (ii). The misconduct perpetrated by the appellant has been established beyond any reasonable doubt. The punishment awarded by the competent authority seems genuine. Therefore, in exercise of the powers conferred upon the undersigned under Rule 11-4 (a) of Khyber Pakhtunkhwa Police Rules, 1975 the instant appeal is hereby filed with immediate effect.

6505
14/10/2020
[Signature]

Qazi Jamil ur Rehman (PSP)
REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

No. 25985
CC

/PA, dated Abbottabad the 12/10/2020.

1. District Police Officer, Haripur for information and necessary action with reference to his office Memo No.8851/GB dated 31-12-2019. Service Roll and Fuji Missal containing enquiry file of the appellant is returned herewith for record.



59

Amir A

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by **Ex-Driver FC Hafeez-ur-Rehman No. 695**. The applicant was dismissed from service by DPO/Haripur on the grounds that he while posted at PS Sarai Salch was charged in criminal case vide FIR No. 487 dated 07.10.2014 u/s 302/324/148/149/334/336/337-A(iii) PPC PS KTS. The complainant Ziafat Hussain s/o Said Rasool charged the accused including Police Official Ex-Electrician Constable Ghayaz Quraishi No. 249 for specific role in the commission of offence.

His appeal was filed by the Appellate Authority i.e. RPO Hazara vide order Indst: No. 25985/PA, dated 12.10.2020.

He was convicted with rigorous imprisonment of 07-years u/s 324/148/149 PPC and 01-year imprisonment with fine of Rs. 100,000/- u/s 337-A (iii) by the court of Addl: Sessions Judge-V, Haripur vide judgment dated 05.04.2021.

He was acquitted by the Peshawar High Court, Abbottabad Bench vide judgment dated 13.09.2022.

Meeting of Appellate Board was held on 01.03.2024 wherein petitioner was heard in person. The petitioner contended that the FIR is frivolous & he is innocent.

Perusal of enquiry papers revealed that the allegations leveled against the petitioner has been proved. The petitioner failed to submit any cogent reason in his self-defense. The Board sees no ground and reasons for acceptance of his petition, therefore, his petition is hereby rejected.

Sd/-
AWAL KHAN, PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

Attested
[Signature]
DSP/L

No. S/ 627-632 /24, dated Peshawar, the 22-03- /2024.

Copy of the above is forwarded to the:

1. Regional Police Officer Hazara, Service Roll, Fauji Missal & Enquiry File of the above named Ex-FC received vide your office Memo: No. 4787-88/B, dated 02.03.2023 is returned herewith for your office record.
2. District Police Officer, Haripur.
3. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.

DSP Legal
c/Ha-1SR/180

In witness
Per *[Signature]*

[Signature]
D/HA



(**FARHAN KHAN**) PSP, QPM
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

[Signature]