IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

MR. JUSTICE MUHAMMAD ZAFAR YASIN
MR. JUSTICE SYED AFZAL HAIDER

Jail Criminal Appeals No.156, 165, 166, 167, 168 & 191/I/2005

1. Afzal Khan son of Hazrat Bilal
2. Ayub son of Hazrat Bilal
   Both residents of Dewan Banjote Manglore Tehsil Babozai, Swat
3. Dawood son of Rekhmeen r/o Afghanistan, present ly Tehkal Peshawar
4. Darveza alias Kalay son of Sarkai r/o Afghanistan, presently Tehkal Peshawar
5. Umar Khan son of Shah Wali Khan r/o Afghanistan, presently Shireen Kotay, District Mardan
6. Aqalmand son of Abdul Malik r/o Bhatti Sangota Tehsil Babozai, Distt. Swat.
7. Farman Ali son of Kashmalay r/o Charbagh Tehsil Khawazakhela, District Swat.

.... Appellants

Versus

The State	....	Respondent
Counsel for appellants	....	M/S. Khizar Hayat, Altaf Elahi Shaikh, Miss B.H. Shah & Mrs. Tahira Khan Goraya Advocates
Counsel for State	....	Mr. Muhammad Sharif Janjuja, Advocate
FIR. No. Date & Police Station	....	186, 06.06.2001 Khawaza Khela District Swat
Date of judgment of trial court	....	30.05.2005
Dates of Institution	....	08.06.2005, 11.06.2005,11.06.2005 11.06.2005, 11.06.2005 & 25.06.2005 Respectively.
Date of hearing	....	23.05.2008
Date of decision	....	29.5.2008

JUDGMENT

SYED AFZAL HAIDER, JUDGE.- Six appeals have been filed on behalf of 07 convicts. Jail Criminal Appeal No.156/I/2005 has been filed by Afzal Khan, Jail Criminal Appeal No.165/I/2005 has been moved by Ayub whereas Jail Criminal Appeal No.166/I/2005 has been filed jointly by Dawood & and Darveza, Jail Criminal Appeal No.167/I/2005 has been moved by Umar Khan, Jail Criminal Appeal No.168/I/2005 was submitted by appellant Aqalmand and appellant Farman Ali filed Jail Criminal Appeal No.191/I/2005.Since all the appeals arise out of the same judgment which was delivered on the basis of the same incident and same crime report, so we propose to dispose of all these appeals thorough this consolidated Judgment.

2. In all there were 12 accused out of which 07 have been convicted, 03 have been declared absconders and 02 have been acquitted. All the 07 accused have been convicted under section 395 of the Pakistan Penal Code and awarded life imprisonment and a fine of Rs.50,000/- each or in default of payment of fine they will undergo another term of six

months simple imprisonment. Half of the fine, if recovered, was directed to be paid to the legal heirs of the deceased.

3. FIR. No.186 Ex.PA/1 was registered with police station Khawaza Khela District Swat at 3.30.p.m. on 06.06.2001 on receipt of a written marasala Ex.PA drafted by Shah Bostan S.I. P.W.9 under section 17(4) of the Offence Against Property (Enforcement of Hudood) Ordinance, 1979.

4. Brief facts of the case are that Shah Bostan, S.I. on receipt of information went to casualty ward of Saidu Sharif Hospital where Bakht Akbar, complainant stated that on the previous night he was sleeping in his house in the ground floor while his son Fazal Mabood was sleeping in the upper storey. At about 2.30.a.m. he woke up on account of a clack and found one parson with muffled face, the second one armed with klashinkove and others armed with pistols. These accused took into possession one klashincove and one 30 bore pistol local made and tied the hands of complainant with a chaddar and took him upstairs and asked him to tell his son to open the door. The complainant asked his son Fazal Mabood to open the door from inside who on seeing the intruders raised

hue and cry and came out of the room whereupon two persons opened fire on the complainant and his son Fazal Mabood as a result of which the calf of the complainant was injured and his son was hit in the back. The residents of the village brought them to hospital. Fazal Mabood breathed his last in the hospital. The family members reportedly saw the occurrence.

5. The case was investigated and charge report was submitted by the Station House Officer in the Court for the trial of accused persons. The trial court framed charge against accused Aqalmand, Zulam, Umar, Darveza alias Kalay, Dawood, Ibrahim, Hamza, Khalil, Muhammad Ayaz, Ayaz son of Nadir Khan, Nisar and Ayub in all twelve accused persons on 19.12.2002. The accused did not plead guilty and claimed trial.

6. The prosecution produced in all 17 P.Ws to prove its case. P.W.1 Dr. Khurshid Ali Khan, Assistant Distirict Health Officer, Swat who conducted the post-mortem of Fazal Mabood deceased. The examination of the dead body revealed:

> "1. fire arm entry wound approx 1/4 inch in diameter on the back of lt: flank. No charring marks present.
>
> 2. fire arm exit would in the irregular margins approx1/2 inches in diameter on the abdomen three (03) fingers above the umbilicus. No charring present. Shirt not available to co-relate holes with entry/exit wound.

3. A slanting lacerated wound on the medial aspect of the (Rt) Fore-arm. It is approx 1 inch x 1/4 inches x skin deep.

Probable duration of injuries: 4-5 hours.

Kind of weapon used. Fire Arm

Nature of injuries: Dangerous".

7. Ameer Zaman Khan is a recovery witness. He appeared as P.W.02. He stated that in his presence three crime empties were recovered from the place of occurrence which were taken into possession by police vide memo Ex.PW.2/1. One bamboo ladder, used by accused, was produced by complainant. It was taken possession of vide memo Ex.PW/2-2. These memos were signed by this witness. Sher Hussain Khan appeared as PW 3. He submitted incomplete challan before the court against accused Aqalmand, Zulam, Umar, Darveza, Dawood, Ibrahim, Hamza, Khalil Ahmad, Ayaz son of Nadir Khan and Ayaz son of Shah Bahadar while the remaining accused Farman Ali, Afzal, Ayub, Amanullah, Babar, Rehmat Shah and Adam could not be arrested. P.W.4 Ameer Zaman Khan SI/SHO submitted challan against the accused Afzal, Ayub and Farman. P.W.5 Muhammad Ghani stated before the trial court that in his presence accused Aqalmand pointed the place where he had placed the ladder to seek entry

into the house of the complainant. Bakht Khan, complainant appeared as P.W.6 . His statement was by and large the same narration which he had made before police at the time of registration of the crime report. Zar Bakhat Khan, ASI appeared as P.W.8. He had produced appellant Afzal before the court on 19.06.2003 for recording his confessional statement but the accused refused and he was sent back to judicial lock up. He also got conducted identification parade of accused Afzal in the presence of complainant. The statements of remaining P.Ws are more or less of a formal nature.

8. Learned trial court after close of the prosecution evidence recorded statements of accused under section 342 of the Code of Criminal Procedure on 07.05.2005 wherein all of them took the plea of innocence. Neither they made statement on oath under section 340(2) of the Code of Criminal Procedure nor produced any evidence in this defence.

9. The learned trial judge at the conclusion of the trial proceedings heard arguments of the State, complainant and the accused as all of them were represented by their respective learned counsel. The

learned trial judge thereafter assessed the evidence brought on record and after considering the respective contentions recorded his findings as under:-

Zulam and Ibrahim	These two accused were acquitted.
Adam, Amanullah and Rehmat Shah	Were declared absconders. Perpetual warrants were issued against them.
Seven appellants	Convicted as recorded in second para of this judgment.

It is to challenge the judgment dated 30.05.2005 that the six appeals are before us.

10. We have noted with concern that 03 prosecution witnesses in this case appeared for the second time to depose on the facts of this case. P.W.1 Dr. Khurshid Ali Khan initially appeared in the trial court on 17.04.2003 when he deposed about the death, cause of death and the postmortem of Fazal Mabood. The prosecution did not examine him as regards the injuries sustained by the complainant. He appeared again as PW 13 before the trial Court on 11.03.2005 to give evidence as regards the injuries of Bakht Akbar, complainant P.W.6. Similarly Zar Bakhat Khan, ASI appeared firstly as P.W.8 on 09.12.2004 but he again appeared before the learned trial Court as P.W.16 on 18.04.2005. In the like manner Ameer Zaman Khan appeared as P.W.2 in the trial court on 02.07.2003 but he

again appeared before the learned trial Court as P.W.17 on 19.05.2005. We confronted the learned counsel for the State with this situation and asked him to throw light on this abnormal procedure adopted by the prosecution party. We also asked him to tell us whether on all these occasions any application by the prosecution was made in which the reasons or re-summoning the witnesses were mentioned and was a notice of such an application given to the accused and was any speaking order passed on these three different applications by the learned trial Court?. When we ourselves checked the record, we found that on 13.04.2005 an application was made for summoning P.W.13, Dr. Khurshid Ali Khan. An order was passed by the learned trial court on this application on 18.04.2005.

11. We are conscious of the fact that under section 540 of the Code of Criminal Procedure material witnesses can be summoned or any person present in the court can be examined or a person can be recalled and re-examined even though he has already deposed at the trial but the condition precedent is that his evidence should appear to the trial court essential to the just decision of the case. It obviously means that in order to fill the lacunas of the prosecution alone the discretion cannot be exercised

in favour of the prosecution by the Court. A perusal of section 540 of the Code shows that the first part of the section is discretionary which says that any court may at any stage of any enquiry or trial or other proceedings under the Code, summon any person, any witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined but the latter part of this section is mandatory which says that the court shall summon and examine or recall and re-examine any person if his evidence appears to it essential to the just decision of the case. However on examination of the contents of the application moved by the prosecution and the order dated 18.04.2005 there is nothing to show that any cogent reason was advanced by the prosecution. No opportunity was given to the accused to contest the application or the reasons advanced by the prosecutor. No speaking order was passed which could put the appellate court into picture as to the reasons that prompted the learned trial court to grant application of the prosecution for summoning witnesses for re-examination. There is no indication that it was necessary for just decision of the case. The prosecution party did not take the trouble of even making separate applications on three separate dates for

three different witnesses. No reasons to re-examine the witnesses were urged. No separate orders exist on the file. Section 24-A of the General Clauses Act, 1897 requires that whenever an order affecting the rights of a person is passed it must be not only be in writing but must state the reasons for recording that particular order. Such orders have to be made fairly, justly and on reasonable grounds. In this view of the matter we exclude from consideration the re-examinations of P.W.13 recorded on 11.03.2005, the deposition of P.W.16 recorded on 18.04.2005 and the statement of P.W.17 taken down on 19.05.2005.

12. The confessional statement of acquitted accused Zulam son of Ghotay Khan was recorded on 09.10.2001 by Mr.Muhammad Hussain Khan, Judicial Magistrate, Babozai. It is significant to note that Zulam was brought out of the jail on 6.10.2001 i.e. 03 days before his confessional statement was recorded in Swat and in this confessional statement he stated as follows:-

> "that approximately four months back I was asleep in my house situated in Murad Abad when Afzal son of Bilal, resident of Banjot alongwith his brother Ayub, Amanullah resident of Sornarr with Aqalmand resident of Sangota Bhatai, Farman resident of Charbagh, Adam Kabli, Ahmad Shah Kabli, Umar Kabli, Kalay Kabli and

Babar Kabli came to my house approximately at 9/9.30.p.m. and woke me up. Then said that first Afzal came and after awakening me said that he has some companions with him. I went and met all of them whose names I have mentioned were sitting. They demanded water and I went home and brought water for them and then I inquired as to what has brought them here at this time. All of them said that there is a seller of sweet in Charbagh in whose house they wanted to commit a dacoity because he is a rich man. They drank water. Amongst them Afzal, Ahmad Shah and Umar were armed with Klashincove, the rest had pistols with them. They left and then the same night some time before morning 'azaan' they again came to my house, I again treated them with water and inquired from them as to what they had done and all of them told that they have committed dacoity and that one young boy was hit by the firing and they escaped from the scene of occurrence. However they were able to snatch one Klashincove and one pistol. Afzal took hold of the said klashincov and on the asking of Afzal the pistol was taken hold of by the other Kablies. Then they left my house. When they had come for the second time, Farman was not present with them".

For all practical purposes in this self-expulcatory confessional statement of Zulam, co-accused, presence of 10 persons is mentioned who had come with the purpose of committing dacoity and had succeeded in doing that. As narrated this cock and bull story is hard to believe because the author of the story wants us to believe that a gang of unknown persons, in order to

commit dacoity, had entered his house to demand water and pass on information about their plan and then on their return would sojourn for a while with the stranger and not only inform him that they had successfully committed a dacoity and one person had suffered a gun shot injury and they could lay their hands upon one klashincove and pistols but also make this stranger a potential witness of a joint extra-judicial confession. By so doing had the dacoits not made it certain that this stranger does not fail to identify them? This confession of Zulam accused is also not acceptable on the ground that it is not exculpatory in nature at all. The reason as to how the Investigating Officer came to know that Zulam accused, who was lodged in the prison in some other case was in the know of this matter and was a possible witness of the extra-judicial confession of accused persons and would eventually give a confessional statement, has not been brought on record. Within three days of his arrest Zulam co-accused makes a confessional statement but this confessional statement was made 04 months after the first information report was lodged on 06.06.2001. This confessional statement of Zulam does not disclose as to how he came to know the names, the parentage and place of residents of the appellants

when they were all strangers to him. He had never met them before or even after the incident and all of a sudden he comes out of the jail after the date of alleged occurrence and reveals personal information about accused which fact is beyond the comprehension of a persons of reasonable prudence. He claims to be aware of the names, parentage and place of residents of ten strangers which is a clear indication that he has been properly tutored during three days when he was in police custody after having come out of the prison and as a reward the prosecution does not bring evidence against him and he is ultimately acquitted by the learned trial court.

13. The next point for consideration is the evidence of the complainant who appeared at the trial as P.W.6. He is an eye witness and is also injured and the incident takes place in his house at night time. His evidence has therefore to be weighed carefully. In his statement he says that initially four persons, out of whom the face of one person was muffled, came to his house. One of them was armed with a kalshincove while the others were armed with pistol. These intruders took hold of his klashincove and .30 caliber pistol and tied his hand with a chaddar. He was taken to the

first floor when he asked his son Fazal Mabood deceased to open the door whereupon the deceased on seeing the dacoits raised noise when two accused fired a shot which hit Fazal Mabood in the back and resultantly he died later on in the hospital. The left calf of the complainant was also injured. In his cross-examination he stated that he joined the identification parade and he identified Afzal son of Hazrat Bilal in the identification parade but in so far as Nisar and other accused, Khalil and Muhammad Ayaz, and Hamza Khan are concerned, he did not want to proceed against them. He also stated in his cross-examination that he knows Farman from early years because he lived for 25 years in his village. He had however not been able to identify Farman as according to him his face was muffled. He also states that two or three months after the alleged incident there was another dacoity in Manglore in which the accused Zulam had been arrested and it was in that case that the accused Zulam mentioned the name of Afzal, Farman and Ayub etc. It was only after the accused Zulam had disclosed the identity that "I started claiming prosecution against the appellants". He also stated that in fact he was interested in the prosecution of only two accused which claim he made 4/5 months after the incident. He

also disclosed that from amongst the accused present in the court, some of them were shown by the police in the CIA Office against whom he had no claim. The local police, he proceeded to state, had on the basis of suspicion arrested the accused and some of them had already been let off. He also admitted that for almost one month the investigation took place during which period he did not mention the name of any accused. It was only when the accused had been arrested and he saw them in the police custody that he identified Farman accused in the police station whereas he identified Afzal accused in the court. He also stated that no recovery had taken place from the accused persons. He also admitted that one Fazal Wahid, his cousin, was murdered in which he was cited as an accused and an FIR was registered against him and he was also sent to jail. He also stated that at the time of the incident Gul Astan, the brother of Fazal Wahid deceased, was present in the village and that the said Gul Astan had left the country after the incident. However, he denied the suggestion that his son was killed by some one in retaliation for murder of Fazal Wahid. He stated further that he has five sons and two grand sons apart from his wife and daughter-in-law. All of them were present in the house at the time of

incident and that his wife was also present in the room and his daughter-in-law was present alongwith his son in the room but none of them was examined in this respect. The complainant however contrary to what he had stated in the crime report, averred that he was the solitary eye witness of the incident. In his cross-examination he admitted that he did not know the names of the appellants who were present in the court at the time of the trial.

14. As regards the factum of recoveries of fire arms is concerned the prosecution has not been successful in establishing a link with the appellants. On the pointation of Farman appellant a klashincove and a 30 caliber pistol, concealed in a bag, were recovered on 13.07.2003 after digging the earth in front of the house of one Misal in the presence of two witnesses who neither appeared to testify the recoveries nor were the addresses of these two recovery witnesses mentioned in the recovery memo. Misal also did not appear. The location of the place from where the recovery was effected is not reflected in the recovery memo prepared by the investigating officer Zar Bakht Kan who appeared at the trial as P.W.8 and deposed before the learned trial court on 09.12.2004. His cross-

examination on the question of recording of firearms on the pointation of Farman appellant makes an interested reading. Let us examine the answers he gave during cross-examination; a) the fire arms recovered were not sent to the laboratory; b) no licence was produced by the complainant entitling him to possess the recovered firearms; c) the site plan of the recovery of firearms Ex.PW.8/14 does not disclose presence of the police officer, accused or even the witnesses. He also stated that he omitted to mention all these things; d) the location of the place from where the fire arms were recovered has also not been indicated; e) it was mentioned in the recovery memo that the recovered fire-arms were sealed by him but there was no seal at the time when the case property was presented in the trial Court on 09.12.2004. He admitted that case property is in open condition and not sealed; f) the memos Ex.PW 8/12 and Ex PW 8/12, though in different hands, were however claimed to have been written by him; g) that on 13.07.2003 he proceeded along with Farman accused to effect recoveries of fire arms at 2.30 p.m. yet he does neither remember the time when recovery was effected nor was aware of the mode as to how he reached the spot; then said he went on official vehicle; and that; h) he did

not know personally the marginal witnesses of the recovery memos and also was not aware as to who brought the instruments used for digging the earth and from where were these tools obtained. He even did not know who dug up the earth to retrieve the crime weapons.

15. In so far as the recovery of two empties, from the place of occurrence by Pw 9 Shah Bostan S.I., is concerned Amin Zaman Khan, appeared as PW 2, as he had attested memo Ex.PW 2/1 and Ex.PW 2/2 concerning the recovery of bamboo ladder used by the accused to scale the wall at the place of occurrence. However column No.22 of the inquest report Ex.PW 9/1 is blank and does not indicate presence of anything connected with the crime near the dead body or the place of occurrence. There is no matching report of the crime empties with the crime weapons. PW 9 Shah Bostan, SI Incharge Police Post, stated that he could not give the time when he inspected the place of occurrence. He admitted that there was no blood at the place of occurrence because the floor had been washed. He also admitted that he did not record the statement of person who had washed the floor. He however stated that crime empties were recovered from the place of occurrence. It is not understandable that the floor of the

room where murder allegedly took place was washed and the blood spots were obliterated but the crime empties were left intact for the purpose of recovery. Complainant however admitted that no recovery was affected from the appellants.

16. In this view the matter and more particularly when the learned trial Court did not consider it worth the while to advert to the issue of recoveries of crime empties or the fire arms, it is not possible to accept the story of recovery of various items as stated by the prosecution party. Provision relating to recoveries as visualized by section 103 of the Code of Criminal Procedure have been grossly violated. Recoveries do not connect the appellants with the crime. There is therefore no corroborative material in the form of recoveries available on record to establish the guilt of appellants.

17. Now we take up the issue of the crime report registered as FIR No.186 dated 06.06.2001 under section 17(4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979. It was a blind report. No person was mentioned by name. The features or other physical

description of the accused was not mentioned. The role played by each appellants was also not attributed by the complainant. Even this aspect was not mentioned that the complainant would be able to identify the culprits if they were brought before him. There is no mention of glowing electric bulb at the place of occurrence or any other indigenous source of light which could help the complainant in preserving in his memory the salient features of the dacoits. Though the crime report contains the assertain that other members of the family witnessed the occurrence but the complainant categorically stated that he was the solitary witness of the occurrence and none of the family members saw the incident. Even the wife of the deceased son of complainant, who was present in the room at the time of occurrence, was neither examined by Investigating Officer nor mentioned in the calendar of witnesses produced by the prosecution agency.

18. How did the complainant managed to identify the appellants is a riddle. It is in evidence that Afzal appellant was spotted in the identification parade but there is no report of the parade available on record. Farman appellant is admittedly known to the complainant as he lived over quarter of a century in his village, yet he could not be identified

by the complainant. The latter admitted during his cross-examination, recorded on 10.10.2007 that he did not know the names of the accused present in Court. He also conceded that it was after the statement of Zulam accused that he laid claim against appellants. There is no evidence on record as to what was the sources of information available to investigating agencies or the process by which the police officers spotted the accused persons in relation to the crime report. Complainants tell us that a number of persons were hauled up in suspicion. Some of the persons suspected were cleared by complainant himself. That the appellants were shown to the complainant in CIA office and police station is also established on record. On the question of identification guidance can be had from the case of Ghulam Rasool and others verses The State reported as 1988 SCMR 557 wherein it was held that when a witness does not attribute the role played by each of the accused person involved in the commission of the offence, such evidence of identification looses significance and hence cannot be relied upon to record a conviction. In the instant case, as observed above, the complainant does not take the trial Court into confidence as regards the datum and circumstances which provided basis to indentify ten persons

involved in the incident whom he did not know earlier and whose features he had not even mentioned in the first crime report. There being no record of the identification parade the complainant could not be examined as to what he had stated at the identification parade with particular reference to each accused. There being no mention of the role played by each accused no reliance can be placed on what the complainant alleges at the later stage. There is a clear trend of improvement on the part of complainant in his statement at the trial which he makes to suit different situations. The courts refrain from extending legitimacy to such a conduct.

19. It might as well be added that in the case of Siraj Din Versus Kala reported as PLD-1964 S.C. 26, at page 33 Chief Justice A.R. Cornelius, a renowned legal luminary in the judicial history of Pakistan found that:-

> "As Gulzar Hasan was not acquainted with the accused, in view of the light being at least dim, since it was after sun-set in a narrow street bounded by high walls on both sides, it was necessary that he should be put to an identification test and this was not done."

20. Learned trial court found that the confession of Zulam accused was exculpatory but it still relied upon it particularly when the accused in his statement before the trial Court had retracted from it. The learned trial court however finds support for such a confession from the fake recoveries and unproven identification parade. It is not understandable as to how can a retracted and an exculpatory confession of a co-accused, in itself a week piece of evidence, be relied upon when recoveries are of no avail and no reliable official record of identification parade is available on the case file. It is therefore not possible to support the findings of learned trial court in the given circumstances of the case. No doubt the trial court has the initial advantage of watching the conduct of witnesses and the accused persons but the demeanour of witnesses is not the only basis of returning the verdict of guilt. The ingredients of the offences have to be proved. Nexus between the crime and the criminal has to be established beyond reasonable doubt. Convictions cannot be sustained on suspicions or assumptions. The intrinsic worth of every statement has to be established. The confessional statement of Zulam accused does not inspire confidence at all. In fact it

raises a number of questions. It does not resolve the issue in controversy. It does not stand the test of reason and common sense.

21. We are fully conscious of the fact that the task of investigation agency becomes difficult when a blind murder takes place or a dacoity is committed by person whose identity cannot be ascertained by the victim but that does not mean that the Courts should start convicting every Tom, Dick and Harry who is sent up for trial. The purpose of police investigation is to collect evidence, best possible evidence in fact, and the objective of the Court is to assess the evidence available on record and see whether it leads to the logical conclusion. Care and caution is of the fundamental guiding principle for safe administration of justice which the courts insist because at every step rights of the parties are involved.

22. It will not be out of place to refer to a tradition of the Holy Prophet (PBUH), bearing number 4244 of Sahih Muslim, reported by Ibn Abbas, which says that if people were to be given according to their claims, then the supplicants will (start) claiming lives and properties of other persons. This precept is therefore of elementary significance in the field of

administration of justice. Judicial mind cannot be oblivions of the fact that at times there are reasons and motivating factors which induce witnesses to exaggerate, suppress, twist or misrepresent facts in order to achieve their pernicious objectives. Evidence basically partakes of the character of information and information is that type of knowledge which is subject to verification. Evidence can be affirmed or even refuted. It can be tested on the touchstone of known guiding principles in order to draw inferences from established facts in judicial proceedings. Information even at the initial stage in other disciplines may be conclusive but in judicial proceedings the information till the end has to stand the test of cross-examination and reasonability before it is accepted by the judicial mind in the conduct of cases.

23. In the light of what has been discussed above it is not possible to agree with the conclusions arrived at by the learned trial court as expressed in its judgment dated 30.05.2005 delivered in Haraba Case No.2/19 of the year 2002. Resultantly the convictions and sentences recorded against the appellants namely Afzal Khan son of Hazrat Bilal, Ayub son of Hazrat Bilal, Dawood son of Rekhmeen, Darveza alias Kalay

son of Sarkai, Umar Khan son of Shah Wali, Aqalmand son of Abdul Malik and Farman Ali son of Kashmalay under section 395 of the Penal Code and the order relating to compensation under section 544-A of the Code of Criminal Procedure, to be paid to the legal heirs of the deceased, is hereby set aside. The appellants shall be set at liberty forthwith unless they are required in any other case.

JUSTICE SYED AFZAL HAIDER

JUSTICE MUHAMMAD ZAFAR YASIN

Announced in open Court
on 29th May, 2008 at Islamabad

*Mujeeb ur Rehman/**

Fit for reporting