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IN THE COURT OF GHULAM HUSSAIN BHINDAR, ADDL. SESSIONS JUDGE TAUNSA SHARIF.

Sessions Case No. 08 of 2016
Sessions Trial No. 21 of 2016

FIR No. 127/2016.
Offence U/S 302 PPC
P.S Saddar, Taunsa Sharif.

State.

Vs.

Khalil Ahmad s/o Muhammad, caste Malghani, r/o Sokar. Tehsil Taunsa Sharif District Dera Ghazi Khan.

26-9-2017.

Present: Syed Muhammad Asif Javed, learned ADPP for the State.
Complainant with Syed Raza Hussain Advocate.
Mr. Mazhar Zahoor Ahmad Advocate for accused.

J U D G M E N T

Accused Khalil Ahmad faced trial in case FIR No. 127/2016, registered u/s 302 PPC at Police Station Saddar, Taunsa Sharif.

Brief facts of the case as reported by Muhammad Ramzan Complainant through his statement Ex.P.E. are that he runs Toka Machine in Basti Sokar. His son Abrar was Rickshaw driver. On 30.05.2016, at about 6.20 AM, he along with Shahid Hussain and Abdul Mateen were going to Taunsa Sharif on the Rickshaw of Abrar from Basti Sokar. When they reached near the shop of Gul Muhammad, Abrar stopped the Rickshaw to purchase "Niswar". When he was going to the shop of Gul Muhammad, accused Khaleel Ahmed armed with pistol 30 bore emerged there and raised lalkara to Abrar that he will not spare him and he fired with his pistol at Abrar, which hit on left side of his chest and crossed

S. Hussain's
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Att. of the
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through and through. After receiving said fire shot, Abrar fell on the ground smeared with blood. They tried to apprehend accused Khaleel Ahmed but he pointed his pistol towards them and fled away from the spot with his respective weapon. They informed rescue-1122. After a short while, Rescue-1122 reached at the spot and they checked his son and told that he has succumbed to the injury.

Motive behind the occurrence was that about 10/12 days prior to the occurrence, some hot words were exchanged between Abrar deceased and Khaleel Ahmed, accused. Due to the said grudge, accused Khaleel Ahmed has committed murder of Abrar. He along with Abdul Mateen and Shahid Hussain PW escorted the dead body of the deceased on the ambulance(vehicle) of Reseuc-1122 to THQ Hospital, Taunsa Sharif. Police came in emergency ward of THQ Hospital, Taunsa Sharif, where the dead body of deceased was lying and recorded his statement Ex.P.E, which was read over to him and he thumb marked the same as a token of its correctness.

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Charge against the accused was framed on 22-9-2015 u/s 302 PPC to which he pleaded not guilty and claimed trial. Hence prosecution evidence was called upon. The prosecution produced the following PWs:-

1. PW.1. Dr. Najceeb Ur Rehman, SMO conducted autopsy on the dead body of deceased Abrar.
2. PW.2. Muhammad Younus, Patwari prepared scaled site plans Ex.P.C and Ex.P.C/1.
3. PW.3. Muhammad Afzal 475/C got conducted autopsy upon he dead body of deceased and produced last worn clothes of deceased to I.O.

4. PW.4: Ghulam Qamber 534/HC is Moharrir.
5. PW.5. Muhammad Ramzan is the complainant and also eye witness of the occurrence.
6. PW.6 Shahid Hussain is eye witness of the occurrence and is witness of memos prepared by I.O. at the spot.
7. PW.7. Amjad Ali SI deposited parcel of pistol in the office of PFSA, Lahore.
8. PW.8: Allah Ditta ASI drafted FIR Ex.P.H.
9. PW.9 Irshad Hussain SI deposited parcel of blood stained earth and empty of pistol in the office of PFSA.
10. PW.10 Abdul Qadoos identified the dead body of deceased Abrar and attested memo of last worn clothes.
11. PW.11. Wajid Ali S.I. is I.O. of this case. He deposed about the investigation conducted by him.
12. PW.12. Mureed Hussain 1227/C is recovery witness of pistol P.4. vide recovery memo Ex.P.K.
13. CW.1. Usama Zeshan Rescue Safety Officer, Rescue-1122 tendered the copy of E.C. Form Ex.CW.1/1 duly signed by him and brief report Ex.CW.1/2

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The learned ADPP Syed Muhammad Asif Javed, while tendering PFSA reports as Ex.P.L and Ex.P.M. and closed the prosecution evidence.

5. The statement of the accused u/s 342 Cr.P.C was recorded. In answer to question why this case against him and why the PWs deposed against him, took the specific plea which is reproduced as under:-

" I am innocent in this case. My wife and wife of Abrar are real sisters. The marriage of Abrar took place before my marriage. Muhammad Ramzan complainant father of deceased wanted to solemnize marriage of my wife Mst. Farhat Mai with his son Asim. But I succeeded to solemnize my marriage with Farhat Mai and complainant party was not

happy about the said marriage. They have grudge in their mind and due to this grudge they falsely involved me in this case. In fact it was a blind murder and none had witnessed the occurrence".

6. Accused did not opt to appear on oath u/s 340(2) Cr.P.C. However, he opted to produce defence evidence. He produced Faqeer Muhammad as DW.1. who stated that Abrar deceased was married to his niece Mst: Musarat Bibi. Abdul Majeed his brother is father of Mst: Musarat Bibi. Khalil accused is also married to his niece Mst: Farhat Mai who is also daughter of his brother Abdul Majeed. Ibrar deceased and Khalil were "Hamzulf" inter-se. Marriage of Abrar deceased was performed prior to marriage of Khalil accused. Ramzan complainant father of deceased Abrar demanded hand of Farhat Bibi for his son Asim. Abdul Majeed his brother wanted to marry Farhat Bibi with accused Khalil Ahmad. Abrar deceased and Ramzan complainant were not happy on marriage of Farhat Mai with Khalil Ahmad, accused. About one week prior to marriage of Khalil Ahmad accused with Farhat Mai, Ramzan complainant and Abrar deceased came at house of Abdul Majeed situated at Mauza Usman Shah. At that time he, Khalil, Ramzan s/o Abdul Majeed were present in the house of Abdul Majeed. Abdul Majeed was also present there. Ramzan complainant and Abrar deceased threatened Khalil Ahmad to destroy his life as Farhat Mai could not be married to Asim because of Khalil Ahmad. Khalil Ahmad accused has been involved in this case due to grudge of this dispute of his marriage with Farhat Mai. Khalil Ahmad accused is involved again said not involved in this case. No one witnessed the occurrence of this case.

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7. On behalf of the accused Mr. Mazhar Zahoor Ahmad Advocate argued that there are material contradictions in statements of prosecution witnesses regarding time of occurrence and reporting to police. That post mortem report is also not incorporation of oral account of prosecution. Further that no person of locality was produced in support of prosecution story as complainant and PWs are closely related inter-se. That there is no repetition of fire on the person of deceased. That as per prosecution story, occurrence took place in a thickly populated area but no independent witness supported the prosecution story; further that false recovery was planted against the accused only to strengthen the prosecution case. Further that as per prosecution story deceased and PWs were on motorcycle rickshaw at the time of occurrence, but said motorcycle rickshaw was not taken into possession nor was produced during evidence. Further that conduct of complainant and PWs after occurrence is un-natural as they did not make any effort to save the life of deceased. That accused was falsely involved due to family dispute with complainant and deceased. That FIR was registered after deliberation and preliminary investigation. That prosecution failed to prove the guilt of accused beyond any shadow of doubt. That motive alleged by prosecution is not proved and the same was not even investigated by Investigating Officer. Learned counsel for accused prayed for acquittal of accused while extending benefit of doubt.

Chief Justice
Addl. S. Judge
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Accepted.
Syed Raza Hussain
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8. On the other hand learned ADPP assisted by learned counsel for the complainant Syed Raza Hussain Advocate argued that accused is nominated in promptly lodged FIR with specific role. Further that accused made fire on chest of deceased with intention to kill which resulted in death of deceased. Further that complainant is real father of deceased and accused is relative of complainant, hence there is no

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apprehension of misidentification. That accused committed occurrence in the day light and there is no possibility of substitution of accused by real father of deceased. Further that weapon of offence has been recovered on pointation of accused and crime empty was sent to PFSA, Lahore prior to arrest of accused which matched with the weapon pistol P.1 recovered on pointation of accused. It is argued by learned ADPP for the State assisted by learned counsel for complainant that the prosecution has proved the guilt against the accused beyond any shadow of doubt and prayed to convict the accused for committing Qatl-e-Amd of deceased.

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9. Arguments heard. Record perused.

10. The perusal of record shows that Muhammad Ramzan complainant who is also father of deceased appeared as PW.5 stated that on 30.05.2016, at about 6.20 AM, he along with Shahid Hussain and Abdul Mateen were going to Taunsa Sharif on Rickshaw of his Abrar from Basti Sokar. That when they reached near the shop of Gul Muhammad, his son Abrar stopped Rickshaw to purchase "Niswar". That when he was going to the shop of Gul Muhammad, accused Khaleel Ahmed present in the court came across armed with pistol 30 bore and raised lalkara not to spare his son Abrar. Further that accused Khalil made fire with pistol on Abrar, which hit on left side of chest of Abrar and crossed through and through. Further that his son Abrar fell on the ground. Further that he along with PWs tried to apprehend accused Khaleel Ahmed but he fled away while extending threats of dire consequence. Further that they informed rescue-1122 which reached after some time. Rescue-1122 officials examined his son and told that Abrar has succumbed to the

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injury. further that motive behind the occurrence was that 10/12 days prior to the occurrence, hot words were exchanged between his son Abrar and Khaleel Ahmed, accused due to which accused Khaleel Ahmed committed murder of deceased. Further that dead body of deceased was escorted to THQ Hospital Taunsa Sharif Rescue-1122. Police reached emergency ward of THQ Hospital, Taunsa Sharif and recorded his statement Ex.P.E,

11. During cross-examination, he stated that inter-se distance between my house and place of occurrence is about half/one kilometer. However, the road on which occurrence took place is badly damaged. He stated that witnesses Shahid and Mateen accompanied them from Ada and they reached place of occurrence within two minutes. He admitted that there are number of shops near the place of occurrence, but said shops were closed at that time. He stated that accused fired from a distance of ten feet and accused made one fire. He stated that PW Shahid called upon Rescue 1122 which reached within 20 minutes. He stated that his wearing clothes were also stained with the bleeding of his son. However, said clothes were not handed over to police. He stated that occurrence took place in front of shop of Gul Muhammad, which was opened, however, Gul Muhammad was not present at that time. He stated that no other person was present at the time of occurrence. not any person attracted till arrival of Rescue-1122. He stated that he did not ask police and they reached hospital at 7.00 A.M. He stated that harsh words were exchanged between accused and deceased, however, matter was not reported to police as they were not expecting that accused will take drastic action. Further that he admitted that wives of Khalil accused and Abrar deceased are real sisters

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inter-se and marriage of Abrar was performed prior to marriage of accused Khalil. He admitted it incorrect that that accused was involved due to dispute of marriage of Farhat Mai with accused as he demanded hand of Farhat Mai for his son Asim.

12. Shahid Hussin who is eye witness and witness of recovery memo of blood stained earth Ex.P.F. and crime empty Ex.P.G. appeared as PW.6. During cross-examination he stated that he boarded on rickshaw from Ada Sokar and at that time Ramzan, Mateen and Abrar were already in rickshaw. Further that rickshaw reached the place of occurrence within four/five minutes. Further he stated that occurrence took place in front of shop of Gul Muhammad. However, Gul Muhammad was not visible to them. He stated that accused Khalil Ahmad raised lalkara from a distance of 10/12 feet and made fire at deceased. He stated that no person attracted on the spot on fire shot and he called Rescue-1122 through mobile. Further

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that they did not provide any first aid to Abrar and no person of locality

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attracted till arrival of Rescue-1122. He admitted that Abrar deceased was son of his paternal Aunt and he was also paternal cousin of Mateen PW.

He stated that he was present when harsh words were exchanged between accused and deceased few days prior to occurrence. He stated that he along with police and other witnesses reached the place of occurrence at 10.00 A.M. when police collected blood stained earth and crime empty. He stated that crime empty was lying at a distance of three feet from the place from where blood stained earth was collected. He also admitted the relations of deceased and accused as "Hamzulf".

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13. Dr. Najeeb-ur-Rehman Medical Officer who conducted autopsy on the dead body of deceased appeared as PW.1. He observed two injuries on the person of deceased out of which one was entry and other was exit wound of bullet. He stated that due to fire arm injury right and left lungs of deceased, pericardium and heart, blood vessels, pleurae and third rib on right side were perforated and fractured respectively. He gave opinion that death of deceased was caused due to perforating of heart which was vital organ of body. Lengthy cross-examination was conducted by learned defence counsel. No material to shatter the witness was brought on record.

14. Wajid Ali, S.I./I.O of case appeared as PW.11 and stated that on 30-5-2016 he was posted as SI/SHO P.S. Saddar, Taunsa Sharif. Further that on the same day, he along with other officials was on patrolling duty when he received information regarding the occurrence.

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Further that he reached THQ Hospital, Taunsa Sharif where complainant Muhammad Ramzan along with PWs was present. That he recorded statement of complainant Muhammad Ramzan Ex.P.E and sent the same through Ghulam Abbas 1305/C for registration of FIR. That he inspected dead body of deceased and prepared injuries statement Ex.P.A/2 inquest report Ex.P.B and handed over dead body to Muhammad Afzal 375/C for post mortem examination. That he inspected the place of occurrence and prepared rough site plan of place of occurrence Ex.P.J. Further that he took into possession blood stained earth vide recovery memo Ex.P.F and crime empty of pistol 30-bore vide recovery memo Ex.P.G. Further that he recorded statements of PWs u/s 161 Cr.P.C. That on receipt of case file,

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Muhammad Afzal 375/C along with Abdul Qadoos and Muhammad Imran PWs appeared before him and produced last worn clothes of deceased which he took into possession memo Ex.P.D and recorded statements of PWs u/s 161 Cr.P.C. Further that on 08-6-2016, Halqa Patwari visited the place of occurrence and prepared scaled site plan and red notes on scaled site plans are in his hand-writing. On 08-6-2016 he arrested Khalil Ahmad, accused and obtained his physical remand. On 12-6-2016, accused Khalil Ahmad made disclosure regarding recovery of weapon of offence in presence of witnesses and led for recovery. That accused Khalil Ahmad got recovered pistol P.4 from his residential house lying in the iron box along with three live bullets which he took into possession recovery memo Ex.P.K. Further that he prepared rough site plan of place of recovery of pistol Ex.P.K/1 and recorded statements of recovery witnesses u/s 161Cr.P.C.

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15. During cross-examination he stated that he received telephone call regarding occurrence 7.30 A.M and he at 7.45 A.M. Further that he noticed injuries in front of chest of deceased and on back right shoulder. Further that he had not noticed any other injury on the person of deceased. Further that he recorded statement of complainant soon after reaching in hospital. When he reached at the place of occurrence complainant and PWs also accompanied him. Further that number of people also gathered at the spot and I also inquired from them about the occurrence. He stated that rickshaw at the place of occurrence was also standing on which complainant along with deceased and PWs were proceeding. He admitted that said rickshaw was not taken into possession nor the same was show in

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rough site plan of place of occurrence. He admitted that wearing clothes of complainant and Pws were not stained with blood. Further he stated that he visited the place of occurrence only one time and he recorded statements of witnesses in the hospital.

16. He stated that for recovery of weapon of offence, they left police station at 2.00 P.M. and rapat was also entered in this regard. But he cannot recollect the rapat number. He stated that place of recovery is situated a distance of 15 k.ms. from police station Saddar, Taunsa Sharif and they reached there at 2.45 P.M. He admitted that no person of locality was joined in recovery proceedings and place of recovery was dwelling house of accused. That he did not call any public witness to associate in recovery proceedings. He admitted that iron box from which pistol P.4 was recovered was not locked

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16. Some one Usama Zeeshan Rescue Safety Officer Rescue-1122 appeared as CW.1. who stated that on 30-5-2016 at 6.24 A.M. Rescue-1122 Control Room received a mobile call from one Gul Muhammad who stated of fire arm injury case. Further that a Rescue Vehicle reached there but injured had already succumbed. He produced copy of Emergency Response Form Ex.CW.1/1.

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17. During cross-examination by counsel for complainant he stated that date of call is 30-5-2016 but inadvertently, in Ex.CW.1/2 date has been mentioned as 30-5-2015. Further he stated that name of victim as per record was Abrar s/o Muhammad Ramzan r/o Basti Sokar. Further that as per record, it was bullet injury case and they were also informed that victim was injured by the hands of his "Hamzul". He stated that phone call made

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by Gul Muhammad was received by his official whose name is Masood Azhar CTW.

18. During cross-examination by counsel for accused, he admitted that signature of Muhammad Ramzan were received in hospital after rescue activity. He admitted that he was not present along with vehicle. He admitted that in Ex.CW.1/1 it is mentioned that due to domestic problem victim was fired by his "Hamzulf". He admitted that as per record injured was received by Medical Officer at 7.08 A.M. He admitted that as per Ex.CW.1/1 victim was dead on the spot.

19. The accused in defence evidence produced Faqeer Muhammad s/o Noor Muhammad as DW.1 who stated that Abrar deceased was married to his niece Musarat Bibi d/o his brother Abdul Majeed. That Khalil accused was married with his other niece Farhat Mai d/o Abdul Majeed. Hence Abrar deceased and accused Khalil were "Hamzulf". Further that Ramzan complainant father of deceased demanded hand of Farhat Mai for his son Asim but Abdul Majeed want to marry his daughter Farhat Bibi with Khalil Ahmad. That Abrar deceased and Ramzan complainant were not happy on marriage of Khalil accused with Farhat Mai and they had threatened to destroy the life of Khalil accused. Khalil Ahmad accused is involved again said not involved in the occurrence.

20. During cross examination by counsel for complainant he admitted that Khalil accused is his maternal nephew. Further that his house is at a distance of 20/25 k.ms. from Basti Sokar, but on the day of occurrence he was present in the house of accused Khalil as he had gone to see his sister. He admitted that he attends court on behalf of accused on

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every date. Further he admitted that Abdul Majeed or Farhat Mai have not come for defence evidence of accused. Further that he admitted that Abrar deceased was murdered on road in front of shop of Gul Muhammad who is also relative of accused Khalil. He admitted that said Gul Muhammad has not come for defence evidence. He admitted that he did not appear during investigation in defence of accused and he has come for defence evidence on asking of father of accused. He admitted that findings of I.O. were not challenged at any forum.

21. Muhammad Younas Patwari who prepared scaled site plan Ex.P.C and Ex.P.C.1 appeared as PW.2. Muhammad Afzal Constable to whom dead body of deceased was handed over for post mortem examination appeared as PW.3. Ghulam Qumber 534/HC to whom scaled parcels were handed over for safe custody by I.O. as well as parcels of last worn clothes of deceased appeared as PW.4. Amjad Ali S.I. who transmitted parcels to PFSA, Lahore appeared as PW.7. Allah Ditta ASI who drafted formal FIR Ex.P.H appeared as PW.8. Irshad Hussain S.I. who escorted parcel of crime empty and blood stained earth to PFSA-Lahore appeared as PW.9. Abdul Qadoos s/o Ghulam who identified the dead body of deceased at the time of post mortem examination appeared as PW.10. Mureed Hussain 1227/C witness of recovery of pistol P.4 and three live bullets P.5/1-3 and attested recovery memo Ex.P.K. appeared as PW.12.

22. Perusal of prosecution as well as defence evidence shows that statements of Muhammad Ramzan complainant and Muhammad Shahid eye witness are in the same lines and there are no material contradictions in

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their statements. Complainant and PWs specifically mentioned in their statements that accused Khalil Ahmad made fire with his pistol 30-bore which hit on left side of chest of Abrar deceased and passed through right shoulder of deceased. The said injury is also corroborated by medical evidence and post mortem report Ex.P.A. Medical Officer while appearing as PW.1. deposed that due to firing heart and other main organs of body of deceased were perforated which resulted in immediate death of deceased. Accused is close relative of complainant as he was "Hamzulf" of deceased. The occurrence took place on 30-5-2016 at 6.20 A.M. in the day light. There is no chance of misidentification of accused. Even otherwise, there is nothing on record to show that complainant made substitution of accused of occurrence in which real son of complainant was murdered. Weapon of offence has been recovered on pointation of accused, which matched with crime empty as per report of PFSA, Lahore. Accused made fire on vital part of body of deceased which shows that he made fire with intention to kill him. The prosecution version is also corroborated by evidence of Usama Zeeshan Rescue Safety Officer who appeared as CW.1 and produced record of Rescue-1122 Ex.CW.1/1. Real maternal uncle of accused Faqeer Muhammad while appearing as DW.1 admitted that occurrence took place in front of shop of one Gul Muhammad who is relative of accused. The said Gul Muhammad is not produced. Motive of family dispute is also not denied even by the accused. In these circumstances, it is held that accused Khalil Ahmad committed murder of deceased who is convicted u/s 302 (b) P.P.C as tazir. As far as quantum of sentence is concerned, there is no mitigating circumstance favouring Khalil

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Ahmad, accused, therefore, he is awarded normal penalty of death. He be hanged by the neck, till he is dead. Death sentence awarded to convict would be subject to confirmation by Hon'ble Lahore High Court in reference being sent u/s 374 Cr.P.C. He is also directed to pay compensation Rs.200,000/- (two lacs) u/s 544-A Cr..P.C. to legal heirs of deceased. This compensation shall be recoverable as an arrears of land revenue and if not recoverable then the convict shall undergo, S.I. for six months. Copy of judgment is delivered to convict free of cost. He has been informed that he can file an appeal within seven days. He is in custody. Be sent to jail to serve out sentence awarded to him. The case property would remain intact till the decision of appeal or revision if any. File be consigned to record room.

Announced.
26-9-2017.

G. Hussain
(Ghulam Hussain Bhindar)
Addl. Sessions Judge ~~Taunsa Sharif~~ *Bhindar*
Add. Sessions Judge
Taunsa Sharif

Attested.
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Ghulam Hussain Bhindar
Addl. Distt. & Sessions Judge
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It is certified that this judgment consists upon fifteen pages and each page has been read, corrected and signed by me.



G. Hussain
Ghulam Hussain Bhindar
Addl. Sessions Judge
Taunsa Sharif. Add. Sessions Judge
Taunsa Sharif

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