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IN THE COURT OF SYED KAMAL HUSSAIN SHAH,
DISTRICT & SESSIONS JUDGE, KARAK.

Sessions Case #.....26/7 of 2014.
Date of Institution 19.07.2014.
Date of Decision16.03.2016.

The State.

Vs

(1). Amin ullah.

(2). Khob Niaz ss/o Abdul Ghaffar rs/o Warrana Mir Hassan Khel Tehsil
Takht-e-Nasrati District Karak.

.....(Accd facing trial).

Case FIR No. 520 dated 11.10.2013 u/ss 302/34 PPC P.S Latamber.

1994 S C M R 1 [Supreme Court of Pakistan], 1995 S C M R
1776 [Supreme Court of Pakistan], P L D 2001 Supreme
Court 222, 2005 S C M R 1110 [Supreme Court of Pakistan],
2008 S C M R 917 [Supreme Court of Pakistan], 2008 S C M R
922 [Supreme Court of Pakistan], 2011 S C M R 492
[Supreme Court of Pakistan], 2015 M L D 927 [Peshawar] &
2015 M L D 938 [Lahore].

... By the prosecution.

AND

1991 P Cr. L J 76 [Peshawar], 1991 P Cr. L J 433 [Lahore],
1991 P Cr. L J 1195 [Lahore], 1991 P Cr. L J 2275 [Lahore],
1992 P Cr. L J 48 [Karachi], 1992 P Cr. L J 313 [Lahore], 1992
P Cr. L J 101 [Karachi], P L D 2002 Supreme Court 1048, 2010
S C M R 566 [Supreme Court of Pakistan], 2013 P Cr. L J 708
[Peshawar], 2015 P Cr. L J 81 [Peshawar], 2015 P Cr. L J 248
[Peshawar], 2015 P Cr. L J 416 [Peshawar] & 2015 P Cr. L J
585 [Peshawar].

... By the defence.

JUDGMENT

(1) In this about 2 ½ years old prosecution's case is that the
complt Shams-ur-Rehman s/o Muhammad Ayub in emergency
ward KDA hospital Karak has reported before Yousaf Khan SI at
18:00 hours on 11.10.2013 after bringing dead body of his father
Muhammad Ayub to the effect that he with his deceased father after
late post noon prayer in mosque Abu Hurira of village Mir Hassan
Khel went out to the shop of one Adnan in the village where both
the brothers accd Amin ullah and Khob Niaz altercated with the



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complt party and agitated that we have published statement in the press against them and left away. It was 17:15 hours of even date when the complt alongwith his father Muhammad Ayub went to their land known as "Marra" where both the accd appeared with Kalashnikovs and stated imperatively be get ready and started firing at his deceased father in furtherance of common intention and the motive of the killing was stated the ferocity of the accd against the statement published in the press/newspaper by his father and the accd de-camped from the scene and the incident was seen by the complt/informant and the other people at the spot and the dead body was brought to the hospital for PM and legal proceeding and the report was reduced into memo report twice posted as Ex.PA and was signed by the informant in English and was read over to him by the scribe also signing the same in English and was sent to I/C of PS at the hands of cop Ajmal Khan # 146 for the registration of case whereas the dead body alongwith inquest report & injury sheet were handed over to cop Noor Islam # 374 for medical reports and such written information was resulted into the registration of case at 19:30 hours and investigations were started out and initially both the accd have been POs and complete challan u/s 512 Cr.PC was drafted and put in the Court of learned area Magistrate on 10.12.2013 receiving proceeding and statements of SW alongwith two PWs and in the meanwhile, the accd Amin ullah was arrested on 26.06.2014 and complete challan u/s 512 Cr.PC against both the accd alongwith supplementary challan of the said accd were, however, sent to this Court on 15.07.2014 by the area JM-I Karak and the case was registered as Sessions Case # 26/7 of 2014 on 19.07.2014 in the diary of this Court.

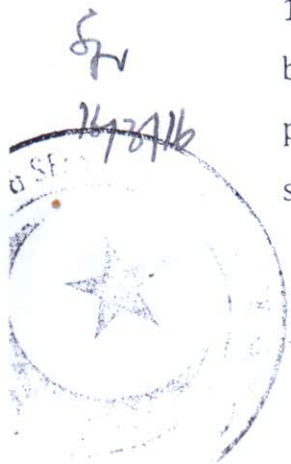
(2) Arrested accd Amin ullah was indicted on 16.09.2014 and he claimed trial and the case was put for evidence and statements of three PWs could be recorded when the co-accd Khob Niaz was arrested on 07.11.2014 and his supplementary challan was received and he was framed charge on 11.12.2014 also claiming

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statements with other P.Ws. It is relevant to mention here that the bail application of the aced Khob Niaz was dismissed by this Court on 08.04.2015 while the co-aced Amin ullah did not seek release on bail and both the aced have contested the proceeding from judicial lock up Karak so far.

(3) The prosecution recorded evidence of fifteen PWs in all alongwith case properties including statement of Muhammad Nawaz (PW-15) by order of this Court dated 02.12.2015 u/s 540 Cr.PC upon the prosecution's application whereas PWs cop Zar Karim # 53, Mamtaz Ali ASI, Inam ullah & Muhammad Adnan ullah, were abandoned.

(4) According to the prosecution's counsel Akhtar Nawaz Adv assisted by Zahir Khan APP for the State that it is a case of promptly lodged FIR with direct charge to both the aced with common roles in the day-light occurrence and the parties are co-villagers with no question of miss-identity of the aced party under the proved motive of disputed publication. It was further stated that the medical evidence and the site plan support the FIR, time, distance & type of weapon and no contradiction in the statement of P.Ws with especial reference to the complt's natural eye-account and the aced have pointed out & verified the place of occurrence to the I.O. It was loudly urged that the willful & long abscondence of the aced party does not give way to them to make flee from the gruesome murder of Muhammad Ayub local journalist for nothingness and in the whole proceeding no favourable evidence has been brought to create benefit for the aced party and the aced Amin ullah has been alleged to bear bad character being wanted in case FIRs # 180/2010, 380 & 505/2013 of PS Latamber and instant case has been said living paradigm of his knavery & brutality and it has been prayed that both the aced be dealt with under the law by taking support of case law cited at the bar.

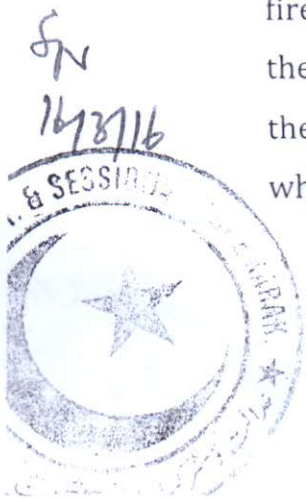


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(5) The defence counsel Malik Muhammad Khan Adv Mansoor & Ahmed Farooq Khattak Adv Karak did not remain behind to say much more than required and stated that instant case is unseen/blind murder and has been registered after consultation and the complt is the only PW who has charged the accd party by placing foundation of false case on flowing water to wash away not only the base but also super structure and the entire story is un-believable and defalcated. It has, inter-alia, been said that one shopkeeper Adnan who was initially said eye-witness but was later dropped and abandoned was in fact withholding of material evidence calling for impunity & creating question mark to the prosecution's case. It was further stated that cardinal principle based on the saying of Holy Prophet (P.B.U.H) "acquitting by error would be better than convicting by error" and by stretching golden rule of Islamic jurisprudence regarding benefit of doubt providing for "it would be better to acquit hundred culprits than to convict one innocent person" and augmented Sir William's doctrine of "Black Stone Ratio" based on the same universal rule of prudence and each piece of evidence brought on record is to be seen with keen care and weightage and the present case has been created elbow room and is precipitated with murky & foggy facts and the case law cited by the defence is of paramount significance and the mere abscondence of the accd party does not call for the proof of case to hilt and every word of prosecution's story is deficient of evidence and both the accd have been demanded acquittal under the circumstances & facts.

(6) The point to determine as to whether the accd have committed Qatl-e-Amd of the complt's father Muhammad Ayub by fire shots with Kalashnikovs in furtherance of common intention on the alleged motive at the given time, date and place or not and all the evidence post of arrest of both the accd on record is taken up which reads as under.



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(7) PW-1 Noor Aslam # 374/FC has stated that on 11.10.2013 he was present with Yousaf Khan SI in emergency room KDA hospital Karak, where SI handed over him the dead body of the deceased Muhammad Ayub alongwith injury sheet and inquest report which he escorted to doctor and handed over to him for P.M examination. On the following day at morning time, the doctor handed over him P.M documents alongwith garments of the deceased which he took to P.S Latamber and handed over to Rauf Ullah SI/KBI. He was examined by the I.O to this effect.

(8) During cross-examination he stated that they three police officials were present at the Reporting Center KDA hospital Karak on the day of occurrence. He rejected the suggestion in-correct that Yousaf Khan SI was not present at that time. They were present at Reporting Center and on the arrival of the deceased they went to the emergency room. They all three police officials came to the emergency room. In their presence Yousaf Khan SI drafted the memo report (murasilla) and at that time the staff of the emergency room was present. The injury sheet and inquest report were handed over to him by Yousaf Khan SI in the presence of doctor and other staff. The doctor handed over to him the P.M documents and the garments of the deceased on the following day at about 06:00 a.m. He handed over the same in P.S to the I.O on the same day at about 07:00 a.m. It is in-correct to suggest that the P.M documents and garments of the deceased were handed over to him on the day of occurrence.

(9) PW-2 Muhammad Ishaq # 196 stated that during those days he was posted at P.S Latamber. He was present with the I.O Muhammad Rehman SI when the accused Amin ullah was taken to the spot for pointation, where he pointed out the various places to the I.O in his presence. To this effect a pointation memo was prepared which bears his signature correctly as a marginal witness. He was examined by the I.O to this effect.



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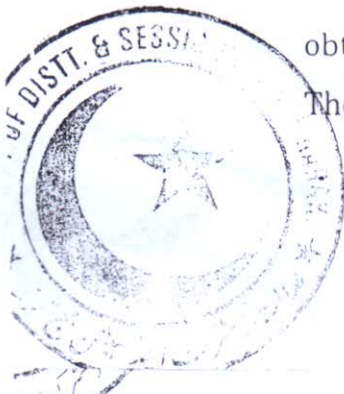
(10) Facing cross-examination he stated that the accused was taken from the P.S to the spot for pointation at about 03:00 p.m and reached there at about 04:00 p.m. They went to the spot through Rahmat Abad, Amberi Killa, Ahmad Abad and Warrana. Villages are situated on the road leading to the place of occurrence. No private person was present with them neither called to associate with the proceedings at the time of pointation through accused. They remained on the spot for about 02 hours. It is in-correct to suggest that he is deposing against the accused falsely.

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(11) PW-3 Nawab Khan (Rtd FC) has stated that he is marginal witness to the recovery memo vide which the I.O took into possession one shirt, one trouser and one banyan of white colour stained with blood belonging to the deceased Muhammad Ayub, having cut marks sent by the doctor through cop Noor Aslam and sealed the same in a parcel. The memo is Ex.PW-3/1, which is correct and bears his signature correctly. Similarly, he has taken the above mentioned garments to FSL Peshawar and deposited the same in the FSL Peshawar through a receipt. He was examined by the I.O to this effect.

(12) In cross-examination he stated that the garments were brought to the P.S on 12.10.2013 at about 07:00 a.m. He was present in the KBI room when FC Noor Aslam brought the garments and handed over to the I.O in his presence. He took the garments to FSL Peshawar on 15.10.2013 at morning time. He was not handed over the FSL report, however, receipt was handed over to him which was handed over by him to Moharrir of the P.S. SHO, Rauf ullah SI and he were present when the garments were brought. He does not remember the exact time of Fajar prayer.

(13) PW-04 Amal Khan SI has stated that after the arrest of the accd Khob Niaz, he produced him before the area Magistrate and obtained two days physical custody vide his application Ex.PW-4/1. Thereafter, he interrogated him and recorded his statement u/s



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161 Cr.PC. After the expiry of physical custody, he again produced the accused before area Magistrate on remand judicial vide his application Ex.PW-4/2 and accused was sent to judicial lock-up. (177)

(14) In cross-examination he stated that he has recorded statement of accused u/s 161 Cr.PC wherein the accused has professed his innocence.

(15) PW-5 Farid ullah # 497 stated that he is marginal witness to the recovery memo Ex.PW-5/1 vide which the I.O took into possession some blood stained sand from the place of the deceased Muhammad Ayub and sealed the same into parcel # 01 in his presence. Similarly, he is marginal witness to the recovery memo already Ex.PW-3/1 vide which the I.O took into possession one shirt, one trouser and one banyan of white colour stained with blood belonging to the deceased Muhammad Ayub, having cut marks sent by the doctor through cop Noor Aslam and sealed the same in a parcel. Both the memos mentioned above bear his signatures correctly. He was also entrusted with warrants of arrest u/s 204 Cr.PC issued against the accused Amin ullah and Khob Niaz sons of Abdul Ghaffar residents of Warrana Mir Hassan Khel Tehsil Takht-e-Nasrati District Karak for execution. He searched for the accused in their village and in the surrounding areas but they were avoiding their lawful arrest, therefore, he returned the warrants un-executed alongwith his reports. He has seen the warrants Ex PW 5/2 and Ex.PW-5/3 respectively which bear his reports on its back correctly. His reports are Ex PW 5/4 & Ex PW 5/5 respectively. Similarly, he was also entrusted with proclamation notices issued against the above named accused for service and after doing the needful; he returned one copy of the same alongwith his reports. He has seen the notices u/s 87 Cr.PC which bear his reports (over-leaf) notices correctly. The notices are Ex PW 5/6 & Ex.PW-5/7 and his reports are Ex PW 5/8 & Ex.PW-5/9 respectively. His statement was recorded by the I.O to this effect.



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(16) Facing cross examination he stated that they had reached to the spot at about 20:00 hours and remained on the spot for about 1 ½ hour. The I.O has taken blood stained sand by his hands and sealed the same in a parcel of cloth. The blood stained sand was not dropped from the hands of the I.O. The garments of the deceased were brought at about 07:00 a.m on the next day and the garments were consisted of shirt, trouser and banyan and nothing else. It is correct that he has used the same pen over-leaf of the warrants and notices. It is also correct that he has not mentioned the CNIC numbers of the witnesses mentioned over-leaf of warrants and notices.

(17) PW-6 Doctor Saddique ullah (Rtd) stated that during those days he was posted as CMO DHQ Hospital Karak. On 11.10.2013 at about 6.30 p.m, he conducted autopsy on the dead body of the deceased Mohammad Ayub aged about 44 years son of Qadir Khan resident of Warrana Mir Hassan Khel brought by police and identified by Ali Khan and Inamullah.

Information furnished by the Police:... Fire arm injuries.

Condition of subject:... Stout.

Wounds:...

1. Entry wound of about 0.5 c.m on the left side of the chest and another wound at about 2 inches on the medial side of the chest. Both oval in shape.
2. Exit wound about 04 inches on the right side of the chest.
3. Entry wound on the right buttock posteriorly about 0.5 c.ms circular.
4. Corresponding exit wound on the right thigh proximally and medially size about 01 inch.

Cranium and spinal cord:... Intact.



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Thorax:

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Walls, ribs and cartilages, pleura, right lung, left lung and blood vessels injured while larynx and trachea were found intact.

Abdomen:

All the abdominal organs were found intact.

Muscles, Bones and Joints:

Injury to muscles and bones of right thigh. Deformity of the proximal right thigh. Fracture of the proximal right femur.

Remarks.

The deceased sustained fire arm injuries at the chest and lower limb resulted in profuse hemorrhage and death.

Probable duration between:

- a) Injury and death..... About half to one hour.
- b) Between death and P.M..... 04 to 05 hours.

The P.M papers consisting of 06 sheets including pictorial are in his own handwriting and bear his signatures correctly. The P.M report is Ex PM while the pictorial consisting of two sheets is Ex PM/1. He has also endorsed the injury sheet Ex PM/2. After P.M examination, he handed over injury sheet and P.M report alongwith one shirt, trouser and bunyan to cop Noor Aslam # 374.

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(18) Facing cross-examination he stated that he has conducted the P.M examination in KDA hospital Karak. It is correct that old DHQ hospital is situated in city Karak. His duty hours were from 02.00 p.m to 08.00 p.m on the relevant day. He has handed over the



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P.M report alongwith garments of the deceased to police on the day of examination of the dead body. He has handed over the above mentioned items to cop Noor Aslam # 374. The dead body was produced before him by the local Police. He would have consumed some one hour time on conducting the P.M examination and preparation of P.M report. It is correct that the level of entry wounds with corresponding exit wounds was through and through. The rigor mortis starts developing after 06 hours, however, it depends upon environment and temperature etc. The doctors guess the probable time between Death and Post Mortem from the examination of the dead body.

(19) PW-7 Yousaf Khan Rtd SI has stated that during those days, he was I/C Casualty KDA hospital Karak. On 11.10.2013 at 18:00 hours, complainant Shams-ur-Rehman son of Muhammad Ayub aged about 18/19 years r/o Warrana Mir Hassan Khel, who has brought the dead body of his father Muhammad Ayub to KDA hospital and reported the matter to him in emergency room which he reduced into writing in the shape of memo report (murasilla) Ex.PA. After recording the report of the complainant, the same was read over to him and he after admitting the same to be correct signed it as a token of its correctness. Thereafter, he prepared the injury sheet Ex.PW-7/1 and inquest report Ex.PW-7/2 of the deceased and sent the dead body under the escort of cop Noor Aslam # 374 to doctor for P.M examination while the memo report was handed over to cop Ajmal Khan # 146 to P.S Latamber for the registration of case. All the documents prepared by him are correct and bear his signature correctly.

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(20) While facing cross-examination he stated that during those days he was posted at emergency room KDA hospital. He has never served in P.S Latamber during his service. The report was taken down in emergency room at KDA hospital. Duty staff of the emergency room was present at that time. Whenever a dead body

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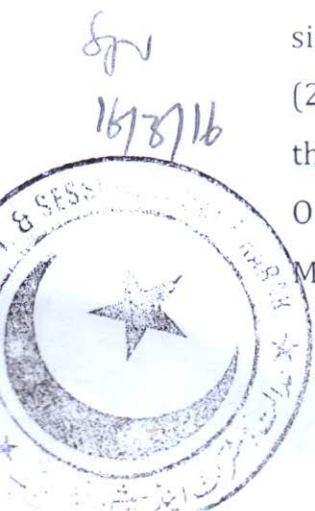
or injured is brought to the hospital, they by themselves attend the same and straight away visit the emergency room. First the emergency room lies and then the reporting center. He was accompanied by two police officials. During those days he was assisted by three police officials, out of whom one was on leave. He grant leave to his subordinate on routine basis. He has not obtained the signature of the doctor on the report of the complainant. The P.M documents were not handed over to him by the doctor. It is incorrect to suggest that he was on leave on the above mentioned date and his subordinates have carried out the whole proceedings. It is in-correct to suggest that he is deposing against the accused falsely.

(21) PW-8 Ali Khan has correctly identified the dead body of the deceased Mohammad Ayub before the Police as well as doctor.

(22) Responding in cross-examination he stated that he identified the dead body before the police at about 06.00 p.m and the doctor at about 06.30 p.m in KDA hospital. He followed the dead body. He has left his village at about 05.30 p.m. Before 30 minutes prior to his departure from village, the dead body was taken to hospital. He being the resident of Saikot followed the path of Surati Killa passing through Ahmed Wala and Rahmat Abad. He was called by his relatives. He inquired from general public regarding the murder of the deceased being his relative and he rushed to the hospital. It is in-correct to suggest that he has signed the blank paper in the P.S.

(23) PW-09 Aslam Khan DSP CTD Investigation stated that during those days, he was posted as SHO police station Latamber. He has submitted complete challan u/s 512 Cr.PC against the accused. He has seen the above referred challan which is correct and bears his signature correctly. He was not cross-examined.

(24) PW-10 Mohib ullah SI stated that during the days of arrest of the aced Khob Niaz, he was posted as SHO police station Latamber. On 07.11.2014, he arrested the aced Khob Niaz from Ahmad Abad Mela and issued his card of arrest Ex.PW-10/1. Thereafter, the



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accused was handed over to the KBI staff for completion of investigation. After completion of investigation, he submitted supplementary challan against the accused Khob Niaz. On 29.06.2014, he has also submitted supplementary challan against the accused Amin ullah. He has seen the above referred documents, which are correct and bear his signatures correctly. He was also not cross-examined. (182

(25) PW-11 Rasool Muhammad SI stated that during those days he was posted as ASI P.S Latamber. On the receipt of memo report from Yousaf Khan SI I/C Casualty KDA hospital Karak brought by cop Ajmal Khan, he incorporated the contents of memo report into FIR Ex.PA/1 correctly. Copy of FIR was handed over to Rauf Ullah SI/KBI for investigation.

(26) Responding in cross-examination he stated that he has not been informed prior to the receipt of memo report on telephone or wireless about the occurrence. There is RHC hospital at some distance from the metalled road at Latamber. He would have remained for about 2/3 years at P.S Latamber at different times. P.S Latamber lies on main metalled road.

(27) PW-12 Shams-ur-Rehman (complt) stated that the deceased Mohammad Ayub was his father. He was a journalist by profession. On 11.10.2013, it was Friday, he alongwith his father after offering late post noon prayers at mosque Abu Khurrira (but correctly Abu Hurrira) came out and proceeded towards the shop of Adnan where the accused Amin ullah and Khob Niaz were present there who have exchanged harsh words with his father by stating that he has reported against them in the newspaper and that they will see him. Thereafter, at about 17:15 hours, he alongwith his father reached at their land known as "Marra". Both the accused facing trial duly armed with Kalashnikov came there and told he to get behind and they started firing at his father with murderous intention, resultantly his father got hit and died on the spot. Accused after the

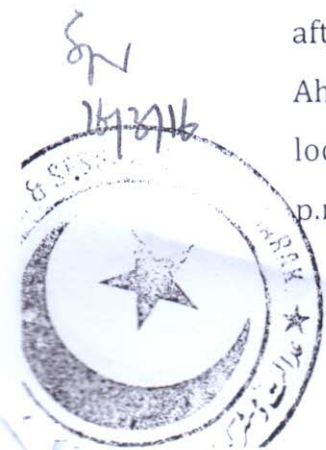


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commission of offence decamped from the spot. Motive behind the occurrence was publication of news against the accused in the newspaper. Thereafter, they shifted the dead body of his deceased father to KDA hospital Karak where he reported the matter to the police, which was reduced into writing in the shape of memo report and his signature was obtained on it as token of its correctness. He has seen his report which bears his signature correctly. On the same day, he also pointed out the spot to the police. He charged the accused for the commission of offence.

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(28) Responding in cross-examination he stated that mosque Abu Hurrira is situated at a distance of about one kilometer from their house. He is educated upto F.Sc. They had left their house for prayers at about 04.45 p.m and reached the mosque within 10/12 minutes. They left the mosque after offering the late post noon prayers. So many other people also offered the prayers in the mosque. Some of the people present in the mosque came out alongwith them while some remained inside the mosque. The distance between the mosque and Adnan shop can be covered within 2/3 minutes. They did not purchase anything in the said shop. As soon as they reached the said shop, both the accused were present there. The distance between the shop and spot might be 60/65 meters. The spot is an open area, but the spot is not visible from the said shop. There is no hillock in between the shop and the place of occurrence. There is inhabited area at some distance from the shop. He cannot tell the exact time for which he remained alongwith the dead body on the spot after the occurrence and before shifting the dead body to the hospital. Witness volunteered that soon after the occurrence the dead body was shifted in an unknown pick up. They went to the hospital via Ahmad Abad road after the occurrence. It is correct that there is a police post at Ahmed Abad, however, he did not go to the said police post for lodging report. He pointed out the spot to the police at about 08.00 p.m. At about 07.00 p.m he left the hospital for spot. As soon as they



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reached the hospital, the police was present there. He reported the matter to police at about 06.00 p.m and the dead body of his deceased father was dispatched to the doctor for P.M examination at 06.30 p.m. The doctor handed over the dead body to them after 20/25 minutes of its dispatching to the doctor. The dead body was handed over to them through police and it was then shifted to village in an ambulance. Other people were present in the shop of Adnan when they came there at relevant time. The dead body was shifted to the hospital in a motorcar. It is in-correct to suggest that he was not present on the spot at the time of occurrence. It is also in-correct to suggest that they did not go to the shop of Adnan, therefore, he has not examined the said Adnan before the Court. Volunteered that said Adnan has gone abroad and due to some money consideration he did not depose as P.W. It is correct that Adnan came from abroad and has attended this Court on the previous date but he was not examined as PW. The people present in the shop might have witnessed the altercation. He was not accompanied by any other person at the time of lodging the report. The police secured blood stained earth during spot inspection in his presence and nothing else was taken into possession in his presence. He did not know as to whether volley ball or cricket is played at late post noon time in their village. It is in-correct to suggest that he was present at relevant time in the playground. He cannot tell as to whether his father has obtained any degree/diploma in Journalism from any University or not. It is in-correct to suggest he has deposed against the accused falsely.

(29) PW-13 Muhammad Rehman SI (Rtd) has stated that on 26.06.2014, he has arrested the accused Amin ullah and issued his card of arrest. On the same date, he produced the accused before area magistrate and requested for 10 days physical remand, which was allowed for two days. Thereafter, he interrogated the accused and the accused confessed his guilt before him and then he took him to the place of occurrence where he pointed out the various places



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of the spot. To this effect he prepared the pointation memo Ex PW 13/1. Then he produced the accused before area magistrate and requested for further remand of the accused which was turned down and the accused was sent to judicial lock up. On 28.06.2014, he recorded the statement of the accused u/s 161 Cr.PC. He has placed on file the copies of previous FIRs (03 in number) registered against the accused.

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(30) Attending cross-examination he stated that the accused was arrested from the Courts in the area of Tehsil Takht-e-Nasrati. He did not produce the accused for recording of his confessional statement before any Court because his request for additional police custody was turned down by the Court of area magistrate. At the time of arrest of the accused Amin ullah he has spent the period of about 03 minutes of his posting in P.S Latamber. It is correct that the case in hand was registered on 11.10.2013. He has not seen the case file of instant case before the arrest of the accused. Self-stated that it was investigated by other police officials. When the accused was arrested his case was under trial in the Court of magistrate u/s 512 Cr.PC. Nothing was recovered from the possession of the accused. He has not visited the spot prior to the date of pointation by the accused. He was led to the place by the accused. He did not prepare any fresh site plan according to the pointation of the accused. He did not mark any of the points on the site plan already prepared by the previous police investigating officer. Self-stated that he has given a case diary in this respect. On the following day of arrest of the accused he started for the spot in the official vehicle of PS at about 1400 hours. The place of occurrence is at a distance of about 12/13 K.Ms from the PS. They reached the spot at about 15:00 hours. There is population near the place of occurrence. There is a single road from the south of the occurrence. The vehicles were running on the said road. About 07/08 police officials have accompanied him from the PS to the spot. No private person has attracted to the spot even after seeing the police party. He did not

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make an effort to ensure the availability of private P.Ws to witness the pointation. Both the witnesses of the pointation memo were his subordinate police officials who have accompanied him from the police station. It is in-correct to suggest that he has prepared the said pointation memo in the PS and got it signed/thumb impressed from his subordinate police officials.

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(31) PW-14 Rauf ullah SI/I.O (Rtd) has stated that during those days he was I/C KBI police station Latamber. After the registration of case the copy of FIR and memo report was handed over to him by the Moharrir of the PS for the purpose of investigation and thereafter he alongwith police party proceeded to the spot and at the instance of the complt Shams-ur-Rehman he prepared the site plan Ex PB which is correct with all its footnotes. During spot inspection, he secured blood stained sand from the place of the deceased Muhammad Ayub and sealed the same in parcel # 01 through recovery memo already Ex PW 5/1. He took snap shots of the place of occurrence showing the blood on the spot, bullet marks on trees which are Ex PW 14/1 to Ex PW 14/5. He recorded the statements of P.Ws on the spot u/s 161 Cr.PC. Thereafter, he conducted houses search of the accused but neither the accused was found nor anything incriminating was recovered. On 12.10.2013, cop Noor Islam # 374 brought one shirt, one trouser and one bunyan of the deceased Muhammad Ayub which were stained with blood and having cut marks sent by the doctor KDA hospital Karak and sealed the same in a parcel Ex P-1 through recovery memo already Ex PW 3/1 in the presence of marginal witnesses. He has sent the parcels # 1 & 2 containing blood stained sand and garments of the deceased respectively to FSL Peshawar and the FSL Peshawar report received to this effect is Ex PK. He has applied for obtaining warrant u/s 204 Cr.PC and proclamation u/s 87 Cr.PC through his applications are Ex PW 14/6 and Ex PW 14/7 respectively. He has recorded statement of search witness. After

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completion of investigation he handed over the case file to the SHO for submission of challan for proceeding u/s 512 Cr.PC. (187)

(32) Responding in cross-examination he stated that he has received the memo report and copy of FIR from the Moharrir in the police station at 1930 hours. The spot is at a distance of 14/15 K.Ms from the police station. He went to the spot in official vehicle. He was accompanied by 03/04 police constables. He could not give the exact number of his companions. He has entered his departure alongwith the police party in the daily diary of the police station. He did not place the copy of said entry of daily diary on the judicial file. He has reached the spot after about 01 hours i.e, about 20:30 hours. Before his arrival at the spot, evening prayers time has already passed. On reaching the spot, he summoned the complt of the case through the people of the village present on the spot. He could not give the name of the person who was sent to inform the complt, however, he was one of his relative. The complt arrived at the spot after about half hour i.e, 09:00 p.m. 02/03 relatives of the complt were with him when he reached at the spot. When he reached the spot, no major private person was available on the spot but some children were there. The people who have already gathered the spot have left the spot after hearing the arrival of the police. The persons accompanying the complt were there on the spot. It is correct that it was darkness and no light arrangement was available. Self-stated that he proceeded in the torch lights and headlights of official vehicle. It is correct that he did not mention the fact of his working in the torch light supported by headlights of the vehicle in the side note of the site plan Ex PB. Self-stated that he mentioned this fact in his case diary No. 01 of 11.10.2013. As per his side note of the said case diary, he worked from 1930 hours to 2400 hours. During this time, he inspected the spot and also searched the accused in their houses and in the surroundings. They the police officers have official cameras and mobiles. Camera is usually available with every investigating officer. These cameras



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placed the same on the judicial file. The said publication was provided to him by the complt on 19.10.2013. He did not prepare any recovery memo of the taking into possession of the said publication. He attached the said publication with the file on the pointation of prosecution branch through his progress report dated 22.10.2013. He did not associate any private witness from the area to show that the site plan was prepared by him at the instance of the complt. He picked up the blood stained sand by his hands having a shopper in his hands. The same was dried before taking it into parcel. The blood was spread over an area of about 02/03 feet. He recorded the statements u/s 161 Cr.PC of Mumtaz Ali and Farid ullah who were the witnesses of recovery memo in respect of blood stained sands. Both are police officials. He completed all these proceeding on the spot in half an hour and then he proceeded for the search of the acdd himself which are situated at a distance of 300/400 from the spot. Both the witnesses of the said search memo are police officials. There are other houses near the houses of the accused. He tried to get any private witness but nobody was ready to become a witness on the search memo. At that time, he has 30/35 years' service. He know that if somebody refuses to become a witness on the demand of police officer they can be proceeded under the law. Self-stated that people avoid due to their enmity. He reached back to the PS at 24:00 hours. The complt has already left the spot after pointation. He made an entry of his arrival in the daily diary, but he has not attached the copy of the said entry with the case file. Thereafter, he spent the time in the police station. The blood stained clothes and the PM report was brought by cop Noor Islam on the following morning to the PS and handed over to him at about 07.00 a.m. He prepared the parcel in the police station. The witnesses of the memo prepared by him in respect of garments of the deceased are also police officials. When he started for the spot from the police station, the inquest report and the injury sheet of the deceased prepared by the SI Muhammad Yousaf in the hospital

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was not available with him. The said papers were also brought by cop Noor Islam alongwith the PM report. He did not specifically mention the inquest report and injury sheet Ex PW 3/1, however, he mentioned about post mortem report which includes injury sheet and inquest report. He has gone through the contents of injury sheet and inquest report on receipt of the same. It is correct that on the top of injury sheet Ex PW 7/1 police station Karak is mentioned. Self-stated that it was a clerical mistake. The difference between the specification of injuries in the injury sheet and the inquest report would be better explained by the scribe of the same. As the PM report was in English so he did not go through the contents of the same. He visited the shop of Adnan and recorded his statement u/s 161 Cr.PC. Although it is mentioned in the report that some other people present on the spot have witnessed the occurrence. He did not try to locate any other person for his statement for having seen the occurrence nor anybody else appear before him to record his statement. He visited the mosque but no one was found by him there to record their statements with regard to the occurrence. It is correct that except taking into possession of the blood stained sands and the garments of the deceased he could not find any supporting evidence to the statement of the complt. It is correct that he recommended the case for challan in the Court simply on the report of complt without collecting any supporting evidence. When he went to the mosque even the chief of the mosque and the call maker for the prayers were not available. He did not know where they live and he did not make an effort to trace them out. It is correct that he did not find any spent bullet or empty shells from the spot. He could not account for the missing of empty shells and bullets on the spot. Accused Khob Niaz was not arrested during the period he was conducting the investigation. Against the said accused also no evidence came forward except the report of the complt and recoveries mentioned above. He did not give the detail of taking of blood stained sands in his recovery memo. He did not

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know as to whether the dead body of the deceased was returned but as per his information the dead body was brought from the hospital to the house of the complt, however, he has not seen the dead body himself. It is correct that the weapon of offence was not recovered from any of the accused by him. It is correct that the police post Ahmed Abad is nearer than the hospital from the spot. Self-stated that it is on the other way which is not in good condition. He did not know from which way the dead body was taken to the hospital. The dead body was identified through Ali Khan and Inam ullah before the police as well as before the doctor, however, it was not done in his presence. The doctor has delivered the PM report and the garments to cop on the same day i.e, 11.10.2013 while the cop has brought the same to him on the following morning. The said cop was on duty with the hospital guards. It is correct that a civil hospital is situated adjacent to the police station Latamber. It is correct that from Ahmed Wala road to Karak, firstly the civil hospital Karak situated in Karak city and then at a distance of about 06 K.Ms, KDA hospital is situated. It is in-correct to suggest that the occurrence was not witnessed by the complt or anybody else and simply this case was planted against the present accused on recording fake report just to get rid of proper investigation into the un-seen murder (the whole suggestion is in-correct). It is also in-correct to suggest that the deceased was done to death by some unknown persons much before the time mentioned by the complt. It is also in-correct to suggest that the deceased was so-called journalist without having any authority or qualification who used to blackmail different respectable persons for the purpose of extorting money. It is also in-correct to suggest that as the last publication on behalf of the deceased was in the name of Amin ullah with reference to the arrest of some other accused namely Sajjad, so this story was concocted by the police with the connivance of the complt to show progress in the case (the whole suggestion is in-correct).

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otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant. It is not out of place to say that the facts not otherwise relevant become relevant if they are in-consistent with any fact in issue or relevant fact and if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable under the doctrine of res gestae. When there is a question whether an act was accidental or intentional, or done with the particular knowledge or intention, the fact that such act formed part of a series of similar occurrence, in each of which the person is doing the act was concerned, is relevant.

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(37) This case is mainly based on circumstantial evidence corroborated by medical evidence and has got sufficient material and the eye-account of the complt Shams-ur-Rehman (PW-12) himself who is son of the deceased to the extent of direct evidence at the time of occurrence does not give intrinsic & natural account and had he been present at the given spot # 01 of spot map Ex.PB at a distance of 41 feet from the accd Amin ullah at point # 03 and involving 50 feet distance from the co-accd Khob Niaz at point # 04 calling him to remain away/aside does not irk to mind and the bullets of the accd party one fancy how spared him, however, his statement to the extent before the occurrence time is speaking & relevant and that too, to the extent of the accd Amin ullah with whom specific allegation of press clipping in the daily "Karak Times" dated 3rd October, 2013 as contained in Ex.PW-15/1 though attributed statement to Ateeq Wazir former DPO Karak existed, however, the presence of the co-accd Khob Niaz by the complt throughout is dubious & swindling like to prey two birds with one stone and is discarded to this effect. Necessary ingredients to establish an offence by circumstantial evidence are:



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- (i) The circumstances from which the conclusions are drawn should be fully established,
- (ii) All the facts must be consistent with hypothesis,
- (iii) The circumstances should be of a conclusive nature and tendency, and
- (iv) The circumstances should to a moral certainty, actually exclude every hypothesis but the one proposed to be proved.

A case resting on circumstantial evidence is scrutinized with utmost care and mere suspicion would not be sufficient to justify conviction and such type of evidence is capable of reasonable alternate theory speaking for leaning in favour of the accd but with the high degree of the responsibility. The case in hand is of its unique nature in which the prosecution has charged two brothers accd for the qatl-e-amd of Muhammad Ayub local journalist at post noon time in the lands known as "Marra" in village Mir Hassan Khel by fire shots on the anguish of press clipping in question qua their conduct which refers to the accd Amin ullah in Court's opinion but not the accd Khob Niaz. It is pertinent to note that the complt is the son of the deceased and is to some extent interested witness. No doubt the facts of the case remained like open secret throughout as one Adnan alongwith the other person offering prayers of late post noon prayer has come forward to depose before the Court when their presence was natural, usual & actual and the initial place of exchanging harsh words between the complt party and the accd party and the place of little bit late main occurrence are the part of one and same scene and the motive of the occurrence is disputed press statements of 07/08 days ago of the occurrence are proved in the statement of PW-15 Muhammad Nawaz editor and are relevant & receivable pieces of evidence u/ss 15/17 of the Press, Newspaper, News Agencies and Books Registration Ordinance, 2002 (Ordinance No.XCVIII of 2002) and there can be no cavil to

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the forthcoming motive and the proverbs that (i) a guilty conscious needs no accuser and (ii) self-sufficient requires no proof, are equally applicable in the circumstances. The evidence as collected by the I.O and corroborated by the medical evidence is consistent and coherent as far as the main accd Amin ullah is concerned and the defence has got no special, general plea and explanation to respond and more pertinently their long and willful abscondence for about 08 months by the accd Amin ullah and about 13 months by the accd Khob Niaz appears purposeful & meaningful and it cannot be said as mere abscondence.

(38) In legal parley "knowledge" signifies a state of mental realization with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. "Intention" on the other hand is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. Intention means shaping of one's conduct so as to bring about a certain event. Mental faculties in the case of intention, therefore, are projected in a set direction and it needs not necessarily involve pre-meditation and whether such an intention exists or not is a question of fact. Intention is not capable of positive proof and it can only be implied from overt act and must always be gathered from the circumstance of the case to case. It is pertinent to see that when knowledge merges into intention a higher degree of guilt is imputable and it becomes more aggravated. To see whether the accd Khob Niaz was present with the main co-accd Amin ullah and has got common intention with the latter speaking for vicarious liability strong circumstance showing common intention were required to be produced but the prosecution has failed and in this view of the matter the prosecution has got no force and material to connect the accd Khob Niaz in purview of sections 34/35 PPC and, therefore, he is acquitted of the proceeding/charge. As far as the accd Amin ullah is concerned the prosecution's case gives wholesome value and the

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evidence on record if weighed on the weightage and the rule of appreciation of evidence in the administration of criminal justice it is, therefore, sufficient to establish the charge against him. The Court by taking into account the above guess work of the evidence and by placing it in juxta position with the probabilities tests finds that the case in hand is brought in the arena wherein the accd Amin ullah is found connected with the commission of the offence complained of circumstantially and the chain of evidence is formed in a geometrical progression touching from one side of the dead body and on the other to the neck of the accd in shape of above episode. The various pieces of prosecution's evidence are not to be considered in isolated form but accumulative effect of whole of prosecution's evidence is to be taken into account and the case law cited by both the parties are not felt taken need to account for. The prosecution's evidence is consistent and confidence inspiring and it could not be riddled with any sort of doubt concerning the main accd Amin ullah and the prosecution has been successful to prove its case against him to bring to home charge and the Court finds him guilty and under the mitigating & extenuating circumstances convict him as under:

(i) With imprisonment for life as ta'zir u/s 302 (b) PPC for the qatl-e-amd of the victim Muhammad Ayub by fire shots and out of which 15 years will be R.I while the remaining will be S.I and;

(ii) Additionally, he is also awarded Rs. five lac (500,000/-) compensation u/s 544-A Cr.PC payable to the heirs of the said decd and if fails to pay the same it shall be recovered as arrears of land revenue at proper time failing which he will suffer six months RI subject to separate order later.

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(iii) However, he is given benefit of section 382-B Cr.PC towards simple part of imprisonment contained in part (i) above.

(39) The convict is given copy of judgment free of cost and has been explained judgment clearly and categorically.



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40) Superintendent District Jail Karak be addressed Jail Warrant of the convict for execution in accordance with law and in terms of judgment whereas release warrant of acquitted person Khob Niaz be also addressed to set him free if not required otherwise. 2nd schedules of both of them are re-called/cancelled.

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(41) The case property be kept intact till the period of appeal/revision (if any) exists otherwise it will be destroyed later.

Announced in open Court at 11:13 a.m.

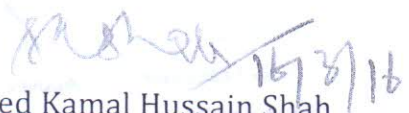
16.03.2016


Syed Kamal Hussain Shah
District & Sessions Judge,
Karak.

CERTIFICATE:

Certified that this judgment consists of 27 pages. Each page has been read, corrected with initials (if any) and signed by me at end.




Syed Kamal Hussain Shah
District & Sessions Judge,
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