

(52)

**IN THE COURT OF ASGHAR SHAH**  
**SESSIONS JUDGE, ORAKZAI AT BABER MELA**

SESSION CASE NO. : 6/2 OF 2019

DATE OF INSTITUTION : 29.08.2019

DATE OF DECISION : 05.03.2020

STATE THROUGH TAJ MUHAMMAD S/O NAWAB KHAN AGED ABOUT 40 YEARS R/O TRIBE BEZOTE, SUB-TRIBE BITTANI, JALAKA MELA, TEHSIL LOWER, DISTRICT ORAKZAI.

------(Complainant)

VS

1. ARABISTAN S/O HABIB ULLAH AGED ABOUT 38 YEARS R/O JALAKA MELA, TRIBE BEZOTE, TEHSIL LOWER, DISTRICT ORAKZAI.

------(Accused Facing Trial)

2. HABIB KHAN S/O HABIB ULLAH AGED ABOUT 44 YEARS R/O JALAKA MELA, TRIBE BEZOTE, TEHSIL LOWER, DISTRICT ORAKZAI.

------(Absconding Accused)

**Present:** Umar Niaz, District Public Prosecutor.

: Haseeb Ullah Khan Advocate, for complainant.

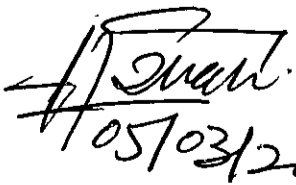
: Mudasir Ijaz Advocate, for accused facing trial.

---

**JUDGEMENT**

04.03.2020

On 24.06.2019, complainant, Taj Muhammad S/O Nawab Khan came to the Police Station, Kalaya Lower Orakzai and submitted a written application Ex. PW-7/1 with the averments made therein that on 07.05.2019 he along with PW Akhtar Muhammad S/O Subhan Khan were busy in ploughing their fields. At about 11:45 AM absconding accused, Habib Khan and accused facing trial Arabistan sons of Habib Ullah Khan R/O Jalaka Mela armed with Kalashnikovs came out of their house and started

  
05/03/20  
**ASGHAR SHAH**  
District & Sessions Judge,  
Orakzai at Hangu

53

54

indiscriminate firing at them with the intention of killing. As a result of firing of absconding accused Habib Khan daughter of complainant minor, Basya Bibi who was present nearby was hit and died at the spot whereas due to the firing of accused facing trial Habib Khan, the PW Akhtar Muhammad got hit and injured on his right hand. The motive for the occurrence was disclosed as the attempt of the accused to illegally occupy the property of complainant. The written application of the complainant was converted into FIR Ex. PA.

- (2). After completion of investigation, complete challan was submitted and accordingly accused were summoned wherein accused Habib Khan was proceeded U/S 512 Cr.P.C after recording the statement of search witness whereas accused facing trial being on bail was summoned. Upon his appearance, the proceedings were initiated against him by providing copies of the case U/S 265-C Cr.P.C and he was charge sheeted to which he pleaded not guilty and claimed trial and accordingly the witnesses were summoned who deposed in the following manner.

**Dr. Muhammad Zubair, Senior Medical Officer, DHQ Hospital, Kohat as PW-1 deposed that,**

*"On 07.05.2019 at about 03:05PM I examined injured, Akhtar Muhammad S/O Shah Jehan Khan aged about 27 years caste Bezoti R/O Jalaka Mela, District Orakzai and found the following:*

*General Condition: Patient/ Injured conscious oriented in time and surroundings.*

*Asghar Shah*  
*05/03/20*  
ASGHAR SHAH  
District & Sessions Judge  
Orakzai at Hangu

(54)

(5/5)

**Injuries:** Two stitched wounds one over medial aspect of right elbow and another one about 1 ½ inch below and lateral to wound no. 1.

Above Right Elbow back slab given and admitted to orthopedic unit by orthopedic surgeon.

X-Rays were advised to the injured of right forearm

Probable duration of injury: Within four hours

On 01.07.2019 I perused and examined the X-Ray report (Opinion of the radiologist) and discharge slip of orthopedic unit of KDA Hospital and found no bone lesion and patient treated conservatively in orthopedic unit. The nature of injury is simple.

Kind of weapon used: Kind of weapon cannot be ascertained as the wounds are already stitched.

Today I have seen my medico legal report Ex.PW-1/1 which is correct and correctly bears my signature. The report of radiologist is Ex. PW-1/2 available on the medico legal report. Similarly, the X-Ray of the injured is Ex. PW-1/3 and discharge slip is Ex. PW-1/4. The injury sheet also correctly bears my endorsement."

**Dr. Aisha Anwar, on training at KTH Peshawar**  
as PW-2 deposed that,

*A. Anwar*  
05/03/20

Stamp: PESHAWAR POLICE STATION

(55)

2/8

"On oath stated that during relevant days I was posted as Medical Officer at Mishti Hospital Tehsil Lower District Orakzai. In the instant case on the application of Police and complainant party, exhumation of the dead body of Basia Bibi was carried out on 26/07/2019 at about 10:00 A.M in the Graveyard of the locality. Besides me one, Abdul Rauf Nursing supervisor was present alongwith officials of other departments. The Grave of the deceased was identified by the relatives of the deceased and after completion of digging the body of the deceased was recovered and I started my examination. During his examination of the dead body I found the following.

A 5-year-old Basia Bibi 2 ½ months ago was found and then she was buried after not doing any investigation/post-mortem. So now the body of the deceased exhumated from the grave. There was decayed body smell and decomposition was there. I found one oval shape wound at glabella region which was the entry wound and below the occipital region there was an exit wound.

*Internal examination*

**II-CRANNIUM AND SPINAL CORD:**

*We did only external physical examination of the dead body*

**III. THOREX**

*Not examined*

**IV- ABDOMEN**

*Asghar Shah*  
05/21/20  
ASGHAR SHAH  
District & Sessions Judge  
Orakzai at Hangu

(56)

(56)

Not examined

**V- MUSCELS, BONES, JOINTS**

One wound at glabellar region round/oval shape found

**VI- REMARKS BY MEDICAL OFFICER**

I found one fire arm entry and exit wound as mentioned above which was the cause of death of the deceased.

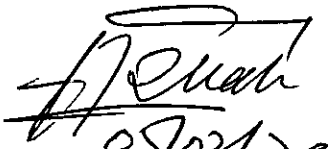
**PROBABLE TIME ELAPSED BETWEEN INJURY AND DEATH:** round about 05 minutes on the spot.

**PROBABLE TIME ELAPSED BETWEEN DEATH AND POSTMORTEM:** 02 months and 19 days.

Today I have seen Post-mortem examination report consist of 06 sheets including the pictorial and is Ex. PM. I have also endorsed the injury sheet of the deceased which Ex. PM/1. Both the documents are correct and correctly bear my signatures."

**Marginal witness of recovery memos, Amir Nawaz, Constable as PW-3** deposed that,

"On oath stated that I am the marginal witness of recovery memo EX: PC vide which the investigation officer Shal Muhammad Khan took into possession 03 colour photos of the deceased Basia Bibi which, were

  
05/03/20.  
ASGHAR SHAH  
District & Sessions Judge

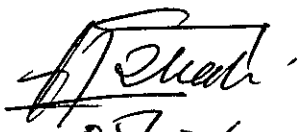
(57)

(8)

produced by complainant, Taj Muhammad on spot on 25/06/2019. The recovery memo Ex. PC is correct and correctly bears my signature and signatures of other witnesses. The photos are Ex: P-1, P-2 and P-3 respectively. Similarly, I am also the marginal witness of recovery memo Ex: PC/1 vide which the I.O took into possession blood stained clothes of the deceased Basia Bibi including Shalwar, Qamees and Chadar which were produced by the complainant to the I.O. The I.O packed and sealed the same in my presence into a parcel. The recovery memo Ex. PC/1 is also correct and correctly bears my signature and signatures of other witnesses. My statement is recorded by I.O.”

**Scriber of FIR Ex. PA, Mujahid Khan, SHO as PW-4** deposed that,

“On oath stated that in the instant case, I have registered the FIR EX. PA on the application of the complainant, Taj Muhammad which is correct and correctly bears my signature. In the instant case I have also arrested accused Arabistan on 27/06/2019 and issued his card of arrest EX: PW 4/1 which is correct and correctly bears my signature. After the completion of investigation, the I.O handed over to me the complete case file for submission of challan and accordingly I submitted the complete challan which Ex.PW4/2 which is correct and correctly bears my signature.”

  
05/03/20.  
**ASGHAR SHAH**  
District & Sessions Judge,  
Orakzai at Hangu

**Identifier of grave of deceased, Malakhel s/o Ali**

**Baz Khan PW-5** deposed that,

*“deceased, Basya Bibi was my niece. On 26.07.2019, I have pointed out grave of deceased, Basya Bibi situated in the graveyard of Jalaka Mela to the Police, doctor and Judicial Magistrate along with other officials present there. The IO prepared pointation memo of the grave on the spot which is correct and correctly bears my thumb impression. The same is Ex. PW-5/1. Thereafter, I along with PW Shah Jehan dig out the grave and recovered the dead body of deceased, Basya Bibi and thereafter, handed over the same to the officials for exhumation. On the spot the IO prepared pointation memo of identification of the deceased Ex. PW-5/2 which is also correct and correctly thumb impressed by me. Both the memos mentioned above were also thumb impressed by PW Shah Jehan Khan on the spot. I and PW Shah Jehan Khan also thumb impressed the inquest report of the deceased, Basya Bibi. After exhumation, we again buried the dead body of the deceased, Mst. Basya Bibi.”*

**Muhammad Imtiaz Shinwari Judicial Magistrate-II, Orakzai** under whose supervision exhumation proceedings were carried out as PW-6 deposed that,

*“on 22.07.2019, IO, Shal Muhammad Khan submitted an application before Hon'ble District &*

*Shah*  
*05/03/20*  
 District & Sessions Judge,  
 Orakzai, Ferozshah

(59)

(66)

Sessions Judge, Orakzai for exhumation of dead body of deceased, Basya Bibi which was entrusted to me for necessary action and I accordingly issued necessary directions to the SHO, PS Kalaya for proper arrangement for exhumation of the dead body which was scheduled for 26.07.2019. Medical Superintendent of DHQ hospital, Lower Orakzai was also directed for constitution of Medical board/team for exhumation/post-mortem of the dead body.

On the date fixed, I along with police officials and medical team visited the grave of the deceased and started the process of exhumation. The grave of the deceased was identified by Malakhel and Shah Jehan who were the relatives of the deceased. The digging of the grave was carried out by Shah Jehan Khan and Malakhel and after the recovery of the dead body, the body of the deceased was identified by the above-mentioned PW's. Thereafter the dead body was handed over to the medical team who conducted post-mortem proceedings. After completion of post-mortem the dead body was buried again. On the next day, I prepared my report of exhumation proceedings mentioned above and handed over the same to the IO who placed the same on judicial file. Today I have seen my exhumation proceeding report consist of four (4) pages Ex. PW-6/1, which is correct and correctly bears my signature."

*A. Qureshi*  
05/08/20  
D.S. JUDGE



**Complainant, Taj Muhammad S/O Nawab**

**Khan as PW-7** deposed that,

*“deceased Basya Bibi was my daughter while PW Akhtar Muhammad is my nephew. On the day of occurrence i.e. 07.05.2019 I along with my nephew, Akhtar Muhammad were busy in ploughing of over fields by means of tractor near our house. At about 11:45AM absconding accused, Habib Khan and accused on trial, Arabistan duly armed with Kalashnikovs came out from their house and started indiscriminate firing on us, resultantly due to the firing of Habib Khan, my daughter Basya Bibi who was present near to us got hit and died on spot. Accused on trial, Arabistan was standing on spot for the help of absconding accused, Habib Khan. Due to the firing of accused on trial, Arabistan my nephew, Akhtar Muhammad got hit on his hand and injured. As we were empty handed therefore, we could not respond. After sometime some people attracted to the spot and we shifted the injured and deceased Basya Bibi to the nearby clinic and first-aid was given to injured Akhtar Muhammad and was referred to KDA hospital, Kohat for further treatment. The injury of deceased was cleaned and bandage was wrapped on the wound in the said clinic. Thereafter, we took the dead body to our house and performed her funeral prayers. For registration of the case I approached to the local Police but the DSP, Lower Orakzai did not register the case on account of having no facilities of equipment*

*Asghar Shah*  
 ASGHAR SHAH  
 District & Sessions Judge,  
 Orakzai at Hangu

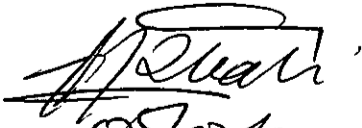
61

62

and trained staff due to the transformation of new system. Thereafter, on 24.06.2019 I again approached the local Police and submitted one written application to DSP for registration of the case and thereafter my case was registered on 25.06.2019. Today I have seen my application Ex. PW-7/1 which is correct and correctly bears my thumb impression. After registration of the case, Investigation Officer, Shal Muhammad Khan came to the spot and I pointed out the place of occurrence to him, who prepared site plan on my pointation. On the spot I handed over the three-color photos as well as the blood-stained garments of the deceased to the IO in presence of marginal witnesses. Motive for the commission of offence is that accused party forcibly attempted to occupy our fields. On 26.07.2019 in exhumation proceedings were carried out by the officials. During exhumation proceedings I identified the grave of my deceased daughter to the officials. I charged the accused for causing murder of my daughter as well as causing injury to the PW Akhtar Muhammad."

**Injured eye witness, Akhtar Muhammad S/O Shah Jahan Khan as PW-8** deposed that,

"complainant, Taj Muhammad is my uncle while deceased Basya Bibi is the daughter of Taj Muhammad. On the day of occurrence, I along with complainant, Taj Muhammad were busy in ploughing the fields. At about 11:45AM absconding accused Habib Khan and accused

  
05/08/20  
ASGHAR SHAH  
District & Sessions Judge

62

83

*on trial duly armed with Kalashnikovs came out from their house and started firing on us. Due to the firing of absconding accused Habib Khan, Basya Bibi who was present near to us got hit and died on the spot. When I attracted towards deceased, the accused facing trial Arabistan opened fire on me due to which I got hit on my right hand. Thereafter, I and deceased Basya Bibi was shifted to the nearby clinic. In the clinic first-aid was given to me and then I was referred to the KDA hospital. In the clinic bandage was wrapped around the wound of deceased and from there she was shifted to her house. I was admitted in KDA hospital and after two days treatment I was discharged. On 25.06.2019 my statement was recorded by the IO in the Kalaya Headquarter. Motive for the occurrence is the attempt of the accused to illegally occupy the fields. I charged the accused for the commission of offence.”*

**Investigating Officer, Shal Muhammad Khan as PW-9** deposed that,

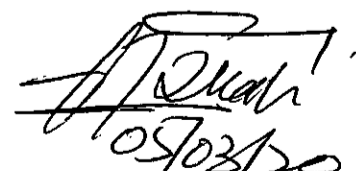
*“after registration of the FIR on 25.06.2019, the copy of FIR and application of the complainant were entrusted to me for investigation and I visited the spot. On the spot I prepared site plan Ex. PB on pointation of complainant. The complainant, Taj Muhammad handed over three colour photos (already exhibited as Ex. P1 to Ex. P3) of the deceased to me which I took into possession in presence of marginal witnesses vide recovery memo*

*Taj Muhammad*  
*05/03/20*

(63)

64

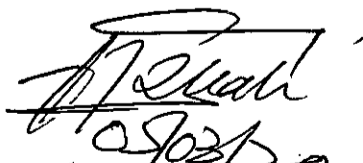
already exhibited as Ex. PC. Similarly, complainant also handed over blood-stained garments of the deceased including Shalwar, Qamees and Chaddar which are Ex. P4 and I packed and sealed the same into parcel no. 1 in presence of marginal witnesses vide recovery memo already exhibited as Ex. PC/1. Thereafter, on my dictation Anar Gul, ASI recorded statements of marginal witnesses and injured PW Akhtar Muhammad U/S 161 Cr.P.C. Accused Arabistan was arrested by the SHO on 27.06.2019 and was handed over to me for investigation along with his card of arrest and I produced him before the court of Judicial Magistrate on 28.06.2019 for obtaining his physical custody vide my application Ex. PW-9/1, as a result of which three days physical custody was granted. I interrogated the accused and recorded his statement U/S 161 Cr.P.C and produced him before the court of Judicial Magistrate vide my application Ex. PW-9/2 on 01.07.2019 and the accused was sent to the Judicial Lockup. During course of investigation I prepared list of legal heirs of deceased Ex. PW-9/3. On 11.07.2019 I sent the blood-stained garments to the FSL through constable, Ameer Nawaz, the report of which I received later on, on 05.08.2019 which is placed on file and the same is Ex. PK. As the accused Habib Khan was avoiding his lawful arrest therefore, I submitted application Ex. PW-9/4 before the court of Judicial Magistrate on 16.07.2019 for issuance of warrant 204

  
05/08/2019  
**ASGHAR SHAH**  
District & Sessions Judge,  
Orakzai at Hangu

(64)

(65)

Cr.P.C and then on 18.07.2019 I submitted application Ex. PW-9/5 for issuance of proclamation notices U/S 87 Cr.P.C. I then recorded statement of search witness Shah Alam U/S 161 Cr.P.C. On 19.07.2019 I submitted one application Ex. PW-9/6 before this court for obtaining permission of exhumation of the dead body of the deceased, Basya Bibi which was entrusted to the Judicial Magistrate for further proceeding. The learned Judicial Magistrate fixed the date for exhumation. On 26.07.2019 learned Judicial Magistrate along with his staff, Officials from the health department, Police Officials and PW Mulakhel, Taj Muhammad and Shah Jahan attended the exhumation proceeding. The grave of the deceased was duly identified by the complainant, Taj Muhammad and I accordingly prepared grave pointation memo already exhibited as Ex. PW-5/1. Thereafter, the dead body was identified and I prepared pointation memo of the dead body already exhibited as Ex. PW-5/2. I also prepared injury sheet of the deceased at the graveyard on the same day which is already exhibited as Ex. PM/1 and inquest report Ex. PW-9/7. I recorded statement of marginal witnesses of the pointation memos already exhibited as Ex. PW-5/1 and Ex. PW-5/2. During course of investigation. During course of investigation I received and placed on file exhumation report and post-mortem report. During investigation Anar Gul, ASI drafted various documents on my dictation. All the documents prepared by me or

  
ASCHAR SHAH  
District & Sessions Judge  
Magisterial at Hangu

65

66

*prepared on my dictation are correct and correctly bear my signatures. After completion of investigation I handed over casefile to SHO for submission of challan."*

- (4). Thereafter, prosecution closed their evidence where after statement of accused was recorded U/S 342 Cr.P.C. The case was fixed for final argument when meanwhile DPP for State submitted an application requesting examination of witnesses Dr. Alif Khan and medical technician Mahmood Khan. After hearing arguments of both the counsel for the parties, application was accepted and both the said witnesses were examined. Out of them **Mahmood Khan medical technician as PW-10** deposed as follows;

*"Stated that I am running a private clinic at Feroz Khel Mela. The clinic of Dr. Alaf Khan is situated in front of my clinic. On 07-05-2019, at about 12:00 noon, complainant Taj Muhammad along with other co-villagers brought one injured Akhtar Muhammad to me for first aid and medical treatment. I examined him and stitches his firearms injuries/wounds on his right hand. After dressing and stitching his wounds, I told the complainant Taj Muhammad to took the injured Akhtar Muhammad to some other hospital for further treatment".*

**Dr. Alif Khan, retired Medical Officer as PW-11,** deposed as follows;

*"Stated that I am running a private clinic at Feroz Khel Mela. The clinic of Mahmood Khan, medical technician, is situated in front of my clinic. On 07-05-2019, at about 12:00 noon, complainant, Taj Muhammad along*

*Asghar Shah*  
07/05/20  
ASGHAR SHAH  
District & Sessions Judge,  
Orakzai at Hangu

66

60

*with other co-villagers brought minor child namely, Basya Bibi, for first aid and medical treatment. I examined her and found her dead. I found one firearm injury on the forehead of the deceased. I cleaned the blood on her face besides bandaged around her head. After confirmation of death and bandage around her head, the minor deceased was handed over to the complainant and co-villagers”.*

(5).           Thereafter, learned DPP for the State closed the prosecution evidence once again but the accused neither wished to be examined on oath nor produced evidence in defence. Accordingly, arguments of the learned DPP for the state, counsel for the complainant and counsel for the accused facing trial heard and case file perused.

(6)-           From the arguments and record available on file it reveals that there is delay of 48 days in lodging the report and the reason of delay has been given by the complainant in his written application Ex. PW 7/1 as ignorance of law. However, while appearing in evidence as PW 7 on page 13 line 14 to 16, the complainant categorically admitted that by the time of occurrence the old system of FCR was already replaced by the new system and the same was within his knowledge. Apart from this, in his examination in chief line 22 to 25 and in his cross examination at page 13 lines 20 to 24, the complainant altogether changed his stance by alleging that for the registration of the case he approached the local Police on the very day of occurrence and thereafter three or four times but he was told that on account of having no facilities of equipment and trained staff, the report cannot be lodged. In the instant case, the scribe of FIR as well as investigating Officer appeared in evidence but none

*A. Shah*  
05/03/20  
A. B. SHAH  
District Sessions Judge  
District Court, Mumbai

67

68

of them stated a single word regarding the non-registration the case by them soon after the occurrence. At page twelve line 13, the complainant again changed his stance by alleging that he lodged the report at the KDA Hospital at Kohat though in cross examination he further alleged that he has not accompanied the injured PW Akhtar Muhammad to the KDA Hospital at Kohat. With regard to lodging of report, injured PW Akhtar Muhammad PW 8 stated in his cross examination that after the occurrence he was shifted to the hospital at Kohat and was admitted there for two days and that he has lodged the report in the Hospital but no such record of the hospital was produced. The District Kohat is an established District and if for the time being we presume that the report of the complainant was not taken down in the newly merged District Orakzai on account of having no facilities by that time, then why in the established District Kohat, the report of the injured PW was not recorded? The answer is very much clear, no such report was made either to the local Police of District Orakzai or to the Police of Kohat. Thus the delay in lodging the report has not been sufficiently explained and the report of the complainant lodged after considerable delay of 48 days is showing that the report was lodged with consultation, pre-deliberation and with the interference of the outer segment.

- (7). The ocular account when consulted, it transpired that complainant as PW 7 stated in his evidence that by the time of firing he was present near his daughter Mst: Basya Bibi as well as injured PW Akhtar Muhammad but in his cross examination, he changed his stance by alleging that by the time of firing he was at a side i.e. in shelter of corps baggage. If he was in the shelter of corps baggage

*Asghar Shah*  
05/03/20  
**ASGHAR SHAH**  
District & Sessions Judge  
Orakzai at Hangu



and was at a side then it means that he was not the eye witness of the occurrence and has not seen the occurrence with his own eyes. It would denote that he was not present at all at the scene of occurrence by the time of occurrence otherwise he would have received certain injuries at the hands of accused shown in front of him in the site Plan Ex. PB at a distance of 20/21 paces. It is also not appealing to a prudent mind that two persons armed with Kalashnikovs with a distance of 20/21 paces fired at the complainant but he escaped unhurt. The non-availability of the complainant at the venue of occurrence at the time of occurrence can also be seen while perusing the written report of the complainant Ex. PW 7/1 wherein he has stated that accused made firing on them i.e. on the complainant, on the Mst: Basya Bibi and injured PW Akhtar Muhammad but on the last page of his evidence he categorically stated that his claim against the accused facing trial is only to the extent of causing injuries to the PW Akhtar Muhammad and in the said statement he absolutely exonerated the accused from making firing at him and his daughter. So, had the complainant was present at the venue of occurrence at the relevant time, he would have stick to his stance taken in his written application regarding firing on him as well upon his daughter. In the written application, complainant alleged that by the time of firing, his daughter was present near him and in the site plan Ex.PB prepared at the instance of the complainant she has been shown at one line near the complainant but the said stance was contradicted by the injured PW Akhtar Muhammad by alleging that Mst: Basya Bibi was ahead of us at a distance of 4/5 paces. Thus, the mode and

District & Sessions Judge  
 Orakzai District

68


69

manner of the occurrence alleged is different in written application of the complainant from the stance taken by the ocular account in evidence.

(8). With regard to the motive, it was disclosed in the initial report of the complainant that accused wished to occupy their fields but, in the evidence, both the complainant and injured PW categorically admitted that the accused neither in the past nor immediately before the occurrence ever attempted to occupy their fields. Also, it is not mentioned either in the initial report of the complainant or in the evidence of the ocular account as to what was the cause of the alleged immediate act of firing of the accused as no altercation or exchange of hot words before the occurrence was alleged. Thus, the motive alleged failed to establish.

(9). The Post-mortem report Ex. PM when perused, it reveals that cause of death by means of fire arm has not been mentioned in the said report. During the investigation, the blood-stained garments of the deceased was sent for chemical analysis to FSL Peshawar and though the report of the FSL Ex. PK has determined the blood available on the said garments to be human blood but it was not confirmed that the blood was of the same group. Thus, the circumstantial evidence also failed to support the version of the complainant.

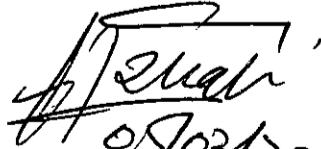
(10). The absence of spot recoveries i.e. empties or blood stained earth, absence of independent witnesses, absence of confession or recovery of crime weapon from the possession of accused facing trial, no past criminal history of accused facing trial, contradictions in the report of the complainant and evidence of the ocular account,

  
05/02/20  
ASGHAR SHAH  
District & Sessions Judge  
Orakzai District

failure to prove the motive and lodging of report with unexplained delay of 48 days would denote that the occurrence has not taken place in the mode and manner as alleged by the complainant and rather the mode and manner alleged by the complainant party failed to establish. It seems that either the ocular account was not present at the site of occurrence at the relevant time or has not narrated the occurrence in the mode and manner in which it was alleged to have been committed.


(11). Thus, in the light of above, sufficient dents and doubts are attracted to the case of complainant, the evidence led in the case is not confidence inspiring and have failed to prove the case against the accused facing trial beyond any shadow of doubts. Hence, benefit of doubt so cropped up must be extended in the favour of accused facing trial. Accordingly, while extending the benefit of doubt, accused facing trial, Arabistan, he is acquitted of the charges levelled against him through the FIR in question. Accused is on bail, his sureties stand discharged from the liability of bail bonds. Case property be kept intact till the arrest of absconding accused.

(12). However, a Prima-Facie case exist against the absconding accused Habib Khan S/O Habib Ullah Khan hence, he is declared as proclaimed offender. Perpetual warrant of arrest be issued against him and DPO Orakzai is directed to enter his name in the register of proclaimed offenders. All the legal course be adopted for the arrest of the proclaimed offender and he be brought before the court as and when arrested.

  
08/03/20  
ASGHAR SHAH  
District & Sessions Judge  
Orakzai

(13). File be consigned to Sessions Record Room after its completion and compilation.



Announced  
05.03.2020

  
(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela  
05/03/20.

CERTIFICATE

Certified that this judgment consists of Twenty (20) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 05.03.2020.

  
(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela  
05/03/20  
  
ASGHAR SHAH  
District & Sessions Judge,  
Orakzai at Hangu.