

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: MANZOOR KHAN v/s Police Deptt

S#	CONTENTS	Yes	No
1.	This Appeal has been presented by <u>Shuaib Sultan Advocate</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.	Whether counsel / appellat / respondent / deponent have signed the requisite document?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.	Whether appeal is within time?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4.	Whether appeal enactment under which the appeal is filed is mentioned?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.	Whether enactment under which the appeal is filed is correct?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.	Whether affidavit is appended?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.	Whether affidavit is duly attested by competent oath commissioner?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8.	Whether appeal / annexure are properly paged?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9.	Whether certificate regarding filling any earlier appeal in the subject, furnished?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10.	Whether annexures are legible?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11.	Whether annexures are attested?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12.	Whether copies of annexures are readable / clear?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13.	Whether copies of appeal is delivered to AG / DAG?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14.	Whether Power of Attorney of the counsel engaged is attested and signed by Petitioner / Appellant / Respondents?	<input type="checkbox"/>	<input type="checkbox"/>
15.	Whether number of referred cases given are correct?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16.	Whether appeal contains cutting / overwriting?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17.	Whether list of books has been provided at the end of the appeal?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18.	Whether case relate to this Court?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19.	Whether requisite number of spare copies are attached?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20.	Whether complete spare copy is filed in separate file cover?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21.	Whether addresses of parties given are completed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
22.	Whether index filed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
23.	Whether index is correct?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
24.	Whether security and process fee deposited? On _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rule 1974 rule 11, Notice along with copy of appeal and annexure has been sent to respondents? On <u>29/04/2022</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
26.	Whether copies of comments / replay / rejoinder submitted? On _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
27.	Whether copies of comments / replay / rejoinder provided to opposite party? On _____	<input type="checkbox"/>	<input type="checkbox"/>

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

Name:- Shuaib Sultan

Signature:- [Signature]

Dated:- 29/04/2022

BEFORE THE SERVICES TRIBUNAL

PESHAWAR

=====

Appeal No. 663/2022

=====

Manzoor Khan... VS... The Police Department & Others

INDEX

S No	Description Of Documents	Anexure	Pages
1	Memo of Appeal with Affidavit		1-----5
2	Copy of the Judgment dated 06.01.2022	A	6 ----- 36
3	Copy of Impugned order No. 8375-82/EF dated 30-07-2020	B	37
4	Copy of Representation Dated 14.03.2022 & Postal Receipt	C & D	38 ----- 41
5	Rejection of Departmental Appeal, vide letter No. 3527/31/EF	E	42
6	Wakalat Nama		43

Dated-28-04-2022

Total

43



APPELLANT
MANZOOR KHAN
THROUGH COUNSEL

SHUAIB SULTAN
ADVOCATE HIGH COURT



SHUAIB SULTAN
Advocate High Court
District Courts Mardan

BEFORE THE SERVICES TRIBUNAL

PESHAWAR

Appeal No. 663/2022

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 657

Dated 29-4-2022

Manzoor Khan Son of Alamzeb Ex. Constable No. 4754/EF, Police
Department Mardan. **Appellant**

VERSUS

1. The Secretary, Home Department, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant Elite Force, KPK Police, Peshawar.
3. The Deputy Commandant Elite Force Khyber Pakhtunkhwa, Peshawar.

Respondents.

**SERVICES APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974
AGAINST THE OFFICE ORDER OF DEPUTY COMMANDANT ELITE FORCE
KPK/ RESPONDENT No.03, AS CONTAINED IN ENDORSEMENT No. 8375-
82/EF DATED 30-07-2020, WHEREBY APPELLANT IS DISMISSED FROM
SERVICE AND APPEAL THEREFROM REJECTED BY THE COMMANDANT
ELITE FORCE, KPK POLICE, PESHAWAR/ RESPONDENT No.02, VIDE OFFICE
ORDER No. 3527-31 / EF/ DATED PESHAWAR THE 31-03-2022,**

Respectfully Sheweth,

Facts:

I- That the Appellant was appointed as constable in the elite force in the police department in Mardan.

II- That Appellant was falsely implicated in a criminal case vide FIR No. 256 dated 14.02.2020 U/S-302/324/353/7ATA/.

Filed to-day

Registrar

III- That Appellant was acquitted from the said charges vide judgment dated 06.01.2022. **(Copy of the Judgment dated 06.01.2022 is attached as annexure "A")**

IV- That while searching for the fate of his service on 16.02.2022 the Appellant learned about his dismissal from service on 16.02.2022, vide order No. 8375-82/EF dated 30-07-2020. **(Copy of the order is annexure "B").**

V- That aggrieved therefrom, the Appellant preferred departmental appeal on dated 14.03.2022 to the Respondent No. 02 through registered AD post. **(Copies of the representation and postal receipts are annexures "C" & "D")**

VI- That Respondent No. 02 vide letter No. 3527/31/EF, rejected the departmental appeal of the appellant. **(Copy of the order is annexure "E").**

The impugned order is unjustified, illegal and against the principals of natural justice. The same is liable to be set-aside on the following amongst many other grounds: -

GROUND:

- 1- That the impugned order was never conveyed to the Appellant, the same was not even indorsed to him.
- 2- That the Appellant had never involved himself in the commission of the alleged offence, he was falsely implicated in the criminal case vide FIR No. 256 dated 14.02.2020.
- 3- That the allegation about absence from duty is out of place. Because, having been under arrest/ custody, he was not supposed to have attended his duty.
- 4- That the charge-sheet, as claimed in the impugned order, was never communicated to the Appellant.
- 5- That Enquiry Officer had never contacted the Appellant for participation in the enquiry proceedings. The inquiry, even, if conducted on the back of Appellant has no legal force.
- 6- That the allegations as mentioned in the impugned order are fully discussed and negated by the court of law, in its judgment dated 16.01.2022.

7- That the disciplinary proceedings against the Appellant were supposed to have been kept pending till the trial of the criminal case, which was well in the knowledge of the department, from the day of his arrest there-in.

8- That the Appellant is condemned unheard.

9- That the Appellant has been jobless through-out.

It is therefore prayed that on accepting of this Appeal, setting-aside the impugned orders, the Appellant may be re-instated into service with back service benefits.

Any other consequential relief not specifically prayed for and deemed proper and appropriate by This Honorable Tribunal, under the facts and circumstances of the case, may also be granted to the appellant.

Dated: 28-04-2022



Appellant


Manzoor Khan

Through:

Shuaib Sultan

Advocate, High Court at Mardan.

AFFIDAVIT

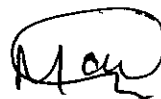


SHUAIB SULTAN
Advocate High Court
District Courts Mardan

I, **Manzoor Khan**, the Appellant, do hereby state on solemn affirmation that the contents of this appeal are true and correct to the best of my knowledge and belief.

Deponent

Manzoor Khan



No, appeal has earlier been filed by the appellant.

(KPK Civil Servant Act 1974.)

BEFORE THE SERVICES TRIBUNAL PESHAWAR

=====
Appeal No. /2022
=====

Manzoor Khan... VS... The Police Department & Others

Application for condonation of delay

Respectfully Sheweth,

1. That the captioned Appeal is instituted today.
2. That the impugned order was not communicated to Appellant. He learned about the same on 16.02.2022, when while searching for the fate of his service after acquittal from the criminal charges, the Appellant learned about his dismissal from service on 16.02.2022, and preferred departmental appeal on 14.03.2022 and thereafter the caption appeal is within time.
3. That the delay in-question was beyond the control of Appellant for want of knowledge about the impugned order.
4. That valuable rights of Appellant are involved the caption Appeal.
5. That the law prefers adjudication of the case on merits.

It is prayed that delay, in-question may kindly be condoned in favour of the Appellant

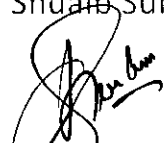
Dated. 28.04.2022



Appellant

Manzoor Khan

Through Shuaib Sultan Advocate



SHUAIB SULTAN
Advocate High Cou
District Courts Mardar

BEFORE THE SERVICES TRIBUNAL

PESHAWAR

=====
Appeal No. /2022
=====

Manzoor Khan... VS... The Police Department & Others

AFFIDAVIT I, Manzoor Khan the Appellant, do hereby state on solemn affirmation that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Deponent

Manzoor Khan



A circular stamp with the text "MANZOOR ADVOCATE" at the top and "Dist: Courts Peshawar" at the bottom. The center of the stamp contains the name "Manzoor Khan" and the number "274". A large, stylized handwritten signature is written over the stamp.



A handwritten signature in black ink, appearing to be "Manzoor Khan".

P/6

Annexure: "A"

IN THE COURT OF IFTIKHAR ELAHI
ADDITIONAL SESSIONS JUDGE/JUDGE MCTC, MARDAN.

Case File No: 70/7 of 2021
Date of Original Institution: 03.11.2020
Date of transfer to this court: 05.10.2021
Date of decision: 06.01.2022



THE STATE

Through

Muhammad Quresh LHC No.1991..... (Complainant)

Versus

1. Sohrab Hayat aged about 38/39 years s/o Jehanzeb r/o Mohalla Khan Kheil Toru presently residing at Dafatari Toru, District Mardan.
2. Muhammad Altaf aged about 39/40 years s/o Muhammad Anwar r/o Mani Kheila Mayar, District Mardan
3. Manzoor aged about 30/31 years s/o Alamzeb r/o Toru Mira District Mardan.....(Accused facing trial)

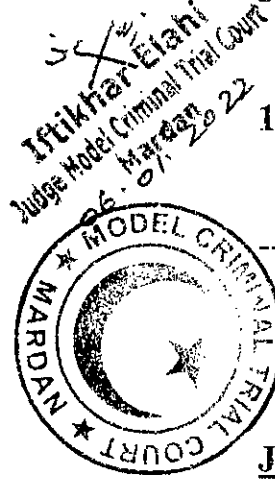
&

1. Siyar s/o Ghulam Habib, 2.Ghulam Sarwar s/o Ghulam Rasool and Fazal Subhan s/o Noor Zaman all residents of Amankot Mira Toru, District Mardan.....(Absconding co-accused)

FIR No.256 dated 14.02.2020 under sections 302/324/353/109/34 PPC/15-AA read with 7-ATA/21(i)(j) ATA (later on deleted) of Police Station City, District Mardan.

JUDGMENT.

Accused named above have faced trial in criminal case registered vide FIR No.256 dated 14.02.2020 of PS City, Mardan registered under sections 302/324/353/109/148/149 PPC/15-AA read with sections 7-ATA/21(i)(j)ATA which were later on deleted vide order of Honourable Judge Anti Terrorism Court, Mardan on the allegations of sharing common object with each other as well as unknown dead co-accused and absconding co-accused named above in committing Qatl-e-

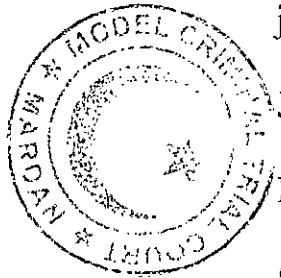


PH

Amd of one Adnan s/o Asfandyar (under custody accused) by firing at him by the unknown dead hired co-accused at the instigation of the accused facing trial and absconding co-accused and being duly facilitated by accused facing trial Altaf Anwar (Court employee) and accused facing trial Manzoor (police official) as well as for attempting at the lives of police officials present with the under custody accused Adnan (deceased) and for restraining the said police officials from discharging their lawful duty.

2. Brief facts of the case are that on 14.02.2020, complainant namely Muhammad Quresh LHC No.1991 alongwith other police officials namely Aziz FC No.3270, Muhammad Saleem FC No.1382 and Muhammad Ali FC No.2763 duly armed with their respective Kalashnikovs had brought under custody accused Adnan s/o Asfandyar r/o Ghulam Haider Killi, arrested in case FIR No.283 dated 24.05.2018 under section 302/324 PPC of PS Toru, alongwith other prisoners from Mardan jail to the Court of learned Judge Ms. Faryal Zia Mufti (Addl: Sessions Judge-VI, Mardan) for hearing and had kept them in the lockup of Khazana and after production of the above named Adnan before the said Court alongwith jail warrant when they were bringing him back to the lockup and reached the spot of occurrence, there a young boy wearing white clothes suddenly opened fire at the police party as well as the aforesaid Adnan with his pistol with the intention to kill them, as a result of which the under trial accused Adnan got hit and died on the spot while the unknown accused also started firing at the police party, in retaliation of which the police party also started firing in self defence and in order to arrest him as a result whereof the unknown accused got hit and died while

111
 Ittikhar Elahi
 Judge Model Criminal Trial Court
 Mardan
 06.01.2022



P/B

from the said firing of the unknown accused fear and terror also prevailed in the vicinity of Kachehri. In the meantime one Rehanzeb s/o Aurangzeb r/o Toru also appeared and stated that he had witnessed the occurrence and that the deceased Adnan (accused in aforementioned case) was his cousin and brother-in-law who had blood feud enmity with accused Siyar s/o Ghulam Habib, Sarwar s/o Ghulam Rasool and Sohrab Hayat s/o Jehanzeb and that his cousin i.e. deceased Adnan has been murdered on their abetment. The report of the complainant was scribed in the shape of murasila on the basis of which the present FIR No. 256 dated 14.02.2020 was initially registered u/s 302/324/353/109/34 PPC/7-ATA at PS City, Mardan against the accused facing trial Sohrab Hayat and the absconding co-accused Siyar s/o Ghulam Habib and Sarwar s/o Ghulam Rasool. Later on during the course of investigation brother of the deceased Adnan recorded his statement u/s 164 Cr.P.C before the Court of learned Senior Civil Judge, Mardan on 03.03.2020 wherein he charged rest of the accused by stating that he was satisfied that his brother had been murdered through unknown hired killer with the help of Fazal Subhan s/o Noor Zaman, Manzoor s/o Alam Zeb and Muhammad s/o Muhammad Anwar, hence they were also arrayed as accused in the present case and section 21(i)(j) ATA were also added in the FIR. Moreover during the course of investigation a 30 bore pistol without number loaded with two (02) live rounds and a spare magazine belonging to the unknown dead co-accused was also produced by the complainant Quresh LHC No.1991 to the IO which he took into his possession and thus section 15-AA was also inserted in the present FIR.

112

U/S
Ittikhar Elahi
 Judge Model Criminal Trial Court
 Mardan
 01.03.2022

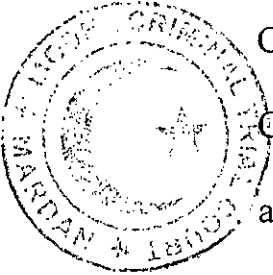


P/9

3. After arrest of the accused facing trial and completion of investigation, challans were submitted for trial against the accused facing trial Sohrab Hayat, Muhammad Altaf and Manzoor as well as for initiating proceedings under section 512 Cr.P.C against the absconding accused Siyar, Ghulam Sarwar and Fazal Subhan which was entrusted to the Court of Honourable Judge Anti-Terrorism Court, Matta (Swat) at Central Prison Mardan. Accused facing trial were summoned who being in custody at that time were produced from jail and after complying with the provisions under section 265-C Cr.P.C, they were charge sheeted for the levelled sections of law on 17.12.2020 by the then Honourable Judge Anti-Terrorism Court, Matta (Swat) at Central Prison, Mardan, to which they pleaded not guilty and claimed trial, hence prosecution was directed to produce its evidence against them as well as absconding co-accused in their absentia. During the course of trial vide order dated 22.09.2021 of the Court of the Honourable Judge Anti-Terrorism Court, Matta (Swat) at Central Prison Mardan, the case in hand after deletion of section 7ATA and sections 21(i)(j) ATA, was transferred to the Court of the Honourable District & Sessions Judge, Mardan for its further entrustment and vide order dated 05.10.2021 of the Honourable District & Sessions Judge, Mardan the case in hand was entrusted to this Court for disposal. Accused were summoned, out of whom accused facing trial Muhammad Altaf being in custody was produced from jail whereas accused facing trial Manzoor and Sohrab Hayat being on bail appeared before the Court and on their appearance before the Court, compliance of section 265-C Cr.P.C were complied with whereafter charge was framed against the accused facing

113

U
 Iftikhar Elahi
 Judge Model Criminal Trial Court
 Mardan
 06.01.2022



P/10

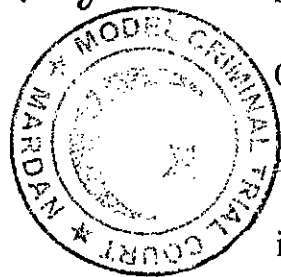
trial to which they pleaded not guilty and claimed trial. Resultantly, PWs were summoned along with case property.

4. During the course of trial prosecution produced as many as fifteen (15) witnesses and the brief of the prosecution evidence is as under:-

Javed FC No.1031, was examined as PW-01. He stated that he was marginal witness to recovery memo Exh.PW1/1 vide which constable Quresh No.1991/LHC produced one pistol 30-bore without number loaded with 02 live rounds and spare empty magazine which was recovered from the dead unknown accused and the I.O sealed the same into parcel No.8 by signing its body. That he was also marginal witness to recovery memo Exh.PW1/2 vide which constable Quresh No.1991/LHC produced one official Kalashnikov No.48001389, constable Saleem No.1382 produced one Kalashnikov No.313 56-94614161, Constable Aziz Ahmad No.3270 produced one Kalashnikov No.386 56-93901364 and constable Muhammad Ali No.2763 produced the handcuffs in which deceased was handcuffed and the I.O sealed the same into parcels No.9, 10 and 11. That he was also marginal witness to recovery memo Exh.PW1/3 vide which the I.O took into possession one Motorcycle His-speed from the possession of accused Manzoor Khan without number having chassis No.4214023 engine No.3411928 Model 2020 red colour alongwith receipt of bargain from the side pocket of accused Manzoor Khan and mobile phone FAYWAG3310 with SIMS No.03118472725, 03439196911, 03085993191. He further stated that in his presence Muharrir Wajid No.2857/FC produced two finger prints which were taken

114

Ittikhar Elahi
Judge Model Criminal Trial Court
Mardan
06.01.2022



P/11

from the unknown dead co-accused through expert and the I.O sealed the same into parcel No.14. He saw the above mentioned recovery memos and endorsed the same to be correct and correctly bearing his signatures as well as the signatures of co-marginal witness. He added that his statement was also recorded by the I.O u/s 161 Cr.P.C.

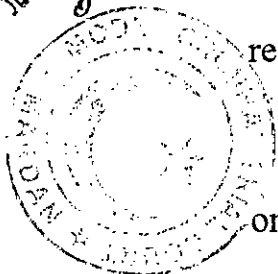
115
Dr. Hamd Ullah, was produced as PW-02. He had conducted autopsy on the dead body of deceased Adnan s/o Asfandyar r/o Ghulam Haider Killi Toru, Mardan, prepared his postmortem report Ex PM as well as endorsed upon his injury sheet and inquest report available on file as Ex PM/1 and Ex PM/2 respectively.

Dr. Zafar Ullah, appeared as PW-03. He had conducted autopsy on the dead body of unknown dead co-accused, prepared his postmortem report Ex PM/3 as well as endorsed upon his injury sheet and inquest report available on file as Ex PM/4 and Ex PM/5 respectively.

Muqadam Khan SI, deposed as PW-04. He stated that on 18.02.2020 at 1600 hours, he had arrested accused Muhammad Altaf s/o Anwar Khan at Tupo chowk and to this effect he prepared his card of arrest available on file as Exh.PW4/1. After completion of investigation against accused Muhammad Altaf, he had submitted interim challan Exh.PW4/2 and complete challan Exh.PW4/3 against accused facing trial. He saw the above mentioned documents and endorsed the same to be correct and correctly bearing his signatures.

Kashif Ali FC No.1774, appeared in the witness box as PW-05. He deposed that on the day of occurrence he alongwith Naveed

U/s
Iftikhar Elahi
 Judge-Magistrate Criminal Trial Court
 Mardan
 06.07.2022



7
P/12

Khan HC and constable Shafiq were present on duty outside the main gate while Usman Zeb was on duty on walk through gate. Accused Muhammad Altaf came on a blue colour Motorcycle 125 cc for his duty inside the main gate. We did not search Muhammad Altaf being official of the District Courts and known to them by that time and was wearing helmet and chaddar. After that two other unknown persons came, one was wearing white clothes, boots and coat while the other was dressed in Khaki colour clothes and cap who came through main gate. They thoroughly searched both the unknown persons and they went inside Court premises. In the meanwhile firing started, so they became alert and closed the main gate and did not allow anybody to go out of the Court premises. After the firing they went to point and place of occurrence, where an under trial prisoner and the unknown person who was wearing white clothes were lying dead. On the following day they were taken to the Police Station City where Hazrat Ali Inspector showed them the footage recorded in the CCTV camera in which he identified accused Muhammad Altaf and the other unknown person wearing white clothes as well as other unknown person wearing khaki colour clothes and these were the unknown persons who had thoroughly been searched by them on the gate while entering to the Court premises. These two unknown persons had de-boarded from the motorcycle of accused Muhammad Altaf.

116

U
Iftikhar Elahi
Judge Model Criminal Trial Court
Mardan
26.01.2022

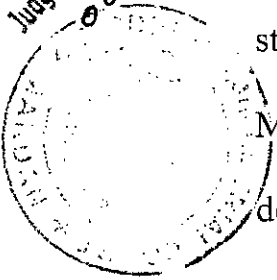


Said Qamar SI, recorded his statement as PW-06. He stated that during those days he was posted at P.S City Mardan. That he was marginal witness to recovery memo Exh.PW6/1 vide which the I.O took into possession blood through cotton from the point and places of

deceased Adnan and dead accused and sealed the same into parcel No.1. He was also marginal witness to another recovery memo Exh.PW6/2 vide which the I.O took into possession from the place of dead accused, 05 empties of 30-bore which were sealed into parcel No.3. That he was also marginal witness to the recovery memo Exh.PW6/3 vide which police constable Quresh produced 05 empties, Constable Saleem No.1382 produced 04 empties, Constable Aziz Ahmad No.3270 produced four empties and all the above empties of 7.62 bore were sealed into parcel No.5,6,7 respectively. He was also marginal witness to the recovery memo Exh.PW6/4 vide which a Motorcar bearing registration No.530 LXW whose mirror of the rear gate were taken into possession and sealed into parcel No.7. He added that in this respect his statement was recorded by the I.O u/s 161 Cr.P.C.

Auzair Ahmad FC No.3270, deposed as PW-07. He stated that on the day of occurrence he alongwith Muhammad Saleem, Muhammad Ali constables armed with official Kalashnikovs rifle brought deceased Adnan s/o Asfandyar who was arrested in case FIR No.283 dated 24.05.2018 u/s 302/34 PPC P.S Toru Mardan. Alongwith deceased Adnan other accused in handcuffs were also produced in the Court of ASJ-IV, Ms. Faryal Zia Mufti and thereafter they were bringing them to police lockup. In the meanwhile a young unknown person wearing white colour clothes suddenly started firing at Adnan with which he got hit and died at the spot. They, the police officials also in retaliation started firing as a result of which the unknown accused got hit and died at the spot there and then. His statement was recorded by the I.O.

117
 Iftikhar Elahi
 Judge Model Criminal Trial Court
 Mardan
 06.07.2022



Naveed Khan FC No.1827, was produced as PW-08.

He testified that during those days he was posted as Guard Commander Old District Courts Mardan. On the day of occurrence he alongwith police constables Kashif and Shafiq were present on duty outside the main gate, while Usman Zeb was on duty on walk through gate. Accused Muhammad Altaf came on a blue colour motorcycle for his duty inside the main gate. They did not search Muhammad Altaf being official of the District Courts and known to them by that time who was wearing helmet and chadar. After that two other unknown persons came, one was wearing white clothes, boots and coat while the other was dressed in Khaki colour clothes and cap came through main gate. They thoroughly searched both the unknown persons and they went inside the Court premises. In the meanwhile firing started so they became alert and closed the main gate and did not allow anybody to go out of the Court premises. After the firing they went to point and place of occurrence where an under trial prisoner and the unknown person who was wearing white clothes were lying dead. On the following day they were taken to the police station City where Hazrat Ali Inspector showed the footage recorded in the CCTV camera in which he identified accused Muhammad Altaf and the other unknown person wearing white clothes as well as other unknown person wearing Khaki colour clothes and these were the unknown person who had thoroughly been searched by them on the gate, while entering to the Court premises. These two unknown persons had de-boarded from the motorcycle of accused Muhammad Altaf.

118

Ittikhar Elahi
Judge Model Criminal Trial Court
Mardan
07.02.22

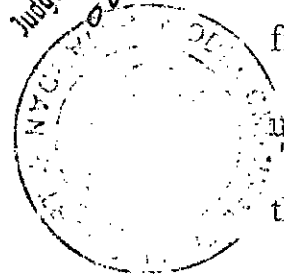


P/15

Quresh LHC No.1991, being complainant of the case recorded his statement as PW-09. He stated that during the days of occurrence he was posted at Police Line Mardan. On 14.02.2020, he alongwith constables Aziz, Muhammad Saleem, Muhammad Ali duly armed with Kalashnikov had taken accused Adnan s/o Asfandiyar r/o Ghulam Haider Killi Toru arrested in FIR No.283 dated 24.05.2018 u/s 302/34 PPC P.S Toru alongwith other arrested accused to the Court premises of learned Judge Ms. Faryal Zia Mufti, ASJ-VI, Mardan and confined them in lockup of Khazana premises. Thereafter they had produced the then murdered accused Adnan to the said Court alongwith his warrant and after attending the Court, he was bringing him back to the lockup, it was about 10:25 hours when they reached to the place of occurrence where a young unknown boy who was wearing white clothes emerged and started firing at them and Adnan through pistol. With the said firing the then accused Adnan got hit and died on the spot. The said unknown accused also made firing upon the police party, therefore, they the police party in retaliation and self defence also made firing upon the said unknown accused due to which he was hit and died. Due to the said act of unknown accused terror prevailed in the premises. In the meanwhile one Rehan Zeb s/o Aurangzeb came forward and stated before him that he was also the eye-witness of the occurrence and the then dead/arrested accused Adnan was his first cousin and brother-in-law who had blood feud with accused Seyar, Sarwar and Sohrab r/o Toru and the dead unknown accused committed the offence at the instance and instigation of the above named accused. He drafted the murasila Exh.PA/1. The murasila was

119

J. W.
Ifkhar Elahi
 Judge Model Criminal Trial Court
 Mardan
 01.02.22



P/16

verified by Rehan Zeb and Qasim Khan by putting the signature upon the murasila and they also disclosed themselves to be the eye-witness of the occurrence. He then informed the casualty staff of police department for preparation of injury sheet and inquest report. The occurrence was brought into the notice of high-ups. The murasila was then sent to the P.S through Muhammad Saleem FC for registration of the case. He saw the murasila and endorsed the same to be correctly bearing his signature. The site plan was prepared at his instance and pointation. During investigation he produced one 30-bore pistol alongwith 02 live rounds and spare empty charger recovered from the killer to the I.O. He also handed over his Kalashnikov as well as the Kalashnikov of constable Saleem, constable Aziz and Constable Muhammad Ali to the I.O.

Wajid FC No.2857, was produced as PW-10. He deposed that he was marginal witness to the recovery memo Exh.PW1/1 vide which constable Quresh No.1991/LHC produced one pistol 30-bore without number loaded with 02 live rounds and spare empty magazine which was recovered from the dead unknown accused and the I.O sealed the same into parcel No.8 **Exh.P1** by signing its body. That he was also marginal witness to recovery memo Exh.PW1/2 vide which constable Quresh No.1991/LHC produced one official Kalashnikov No.48001389, constable Saleem No.1382 produced one Kalashnikov No.313 56-94614161, constable Aziz Ahmad No.3270 produced one Kalashnikov No.386 56-93901364 and constable Muhammad Ali No.2763 produced the handcuffs in which deceased was handcuffed and the I.O sealed the same into parcels No.9, 10 and 11 which were marked as Exh.P2,

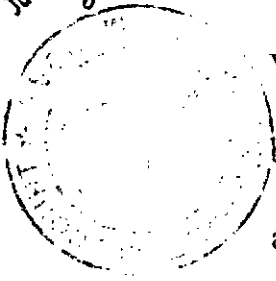
120
 Iftikhar Elahi
 Judge Model Criminal Trial Court
 Mardan
 06/01/2022

P/18

blood through cotton and sealed the same into parcel No.1 & 2 respectively which were marked as Exh.P1 & Exh.P2. Vide recovery memo Exh.PW6/2, he took into possession from the place of accused 05 empties of 30-bore freshly discharge and sealed the same into parcel No.3 (Exh.P3). Vide recovery memo Exh.PW6/3, he took into possession from the place of LHC Quresh 05 empties, four empties from the place of Saleem 1382 and four empties from the place of Auzair Ahmad 3270, all of 7.62 bore were freshly discharge and were sealed into parcel No.4,5,6 which were marked as Exh.P4, Exh.P5 & Exh.P6. Vide recovery memo Exh.PW12/1, he took into possession from the spot a Motorcar VXR No.530/LXW, purple colour, which was parked at the spot having bullet cut mark and its glasses were also broken. Vide recovery memo Exh.PW6/4, he took into possession the broken glasses of the rear glass of the motorcar No.530/LXW and sealed the same into parcel No.7 (Exh.P8). Vide recovery memo Exh.PW1/1, he took into possession one pistol of 30-bore without number loaded with 02 live rounds belonging to deceased accused produced before him by Quresh No.1991/LHC and he sealed the same into parcel No.8 (Exh.P1). Vide recovery memo Exh.PW1/2, he took into possession one kalashnikov No.48001389 brought by Quresh LHC No.1991, another of Saleem No.1382 i.e. Kalashnikov No.313 56-94614161, one Kalashnikov of Auzair Ahmad 3270 having No.386 56-93901364 and constable Muhammad Ali No.2763 produced one handcuff and he sealed the same into parcels No.9, 10,11 which were marked as Exh.P2, P3 and P4. Vide recovery memo Exh.PW12/2, he took into possession blood stained clothes of deceased Adnan consisting of Qamees,

122

Iftikhar Elahi
 Judge Model Criminal Trial Court
 06.07.2022



P/19

shalwar and blood stained clothes of unknown deceased accused consisting of Qamees, shalwar of white colour and a white banyan as well as a woolen banyan and blowzer of blue colour and sealed the same into parcel No.12 & 13 (Exh.P9 & P10). Vide his application Exh.PW12/3, he sent parcels No.4, 5,6,9,10,11 to FSL for comparison that whether the recovered empties were fired from the recovered weapons or not and also received its report as Exh.PK. Similarly vide his application Exh.PW12/4, he sent parcel No.3 containing 05 empties and parcel No.8 containing one 30-bore pistol for comparison and received its report as Exh.PK/1. Vide his application Exh.PW12/5, he sent blood stained articles to FSL for analysis and received its report as Exh.PK/2. He also drafted a receipt Exh.PW12/6 vide which he handed over the motorcar No.530/LXW VXR having bullet cut marks to its original owner i.e. Dur-e-Kamil. The list of legal heirs of deceased Adnan available on file was marked as Exh.PW12/7. Vide recovery memo Exh.PW1/4, he obtained two finger prints which were taken from the unknown deceased/accused through expert and he sealed the same into parcel No.14 (Exh.P5) in presence of marginal witnesses. Vide his application Exh.PW12/8, he sent the finger prints of unknown accused-deceased to NADRA department for verification. On 18.02.2020 accused Sohrab Hayat produced before him the BBA order and accordingly he issued his formal card of arrest available on file as Exh.PW12/9. On 18.02.2020 accused Muhammad Altaf was arrested and his case was entrusted to him for investigation. Vide his application Exh.PW12/10, he produced him before the Area Magistrate for obtaining custody which was allowed for three days. During interrogation, on the

123

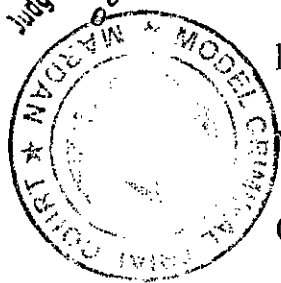
J
X
E
Iftikhar Elahi
Judge Model Criminal Trial Court
Mardan
07-2022



pointation of accused Muhammad Altaf, he took into possession a Motorcycle No.6199/FJ Mardan (Ex P6) from the house of accused Muhammad Altaf and in this respect he prepared the recovery memo (Exh.PW10/1).The said accused Muhammad Altaf also pointed out the place where he handed over the pistol to Seyar and in this respect he prepared the pointation memo Exh.PW12/11. Similarly vide pointation memo Exh.PW12/12, accused Muhammad Altaf also pointed out the place at which he brought the two unknown accused at the place in front of Khazana Katcheri. Vide pointation memo Exh.PW12/13, the accused Muhammad Altaf pointed out the place where he received the pistol and hired amount. As the accused admitted his guilt before him, therefore, vide his application Exh.PW12/14, he produced accused Muhammad Altaf before the Area Magistrate for recording his confessional statement; however, the accused refused to confess his guilt and was sent to judicial lockup. He recorded the statement of accused and PWs u/s 161 Cr.P.C. Vide recovery memo Exh.PW10/2, he took into possession the videos of CCTV cameras in USB. The parcel of USB was marked as **Exh.P7**. Vide his application Exh.PW12/15, he sent parcel No.15 containing USB to confirm whether the video in the USB was in correct condition or any alteration has been made and in that respect received its report as Exh.PK/3. On 03.03.2020, he vide his application Exh.PW12/16, produced one Fawad (brother of Adnan deceased) before the Court of Magistrate for recording his statement u/s 164 Cr.P.C and accordingly he was produced before the court and his statement got recorded. He also arrested accused Manzoor and issued his card of arrest Exh.PW12/17. Vide recovery memo

129

129
 Iftikhar Elahi
 Judge Model Criminal Trial Court
 Mardan
 07.03.2022

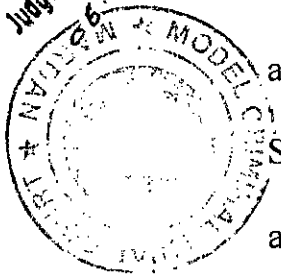


P/21

Exh.PW1/3, he took into possession one motorcycle, copy of bargain receipt, mobile and three SIMS from accused Manzoor Khan. Vide his application Exh.PW12/18, he produced accused Manzoor Khan before the Magistrate for obtaining custody which was allowed for five days. Vide his application Exh.PW12/19, he also applied for the concerned department wherein accused Manzoor Khan was employed, for initiation of departmental inquiry. As the accused Manzoor Khan admitted his guilt before him thus vide his application Exh.PW12/20, he produced accused Manzoor Khan before the Court of Magistrate for recording confessional statement, however, the accused refused to confess his guilt and was sent to judicial lockup. He recorded the statement of accused and PWs u/s 161 Cr.P.C. As accused Seyar and Sarwar were avoiding their lawful arrest, therefore, vide his application Exh.PW12/21, he applied and obtained warrants u/s 204 Cr.P.C. Similarly vide his application Exh.PW12/22, he also obtained proclamation notice u/s 87 Cr.P.C against accused Seyar and Sarwar. Vide his applications Exh.PW12/23 and Exh.PW12/24, he applied and obtained warrant u/s 204 & 87 Cr.P.C against another nominated accused Fazal Subhan. He also placed on file the NADRA report which had not match with the finger prints of unknown accused-deceased which was marked as Exh.PW12/25. As the BBA of the accused Sohrab was rejected, therefore, vide his application Exh.PW12/26, he produced him before the Area Magistrate for obtaining custody which was allowed for three days. Vide his application Exh.PW12/27, he produced the said accused before the Magistrate for recording confessional statement, however, the accused refused to confess his guilt and was sent to judicial

125

ج
 Iftikhar Elahi
 Judge Model Criminal Trial Court
 Margan
 22-22



P/22

lockup. He placed on file the postmortem reports of the deceased and the killer-deceased and previous FIRs regarding the blood feud enmity in between absconding accused and the deceased Adnan. After completion of investigation he handed over the case file to SHO concerned for onward submission of challan. The above mentioned documents correctly bore his signatures.

126

Muhammad Fawad s/o Asfandyar, was examined as PW-13. He stated that deceased Adnan was his brother. On the day of occurrence he was brought to the Court of Honorable Ms. Faryal Zia Mufti from jail. He also met him in Court premises in the morning. On the said day he also saw accused Seyar s/o Ghulam Habib, Fazal Subhan s/o Noor Zaman, Manzoor s/o Alamzeb, who was employee in the police department, alongwith an unknown person who was also murdered on the said day by the police, and was present in police uniform inside the Court premises. After meeting with his brother he left the Court premises and after sometime he was informed that his brother was murdered. On the said information he came to DHQ Hospital Mardan where he found his deceased brother murdered alongwith the unknown killer lying on the spot. In this respect his cousin Rehan Zeb had lodged the report wherein he had charged accused Seyar s/o Ghulam Habib, Sarwar s/o Ghulam Rasool and Sohrab s/o Jehanzeb. Thereafter, after full satisfaction he also charged the said accused alongwith accused Fazal Subhan s/o Noor Zaman, Manzoor s/o Alamzeb and Altaf s/o Muhammad Anwar, who was Court employee and with their active connivance and help the unknown killer had

U.S. / E.
Iftikhar Elahi
 Judge Model Criminal Trial Court
 Mardan
 07. 20 22

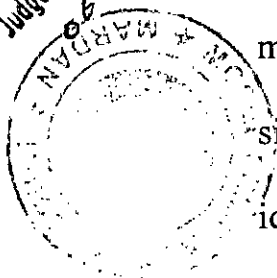


committed the murder of his brother Adnan. He charged all the accused for the commission of offence.

Rehan Zeb s/o Aurangzeb, recorded his statement as PW-14. He narrated that the deceased Adnan was his cousin and also his brother-in-law while accused Siyar, Sarwar, Sohrab, Fazal Subhan and Manzoor were his co-villagers whereas accused Altaf was the resident of Mani Khel Mayar and was a court employee. On the day of occurrence he was present in the court premises for attending the court proceedings in the trial of deceased Adnan who was under arrest trial prison. After attending the Court proceedings when the deceased was taken to the lockup, there an unknown killer had opened fired upon the deceased Adnan as well as upon the police party with which the deceased Adnan got hit and died on the spot while from the firing of the police the unknown killer had also died. He reported the matter to the police in the shape of murasila. He saw the murasila and endorsed the same to be correct and correctly bearing his signature. Thereafter they took the deceased to the hospital where he identified the dead body of the deceased before the police and the doctor. He also pointed out the site of occurrence to the IO at the time of preparation of site plan. The unknown killer had committed the murder of the deceased Adnan at the instance and instigation of the accused named above. He charged all the above named accused for commission of the offence.

127

J. E.
Iftikhar Elahi
Judge Model Criminal Trial Court
Mardan
07. 2022



Sadique MASI, was produced as PW-15. He stated that he had been handed over thirteen (13) parcels by the IO namely Hazrat Ali Khan Inspector out of which parcel No.1 was containing blood through

P/24

cotton, parcel No.2 also containing blood through cotton, parcel No.3 was containing 05 empties of 30 bore, parcel No.4 was containing 05 empties of 7.62 bore, parcel No.5 was having 04 empties of 7.62 bore, parcel No.6 was containing 04 empties of 7.62 bore, parcel No.7 was having some glass pieces, parcel No.8 was containing one 30 bore pistol, parcel No.9 was having official Kalashnikov of one Quresh LHC, parcel No.10 was having official Kalashnikov of one Muhammad Saleem constable, parcel No.11 was containing official Kalashnikov of one Aziz Ahmad, parcel No.12 was having blood stained clothes of deceased Adnan while parcel No.13 was containing the blood stained clothes of unknown deceased (murderer). He kept all the aforementioned parcels in the safe custody of the Mall Khana of the Police Station.

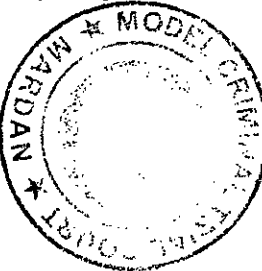
5. Rest of the prosecution witnesses were abandoned by the prosecution and thus the case was posted for recording of statements of the accused within the meaning of section 342 Cr.P.C.

6. Accused facing trial were examined within the meaning of section 342-Cr.P.C wherein they denied each and every piece of evidence of the prosecution being the outcome of fabrication and manipulation. However they did not wish to produce any evidence in their defense. They also did not wish to be examined on oath because according to them the prosecution had failed to prove its case against them.

7. I have heard arguments of learned counsels for both the parties and perused the record.

8. Perusal of case file reveals that all the present accused facing trial have been charged for abetment and facilitation for the

128
 J. Iftikhar Elahi
 Judge Model Criminal Trial Court
 Mardan
 06.07.2022



P/25

commission of murder of deceased Adnan by the dead unknown co-accused in presence of complainant namely Muhammad Quresh LHC No.1991 and other police party who had brought the deceased for his production before the Court of the then learned Addl: Sessions Judge-VI, Mardan namely Ms. Faryal Zia Mufti being an under trial prisoner in case FIR No.283 dated 24.05.2018 under section 302/34 PPC of PS Toru, Mardan. In the first information report only the accused facing trial namely Sohrab Hayat was charged alongwith the absconding co-accused Siyar and Sarwar by cousin of deceased Adnan namely Rehan Zeb who was also present at the time of lodging of report by the complainant namely Muhammad Quresh LHC while rest of the accused facing trial i.e. Muhammad Altaf and Manzoor were later on charged by brother of the deceased Adnan namely Muhammad Fawad s/o Asfandyar for facilitation of the co-accused Sohrab Hayat, absconding co-accused namely Siyar and Sarwar and unknown dead co-accused while recording his statement u/s 164 Cr.P.C before the Court of the then learned Senior Civil Judge/Judicial Magistrate, Mardan. The main accused who had committed the crime on the spot i.e. made firing at the deceased and police party had been done to death on the spot by the local police while making firing in retaliation and self defence and there is no evidence in respect of his identity on the entire prosecution file and thus the identity of the main dead accused had went into a mystery. Similarly as per prosecution story two unknown persons, one wearing white clothes, boots and coat while the other dressed in Khaki colour clothes and cap had entered through main gate out of whom the one wearing white clothes was the unknown dead assailant but the entire

129

Ittikhar Elahi
Judge Model Criminal Trial Court
Mardan
01.05.2022

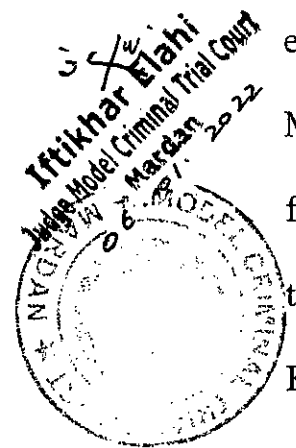


P/26

prosecution file is silent regarding the second unknown person who had entered with the unknown dead assailant which also creates a serious dent in the case of the prosecution to the fact that as to why the case in hand has not been investigated in that aspect and why no efforts were made by the investigation agency and local police for his identification and arrest and why this aspect of the case has been kept in dark which could be the key point for the investigation agency to grab the necks of the real culprits.

130

9. Besides the above the present accused facing trial are only being charged for abetment and facilitation of the main dead unknown assailant, however, there is nothing on file which could establish a link between the present accused facing trial and the unknown dead assailant except a CCTV footage on the basis of which accused facing trial Muhammad Altaf has been arrayed as accused by assigning him the role of facilitator of the unknown dead accused and the main witnesses supporting this aspect of the case of the prosecution are PW-05 and PW-08 namely Kashif Ali FC No.1774 and Naveed Khan LHC No.1827, who were witnesses of identification of accused facing trial Muhammad Altaf as they were performing their duty as guards on the main gate of the spot premises and were well familiar with the features and facial structure of the accused facing trial Muhammad Altaf however, when the said CCTV footage was produced during the course of evidence while recording the statement of PW-05/Kashif Ali FC No.1774, the court observed that the parcel pertaining to the USB was not properly sealed and cloth of the parcel underneath the seal was already torn wherefrom the USB can easily be taken out and entered without breaking the seals. Further when the CCTV



P/28

the local police. Further in the examination-in-chief of PW-05/Kashif Ali FC No.1774 he had stated that on the following day they were taken to the police station City where the IO namely Hazrat Ali Inspector showed them the footage recorded in CCTV camera in which he identified the accused Muhammad Altaf and other unknown person wearing white clothes as well as the other unknown person wearing Khaki colour clothes who had deboarded from the motorcycle of accused Muhammad Altaf but when he was cross examined he has admitted that in his police statement there is no mention regarding the CCTV footage nor there is any mention of identification of the accused through CCTV footage. Further he in his cross examination has stated that there is no front mirror on the motorcycle visible in the CCTV footage whereas according to his statement recorded u/s 161 Cr.P.C the accused facing trial Muhammad Altaf used to install front mirror on his motorcycle which further creates doubt in respect of credibility of the witness as his statement recorded before the Court does not support his statement recorded u/s 161 Cr.P.C. Similarly he in his cross examination has also admitted that as per routine other employees had also entered the Court premises without any checking and that he had also not searched the back portion of the assailants which narration further gives concession to the case of the accused facing trial Muhammad Altaf on two folds, firstly that it was not only Muhammad Altaf who had entered into the Court premises without checking and other employees had also not been searched and secondly the back portion of the unknown assailants had also not been searched and thus they would have taken the pistol by themselves into the court premises being tied to their back. Further the

132

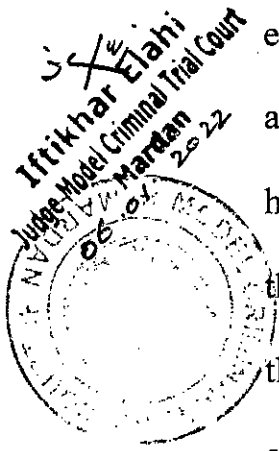
جسٹس
Iftikhar Elahi
 Judge Model Criminal Trial Court
 07/07/2022



P/29

PW-05/Kashif Ali FC No.1774 in his cross examination has also created a dent in the case of the prosecution by stating that on the day of occurrence many other persons who were wearing white colour clothes and other colour clothes had entered into the Court premises and many of them were having caps of different kinds on their head. Likewise he in his cross examination has further stated that his statement was recorded after two days of the occurrence in the Police Station by the IO in the office of the SHO and that in his police statement he had not given the registration number of the motorcycle and general features of the unknown accused nor it has been mentioned that the IO had showed the camera photographs in which the accused was identified by them. Similarly if we peruse the cross examination of PW-08 namely Naveed Khan LHC No.1827, he also has admitted that the face of the rider of the motorcycle was covered with helmet who was also wearing a Chadar and that the registration number of the motorcycle was also not visible in the video. He also admitted that in the video played before him in the Court, the face of the rider is not visible as well as the place where the two persons according to him had been deboarded from the motorcycle was visible. Similarly he has admitted in his cross examination that while passing from the walk through gate they had not noted any weapon with the persons entering the Court premises. He also has admitted that including accused Muhammad Altaf no one had provided the pistol in their presence and that he could not say that how the pistol came into the hands of the unknown assailant. Likewise PW-08/Naveed Khan LHC in his cross examination has also stated that in his police statement this fact has not been mentioned that he had seen the

133



P/30

deboarding of the two unknown person from the motorcycle of Muhammad Altaf by his own eyes. Likewise in his cross examination he has admitted that before entering of the suspected motorcycle rider, two other motorbikes of staff having helmets and chadar had also entered into the Court premises without checking. Similarly he also has admitted that many other persons had entered into the Court premises and that at the time of occurrence there was a peek rush in the Court premises. All these facts are clearly suggestive of the fact that the case against the accused facing trial Muhammad Altaf does not get any corroborative evidence and support from the evidence available on file and is standing on very weak footings being full of doubts and presumptions. Further both the aforesaid witnesses i.e. PW-05 and PW-07 in their cross examination have admitted that after the occurrence they had been sent up to the quarter guard and were kept there for one day whereafter they had been taken to the Police Station City where there statements were recorded by the IO in the office of the SHO concerned after two days which fact also is suggestive of the fact that their statements had been recorded involuntarily and with due force and coercion just to safeguard the skin and reputation of the local police. Besides the above both the above witnesses in their examination-in-chief have stated that just after entering of the unknown persons in the premises, they heard the fire shots meaning thereby that just after their entrance the occurrence had taken place but as per the CCTV footage and cross examination of PW-07/Naveed Khan LHC No.1827 the rider of the motorbike and the unknown persons assailants had entered into the Court

134



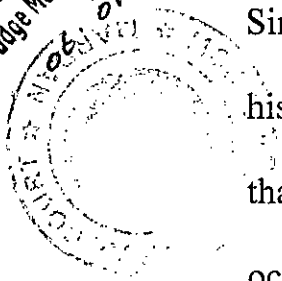
P/31

premises at 08:24 AM while the occurrence had taken at 10:25 AM, which fact also hits the credibility of these two witnesses.

10. Now if we examine the credibility and authenticity of the CCTV footage stored in the USB by the IO of the case in view of the statement of marginal witness to the recovery memo vide which the said USB had been taken into possession by the IO i.e. PW-10 namely Wajid FC No.2857 and the Investigation Officer namely Hazrat Ali Inspector/PW-12, the same also seems to be of no help to the prosecution and hits the case of the prosecution contrary as clearly evident from the prosecution file that no private witness has been associated to the recovery memo and the witnesses associated with the recovery are police officials which fact has also been admitted by PW-10/Wajid FC No.2857 by stating that none from the public was associated with the recovery proceedings. Similarly PW-10 in his cross examination has also stated that it was not in his knowledge that who had converted the CCTV footage to the USB and that the said USB was taken into possession by the IO after 09 days of the occurrence however he was also not in knowledge that during the said period where and with whom the said USB was lying and thus these narrations of the PW-10 clearly strikes the routes the prosecution case regarding the safe custody of the USB in question. Now coming to the statement of the IO/PW-12 namely Hazrat Ali Inspector, he in his cross examination has admitted that the accused Altaf and Manzoor were charged in the instant case on the basis of CCTV footage however when he was asked regarding the FSL of the USB in question, he has stated that the said USB had been sent to the FSL on 18.03.2020 i.e. after one and half

135

Utkar Elahi
Judge Model Criminal Trial Court
Mardan
07.07.2022



P/32

month of the occurrence and that he had not recorded the statement of any concerned muharrir regarding the safe custody of the said USB. He in his cross examination has further admitted that the FSL report does not bear the emboss mark and thus highly affects the intrinsic value of the CCTV footage present in the USB which is the only evidence available with the prosecution against the accused facing trial Muhammad Altaf and Manzoor. Likewise the IO/PW-12 in his cross examination has also admitted that there is no report of FSL regarding the identity of the accused facing trial and that in the CCTV footage played before him in the Court, the faces of the accused facing trial Muhammad Altaf and Manzoor were not visible while entering the Court premises. He also admitted in his cross examination that rider of the motorbike was in helmet whose identity could not be ascertained from the video and further added that the face of the person deboarding the two assailants was also not visible nor the registration number and colour of the motorcycle could be seen or identified. Similarly he has admitted that two persons deboarded from the bike on the opposite side of the Court premises i.e. Shamsi Road and the rider of the motorbike went towards Shamsi Road and did not attract towards the Court. The IO/PW-13 in his cross examination has further stated that other offices of the provincial government were also situated within the premises of Khazana including District Account Office, Officer of the Registrar Mardan and District Qanoon-go Mardan and that round about 200 servants used to attend the offices in the spot premises who were not been thoroughly checked before entering into Khazana premises where the Court of learned Addl: Sessions Judge-VI, Mardan was also situated.

136



P/33

Likewise the IO/PW-13 in his cross examination has admitted that prior to the entry of the assailants into the Court premises other rider of the motorbikes had also entered into the Court premises who were also wearing helmets and who were not searched by the on duty guard/police officials. All these facts are evident of the fact that it was not only accused facing trial Muhammad Altaf who used to come on motorbike and used to enter the spot premises without checking but a lot of other people also used to enter in the premises without checking and thus in the scenario when from the CCTV footage the identification of the rider is not possible the case against the accused facing trial could not be established when no other circumstantial or direct evidence is available and this fact has been admitted by the IO/PW-13 that except the CCTV footage there is no evidence of any kind in shape of ocular or circumstantial which could connect the accused facing trial with the commission of offence or which could prove that the accused facing trial had handed over the pistol to the assailants. The IO/PW-13 himself has also admitted that there is no witness of handing over of pistol by the accused facing trial to the dead co-accused nor there is any evidence that by whom the pistol was handed over to the accused facing trial. Besides the above the accused facing trial Muhammad Altaf and Manzoor have also not made any confession before the Court of competent jurisdiction. Further the accused facing trial namely Muhammad Altaf and Manzoor have been charged by brother of the deceased Adnan namely Muhammad Fawad in his statement recorded before the Court of learned Senior Civil Judge, Mardan on 03.03.2020 i.e. after about 17/18 days of the occurrence, who was not even the eye witness

137

137
 Iftikhar Elahi
 Judge Model Criminal Trial Court
 Mardan
 07.20.22



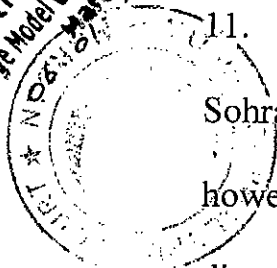
P/34

of the incident and had charged the accused facing trial on the basis of his source and satisfaction but he has not disclosed his source of information and satisfaction. Moreover the said Muhammad Fawad while appearing as PW-13 in his cross examination has also admitted that he had charged the accused facing trial by his own and added that he had seen the dead accused in the company of the absconding co-accused a day prior to the present occurrence however he has not stated that he had seen the dead co-accused with the present accused facing trial and even the fact of seeing the absconding co-accused is also not mentioned in the statement of PW-13/Muhammad Fawad recorded u/s 164 Cr.P.C. Further as admitted by the complainant PW-09 namely Muhammad Quresh LHC No.1991 that the accused Manzoor is not even charged in the FIR at any angle or in the murasila and that even has not been shown in the site plan.

138

11. Now coming to the case of the accused facing trial Sohrab Hayat, though he has been charged by name in the initial report however he has also been assigned only the role of abetment and not of direct participation in the commission of offence. The allegation of abetment of offence would always need serious considerations and some material to establish participation of the accused in the occurrence. In the present case there is no evidence to establish that the accused facing trial Sohrab Hayat had participated in the occurrence or there was any such overt act attributable to him which could suggest abetment or instigation on his part. From the first report it is also evident that cousin of deceased Adnan namely Rehan Zeb who was also endorser of the report simply mentioned the name of accused Sohrab Hayat on the pretext of previous

11/11/22
 Iftikhar Elahi
 Judge Model Criminal Trial Court



P/35

enmity between him and the deceased however there is no mention of any participation of accused Sohrab Hayat in the commission of offence in the first report and subsequently even in 164 Cr.P.C statement of brother of the deceased Adnan namely Muhammad Fawad, there is no mention whatsoever of the acts attributable to the accused facing trial for the abetment of the offence. Mere allegation of participation of the accused facing trial in the offence without there being any corroboration in this regard is not sufficient to bring home the charges framed against him. To sustain the charge of abetment of an offence it is necessary that there must be evidence of an overt action or omission so as to suggest a preconcert and a common design to commit a particular offence. There is no evidence on record to prove that accused facing trial instigated the unknown dead co-accused to commit the murder of deceased and in pursuance of such instigation, the unknown dead accused committed the offence. The evidence produced by prosecution does not meet the required standard of proof in criminal cases, therefore, Court is inclined to hold that prosecution has failed to establish the charge of abetment/instigation of the offence against the accused facing trial through cogent and reliable evidence beyond any shadow of reasonable doubt.

12. In view of what has been discussed above all the accused facing trial are hereby acquitted of the offences leveled against them vide case FIR No.256 dated 14.02.2020 u/s 302/324/353/34/109 PPC/15-AA at PS City Mardan, by extending benefit of doubt. Accused Muhammad Altaf is in custody, he be set free forthwith if not required in any other case. Accused Sohrab Hayat and Manzoor are on bail, hence



P/36

their bail bonds are cancelled and their sureties are absolved from the liabilities under the bail bonds.

13. So far as the case against absconding accused Siyar s/o Ghulam Habib, Gulam Sarwar s/o Ghulam Rasool and Fazal Subhan s/o Noor Zaman is concerned, from the evidence available on file, they are prima facie connected with commission of offence and perpetual warrant of their arrest be issued and the quarter concerned be intimated to enter their names in the register of POs.

14. Case property be kept intact till the arrest and conclusion of trial of absconding co-accused named above whereafter the same shall be disposed of in accordance with law on expiry of period provided for appeal/revision. File be consigned to record room after its completion.

Announced.
06.01.2022



س/می
(IFTIKHAR ELAHI)
Additional Sessions Judge/
Judge MCT C, Mardan

CERTIFICATE

Certified that this judgment consists of (31) pages and each page has been signed by me after necessary correction made therein.



س/می
(IFTIKHAR ELAHI)
Additional Sessions Judge/
Judge MCTC, Mardan

Iftikhar Elahi
Judge Model Criminal Trial Court
Mardan



P/37

Annexure - B



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

No. 8375-82/EF

Date: 30/07/2020

ORDER

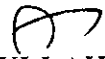
This order will dispose of the departmental proceedings against Constable Manzoor Khan No. 4754, of District Police Mardan now on deputation to Elite Force Khyber Pakhtunkhwa.

As per information report of Acting SP Elite Force Mardan region vide No. 107/EF, dated 03.03.2020 that he is allegedly involved in case FIR No. 256, dated 14.02.2020 U/S 302/324/353/7ATA/109/34 PPC Police Station City, District Mardan and also remained absent from lawful duty without any leave or prior permission w.e. from 26.02.2020 till to date.

In this regard Charge Sheet alongwith Summary of Allegations were issued to him by this office vide No. 3823-27/EF, dated 05.03.2020 and Mr. Shah Jehan Khan Durrani, SP Elite Force HQrs: Peshawar was appointed as enquiry officer. The Enquiry Officer recorded the statements and reported that investigation was carried out by Inv: Officer Inspector Hazrat Ali of Police Station City Mardan, who found him guilty in the murder case. The I/O took his motorcycle and mobile with sim in possession as case property and involvement of the accused Constable is proved with the help of CCTV cameras and call data record (CDR) shows that both the accused Constable Manzoor and his relative Sayar Khan were found inside the kachehri on the day of occurrence. Hence, the accused Constable does not deserved any sympathy and mercy, therefore Enquiry Officer has recommended that he may be awarded major penalty of dismissal from service.

Therefore, I, Zaib Ullah Khan, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, keeping in view the above facts, circumstances and recommendations of the enquiry officer, impose major penalty of dismissal from service upon the defaulter official from the date of absence i.e 26.02.2020.

Order Announced!


(ZAIB ULLAH KHAN)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa
Peshawar.

Copy of the above is forwarded to the:-

1. District Police Officer, Mardan for information.
2. Superintendent of Police, Elite Force HQr: Peshawar.
3. Superintendent of Police, Elite Force Mardan.
4. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Accountant /Incharg Kot,,Elite Force Khyber Pakhtunkhwa Peshawar.
6. OASI/SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
7. FMC, along with complete enquiry file Enls: (16) pages.

2
16/2022



P/38

Regd/A-D

The Commandant,
Elite Force,
K.P Peshawar.

Amendment - "C"

Through proper channel.

Subject:- Appeal against the Order of The Deputy
Commander, Elite Force K.P, Peshawar,
contained in letter No.8375-82/EF
dated 30-07-2020, dismissing the
Appellant from service.

Sir,

With Reference to the captioned order, it is submitted that the impugned order was never communicated to Appellant nor endorsed to him.

(Copy attached).

He came across the same on 16-02-2022, while searching for the fate of his service, after acquittal from the criminal charge.

It is Submitted, that the Appellant was falsely charged in a criminal case vide FiR No. 256 dated 14-02-2020 U/S-302/324/353/7ATA/109/34/PPc of Police Station City Mardan and also on alleged grounds of absence from duty with-out prior permission w.e.f 26-02-2020 till date i.e 30-07-2020.

The Appellant was arrested in the above noted case and put to trial.

He was acquitted from the said charge by The

Addl; District & Section Judge/Judge M.C.T.C
Mardan vide judgement dated 06-01-2022.

Copy attached.

While, searching for the fate of his service, on 16-02-2022 the Appellant learnt about his dismissal from service on 16-02-2022.

The impugned order is liable to be set-aside on the following amongst many other grounds and the Appellant to be re-instated into service.

1. That the impugned order was never conveyed to Appellant. The same is even not endorsed to him.
2. That the Appellant had not involved himself in the commission of the alleged offence, he was falsely charged for the same.
3. That allegations about absence from duty is out of place. Because, having been under arrest/custody, he was not supposed to have attended his duty.
4. That the charge-sheet, as claimed in the impugned order, was never communicated to Appellant.
5. That Enquiry Officer had never contacted the Appellant for participation in the enquiry proceedings. The inquiry, even, if conducted on the back of Appellant has no legal force.
6. That the allegations as mentioned in the impugned order are fully discussed and

P/40

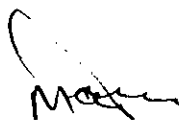
negated by the Court of law, in its judgment dated 06-01-2022.

7. That the disciplinary proceedings against the Appellant were supposed to have been kept pending till the trial of the criminal case, which was well in the knowledge of the department, from the day of his arrest there-in.
8. That the Appellant is condemned unheard.
9. That the Appellant has been jobless through-out.

It is requested that on acceptance of this Appeal, setting-aside the impugned order, the Appellant may be re-instated into service with back service benefits.

Dated. 14-03-2022.

Your's obediently



(Manzoor khan)
Ex-Constable No.4754/EF
District Mardan.

Address:-

Manzoor Khan S/o Manzoor
Village Toru Maira, Mardan.



P/41

Annexure - D

NO. 1499 For Insurance Notices see reverse. R 110

Stamps affixed except in case of uninsured letters of not more than **AD** the i **RGL74360687**

Post Office Guide or on which no acknowledgement is due.

Received a registered* addressed to _____

Date-Station _____

Write here "letter", "postcard", "note" or "parcel" with the word "insured" before it when necessary.

The Cambridge

Insured for Rs. (in figures) Rs. 500 (in words) Five hundred

Weight 14 Kilo

Insurance fee Rs. _____ P. in words _____

Name and address of sender Cambridge

14 22

P/42

E



Office of the Addl: IGP
Elite Force Khyber Pakhtunkhwa Peshawar



No. 1 /EF

Dated: 31/03/2022

ORDER

This is departmental appeal submitted by Ex-Constable Manzoor Khan No. 4754 against the punishment of dismissal from service awarded to him by Deputy Commandant Elite Force vide order No. 8375-82/EF, dated 30.07.2020 charged in case FIR No. 256, dated 14.02.2020 u/s 302/324/353/7ATA/109/34, PPC PS City, District Mardan.

Hence, the competent authority on the perusal of the appeal and on the grounds of time limitation i.e. time barred filed the appeal.

Order Announced!

-Sd-

(MUHAMMAD WISAL FAKHAR SULTAN)PSP
Addl: Inspector General of Police,
Elite Force Khyber Pakhtunkhwa Peshawar

No. 3527-31 /EF.

Copy of above is forwarded:-

1. Superintendent of Police, HQrs: Elite Force, Peshawar.
2. OASI/SRC/FMC, Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. Ex-Constable Manzoor Khan No: 4754, through Reader SP Elite Force Peshawar.

(ASST. IGBAL MOHMAND)PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

P/43

WAKALAT NAMA

BEFORE KPK SERVICES TRIBUNAL PESHAWAR

Appeal No. _____ of 20 _____

In re:-

MANZoor Khan

Appellant

Petitioner

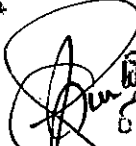
VERSUS

The Police Department and others Respondent

KNOW ALL to whom these present shall come that I/ we Manzoor Khan
appellant in the above noted service appeal,
do hereby appoint and constitute **Mr. SHUAIB SULTAN ADVOCATE**
Mardan as Counsel in subject proceeding and authorize him to appear, plead etc.,
compromise, withdraw or refer to arbitration for me/ us, as my/ our Advocate in
the above matter, without any liability for his default and with the authority to
engage/ appoint any other Advocate/ Counsel at my/ our behalf all sums and
amounts payable to deposited on my/ our account in the above noted matter.

IN WITNESS WHEREOF I/ We do hereunto set my/our hand to these presents the
contents of which have been understood by me/us on this 28 day of
04, 2022.

Accepted subject to the terms of the fees.


SHUAIB SULTAN
Advocate High Court
District Courts Mardan

Shuaib Sultan, Advocate High Court

District Courts Mardan

Cell No. 0300-5727424

Email. shuaibadv@gmail.com

Bar Council, S. No.Bc-10-5973

Dated: 28/04/2022

Signature of client: 




16101-22 75 581-3

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 663/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/04/2022	<p>The appeal of Mr. Manzoor Khan presented today by Mr. Shuaib Sultan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	12/5/22	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>13/5/22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p> CHAIRMAN</p>
	13.05 2022	<p>learned counsel for the appellant present and requested for adjournment to further prepare the brief. Adjourned. To come up for preliminary hearing before the S.B on 18.07.2022.</p> <p> (Kalim Arshad Khan) Chairman</p>