

(91)

**IN THE COURT OF SHAUKAT AHMAD KHAN**  
**SESSIONS JUDGE, ORAKZAI AT BABER MELA**

SESSION CASE NO. : 12/02 OF 2022  
DATE OF INSTITUTION : 16.12.2022  
DATE OF DECISION : 31.01.2023

STATE THROUGH SHAL MUHAMMAD SHO, POLICE STATION  
KALAYA, TEHSIL LOWER, DISTRICT ORAKZAI.

------(Complainant)

VS

1. WASIYAT ALI S/O SAID NABI, AGED ABOUT 22 YEARS, R/O CASTE MANI KHEL, TAPPA AHMAD KHEL, DISTRICT ORAKZAI.
2. SADIQ KHAN S/O WAJID GUL, AGED ABOUT 37 YEARS, R/O CASTE BAR MUHAMMAD KHEL TAPPA BAIDAR KHEL DISTRICT ORAKZAI.
3. JAAN KHAN S/O NAZIR KHAN, AGED ABOUT 37 R/O CASTE BAR MUHAMMAD KHEL, TAPPA ABDUL AZIZ KHEL, DISTRICT ORAKZAI.

------(Accused Facing Trial on bail)

**Present:** Umar Niaz, District Public Prosecutor.  
: Sana Ullah Khan Advocate, for accused facing trial.

**FIR No. 77**      **Dated:** 16.08.2022      **U/S:** 302/311/109/34 PPC  
**Police Station:** Kalaya.

JUDGEMENT 2,  
31.01.2023

The accused named above faced trial for the offence u/s 302/34/109/34 PPC vide FIR no. 77, dated 16.08.2022 of Police Station Kalaya.

- (2). The case of the prosecution as per contents of Murasila based FIR is; that on 16.08.2022, the local police upon receipt of information regarding murder of a female, reached the spot of occurrence, where the dead body of Mst. Faheeda Bibi w/o Anayat Ali aged about 45/50 was found lying in front of the door of her house, where the local police came to know that she has been murdered by her brother Wasiat Ali on the pretext of having illicit

Shaukat Ahmad Khan  
District & Session Judge,  
Orakzai at Baber Mela  
31/01/23

relations with one, Khalid s/o Gul Haider. The local police also came to know that after being alleged to have illicit relations with Khalid s/o Gul Haider, Mst. Faheeda Bibi had left her house about 10/12 years ago and she had taken shelter in the house of Syed Fakhar Abbas. That on the day of occurrence, the accused Wasiyat Ali with help of co-accused Sadiq Khan and Jaan Khan took her out from the house of Syed Fakhar Abbas, boarded her in a vehicle bearing Registration No. 333/ICT-Islamabad and shot her dead by accused Wasiyat Ali at some distance. Report in the shape of Murasila Ex. PA/1 was drafted by Complainant Shal Muhammad SHO/PW-2 on the spot and was sent to the police station through constable Muhammad Abdul Sattar, on the basis of which FIR Ex. PA was drafted by PW-8 Asmat Ali AMHC.

(3). After registration of FIR, it was handed over to IO/PW-4, Muhammad Hanif Incharge Investigation for investigation. Accordingly, after receipt of FIR, he reached the spot, took into possession blood-stained earth and 05 empty shells of 7.62 bore from the places of deceased and accused Wasiyat Ali respectively and sealed the same into parcel no. 1 (Ex. P2) and parcel no. 2 (Ex. P3) respectively vide recovery memo Ex. PC/1. He prepared site plan Ex. PB on the pointation of the complainant/PW-2, Shal Muhammad SHO. The IO visited the house of Syed Fakhar

Shaukat Ahmad Khan  
District & Sessions Judge,  
Crackzai at Baber Mela  
31/01/23

Abbas and recorded his statement u/s 161 CrPC. The IO also took into possession blood-stained garments of the deceased brought by constable Muhammad Rasool and sealed the same into parcel no. 3 (Ex. P4) vide recovery memo Ex. PC/2. On 17.08.2021, after the arrest of accused Sadiq Khan and Jaan Khan, they were produced by the IO before the court of Judicial Magistrate vide his applications Ex. PW 4/1 and Ex. PW 4/7. The IO prepared list of LRs of deceased Ex. PW 4/2. He sent parcels no. 1, 2 and 3 to the FSL through constable Muhammad Raziq vide application and road permit certificates. The IO placed on file the post-mortem documents and Daily Diaries, recorded statements of PWs, visited the house of Khalid with whom deceased was having alleged illicit relations but he was not found, conducted proceedings against accused Wasiat Ali u/s 204 and 87 CrPC, placed on file FSL reports and copy of register no. 19, arrested accused Wasiat Ali, produced him before the court of Judicial Magistrate vide his applications, prepared pointation memo Ex. 4/14 on the pointation of accused Wasiat Ali, placed on file report of Motor Registration Authority Islamabad Ex. PW 4/16 and submitted the case file to SHO for onward proceedings.

Shaukat Ahmad Khan  
 District & Sessions Judge  
 Oranizai at Bahar Mela  
 21/8/21

- (4). Upon the receipt of case file for the purpose of trial, the accused were summoned, copies of the record

were provided to them u/s 265-C Cr.P.C and formal charge was framed against them to which they pleaded not guilty and claimed trial. The prosecution examined as many as 09 witnesses. The gist of their evidence is as follow;

I. Dr. Fatima Sarfaraz, WMO, Madina Centre Bajawar is PW-1. She has conducted autopsy on the dead body of deceased vide post-mortem report Ex. PM.

II. Complainant, Shal Muhammad SHO as PW-2 in his evidence deposed that on receipt of information, he reached the spot of occurrence and found Mst. Faheeda Bibi murdered with firearm in front of her house and repeated the story of Murasila Ex. PA as well. He has prepared injury sheet Ex. PW 1/1 and inquest report Ex. PW 1/2 and has forwarded the dead body to the doctor for post-mortem examination. He further deposed that he sent Murasila through constable Abdul Sattar for registration of FIR. He has arrested the accused Sadiq Khan and Jaan Khan vide card of arrest Ex. PW 2/1, taken into possession vehicle bearing no. 333/ICT Islamabad vide recovery memo Ex. PC and submitted complete challan Ex. PW 2/2 against the

Shaukat Ali Khan  
District & Sessions Judge,  
Qukzai at Baber Meta  
31/01/23

95

arrested accused Sadiq Khan and Jaan Khan and absconding accused Wasiat Ali. After arrest of accused Wasiat Ali, he has also submitted supplementary challan Ex. PW 2/3 against him.

III. Shah Jahan appeared in the witness box as PW-3. He has identified the dead body of Mst. Faheeda Bibi to the local police and to the doctor.

IV. Muhammad Hanif Incharge Investigation is PW-4. He deposed in respect of the investigation carried out by him in the instant case including taking into possession blood-stained earth from the place of deceased, sealing the same into parcel no. 1 and 05 empty shells of 7.62 bore, sealing the same into parcel no. 2 vide recovery memo Ex. PC/1, preparation of site plan Ex. PB, recording statements of PWs u/s 161 Cr.P.C, taking into possession blood-stained garments of the deceased vide recovery memo Ex. PC/2, production of accused before the court of Judicial Magistrate vide his applications, preparation of list of legal heirs of the deceased Ex. PW4/2, sending parcels no. 1, 2

Shaukat Abid Khan  
District & Sessions Judge,  
Chakwal at Baher Mela

31/07/23

and 3 to the FSL vide his application and road permit certificates, proceedings against absconding accused Wasiat Ali and his arrest later on, his production before the court of Judicial Magistrate vide his applications, visiting the house of Khalid with whom the deceased was having alleged illicit relations, placing on file PM report, DDs, FSL reports, preparation of pointation memo Ex. PW 4/14 on the pointation of accused Wasiat Ali, making addition in the site plan Ex. PB/1, placing on file report of Motor Registration Authority Islamabad Ex. PW 4/16 and submission of case file to SHO for onward proceedings.

Shaukat Ahmad Khan  
 District & Sessions Judge,  
 Orakzai at Baber Mela  
 31/01/23

V. Constable Shams Ul Ghani appeared in the witness box as PW-5 being marginal witness of recovery memos Ex. PC/1 and Ex. PC/2, deposited in respect of investigation carried out by the IO in his presence and taking into possession blood-stained earth, 05 empty shells of 7.62 bore and blood-stained garments of the deceased.

VI. Constable Gul Karim is PW-6. He being marginal witness to the pointation memo Ex.

PW 4/14 deposed that in his presence the accused has confessed his guilt and voluntarily pointed out the spot to the IO.

VII. Syed Fakhar Abbas is PW-7. He stated that deceased Mst. Faheeda Bibi had left her house 12 years ago and had taken shelter in his house. He had convened various jirgas with the family of accused to take the deceased but in vain and on the day of occurrence, he came to know that she was murdered by her brother accused Wasiat Ali.

VIII. Asmat Ali AMHC appeared as PW-8 and deposed that upon receipt of Murasila, he incorporated its contents into FIR Ex. PA. He has received parcels no. 1 to 3 and the vehicle allegedly used in the commission of offence which he had parked in the vicinity of the police station by making its entry in register no. 19. He had handed over the vehicle to the IO for sending it to FSL.

IX. Constable Muhammad Rasool is PW-9. He is marginal witness to the recovery memo Ex. PC vide which the IO took into possession vehicle bearing No. 333/ICT Islamabad.

Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai at Baber Mela

31/01/23

(5). After closure of evidence of the prosecution, statements of the accused were recorded u/s 342 Cr.P.C but they neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of the learned DPP for the state and counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the State submitted that the accused facing trial are directly nominated in the FIR, that the accused have confessed their guilt before the police and made pointation of the spot, that the IO has conducted investigation on the spot and has recovered a non-customs paid vehicle used in the commission of offence, that the complainant, the witness of the recovery and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

Shaukat Ahmad Khan  
 District & Sessions Judge,  
 Orakzai at Baher Mela  
 31/01/23

(7). Learned counsel for the defence argued that though the accused facing trial are directly nominated in the FIR, but there is no ocular or circumstantial evidence available on file against the accused facing trial. Learned counsel for defence argued that the prosecution has badly failed to



bring an iota of evidence on file against the accused facing trial.

(8). In the light of arguments advanced by the learned DPP for the State, arguments of the learned counsel for the defence and the available record it is observed that as per post-mortem Ex. PM coupled with statement of Dr. Fatima Sarfaraz as PW-1, the deceased Mst. Faheeda Bibi has met unnatural death due to firearm injuries. It is also established on record that deceased Mst. Faheeda Bibi was married and she had left her house about 10/12 years ago taking refuge at the house of PW-7 Syed Fakhar Abbas. In order to answer the question that as to when, where and by whom she has been murdered, the prosecution relied upon the statement of Shal Muhammad as PW-2 and statement of Investigation Officer as PW-4. But Shal Muhammad/PW-2 is not the eyewitness of occurrence and his statement is based on hearsay evidence. The investigation officer has conducted investigation on the spot but he has also failed to bring on record a single piece of evidence which could connect the accused with the commission of offence. Even it is also not known that as to whether the occurrence has taken place on 16.08.2022 or 15.08.2022, for, as per injury sheet, inquest report and post-mortem report, the date of occurrence is 15.08.2022 but as per Murasila and other documents the date of occurrence is 16.08.2022. In short there is no ocular or circumstantial


Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai at Behar Meja  
31/08/23

(100)

evidence available on file to connect the accused facing trial with the commission of offence. Therefore, accused Wasiat Ali, Sadiq Khan and Jaan Khan are acquitted of the charges levelled against them. The accused are on bail. Their bail bonds stand cancelled and their sureties are relieved of the liabilities of bail bonds. Case property be disposed of in accordance with law but after the expiry of period provided for appeal/revision. With respect to vehicle bearing Registration No. 333/ICT Islamabad, Chassis No. ZZE122-0089586 and Engine No. 1ZZ-FE allegedly used in the commission of offence, though there is no evidence to prove that the vehicle taken into possession by the local police has been used in the commission of offence but as per report of Motor Registration Authority (MRA) Islamabad, the vehicle in question is not registered with MRA Islamabad. Learned DPP for State submitted that on the basis of report of MRA Islamabad, the local police is going to register a separate case against the accused under relevant provisions of law. Hence, in view of report of MRA Islamabad coupled with request of learned DPP for State, no order as to disposal of vehicle in question in the instant case and its fate will be decided in the case, if so registered. In case no such case is registered, the vehicle in question be returned to its lawful owner subject to production of valid documents. Consign.

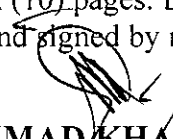


**Pronounced**  
31.01.2023

  
(SHAUKAT AHMAD KHAN)  
Sessions Judge, Orakzai,  
at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of ten (10) pages. Each page has been read, corrected wherever necessary and signed by me.  
Dated: 31.01.2023

  
(SHAUKAT AHMAD KHAN)  
Sessions Judge, Orakzai,  
at Baber Mela