

**IN THE COURT OF SHAUKAT ALI; ADDITIONAL SESSIONS
JUDGE-II, ORAKZAI AT BABAR MELA, HANGU**

Session case No: 8/2 of 2020

Date of Institution: 19.06.2020

Date of Decision: 02.10.2020

State through Muhammad Shafiq SHO PS Lower Orakzai
.....(*Complainant*)

VERSUS

Lahor Shah s/o Sarwar Shah r/o Tribe Sheikhan, Tappa Umar Zai, Gul Mir
Ghari District Orakzai (*Accused Facing Trial*)

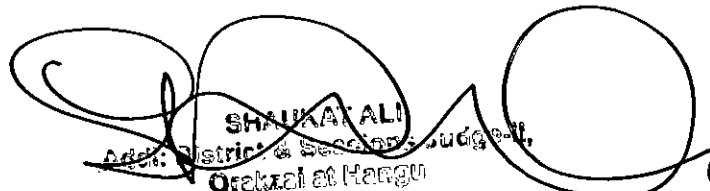
Represented by:

*Mr. Syed Amir Shah APP for State,
Mr. Sana Ullah Khan Advocate and Mr. Yousaf Khalil Advocate counsels,
for accused facing trial.*

**CASE FIR NO.52 DATED 27.05.2020 U/S 302,311,201 PPC/ 15-AA OF
POLICE STATION LOWER ORAKZAI (KALAYA)**

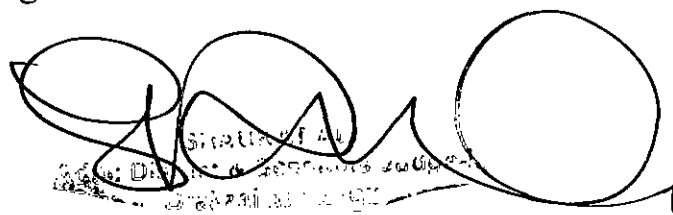
JUDGMENT

The prosecution story is that on 27-05-2020 during gusht SHO Muhammad Shafiq SHO received information regarding the occurrence that the accused facing trial Lahor Shah murdered his cousin Muhammad Zaman and her niece Mst: Amina Bibi through fire arm weapon due to illicit relationship between both the deceased, that the dead body of Mst: Amina Bibi has been buried while deceased Muhammad Zaman has brought to the Civil Hospital Mishti Mela. On that information the SHO came to the Civil Hospital Mishti Mela where in emergency room he found the dead body of deceased Muhammad Zaman which was accompanied by his brother Muhammad Shafiq who confirmed the occurrence and informed the complainant that his brother deceased Muhammad Zaman and deceased Mst;


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Amina Bibi had illicit relationship due to which the accused Lahor Shah murdered both of them. The complainant prepared the injury sheet and inquest report of deceased Muhammad Zaman and sent the dead body in the escort of Constable Shakeel to the doctor for PM examination whereas proceedings to be initiated for the exhumation of Mst; Amina Bibi. The complainant drafted the Murasila which was sent to the PS as a special report through Constable Saeed Gul for registration of FIR on the basis of which FIR was registered against the accused. After registration of the case the Murasila and copy of FIR was handed over to the investigation branch for investigation.

The investigation was carried out in the instant case and during the investigation the IO visited the spot of deceased Muhammad Zaman for spot inspection and prepared site plan Ex.PB. The IO recovered blood from the place of deceased and also took into possession one empty of 7.62 bore. The IO prepared the site plan of Mst; Amina Bibi Ex.PC. The IO also took into possession the blood stained garments of both the deceased. The accused facing trial was interrogated and during interrogation the accused pointed out the place of occurrence and the weapon of offence which was also recovered on his pointation. The IO recorded the statement of accused and prosecution witnesses u/s 161 Cr.PC. After completion of investigation complete challan against the accused was submitted which was received by this court on 19.06.2020 for trial against the accused. The accused who was in Judicial Lock-up was summoned through addendum-B and was produced before the court on 22-06-2020. After compliance of 265-C Cr.P.C, charge was framed against accused on 27.06.2020 to which the accused pleaded not guilty and claimed trial. The prosecution was allowed to produce its evidence in support of the charge against the accused.



State of Andhra Pradesh
District of West Godavari
Muzaffarpur

During the trial of the case the prosecution produced 11 witnesses; the gist of the prosecution evidence is as follows;

PW.01 is the statement of Dr. Abida Shabeena Female Medical Officer DHQ who stated that "On 03/06/2020 during the exhumation proceedings I have conducted post mortem examination at about 10:35 AM of deceased Mst: Amina Bibi aged about 24/25 years' r/o Cast Sheikhan Tappa Umar Zai village Gul Mir Garhi Orakzai identified by one Fazal Shah s/o Dawran Shah."

PW.02 is the statement of Nazeef Khan who stated that "I identified the dead body of Muhammad Zaman before the police and before the doctors in hospital. Similarly I also identified the dead body of Mst; Amina Bibi at the time of her exhumation and PM examination before the doctor. My thumb impression was taken on the identification memo which I have seen today which is correct and correct bears my thumb impression. The identification memo is Ex.PW-2/1. My statement was recorded by the IO in the instant case."

PW.03 is the statement of Fazal Shah who state that "When the judicial officer along the police and other officials came to the grave yard of Gul Mir Kalay I was present there and I identified the grave of Mst: Amina Bibi to them. Besides me one Muhammad Rehman also identified the grave. In this respect pointation memo was prepared on the spot and I thumb impressed the same. Today I have seen the pointation memo which is Ex.PW-3/1 which is correct and correct bears my thumb impression"

PW.04 is the statement of Aftab Ahmad ASI who stated that "On 27-05-2020 on the receipt of Murasila through Constable Muhammad Saeed I have correctly incorporated the contents of Murasila into FIR. Today I have

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seen the FIR which is Ex.PA which is correct and correctly bears my signature”

PW.05 is the statement of Muhammad Shafiq SHO who stated that “On 27-05-2020 I was on my routine gasht when during gasht I received information that at village Gul Mir Garhi Sheikhan a lady namely Amina Bibi and one Muhammad Zaman has been murdered by accused Lahore Shah on account honor. On that information I came to hospital Mishti Mela where the dead body of Muhammad Zaman deceased was laying and along with the dead body his brother Muhammad Shafiq was also present who confirmed the occurrence. I prepared the inquest report and injury sheet of Muhammad Zaman and handed over the same to Constable Shakeel for the purpose of PM examination. The lady Mst; Amina Bibi was buried without PM examination. I drafted the Murasila and sent the same through Constable Saeed Gul for registration of FIR. On the same day I arrested accused Lahor Shah vide my card of arrest Ex.PW-5/1. I came to the PS and handed over the accused along with card of arrest to the IO. The Murasila is Ex.PA/1. The injury sheet and inquest report are Ex.PW-5/2 and Ex.PW-5/3. After completion of investigation I also submitted complete challan which is Ex.PW-5/4. Today I have seen the above exhibited documents which are correct and correctly bears my signature.”

PW.06 is the statement of Dr. Riaz Medical Officer who stated that “I conducted PM examination of deceased Muhammad Zaman s/o Zareen Afzal aged about 21 years r/o Gul Mir Garhi Orakzai brought by police and identified by Muhammad Shafiq, brother of deceased.”

PW.07 is the statement of Mr. Rehmat Ullah Judicial Magistrate Orakzai who stated that “On 29-05-2020 incharge investigation Shal Muhammad SI submitted application for exhumation of the dead body of

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deceased Mst: Amina Bibi D/O Munawar Shah R/O tribe Sheikhan, Gul Mir Garhi, Mamu Zai, Mishti Tehsil Lower District Orakzai buried at the grave yard of village Gul Mir Garhi. The application was allowed and necessary directions were issued to the police MS HQ hospital Mishti Orakzai and other official for properly carrying out the exhumation proceedings which was to be schedule on 03-06-2020. On 03-06-2020 the dead body was disinterred and PM examination of the dead body was carried out by the doctor under my supervision and after PM examination the dead body was buried again. I prepared my detail report to this effect which is self-explanatory and contained the detail of proceedings conducted by me on the spot. My report which is consist of 03 pages and Ex.PW-7/1 is correct and correctly bears my signature. The pointation memo of the grave already exhibited as Ex.PW-3/1 and pointation memo of the dead body already exhibited as Ex.PW-2/1 were also prepared by the police which is correctly signed by me.”


PW.08 is the statement of Taj Meen Khan who stated that “I have correctly identified the dead body of deceased Muhammad Zaman before the police and before the doctor”

PW.09 is the statement of Muhammad Fayaz Constable who stated that “On 29-05-2020 accused facing trial confessed his guilt before the investigation officer during interrogation and he voluntarily without duress and pressure led the police party to the place of occurrence. The accused was boarded in vehicle along with police Nafri and investigation officer and when we reached to the place of deceased Muhammad Zaman, accused there pointed out the spot from where he has made fired upon the deceased and also pointed out the place where the deceased was present at the time of occurrence. After that the IO made addition in the site plan with red ink

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thereafter accused lead the police party to the place where the deceased Mst: Amina Bibi was done to death by the accused. Over there he also pointed out his own place as well as the place of lady accused. Likewise the investigation officer made also addition in the site plan with the red ink. To this effect the IO prepared pointation memo Ex.PW-9/1 which is correct and correctly bears my signature. Accused was willingly pointed out the place where he has kept the weapon of offence in his house therefore again he led the police party to his own house and pointed out the room there. The accused entered in the same room along with police party and pointed towards the charpai, where the Kalashnikov with fixed charger bearing No. 51803 was laying under the pillow and the same was recovered by the IO in my presence and packed and sealed the same into parcel No. 5. The IO affixed the monogram of SH on the parcel. The recovery memo Ex.PW-9/2 was prepared by the IO in my presence and I correctly signed the same. My statement was recorded by the IO u/s 161 Cr.PC.”

PW.10 is the statement of Khan Wada Constable who stated that “On 27-05-2020 I was present with IO on the spot and in my presence the IO took into possession blood stained earth from the place of deceased Muhammad Zaman and packed and sealed into parcel No.1. Similarly the IO also recovered and took into possession one empty shell of 7.62 bore which was laying at some distance from the place of deceased and the IO packed and sealed the same into parcel No. 2 vide recovery memo Ex.PW-10/1 which is correct and correctly bears my signature. Similarly one Masood s/o Zareen Afzal brought blood stained qamees, shalwar and bunyan belonging to the decease Muhammad Zaman and handed over the same to the IO on spot in my presence and the IO packed and sealed the same into parcel No. 3. Likewise one Azam Tariq s/o Munawar Shah brought blood stained qamees,


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shalwar and chadar of the lady deceased and handed over the same to the IO in my presence and the IO packed and sealed the same into parcel No. 4. To this effect the IO prepared recovery memo Ex.Pw-10/2 which is correct and correctly bears my signature. My statement was recorded by the IO u/s 161 Cr.PC.”

PW.11 is the statement of Shal Muhammad SI/IO who stated that “After registration of FIR, the Murasila and copy of FIR was handed over to me for investigation. On 27-05-2020 I visited first the spot of deceased Muhammad Zaman for the purpose of spot inspection. During spot inspection I took into possession blood from the place of deceased Muhammad Zaman and sealed into parcel No.1. I also took into possession one empty of 7.62 bore and sealed into parcel No. 2 vide recovery memo already exhibited as Ex.PW-10/1. Parcel No.1 and parcel No. 2 are Ex.P-1 and Ex.P-02. I took into the possession the garments of deceased Muhammad Zaman and sealed into parcel No.3 which is Ex.P-03 vide recovery memo Ex.PW-10/2 produced by Masood Khan. . I prepared the site plan of deceased Muhammad Zaman on my own instance while observing the spot which is Ex.PB. I thereafter visited the place of deceased MSst: Amina Bibi and also prepared the site plan which is Ex.PC. I sealed into parcel No. 4 the garments of deceased Mst; Amina Bibi Ex.P-04 produced by Azam Tariq. During spot inspection of the place of deceased Mst; Amina Bibi I found that the place of deceased was washed and blood was not available whereas the empty were also not available which was misplaced/thrown by the children. I returned to the PS after inspection of both the spots. In the PS the accused who was arrested by the SHO PS Lower Orakzai was handed over to me along with his card of arrest. I interrogated the accused. On the next day i.e. 28-05-2020 I produced the accused for custody before the Illaqa Magistrate

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vide my application Ex.PW-11/1 which was allowed and 02 days police custody was granted. The accused was interrogated during custody and on 9-05-2020 I proceeded the accused to the spot. The accused pointed out the place of occurrence to me and on the pointation of accused addition were made in the site plan with red ink. On the pointation of accused the weapon of offense Kalashnikov was recovered and sealed into parcel No.5 which is Ex.P-5 and affixed three monograms of SH on the parcel. On all the parcels I have affixed three stamps of monograms SH on each parcel. I prepare the pointation memo and recovery memo in the presence marginal witnesses which are already Ex.PW-9/1 and PW-9/2 respectively. I added section 15-AA in the FIR vide perwana Ex.PW-11/2. I recorded the statement u/s 161 Cr.PC of PWs. I recorded the statement of accused u/s 161 Cr.PC wherein the accused confessed hi guilt before me and on the expiry of custody the accused was produced before the magistrate for recording his confessional statement vide my application EX.PW-11/3. The accused refused to record confession and was sent to judicial lock-up. I also prepared recovery sketch Ex.PW-11/4 in respect of recovery of weapon of offense. The deceased Mst;Amina Bibi was buried without any PM examination therefore I submitted application Ex.PW-11/5 to the Illaqa Magistrate for exhumation of the dead body of deceased Mst;Amina Bibi which was allowed and after exhumation of the dead body her PM examination was conducted. My report regarding exhumation is Ex.PW-11/6 whereas the report of Illaqa Magistrate is already Ex.PW-7/1. I have prepared the injury sheet and inquest report of Mst; Amina Bibi for the purpose of her PM examination after her exhumation which are Ex.PW-11/7 and Ex.PW-11/8 respectively. I recorded the statement of identifiers of the grave of deceased Mst; Amina Bibi u/s 161 Cr.PC. I sent parcels No. 1,2,3,4 and 5 to the FSL vide my application Ex.PW-11/9 and Ex PW-11/10 respectively report whereof I received which

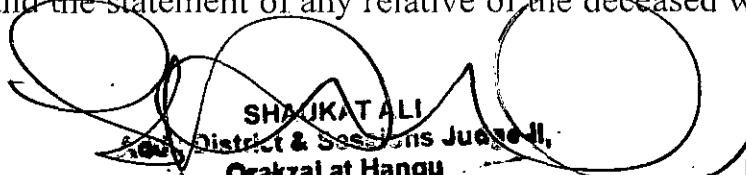
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are Ex.PZ and Ex.PZ/1 respectively vide road certificate Ex.PW-11/11 and Ex.PW-11/12 respectively. I prepared the list of legal heirs of both the deceased which are Ex.PW-11/13 and Ex.PW-11/14. I recorded the statement of PWs u/s 161 Cr.PC and on completion of investigation I handed over the case file to the SHO for onward submission. Today I have seen all the documents prepared by me which are correct and correctly bears my signature.”

On 14.09.2020, the prosecution closed its evidence and on 16.09.2020 the statement of accused was recorded u/s 342 Cr.P.C wherein the accused denied the allegations of the prosecution, however he refused to be examined on oath or to produce defense evidence, therefore, the case was fixed for final arguments.

Learned APP for the state argued that the case of the prosecution is of circumstantial evidence and the circumstance of the case connect the accused with the commission of offence, that the PM reports of both the deceased shows fire armed injuries on the body of deceased with supports the case of prosecution, that the recovery of weapon of offence on the pointation of accused and addition in the site plan connect the accused with the crime, that the FSL report is in positive which support the recovery of weapon of offence from the accused, that the statement of PWs are in line with the case of prosecution, that motive has not been shattered by the defense and single accused is charged for the offence.

On the contrary learned counsel for accused argued that the occurrence is unseen and no eye witness is available against the accused, that there is an unexplained delay in lodging the report, that the statement of brother of deceased Muhammad Shafiq was not recorded nor he was produce before the court and the statement of any relative of the deceased were also

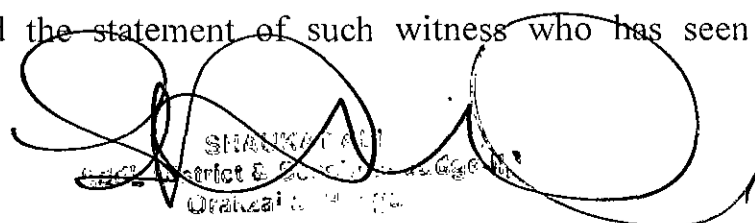

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not recorded to support the case of prosecution against the accused, that the medical reports neither mention fire arm injuries on the body of deceased nor mentioned the cause of death, that no PM examination was conducted and the medical report was prepared only on physical examination of dead body which does not support the version of prosecution, that the statements of prosecution witnesses in respect of recoveries are not reliable and full of contradiction, that no lady constable was accompanied by the IO during spot inspection and recoveries as the place of occurrence and recoveries are inside the house, that the prosecution failed to produce cogent and confidence inspiring evidence to prove the case against the accused. Learned counsel for the accused referred and relied on 2019 SCMR 1068, 2019 PCrLJ 1392, 2019 PCrLJ Note 144, 2020 SCMR 857, 2019 YLR 189 and 2019 SCMR 956.

Arguments of APP for the state and counsel for the accused heard and record perused.

The case of the prosecution is based on circumstantial evidence and no direct ocular account of the case is available against the accused. The recognized principle in cases of circumstantial evidence is that the chain of circumstances must be so connected that at the one end it must touch the corpus of deceased and on the other end the neck of the accused. If anyone link of the chain is missing then the whole evidence of the prosecution would be discredited.

The case of the prosecution is neither eye witnessed by any one from the inmates of the house nor any person from the relatives of both the deceased charged the accused for the commission of the offence. The Investigation Officer of the case (PW-11) stated in his cross examination that he has not recorded the statement of such witness who has seen the

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occurrence. There is no eyewitness of the occurrence nor had any such witness approached the I.O during his investigation to depose regarding the occurrence to connect the accused with the commission of offence. The complainant of the case is Mohammad Shafiq Khan SHO PS Lower Orakzai (PW-05) who deposed in his cross examination that except the information that he had received he had not brought on record any proof to connect the accused with the commission of offence. The report Ex.PA/1 of the complainant Mohammad Shafiq SHO (PW-05) shows that at emergency room of the hospital along with the dead body one Mohammad Shafiq; the brother of deceased Mohammad Zaman was present and verified the occurrence, but the report does not bear his signature or thumb impression as a token of proof to support the version of the complainant. The complainant (PW-05) stated in his cross examination that it is correct despite the fact that Mohammad Shafiq, the brother of deceased was available in the hospital and he never posed to be complainant of the case nor has he given any statement with regard to the occurrence. The PM report Ex.PM shows that the dead body of Muhammad Zaman was brought by his brother Muhammad Shafiq to the hospital and he also identified the dead body of the brother before the doctor but he did not lodge the report against the accused to charge him for the murder of his brother nor he verified the report Ex.PA/1 wherein the accused was charged by the complainant SHO which put a question mark on the involvement of accused in the commission of offence.

Shal Muhammad Khan (PW-11) investigated the case who during his investigation visited the spots of both the deceased for spot inspection and investigation. Non from the relative of both the deceased appeared before the I.O or approached him for recording statement regarding the mode and

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manner of the offence or the involvement of the accused in the murder of the deceased Mohammad Zaman and Mst: Amina BiBi. The I.O deposed in his cross examination that he has not recorded the statement of any such witness who has seen the occurrence and further stated that he had not recorded the statement of any relative of both the deceased regarding the fact that the accused had committed the offence. The statement of Mohammad Shafiq was also not recorded by the I.O u/s 161 Cr.PC nor he was produced before the court as prosecution witness to deposed against the accused. The I.O stated in his cross examination that he had not recorded the statement of Mohammad Shafiq u/s 161 Cr.PC who verified the occurrence to the SHO. The report of the complainant Muhammad Shafiq Khan SHO is not corroborated by any independent witness. PW Muhammad Shafiq SHO (PW-05) stated in his cross examination that he had not brought on record any proof to connect the accused with the commission of offence.

The only incriminating evidence against the accused is the recovery of Kalashnikov on his pointation vide pointation memo Ex.PW-9/2 and pointation of place of occurrence. The I.O vide pointation memo Ex.PW-9/2 recovered the weapon of offence from beneath the pillow on the *charpae* inside the residential room of the accused on the pointation of accused. The house of accused and female deceased is inside the same boundary wall that was visited by the IO during his first visit to the spot, hence the place of recovery of weapon of offence was not a hidden place but it was a residential room and the investigation officer was bound to see the same and take it into possession during the course of investigation when the IO first visited that house which is in the same boundary wall. Furthermore the site plan Ex.PB and Ex.PC were prepared by the IO before the pointation by the accused therefore the pointation of the place of occurrence by the accused is not a

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 District & Sessions Judge
 District of ...

discovery hence such pointation is not relevant. Muhammad Fayaz constable (PW-09) stated in his cross examination that the house of accused is inside one boundary wall where the accused and female deceased have separate rooms and the place of female deceased and accused are residential house in the same boundary wall. Furthermore PW-09 stated that the IO knocked at the door and thereafter they entered the house which shows that it was the IO who was leading the accused to the place of recovery of weapon of offence and not the accused, therefore such pointation is not reliable and could not be made basis for the conviction of accused. The IO did not accompanied any lady constable while they were entering the house as stated by PW-09 in his cross examination that during the entire proceedings the lady constable and Illaqa elders did not accompany them. The IO also stated in his cross examination that at the time of spot inspection and recoveries from the spot inside the house no lady constable and private witnesses accompanied him, therefore such recovery could not be termed as discovery under Article 40 of the Qanoon-e-Shahadat 1984 and is of no avail for the prosecution. There is no direct evidence against the accused nor the circumstances connect the accused with the commission of offence and only recovery of weapon of offence on the pointation accused is not sufficient to connect the accused with the commission of offence.

The medical evidence may indicate the nature and seat of injury but it cannot point out the culprit of a blind murder occurrence. The PM examination of both the deceased were carried out which are Ex. PM and Ex.PM/1. The doctors prepared the PM report on the physical examination of the dead bodies and they had not conducted autopsy on the dead bodies therefore the medical reports of the dead bodies are not based on the internal examination of the dead bodies. The medical officers have not mentioned in

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Additional District & Sessions Judge
Orakzai at Hangu

the medical reports that the injuries were fire armed injuries. Doctor Abida Shabeena Female Medical Officer (PW-01) stated in her cross examination that she has not mentioned in her report that the injuries were fire armed and she has mentioned only entry and exit wounds. The lady doctor further stated that she had not conducted autopsy of the dead body but her findings are based only on physical examination of the dead body. Furthermore the cause of death has also not been determined in the medical report of female deceased as no internal examination of the dead body had been carried out. Doctor Riaz Medical Officer (PW-06) submitted medical report of deceased Muhammad Zaman which is also only based on physical examination of the dead body. The medical officer stated that he examined the dead body apparently and in a strict sense it was not a PM examination. In the PM examination of deceased Muhammad Zaman the dead body was also not internally examined to ascertain the cause of death. Furthermore the PM report Ex.PM/1 does not mentioned the date and time of the examination of the dead body. The medical reports do not support the prosecution case as the findings of both the medical officers is based on apparent physical examination of the dead bodies and no autopsy of the dead body had been carried out.

Admittedly the single accused has been charged for the murder of both the deceased but to put the rope around the neck of accused charge singularly there must be strong and confidence inspiring direct or circumstantial evidence against the accused. The case against the accused is only of circumstantial evidence which is weak and dilapidated which do not connect the accused with the commission of offence. Many doubts are not needed in the prosecution case; when there is a single circumstance in the prosecution case which creates reasonable doubt in the mind of a prudent person

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Addl. District & Sessions Judge
Central Jail, Haveli

regarding the guilt of the accused the benefit of such doubt shall be extended to the accused.

As sequel to the above discussion, the prosecution has failed to bring home the guilt of the accused beyond any reasonable shadow of doubt; therefore, the accused Lahor Shah is acquitted in the instant case by extending him the benefit of doubt. The accused is in custody, he be set at liberty forthwith if not required in any other case.

The case property be kept intact till the expiry of period of appeal or revision and where after the same be dealt according to law.

File be consigned to the record room after necessary completion and compilation.

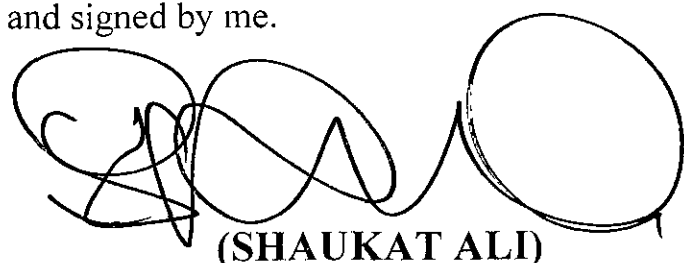
Announced
02 Oct, 2020



(SHAUKAT ALI)
Additional Sessions Judge-II,
Orakzai at Baber Mela, Hangu

CERTIFICATE

Certified that this judgment consists of 15 pages. Each page has been read, corrected wherever necessary and signed by me.



(SHAUKAT ALI)
Additional Sessions Judge-II,
Orakzai at Baber Mela, Hangu