

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,  
GILGIT.**

**Before:-**

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.**

**Mr. Justice Javed Iqbal, Judge.**

**Mr. Justice Shahbaz Khan, Judge.**

**Cr. Appeal No. 05/2015,**

**Cr. Appeal No. 06/2015,**

**Cr. Appeal No. 07/2015,**

**Cr. Appeal No. 10/2015,**

**In**

**Cr. PLA. No. 18/2015**

**Cr. PLA. No. 14/2015**

**Cr. PLA. No. 17/2015**

**Cr. PLA. No. 16/2015.**

The State

**Petitioner.**

**Versus**

1. Iftikhar Hussain son of Muhammad Ishaq r/o Aliabad Tehsil Aliabad District Hunza Nagar in Criminal Appeal No. 05/2015.

The State

**Petitioner.**

**Versus**

2. I. Irfan Karim son of Karamat r/o Aliabad Tehsil Aliabad District Hunza Nagar. ii. Salman Karim son of Ibrahim Khan iii. Ahmad Khan son of Ibadat Khan iv. Ghulam Abass son of Muhammad v. Amir Ali son of Amir Hayat in Criminal Appeal No. 10/2015.

The State

**Petitioner.**

**Versus**

3. i. Sarfraz son of Ghulam Musa r/o Altit Hunza Tehsil Aliabad District Hunza Nagar ii. Rashid Minhas Anees son of Abdul Mateen ii. Aleemullah Khan Son of Taighon Shah iii. Sher Khan son of Hamadullah Baig iv. Irfan Ali son of Arman Shah v. Shukurullah Alias Methoo son of Amanullah vi. Musa Baig son of Abdur Rehman in Criminal Appeal No. 07/2015.

The State

**Petitioner.**

**Versus**

4. Baba Jan son of Abdullah Baig r/o Nasir Abad, Hunza Tehsil Aliabad District Hunza Nagar Criminal Appeal No. 06/2015.

**CHARGE UNDER SECTION 436, 435, 427, 448, 53, 147, 149, 337-A PPC SECTION 17 HARABA OF THE OFFENCE AGAINST PROPERTY (HUDOOD) ORDINANCE 1979, SECTION 21-L AND 6/7 OF THE ANTI TERRORISM ACT 1997 VIDE FIR NO. 20/2011 OF POLICE STATION ALIABAD HUNZA.**

**CRIMINAL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER, 2009, READ WITH ENABLING ARTICLES OF SUPREME APPELLATE COURT GILGIT-BALTISTAN RULES 2008 AGAINST ACQUITTAL ORDER/JUDGMENT DATED 09.04.2015 PASSED BY GILGIT-BALTISTAN CHIEF COURT IN CRIMINAL APPEALS NO. 34/2014, 35/2014, 36/2014, AND 40/2016 WHEREBY ACCEPTING THE APPEALS OF RESPONDENTS CONVICTION ORDER/JUDGMENT OF ANTI TERRORISM COURT GILGIT-BALTISTAN DATED 25.09.2014 PASSED IN TC NO. 17/2011 HAS BEEN SET ASIDE AND RESPONDENTS/ACCUSED ACQUITTED FROM THE CHARGES.**

**PRESENT:-**

1. The Advocate General Gilgit-Baltistan for the Petitioner/State.
2. Mr. Ehsan Ali Advocate for the respondent No. 01 to 03.
3. Mr. Amjad Hussain advocate for respondent No.04.

**DATE OF HEARING: - 09.06.2016.**

**DATE OF DETAIL JUDGMENT: - 02.07.2016.**

### **JUDGMENT.**

**Dr. Rana Muhammad Shamim, CJ..... (1).** Since all the above Criminal Appeals have been arisen out of the common impugned Judgment dated 09.04.2015 in Criminal Appeals No. 34/2014, 35/2014, 36/2014, and 40/2016 under FIR No. 20/2011 passed by the learned Gilgit-Baltistan Chief

Court and the same were disposed of by this Court through a common/consolidated short order dated 09.06.2016.

**2.** The brief facts of the case are that an FIR No. 20/2011 was registered at Police Station Aliabad Hunza against the aforementioned respondents alongwith other rioters/accused on 11.08.2011 with the allegation of leading 700/800 rioters and putting on fire Government vehicles, police station building, destroying Government properties, police record, looting police ammunition through breaking police Koth/police mal Khana and record room and delivered anti state speech & Slogans, setting on fire Police Station Police Vehicles & causing damages to Government properties and attacking on public servants, creating Haraba causing hurt to police personnels.

**3.** The prosecution after conducting investigation and recording oral as well as documentary evidence alongwith circumstantial, medical and expert evidence, which fully corroborated the prosecution version and submitted the challan before the learned Trial Court. In the challan the Investigating Officer of the case narrated again the same facts. The SHO Police Station Aliabad stated that the Internally Displaced Persons (IDPs) gathered in front of the United Bank Limited (UBL) for demanding payment of money so granted to them as compensation being effectees of Attabad lake disaster, started shouting against the UBL authorities. Subsequently

some other people of the area started gathering who instigated each other which become an uncontrolled mob. In the meantime a group of rioters led by accused Baba Jan r/o Nasir Abad, Ahmed Khan r/o Shishkat, Sultan Ishaq r/o Sirt, Imam Dad, Sahib Khan, Muhammad Shah, Ali Gohar, Deedar Hussain s/o Shah Gul Hayat Sirt, Raheem Muhammad, Iftikhar r/o Shishkat got violent and attacked the Police Station Aliabad and started beating FC Abdul Qayyum who was present on gate and FC Saleem, HC Wazeer Aman, FC Saifullah, FC Ayub and FC Zafar Iqbal present in Police Station Aliabad. They put on fire Government Vehicle (Datson) bearing No. GLT-A 4549 which was parked inside the Police Station. After that the violent mob gathered inside the Police Station and burnt into ashes all the record and documents of the Police Station, case files and case properties kept in Malkhana. They also broke the koth/malkhana and looted the ammunition kept in koth 08 Nos Semi Rifles, 13 rounds, 980 rounds of G-3 1200 rounds of 7.62MM, 110 rounds of MP5, 40 rounds of Pistol 30 bore, spare magazine of every kind of weapon and necessary items of ammunition and ammunition for DPL which includes SMG 08 Nos, 30 bore pistol 13 Nos with spare magazines and necessary articles, ARP which included SMG 02 NOS, Gas guns 02 Nos, shells 02 bags and ammunition of police station which included one Gas gun, Shell 35 Nos, hand grenade 02 boxes and also put on fire the



uniform of the police personnel, their beddings, boxes and all the items. Whereafter they also put on fire the Government Vehicle of Police Station Gulmit parked inside the workshop situated in front of Police Station Aliabad. After that the Police Station and SHO house was also put on fire and then the violent mob advanced towards Bazar. The complainant alongwith the other Police personnel in the police Station did try to prevent the accused by tear gas but they became uncontrollable and have damaged the government property including the building of Police Station Aliabad costing millions of Rupees.

**4.** After completion of the investigation conducted by the JIT, first incomplete challan was submitted on 04.10.2014 in the learned trial court. However some of them were released by the Police under Section 169 Cr. PC placing their names in column No. 2 of the challan. Proclaimed offender/absconder accused Ameer Ali was arrested on 13.10.2011 and proclaimed offender/absconder accused Rashid Minhas was arrested on 17.10.2011. Accused Sarfraz was arrested on 27.10.2011 and another incomplete challan was submitted in the Trial Court on 12.11.2011. It was also reported in the back of the said challan that proclaimed offender/absconder accused Fazal son of Gohar Hayat r/o Aliabad has committed suicide. On 10.09.2012 proclaimed offender/absconder accused Musa Baig Driver son of Abdur Rehman r/o Shishkat

Gojal was arrested and incomplete challan ExPW- 20/A was submitted before Trial Court on 29.09.2012. However, on 30.05.2013 proclaimed offender/absconder accused Shukurullah Baig alias Mithoo was also arrested and incomplete Challan ExPW-24/B was submitted before Trial Court on 01.07.2013.

**5.** Accused Iftikhar Hussain, Irfan Karim, Irfan Ali, Salman Karim, Sher Khan, Baba Jan, Aleemullah Khan, Ahmad Khan, Ghulam Abbas, Amir Ali, Rashid Minhas Anees and Sarfraz were formally charged on 29.11.2011 wherein all the accused pleaded not guilty and claimed trial. Charge of proclaimed offender/absconder accused namely Meher Ali, Mithoo, Nasir, Musa Baig and Deedar Ali was also framed by the learned Judge Anti-Terrorism Court No-II Gilgit-Baltistan on 05.09.2013 wherein the accused pleaded not guilty and claimed trial.

**6.** As per learned Trial Court the prosecution to prove their case against the accused produced and examined 28 Prosecution Witnesses (PWs).

**7.** After closing the prosecution evidence the present accused were examined under Section 342 Cr.PC. The accused denied to record their statements on oath under Section 340 (2) Cr.PC in disproof of the charged leveled against them. The accused also denied to produce any DW in their defense except accused Baba Jan who provided names of DWs to be

examined. Accordingly the statements of DWs Numberdar Juma Khan, Shukurullah Baig and Muzaffar-ud-Din Shah were recorded.

**8.** As per learned trial Court the prosecution had relied on the following categories of evidences:-

- i. OCULAR EVIDENCE**
- ii. CIRCUMSTANTIAL EVIDENCE**
- iii. CONFESSIONAL STATEMENT OF ACCUSED**
- iv. RECOVERIES**
- v. MEDICAL EVIDENCE**
- vi. ABSCONSION.**

**9.** As per prosecution it was a daylight occurrence and the FIR had been lodged promptly. The accused were nominated and charged in the promptly lodged FIR and specific role were attributed to the accused. The confessional statement of respondents/accused have been recorded under Section 21-H of The Anti-Terrorism Act, 1997 wherein respondents/accused Iftikhar Hussain, accused Baba Jab, accused Ahmed Khan, accused Ameer Ali, accused Irfan Karim, accused Irfan Ali, accused Salman Karim, accused Sher Khan, accused Aleemullah Khan, accused Ahmad Khan, accused Ghulam Abbas, accused Amir Ali, accused Rashid Minhas Anees accused Musa Baig and accused Sarfraz had voluntarily confessed their guilt. Investigation Officer has recovered 2 magazines of SMG and 79 live rounds of 7.62 mm on the pointation of the accused Iftikhar Hussain in presence of Magistrate. The other recoveries of crime articles were also

made on the pointation of the accused respondents in presence of the learned Magistrate.

**10.** That the medico legal reports and injury sheets of injured Police officials proved that the accused have attacked on Police Station and had burnt the Police Station Aliabad and the accused had also put on fire the Government vehicle No. GLT-A 4549. That after fulfilling the legal requirements accused Meher Ali, accused Deedar Ali and Driver Nasir have been declared as proclaimed offenders under Section 19 (10) of The Anti-Terrorist Act, 1997 and their absconsions is fully proved and the respondents/accused have given a huge loss to the Government exchequer.

**11.** The learned Trial Court discussed the prosecution evidence one by one as under:-

**(i). (PW-1) Head Constable Muhammad Ismail** is an injured eye witness of the occurrence. The said PW stated in the examination-in-chief the “the mob entered in the Police Station and broke the window of the kitchen and entered inside the building of Police Station.” The said PW further stated that “among them I recognized Iftikhar Hussain, Irfan Karim, Irfan Ali, Salman Karim, Sher Khan, Aleemullah Khan, Ahmad Khan, Ghulam Abbas and Mithoo etc”. The said PW further stated that “The Government Property and the personal belongings of police officials were destroyed”. Iftikhar alongwith other persons proceeded towards the koth (Mall

Khana) and after some they came back holding weapons etc". The said PW further stated that "when I reached the field near the SHO house, some persons, who had covered their faces, started beating me. I was injured and managed to reach Murtaza Abad in a Truck, where I got a taxi and went to Asqurdass Dispensary, where some injured police officials were admitted. I got some treatment and the next day I went to home." The said PW specifically charged and nominated the above named accused.

In his cross examination the said PW stated that, "I knew the persons named as accused by me, prior to the occurrence." The said PW further stated in his cross-examination that, "I know accused Iftikhar right, when I assumed my duties in Hunza." Despite lengthy cross-examination, the learned defence counsel has failed to shatter the said PW, rather he himself got clarified and confirmed from the said PW about the identity of nominated accused as mentioned by the said PW in his examination-in-chief above.

Ocular version furnished by the said injured witness is fully corroborated with the statements of PW-4, PW-7, PW-9, PW-11, PW-15, PW-16 and medical evidence and also corroborated with the confessional statement of accused. The statement of the said PW is worth of credence and confidence inspiring and believable.

**(ii). (PW-2) Rehmatullah Baig** has been declared hostile.

**(iii). (PW-3) Ghulam Jaffar** had been declared hostile, but in his examination-in-chief and his cross examination the said PW has confirmed the facts regarding setting on fire the police pickup by the rioters near the police station. The said PW stated that in his examination-in-chief that when “I returned back to workshop, where the police pickup was not found there. It was being set on fire near the police station.” In his cross examination the said PW stated the “when I came back to my workshop, the police pickup was put on fire and few persons were present there.” Although the said PW has been declared hostile, but the said PW has confirmed regarding putting on fire the police pickup by the rioters at the time of occurrence. Mere declaring a witness hostile does not shatter the reality of his evidence and such witness does not loose his credibility. It is an admitted fact that the police pickup has been burnt by the accused of the instant case, as such, I consider this statement of the said PW regarding the facts of the case and hold it, as corroborative piece of evidence against the accused. The statement of the said PW is fully corroborated with the statement PW-11.

**(iv). (PW-4) Muhammad Yaseen** is the eye witness of the occurrence. The said PW stated in his examination-in-chief that “when I went out of the police station to see what was happening, I found that the mob was chanting slogans against

Police. The mob was equipped with stones and sticks etc”. The said PW further stated that “I saw Iftikhar Hussain and Ahmed Khan among the mob. After a while smoke started emitting from the police station.

In his cross-examination the said PW stated that, “Almost all the participants of the mob were carrying sticks and stones.” The said PW further stated that, “I do not know the participants of the mob, except the accused person.” Despite lengthy cross-examination, the learned defense counsel have failed to shatter the said PW, rather they themselves got confirmed and verified from the said PW about the presence of accused, with stones and sticks at the place of occurrence.

**(v). (PW-5) Raja Baba Khan SP (Rtd)** is the eye witness, who has recorded the confessional statement ExPW-5/A of accused Ghulam Abbas and confessional statement ExPW-5/B of accused Ahmed Khan under Section 21-H of the Anti-Terrorist Act, 1997. The said PW has verified and authenticated the confessional statements ExPW-5/A of accused Ghulam Abbas and confessional statement ExPW-5/B of accused Ahmed Khan which is reproduced as under:-

بیان کیا کہ مورخہ 11-08-11 کو متاثرین کے ساتھ اپنا معاوضہ لینے کے لیے قراقرم بینک علی آباد گیا تھا۔ قراقرم بینک کے اندر کافی متاثرین جمع ہو چکے تھے۔ تمام متاثرین کو معاوضہ دینے کا مطالبہ کیا۔ کم تعداد میں متاثرین کو معاوضہ تقسیم کا منع کرتے ہوئے شور شرابہ کر کے قراقرم بینک سے باہر KKH روڈ بلاک کیا تو AC موٹن جانے وہاں آکر بتایا CM صاحب آ رہا ہے روڈ بلاک نہ کرو بلکہ فوڈ کی شکل میں CM صاحب سے ملاقات کر کے اپنے مطالبات پیش کرو جس پر متاثرین نے انکار کیا تو امام داد ولد غلام جعفر نے تقریر کرتے ہوئے روڈ بلاک نہ کرنے کا بتایا تو مظہر نے امام داد کو برا بھلا کہا اور حکومت کو دلا لہا۔ تھوڑی دیر بعد DSP بابر خان موقع پر آیا اور روڈ واگزار کرنے کو کہا اور ایک نمائندہ وفد CM صاحب سے ملاقات کے لیے تیار کرنے کا بتایا۔ تو مظہر اور متاثرین نے انکار کیا۔ جس پر بابر DSP نے لاٹھی چارج کروایا اور وہاں حالات کشیدہ ہو کر مقامی پولیس نے ہوائی فائرنگ کیا اس دوران شیر افضل وغیرہ زخمی ہوئے چنانچہ زخمیوں کو وہاں سے ہیلتھ سنٹر لے جانے کے بعد ہیلتھ سنٹر پر آنسو گیس ڈالنے پر بلوائی مشتعل ہو کر تھانہ علی آباد میں گیٹ کے سامنے جا کر پولیس گاڑیوں کی جلاؤ گھیراؤ میں دیگر بلوائیوں کے ساتھ شریک ہوا۔ اکثر لڑکے نقاب پوش تھے۔ اس وقت احمد خان ولد عمارت خان سکندہ شعلت تھانہ کی چھت پر چڑھا اس کے ساتھ 30/35 نامعلوم لڑکے چھت پر کھڑے تھے۔ ہجوم میں چند لڑکوں نے مسمی میر دین ولد امیر حیات ساکن شعلت جو کہ کچھ دیر پہلے پولیس نے بند حوالات کیا تھا کو حوالات سے نکال کر باہر لانے پر وہ چلا گیا۔ مظہر تھانہ علی آباد کے اندر توڑ پھوڑ اور جلاؤ گھیراؤ میں شریک رہا کوئی رائفل وغیرہ نہیں لے گیا۔

Confession statement ex-PW -5/B of accused Ahmed

Khan.

بدریافت بتایا کہ مورخہ 11-08-11 کو مظہر شعلت سے اپنا معاوضہ لینے کے لیے علی آباد قراقرم بینک آیا تھا۔ IDPS کچھ کو معاوضہ ملنے اور کچھ کو نہ ملنے کی وجہ سے مظہر دیگر IDPS جن کو معاوضہ نہیں ملا تھا KKH روڈ پر آکر روڈ بلاک کیا۔ اس دوران امام داد نے آکر تقریر کر کے بتایا کہ روڈ بلاک مت کرو پیسے ملتے۔ غلام عباس شعلت تقریر کرتے ہوئے روڈ نہیں کھولتے ہیں کہا جب تک CM یہاں آکر ہمارا مسئلہ حل نہیں کرتا ہے۔ اسی دوران AC ہنزہ اور پولیش والے وہاں آئے اور AC نے IDPS کے ساتھ مذاکرات کر کے روڈ واگزار کی کوشش کی لیکن متاثرین نے انکار کیا۔ اس وقت جین بارش ہو رہی تھی۔ تھوڑی دیر بعد DSP بابر خان وہاں آیا اور بتایا CM صاحب اور دیگر آفسران آرہے ہیں روڈ کو خالی کرو۔ لیکن متاثرین نے انکار کیا جس پر پولیس نے لاٹھی چارج کیا۔ اسی دوران کسی بندے نے DSP بابر کے سر پر ایک پتھر مارا جس کے باعث وہ زخمی ہوا اور زمین پر گر گیا۔ پولیس والوں نے DSP کو اٹھا کر قریب ہی ایک دکان کے اندر لے گئے اور دروازہ بند کیا۔ اسی دوران ہوائی فائرنگ ہوئی۔ متاثرین نے دکان پر حملہ کیا دکان کے دروازے کو عباس علی خان ولد عین الحیات نے توڑا۔ اس کے بعد میں زخمی کو لیکر ہیلتھ سنٹر گیا۔ وہاں سے مظہر تھانہ میں جا کر تھانہ کی چھت پر چڑھا اور وہاں سے نیچے اتر کر دیگر بلوائیوں کے ساتھ مل کر گاڑیوں کو نذر آتش کیا۔ تھانہ کے اندر توڑ پھوڑ کیا۔ مظہر نے تھانہ کے اندر سے کوئی اسلحہ وغیرہ نہیں لے گیا۔

The said PW has verified and authenticated the confessional statements Ex-PW-5/A of accused Ghulam Abbas and confessional statement Ex-PW-P/B of accused Ahmed Khan.

(vi). (PW-6) Magistrate Salman is the eye witness, in whose presence the IO has prepared site plan ExPW-6/A of



the place of occurrence on the pointation of accused Shukurullah Baig alias Mithoo. In his examination-in-chief the said PW stated that, "in my presence, accused Shukurullah Baig stated that, he has pelting stones from the point No. 01 of the site plan to the kitchen." On the pointation of accused Shukurullah Baig alias Mithoo, IP Safdar has prepared site plan ExPW-6/A in my presence. The site plan ExPW-6/A bears my signature and its contents are correct."

While preparation of site plan in presence of the said PW accused Shukurullah Baig has made Extra Judicial Confessional before the said PW (Magistrate). The Extra Judicial Confessional made by the accused Shukurullah Baig alias Mithoo before the said PW, the said PW has narrated before this Court as quoted above. The Extra Judicial Confessional made by accused Shukurullah Baig alias Mithoo before the Magistrate being voluntarily and true is proved against accused Shukurullah Baig alias Mithoo within the four corners of Article 40 of Qanoon-e-Shahadat 1984.

In his cross-examination the said PW stated that, "the site plan ExPW-6/A has been prepared at the place of occurrence." The said PW further stated that, "I affixed my seal/office stamp on site plan ExPW-6/A on same day at Police Station." The learned defence counsel himself got confirmed from the said PW about the preparation of sit plan ExPW-6/A at the place of occurrence, which is corroborative

piece of evidence against accused Shukurullah Baig alias Mithoo. The said PW has confirmed and authenticated the site plan ExPW-6/A of the plan of occurrence. The statement of the said PW is fully corroborated with the statement of PW-24 and also corroborated with confessional statement ExPW-15/A of accused Shukurullah Baig. The testimony of the said PW is worth of credence and confidence inspiring and believable.

**(vii). UP/HC Muhammad Akram Baig PW-07)** is the injured eye witness of the occurrence. The said PW stated in his examination in-chief that “on 11.08.2011, I was on duty at control room at Police Station Aliabad. At about 1300 hours the rioters attacked the police station Aliabad. The said PW further stated that the rioters pelting stones at the door of Police Station, till 1330 hours and then they entered in the Police station. The rioters set the police station on fire and after breaking koth the ammunitions were taken. The said PW further stated that I recognized the accused among the rioters namely Baba Jan, accused Iftikhar Hussain, Accused Aleem, accused Fazal, accused Ghulam Abbas, accused Ahmad Khan and another an accused whose name I do not remember now were present at the time of occurrence. The said PW has specifically charged and nominated the above named accused who has participated in the commission of the offence of the instance case.

Upon asking question by Mr. Ehsan Ali Advocate for the respondent the said PW recognized and identified the accused Aleem Ullah before the court. In this regard a Court note has been given in the cross examination of the said PW, which is reproduced as under:-

**“Court Note: - The PW came out from the witness box and put his hand on the shoulder of the accused Aleemullah and identified before the Court”.**

In his cross-examination the said PW further stated that, “at the time of occurrence, beside me HC Muhammad Ismail, HC Wazir Aman, SGC Ali Ahmed Jan, FC Naeemullah, FC Ghulam Abbas and some reserve personnel were also present in police station Aliabad.” Despite lengthy cross-examination the learned defence counsel has failed to shatter the said PW, rather he himself got confirmed from the said PW about the presence of the above named eye witnesses on spot at the time of occurrence.

Ocular version furnished by the said injured witness is fully corroborated with the statements of PW-1, PW-4, PW-9, PW-11, PW-15, PW-16 and medical evidence and also corroborated with the confessional statements of accused. The statement of the said PW is worth of credence and believable.

**(viii). Dr. Khawaja Khan PW-08)** is the witness, who has examined injured HC Wazir Aman, vide injury sheet ex Pw-8-A and also examined injured FC Shahid Khan vide injury sheet EX. PW-8/B. The said PW has authenticated the injury

sheets PW-8/A Ex. PW-8/B and confirmed the injuries received by the HC Wazir Aman PW and FC Shahid Khan PW.

**(ix). HC Inam Ullah (PW-09)** is the witness of recovery memo Ex. PW.9/A site plan Ex. PW-9/B of the place of recovery and site plan Ex. Pw-9/C of the place of occurrence. Vide recovery Memo Ex. PW-09/A on the pointation of accused Iftikhar Hussain, the IO has recovered two magazines of SMG and 79 live rounds of 7.62 mm in presence of the Magistrate from the stones of a plot owned by accused Iftikhar Hussain and also prepare site plan Ex. PW -09/B of the place of recovery. On the pointation of accused Iftikhar Hussain the IO has prepared site plan Ex.PW-9/C of the place of occurrence in presence of Magistrate.

In his examination-in-chief the said PW said that, “in my presence and presence of magistrate accused Iftikhar Hussain disclosed that he and his co-accused Ameer Ali, Meher Ali, Sultan Jan and Mithoo after broken the koth of Police Station Aliabad and distributed the arms and ammunitions by the above named accused.” The accused further disclosed that “the arms ammunitions were also distributed among Fazal Karim and Sher Khan etc.”

In his cross-examination the said PW stated that, “the ammunitions were taken into possession by IP Muhammad Izzat on the pointation accused.” The said PW further stated that, “the site plan ExPW-9/C was prepared IP Muhammad

Izzat in my presence in presence of Magistrate.” The said learned defence counsel for accused Iftikhar Hussain himself got confirmed the said PW about the recovery of ammunitions on the pointation of accused Iftikhar Hussain and also confirmed the preparation of site plan ExPW-9/C in presence of the said PW and Magistrate. The said PW has confirmed and authenticated the recovery memo ExPW-9/A, site plan ExPW-9/B of the place of recovery and site plan ExPW-9/C of the place of occurrence. The statement of the said PW is fully corroborated with the statements of PW-10, PW-25 and PW-28. The statement of the said PW is worth of credence and believable.

**(x). (PW-10) HC Wazir Aman** is the witness of recovery memo ExPW-9/A, site plan ExPW-9/B of the place of recovery and site plan ExPW-9/C of the place of occurrence. The said PW is also witness of recovery memos ExPW-10/B. ExPW-10/C.

Vide recovery memo EXPW-9/A the IO has taken into his possession 79 live rounds of 7.62 mm on the pointation of accused Iftikhar Hussain in presence of Magistrate and also prepared site plan ExPW-9/B of place of the recovery. Vide site plan ExPW-9/Co of the place of occurrence, accused Iftikhar Hussain had disclosed the place and points of the place of occurrence in presence of Magistrate (PW-25). Vide recovery memo ExPW-/10/A the IO has taken into his possession one

DVD Sony 4.7 Gilgit-Baltistan, 120 mm and the IO has also taken into his possession 1 DVD vide recovery memo ExPW-10/B and one CD vide recovery memo EXPW-10/C.

In his cross-examination the said PW stated that, “on the pointation accused Iftikhar Hussain the IO Izzat has recovered 97 alive rounds of 7.62mm, which were concealed by the accused in the stones. The place of recovery is a plot of accused Iftikhar Hussain, surrounded by the gardens in three sides and one side graveyards.” The learned defence counsel for accused Iftikhar Hussain himself got confirmed from the said PW about the recovery of 79 alive rounds on the pointation of accused Iftikhar Hussain in presence of Magistrate. The recovery is a corroborative piece of evidence, which is proved against accused Iftikhar Hussain. The said PW has confirmed and authenticated the recovery memo ExPW-9/A, site plan ExPW-9/B of the place of recovery and site plan ExPW-9/C of the place of occurrence. The statement of the said PW is fully corroborated with the statement PW-9, PW-10, PW-25 and PW-28 and also corroborated with the confessional statement ExPW-22/A of accused Iftikhar Hussain.

**(xi) (PW-11) Naeemullah** is an injured eye witness of the occurrence and is also witness of recovery memo ExPW-11/A, ExPW-11/B. In his examination-in-chief said PW stated that, “in the meanwhile the mob came from eastern side and attacked on Police Station. The mob was leaded by accused

Baba Jan r/o Nasir Abad. The members of mob, accused Iftikhar Hussain, accused Ahmed Khan, accused Ghulam Abbas were pelting stones on Police Station.” The said PW further stated that, “the members of mob brought the Government vehicle from Workshop and set on fire in front of Police Station. The members of mob also set on fire the vehicle of SIP Muhammad Ilyas. The rioter broken the window of the kitchen of Police Station and entered in the Police Station.” The said PW further stated that “I identified accused Iftikhar Hussain, accused Ghulam Abbas, accused Ahmed Khan etc, who entered in the Police Station. From the roof side accused Aleemullah Khan entered in the Police Station.” The said PW further stated that “the rioters set on fire, Government vehicle, which was parked inside the Police Station.” The rioters set on fire belonging of the police officials.” The PW further stated that “I received injuries.” The PW has specifically charged and nominated the accused named above.

In his cross-examination the said PW stated that, “I know accused Baba Jan, accused Iftikhar Hussain, accused Ahmed Khan, accused Ghulam Abbas and accused Aleem about 4-5 years prior to the occurrence, when I was in police.” The learned defence counsel got clarified from the said PW about the identity of the above named accused.

Ocular version furnished by the said injured witness is fully corroborated with the statement of PW-1, PW-4, PW-7,

PW-9, PW-11, and PW-15 PW-16 and also corroborated with the confessional statements of accused. The statement of the said PW is worth of credence and believable.

**(xii). (PW-12) HC Talib Hussain** is the witness of site plans ExPW-12/A of the place of occurrence, recovery memo ExPW-12/B, site plan ExPW-12/C of place of recovery and recovery memo ExPW-12/D.

Vide site plan ExPW-12/A of the place of occurrence, accused Sarfraz has disclosed the place and point of the place of occurrence in presence of Magistrate (PW-25). Vide recovery memo EXPW-12/B, the IO recovered 80 live rounds of G-3 on the pointation of accused Sarfraz from beneath the stones near Altit Bridge in presence of magistrate (PW-25) and the IO has prepared site plan ExPW-12/C of the place of recovery. Vide recovery memo ExPW-12/D, the IO took into his possession a CD, which was prepared by photographer Shahid Hussain and also confirmed the recovery rounds.

In his cross-examination the said PW stated that, "Magistrate was also with us. Accused was also with us in the vehicle." The said PW further stated that. "at the time of recovery the accused was set at liberty. The rounds were taken by the accused Sarfraz and handed over to IP Izzat." The learned defence counsel himself got confirmed from the said PW about the presence of Magistrate at the time of recovery. The said PW has confirmed and verified the site plan ExPW-



12/A of the place of occurrence, recovery memo ExPW-12/B site plan ExPW-12/C of the place of recovery and recovery memo ExPW-12/D. The Statement of the said PW is fully corroborated with the statement of PW-25 and PW-28.

**(xiii). (PW-13) ASI Javed Alam** is the witness of recovery memo ExPW-13/A, ExPW-13/B, ExPW-13/C, ExPW-13/D. Vide recovery memo ExPW-13/A, the IO took into his possession 12 Bore shot gun No.NIL, Pak Made from accused Sher Khan in presence of Magistrate, vide recovery memo ExPW-13/B, the IO recovered one G-3 from accused Salman. Vide recovery memo ExPW-13/C , the IO recovered one 30 Bore Pistol bearing No. 33028721, tear gas gun DSA542, SMG 830,12 Bore Rifle No. NIL from the Courtyard of central Jammat Khana Aliabad. Vide recovery memo ExPW-13/D, the IO took into his possession from the Courtyard of Central Jammat Khana Aliabad one G-3 Rifle bearing No. J-55539, Semi Rifle bearing No. 10036312, SMG bearing No. WB07099, Pistol 30 Bore No. 33023469, one 30-Bore Pistol No. 3302843, 4 Nos. magazines SMG, hand grenade 4 numbers, one repeater bearing No. MSC-3190, one shot gun china and 30-Bore Pistol No. NIL.

In his cross-examination on the question of learned defence counsel for accused Sher Khan the said PW stated that, "it is correct that accused Sher Khan has Handed over 12 Bore No. NIL, in the Jammat Khana." The learned defence

counsel himself got confirmed from the said PW about the recovery of 12 Bore gun from accused Sher Khan. The said PW has confirmed and authenticated the recovery memos ExPW-13/A, ExPW-13/B and ExPW-13/D.

**(xiv). (PW-14) SP Haneef-ullah Khan** is the witness, who has recorded the confessional statement ExPW-14/A of accused Shukurullah Baig under Section 21-H of the Anti-Terrorist Act, 1997. The confessional statement Ex-PW-14/A of accused Shukurullah Baig is reproduced as under:-

بدریافت بتلایا کہ میں ہنزہ کاسکوتی ہوں۔ اور پیشہ ڈینٹرسٹری ہے۔ گاڈیوں کا کام کرتا ہوں۔ روز وقوعہ میں اپنی ورکشاپ سے گاڈی کا فریم کا کام کرنے کے لیے علی آباد تھانہ کے باہر شیر واستاد کے ورکشاپ آیا تھا۔ اور فریم کے کام میں مصروف تھا۔ اسی دوران اگلے علی آباد بازار میں فائرنگ ہوئی۔ کچھ دیر بعد لوگوں کا ہجوم تھا۔ تھانہ کی طرف مین روڈ سے آرہے تھے۔ میں بھی شیر واستاد کے ورکشاپ سے مین روڈ میں آیا تو ہجوم بھی تھانہ کے قریب آئی تھی۔ بہت سارے لوگ تھے جن کی تعداد ہزاروں سے زیادہ تھی۔ تھانہ کی طرف بڑھ گئے اور تھانہ پر حملہ کیا۔ میں اور ساتھی شیر علی، سلطان جان، امیر علی، راشد منہاس، سلمان راجوہ باغ میں جا کر تھانہ کی طرف پتھراؤ کئے اور ایک روشندان جو راجوہ باغ کی طرف ہے پر بھی پتھراؤ کیا جس سے روشندان ٹوٹ گیا اور اس کے بعد میں اور دیگر ساتھی نیچے SHO ہاؤس کے پاس بھی جا کر ایک دو پتھر مارے تھے اسی دوران دیکھا تو ایک آدمی کے سر پر چوٹ آئی تھی جس کے پاس جا کر میں نے پوچھا تو اس نے اپنے آپ کو PNHA پولیس ہونا بتلایا زبان سے سکرود کا لگتا تھا۔ اور خون میں لت پت تھا کوئلے کے علاج کے لیے سول ہسپتال لے گیا۔ اس کو ہسپتال میں چھوڑ کر قمیض میں خون لگا تھا قمیض بدلنے کے لیے گھر گیا تھا۔ مجھے پولیس تلاش کر رہی تھی جس باعث میں بھاگ کر پنڈی گیا۔ واپس گلگت آیا مورخہ 30-05-2013 کو مقامی پولیس نے مجھے گرفتار کیا۔ بعد از گرفتاری میں نے موجودگی مجسٹریٹ دگواہان جانے وقوعہ کی نشاندہی کر چکا ہوں۔

From the above statement the learned Trial Court has held that from careful scrutiny of the said confessional statement of accused it reveals that the said confessional statement has been made by the accused voluntarily and has been recorded by the (PW-14) after fulfilling the legal requirements as provided in law. After considering the evidence of (PW-14), in the considered view of the learned

Judge, the said PW has complied with all the requirements of law. The said PW has asked the material questions from the accused and the same are available in the confessional statement of the accused alongwith his replies. The said PW has also appended the required certificates with confessional statement of the accused. It is pertinent to mention here that the said PW is not associated with the investigation of the instant case. After satisfying himself the learned Judge has held that the confessional statement made by the accused was voluntarily and true. The said PW has confirmed and authenticated the confessional statement Ex-PW-14/A.

**(xv). (PW-15) UPHC Ali Ahmed Jan** is an injured eye witness of the occurrence. The said PW stated in his examination-in-chief that, “on 11.08.2011, I was on duty at Aliabad police station.” The said PW stated that, “the rioters started pelting stones on the police station. The rioters broken window of kitchen on entered in police station. A vehicle was parked in Police Station; the rioters set ablaze the said vehicle.” The said PW further stated that, “among the rioters, who entered in the Police Station, were accused Baba Jan, Iftikhar, Sultan Jan, Irfan, Amir Ali, Ahmed Khan and Fazal. The accused also holding bottles containing petrol in their hands. The said accused

set on fire the police station.” The said PW further stated that, ‘Accused Iftikhar Hussain and Amir Ali have koth of police station and distributed the arms and ammunitions among the rioters.” The said PW further stated that, “accused Fazal has started firing with the government arms, while accused Iftikhar Hussain was holding arms and ammunitions in his hand.” The said PW has given a true picture of occurrence. The said PW has specifically attributed the role played by the accused.

In his cross-examination the said PW stated that, “there were many people, who entered in the police station except the present accused the other rioters, who entered in Police Station, are not present in the court alongwith the present accused.” The said PW further stated that, “the nominated accused were pelting stones on police station and burning the articles of police station. All the rioters were having similar role as attributed to the nominated accused.” Despite lengthy cross-examination the learned defence counsel have failed to shatter the said PW, rather they themselves got confirmed and clarified from the said PW about the presence of the nominated accused at the place of occurrence and also confirmed the role played by the accused nominated in examination-in-chief of the said PW.

Ocular version furnished by the said injured witness is fully corroborated with the statements of PW-1, PW-4 PW-7, PW-9, PW-11, PW-16 and medical evidence and also corroborated with the confessional statements of accused. The statement of the said PW is worth of credence and believable.

**(xvi). (PW-16) (Rtd) Gulzar Hussain** is an eye witness of occurrence and also witness, who has registered FIR ExPW-16/A and prepared site plan ExPW-16/B and prepared recovery memo ExPW-11/A.

In his examination-in-chief the said PW stated that, “on 11.08.2011, I was present in Police Station Aliabad. At about 1300 hours, rioters in supervision of accused Baba Jan , Imam Dad, Sultan Hassan s/o Shah Gul Hayat and Iftikhar Hussain, the rioters have attacked on Police Station. The rioters set on fire the Govt. vehicle, which was parked inside the Police Station. They attacked on koth and taken the Govt. arms and ammunitions and the rioters set on fire the personal commodities of Police personnel, which consisting of clothes, uniforms, beds etc.”

In his cross-examination the said PW stated that, “I personally know the accused Baba Jan and Iftikhar Husain.” The learned defence counsel got confirmed and



identified the accused Baba Jan and Iftikhar Hussain from the said PW. The said PW has confirmed the FIR ExPW-16/A, site plan ExPW-16/B and recovery memo ExPW-11/A. the statement of the said PW is fully corroborated with statements of PW-1, PW-4, PW-7, PW-9, PW-11, PW-15, PW-16 and PW-28.

(xvii).(PW-17) **SP Ishaq Hussain** is the witness, who has recorded the confessional statement ExPW-17/A of accused Musa Baig. The confessional statement ExPW -17 of accused Musa Baig is reproduced as under:-

بدریافت بتلایا کہ میں ششکٹ کا سکوتی ہے اور آغا خان کلچر میں ملازم ہوں روز قوع مورخہ 11-08-11 کو اہت ہنزہ میں اپنی ڈیوٹی پر موجود تھا کہ معلوم ہوا عطا آباد متاثرین کے روڈ بلاک اور احتجاج کے دوران تصادم کی وجہ سے شیر افضل اور اس کا بیٹا شیر اللہ ساکنان ششکٹ زخمی ہو کر جان بحق ہوئے ہیں۔ متوفی شیر اللہ کا ایک بھائی امیر جان بھی آغا خان کلچر میں ملازم ہے، ہم دونوں علی آباد پہنچ کر آغا خان ہیلتھ آئے جہاں پر شیر اللہ کی نعش موجود تھی جبکہ شیر افضل کو زخمی حالت میں گلگت لے جایا گیا تھا۔ مشعل جوم تھانہ علی آباد میں جلاؤ گھیراؤ کر رہے تھے۔ نعش کو دیکھ کر مجھے غصہ آیا اور تھانہ علی آباد میں داخل ہو کر جوم کے ساتھ مل کر جلاؤ گھیراؤ اور توڑ پھوڑ کرنا شروع کیا۔ اندر تھانہ کے کمروں کے دروازے توڑ کر نذر آتش کر دیا۔ میرے علاوہ اور بہت سارے لوگ وہاں موجود تھے اور اکثر نے منہ کو نقاب سے چھپا کر رکھا تھا۔ اس لیے انکو شناخت نہ کر سکا۔ اسی دوران کوٹ کا دروازہ توڑ کر مسلمان رحمت کریم ولد ابراہیم، فضل ولد حسینی ساکنان ششکٹ سرکاری اسلحہ لیکر جا رہے تھے۔ مسی فضل کے ہاتھ میں ایک فولڈنگ کلاشنکوف تھا جبکہ رحمت کریم کے ہاتھ میں ایک پستول تھا جو لیکر باہر جا رہے تھے۔ ان کے علاوہ کسی اور کو شناخت نہیں کر سکا میں نے کوٹ سے کوئی سرکاری اسلحہ وغیرہ نہیں لے گیا ہوں۔ بعد قوع میں ہیلتھ آیا اور وہاں سے اپنے گھر چلا گیا۔

The learned Trial Court after carefully scrutiny of the said confessional statement observed that the same has been made by the accused voluntarily which was recorded by the PW-17 after fulfilling the legal requirements. After considering the evidence of PW-17, in the considered view of the learned Trial Court that the

said PW has complied with all the requirements of law and made the statement voluntarily. The said PW has asked the material questions from the accused and the same are available in the confessional statement of accused alongwith his replies. The said PW has been appended the required certificate with the confessional statement of accused. It is pertinent to mention here that the said PW is not associated with the investigation of the instant case. After satisfying himself the learned Judge held that the confessional statement made by the accused was voluntarily and true. The said PW has confirmed and authenticated the confessional statement ExPW-17/A.

**(xviii). (PW-18) HC Muhammad Ismail** has already been examined as PW-1. I have thoroughly discussed about the evidentiary value of statement of the said PW.

**xix. (PW-19) HC Wazir Aman** has already been examined as PW-10. I have discussed the evidentiary value of statement of the said PW.

**(xx). (PW-20) Muhammad Yaseen** already been examined as PW-4. I have discussed the evidentiary value of statement of the said PW.

**(xxi). (PW-21) Dr. Shahidullah Baig** is the witness, who has examined injured Naeemullah Baig.

(xxii). (PW-22) SP Tufail Ahmed is the witness, who has recorded the confessional statement ExPW-22/A of accused Iftikhar Hussain, confessional statement ExPW-22/B of accused Sher Khan, confessional statement ExPW-22/C of Salman Karim, confessional Statement ExPW-22/D of accused Irfan Karim, confessional statement ExPW-22/E of accused Irfan Ali and confessional statement ExPW-22/F of accused Baba Jan. The confessional statements ExPW-22/A, ExPW-22/B, Ex-PW-22/C, ExPW-22/D, ExPW-22/E and Ex-PW- 22/F are reproduced as under:-

بدریافت بتلایا کہ میں علی آباد کا سکونتی ہوں۔ روز وقوعہ مورخہ 11-08-11 کو دوپہر کے وقت میں علی احمد جان کی ورکشاپ واقع علی آباد میں کشتی کی ٹینگی، بنوار ہاتھائی دوران تیز بارش ہونے پر کام بند کر کے ورکشاپ کے اندر کھڑی کار کے اندر بیٹھے تھے۔ اسی دوران بازار علی آباد سے شور وغل کی آواز آئی۔ اور اس کے بعد فائرنگ کی آوازیں سنائی دی جس پر مظہر علی آباد بازار نزد قراقرم بینک پہنچا تو وہاں گاؤں سسٹنٹ، آئین آباد سٹ کے لوگوں کا ہجوم تھا۔ قراقرم بینک کے سامنے مسی شیر افضل ولد شیر اللہ بیک سکند آئین آباد گرا پڑا تھا اور خون میں لپکتا تھا۔ ہجوم والے مقامی پولیس پر پتھر اڑا کر رہے تھے جہاں دریافت کرنے پر معلوم ہوا کہ عطا آباد جیل کے متاثرین نے احتجاج کر کے روڈ بلاک کرنے پر مقامی پولیس نے DSP باہر خان کی نگرانی میں لائچی چارج کر کے ہجوم کو منتشر کرنے کی کوشش کئے ہیں۔ اس دوران DSP باہر خان زخمی ہونے پر اس کو غلام حیدر کی ہارڈ ویئر کی دکان کے اندر کے گئے تھے ہجوم میں شامل افراد جن میں احمد خان فوجی ریٹائرڈ ساکنہ مشنٹ، عزیز ولد علی گوہر سکندہ مشنٹ غلام عباس سکندہ مشنٹ اور موسیٰ سکندہ مشنٹ کا بڑا بیٹا اور دیگر کافی تعداد میں نامعلوم اشخاص غلام حیدر کی دکان پر حملہ کر رہے تھے جس کے اندر DSP باہر خان اور اس کا گن مین خان اعظم، دوکاندار غلام حیدر اور گاؤں حیدر آباد کا ایک بوڑھا شخص جس کا نام معلوم نہیں ہے نواز ار مشین والے کے ساتھ دکان کے اندر موجود تھے۔ دکان پر حملہ آور ہونے پر غلام حیدر دکاندار نے دکان کے شٹر کو نیچے لاکر بند کیا جس باعث بلوائیوں نے ڈنڈوں اور پتھروں سے شٹر پر حملہ آور ہوئے۔ مظہر بھی وہاں تھا۔ شٹر توڑ کر سوراخ ہوا دریں اثنا DSP باہر خان کے گن مین نے ہوائی فائرنگ کرتے ہوئے DSP کلینکر دکان سے باہر نکل کر مغرب کی جانب بھاگ گئے تو ہجوم نے ان پر حملہ کیا۔ اسی دوران خان اعظم پولیس نے ہوائی فائرنگ کی اور DSP باہر کلینکر آگے بھاگ گیا۔ دیکھا تو شیر اللہ بیک سڑک کے کنارے گرا پڑا ہوا تھا۔ اس کے سینے سے خون نکل رہا تھا۔ مظہر علی گوہر کے ساتھ تقریباً 200 مشتعل افراد نے جماعت خانہ آغا خان علی آباد کا DSP باہر خان کا پیچھا کیا جہاں سے واپس آ کر مظہر زخمیوں کے پاس آغا خان ہیلتھ سینٹر علی آباد گیا تو پولیس نے آنسو گیس ڈالا اس وقت ہجوم میں شامل مشتعل افراد نے تھانہ علی آباد پر حملہ آور ہوئے تھے۔



مظہر، شیر علی اور بوڑھا عبدالمبین SHO ہاؤس گئے اور SHO ہاؤس کو مشتعل ہجوم نے گھیر لیا تھا۔ پتھر اڑ کر رہے تھے نعرہ بازی کر رہے تھے۔ ہم تینوں نے الیاس SIP کے اہل و عیال کو مکان سے باہر نکال کر دیوار پر آہنی سیڑھی لگایا اور نیچے کھیتوں میں اتارا۔ ایک سوٹ کیس کے بیگ محمد الیاس SIP کی بیوی نے نکال کر مکان میں تالا لگایا میں ان کو اپنے گھر لے جا رہا تھا لیکن وہ ممتاز کے چھوٹے پوتے کے ساتھ ان کے گھر گئے جہاں سے مظہر راجہ باغ کی جانب سے اوپر تھا۔ علی آباد کی طرف گیا تو ملزم علیم ولد تیغون شاہ سکنہ حسن آباد اور سلطان جان ولد شاہ جہان سکنہ مرتضیٰ آباد تھا۔ علی آباد کی چھت پر چڑھے تھے۔ مظہر اور موسیٰ کا بیٹا جس کا نام نہیں جانتا۔ خشک کار ہائشی ہے تھا۔ نہ کھولے ہوئے مین گیٹ سے اندر داخل ہوئے۔ اور حوالات میں بند ہوئے نامعلوم شخص کو حوالات کا دروازہ کھول کر آزاد کیا۔ وہاں سے مظہر کوٹ کیے دروازے پر پہنچا تو سلطان جان چھت سے وہاں آیا۔ پہلے سے کافی لڑکے کوٹ کے باہر موجود تھے۔ تھا نہ کو اور پولیس گاڑیوں کو پہلے ہی آگ لگائے ہوئے تھے۔ امیر علی ولد نامعلوم سکنہ علی آباد کوٹ کے دروازے پر لگی پھنکڑی کو ایک رانفل سے توڑنے کی کوشش کر رہا تھا۔ رانفل ٹیڑھا ہوا پھنکڑی نہیں ٹوٹی۔ میں دیکھا تو پھنکڑی ڈھیلی لگی تھی اس کے سلاخ دروازے دائیں بائیں کر کے لکڑی کے دروازے پر لات مار کر دروازے کو اوپر سے توڑ کر میں کوٹ کے اندر داخل ہوا۔ کوٹ کے دروازے کے باہر امیر علی، مشو ولد امان اللہ، مہر علی ولد فرمان ساکنان علی آباد، سلطان جان ولد شاہ جہان ساکن مرتضیٰ آباد کو مظہر نے کوٹ کے اندر رانفل میں پاس کیا تو وہ دیگر بلوائیوں کو دے رہے تھے۔ بعد میں ان سے پوچھنے پر انھوں نے بتایا کہ انھوں نے سلمان کریم ولد ابراہیم، سلیم ولد میرو، دیدار ولد میون، ایوب ولد رشید، شاہ جہان ولد کریم، امجد ولد مالک شاہ، قیمت ولد حرمت اور افضل ولد گوہر حیات ساکنان علی آباد کو تقسیم کر دیئے ہیں۔ اس کے بعد کوٹ کے اندر دھواں بھریا گیا مظہر باہر آیا تو کافی مشتعل لڑکے کوٹ کے اندر داخل ہو کر کارٹوس کوٹ باہر دے رہے تھے۔ اور مذید اسلحہ وہ اٹھا رہے تھے میں نے تین پستول اور کچھ کارٹوس کوٹ سے نکال کر باہر روڈ میں بکھیر دیا جو بلوائیوں نے لے گئے۔ دو میگزین SMG اور 79 کارٹوس SMG کے اپنے ملکیتی اراضی میں چھپا رکھا تھا جسٹس کی موجودگی میں پولیس کو برآمدگی دے چکا ہے اور تھا نہ علی آباد کی نشاندہی بھی کرا چکا ہے۔

بدریافت بتلایا کہ میں علی آباد رہائشی ہوں۔ روز وقوعہ مورخہ 11-08-11 کو تقریباً دوپہر کے وقت PSO علی آباد کے قریب علی آباد بازاری کی طرف ارہا تھا۔ تو فائرنگ کی آوازیں سنائی دی۔ وہاں سے میں قراقرم بینک کے پاس پہنچا تو مسی امجد ولد شاہ منو چ سکنہ علی آباد ملاتی ہو کر بتایا کہ اس کے بھائی ظفر اقبال پر گولی لگ کر آغا خان ہسپتال سنٹر علی آباد لے گئے چنانچہ ہم دونوں آغا خان ہسپتال سنٹر گئے تو وہاں لوگوں کا ہجوم تھا جہاں پر زیادہ تر مشاہرین تھے۔ ان میں علی گوہر ولد نامعلوم خشک کو جانتا ہوں اس وقت تھا نہ علی آباد سے آنسو گیس کے شل ہسپتال سنٹر آکر گئے تھا نہ سے ہوائی فائرنگ کی آوازیں آرہی تھی۔ مشتعل ہجوم نے نعرہ بازی کرتے ہوئے تھا نہ کا گھیراؤ کیا تھا پولیس گاڑیوں اور تھا نہ کو آگ لگائے تھے دھواں اٹھ رہا تھا۔ میں اپنے چچا زاد بھائی ظفر اقبال مذکور جو کہ زخمی ہو کر ہسپتال سنٹر میں زیر علاج تھا مشکل سے ملا۔ اس کو گلگت ریفز کرنے پر اسکو رشتہ داروں کے ساتھ گلگت روانہ کر کے خود باز آرا آیا تو دیکھا مرتضیٰ آٹو زلی آباد کے ساتھ ایک نامعلوم لڑکا تھا۔ دونوں کے ہاتھوں میں ایک ایک کلاشنکوف تھے مرتضیٰ آٹو زلی آباد کی جیب برنگ بنر کے اندر ڈال کر جانب مشرق لے گئے۔ تھا نہ کے سامنے تقریباً 30/35 متاثرین عطا آباد تھے پولیس گاڑیوں اور تھا نہ پر آگ لگائے گئے تھے مظہر تھا نہ کے اندر گیا تو تھا نہ کے اندر ہجوم تھا۔ تھا نہ علی آباد کی توڑ پھوڑ اور جلاؤ گھیراؤ پہلے کر چکے تھے۔ ہجوم میں سے کسی نے بندوق بارہ بور کو آگ کی طرف پھینکا تو مظہر نے اس بندوق بارہ بور کو اٹھا کر اپنے کمرے میں پلنگ کے نیچے چھپا رکھا تھا۔ تین دن بعد SIP سید جان کو فون پر بتایا تو اس نے پولیس رضوان کو بھیجا۔ رضوان پولیس کو حوالہ کیا۔ تھا نہ کے اندر ملزمان افتخار حسین سکنہ علی آباد، احمد خان سکنہ خشک، علی گوہر خشک، قیمت خان سکنہ علی آباد علیم سکنہ حسن آباد موجود تھے۔

### (iii). Confessional statement of ExPW-22/C, Salman

Karim .

بدریافت بیان کیا کہ میں ہنزہ علی آباد کاسکونٹی ہے۔ اور علی آباد میں کپڑے کی دکان ہے۔ روز وقوعہ یعنی مورخہ 11-08-11 کو میں اپنے دکان کے اندر موجود تھا۔ عید الفطر کے لیے کافی گاہک شاپنگ کر رہے تھے۔ باہر تیز بارش ہو رہی تھی۔ تقریباً دوپہر کے وقت فائرنگ کی آواز سنائی دی تو مظہر نے دو گاہک دکان میں چھوڑ کر ہسپتال روڈ تک گیا تو لوگ ادھر ادھر بھاگ رہے تھے۔

بازار میں افواہ ہو چکی تھی کہ متاثرین عطا آباد کے روڈ بلاک کرنے پر مقامی پولیس نے لائٹی چارج کر کے ہوائی فائرنگ کئے جس باعث مظہر واپس اپنی دکان آیا۔ تو گاہک چلے گئے تھے تو مظہر نے سامان سنبھالا اور دکان کا دروازہ بند کر کے تالا بند کیا۔ اور ہجوم کی طرف روانہ ہوا۔ جب علی آباد تھانہ میں گیٹ پر پہنچا ایک پولیس پک اپ گیٹ کے سامنے جل رہی تھی۔ اور تھانہ کا گیٹ کھلا ہوا تھا۔ اور تھانہ کے اندر مختلف کمروں سے دھواں اٹھ رہا تھا کوٹ کے باہر ہجوم تھا میں مین گیٹ کے سامنے والی پورشن میں تھا نیچلے پورشن میں کوٹ کے سامنے سے مہر علی ولد فرمان علی سکند علی آباد جو کہ میر چچا زاد بھائی ہے نے دور انگلیں جن میں ایک پلاسٹک کے تھیلے میں بندھی۔ دوسری رائفل G3 کھلی تھی مظہر کے حوالے کیا۔ مظہر نے دونوں رائفلیں لے کر راجہ باغ علی آباد گیا۔ جہاں پیچھے سے مہر علی ولد فرمان ساکن علی آباد اکریک رائفل پلاسٹک بند کو مظہر سے لے گیا کھلی والی رائفل G3 مظہر نے اپنی مویشی خانہ کے اوپر گھاس کی ٹاپ کے اندر چھپایا۔ دو دن بعد اس کمیٹی کے اعلان کرنے پر مظہر نے رضوان مبارک علی پولیس حوالدار اور الیاس IB والا تینوں کو رائفل G3 واپس حوالہ کیا۔ پولیس رضوان نے رسید تحریر کر کے ایک کاپی لے گیا اور دوسری کاپی مظہر کو دیا تھا جو کہ کہیں گم گیا۔ دوسری رائفل جو کہ مہر علی نے لے گیا تھا کو کمیٹی کے ممبر یوسف خان ولد فقیر ساکن علی آباد نے دو دن بعد لا کر مندرجہ بالا تینوں افراد کے حوالے کرنے پر پولیس رضوان نے رسید تحریر کر کے ایک کاپی یوسف خان کو دیا دوسری کاپی خود لے گیا۔ اور دونوں رائفلیں لے کر چلے گئے روز وقوعہ ملزم ایوب ولد رشید سکند علی آباد کو تھانہ علی آباد سے ایک رائفل لا کر راجہ باغ علی آباد سے ہوتے ہوئے جانب مشرق جاتے ہوئے دیکھا تھا۔

#### (iv) Confessional statement ExPW-22/D of accused Irfan Karim

بدریافت بیان کیا کہ میں ہنزہ علی آباد کاسکونٹی ہے پولیال روڈ علی آباد میں شیئری کی دکان ہے۔ روز وقوعہ مورخہ 11-08-11 کو اپنے دکان میں موجود تھا۔ دوپہر کے وقت بجلی کی لائنیں شارٹ جیسی آوازیں سنائی دی۔ اسی دوران تیز بارش ہو رہی تھی۔ تھوڑی دیر بعد فائرنگ کی آوازیں سنائی دی۔ مظہر نے دکان کھلا چھوڑ کر قمر بنک کے پاس آیا تو ایک ہجوم مشتعل حالت میں تعمرہ بازی کرتے ہوئے تھانہ علی آباد کی طرف جا رہے تھے وہاں کچھ عطا آباد کے متاثرین ملے جنکو نام سے نہیں جانتا ہوں۔ انہوں نے بتایا کہ متاثرین KKH بلاک کر کے احتجاج کر رہے تھے اسی دوران مقامی پولیس نے لائٹی چارج کرتے ہوئے ہوائی فائرنگ کئے جس باعث چند لوگ زخمی ہوئے جن کو علی آباد ہیسیسنٹر لے گئے وہاں سے میں واپس اپنی دکان پر آیا اور دکان کا دروازہ بند کر کے تالا لگایا اور اپنے معذور دادا کو اپنی ٹولس پر بٹھا کر اپنے گھر چھوڑ کر خود کپڑے تبدیل کر کے تھانہ علی آباد کی طرف روانہ ہوا۔ اثناء نور حیات کے گھر کے پاس گلی میں مسمی ایوب ولد رشید سکند علی آباد ملاقاتی ہوا۔ اسکے ہاتھ میں کپڑے میں لپٹا ہوا ایک رائفل تھی اس نے مجھ سے کہا کہ میرا گھر نزدیک ہے شام تک رائفل کو امانت اپنے گھر میں رکھنے کو کہا۔ اور بتایا کہ اس نے تھانہ علی آباد سے لایا ہے جس پر میں نے اس رائفل کو اپنے گھر لے جا کر کمرے کے اندر لکڑی کی الماری کی اندر چھپا رکھا۔ شام کو وہ نہیں آیا تو اگلے روز ایوب مذکور بازار میں ملا تو میں نے رائفل لے جانے کو کہا تو اس نے بتایا کہ وہ گزشتہ شام مصروفیت کی وجہ سے نہیں آسکا۔ آج شام کو آکر لے جائے گا۔ لیکن اس شام کو بھی نہیں آیا۔ اس سے اگلے روز مظہر نے متذکرہ رائفل کو اپنی دکان میں لے جا کر پولیس رضوان کو از خود واپس حوالہ کیا۔



تو اس نے رسید تحریر کر کے ایک کاپی مجھے دیا تھا وہ مجھ سے گم کیا ایک کاپی رسید ساتھ رائل پولیس رضوان نے لے گیا اور اس بتایا کہ رائل پولیس یہی آٹو میٹک ہے۔

(v) Confessional statement ExPW -22/E of accused Irfan Ali.

بدریافت بیانیہ ایکہ میں مرتفعی آباد ہنزہہ کا سکوتی ہے۔ کالج روڈ علی آباد میں میری منزل شور ہے۔ مورخہ 11-08-11 کو اپنی دکان میں بیٹھا ہوا تھا تقریباً دوپہر کے وقت فائرنگ کی آوازیں دی تو میں نے دکان بند کر کے قراقرم بینک کے پاس آیا۔ تو وہاں سے لوگ ہجوم کی شکل میں علی آباد تھانہ کی طرف جارہے تھے۔

شیراللہ بیک سکٹہ شکست سڑک کے کنارے گرا پڑا تھا اس کے سینہ سے خون بہہ رہا تھا۔ اس کے ارد گرد متاثرین عطا آباد تھے ان کو نام سے نہیں جانتا۔ انہوں نے بتایا کہ چند زخمیوں کو آغا خان ہیلیکٹر علی آباد کے گئے ہیں وہاں سے میں ہیلیکٹر سن کر گیا۔ اسی دوران مشتعل ہجوم نے تھانہ علی آباد کو گھیر لیا تھا۔ پولیس اور انتظامیہ کے خلاف نعرہ بازی کر رہے تھے۔ پولیس آنسو گیس ڈال رہی تھی۔ جب میں ہیلیکٹر پہنچا تو آنسو گیس کے شیل وہاں آکر گرے تو میں بھی مشتعل ہو کر تھانہ کی طرف روانہ ہوا۔ تھانہ علی آباد پہنچا تو دیکھا تھا کہ باہر پولیس پک اپ کو ہجوم نے آگ لگایا تھا جو جل رہی تھی اور تھانہ کا مین گیٹ کھولا تھا اندرونی جانب بھی ایک پک اپ جل رہی تھی۔ مظہر بھی تھانہ کے اندر گیا اور پہلی پوزیشن میں داخل ہوا۔ اور مشتعل ہجوم کے ساتھ ملکر توڑ پھوڑ اور جلاؤ گھیراؤ میں شامل ہوا۔ ملزمان قیمت جان سکٹہ علی آباد، علیم ساکن حسن آباد، افتخار حسین سکٹہ علی آباد، احمد خان سکٹہ شکست، ویدار علی آباد تھانہ کے اندر توڑ پھوڑ اور جلاؤ گھیراؤ کر رہے تھے۔ ہجوم میں زیادہ تر متاثرین عطا آباد تھے جن کو نام سے نہیں جانتا ہوں۔

(iv) Confessional statement ExPW -22/E of accused Baba Jan.

بدریافت بیان کرتا ہے کہ میں لیبر پارٹی گلگت بلتستان کے مرکزی رکن اور لیبر پارٹی پاکستان پروگریسیو یوتھ فرنٹ گلگت بلتستان کا انچارج ہوں۔ روز وقوعہ مورخہ 11-08-11 کو مظہر اپنے گھر واقع گاؤں ناصر آباد سے ہنزہہ جانے کے لیے ایک ہائیس پر سوار ہو کر علی آباد ہنزہہ جا رہا تھا۔ اٹنا راہ علی آباد سے گلگت جانے والی گاڑی کے ڈرائیور جس کا نام نہیں جانتا ہے بتایا کہ KKH علی آباد کو بلاک کرنے پر متاثرین عطا آباد اور مقامی پولیس تھانہ علی آباد کے مابین تصادم ہو کر ایک شخص ہلاک اور تین زخمی ہوئے ہیں۔ جب ہماری ہائیس علی آباد کے آغاز میں جہاں بھڑ ڈالے گئے تھے وہاں تھانہ تک پہنچ گیا۔ تھانہ کے سامنے دو گاڑیاں جل رہی تھیں تھانہ کے اندر ایک پولیس گاڑی جل رہی تھی۔ تھانہ علی آباد کی توڑ پھوڑ اور جلاؤ گھیراؤ آخری مراحل میں تھے۔ تھانہ کے سامنے متاثرین عطا آباد شکل ہجوم جمع تھے حکومت وقت اور پولیس کے خلاف نعرہ بازی کر رہے تھے۔ مظہر بھی تھانہ علی آباد کے سامنے ہجوم کو تقریر کرتے ہوئے حکومت وقت اور پولیس پر تنقید کیا اور تھانہ کے اندر جا کر توڑ پھوڑ میں شریک ہوا۔ اکثر لڑکے نقاب پوش تھے۔ ملزمان افتخار حسین ولد محمد اسحاق سکٹہ علی آباد، احمد خان فوجی سکٹہ شکست اور علی گوہر سکٹہ سرٹ ہنزہہ تھانہ حملہ آور ہونے اور توڑ پھوڑ اور جلاؤ گھیراؤ کرنے والوں میں شامل تھے۔ مظہر لیبر پارٹی گلگت بلتستان کے لیڈر کی حیثیت سے تقریر بلوائیوں کو مدد پر مشتعل کیا۔ مظہر نے تھانہ علی آباد سے کوئی اسلحہ وغیرہ نہیں لے گیا ہے۔ بلوائیوں کے ساتھ ملکر ہیلیکٹر سے نقش کو لے کر سول ہسپتال علی آباد چلے گئے اور وہاں یہ طے پایا کہ جب تک پولیس کے خلاف مقدمہ درج نہیں ہوتا ہے نقش کی تدفین نہیں کریں گے رات وہاں ہسپتال میں بسر کی اگلے دن گلگت سے دوسرے نقش آنے پر KKH روڈ پر دھرنہ دیا سول انتظامیہ پولیس کے خلاف مقدمہ درج ہونے پر ہم نے نعشوں کو تدفین کیا اگلے روز مظہر نے ہسپتال چوک علی آباد میں حکومت اور پولیس کے خلاف تقریر کی۔

In view of the above the learned trial Court has observed that from carefully scrutiny of the said confessional statements of accused it reveals that the said confessional

statements have been made by the accused voluntarily which have been recorded by the PW-22 after fulfilling the legal requirements. After considering the evidence of PW-22, in the considered view of the learned Judge the said PW has complied with all the requirements of law. The said PW has asked the material questions from the accused and the same were available in the confessional statement of accused alongwith their replies. The said PW has been appended the required certificate with the confessional statement of accused. It is pertinent to mention here that the said PW is not associated with the investigation of the instant case. After satisfying the learned Trial Court held that the confessional statements made by the accused were voluntarily and true. The said PW has confirmed and authenticated the confessional statement ExPW-22/A ExPW-22/B, ExPW-/C, ExPW-22/D, ExPW-22/E and ExPW-/F.

**(xxiii). (PW-23) DR. Wali Muhammad** is the witness, who has examined injured Abdul Qayyum vide injury sheet ExPW-23/A and the said PW has also injured Saifullah vide injury sheet ExPW-23/B, injured Zafar Iqbal vide injury sheet ExPW-23/C and injured Sabir Hussain vide injury sheet ExPW-23/D. The said has confirmed and authenticated the opinion given by the said PW in injury sheet ExPW-23/A of injured Abdul Qayyum, injury sheet ExPW-23/B of injured Saifullah,

injury sheet ExPW-23/C of injured Zafar Iqbal and injury sheet ExPW-23/D of injured Sabir Hussain.

**(xxiv). (PW-24) IP Safdar Ali** is the IO, who has investigated the case is up to the extent of accused Shukurullah Baig alias Mithoo. The said PW has arrested absconder accused Shukurullah Baig alias Mithoo on 30.05.2013. The said PW has obtained physical remand of the accused from the court. The said PW has prepared site plan ExPW-6/A of the place of occurrence on the pointation of accused Shukurullah Baig alias Mithoo in presence of Magistrate and marginal witnesses. The said PW got recorded the confessional statement ExPW-14/A of accused Shukurullah Baig alias Mithoo under Section 21-H of the Anti-Terrorist Act, 1997 and committed the accused to judicial lockup after obtaining judicial remand from the court. After completion of the investigation the said PW has prepared incomplete challan ExPW-24/B against accused Shukurullah Baig alias Mithoo and submitted before the court through Public Prosecutor.

In his cross-examination the said PW stated that. "The site plan has been prepared at the place of occurrence in presence of Magistrate." The said PW further stated that, "at the time of preparation of site plan Wajid Karim, Mubarak Ali and Magistrate were alongwith

me, at the time of preparation of site plan on the pointation of accused.” The learned defence counsel himself got confirmed from the said PW about the preparation of site plan ExPW-6/A of the place of occurrence which has been prepared by the said PW on the pointation of accused Shukurullah Baig alias Mithoo in presence of Magistrate (PW-6). The statement of the said PW is fully corroborated with the statement of PW-6 and also corroborated with the confessional statement ExPW-15/A of accused Shukurullah Baig alias Mithoo.

**(xxv). (PW-25) Magistrate Farman Ali** is the witness of recovery memo ExPW-9/A vide which, on the pointation of accused Iftikhar Hussain the IO has took into his possession 17 alive rounds of 7.62mm and 2 magazines from the plot owned by accused Iftikhar Hussain and also prepared site plan ExPW-9/B of the place of recovery. The said PW also witness of site plan ExPW-9/C of the place of occurrence. The said PW is also witness of recovery memo ExPW-12/B, vide which the IO has recovered 80 alive rounds of G-3 on the pointation of accused Sarfraz and prepared site plan ExPW-12/C. The said PW is also witness of recovery memo ExPW12/D, vide which the IO took into his possession one CD.

In his cross-examination made by the learned defence counsel for accused Iftikhar Hussain the said PW stated that, “we proceeded to the place of recovery on food. The said PW further stated that, “as per statement of accused Iftikhar Hussain the plot from where the recovery was made belongs to accused Iftikhar Hussain but no documents were with us to ascertain the ownership of accused Iftikhar Hussain.” In his cross-examination the said PW further stated that, “the recovered rounds were counted by me. The rounds were 17.” The rounds were of Kalashankove. The learned defence counsel himself got confirmed from the said PW about the recovered rounds from accused Iftikhar Hussain.

The said PW has confirmed and authenticated the recovery memo ExPW-9/A site plan, ExPW-9/B of the place of recovery, site plan ExPW9/C of place occurrence, recovery memo ExPW-12/B, site plan ExPW-12/C and site plan ExPW-12/A of the place of occurrence. The statement of the said PW is fully corroborated with the statements of PW-9, PW-12 and PW-28. The evidence of the said PW is worth of credence and believable.

**(xxvi). (PW-26) IP Jahangir Shah** is the witness who has investigated the instant case up to the extent of accused Musa Baig. The said PW has arrested accused



Musa Baig on 09.10.2012 and obtained physical remand from the court. The said PW has got recorded the confessional statement ExPW-17/A under Section 21-H of the Anti-Terrorist Act, 1997 and committed the accused to judicial lockup after obtaining judicial remand from the court. After completion of the investigation the said PW has prepared challan ExPW-26/A.

(xxvii). (PW-27) SP Rtd Bashir Ahmed is the witness who has recorded the confessional statement Ex-PW-27/A of accused Aleemullah alias Ali and confessional statement Ex-PW-27/B of accused Amir Ali and confessional statement Ex-PW-27/C of accused Sarfraz under Section 21-H of the Anti-Terrorist Act, 1997. The confessional statement Ex-PW-27/A, Ex-PW-27/B and Ex-PW-27/C of the above named accused are re-produced as under:-

**(iv). Confessional statement Ex-PW-27/B of accused Ameer Ali.**

بدریقت بتلایا کہ روز وقوعہ مورخہ 11-08-11 کو میں محلہ دلاٹ علی آباد میں تھا دوپہر کے وقت بازار علی آباد کی طرف سے فائرنگ کی آوازیں سنائی دی جب فائرنگ معلوم کرنے کے لیے علی آباد بازار نزد قرقمہ تک پہنچا تو وہاں متاثرین عطا آباد کئی تعداد میں موجود تھے تیز بارش ہو رہی تھی قرقمہ تک کے سامنے ٹک پر کئی خون گرا پڑا تھا جس پر پلانٹنگ ڈالے گئے تھے بدریقت کرنے پر معلوم ہوا کہ متاثرین عطا آباد جن کو نام سننے میں جانتہ میں نے بتایا کہ شیر فضل اور اس کے والد کو گولی لگنے پر یہاں سے علی آباد لے گئے ہیں۔



چنانچہ میں بھی شیر افضل سے ملنے ہیلتھ سنٹر علی آباد کے دروازے پر گیا تو گاڑی نے اندر داخل ہونے سے منع کیا دیکھا تو تھانہ علی آباد کے گیٹ کے سامنے پولیس کی گاڑی اور ایک کار کو آگ لگائے تھے۔ دھواں اٹھ رہا تھا۔ مشتعل بلوائی تھانہ کے اندر داخل ہو رہے تھے۔ میں بھی ان بلوائیوں میں شامل ہو کر تھانہ علی آباد کے اندر داخل ہوا تو تھانہ کے اندر صحن میں تھانہ علی آباد کی گاڑی جل رہی تھی۔ کافی تعداد میں مشتعل ہجوم تھانہ کے اندر توڑ پھوڑ اور جلاؤ گھیراؤ کر رہے تھے۔ میں چلی پورٹن میں گیا تو برآمدے میں ایک رائفل پڑی تھی۔ اس رائفل کے بیرل سے میں نے کوت کے سلاخ والے دروازے پر لگی جھکڑی کو توڑنے کی کوشش کی تو رائفل ٹیڑھا ہوا لیکن جھکڑی نہیں ٹوٹ گئی۔ اس دوران ملزم افتخار حسین ولد محمد اسحاق سکندری علی آباد وہاں آکر سلاخ دروازے کے پلوں کو دائیں بائیں کھینچا تو جھکڑی ڈھیلی لگی تھی۔ ملزم افتخار حسین نے جھکڑی پر پاؤں رکھ کر سلاخ دروازے کو پکڑ کر اندرونی لکڑی کے دروازے پر لات مار کر اوپر سے توڑ کر کوت کے اندر داخل ہوا اور کوت کے اندر سے رائفلیں اٹھا کر کوت کے باہر ملزمان فضل ولد گوہر حیات، مشہود ولد آمان اللہ، مہر علی ولد فرمان ساکنان علی آباد کو پاس کیا تو دیگر دیگر بلوائیوں کو دے رہے تھے۔ میرے ہاتھ میں پہلے سے موجود رائفل کو میں نے تھانہ کے صحن میں پھینکا۔ ملزمان سلمان کریم ولد ابراہیم سکندری علی آباد، عرفان علی ولد ارمان شاہ سکندری علی آباد بھی تھانہ کے اندر متاثرین کے ساتھ موجود تھے۔ اسکے علاوہ بہت سارے مشتعل متاثرین وہاں موجود تھے جن کے نام نہیں جانتا کچھ بلوائی نقاب پوش بھی تھے میں وہاں سے اپنے گھر چلا گیا۔ میں نے کوئی اسلحہ وایمنیشن نہیں لے گیا۔

(ii) Confessional statement ExPW -27/A of accused Aleemullah Khan.

بدریافت بتلایا کہ میں ہلال احمد آفس علی آباد ہنزہ میں انٹری کام کرتا ہے۔ روز وقوعہ یعنی مورخہ 11-08-11 کو مظہر اپنی آفس میں بیٹھا ہوا کمپیوٹر پر کام کر رہا تھا۔ ہماری آفس قراقرم بینک علی آباد کے قریب ہی واقع ہے۔ تقریباً دوپہر کے وقت باہر سڑک پر شور وغل اور نعرہ بازی ہونے پر باہر نکل کر دیکھا تو ایک جوان لمبے بالوں والا تقریر کر رہا تھا۔ جبکہ متاثرین عطا آباد KKH پر دھڑا دے کر بیٹھے تھے۔ جہاں دریافت کرنے پر تقریر کرنے والے جوان کا نام غلام عباس ولد نامعلوم سکندری مشکوک معلوم ہوا۔ وہ کہہ رہا تھا کہ حکومت نے متاثرین عطا آباد کے ساتھ امداد دینے کا جو وعدہ کیا تھا وہ پورا نہیں کیا گیا۔ اس دوران تیز بارش ہو رہی تھی مظہر واپس ہلال احمد کے دفتر میں جا کر کام کرتا رہا۔ کچھ دیر بعد باہر شور و غل ابھرنے لگا فائرنگ کی آوازیں آئیں تو گولی لگنے سے خوف سے باہر نہیں گیا۔ تھوڑی دیر بعد مارکیٹ میں ہجوم میں سے کسی نے کہا کہ شیر افضل کو گولی لگنے پر ہیلتھ سنٹر علی آباد لے گئے ہیں۔ شیر افضل میرے پیچھے لگتا تھا جس باعث میں ہیلتھ سنٹر کی طرف گیا تو بلوائی تھانہ علی آباد کی طرف حملہ آور ہو رہے تھے۔ مظہر ہیلتھ سنٹر پہنچا تو تھانہ علی آباد سے آنسو گیس کے گولے ہیلتھ سنٹر میں آکر گرے جس پر میں بھی مشتعل ہو کر دیگر بلوائیوں کے ساتھ تھانہ علی آباد پر حملہ کرنے گیا تو پولیس نے زیادہ آنسو گیس ڈالا جس پر مظہر عرفان علی ولد آمان شاہ سکندری علی آباد اور تقریباً دس پندرہ نامعلوم لڑکے جو کہ متاثرین تھے تھانہ علی آباد کے مین گیٹ کے سامنے لاکڑاٹن پر احمد خان ریٹائرڈ فوجی سکندری مشکوک نے بڑول لاکڑاٹن اور نذر آتش کیا اس کے قریب ایک سفید رنگ کی کار کو افتخار حسین ولد محمد اسحاق سکندری علی آباد آگ لگایا۔ اس کے بعد رہبر باغ سائیڈ سے عرفان علی ولد ارمان شاہ سکندری علی آباد مظہر اور سلطان جان ولد شاہ جہان سکندری علی آباد تھانہ کی چار دیواری پر چڑھ کر وہاں سے تھانے کی چھت پر چڑھا تو تھانہ کے اندر سے پولیس ہوائی فائرنگ اور آنسو گیس ڈال رہے تھے۔ تھوڑی دیر بعد فائرنگ گئی۔ تو مظہر تھانہ کے اندر موجود پولیس کو آواز دے کر بتایا کہ بہت سارے لوگوں نے کو تھانہ کو گھیر لیا ہے وہ اپنی جان بچا کر نکل جائیں چنانچہ پولیس تھانہ کی چھت پر چڑھ کر نیچے پھلانگ لگانے لگے تو داری چمکی خانے کی کھڑکی توڑ کر ہجوم تھانہ کے اندر داخل ہو کر اندر سے مین گیٹ کو کھولا تو بہت سارے بلوائی اندر داخل ہو کر تھانہ میں توڑ پھوڑ اور جلاؤ گھیراؤ شروع کی۔ مظہر بھی اندر داخل ہوا اور بلوائیوں کے ساتھ مل کر تھانہ کے اندر موجود پولیس پک اپ جوانوں کے زاتی سامان، وردی، ریکارڈ تھانہ، کمروں اور

وائرس روم کے علاوہ مال مقدمات کو جلا کر توڑ پھوڑ کئے۔ میرے ساتھ مسلمان گل باز ولد عباس، قیمت جان ولد حرمت، فضل ولد گوہر حیات، دولت کریم عرف شاہ جہان ولد عبدالکریم، افتخار حسین ولد محمد اسحاق ساکنان علی آباد تھانہ کے اندر کوت کے دروازے کو توڑ کر اندر سے سرکاری اسلحہ کو باہر ہجوم کو پاس کیا۔ تو امیر علی ولد امیر حیات، مہر علی ولد فرمان علی، مشہود ولد آمان اللہ، فضل ولد گوہر حیات ساکنان علی آباد نے رائفلیں اٹھا کر ہجوم میں تقسیم کر رہے تھے۔



فضل ولد گوہر حیات نے سرکاری رانقل سے تھانہ کے اندر سے ہوائی فائرنگ کیا۔ اس کے ساتھ دو نقاب پوش لڑکے جو کہ پی کیپ پہنے ہوئے تھے نے بھی سرکاری رانقلوں سے ہوائی فائرنگ کیا۔ ملزمان فضل ولد گوہر حیات، اشرف آمان ولد علی یار، تقسیم ولد طالب شاہ، غلام طاہر ولد غلام سرور کو تھانہ علی آباد کے اندر سے سرکاری رانقلیں لے جاتے ہوئے مظہر نے چشم خود دیکھا اس کے بعد میں دیگر بلوائیوں کے ساتھ مل کر AC ہاؤس جا کر توڑ پھوڑ جلاؤ گھیراؤ کیا۔ جہاں سے واپس ہیلتھ سنٹر جا کر شیر اللہ کی نعش لے کر دیگر لوگوں کے ساتھ سول ہسپتال علی آباد گیا۔

(iii) Confessional statement ExPW -27/C of accused Sarfraz.

بدریافت بتلایا کہ روز وقوعہ مورخہ 11-08-11 کو مظہر موٹر سائیکل پر ایکسیڈنٹ ہو کر بغرض علاج آغا خان ہیلتھ سنٹر علی آباد گیا تھا جہاں ہیلتھ کے دروازے پر پہنچے پر ایک نامعلوم شخص جو کہ موضع مشکٹ کا ہونا بتلایا گیا خون میں لت پت تھا ہیلتھ سنٹر لایا گیا۔ اس کے ساتھ ساتھ مشتعل بلوائیوں کی جلوس تھانہ کی طرف جارہی تھی۔ مظہر بھی جلوس کے ساتھ روانہ ہوا تو KKH علی آباد میں مسی اسلم ولد نامعلوم سکندہ نگر جو کہ علی آباد میں دکاندار ہیں دو سیٹے اٹھائے تھے۔ اس نے ایک بیچلے مظہر کو دیا۔ وہ جلوس میں آگے آگے تھا۔ مشتعل بلوائی تقسیم ہو کر تھانہ علی آباد کی طرف گئے۔ میں چند نامعلوم ملزمان کے ساتھ ساتھ تھانہ علی آباد کے سامنے ورکشاپ میں جا کر پولیس پک اپ کو دیکھ کر تھانہ علی آباد کے مین گیٹ کے سامنے لا کر نذر آتش کیا۔ میرے ساتھ ملزمان افتخار حسین ولد نامعلوم سکندہ علی آباد اور احمد خان ولد نامعلوم سکندہ مشکٹ پولیس گاڑی کو۔۔۔ کر کے لا کر نذر آتش کرنے میں ساتھ دیا۔ اس دوران بلوائیوں نے تھانہ علی آباد کے مین گیٹ کو کھول کر اندر داخل ہو کر ایک کمرے کے پیشے توڑا۔ SHO کے دفتر کی ٹیبل کو توڑا۔ پولیس نے ٹیمر گیس ڈالے تھے آنکھیں جل گئے۔ الٹیاں آ کر مظہر تھانہ سے باہر آیا۔ جہاں تھانہ کے سامنے روڈ پر ملزم فضل کریم ولد نامعلوم سکندہ علی آباد نے تھانہ علی آباد کے اندر سے کار توں لایا تو مظہر نے اس سے کار توں لے کر انت گاؤں کے جنگل میں دیوار سوراخ میں چھپا رکھا تھا۔ جو کہ برآمد کر کے مقامی پولیس کے حوالے کیا ہوں اور جائے وقوعہ تھانہ علی آباد کی نشاندہی کروالیا ہوں۔ تھانہ علی آباد کے اندر متاثرین عطا آباد حملہ آور ہوئے تھے جن کو نام سے نہیں جانتا ہوں اور زیادہ لڑکے نقاب پوش تھے۔ مگر کے دو نامعلوم لڑکے تھانہ کے اندر داخل ہوئے تھے جن کو نہیں جانتا ہوں۔

The learned Trial Court after carefully scrutiny of the above confessional statement of accused observed that the same has been made by the accused voluntarily which was recorded by the PW-27 after fulfilling the legal requirements of law. After considering the evidence of PW-27. The learned Judge of Trial Court has observed that the said PWs have complied with all the requirements of law. The said PWs have asked the material questions from the accused and the same are available in the confessional statement of accused alongwith his replies. The said PWs have been appended the required certificate with the confessional statement of accused. It is pertinent to mention here that the said PWs

were not associated with the investigation of the instant case. After satisfying himself the learned Judge of Trial Court has held that the confessional statements made by the accused were voluntarily and true. The said PW has confirmed and authenticated the confessional statement ExPW-27/A, ExPW-27/B and ExPW-27/C of the accused.

**(xxviii). (PW-28) DSP Muhammad Izzat** is the witness who has investigated of the instant case alongwith JIT member DSP Fida Ali. The said PW has recorded the statements of PWs under section 161 Cr.P.C. On 20.08.2011 the said PW has arrested accused Iftikhar Hussain and other 17 suspects accused and obtained physical remand from the court. On 23.08.2011 the said PW has obtained warrant of arrest under Section 204 Cr.P.C against accused Baba Jan and other 14 accused. On 26.08.2011 the said PW has arrested accused Salman Karim, Sher Khan, Javed Iqbal and Sifat Shah and obtained physical remand from the court. The said PW has recovered 79 rounds of 7.62 mm and 2 magazines of Kalashankove. On the pointation of accused Iftikhar Hussain from his plot and prepared recovery memo ExPW-9/A and also prepared site plan ExPW-9/B of the place of occurrence in presence of Magistrate. The said PW has also prepared site plan ExPW-9/C of the place of occurrence from the pointation of accused Iftikhar Hussain in presence of Magistrate and the said PW has recorded the statement of marginal witnesses

under Section 161 Cr.P.C. The said PW has arrested accused Baba Jan on 12.09.2011 and obtained physical remand from the court. The said PW has got recorded the confessional statement ExPW-22/F of accused Baba Jan and committed the accused to judicial Lockup. After obtaining judicial remand from the court. The said PW has got recorded the confessional statement of accused Salman Karim, Irfan Karim and Sher Khan and committed the said accused to judicial lockup after obtaining judicial remand. The said PW has arrested accused Aleemullah Khan and Sultan Ishaq on 17.09.2011 and obtained physical remand of the accused from the court. The said has got recorded the confessional statement of accused Aleemullah Khan on 24.09.2011 and committed the accused to judicial lockup. After obtaining judicial remand from the court. Accused Ashraf Aman, Ghulam Tahir and Ghulam Abbas have arrested on 27.09.2011. The said accused has took into his possession to DVDs containing clips of the occurrence vide recovery memo ExPW-10/A and ExPW-10/B. The said PW has got recorded confessional statement accused Ahmed Khan and Ghulam Abbas under Section 21-H of the Anti-Terrorist Act, 1997 and committed the accused to judicial lockup after obtaining judicial remand. After completion of investigation the said PW has prepared in complete challan No. 08 dated 03.10.2011 ExPW-28/B against accused Iftikhar Hussain and 09 other accused and placing the names of



Meher Ali and 09 others accused as absconders accused in column No. 02 of the challan.

The said PW has arrested accused Shukurullah Baig, Niamat Karim and Sultan Jan on 06.10.2011 and obtained physical remand of the accused from the court. The said PW has arrested accused Rashid Minhas on 17.10.2011 and obtained physical remand from the court. The said PW has got recorded the confessional statement of accused Amir Ali on 21.10.2011 and committed the accused to judicial lockup on 21.10.2011. The said PW has committed accused Rashid Minhas to judicial lockup after obtaining judicial remand. The said PW has arrested accused Sarfraz on 28.10.2011 and obtained physical remand of the accused from the court. The said PW has recovered 18 alive rounds of G-3 on the pointation of the accused Sarfraz and prepared recovery memo ExPW-12/B and also prepared site plan ExpPW-12/C of the place of recovery. The said PW has also taken to his possession video and prepared recovery memo ExPW-12/D. The said PW has also prepared site plan ExpPW-12/A of the place of occurrence. The said PW has got recorded the confessional statement of accused Sarfraz under Section 21-H of the Anti-Terrorist Act, 1997 and committed the accused to judicial lockup after obtaining judicial remand. After completion of investigation incomplete challan ExPW-28/C was prepared on 04.11.2011.

In his cross examination the said PW stated that, “the burnt articles were taken into possession by the then IP/SHO Gulzar Hussain vide recovery memo ExPW- 11/A.” The said PW further stated that, “I have conducted the recovery proceeding against Iftikhar Hussain alongwith JIT members.” The said PW further stated that, “we went to the place of recovery on foot. The place of recovery is situated known as Gurman, where is a graveyard situated and the boundary wall of the plot is belonging to the accused Iftikhar Hussain.” the learned defence counsel himself got confirmed from the said PW about the recovery of burnt articles and alive rounds from accused Iftikhar Hussain. The said PW has confirmed and authenticated all the proceedings carried out by him alongwith JIT members during the investigation. The statement of the said PW is fully corroborated with the statements of all PWs.

After closing the prosecution evidence, the learned Trial Court recorded the statement of accused Iftikhar Hussain, Irfan Karim, Irfan Ali, Salman Karim, Baba Jan, Aleem Ullah Khan, Ahmed Khan, Gulam Abbas, Musa Baig, Amir Ali, Sher Khan, Rashid Minhas, Sarfraz and Shukurullah alias Mithoo as provided under section 342 Cr.P.C.

All the aforementioned accused except Baba Jan have denied to record their statements on oath under section 340 (2) Cr.P.C, in disproof of charges leveled against them. The accused Baba Jan, however, has produced three (03) DWs

namely Numberdar Juma Khan, Shukurullah Baig and Khan Muzaffar-ud-Din Shah. The statements of the said DWs were recorded. From perusal of the said statements, it reveals that the story narrated by the said DWs is not correct in the light of the statement of the accused Baba Jan recorded before the learned trial court under section 342 Cr.P.C. it is pertinent to mention here that accused Baba Jan admitted his presence at the place of incident at the relevant time of occurrence in his statement recorded under section 342 Cr.P.C before the learned Trial Court.

**12.** The learned trial Court after hearing the counsel of the respective parties, evaluating the material evidence on record and consequent thereto on proven guilty, has convicted all the above accused/respondents under Section 436, 435, 427, 448, 353, 147, 149, 337-a PPC Section 17 Haraba of the offence against property (Hudood) Ordinance 1979, Section 21-1 and 6/7 of the Anti Terrorism Act 1997 and awarded various sentences to them in accordance with law.

The operative part of the said judgment is hereby reproduced as under:-

**“Quote”**

**114. “In the light of the above discussion, I hold that the prosecution has proved the guilt of accused Irfan Ali, accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas, accused Sarfraz, accused Musa Baig, accused Shukurullah Baig alias Mithoo and**

proclaimed offenders Meher Ali, Deedar Ali and driver Nasir for mischief by fire to cause damage to property by fire to destroy house etc, mischief by fire to damage to property, mischief causing damage, house trespass, assault on public servant, bodily hurt to the injured persons, rioting, Haraba (Daketi) and create a sense of fear and insecurity in the area in furtherance of their common object, hence I convict accused Iftikhar Hussain, accused Irfan Ali, accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas, accused Sarfraz, accused Musa Baig, accused Shukurullah Baig alias Mittoo and proclaimed offenders Meher Ali, Deedar Ali and driver Nasir under Section 436/149 read with Section 7(d) of the Anti Terrorism Act, 1997 and sentence them to undergo rigorous imprisonment for life and the accused to pay fine of 1000000/- (Rupees one hundred thousand only) each. The above named accused are also hereby convicted under Section 435/149 PPC and sentence them to undergo (7) years imprisonment and the accused to pay fine of Rs.1000000/- (Rupees One hundred thousand only) each. I convict the above named accused under Section 427/149 PPC and sentence them to undergo 2 years imprisonment. The above named accused are also convicted under Section 448/149 PPC and sentenced them to undergo one year imprisonment. I convict the accused Iftikhar Hussain, accused Irfan Ali, accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas, accused Sarfraz, accused Musa Baig, accused Shukurullah Baig alias Mithoo and



proclaimed offenders Maher Ali, Deedar Ali and driver Nasir under Section 353/149 PPC read with section 7 (h) of the Anti-Terrorism Act, 1997 and sentence them to undergo 5 years imprisonment. The above named accused are also convicted under section 147/149 PPC and sentenced them to undergo imprisonment for 2 years. I convict the above named accused under section 337-A/149 PPC and sentence them to pay “daman” of Rs. 100,000/- (rupees one hundred thousand only) and the above named accused are also convicted and sentenced to undergo 02 years imprisonment as Ta’zir . The above named accused are also convicted under section 7 (C) of the Anti-Terrorism Act 1997 and sentenced them to pay “daman” of Rs. 100,000/- (rupees one hundred thousand only) each and sentenced them to undergo 5 years imprisonment as “ta’zir”. The amount of the Daman shall be paid to the injured persons. I convict the accused Iftikhar Hussain , accused Irfan Ali, accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas accused Sarfraz , accused Musa Baig, accused Shukurullah Baig alias Mithoo and proclaimed offenders Maher Ali, Deedar Ali, and driver Nasir under section 17/20 offence against Property (Enforcement of Hudood) Ordinance 1979 read with section 395/149 PPC and section 7 (d) of the Anti-Terrorism Act 1997 and sentence them to undergo rigorous imprisonment for ten (10) years and to pay fine of Rs. 100,000/- (Rupees one hundred thousand only) each. In default of payment of fine, the above

named convicts-accused, shall undergo two years imprisonment.

115. “Proclaimed Offenders/absconder accused Maher Ali, Deedar Ali and driver Nasir are hereby convicted under section 21-L of the Anti-Terrorism Act 1997 and sentenced them to undergo ten 10 years imprisonment”

116. Before parting with the file. It is pertinent to mention here that the convicts-accused have given a heavy loss to the Government exchequer by putting on fire the police Station Aliabad and two Government vehicles and have taken the arms and ammunitions from the Mall Khana of Police Station Aliabad. The convicts-accused are responsible for the damages given to the Government exchequer. Hence, the cost of all the damages be recovered from the convicts-accused, as an arrear of land revenue, as per assessment and be deposited into the Government treasury.

**“Unquote”**

(13). The learned Chief Court while hearing appeals filed some of the respondents against their conviction recorded by the learned Anti-Terrorism Court vide judgment dated 09.04.2015 in Criminal Appeal No. 40/2014 allowed the appeals and set aside the judgment of the learned Trial Court. The learned Gilgit-Baltistan Chief Court was pleased to observe that:-

From perusal of prosecution evidence, it is evident that the learned Trial Court did not rely on the whole statement of any of the PWs. So the views and findings of the learned Trial

Court are against the principle of acceptance of whole of the statement of any PW or discarding the whole. The learned Trial Court has on the one hand accepted part statement of PWs against some of the co-accused of the appellant and has discarded the other parts of the statement of PWs regarding some accused. This view of the learned Trial Court is without any explanation on his part to that effect.

The PWs, who have even charged the appellant, have stated about mere presence of the appellant in the mob. Mere presence of the appellant at the place of occurrence is never sufficient to prove that he shared the common object of the unlawful assembly.

Further the prosecution evidence does not show any circumstance or circumstances showing attraction of the offences of Section 6/7 of Anti-Terrorism Act and offence of Section 17 of offences against Property (Enforcement of Hudood) Ordinance 1979. The learned Trial Court has very wrongly tried the appellant for the said offences although none of the PWs have stated in proof of any circumstance or occasion that showed involvement of the appellant for the said offences. We are of the opinion that the circumstances of the case stated by the PWs constituted the case in hand, hardly a case of offences of Section 147, 148, 149, 427, 436, 353 and 448 PPC and that also without any concrete evidence against the appellant. The prosecution evidence hardly shows

presence of appellant on the place of occurrence but without showing any role of the appellant in commission of the alleged occurrence of even the above referred offences.

The second piece of evidence is the circumstantial evidence. In the case in hand, once it is established that reading of ocular evidence against the appellant is not only insufficient in the above circumstances but is wrong also. In such circumstances, circumstantial evidence is not only of no worth but also is irrelevant against the appellant. The learned Trial Court has accepted the statement of the appellant recorded under Section 21- H of Anti-Terrorism Act, 1976 and have read the same against the appellant. In our opinion, accepting or reading the confessional statement of appellant recorded under Section 21-H of Anti-Terrorism Act, 1976 is really astonishing as the superior courts of our country have repeatedly held such statement as not admissible and irrelevant against the appellant. The prosecution has leveled allegation of looting the weapons and cartridges from Koth (Mall Khana) of Police Station. In this connection, we do not find any evidence showing that the police has stored any weapons in the said Koth (Mall Khana). In our opinion, the prosecution is bound to prove that they had stored the weapons, allegedly looted by the appellant, in the Koth (Mall Khana) of Police Station. Without such proof, merely alleging

that the looted articles were stored in the Koth (Mall Khana) is never any proof of any theft or looting etc.

As to medical evidence, mere proof of any injuries to any person is not sufficient to hold that the same were caused by the appellant. PWs are not stating about causing any injury by appellant to the person or persons examined by the medical officer. So the medical report is not against appellant.

In the sequel of above discussion, we hold that the impugned order is very bad in the eye of law and merits reversal. We allow this appeal and set aside impugned conviction and sentence.

**14.** The learned Advocate General submits that basically it was an unlawful assembly led by all the respondents. According to the Section 141, 145, 147 and Section 149 PPC every member of the said unlawful assembly is equally responsible for their common object of that assembly. He specially referred and read out the said Sections which for convenience are hereby reproduced as under:-

**Section 141. Unlawful Assembly.** --- An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is :

**First.** To overawe by criminal force, or show of criminal force, the central or any Provincial Government or legislator, or any public servant in the exercise of the lawful power of such public servant; or

**Second.** To resist the execution of any law, or of any legal process:  
or

**Third.** To commit any mischief or criminal trespass, or other offence,  
or

**Forth.** By means of criminal force, or show of criminal force to any person to take or obtain possession of any property or to deprive any person of the enjoyment of a right of way, of the use of water or

other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

**Fifth.** By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.

**Section 142. Being Member of unlawful assembly.**-----Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it is said to be a member of an unlawful assembly.

**Section 143. Punishment.**-----Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**Section 145.** Joining or continuing in unlawful assembly, knowing that it has been commanded to disperse.-----Whoever joins or continues in unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law or disperse shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

**Section 146. Rioting.** Whenever force or violence is used by an unlawful assembly, or by any member thereof in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

**Section 147. Punishment of rioting** .....Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Section 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.**\_\_\_\_ if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

He further submits that the presence of the respondents in all the State aforementioned appeals have been admitted by the respondents themselves in their confessional statements etc which corroborated by the injured prosecution witnesses and the Superintendent of Police who recorded their statements under Section 21-H of the Anti-Terrorism Act

1997. Admittedly the recoveries of the Crime articles were affected on the pointation of the respondents which is admissible under Article 40 of the Qanoon-e-Shahadat Order 1984. He further contends that the ocular and circumstantial evidence coupled with medical evidence connects the chain committing crime by the respondents in all appeals, causing by the rioters of the unlawful assembly. All the respondents in all appeals played similar role and jointly participated in setting on fire the Government vehicles, police station alongwith Pakistan flag, police uniform, records, other Government properties etc and looted the arms and ammunition thereto. The police personals were attacked, injured, humiliated and disgraced publically. All the respondents have failed to point out any enmity of police with them.

The learned Advocate General contends that now it is well recognized principle of dispensation of criminal justice that identification parade are only held as a matter of prudence and not as rule of jurisprudence. A laxity, if any, on the part of Investigation Officer (IO), which is an irregularity & cannot, demolish the prosecution case. He also contended that the learned Trial Court has rightly relied upon a case reported in 1995 P.Cr.LJ that:

**“Procedural defect or irregularities and even illegalities in the course of investigation shall not demolish the prosecution case.”**

Furthermore admittedly it was a day light occurrence and the eye witnesses have specifically mentioned the part attributed to the accused in their statement.

**15.** He also contended that the learned Trial Court while convicting the respondents has rightly relied upon the case reported in 2001-SCMR-424 that:

**“The court’s approach, while appraising the evidence, should be dynamic and not static. It should keep in view all the facts and circumstances of the case and if it is satisfied that factually the person charged with the offence has committed the same, it should record the conviction though there might have been some technical lapses on the part of the investigation agency/prosecution, provided the same have not prejudiced the accused in the fair trial.”**

**17.** The learned Advocate General submits that the learned Trial Court has rightly convicted the respondents namely Iftikhar Hussain, accused Irfan Ali accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas, accused Sarfraz, accused Musa Baig, accused Shukurullah Baig alias Mithoo and proclaimed offenders Meher Ali , Deedar Ali and driver Nasir whereas the learned Trial Court has wrongly acquitted accused/respondents Irfan Karim, Salman Karim, Ahmed Khan, Ghulam Abbas and Ameer Ali who have played the similar role in commission of the offence who are liable to be convicted and be awarded sentences and fine according to law.



**18.** In support of above contentions the learned Advocate General relied upon the following case laws: -

- I. “Surendra & others Versus the State of Uttarparadesh (2012 SCMR 1422, SC of India).
- II. Afzal & another versus the State (2007 SCMR 315).
- III. Rashid Ahmed versus the State, (Shariat Appellate Jurisdiction) (2006 SCMR 1243),
- IV. Muhammad Altaf and 5 others versus the State (2002 SCMR 189).
- V. Shafqat Ali and others versus Liaqat Ali & others (1985 SCMR 1151).
- VI. Saeed & others versus the State (1984 SCMR 1069).
- VII. Nallamsetty Yanadalah & others versus State of Andhra Pradesh (SCMR (1994 588).
- VIII. Naveed Hussain versus the State (2011 PCr. LJ 389) Gilgit-Baltistan Chief Court.
- IX. Gulbaz versus the State (2009 Y.L.R 933).
- X. Imran Ashraf & 7 others versus The State (2001 SCMR 424).

**19.** On the other hand Mr. Ehsan Ali Advocate appearing on behalf of the respondent’s No. 01 to 03 and Mr. Amjad Hussain advocate for respondent No. 04 submits that this is case of clear acquittal as the foundation of the FIR No. 20/2011 has broken into pieces and the same has lost its existence. They further submits that according to the FIR there were more than 700/800 accused/rioters amongst them only 15 accused have been implicated out of which 04 have been released by the Police under Section 169 Cr.P.C while 05 accused have been acquitted by the learned trial Court

whereas the convicted accused were entitled for the same treatment under the law on the principle of consistency. They contended that the foundation of the said FIR has been damaged and the same ultimately lost its existence. They further submit that the Prosecution has recorded statements of twenty eight (28) Prosecution Witnesses (PWs) and none of them have charged the accused assigning them specific roles in creating violence, instigating, rioting and burning the Government Properties during that occurrence. Moreover, the statements of the PWs are contradictory with each other and the whole story based on Presumption and hearsay. They also submit that the occurrence took place after death of the two persons as they were protesting for nonpayment of grants to the Internally Displaced Persons (IDPs) on account of compensation to the affectees of the Attaabad lake calamity. They argued that no PW mentioned the death of the two deceased who have been killed by the Police and resultantly the mob had become aggressive and provoked by the police itself and it was a natural act to react by the mob after death of the two private persons. They submit that the unlawful assembly of the people was there on account of the protest as their cheques were being bounced and the mere presence of the present respondents on the spot does not contribute any offence. The case is full of doubts and the prosecution has miserably failed to bring home a case against the respondents

beyond reasonable doubts. They also contended that benefit of doubt, if any, always goes to the accused and not to the prosecution. The learned trial Court did not consider this aspect of the case and has wrongly awarded punishments to respondents. Consequent thereto, the Judgment dated 25.09.2014 passed by the learned Anti-Terrorism Court was not sustainable and the learned Chief Court Judgment dated 09.04.2015 in Criminal Appeals No. 34/2014, 35/2014, 36/2014, and 40/2016 has rightly set aside the same being not well founded. They also contended that the accused are IDPs of Attaabad Lake and the instant case is based on Political victimization. They further contended that the occurrence of the instant case is not pre-planned and PW-5 SP Baba Khan has identified accused Baba Jan and accused Iftikhar Hussain instead of Gulam Abbas and accused Ahmed Khan. They further contended that there are contradictions between the statements of SP Baba Khan and SP Tufail as well as the statements of recovery witnesses. They further contended that the belated recoveries of crime articles are fake as the recovery Magistrate mentioned time as 05:00 AM while other witnesses stated that it was 8' O Clock and the other PWs says that it was 9:00 AM, 10:00 AM or 11:00 AM respectively. They also contend that PW -22 SP Tufail also stated that he has recorded the confessional statements of accused Iftikhar Hussain etc while SP Baba Khan also claimed

that he has recorded the confessional statement of the said accused. They further contended that injured person/PWs have not been examined at the nearest Hospital at Karimabad rather they have got treated more than 300 Km away at Asqurdass. They also contended that no accused except accused Iftikhar Hussain has been arrested at the place of occurrence/ near Police Station Aliabad. They further contended that injuries shown on the police personnel are also fake as per statement of PW-21 Dr. Shahidullah Baig. They finally argued that the Judgment dated 09.04.2015 passed by the learned Chief Court is well reasoned and well founded, hence, no interference is warranted into it and the same is required to be maintained to meet the ends of justice and equity. While arguing so they relied upon the case laws i.e. (i).PLD 1996 SC 219. (ii). PCr. LJ 2518. (iii) PLD 1956 SC 249. (iv) SCMR 1987, 1015. (v) PLD 1968, SC 372.

**20.** We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the Impugned Judgments of both the Court below. The case laws cited by both the learned counsels have also been perused. The case laws cited by the learned Advocate General are applicable whereas the case laws relied upon by the learned counsels for the respondents are distinguishable.

**21.** We have been fortified with the case laws referred by the learned Advocate General wherein the Hon'ble apex Courts of Pakistan and India have held that in such cases least consideration be given to the technical flaws made by the Prosecution and the Courts must have appraised evidence in a dynamic way instead of static approach. All the facts/circumstances of the case should be kept in view if a member of an unlawful assembly is committed the offence. The conviction should be recorded without going into technical flaws made by the investigating agency. In case Surendra & others versus the State of Uttarparadesh (supra) it is held that the legal position is well established that inference of common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and the result. We are satisfied that the prosecution from the entirety of the evidence, has been able to establish that all the members of the unlawful assembly acted in furtherance of the common object. In case titled Afzal & another versus the State (supra) it is held that all the respondents alongwith others have formed unlawful assembly and attacked complainant party, injured to the PWs. The respondents by virtue of the vicarious liability would be equally responsible for the commission of the offence under Section 147 and 149 PPC as the respondents failed to convince that either testimony of the

injured witnesses was unreliable or the participation of the petitioners in the occurrence was doubtful, in case titled Rashid Ahmed versus the State (supra). It is held that the prosecution has brought on record truthful and convincing evidence of the complainant and injured eye-witness. It has been proved that forming unlawful assembly and with common object in the commission of offence, in case titled Muhammad Altaf & five others versus the State (supra). It is held that every member of unlawful assembly to be equally charged for committing the offence with a common object, in case titled Shafqat Ali & others versus Liaqat Ali & others (supra) it is held that accused forming unlawful assembly duly armed with common object, the presence of the accused at the spot testified by eye-witness and participation in the commission of the offence equally fell within mischief under Section 149 PPC, in case titled Saeed & others versus the State (supra), it is held that out of 250 rioters, 43 were mentioned as accused and rest could not be identified, then all the 43 accused would share the same responsibility under Section 149 PPC, in case titled Nallamsety Yanadalah & other versus the State of Andhra Pradesh (supra), it is held that for the application of Section 149 IPC, the prosecution has to prove the presence and participation of each one in an unlawful assembly, in case titled Imran Ashraf & 7 others versus The State (supra), It is held that the court's approach, while



appraising the evidence, should be dynamic and not static. It should keep in view all the facts and circumstances of the case and if it is satisfied that factually the person charged with the offence has committed the same, it should record the conviction though there might have been some technical lapses on the part of the investigation agency/prosecution, provided the same have not prejudiced the accused in the fair trial.” In case titled Naveed Hussain versus the State Gilgit-Baltistan Chief Court, (supra) it is held that confessional statement of accused, after the amendment in Section 21-H of Anti-Terrorism Act, 1997 whereby a proviso had been added to the section, legislature had made it mandatory that statement under said section would be admissible in evidence, which has to be read with the provision of Section 6 of Anti-Terrorism Act, 1997. In case titled Gulbaz versus the State (supra), it is held that accused has voluntarily confessed his guilt before prosecution witness who had fulfilled all the legal formalities in that behalf and accused, without any force or coercion, has admitted his accusation and said admission was admissible in evidence under the provisions of Section 21-H of Anti-Terrorism Act, 1997. Accused had failed to show any animosity toward the prosecution witness. Prosecution case was fully supported from the recoveries affected from the spot of occurrence, positive report of Bomb Squads, the effectively firing at the police party with intention to kill them which also

created terror and panic in the locality, had fully brought home the charge to accused. Prosecution case was fully proved against accused. Counsel for accused had failed to prove any illegality or irregularity in the impugned conviction of the Trial Court which was the result of sound appraisal of evidence brought on record and to which no exception could be taken by the High Court. (P. 934).

**22.** In view of the above discussion, after evaluation of the entire evidence of the Prosecution on record and going through the aforementioned case laws in our considered view the prosecution has proved its case against all the respondents in all the above appeals beyond any shadow of doubts by producing Ocular Evidence, Circumstantial Evidence, Confessional Statement of accused/respondents, Recoveries on the pointation of the respondents, Medical Evidence and coupled with the absconsions of the accused /respondents.

**23.** We hold that the learned trial court has rightly convicted the accused Iftikhar Hussain, accused Irfan Ali accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas, accused Sarfraz, accused Musa Baig, accused Shukurullah Baig alias Mithoo and proclaimed offenders Meher Ali , Deedar Ali and driver Nasir under Section 436/149 PPC read with Section 7(d) of The Anti Terrorism Act, 1997 and sentenced them to undergo rigorous imprisonment for life and to pay fine of 1000000/- (Rupees one hundred thousand only) each. The above named accused are also convicted under Section 435/149 PPC and sentenced them to undergo (7) years imprisonment and the accused

to pay fine of Rs.1000000/- (Rupees One hundred thousand only) each. The above named accused were also convicted and sentenced them under Section 427/149 PPC undergo 2 years imprisonment. The above named accused are also convicted under Section 448/149 PPC and to undergo one year imprisonment. the accused Iftikhar Hussain, accused Irfan Ali, accused Baba Jan, accused Aleemullah Khan, accused Sher Khan accused Rashid Minhas, accused Sarfraz, accused Musa Baig, accused Shukurullah Baig alias Mithoo and proclaimed offenders Maher Ali, Deedar Ali and driver Nasir under Section 353/149 PPC read with section 7 (h) of the Anti-Terrorism Act, 1997 and sentence them to undergo 5 years imprisonment. The above named accused are also convicted under section 147/149 PPC and sentenced them to undergo imprisonment for 2 years. The above named accused were also convicted under section 337-A/149 PPC and sentenced them to pay “daman” of Rs. 100,000/- (rupees one hundred thousand only). The above named accused are also convicted and sentenced to undergo 02 years imprisonment as Ta’zir. The above named accused are also convicted under section 7 (C) of the Anti-Terrorism Act 1997 and sentenced them to pay “daman” of Rs. 100,000/- (rupees one hundred thousand only) each and sentenced them to undergo 5 years imprisonment as “ta’zir”. The amount of the Daman shall be paid to the injured persons. The accused Iftikhar Hussain , accused Irfan Ali, accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas accused Sarfraz , accused Musa Baig, accused Shukurullah Baig alias Mithoo and proclaimed offenders Maher Ali, Deedar Ali, and driver Nasir under section

17/20 offence against Property (Enforcement of Hudood) Ordinance 1979 read with section 395/149 PPC and section 7 (d) of the Anti-Terrorism Act 1997 and sentence them to undergo rigorous imprisonment for ten (10) years and to pay fine of Rs. 100,000/- (Rupees one hundred thousand only) each. In default of payment of fine, the above named convicts-accused, shall undergo two years imprisonment. The convictions and sentences awarded to them by the learned Trial Court are upheld.

**24.** The Proclaimed Offenders/absconder accused Maher Ali, Deedar Ali and driver Nasir are hereby convicted under section 21-L of the Anti-Terrorism Act 1997 and sentenced them to undergo ten 10 years imprisonment. The convict accused/respondents have given a heavy loss to the Government Exchequer by putting on fire the Police Station Aliabad and two Government vehicles and have taken the arms and ammunitions from the Mall Khana of Police Station Aliabad. The convict accused/respondents are responsible for the damages given to Government exchequer, hence, the cost of all the damages be recovered from the convict accused/respondents, as an arrear of land revenue, as per assessment and be deposited into the Government Treasury whereas the learned trial Court has failed to apply its judicial mind in acquitting the accused namely Irfan Karim , Salman Karim, accused Ahmed Khan, Accused Ghulam Abass and accused Ameer Ali, who were also present on the place of occurrence, played equal role in mischief, participated in putting on fire the Police Station and Government Properties, Government vehicles equally participated in burning the record of the police Station Aliabad, case file and case properties in

Mall Khana and looted the police ammunitions kept in koth. In our considered view they were also equally responsible as of aforementioned convicted accused. The State filed appeals against them and the same were also allowed through our short order dated 09.06.2016, hence, they are also been awarded the same convictions/sentences as awarded to the aforementioned convicted accused namely accused Iftikhar Hussain, accused Irfan Ali, accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas, accused Sarfraz, accused Musa Baig, accused Shukurullah Baig alias Mithoo and proclaimed offenders Maher Ali, Deedar Ali and driver Nasir.

**25.** Consequently, upon hearing I, Mr. Justice Dr. Rana Muhammad Shamim, CJ, and Mr. Justice Javed Iqbal, J, have allowed all the appeals filed by the State vide our short order 09.06.2016. Consequent thereto, the Impugned Judgment dated 09.04.2015 in Criminal Appeals No. 34/2014, 35/2014, 36/2014, and 40/2016 under FIR No. 20/2011 passed by the learned Gilgit-Baltistan Chief Court were set aside whereas the Judgment dated 25.09.2014 passed by the learned Trial Court was maintained. In addition, since in Criminal Appeal No. 10/2015 filed by the State against the accused/respondents namely Irfan Karim, Salman Karim, Ahmed Khan, Ghulam Abbas and Ameer Ali was also allowed. They are also convicted as under:-

The above named respondents/accused are convicted/ sentenced to undergo rigorous imprisonment for life and the accused to pay fine of 1000000/- (Rupees one hundred thousand only) each under Section 436/149 read with Section 7(d) of the Anti Terrorism Act,

1997. The above named accused are also hereby convicted under Section 435/149 PPC and sentence them to undergo (07) years imprisonment and the accused to pay fine of Rs.1000000/- (Rupees One hundred thousand only) each. They are also convicted under Section 427/149 PPC and sentence them to undergo 02 years imprisonment. The above named accused/respondents are also convicted under Section 448/149 PPC and sentenced them to undergo one year imprisonment. The above named accused are also convicted under Section 353/149 PPC read with Section 7 (h) of The Anti-Terrorism Act, 1997 and sentence them to undergo 05 years imprisonment. They are also convicted under section 147/149 PPC and sentenced them to undergo imprisonment for 02 years. The above named accused /respondents are also convicted under Section 337-A/149 PPC and sentenced them to pay “daman” of Rs. 100,000/- (rupees one hundred thousand only) they are also convicted and sentenced to undergo 02 years imprisonment as Ta’zir. The above named accused are also convicted under Section 7 (C) of The Anti-Terrorism Act, 1997 and sentenced them to pay “daman” of Rs. 100,000/- (rupees one hundred thousand only) each and sentenced them to undergo 5 years imprisonment as “ta’zir”. The amount of the Daman shall be paid to the injured persons. The accused/respondent Irfan Karim, Salman Karim, Ahmed Khan, Ghulam Abbas and Ameer Ali are also convicted under section 17/20 offence against Property (Enforcement of Hudood) Ordinance 1979 read with section 395/149 PPC and section 7 (d) of The Anti-Terrorism Act 1997 and sentenced them to undergo rigorous imprisonment for ten (10) years and to pay fine of Rs. 100,000/-



(Rupees one hundred thousand only) each. In default of payment of fine, the above named convicts-accused, shall undergo two years imprisonment. The convict accused/respondents have given a heavy loss to the Government Exchequer by putting on fire the Police Station Aliabad and two Government vehicles and have taken the arms and ammunitions from the Mall Khana of Police Station Aliabad. The convicts/accused are responsible for the damages given to Government exchequer, hence, the cost of all the damages be recovered from the convict accused/ respondents , as an arrear land revenue, as per assessment and be deposited into the Government Treasury.

**26.** All the respondents/accused except Baba Jan and Iftikhar Hussain who are already in Jail custody are directed to surrender before the learned Trial Court/Anti-Terrorism Court Gilgit for serving out their sentences. In case they do not surrender the learned Anti-Terrorism Court Gilgit is directed to adopt all measures to arrest all the respondents in above appeals in order to serve out the sentences awarded to them. The copies of this Judgment be sent to the learned Trial Court, the learned Advocate General and the learned Home Secretary, Government of Gilgit-Baltistan for implementation of the Judgment of this Court and for strictly compliance of the orders/directives of this Court thereto.

**27.** During the course of arguments, the learned Advocate General placed on record the Office Order No. CC.-E-67/2011 dated 13.08.2011 issued by the learned Registrar, Gilgit-Baltistan Chief Court whereby in pursuance of the letter No. PS/Secy Law-1(1)/2011 dated 12.08.2012 issued by the Secretary, Law and

Prosecution Gilgit-Baltistan, the learned Chief Judge, Gilgit-Baltistan Chief Court was pleased to appoint Mr. Muhammad Alam the then District & Session Judge Skardu as Inquiry Officer to conduct Judicial Inquiry into the unfortunate incident took place at Aliabad Hunza on 11.08.2011 resulting in killing of two persons and injuring several others. Whereafter he submitted the judicial inquiry report.

**28.** It is shocking that Mr. Muhammad Alam the then District & Session Judge who conducted the aforementioned judicial inquiry and subsequently he has been elevated as learned Judge of Gilgit-Baltistan Chief Court who heard the criminal appeals arisen out of the same incident as senior member of the bench which is against the “Code of Conduct” and becoming of a Judge of Chief Court. He should have refrained and separated himself to hear the said criminal appeals of the same incident as he cannot sit as a judge of his own cause. Since he is at the verge of his retirement, this Court has withheld to refer his case to the Chairman Gilgit-Baltistan Council/Prime Minister of Pakistan to file reference against him in the Supreme Judicial Council Gilgit-Baltistan. The learned Judge is, however, required to be careful in future.

**29.** The dissenting note /Judgment separately written by our learned brother Judge (Mr. Shahbaz Khan, J) is as under:-

**Chief Judge.**

**Judge.**

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN  
GILGIT.**

**Before:- Mr. Justice Dr. Rana Muhammad Shamim  
,Chief Judge.**

**Mr. Justice Javed Iqbal,Judge.**

**Mr. Justice Shahbaz Khan, Judge.**

**Cr. Appeal No.05/2015**

**Cr. Appeal No 06/2015**

**Cr. Appeal No 07/2015**

**Cr. Appeal No 10/2015**

The State

**Appellant**

**Versus**

1. Iftikhar Hussain & Others
2. Irfan Karim & Others
3. Sarfaraz Ahmad & others
4. Baba Jan

**Respondents**

**CHARGE UNDER SECTION 436/ 435/ 427/  
448/ 353/ 147/ 149/ 337-A PPC SECTION 17  
HARABA OF THE OFFENCE AGAINST  
PROPERTY (HUDOOD) ORDINANCE 1979  
SECTION 21-L AND 6/7 OF THE ANTI  
TERRORISM ACT 1997 VIDE FIR NO.20/2011  
OF POLICE STATION ALIABAD HUNZA.**

**CRIMINAL PETITION FOR LEAVE TO APPEAL  
UNDER ARTICLE 60 OF FGILGIT-BALTISTAN  
(EMPOWERMENT & SELF GOVERNANCE)  
ORDER 2009 ETC.**

**Present :-1** The Advocate General Gilgit-Baltistan alongwith

Mr.Ali Nazar, Advocate-on-Record for  
the petitioner.

2. Mr.Amjad Hussain, Advocate along  
with Mr. Ehsan

Ali Advocate on behalf of the  
respondents.

**Date of Hearing:- 09-06-2016.**

**Date of detail Judgment :- 01-08-2016**

**JUDGMENT:**

**Shahbaz Khan J :**

I have had the benefit of discussing the findings of my learned Brothers, Honorable Dr Rana Mohammad Shamim Chief Judge & Justice Javed Iqbal Judge during deliberations after hearing the arguments in the above cases. I am unable to share the view expressed by them on some points and must respectfully dissent.

Though the facts and provisions of the relevant law might be set out in the judgment prepared by Honorable Chief Judge but keeping in view of the importance in the matter, I propose to refer all the details and deliver a separate judgment in the following terms:-

1. Through the instant appeals, by leave of the Court, the

appellant has assailed the judgment dated 09-04-2015, passed by the learned Chief Court Gilgit-Baltistan, in Cr. Appeals No.34/2014, 35/2014, 36/2014 and 40/2014 whereby the said Criminal appeal filed by the respondents/accused have been accepted by acquitting them.

The concise facts as narrated are as such that a criminal case vide its FIR No.20/2011 lodged by IP Gulzar Hussain on 11-08-2011 at Police Station Hunza Aliabad nominating the respondents Baba Jan, Ahmad Khan r/o Shishkat, Sultan Ishaq, Imam Dad, Sahib

Khan, Mohammad Shah, Ali Gohar, Deedar Hussain residents of Sarat, Rahim Mohammad and Iftikhar residents of Shishkat, on the charge of leading a provoked mob consisting 700/800 people as a result of an incident due to nonpayment of compensation to the affectees of Ata Abad by UBL, attacked Police Station Ali Abad by beating guard Abdul Qayum present on the gate of Police Station and entered therein and beaten police officials present at the time of occurrence in the police station namely Saleem FC, Wazir Aman HC, Saifullah FC, Ayub FC & Zafar Iqbal FC and putting on fire the Govt. Vehicle No. GLTA 4549 present in the police station and put on fire all the police station record, all official documents and official material and cases material present in Maalkhana and broken the Arm store /Koth by looting police arms and ammunition present therein consisting SMG 08 Nos, Semi Rifles 13 Nos, ammunition rounds consisting G3 980 nos, 7.62 mm 1200 Nos, MP-5 110 nos, 30 bore pistol 40 nos, and the magazines of arms along with the arms of DPL consisting SMG 03 nos, 13 nos 30 bore pistols and essential articles and magazines and ARP material including SMG 02 nos, Gas Gun 02 nos, Gas shell 02 packets, police station gas gun 01 nos, shell 35 nos, hand grenade 02 boxes, and also burnt police uniforms, beds, belts and then burnt the vehicle of police station Gulmit

and also burnt the SHO house and then the mob went towards bazaar .

The police after investigation submitted challan against the accused before the Anti Terrorist Court Gilgit. The prosecution tried to lead oral as well as documentary evidence in proof of the allegations to corroborate the prosecution version with the help of confessional statements of accused recorded before the Superintendent of Police under Section 21-H ATC Act 1997.

2. The police, in exercise of powers conferred under Section 169 Cr PC released the following 08 accused out of a total of 10 who were directly nominated in FIR by the complainant SHO and as per statement of some eye witnesses as well as the Investigation Officer, having similar role with the accused, who have been committed to judicial lock up for facing trial:

1. Sultan Ishaq r/o Shishkat
2. Imam Dad r/o Sarat
3. Sahib Khan r/o Sarat
4. Mohammad Shah r/o Sarat
5. Ali Gohar r/o Sarat
6. Deedar Hussain r/o Sarat
7. Rahim Mohammad r/o Shishkat
8. Iftikhar r/o Shishkat

The police submitted challan against the respondents Baba Jan, Ahmad Khan and the 15 other accused/respondents who were not named in FIR.

3. The learned Judge of ATC No.1 Gilgit framed the charge of



Accused as per contents of FIR No 20/2011 wherein the respondents/accused did not plead guilty and claimed trial. Consequently, the prosecution has produced as many as 28 PW's in proof of their case excluding those which have been named in FIR as eye witnesses by the complainant. After recording of evidence made by the prosecution witnesses, the trial court recorded the statement of accused/respondents under section 342 wherein they vehemently denied the allegation stating that they are not involved in the instant case rather they have been involved by the police due to political pressure and just to harass and humiliate them in the eye of society as they are having good reputation and they have never committed any offence previously and they further stated that their involvement in the instant case by the police is only the result of being them as eye witnesses of another incident which took place in an another place in Ali Abad wherein two affectees of Ata Abad were murdered and five injured by DSP Babar Khan and his gun man FC Azam Khan and the police want to restrain them of being eye witness of this incident. Lastly the trial Court has concluded the case in hand by giving their verdict vide judgment dated 25.08.2011, five out of the seventeen accused namely Irfan Karim, Salman Karim, Ameer Ali, Ahmad Khan & Ghulam Abbass were acquitted by the trial court while other 12

accused namely Iftikhar Hussain, Irfan Ali, Baba Jan, Aleemullah Khan, Sher Khan, Rashid Minhas, Sarfaraz Khan, Musa Baig, Shukurallah Baig and proclaimed offenders Meher Ali, Deedar Ali and Driver Nasir were found guilty of the following offences and sentenced by the Trial Court as under :-

114. "In the light of the above discussions, I hold that the

Prosecution has proved the guilt of accused Iftikhar Hussain, accused Irfan Ali, accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas, accused Sarfaraz, accused Musa Baig, accused Shukurallah Baig Alias Mitto, and proclaimed offenders Meher Ali, Deedar Ali and Driver Nasir for mischief by fire to cause damage to property, mischief causing damage, house trespass, assault on public servant, bodily hurt to the injured persons, rioting, haraba (daeti) and create a sense of fear and insecurity in the area in furtherance of their common object, hence I convict accused Iftikhar Hussain, accused Irfan Ali, accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas, accused Sarfaraz, accused Musa Baig, accused Shukurallah Baig alias Mitto, and proclaimed offenders Meher Ali, deedar Ali and driver Nasir under section 436/149 PPC read with section 7(d) of the Anti Terrorism Act 1997 and sentence them to undergo rigorous imprisonment for life and the accused to pay fine of 100000/- (Rupees One hundred thousand only) each. The above named accused are also hereby convicted under section 435/149 PPC and sentence them to undergo seven (7) years imprisonment and the accused to pay the fine of 100000/- (Rupees One hundred thousand only) each. I convict the above named accused under section 427/149 PPC and sentence them to undergo 2 years imprisonment.. The above named accused are also convicted under section 448/149 PPC and sentence them to undergo one year imprisonment. I convict the accused Iftikhar Hussain, accused Irfan Ali, accused Baba Jan, accused Aleemullah Khan, accused Sher Khan, accused Rashid Minhas, accused Sarfaraz, accused Musa Baig, accused Shukurallah Baig alias Mitto, and proclaimed offenders Meher Ali, deedar Ali and driver Nasir under section 353/149 PPC read with section 7(h) Anti Terrorism Act 1997 and sentence them to undergo 5 years imprisonment. The above named accused are also convicted under section 147/149 and sentence them to undergo imprisonment for 2 years. I convict the above named accused under section 337-A/149 and sentence them to pay "Daman" of Rs 100000/- (Rupees One hundred thousand only) each and the above named accused are also convicted and

sentenced to undergo 2 years imprisonment as “Tazir”. The above named accused are also convicted under section 337-F(iii)/149 PPC read with section 7(c) of the Anti Terrorism Act 1997 and sentenced them to pay “Daman” of Rs. 100000/- (One hundred thousands only) each and sentenced them to undergo 5 years imprisonment as “Tazir”. The amount of “Daman” shall be paid to the injured persons. I convict the accused Iftikhar Hussain, accused Irfan Ali, accused Baba Jan, accused Allemulah Khan, accused Sher Khan, accused Rashid Minhas, accused Sarfaraz, accused Musa Baig, accused Shukurallah Baig alias Mitto, and proclaimed offenders Meher Ali, deedar Ali and driver Nasir under section 17/20 Offence Against Property (Enforcement of Hudood) Ordinance 1979 read with section 395/149 PPC and section 7(d) of the Anti Terrorist Act 1997 and sentence them to undergo rigorous imprisonment for ten years and to pay fine of Rs 100000/- (Rupees One hundred thousand only) each. In default of payment of fine, the above named convicts-accused shall undergo two years imprisonment.

115. “Proclaimed offenders/absconder accused Meher Ali, deedar Ali and driver Nasir are hereby convicted under section 21-I of the Anti Terrorism Act 1997 and sentenced them to undergo ten years imprisonment.

116. “Before parting with the file, it is pertinent to mention here that the convicts-accused have given a heavy loss to Govt. Exchequer by putting on fire the Police Station Aliabad. And two Govt. vehicles and have taken the arms and ammunition from the Mall Khana of Police Station Aliabad. The convicts accused are responsible for the damages given to Govt. Exchequer. Hence, the cost of all the damages be recovered, as an arrear of land revenue, as per assessment and be deposited into the Govt. Treasury.

4. The accused /respondents filed an appeal before the learned Chief Court Gilgit-Baltistan against the said conviction. The learned Chief Court after hearing pro and contra in its judgments dismissed the appeal of the State filed against acquittal of accused Irfan Karim, Salman Karim, Ameer Ali, Ahmad khan & Ghulam Abbass and accepted appeals filed by Baba Jan, Iftkhar Hussain Sarfaraz etc vide its judgment dated 09-04-2015, holding that the judgment of the trial court is bad in the eyes of law and meritless. The

present petitioner/appellant being aggrieved and dissatisfied with the impugned order passed by the Gilgit-Baltistan Chief Court filed the petition in hand for leave to appeal before this apex Court. This Court admitted the case by granting leave to appeal.

Arguments advanced by the learned counsels of accused and learned Advocate General Gilgit-Baltistan heard in detail and record perused.

The Learned Advocate General defended the judgment of the Trial Court up to the extent of accused Baba Jan, Iftikhar Hussain Etc, Sarfaraz Khan Etc but opposed in respect of accused Irfan Karim etc who have been acquitted by the learned trial court in the same judgment whereas the learned counsels of the respondent. The learned Trial Court based its findings on the following categories of evidences claimed to be produced by the prosecution which needs to be thoroughly examined in the light of law:

- (i) Ocular evidence
- (ii) Circumstantial evidence
- (iii) Confessional Statement of accused
- (iv) Recoveries
- (v) Medical Evidence

5. The first pinching point in the instant case is that out of twelve directly named and given same role in the FIR, the police has discharged and released 10 accused under section 169 Cr. PC which infect has demolished the persecution story narrated in FIR at the investigation stage. Moreover, out of 17 accused named in challan submitted u/s 173 Cr.PC , 05 accused namely

Irfan Karim, Salman Karim, Ameer Ali, Ghulam Abbas and Ahmad Khan, having the same alleged role and participation in the occurrence as per statements of prosecution eye witnesses as well as Investigation Officer, have been acquitted by the learned Trial Court by rejecting the prosecution evidence and very surprisingly the other **12 accused persons** on the basis of exactly the same set of prosecution evidence, who could not be convicted and sentenced at all on the basis of such a rejected evidence and in absence of any other independent corroborative evidence but the learned Trial Court did it by convicting and sentencing them which is not only a gross violation of law but also against the natural justice .

The DB of Honorable Justice Mohammad Munir Khan & Raja Afrasiab Khan of Lahore High Court, in its judgment under reference **1991 Pcr.LJ 133**, in a similar nature case has held that:

“ The motive part of prosecution story, therefore, does not lend support to the prosecution case. apart from the above, four co-accused were acquitted by the learned trial judge by rejecting the prosecution evidence and as such on the basis of same set of evidence the appellant cannot be convicted and sentenced”,

A Full Bench of Supreme Court of Pakistan headed by Honorable Justice Gulzar Ahmad vide para 17 of its judgment dated 16 March, 2016 in the case titled Soba Khan vs The State has held that:

“It is by now well settled principle of law relating to re appraisal of evidence that once co accused, similarly charged and

attributed same and similar role in a particular crime, is acquitted on the basis of same set of evidence where the witnesses have maintained no regard for truth while deposing on oath to tell the truth and nothing else the ordinarily they shall not be relied upon with regard to the other co accused unless their testimony/evidence is strongly corroborated by independent cogent and convincing evidence.”

The Supreme Court of Pakistan under reference **2009 SCMR 230**. Muhammad Akram V/S The State has held that:

S.302/324/337-A(i)/148/149 PPC. Case of vicarious liability. Accused must be shown to share criminal act and also that criminal act was committed in concert and in pursuance of a prearranged plan, but in the present case no pre-concert and prearranged plan appeared to have been proved. Trial court, in circumstances had rightly given benefit of doubt to acquitted accused. Court had to sift the grain from the chaff and only one circumstances creating doubt in the mind of prudent man was sufficient to acquit accused by way of an abundant caution. If the trial court had acquitted some of accused persons by giving them benefit of doubt, that would not impair the veracity of the witnesses against the other accused whose involvement in the case was established. Accused were rightly acquitted. ACQUITTAL UPHOLD.

The Supreme Court of Pakistan in a case under reference **2008 SCMR 6** Akhtar Ali & Others V/S The State (Larger Bench) has held that :

S.302/452/394/397/449/109/34 PPC. Eye-witnesses found to have falsely implicated five out of eight accused--- Effect---Conviction of remaining three accused could not be based on same evidence without independent corroboration. APPEAL ALLOWED.

The Supreme Court of Pakistan in a case under reference **PLD 2002 SC 643**. Shera Masih & another V/S The State (FB) has held that :

S.302 PPC. Maxim: “Falsus in uno falsus in omnibus” . Applicability. Where the witnesses are found false against one accused, their evidence being of doubtful character would not be acceptable qua the remaining accused without independent corroboration and thus if the evidence of a witness is discarded to the extent of one accused, the same should not be automatically excluded from consideration qua other accused as the same can still be used against the remaining accused if it is supported by any other evidence of independent character. Principle of “falsus in uno falsus in omnibus”, therefore, cannot be accepted as a mandatory rule and given preference over the principle of “sifting the grain from the chaff”, as by doing so the true spirit criminal administration of justice shall be defeated.

A Division Bench of Lahore High Court under reference **NLR 2004 Cr. LJ 626** Muhammad Anwar V/S The State held as under :

S.302/34 PPC. Partial acceptance of ocular evidence against convicted accused and its disbelief qua acquitted accused would not be legally tenable. ACQUITTAL.

6. The conviction and sentences passed by the learned trial courtis actually and factually based on Section 149 of the PPC and that the accused have been declared to be convicted as they were members of an alleged unlawful assembly but the trial court did not bother to look at the evidence on record as well as law for making an arguable foundation at least. Before going to discuss on above points, I would like to discuss on the two fundamental issues in this case overlooked by the learned Chief Court and particularly the trial court which concluded its findings and convicted the accused based



on the sole point of mere presence of some of the accused on the scene of occurrence in absence of any attribution in the alleged overt act and by treating them same as members of an unlawful assembly under the principle of vicarious liability as well as constructive liability without taking into consideration of non availability of evidence and its legal application and adaptation of due procedure during trial. Thus we have to discuss the below mentioned points first:

i. Failure of learned trial court to frame charge under section 147, 148, 149 PPC specifically.

ii. Failure of learned trial court in respect of appreciation and application of essential ingredients & fundamental requirements of section 149 PPC.

iii. Failure of trial court to specific framing of charges to Justify its conviction and sentences awarded against the accused persons under the substantive offences.

**7.** For a fair discussion on conviction under section 149, we have to look at its essential ingredients of this provision, framing of charge by the learned trial courts usually and the charge framed by the learned Trial Court in the instant case particularly.

a) Section 149 PPC states as under:

**Every member of unlawful assembly guilty of offence committed in prosecution of common object:**

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every

person, who at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

8. In order to apply section 149 PPC, the accused must be:

- i. A member of an unlawful assembly
- ii. The overt act must have been committed in prosecution of common object or
- iii. The member of assembly must have known that such offence was likely to be committed in prosecution of the common object of the assembly.

Necessary ingredient of common object are, prior meeting of minds of accused to form a pre-arranged plan and some evidence to prove that accused were in-concert and in pursuance of pre arranged plan then it could be said that the accused committed the criminal act. Every member of an unlawful assembly must know that the offence likely to be committed is in further more of common object while convicting a person under this section necessary ingredient for a constitution of the offence are prior meeting of minds of the accused to form a pre-arranged plan and evidence to prove that accused were in pre-concert and in pursuance of pre arranged plan, the offence committed.

9. But it is an admitted fact that the prosecution totally failed to prove this main aspect of case as none of the prosecution witness uttered a single word to substantiate the contention of the prosecution as well as

conclusion of the learned Trial Court in respect of involvement of accused under this specific allegation and applicability of section 149 in this case. The whole case file does not possess any kind of evidence or even allegation that the **accused persons** pre planned to make an unlawful assembly with a common object to commit the specific criminal acts charge sheeted. The record of the case does not disclose any kind of evidence that the incident was took place as a result of a pre planned act rather the record reveals that same was happened suddenly as a result of the tragic incident occurred in front of Aliabad UBL Bank a little bit time before wherein two civilian affectees of Ata Abad were killed and five injured as a result of firing of DSP Babar & his Gunman FC Azam. This fact is further substantiated and authenticated by the wordings of FIR itself which explains that the incident took place as a result of **provocation** of the mob after the happening of the incident due to nonpayment of compensation by UBL.

**10.** The accused were neither charge sheeted under section 149PPC in a specific way nor any evidence was produced before the trial court accordingly to prove and substantiate the ingredients of section 149 and most interestingly none of the prosecution witnesses attributed a single word about the alleged common object and also not attributed any overt act against any of the

accused in respect of the criminal acts charge sheeted. More interestingly those 06 accused /respondents were also convicted against whom there was absolutely nothing on the record.

The surprising imposition of conviction and sentence of the accused /respondents by the learned Trial Court under the umbrella and domain of section 149 on the basis of just hypothesis, without farming of charge specifically, in absence of any cogent reasons and evidence on record in respect of section 147, 148 and 149 and without affording any opportunity to the accused to defend themselves, is a gross violation of law. The prosecution also utterly failed to produce any kind of evidence in respect of these specific provisions during trial. Therefore, the errors or omissions which are misleading and prejudicial to the accused or has occasioned failure of justice are material errors and fatal for the prosecution. This conduct of the learned trial court and thereafter its findings as a result has caused **prejudice and unjustic** to the accused thus the same are liable to be set aside being against law as well as natural justice.

**11..** It is true that the learned Trial Court failed to frame

substantive charges under 436/ 435/ 427/ 448/ 353/ 147/ 149/ 337-A PPC , Section 17 Haraba of the Offence Against Property (Hudood) Ordinance 1979, Sections 21-L & 6/7 of Anti

Terrorism Act 199 as well against the accused persons. The charges framed were for individual liability for these offences with the add of [Section 149, Pakistan Penal Code](#). The charges when framed with the help of [Section 149, Pakistan Penal Code](#), amount to telling the accused that they are constructively being held liable for offence committed by another, who was a member of the unlawful assembly, in which they were also the members. It also amounts to telling them that they are not being accused of committing the offences with their own hands or of any participation in the commission of the said offences. In such a situation, if the charge under [Section 149, Pakistan Penal Code](#) fails either by reason of the fact that unlawful assembly of five or more persons was not proved or some such reason, it is not open to the Court to convict the accused persons of the substantive offence or offences.

**12.** The omnibus statement about the culpability of the accused/ respondents in the testimony of the prosecution witnesses would in the circumstances of the case have to be considered only in the light of evidence of specific overt acts attributed to each and every accused which is missing not only in the entire prosecution case but also not available in the charge framed by the learned trial court as well unfortunately. Therefore, in absence of evidence it is difficult to accept that the accused were members of the unlawful assembly with the common object of committing the offence charge sheeted. In the

circumstances, it is held that section 149 PPC is only an enabling provision and not a substantive offence and no sentence has been provided in this section so the conviction and sentence of the accused / respondents awarded by trial court under this section is misconceived and it is highly unsafe to apply [Section 149](#) and make everyone of them constructively liable. I, therefore have no hesitation in dismissing the prosecution case against the respondents on the charge under [Section 149](#) , thus the conviction & sentencing of all the respondents / accused under [Section 149](#) PPC by trial court has rightly been set aside by the learned Chief Court. Having rejected the contention that the appellants were members of unlawful assembly, it would be equally unsafe to apply [section 147 & 148](#) of PPC on the basis of omnibus statements made by the prosecution witnesses which is not corroborated. Accordingly, the conviction of all the accused under [Section 147, 148](#) PPC also remains set aside.

**13.** For a fair conclusion in respect of the implications of above

provision and legality of trial procedure conducted by the trial court, it is extremely necessary to make a comparison between a charge framed by the courts in Pakistan generally and the charge framed by the learned Trial Court in the instant case particularly as under:

**The framing of charge in a case u/s 149 PPC used to be in practice as under:**

**CHARGE:**

I----- (name and office of the magistrate/Judge hereby charge you----- (name of the accused) as flows:

That you ----- on or about the day of ----- at----- were member of an unlawful assembly, the common object of which was to ----- specify the object----- and that while you were a member of the said unlawful assembly , another of member of the same committed -----(specify the act) ----- and thereby committed an offence punishable u/s ----- of the ----- which said offence was committed in prosecution of the common object of the said unlawful assembly (or which offence the members of the said unlawful assembly knew to be likely to be committed in furtherance of the common object of the assembly) , and that you thereby committed an offence punishable u/s 149 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried by the said court on the said charge

**Whereas the learned Trial Court framed the charge in the instant case as Under:**

**CHARGE:**

“ I Raja Sehbaz Khan Administrative Judge Anti Terrorism Court No. 1

Gigit Baltistan do hereby charge you accused Iftikhar Hussain S/o Muhammad Ishaq, Irfan Karim S/O Karamat residents of Aliabad, Irfan Ali S/o Arman Shah r/o Murtaza Abad, salman Karim S/O Ibrahim, Sher Khan S/O Hamadullah Baig R/o Aliabad Hunza, Baba jan S/o Abdullah Baig r/o Nasir Abad , Allemullah Khan s/o Taighoon Shah r/o Hassan Abad, Ahmad Khan s/o Ibadat, Ghulam Abbas s/o Muhammad residents of Shishkat, Amir Ali s.o Amir Hayat, Rashid Minhas Anees s/o Abdul Mateen residents of Ali Abad Hunza and Sarfarz s/o Ghulam Musa r/o Altit Hunza Tehsil Ali Abad District Hunza Nagar that on 11.08.2011 at about 1300 hours along with your co accused/proclaimed offenders Meher Ali s/o Farman Ali, Mithoo s/o Amanaullah residents of Ali Abad, Driver Nasir s/o Ghulam Rasul r/o Grilt Hunza, Driver Musa Baig S/o Abd-ur –Reman and Deedar s/o Amir Ali residents of Shishkat Hunza enraged and attacked on the police Station and entered in the police station after assaulting and battling the FC Abdul Qayum, FC Saleem, HC Wazir Aman, FC Saifullah, FC Ayub, FC Zafar Iqbal and set on fire the government Datsun No. GLT A 4519 and entered in the police station and put on fire the record of police station and case files and the case properties.

The Koat was also broken by you and 13 weapons 1-3-08, 980 nos rounds of 9.3, 1200 rounds of 7-62 mm, 110 rounds of MP-5, 40 rounds of 30 bore pistols, with spare magazines and necessary parts of different weapons 8 nos, SM4, 13 nos, 30 bore pistols with spare magazines



and necessary things of ABP, 2 nos SM4, 2 nos Gas Gun, 2 bag Gas Shells, one no Gas Gun of police stati On, 35 nos Gas Shells and 2 boxes hand grenades were taken by you and the uniform of police personnel along with their beds boxes and necessary things were also set on fire by you. A vehicle of Police Station Gulmit was parked in a work shop opposite the police station was also set on fire and also put the fire on the house of SHO House by you. By doing this act you accused caused the loss of millions to the government property.

Thereby, you have committed an offence punishable under section 147, 148, 149, 114, 353, 427, 448,, 435,436, 337-A, 225, 225 B PPC, 17 Haraba and section 6/7 of that Anti Terrorism Act 1997 which is within the cognizance of this court an I hereby direct you to be tried by me on the said charges”.

**14.** It is clear from above charge sheet that the trial court totally

failed to frame the charge as per ingredients of the section 149 PPC specifically thus defeated the rights available to the respondents/accused under criminal jurisprudence. The respondents/accused are not being asked to defend themselves on the fundamental charge of criminal acts committed as a result of being a member of an unlawful assembly in prosecution of the common object of all the criminal acts mentioned above rather the accused have been charged to defend them as an individual liability against some criminal acts as happened in ordinary cases just aiding of Section 149 PPC. Moreover, none of the prosecution witness examined who could support the contention of the prosecution to substantiate or prove the essential ingredients of this particular provision of section 149.

Thus the conviction based judgment under cover and domain of section 149 by imposing the constructive liability in a case of unproved charges has caused **prejudice and injustice** to the accused which is not warranted under the law thus not maintainable.

The following citations will further substantiate the contention whatever stated above;

**2007 PCr.L.J 1860**

Necessary ingredient of common object are prior meeting of minds of accused to form a pre-arranged plan and some evidence to prove that accused were in-concert and in pursuance of pre arranged plan then it could be said that the accused committed the criminal act

**(PLJ 2009 Sh.C (AJ& K) 126**

Every member of unlawful assembly must know that the offence likely to be

Committed is in furtherance of common object while convicting a person under this section necessary ingredient for constitution of the offence are prior meetings of minds of the accused to form a pre-arranged plan and evidence to prove that accused were in pre-concert and in pursuance of a pre-arranged plan, the offence committed.

**PLD 1956 Supreme Court (Ind.) 249**

If members of the family of the appellants and other residents of the village assemble, all such persons could not be condemned ipso facto as being members of that unlawful assembly. It is necessary, therefore, for the prosecution to lead evidence pointing to the conclusion that all the appellants had done or been committing some overt act in prosecution of the common object of the unlawful assembly. The omnibus kind of evidence that all the appellants and many more were the miscreants and were armed with deadly weapons like guns, spears, pharsas axes, lathis etc has to be very closely scrutinized in order to eliminate all

**AIR 1959 Andh Pra 102**

Chances of false or mistaken implication. The case of each individual accused has to be examined to satisfy that mere spectators who had not joined the assembly And were unaware of its motive had not been branded as members of the unlawful assembly which committed the crime. {p.262} A

An accused is charged only with a substantive offence cannot be convicted u/s 149 read with substantive offence.

**AIR 1955 SC 419**

Where an accused is charged only with an offence under this section read with the section dealing with a substantive offence, conviction in such cases for substantive offence would be bad if the accused has suffered prejudice.

A charge as a member of an unlawful assembly for an offence committed by a member thereof in furtherance of common object is a substantially different one from a charge against a person for an offence committed by him as a member of such assembly. A charge u/s 149 puts the person on notice only of the fact that the offences committed by a member of the unlawful assembly in prosecution of the common object or such as was known to be likely committed. Section 149 creates a distinct head of criminal liability commonly known as constructive liability which is not covered by section 236 and 237. **(Cr PC. (SC) Ind 1)**

**AIR 2010 SC 3786 - In Sanichar Sahni v. State of Bihar**

“Therefore, ... unless the convict is able to establish that defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities. Conviction order in fact is to be tested on the touchstone of prejudice theory.”

**AIR 2013 SC 840 - In Darbara Singh v. State of Punjab.**

In determining whether any error, omission or irregularity in framing the relevant charges, has led to a failure of justice, the court must have regard to whether an objection could have been raised at an earlier stage during the proceedings or not. While judging the question of prejudice or guilt, the court must bear in mind that every accused has a right to a fair trial, where he is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charge(s).

**15. Ocular Evidence**

i) As per prosecution story itself, there is no dispute that the incident took place in a broad day light at a place on around KKH which is a thickly

populated and market place of Ali Abad Town where hundreds of people used to be present all the time normally. But very surprise to note that the prosecution did not produce even a single independent person as witness hailing from the locality or even a non-partisan, non-interested private person of any other place present there at the time of occurrence being a passerby. The FIR itself speaks about presence of at least 700/800 persons present at the place of occurrence which is KKH and market place and interestingly the PWs stated before the trial court that the rioters and mob of unlawful assembly were 60, 70 and 100 at the most in numbers who entered the police station and committed criminal acts therein. This proves beyond any doubt that more than 700 persons were present at the place of occurrence as spectators and not as rioters. But the prosecution miserably failed to produce none of them as eye witness being natural witnesses. All the witnesses produced by the prosecution were interested and partisan being police officials their evidence is not trust worthy and free from doubts thus not reliable.

ii) The learned trial court, while convicting the accused, has relied upon

those so called 06 police officials as eyewitnesses of occurrence which are neither named in FIR nor they could be treated as eye witnesses in the eye of law. The FIR lodger PW16 is SHO and complainant in this case who does not disclose the names of these so called eye witness at all neither in FIR nor in his statement before the trial court wherein he once again emphasized correctness of the contents of FIR. The complainant, being SHO of same police station categorically named the below mentioned 06 eye witness in the FIR who were present in the police station when the provoked mob attacked.

1. Gate Guard Abdul Qayum FC,
2. Saleem FC,
3. Wazir Aman HC,
4. Saifullah FC,
5. Ayub FC
6. Zafar Iqbal FC

**But it is very very surprising to note that the police did not record statement u/s 161 Cr.PC of above six officials at all and did not make them as eye witnesses of this occurrence and not named in witnesses column of chalan as well. Moreover, the prosecution neither mentioned any reason for not producing them as eye witnesses nor claimed**

**wining over of them or any other reason or explanation for not examining them as eye witnesses in the court making the whole prosecution story a concocted and false.**

The Investigation Officer remained mum in respect of FIR named eye witnesses either in his challan report or in his statement before the trial court and also failed to explain anything in the challan report or even in his statement before the Trial Court in respect of missing of FIR named eye witnesses. The Investigation Officer did not utter a single word of reason or explanation for not adducing them as eye witnesses before the court. As per timely lodged FIR and statement of complainant recoded before the court makes it crystal clear that apart from the 700 private people the above FIR named officials were the natural and real eye witnesses of the occurrence who have been deliberately & willfully pushed back from the occurrence scene and this act has not only created serious doubts about qua the guilt of accused but also demolished the prosecution case thus this sole point is enough to declare the prosecution case as false & concocted.

- iii. As a result of attack on police station by mob, it is natural that several police officials should be injured. Although no

**medico legal certificate** consisting about nature of injuries has been placed before the trial court in respect of any injured police official including these natural witnesses. However one PW 23 Dr. Wali Mohammad Medical Officer Askurdas Dispensary has been produced before the court and he endorses examination and treatment of injured **Gurad Abdul Qayum FC, Saifullah, and Zafar Iqbal FC** but the prosecution did not submit any Medico Legal Certificate in this regard. PW-8 Dr. Khuwaja Khan of Civil Hospital Ali Abad as well examined FIR named eye witness **Wazir Aman HC** and endorsed his treatment but no Medico Legal Certificate is available on the record in this regard as well. All the above four FIR named police officials were no doubt stationed and performing their duties in the police station when the mob attacked. **Thus their presence in police station as eye witness is beyond any doubt but non examination of these four injured and FIR named natural eye witness has created serious doubts about the prosecution case and naturally and legally presumption has gone against the prosecution and they might not have corroborated the prosecution case as a result if produced and examined before the court.**

In a similar nature case, the Learned Justice Rana Bhagwan Das and **Zakir Hussain K Mirza** in their judgment in reference **1997 P Cr LJ 1628** has thoroughly discussed about the testimony of such nature case wherein the eye witnesses named in FIR not examined but examined those not named in FIR as eye witness. The finding in this regard is as under:

Non-examination of prosecution witnesses named in FIR as eye witnesses whose evidence was material and admissible in order to arrive at just and correct conclusion, was not explained by the prosecution--- Prosecution witnesses examined at the trial could not be termed as eye-witnesses of the occurrence and their testimony was neither unimpeachable nor reliable--- Accused were not proved to have a strong motive to commit the murder of the deceased--- Circumstance that the accused had already been shown to the witnesses well in advance of the identification parade was fatal to the prosecution case which was inherently weak and full of material inconsistent and infirmities---accused were acquitted in circumstance. --- **S. 302/149---**  
**Appreciation of evidence—**

Below mentioned citations will make this point further clear:

**2. (DB) PLD 1960 Lah. 48 Ghulam Rasul.**

Prosecution must call witnesses named in F.I.R. Whether they support the prosecution or not. As a general rule, the prosecutor is bound to call all eye witnesses who are mentioned in the first information report unless he has reasons to believe that the witness if called would not speak the truth, or is unnecessary or is an accomplice himself. The mere statement of the public prosecution not support by any material upon the record that the witnesses were won over the accused, would not absolve the prosecution to produce material witnesses mentioned in the first information report. If, however, the public prosecutor refuses to examine such witnesses, then a duty is cast upon the court to call those witnesses as court witnesses and afford opportunity to both the accused and the prosecution to cross-examine them. Failure to examine such witnesses or witnesses who were able to give important information in the case, or had some connection with the transaction in question might very well lead to miscarriage of justice which should be avoided at all cost. {p.51}A

**3. 1972 SCMR 286.**



Case Title: Shah Nawaz Versus Lal

Khan

Citation:- (a) Penal Code (XLV of 1860) S.302 read with Evidence Act (1

to 1872) S.114 Illus. (g) –Non- examination of eye witnesses mentioned

in FIR Circumstances of case demanding the witnesses should have been examined –inference adverse to prosecution in such case could and should be drawn { P. 289} A

#### 4. Calcutta High Court

Afjal Hossain And Ors. vs State Of West Bengal And

Anr.

on 28 February, 2007 Equivalent citations: 2007 (4)

CHN 482

“Against the said order of acquittal the opposite party No. 2, the de facto-complainant of the case moved a criminal revision before the Sessions Court, Uttar Dinajpur. The learned Additional District and Sessions Judge, Fast Track, 2nd Court, Raigunge, Uttar Dinajpur by his judgment and order dated January 21, 2005 set aside the said order of acquittal and remanded back the said case to the Trial Court for fresh trial directing that during such fresh trial the de facto -complainant be permitted to **examine** all the FIR **named unexamined witnesses**.

Eighthlv. as **witnesses** during trial some persons, about whom there was no reference in the FIR and left behind all the persons who have been referred as **witness** in the FIR except P.W. 6.

Ninthly, the learned Magistrate observed, according to the principle of law as laid down in the decisions, viz. 2001 Criminal Law Journal (SC) 170 and 2003 Criminal Law Journal (SC) 1282, the failure of I.O. cannot render the prosecution case doubtful nor there is any necessity to **examine** all the eye**witnesses**, but in the instant case the matter is otherwise, here the prosecution has relied on P.W. 2 and P.W. 3 **without examining** the FIR **named eye-witnesses**. Initially not a single FIR **named eye-witness** was **examined** by the prosecution, subsequently the prosecution applying the provisions of [Section 311](#) of the Code of Criminal Procedure **examined** only the P.W.6, who is the father of P.W.1, but curiously enough the prosecution has not taken any pain to **examine** other FIR **named eye-witnesses** following the said provisions. Even no explanation for non-**examination** of those vital FIR **named eye-witnesses** has been offered. This aspect of the case speaks a volume against the prosecution as because **examination** of those FIR **named eye-witnesses** might have help the defence.

c) The revision has been preferred by the de facto-complainant as no appeal has been preferred by the State, where prosecution has not **examined** the FIR **named** eye-witnesses and doctor.

d) The Revisional Court is to see whether there is miscarriage of justice and whether acquittal was unmerited.

e) There is evidence of relatives of both accused and the de facto-complainant.

Apart from that in the instant case in hand during the trial the prosecution taking recourse to [Section 311](#) of the Code of Criminal Procedure **examined** P.W.6 Anauddin Ahamed, the father of the victim wife, but reason best known to the prosecution no attempt has been made to **examine** the other FIR **named** witnesses or the doctor there under. The doctors were not even **examined** under [Section 161](#) of the Code during the investigation. In my view, in such circumstances a presumption under [Section 114\(g\)](#) of the Evidence Act is very much available in favor of the defense and sending the matter back for retrial **with** the opportunity to the prosecution to **examine** witnesses referred in charge sheet or not would certainly provide an opportunity to the prosecution to fill up its lacuna. 13. Having regard to the materials on record, I am of the opinion that the Revisional Court has exceeded its jurisdiction while interfering with the order of acquittal of the petitioners and thus same cannot be sustained. Hence, the impugned order whereby order of acquittal of the petitioners has been reversed by the Revisional Court is set aside and order of acquittal passed in favour of the petitioners by the Trial Court stands restored”.

5. **1976 P.Cr.LJ 28 Shamman** etc. g) Evidence Act. Non-production of eye-witnesses for examination. Presumption that such witnesses if examined would not support the prosecution case, held correct. Section 114 illus.

6. **1971 P.Cr.LJ 490. ILR 27 Lah. 1 (PC), (DB) PLJ. 1978 Cr.C. (BJ) 58**  
Material witness if not produced without sufficient reason Court may presume that had the prosecution.

7. **DB) 1973 P.Cr.LJ 737 Najeebullah etc.**  
Witness from neighbourhood not produced. Persons from neighboring houses soon attracted to the scene of occurrence. None was examined as prosecution witness or named in F.I.R. Prosecution version held doubtful.

8. **(SC) 1972 SCMR 572**  
 Ocular evidence Independent witnesses present but not produced.  
 contrary to medical evidence. Accused acquitted.

9. **(DB) 1973 P.Cr.LJ 990 Abdul Aziz etc.**  
 Disinterested witness not produced when  
 occurrence took place in the  
 Most populous part of the town in daylight.  
 Prosecution case resting only  
 on the evidence of three interested-cum-hostile  
 witnesses and their  
 testimony irreconcilable with medical evidence. Such  
 witnesses  
 disbelieved.

10. **(DB) 1976 P.Cr.LJ 243 Mangio.**

Non-partisan and natural witnesses not examined  
 by the prosecution.  
 Held, adverse inference to be drawn against the  
 prosecution.

11.. **(DB) 1976 P.Cr.LJ 1082 Mushtaq Ahmed etc.**  
 Partisan witnesses only, produced at the trial  
 although the occurrence  
 took place in a congested bazar. Recoveries of crime  
 weapons doubtful.  
 Accused acquitted.

12. **1973 SCMR 12 Karam Dad v. Abdullah. (DB)**  
**1973 P.Cr.LJ 649**  
**Siraj etc.**  
 No independent witnesses produced. Incident  
 taking place in busy cattle  
 fair in presence of hundreds of people, yet no  
 independent witness  
 produced. Circumstances very suspicious. High  
 Court rightly acquitted  
 the accused.

13. **(DB) PLD 1962 Kar. 800 Mamoon.**

Eye witness not mentioned in the F.I.R. The  
 evidence of the eye  
 witnesses not mentioned in F.I.R. ruled out of  
 consideration.

**iii .** More interestingly, instead of making above  
 mentioned FIR named witnesses as eye  
 witnesses, the prosecution  
 managed to get recorded statement of the  
 following six

other police officials u/s 161 Cr. PC as eye witnesses after a **delay of 09 days to 47 days** of occurrence despite the fact that as per their own statement before the court, they are the officials stationed and posted at police station Ali Abad and were present at police station during occurrence of the incident as well but very surprisingly their statements u/s 161 Cr.PC has been recorded after a delay 09 to 47 days and no explanation has been given for this extraordinary delay which makes their whole evidence absolutely doubtful and unreliable :

**i. PW-16 IP Retired Gulzar Hussain** FIR Lodger /complainant :

Very interestingly his statement u/s 161 has not been recorded at all.

**ii. PW-1 Mohammad Ismail** : Statement u/s 161 CrPC recorded on 07/09/2011 :after a delay of 26 days.

**iii. PW-15 HC Ali Ahmad Jan** : Statement u/s 161 CrPC recorded on 20/08/2011 : after a delay of 09Days.

**iv. PW-04 HC Mohammad Yasin** : Statement u/s 161 Cr.PC recorded on 26/08/2011: after a delay of 15 days

**v. PW-07 HC Mohammad Akram Baig** : Statement u/s 161 Cr.PC recorded on 28/09/2011 after a delay of 47days

**vi. PW-11 SGC Naeemullah Baig** : Statement u/s 161 CrPC recorded on 20/08/2011 after a delay of 09 days.

It is an admitted fact that the prosecution did not mention any kind of explanation or reason in respect of extra ordinary delay of

09 to 47 days in respect of recording statements of above eye witnesses under section 161 Cr.PC. The following citations will make it clear that, the testimony of the above named eye witnesses in such a circumstance will be highly doubtful and unreliable:

**1998 SCMR 70, Muhammad Khan v. Maula Bakhsh.**

Statement u/s. 161 recorded with delay without any plausible explanation casts serious suspicion on the credibility of witnesses, such evidence not relied upon.

**(DB) PLD 1960 Kar. 697 Qabil Shah.**

48 hours' delay. Witness examined by the police 48 hours after the occurrence. Veracity of such eye-witness account doubted.

**DB) PLJ 1974 Cr.C. (Kar.) 244 Jalal.**

3 days' delay in examination of eye-witness after the occurrence is enough to look askance at his evidence. Such a person is not a witness of truth.

**(FSC) 1982 PSC 1217 Muzaffar Khan.**

Statement to police after 2 days by the persons who were not mentioned as the witnesses by the prosecutrix. held, such persons could not be treated as eye-witnesses.

4 days' delay. Statement of an eye-witness recorded by police 4 days after the incident ruled out of consideration by the Court.

**(DB) PLD 1965 Kar. 76 Badhu.**

4 days' delay in recording statement by the police when the PW was running a shop near the police station and also going with the first informant to the police station. Statement not relied upon.

**(SC) 1976 SCMR 236 Sahib Gul v. Ziarat Gul.**

Police recorded the statement of a prosecution witness 22 days after the occurrence in a murder case. No explanation for this inordinate delay given. Held, a case of further inquiry. Bail allowed.

**PLJ 1994 Cr.C (Kar.) 521, Abdul Ghani.**

Statement u/S. 161 Cr.P.C. recorded after delay without explanation for such delay is to be ruled out of consideration.

**1993 SCMR (S.APP.C.) 550, Syed Saeed Mohammad Shah.**

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Gross and unexplained delay (11 days) in recording statements of P.Ws. under section 161, Cr.P.C. Ocular evidence not fit to be accepted without strong corroboration.

**(DB) 1976 P.Cr.LJ 34 Wahid Bakhsh. PLD 1978 Pesh. 38 Asfandyar**

Eye-witness appearing before police after 10 days, of occurrence no explanation for keeping silent for such a long period. Held, no reliance can be placed on such eye-witnesses.

**(DB) PLJ 1989 Cr.C. (Lah.) 20 Zahere-ud-Din.**

15 days after the occurrence, a witness was examined by the police and no explanation offered for the delay. Held: not safe to rely on such evidence.

**(DB) 1976 P Cr.LJ 249 Allah Din etc.**

Statements of witnesses recorded 15 or 20 days after occurrence, held reliability of such witnesses is always questionable.

**1984 SCMR 930. Mohammad Iqbal.**

1« month's delay. Witnesses examined by the police after lapse of one and a half months. Testimony of such witnesses is to be disregarded. **(DB) 1974 P Cr.LJ 391 Muhammad Rafiq etc. PLJ 1973 Lah. 257.**

2 months after the occurrence a witness when examined by the police, such witness was not believed without explanation for delay.

**PLD 1968 Lah. 49 Amir.**

**iv.** As per statement of FIR lodger /complainant PW- 16 SHO

Gulzar Hussain, the mob entered into the police station by beating guard Abdul Qayum FC standing at the gate of the police Station whereas all the above named so called eye witnesses contradicted the same by stating that the mob entered into police station through windows of kitchen after breaking the same. Interestingly the site plan ExPW-6/A prepared and signed in presence of Magistrate Salman Ali PW 06 categorically states that the accused Shukuralh Baig along with mob had pelted

stones on the windows and roshandan of kitchen from garden of Raja Sakhi Ahmad Jan a place situated outside the police station towards east. This document does not show any indication that the window of kitchen was

broken by mob and entered the police station through this way. This document further falsify the statement of PW-01 Mohammad Ismail HC in respect of presence of Shukur Ullah Baig in side the police station during the occurrence. Moreover, the PW 16, the FIR lodger states to be inside the police station at the time of occurrence but the PW-01 Mohammad Ismail HC states that during the incident the PW-16 was somewhere else outside the police station. The PW-01 HC Mohammad Ismail falsify his own statement by saying that most of the rioters were muffled among them he recognized some accused which is apparently seems to be untrue and self contradictory.

▼. That just to strengthen their statements, the following

prosecution eye witnesses pretended themselves to be injured as a result of occurrence and stated to be examined and treated by the medical officers but no medico legal certificate in this regard has been produced by the prosecution before the trial court. Moreover very surprisingly all the

three Medical Officers examined by the trial court, totally falsified the statements of the so called injured witnesses by not mentioning even their names in the statement before the trial court:

**PW-01 Mohammad Ismail** claims that as a result of incident he became injured and he managed to reach Askurdas Dispensary and got treatment. But Medical Officer of this Dispensary, Dr. Wali Mohammad PW-23 totally negates this story in his statement before the trial court and does not mention the name of this so called eye witness in his statement among those injured officials who were examined and treated by him on the day of occurrence.

**PW-07 Mohammad Akram Baig** claims that after the occurrence he went to doctor for treatment but none of the three Medical officers examined before the trial court did mention his name in their statements.

**PW-11 SGC Naeem Ullah Baig** claims that on the day of occurrence he went to the house of Iqbal Karim from where at about 11 P.m at night went to Agha Khan Hospital at Karim Abad and got discharged after first



aid and thereafter they referred him to DHQ Hospital Gilgit . Interestingly no doctor from Agha Khan Hospital came forward to substantiate his statement. However PW Shahid Ullah Baig Medical Officer Ali Abad Hospital contradicted his story by stating that the PW-11 Naeemulah came to him on 14/08/2011 for medical checkup and examination and it was he who referred him to Gilgit Hospital.

**PW-15 HC Ali Ahmad Jan** stated in his statement that after the incident he went to doctor along with the injury sheet. But none of the three medical officers examined before the court mentioned even his name in their statements.

**vi.** The Learned Trial Court misconceived about the statements of accused/respondents recorded u/s 342 Cr.PC before the trial court that they have admitted to be present at the place of occurrence hence liable to be convicted and sentenced.

The statements of accused recorded under the above

referred section & careful perusal of record of case files

makes it clear that the accused actually stated about their presence in respect of another incident reported under:-

**FIR No. 23/2011** which took place at a different location of Ali Abad Town at a different time on the same day wherein two affectees of Ata Abad were killed and five injured as a result of firing by DSP Babar & his Gunman FC Azam. The accused further stated that since they were eye witnesses of that incident as such the police has involved them in the present case to harass and pressurize to stop them from giving evidence to save their police officials from the murder case.

#### **16. The Recoveries .**

As per record of the case, nothing recovered from accused Baba Jan , Irfan Ali, Aleemullah Khan, Ahmad Khan, Ghulam Abbass, Ameer Ali, Rashid Minhas Mittu, Musa Baig and Shukurallah Baig. However the prosecution has shown recoveries against accused Iftikhar Hussain, Salman Karim, Irfan Karim, Sher Khan & Sarfaraz Khan but the same are highly doubtful, fake and unreliable because of the following reasons:

- i. As per prosecution story, the mob broke the koat and looted the arms and ammunition stored therein as per details mentioned in FIR

but very surprisingly the prosecution could not produce any police record, document or witness to substantiate this fact that such kind and quantity of arms and ammunition were actually existed in the police station arms store /koat before the incident and the same is missing as a result of alleged incident.

**ii.** It is an admitted fact that the police could not show any recovery from the above named 12 accused at all except the alleged recovery from the following five accused persons :

Salman Karim :	A G-3 gun on
18/08/2011	
Irfan Karim :	A Semi
Automatic on	18/08/2011
Iftikhar Hussain :	79 Nos of 7.62
mm live cartridges	on
	07/09/2011
Sher Khan :	One 12 Bore
Shot Gun on	17/08/2011
Sarfaraz Khan :	80 nos live
cartridges of G-3 On	
	03/11/2011

It is very interesting to note here that the learned trial court acquitted accused Salman Karim & Irfan Karim having alleged recovery of fire arms of G-3 gun and a semi automatic rifle but convicted accused Iftikhar Hussain, Sarfaraz Khan & Sher Khan having alleged recovery of commonly available live rounds and a 12 bore shot gun.

**iii.** The prosecution , instead of making independent notables and respectable. of the locality , has made only police officials as marginal witnesses of all the recoveries despite availability of non partisan private & public witnesses at spots being a place of thickly populated locality. The testimony of police officials thus has lost credence in such a situation and the recoveries would become totally unreliable when no public witness was associated with the recovery proceedings. Moreover the recovered arms and live cartridges were not sent to forensic laboratory which resulted loss of evidentiary or corroborative value of the same as well.

**iv.** Alleged recovery of weapons and live cartridges from the above named 05 accused have been made after a delay of 07, 08, 17, and 82 days of occurrence respectively. It is hard to believe that the accused would keep on hiding the police weapons in their owned places just for waiting for its recovery by the police in a situation when the police was searching their looted weapons like a hungry hunter and recovering the same from public places of Ali Abad Town in a thrown away position.

**v.** As per prosecution story and recovery memo Ex PW- 9 /A , two empty magazines of Kalashnikov and 79 alive rounds of 7.62 mm were recovered from a plot having boundary wall owned by the accused Iftikhar Hussain at a place

known as Giram located at a distance of 500 meters from police station. But PW -25 Farman Ali Magistrate, specially brought as a witness to these recoveries, totally falsified the statements of prosecution recovery witnesses by stating that the number of alive rounds of 7.62 mm recovered from accused Iftikhar Hussain were 17 and the same were recovered from a plot having no boundary wall at a different place know as Gurman Aliabad which is located at a distance of 1.5 Kilo Meter from Aliabad Police Station.

**vi.** A recovery of 12 Bore shot gun has been shown against the accused Sher Khan by the prosecution. But it is very interesting to note here that the weapon of 12 Bore shot gun claimed to be recovered from the accused does not include in the detailed list of FIR looted by mob from police station during the incident.

In a situation explained above, the recoveries shown against

the above named 05 accused seems to be concocted, fake and not genuine and lacks credibility and reliability thus could not become a ground for a conviction against the accused at all. The following case laws further substantiate whatever discussed above.

**NLR 1994 Criminal 321**

Case Title :- Muhammad Akram Versus The State.

Citation :- Sec 103 – objection of associating public witnesses with recovery is to obviate possibility of false implication of accused persons. Recoveries would become unreliable when no public witness was associated while making inquiry though public witnesses were available. {P.323}

**PLJ 1994 Cr.C. (Karachi) 514**

Case Title :- Dur Muhammad Versus The state.

Citation ---S. 13-D – Double barrel gun – Recovery of—Conviction for—challenge to— contention that lower courts did not give any importance to fact that in spite of availability of private persons, none was asked to act as Mashir – admission of prosecution witnesses, is also on record that there were shops and hotels ground place of recovery of gun and so many private persons were available but only police party acted as Mashir – in view of the above testimony of police officers has lost credence—Held—prosecution has failed to establish charge against petitioner , beyond reasonable doubt—conviction set aside {P..516} A&B

### **NLR 1985 Criminal 717**

Case Title :- Bashir Versus The state

**Recovery**--- Recovery of carbine which is not sent to forensic laboratory—Carries no evidentiary or corroborative value—it cannot be used to rehabilitate ocular evidence which is wholly unreliable.

### **1977 PCr. LJ 671.**

Case Title: Muhammad Azeem Versus The State.

Citation:- --S. 13—Conviction propriety of— Recovery—Benefit of Doubt—only two police officers appearing as witnesses to recovery and not a single independent public witness cited possibility that accused was falsely implicated in case, not ruled out accused given benefit of doubt and acquitted in circumstances, { witnesses benefit of doubt} {P.672} A

### **1983 SCMR 350. Ahmed Hayat.**

Recovery of blood-stained knife 13 days after the arrest of the accused from cowdung heap. Held, unlikely that blood-stain will remain intact so as the origin may be detected.

### **PLJ 1996 S.C. 168. Riaz Masih 1995 SCMR 1730.**

Recovery of blood-stained knife from appellant by itself is not sufficient for conviction on murder charge. Recovery also held doubtful because attesting witnesses are police officials only. The recovery was made on last day physical remand of the accused. Recovery disbelieved.

### **PLJ 1995S.C. 532. Muhammad Arshad.**

Blood-stained hatchet recovered after 22 days of the occurrence from the house of the accused. It is hard to believe that the accused would keep blood-stained weapon in his house for so long. Recovery not relied upon.

### **(DB) PLD 1973 Lah. 467 Muhammad PLD 1974 Cr.C. (Lah.) 168.**

More than 46 days elapsing between occurrence and actual recoveries. Such inordinate delay creates doubts as to whether the recoveries were genuine or fake. Held, recoveries not reliable.

**(DB) NLR 1985 Cr. 717 Bashir**

Recovery of Fire-Arms (Carbine) not sent to forensic Laboratory has no corroborative value.

**14. Legal Sanctity of confessional statement of accused Under Section 21-H of Anti Terrorism Act 1997:**

i. The matter pertains to the interpretation of legal position on confessional statement of an accused before the police officer in terms of Section 21-H of Anti Terrorism Act 1997. The statement of an accused relating to inculpatory statement before the Police Officer is not admissible and on the touch stone of the same principle a confessional statement, in terms of section 21-H of Anti Terrorism Act 1997, may have no evidentiary value and is not as such admissible.

This Apex Court in its judgment under reference 2012-14

GBLR 227 has held that:

**“the Anti Terrorism Act 1997 is a federal statute and is made applicable to Gilgit Baltistan also thus the interpretation of section 21-H ibid to the contrary may not be justified in terms of Article 10-A of the constitution which assures fair trial. This is settled principle of law that any law or provision of law, in conflict to the constitution is not valid.”**

ii. The learned Trial Court while convicting and sentencing the accused /respondents has based upon the confessiona statements of respondents/accused made before the police officials under section 21-H of Anti Terrorism Act 1997 terming the testimony of the same as admissible under the law and by doing so the learned Trial Court mainly relied upon a decision of learned Chief Court Gilgit Baltistan under reference **2011 PCr.LJ-389** but it is interesting to note here that this judgments has become overruled as a result of judgment of this Apex Court under reference **2011 GBLR 475** wherein it has been held as under:

“The basic principle of criminal administration of justice that an accused is an innocent child of law unless he is proved guilty and this principle is based upon the concept of justice in Islam. There is no cavil to the proposition of law that conviction can alone sustain on the basis of even a retracted confession made by an accused person before a judicial officer if it is found truthful and confidence inspiring and since no sanctity is attached with the confession of guilt before a police officer therefore such confession cannot be considered at par to the judicial confession and is not admissible in evidence to be made basis of conviction.

The question of admissibility of confession of confession before a police officer under Section 21-h of Anti Terrorism Court 1997 was considered by the Supreme Court of Pakistan in Mahram Ali,s case (PLD 1998 SC 1445) supra wherein it has held that the confessional statement before a Police Officer was not admissible and observation was made for suitable amendment of section 21-h of Anti Terrorism Act 1997. This is settled law that a confession made before a judicial officer subject to the credibility of



statement, was admissible in evidence, whereas a confession made before a Police Officer or any other person in authority or a private person, could have no legal sanctity and could hardly be treated as extra judicial confession in law.

Confession of the accused under custody before a police officer, could not be free from undue influence and coercion as police custody itself was considered coercion and a statement during custody could not be voluntary. This is settled principle of constitutional law that a person an accused of an offence, can not be compelled to be witness against himself and in that context the judicial confession made by accused voluntarily before the Magistrate which was recorded after fulfillment of legal requirements, could be admissible as evidence against him but a conviction made before a police officer, could not be equated with the confession before Magistrate because no presumption of its being voluntary , could be attached with such a statement..

There is no compulsion for the court to accept the confessional statement of accused recorded by judicial officer or a police officer, but confessional statement made before a Judicial Officer had evidentiary value to be accepted as evidence, whereas a confession made before a police officer was not considered legal evidence. The Official Authority of a police officer, may create an impression of compelling accused to make confession”.

In a similar nature case under reference **2004 MLD 1337** it has been held that:

“Recovery of hand grenades from possession of accused was not witnessed by any independent. Police officials, were no doubt as good witnesses as any other from the public, but when in a case the very occurrence on the alleged date and spot was highly doubtful, recovery of incriminating material in the absence of independent witnesses, had to be looked askance at. Alleged confessional statement of accused

thought had been recorded after fulfilling all legal formalities, but same having been recorded by a police officer, would cast a serious doubt on its voluntariness despite its admissibility under section 21-H of Anti Terrorism Act 1997. Question was not merely of admissibility or otherwise of a confessional statement, but the question was its voluntariness or otherwise before a person who could never be thought to be independent, impartial, non partisan and separated from those who were entrusted with the job of investigation. Confessional statement of accused was of no help to prosecution as same was not voluntary. Prosecution having failed to prove its case beyond any shadow of doubt, their conviction and sentence recorded by Trial Court were set aside and they were set aside free”

In the light of the above discussion, there can be no departure to the principle that a confession before a police officer is not admissible in evidence under the provision of Qanun-e- Shahadat 1984 and cannot be used against the accused at the trial at par to the judicial confession for the purpose of conviction. The confession before a Police officer may carry the presumption of coercion and undue influence unless it is established on record that an accused voluntarily made a statement before a police officer quite free from any influence or coercion. The voluntary confession before a police officer who is not associated with the investigation of case may have the status of an extra judicial confession which is a very weak type of evidence and cannot be relied

upon without independent corroborative evidence of sound and un impeachable character. Thus I fully agree with the findings of Honorable Supreme Court of Pakistan given in Mehram Ali Vs Federation of Pakistan ( 1998 SC 1445) and of this Apex Court verdict given in Ateeq Hussain etc Vs The State case ( 2011 GBLR 477), wherein this issue has exhaustively been dealt with to declare the provision of section 21-H of Anti Terrorism Act 1997 violative and ultra vires to the Article 17 of the GB (Empowerment & Self Governance) Order 2009 read with Article 10-A, 13 and 25 of the Constitution of Pakistan. The Anti Terrorism Act 1997 is a Federal Law which has been made applicable to Gilgit Baltistan and a provision of federal law declared by the Supreme Court of Pakistan ultra vires to the Constitution of Pakistan thus can no more treated as part of statute and would have no legal effect.

15. The net shell of the above discussion is that :

- i. The prosecution demolished its case by not making  
those police officials as eye witnesses who were specifically named by complainant SHO Ali Abad in his FIR as witnesses being present at the police

station when the provoked mob  
 attacked Ali Abad police station.

ii. In presence of FIR named eye  
 witnesses, the manure and  
 arrangement of other police officials as eye  
 witnesses and recording their statements  
 under section 161 Cr.P.C after an  
 extra ordinary delay of 09 to 47 days without  
 mentioning any explanation by the police  
 and their contradictory and false statements  
 before the trial court as explained supra, has  
 made the prosecution case as totally  
 unreliable highly doubtful false and  
 fabricated ,

iii. The extra ordinary delay in making  
 recoveries from 05 out of 17 accused and by  
 making interested and partisan  
 police officials as marginal witnesses to these  
 recoveries and their contradictory statements as  
 well made the recoveries as highly doubtful,  
 false, concocted and unreliable,

iv. No Medico Legal Certificate existed on case  
 file except  
 police injury sheets mentioning no  
 description & nature of injuries of  
 FIR named witnesses along with  
 examination of three Medical Officers as  
 witnesses who stated to make check up and  
 treatment of those police officials on the day  
 of occurrence who were named in FIR as

witnesses but surprisingly the prosecution did not make none of them as eye witnesses of the occurrence demolishing its case as a result.

v. The confessional statement of accused / respondents

before the Police Officer under section 21-H Anti Terrorism Act 1997 has no legal effect being violative and ultra vires to Article 17 of GB (Empowerment & Self Governance) Order 2009 and Article 10-A, 13 & 25 of the Constitution of Pakistan as declared by this Apex Court as well as Supreme Court of Pakistan supra

16. In the light of the above discussions, the Appeals No. 05/2015, 06/2015, 07/2015 & 10/2015 filed by the State stands fail and accordingly dismissed. There shall be no order as to costs.

Consequently the judgment dated 09/04/2015 passed by the learned Gilgit Baltistan Chief Court in Criminal Appeals No. 34/2014, 35/2014, 36/2014 and 40/2014 under FIR No. 20/2011 are upheld and the respondents stand acquitted.

**APPEALS DISMISSED.**

**Judge.**

**Majority decision of the Court.**

**31.** All the above appeals Nos. i.e. Cr. Appeal No. 05/2015, Cr. Appeal No. 06/2015, Cr. Appeal No. 07/2015 and Cr. Appeal No. 10/2015 filed by the State are allowed.

**Chief Judge.**

**Judge.**

**Judge.**

**Whether the case is fit to be reported or not?**