

STATE VS MAROOF KHAN
FIR No. 40 Dated: 21.04.2022 U/S: 302/324 PPC
Police Station: Kalaya

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

SESSION CASE NO. : 4/2 OF 2022
DATE OF INSTITUTION : 26.05.2022
DATE OF DECISION : 24.02.2023

STATE THROUGH ZARWAR KHAN S/O TOR KHAN, AGED ABOUT 62 YEARS, R/O CASTE BEZOT, TAPA BETHAYI, STAR BEZOT, PO FERAZ KHEL, TEHSIL LOWER, DISTRICT ORAKZAI

------(Complainant)

VS

MAROOF KHAN S/O NOOR HABIB, AGED ABOUT 42 YEARS, R/O CASTE BEZOT, DISTRICT ORAKZAI

------(Accused Facing Trial)


Present: Umar Niaz, District Public Prosecutor for State.
: Hamid Sarfaraz Advocate, for accused facing trial.
: Kamran Khan Khattak Advocate, the counsel for complainant.

FIR No. 40 **Dated: 21.04.2022**
U/S: 302/324 PPC **Police Station: Kalaya**

JUDGEMENT
24.02.2023

The accused named above faced trial for the offence u/s 302/324 PPC vide FIR no. 40, Dated 21.04.2022 of Police Station Kalaya.

(2). The case of the prosecution as per contents of Murasila based FIR is; that on 21.04.2022, the local police upon receipt of information regarding the occurrence, reached DHQ Hospital Mishti Mela and found the dead body of Kamran s/o Zarwar Khan, aged about 25 lying in the emergency room where the complainant, Zarwar Khan, the father of deceased reported the matter to the local police to the fact that on that day he along with his son Kamran, after purchasing household articles, on way back to their house when reached the place of occurrence the


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accused facing trial appeared, started altercation with his son that as to why he (son of complainant) is used to walk around with nephew of the accused at which he (complainant's son) replied that nephews of the accused are his friends and that he would continue to walk around with them, the accused got furious, put out a pistol from his trouser-fold and made fire shots at them as a result of which he (complainant's son) got hit and died on the spot while he luckily escaped unhurt. Report of the complainant in the shape of Murasila Ex. PA/1 was drafted by Shal Muhammad SHO which was also thumb impressed by one, Arab Khan s/o Umar Khan testifying the same to be true. The Murasila was sent to police station through constable Yousaf Ali, on the basis of which FIR Ex. PA was drafted by PW-2/MHC Muhammad Jamil, while the dead body under the escort of constable Abdul Sattar along with injury sheet and inquest report were forwarded to the doctor for post-mortem examination.

- (3). After registration of FIR, it was handed over to IO/PW-10, Mehdi Hassan SI for investigation. Accordingly, after receipt of FIR, he reached the spot, took into possession blood with cotton from the place of deceased and sealed the same into parcel no. 1 (Ex. P2) and 02 empty shells of 30-bore from the place of accused and sealed the same into parcel no. 2 (Ex. P3) vide

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recovery memo Ex. PC. He prepared site plan Ex. PB on the pointation of the complainant, Zarwar Khan. The IO recorded the statements of witnesses u/s 161 CrPC. He prepared list of LRs of deceased which is Ex. PW 10/1. The IO also took into possession blood-stained garments of the deceased brought by constable Abdul Sattar and sealed the same into parcel no. 4 (Ex. P4) vide recovery memo Ex. PC/1. After scribing the Murasila, Shal Muhammad SHO/PW-4 went towards the house of accused where the accused facing trial was arrested with a pistol which was taken into possession vide recovery memo and sealed into parcel no. 3. On 23.04.2022, the IO sent the blood collected through cotton from the spot and blood-stained clothes in parcels no. 1 and 4 respectively, the empties in parcel no. 2 with pistol in parcel no. 3 to the FSL through constable Shams Ul Ghani vide applications and road permit certificates. The IO also prepared pointation memo Ex. PW 10/7 on the pointation of accused, placed on file FSL reports of parcels no. 1 to 4 which are Ex. PK and Ex. PK/1 vide which the blood found on him of same group and the empties were found fired from the pistol in question. The IO after completion of investigation submitted the case file to SHO for onward proceedings.

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

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provided to him u/s 265-C Cr.P.C and formal charge was framed against him to which he pleaded not guilty and claimed trial. The prosecution examined as many as 11 witnesses. The gist of their evidence is as follow;

I. Dr. Mujahid Hussain, MO/DMS is PW-1. He has conducted autopsy on the dead body of deceased Kamran vide post-mortem report Ex. PM. He also endorsed the injury sheet Ex. PW 1/1 and inquest report Ex. PW 1/2.

II. Moharrir Muhammad Jamil appeared as PW-2 and deposed that upon receipt of Murasila, he incorporated its contents into FIR Ex. PA. He has received parcels no. 1 to 4 by keeping it in mal khan and making its entry in register no. 19. He has put the accused behind the lockup of the police station. He has handed over parcels no. 1 to 4 to the IO for sending it to FSL on 23.04.2022.

III. Arab Khan, PW-3 is the verifier of the report of complainant.

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IV. Shal Muhammad SHO as PW-4 in his evidence deposed that on receipt of information, he reached the hospital and found the dead body of Kamran in emergency room where he drafted the report of complainant in

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shape of Murasila Ex. PA besides prepared injury sheet and inquest report which were sent of police station by him through constable Abdul Sattar and forwarded the dead body to the doctor for post-mortem examination. Thereafter, he went towards the house of accused where he was arrested the accused vide card of arrest Ex. PW 4/3 and recovered 30-bore pistol from possession of accused facing trial, sealing the same into parcel no. 3 which was taken into possession by the SHO vide recovery memo Ex. PW 4/4. On his arrival to police station, he handed over card of arrest, recovery memo and recovery sketch along with accused to Moharrir of police station. Lastly, he has submitted complete challan Ex. PW 4/6 against the accused facing trial.

V. Constable Muhammad Rasool appeared in the witness box as PW-5 being marginal witness of recovery memo Ex. PW 4/4, deposed in respect of arrest of the accused facing trial by SHO Shal Muhammad in his presence and taking into possession 30-bore pistol recovered from possession of the accused.

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VI. Constable Abdul Sattar is PW-6. He has handed over the Murasila, injury sheet and inquest report to the doctor and taken the blood-stained garments of the deceased to police station.

VII. Constable Shams Ul Ghani as PW-7 stated that he has taken parcels no. 1 to 4 along with road permit certificates and applications to the FSL and obtained its receipt which he has handed over to the IO upon his return.

VIII. Complainant Zarwar Khan, the father of deceased, is PW-8. He repeated the same story as narrated by him in the Murasila Ex. PA.


IX. Wrekhmeen Gul, the eyewitness of the occurrence appeared in the witness box as PW-9. He deposed that he was on way back to his house when he saw accused facing trial and altercating with Zarwar Khan and deceased Kamran, meanwhile the accused took out his pistol and made firing at them as a result of which Kamran got hit and died on the spot while the complainant luckily escaped unhurt. He also stated that he along with co-villagers has shifted the deceased to the hospital where he has identified the dead body to the doctor.


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He further stated that he along with complainant on call of police visited the place of occurrence where the complainant pointed the spot to the IO.

X. Mehdi Hassan SI is PW-10. He deposed in respect of the investigation carried out by him in the instant case including taking into possession blood through cotton from the place of deceased, sealing the same into parcel no. 1 and 02 empty shells of 30-bore, sealing the same into parcel no. 2 vide recovery memo Ex. PC, preparation of site plan Ex. PB on the pointation of the complainant, recording statements of PWs u/s 161 Cr.P.C, taking into possession blood-stained garments of the deceased vide recovery memo Ex. PC/1, production of accused before the court of Judicial Magistrate vide his applications, sending parcels no. 1 to 4 to FSL for chemical analysis, preparing pointation memo Ex. PW 10/7 on the pointation of accused facing trial, placing on file reports of FSL which are Ex. PK and Ex. PK/1, production of original register no. 19 before the court, placing on file the photocopy of register no. 19 as Ex. PW


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10/9 and and submission of case file to SHO
for onward proceedings.

XI. Lastly, constable Muhammad Khalil appeared
in the witness box as PW-11 being marginal
witness of recovery memos Ex. PC and Ex.
PC/1, deposed in respect of investigation
carried out by the IO in his presence and
taking into possession blood through cotton,
02 empty shells of 30-bore and blood-stained
garments of the deceased. He is also marginal
witness of the pointation memo Ex. PW 10/7
prepared by the IO at the instance of accused
facing trial.

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

(6). Learned DPP for the State assisted by counsel for
complainant submitted that the accused facing trial is
directly nominated in the FIR, that the accused has
confessed his guilt before the police and made pointation
of the spot, that the IO has conducted investigation on the


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spot and has recovered 30-bore pistol 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.

- (7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, but the occurrence has not taken place in the mode and manner as alleged by the complainant in the FIR and in his court statement. The deceased Kamran Khan was having a Kabab shop at Feroz Khel Mela Bazar where in normal course of routine he used to be present over there at the time of occurrence. The presence of complainant, and that of other witnesses who are close relatives of the complainant party, is not natural and neither the presence of complainant nor that of other witnesses is proved. Similarly, the matter has also not been reported in the mode and manner as alleged by the prosecution. So much so, the scribe of the report is the close relative of the complainant party and he has managed the whole proceedings of the case against the accused facing trial.


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Moreover, the investigations have also not been conducted on the spot in the mode and manner as alleged by the prosecution. The alleged weapon of offence has also not been proved to be recovered from the accused facing trial. The motive part is also not proved. Learned counsel for defence argued that the prosecution has badly failed to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by learned DPP for State assisted by private counsel for complainant, arguments of learned counsel for defence and after going through the record, following are the points for determination of charge against the accused facing trial;

- I. Whether the occurrence has taken place in the mode and manner as alleged in the Murasila Ex. PA/1?
- II. Whether the report is made in the mode and manner as alleged by the prosecution?
- III. Whether the investigation has been conducted in the mode and manner and the weapon of offence has been recovered from possession of the accused?
- IV. Whether the motive part as alleged by the complainant is proved?


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MODE AND MANNER OF OCCURRENCE:

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The case of prosecution, as per report in the form of Murasila Ex. PA/1 and statement of complainant as PW-8, is, that on 21.04.2022, the local police upon receipt of information regarding the occurrence, reached DHQ Hospital Mishti Mela and found the dead body of Kamran w/o Zarwar Khan, aged about 25 lying in the emergency room where the complainant, Zarwar Khan, the father of deceased reported the matter to the local police to the fact that on that day he along with his son Kamran, after purchasing household articles, on way back to their house when reached the place of occurrence the accused facing trial appeared, started altercation with his son that as to why he (son of complainant) is used to walk around with nephew of the accused at which he (complainant's son) replied that nephews of the accused are his friends and that he would continue to walk around with them, the accused got furious, put out a pistol from his trouser-fold and made fire shots at them as a result of which his (complainant's son) got hit and died on the spot while he luckily escaped unhurt. The occurrence is witnessed by Wrekhmeen Gul who was present there.

As discussed above, the purpose of visit of complainant with his deceased son to Bazar was fetching of household articles. In cross examination, the complainant told that he is a labourer by profession while

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his deceased son was running a shop of Kabab located in Feroz Khel Bazar and that his son in routine used to go to the shop at about 02:00 to 03:00 pm. The factum of running Kabab shop by the deceased though contradicted by eyewitness PW-9 but it has been verified by the IO that as per his investigation the deceased was having a Kabab shop in Feroz Khel Bazar. In these circumstances and in natural course of things, the deceased should have been at his shop at the time of occurrence. The presence of complainant at the relevant time is also not natural. Though the complainant has tried to justify his presence with deceased son at the time of occurrence, first when he was asked about the business of his deceased son where he stated that he was having a shop of Kabab and he (complainant) also used to sit with him in the shop. And second after realizing that the deceased at the time of occurrence should have been on his duty in Kabab shop, he has voluntarily stated that on that day he was on leave. However, if at all it is presumed that on the eventful day his son (deceased) was on leave and the complainant along with deceased were on their way back to home after fetching some household articles at the time occurrence, then at the time of occurrence they should have been in possession of the articles purchased at Bazar. But in this respect when the complainant was asked, he stated that at

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Bazar they have purchased guava and cucumber. These articles are neither produced to the IO nor it appeals to the mind that for fetching only guava and cucumber two persons had gone to the Bazar. Secondly, as per site plan Ex. PB the deceased at point no. 1 with the complainant and at point no. 2 while proceeding from east to west, the accused facing trial at point no. 3 has appeared in front, from western side but in cross examination the complainant contradicted the site plan by stating that;

"We were proceeding towards east from bazar to our house and the accused appeared from eastern side while facing towards west."

The eyewitness Wrekhmeen Gul/PW-9, is the relative of complainant. He, as per his court statement, had also gone to Feroz Khel Bazar and after wandering in the Bazar he was on way back to his house when witnessed the occurrence. In cross examination he has told that he is jobless and had gone to bazar on eventful day at 03:00 pm. He has also not put forward any reason or other supportive material justifying his presence in bazar at the relevant

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time. PW-3/Arab Khan, the verifier of report of complainant is also relative of the complainant. He had also shown himself present in the Bazar, attracted to the spot and accompanied the dead body to the hospital from

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the spot but he has also failed to explain his presence in the bazar and that as to how he attracted to the spot.

The conduct of the complainant towards happening on the spot also seems not natural. In cross examination when he was asked about the facts that after his son being shot and died on the spot, who arranged the cot and whether he put the dead body on the cot and whether his hands and clothes were smeared with blood, he told that the co-villagers arranged the cot and the Datsun and the dead body was shifted to hospital but neither he nor PW-9 has helped the dead body putting on cot and nor their hands and clothes were smeared with blood. The conduct of the complainant towards happening on the spot, on one hand, seems not natural that as to how a father can remain spectator when a son is shot dead in front of his eyes, neither touching his dead body nor putting it on cot. Had the complainant being father was present on the spot, his hands and clothes would have been smeared with blood. On the other hand, the stance of the complainant has also been contradicted by eyewitness/PW-9 in his cross examination. He has told that much blood had oozed from the injury on the person of deceased and that his hands and clothes were smeared with blood while putting the dead body on the cot, that Zarwar Khan was present and that he

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also picked the dead body of deceased on the spot and his clothes and hands might have been smeared with blood.

Besides above, the complainant as PW-8 has also made improvements in his court statement to the extent of the hot words exchanged by the deceased with the accused facing trial and the numbers of fire shots made by the accused facing trial i.e., as per report of complainant Ex. PA/1 the deceased when asked by the accused facing trial as to why he (deceased) used to walk around with his (accused facing trial) nephews, the deceased replied that;

"آپ کے بھتیجاگان میرے قریبی دوستان ہیں اور ان کے ساتھ میرا اٹھنا بیٹھنا ہے اور رہے گا"

While in the court statement, the complainant stated that the deceased replied that;

"Yours nephews are our friends, if you mind, I will not wonder with them".

Similarly, as per report of complainant Ex. PA/1, the accused facing trial put out a pistol from his trouser-fold and made firing at both of them but in his court statement in order to bring his statement in line with the recovery of 02 empties from the spot, he has stated;

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"recovered pistol from his trouser-fold and made two fire shots on me and my son Kamran Khan (deceased)."

MODE AND MANNER OF REPORT:

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The report of complainant is drafted by Shal Muhammad SHO/PW-4 in the form of Murasila Ex. PA/1. He is also relative of complainant party. As per his court statement, on 21.04.2022 on receipt of information about the present occurrence, he rushed to DHQ hospital Mishti Mela where the dead body of Kamran s/o Zarwar Khan was lying in emergency room of the hospital. The father of deceased namely Zarwar Khan reported the matter to him regarding the occurrence which he reduced into writing in shape of Murasila which was read over to the complainant, and after admitting its contents to be true, thumb impressed the same. He has also prepared injury sheet Ex. PW 4/1 and inquest report Ex. PW 4/2 of the deceased and sent the same to the doctor through constable Abdul Sattar/PW-6 for post-mortem examination. He sent the Murasila to police station through constable Yousaf Ali for registration of FIR. After the occurrence, people present there attracted to the spot, who arranged 'cot' and vehicle and thereafter they shifted the dead body to the hospital with the help of co-villagers. On way to the DHQ Hospital, they passed through a police-post where they were stopped and after seeing the dead body, they were led to go. They reached the DHQ hospital Mishti Mela at about 1545 hours. The police arrived at DHQ hospital and they took the dead body from them and handed over to the doctor. The

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complainant reported the matter to the local police which was reduced into writing in shape of Murasila and was read over to him and after admitting its contents to be true, he correctly thumb impressed the same. The report of complainant Ex. PA/1 was also verified and thumb impressed by PW Arab Khan.

The time of receipt of information and the place where the information has allegedly been received to PW-4/Shal Muhammad SHO, have neither been mentioned by him in report Ex. PA/1 nor in his court statement as PW-4. Even in his cross examination when he was asked about these two factors, he has not explained the same. However, he has told that at the time of information he was on patrolling and had made his entry of departure from Police Station in the daily dairy (DD) but that DD is neither available on file nor produced later on by the prosecution. Even this stance of PW-4 has been contradicted by PW-5 who was allegedly present with him. He has stated that he cannot tell the exact time when they left the police station however, on receipt of information by the SHO, they left the police station.

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As per contentions of the complainant/PW-8, the eyewitness/PW-9 and the verifier of report/PW-3, prior to the arrival of PW-4, the scribe of report, they had already reached the hospital. As per cross examination of doctor as

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PW-1 and scribe of report as PW-4, police officials are deputed in Mishti Mela Hospital for the purpose of receiving the report and they were on duty at the relevant time. In this respect, when PW-4 was cross examined that as to why the police officials deputed at the hospital have not received the report of complainant, he told that they are untrained and cannot scribe the injury sheet and inquest report; however, the said PW has been unable to justify that as to why the handwriting of Murasila is different from that of the inquest report and injury sheet. He has again tried to justify this fact on a flimsy ground, that the Murasila is in his own handwriting while the injury sheet and inquest report are prepared on his dictation. The mode and manner of report as received by PW-4 is also contradicted by complainant as PW-8 and eyewitness as PW-9. The complainant as PW-8 in his cross examination stated that;

"The doctor was conducting post-mortem and I was reporting the matter to the police in the hospital. The dead body was handed over to the doctor by the police and thereafter my report was reduced into writing by the police".

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The eyewitness as PW-9 has also stated that;

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"I was present with complainant in the doctor room where the complainant reported the matter to SHO, while the dead body was with the doctor".

The factum of presence of police officials at the hospital for the purpose of receiving report, the factum of the injury sheet and inquest report being in different writing from that of Murasila and the factum of making report as explained by complainant and eyewitness in cross examination, suggest that prior to arrival of PW-4, the injury sheet and the inquest report had already been prepared and the dead body had already been forwarded to doctor for post-mortem examination and the report has been made later on. Moreover, it is on record that Kamran Khan had died on the spot and Police Station Mishti Mela is about 03/04 km from the spot of occurrence falling on way to the hospital from the spot. In these circumstances in natural course of things, the dead body should have been taken to the police station for making report and there was no purpose of shifting the dead body to the hospital for post-mortem examination prior to making of report.

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In view of the aforementioned discussion, it is held that the presence of complainant/PW-8 with his deceased son in the Bazar, who (deceased), in normal course of routine used to be present on his shop at the time of

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occurrence, is not natural and he has failed to justify his presence on the spot. Similarly, the presence of eyewitness/PW-8, the verifier Arab Khan/PW-3 and Shafi Gul is also not natural. They have also failed to explain their presence on the spot in the Bazar. The conduct of complainant/PW-8 on the spot also not seems natural. The deceased has died immediately on the spot and the report should have been made in the police station which is nearer to the spot and there was no reason for taking the dead body for post-mortem examination prior to report. PW-4/Shal Muhammad SHO is the relative of complainant party. He has failed to explain that as to how and where he received the information and as to why in the presence of police officials deputed in hospital for the purpose of receiving report, the relatives of deceased were waiting for his (PW-4) arrival to report the matter to him specially when the injury sheet and inquest report are admitted to be not scribed by PW-4. All these facts led to the conclusion that the occurrence has not taken place in the mode and manner and the same has also not been reported in the mode and manner as detailed in Murasila Ex. PA/1.

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Gazalot Baber Mela
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MODE AND MANNER OF INVESTIGATION AND

RECOVERY OF THE WEAPON OF OFFENCE:

The investigation has been conducted by PW-10/Mehdi Hassan SI and the weapon of offence has been

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recovered by Shal Muhammad SHO/PW-4 at the time of arrest of accused. As per court statement of Mehdi Hassan SI, on receipt of copy of FIR and others relevant documents he visited the spot along with police nafri. On the spot he took into possession blood with cotton from the place of deceased and packed the same in parcel no.1 (Ex. P2). Similarly, he also took into possession two empty shells of 30-bore from the place of accused, packed and sealed the same into parcel no. 2 (Ex. P3). The above-mentioned proceedings were carried out by him in the presence of marginal witnesses namely, Muhammad Raziq and Muhammad Khalil/PW-11. To this effect he prepared recovery memo Ex. PC. Thereafter, he prepared site plan on pointation of complainant which is Ex. PB. He recorded statements of PWs Arab Khan, Wrekhmeen Gul and Shafi Gul u/s 161 CrPC. After completion of proceedings on spot, he returned to police station where constable Abdul Sattar/PW-6 brought blood-stained garments of the deceased including Kamees and Shalwar from DHQ hospital Mishti Mela. He packed and sealed the same into parcel no. 4 (Ex. P4) in presence of marginal witnesses. To this effect he prepared recovery memo Ex. PC/1. SHO Shal Muhammad/PW-4 handed over card of arrest of accused to him. On 23.04.2022 he collected parcels no. 1 to 4 duly packed and sealed from Moharrir of the police station and

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sent the same to FSL for chemical analysis along with applications addressed to incharge FSL Ex. PW 10/3 and Ex. PW 10/4 and road permit certificates Ex. PW 10/5 and Ex. PW 10/6 through constable Sham Ul Ghani/PW-7. During course of investigation, he prepared pointation memo Ex. PW 10/7 on the pointation of accused. On receipt of FSL reports regarding parcels no. 1 to 4, he placed the same on judicial file.

The recovery of the blood and empties from the spot have been witnessed by constable Muhammad Khalil/PW-11. The spot inspection has been made on pointation of complainant/PW-8 in the presence of eyewitness/PW-9. Both in their examinations-in-chief have stated that after reporting the matter at the hospital the police telephonically contacted them and they came to the spot and made pointation to the IO, who prepared site plan on pointation of complainant.

The weapon of offence has been recovered by PW-4/Shal Muhammad SHO. As per his court statement after completion of proceedings at hospital, he along with police and arrested the accused with 30-bore pistol. The recovery has been witnessed by PW-5/constable Muhammad Rasool. PW-2/Moharrir of the police station has received the case property from IO and accused from SHO Shal

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Muhammad/PW-4. On 23.04.2022 he has handed over the case property to PW-10/IO who has dispatched the same to FSL through PW-7/Shams Ul Ghani.

As mentioned above, as per court statement of PW-4/Shal Muhammad SHO after making proceedings in the hospital he went to Jalaka Feroz Khel for arrest of accused but when the IO/PW-10 was asked as to who guided him towards the spot, he stated that prior to arrival on the spot the SHO was already present on the spot and that the complainant and SHO shown to him places of the same. However, as per statement of SHO Shal Muhammad/PW-4, after completion of receiving report at hospital, he went to Jalaka Mela to arrest the accused. With respect to making pointation on the spot, the IO/PW-10 stated that the complainant was already present on the spot at the time of his arrival when the complainant as PW-8 was cross examined in this respect, he stated;


“People of the locality were present in the hujra when we reached to our home from hospital. I went to the hujra where people were present for dua till late night. And when the village people left the hujra at late time, I went to sleep. Shal Muhammad SHO did not accompany me from the hospital to my home and remained in hospital. On the

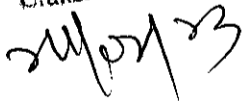
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following day till the time of funeral, I remained in my hujra and after funeral I again remained in the hujra for three days for dua and neither joined the police nor went to the police station. The witness volunteered that the police came to my hujra for dua after funeral”.

Similarly, PW-11, who has also accompanied the IO to the spot and witnessed the recovery of blood and empties from the spot, tell a different story in his cross examination.

“I do not remember the time of spot proceedings. It was noon time. I visited the spot with investigation officer two times during the investigation. SHO did not accompany us from the PS to the spot. At the time of first visit, SHO was present with us. I do not remember as to whether SHO remained on the spot or joined us to the PS on our return. On the second visit, I accompanied the IO for pointation proceedings along with accused. I along with Mehdi Hassan visited the spot two times. The place of occurrence was already known to the IO during his second visit. No


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one was cited as a witness during spot proceedings”.

With respect to arrest of accused and weapon of offence as mentioned above, the stance of PW-4 is, that after making proceedings at the hospital he went to Jalaka Mela Bezot for arrest of accused but the IO as PW-10 told that on his arrival to spot PW-4 Shal Muhammad SHO was present on the spot. He remained with him for about 30/35 minutes and thereafter proceeded to the police station.

Secondly, as per sketch of the arrest of accused and recovery of weapon of offence Ex. PW 4/5, the spot of arrest is Kacha Road surrounded by fields. PW-4 has also stated that there is no house near the spot of arrest; however, PW-5, who was allegedly present with PW-4 at the time of arrest and has seen the recovery, has stated that the accused was arrested from village Bezot from his house. He has further stated that other inmates of the house were present at the house.

Third, as per stance of PW-4 after arrest of accused and recovery of the weapon of offence he came to the police station, handed over card of arrest, recovery memo and recovery sketch to Moharrir of the police station along with the accused and case property (parcel No. 3) but Moharrir of the police station in his examination-in-chief


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has told that the parcels no. 1 to 4 were handed over to him by IO (PW-10).

Fourth, with respect to sending of case property to FSL, as per court statements of PW-2, the IO as PW-10 and Shams Ul Ghani as PW-7, on 23.04.2022 IO collected parcel No. 1 containing blood-stained cotton, parcel No. 4 containing blood-stained garments, parcel No. 2 containing 02 empties of 30-bore and parcel No. 3 containing 30-bore pistol from Moharrir of the police station and sent the same to FSL through constable Shams Ul Ghani/PW-7 but as per report of FSL, parcel no. 1 and 4 containing blood-stained cotton and blood-stained garments were received from constable No. 1424 while parcel no. 2 and 3 containing 30-bore empties and 30-bore pistol were received from SHO of police station Kalaya.

Similarly, as per FSL report Ex. PK parcel no. 2 and 3 were also accompanied by five 30-bore live cartridges but neither there is any entry of five live cartridges in the application addressed to the FSL Ex. PW 10/11 nor in *rahdari* receipt Ex. PW 10/6. PW-10 in his cross examination has also stated that no live cartridges

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have sent by him to the FSL.

As per stance of prosecution, the Murasila Ex. PA/1, the card of arrest Ex. PW 4/3 and recovery memo of the pistol Ex. PW 4/4 are in the handwriting of SHO Shal

Muhammad while the site plan Ex. PB, recovery memo of the blood-stained cotton and 02 empties of 30-bore Ex. PC, recovery memo of blood-stained garments Ex. PC/1, pointation memo are in the handwriting of PW-10; however, when the IO was asked about these facts, he stated that;

“Ex. PC and Ex. PB are in my handwriting while Ex. PW 10/2 was written on my dictation by the Moharrir of the police station. It is correct that the writing of the Murasila, card of arrest, pointation memo, recovery memo regarding the recovery of pistol Ex. PW 4/4, recovery memo Ex. PC/1, and Site plan Ex. PB are in the same handwriting of the Moharrir of the Police Station”.

In view of what is discussed above, it is held that it is doubtful that whether the spot proceedings have been conducted by the IO on the same day or otherwise and whether spot proceedings have been made on the pointation of complainant/PW-8 or that of Shal Muhammad SHO/PW-4. It is also doubtful that whether the IO has conducted the proceedings of spot inspection at all or otherwise? Similarly, the recovery of weapon of offence is also doubtful, if Shal Muhammad SHO/PW-4

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was present with the IO on the spot and from there he has proceeded to the police station then as to when he has arrested the accused and made recovery of weapon of offence. Similarly, the spot of arrest of accused is also doubtful as to the fact that whether the accused has been arrested from his house or from the spot as alleged by PW-4 on the Kacha Road. Moreover, as admitted by PW-10, the IO of the case, most of the documents are in the handwriting of Moharrir of the police station which make the case of prosecution doubtful as to whether these documents are drafted on the spot or in the police station.

MOTIVE:

The motive has alleged by complainant/PW-8 is, that the accused facing trial was annoyed of the friendship of his nephews with that of accused facing trial but in that respect not an iota of evidence has been brought on record by prosecution rather the case is vice versa when the complainant as PW-8, the eyewitness as PW-9 and the IO as PW-10 were put in cross examination. In this respect they told that the accused facing trial is living in a separate house and has got strained relations with his father even having a civil litigation between them while on the other hand, the complainant has got good relations with the brother of accused facing trial. So in these circumstances, on one hand, the motive as alleged by the complainant is

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not proved while on the other hand, it makes the case of prosecution doubtful as to the fact that as to why the accused facing trial would murder the son of complainant on the pretext of having friendship with his nephew with father of whom he has got strained relations.

(8). Hence, in view of that is discussed above, it is concluded that the occurrence has neither taken place nor reported in the mode and manner as alleged by the prosecution. Similarly, the investigations have also not been conducted in the mode and manner as alleged by the prosecution. Moreover, the recovery of weapon of offence is also not proved. All these facts lead to the inescapable conclusion that the prosecution failed to bring home the charge against the accused facing trial beyond shadow of doubt. Therefore, the accused **Maroof Khan** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. Case property be disposed of in accordance with law after the expiry of period provided for appeal/revision. Consign.



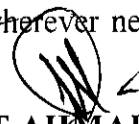
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24.02.2023


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

CERTIFICATE

Certified that this judgment consists of twenty-nine (29) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 24.02.2023


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