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**STATE VS WALI ULLAH**

Case No. 4/2 || FIR No. 37 || Dated: 16.03.2021 || u/s 302/148/149 PPC ||  
Police Station: Kalaya

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

SESSION CASE NO. : 4/2 OF 2023  
DATE OF INSTITUTION : 09.02.2023  
DATE OF DECISION : 28.03.2023

STATE THROUGH COMPLAINANT ISAR KHAN S/O SYED  
BADSHAH, AGED ABOUT 65 YEARS, R/O TRIBE MISHTI, SUB  
TRIBE HAIDER KHEL, DISTRICT ORAKZAI

------(Complainant)

VS

WALI ULLAH S/O ABDUL AKBAR, AGED ABOUT 29 YEARS, R/O  
CASTE MISHTI, TAPA HAIDER KHEL, CHAPPAR MISHTI,  
DISTRICT ORAKZAI

------(Accused facing trial)

**Present:** DPP, Umar Niaz for the State.

: Zahoor Ur Rehman Advocate, the counsel for accused.

**FIR No. 37**

**Dated:** 16.03.2021

**U/S:** 302/148/149 PPC

**Police Station:** Kalaya

**JUDGEMENT**

28.03.2023

The accused named above is charged for the  
offence u/s 302/148/149 PPC vide FIR no. 37, dated  
16.03.2021 of Police Station Kalaya.

- (2). The case of the prosecution as per contents of  
Murasila based FIR is; that on 16.03.2021 at 1930 hours  
at DHQ hospital Mishti Mela, the complainant, Isar  
Khan, father of the deceased Shahid Khan made a report  
to the local police to the fact that his son Shahid Khan  
was working as security guard in coal mine of Raza Khan  
and Abdul Wali. That on that day, at about 1430 hours,  
he was informed by the kids of the locality regarding the  
dead body of his son lying on the spot. Accordingly, he  
reached on the spot and found his son Shahid Khan

Shaukat Ahmad Khan  
District & Sessions Judge  
Orakzai at Baber Mela  
28/03/2023

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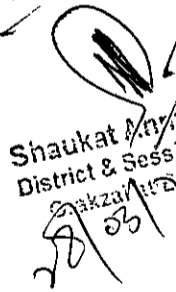
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murdered. The complainant charged unknown accused for the murder of his son. The Murasila was drafted by Muhammad Riaz SI which was sent to Police Station through constable Muhammad Asghar, on the basis of which FIR was drafted by Malak Abdul Janan SHO.

(3). After registration of FIR, it was handed over to IO Shal Muhammad SI for investigation. Accordingly, after receipt of FIR, he reached the spot, took into possession blood-stained pebble from the place of deceased vide recovery memo and on 18.03.2021 sent the same to FSL vide his application and road permit certificate. He prepared site plan on the pointation of complainant. The IO also took into possession blood-stained shalwar, Kamees and vest of the deceased vide recovery memo and on 25.03.2021 sent the same to FSL vide his application and road permit certificate through constable Raza Ali.

On 07.04.2021, Iqbal Khan, Isar Khan

  
Shaukat Myhad Khan  
District & Sessions Judge.  
20/03/21

(complainant) and Habib Ur Rehman recorded their statements u/s 164 CrPC wherein they charged the accused facing trial Wali Ullah and acquitted co-accused Afzal Khan, Sajid Khan, Mujahid and Umar Hayat. Habib Ur Rehman and Iqbal Khan shown themselves present on the spot when the accused threw the dead body of deceased Shahid Khan on the spot from the cabin

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of a pick-up. Addition in the site plan was made with red ink on pointation of eyewitnesses Iqbal Khan and Habib Ur Rehman.

(4). After completion of investigation, the acquitted co-accused Afzal Khan, Sajid Khan, Mujahid and Umar Hayat were challaned while the present accused facing trial, being absconder, was proceeded u/s 512 CrPC. The acquitted co-accused faced the trial and were acquitted vide orders/judgments dated 30.10.2021 & 16.02.2022 of this court while the present accused facing trial was declared proclaimed offender. After arrest of the present accused, supplementary challan was submitted, the accused was summoned, copies of the record were 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. Accordingly, the witnesses and the complainant were summoned. The prosecution produced 03 witnesses but despite repeated summons neither the complainant nor the remaining witnesses appeared before the court.

Counsel for the accused submitted application for acquittal of the accused u/s 265-K CrPC for the reasons mentioned therein.

(6). I heard arguments and perused the record.

Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai (5)

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(7). Perusal of case file shows that as per contents of FIR, the complainant who is the father of deceased, is not the eyewitness of the occurrence; however, after about 21 days of the occurrence, Habib Ur Rehman and Iqbal Khan recorded their statement u/s 164 CrPC alleging themselves to have seen the accused facing trial and co-accused while throwing the dead body of the deceased. The complainant while reporting the matter has not narrated this fact to the scribe of the Murasila creating serious doubt as to the fact that which of the version i.e., as that of the complainant or that of the alleged eyewitness, is correct. The story regarding seeing of the accused by the PWs Habib Ur Rehman and Iqbal Khan while throwing the dead body on the spot, also seems concocted, for, PW Habib Ur Rehman is the brother of the deceased while Iqbal Khan is the real uncle of the deceased. Their silence for about 22 days regarding the factum of seeing the accused while throwing the dead body due to fear of the acquitted accused Afzal Khan, is not appealable to a prudent mind. Similarly, if the eyewitnesses Habib Ur Rehman and Iqbal Khan were present on the spot, allegedly saw the accused throwing the dead body of the deceased then what prevented them either to inform the complainant or to take the dead body either to Police Station or hospital.

Shaukat Ahmad Khan  
District & Sessions Judge,  
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Moreover, no circumstantial evidence is available on file to connect the accused facing trial with the commission of offence. Furthermore, the co-accused namely, Afzal Khan, Sajid Khan, Mujahid and Umar Hayat with similar roles as that of accused facing trial, have already been acquitted by this Court and the evidence of prosecution has been disbelieved.

(8). Hence, in view of what is discussed above, it is held that there is no probability of the conviction of accused facing trial, even if the prosecution is given further opportunity to produce the witnesses; therefore, accused namely, **Wali Ullah**, on acceptance of his application, is acquitted from the charges levelled against him u/s 265-K CrPC. The accused is on bail. His bail bonds stand cancelled and his sureties are discharged of the liabilities of bail bonds. The case property be destroyed after expiry of period provided for appeal/revision. Consign.



**Pronounced**

28.03.2023

(SHAUKAT AHMAD KHAN)

Sessions Judge, Orakzai,  
at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 28.03.2023

(SHAUKAT AHMAD KHAN)

Sessions Judge, Orakzai,  
at Baber Mela