

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

SESSION CASE NO. : 15/2 OF 2020

DATE OF INSTITUTION : 04.07.2020

DATE OF DECISION : 06.02.2021

STATE THROUGH GUL MUHAMMAD S/O SAID MUHAMMAD,  
AGED ABOUT 32/33 YEARS, TRIBE UTMAN KHEL, VILLAGE  
ABA KHEL TANDA, DISTRICT LOWER ORAKZAI

------(Complainant)

VS

SAID ALAM S/O MUHAMMAD JAAN, AGED ABOUT 46/47  
YEARS, TRIBE UTMAN KHEL, FATEH KHAN KHEL, VILLAGE  
ABA KHEL, TANDA DISTRICT LOWER ORAKZAI


------(Accused Facing Trial in custody)

**Present:** Umar Niaz, District Public Prosecutor for the state.  
: Akbar Yousaf Khalil and Syed Muzahir Hussain Advocates,  
for accused facing trial.  
: Fawad Hussain Advocate for complainant


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**JUDGEMENT**  
**06.02.2021**

On 06.05.2020, the local police upon information regarding the instant occurrence when reached to the Civil Hospital Mishti Mela, there the complainant, Gul Muhammad was found present in the emergency room with the dead body of his brother, Sarteef Khan and relative injured, Muhammad Khalid. The complainant reported to the

  
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local police at about 1545 hours to the effect that on the day of occurrence he alongwith deceased, Sarteef Khan and injured, Muhammad Khalid were going to Utman Khel market for purchasing household items. After the shopping they started proceeding back towards their home, and at about 1130 am, when reached kacha road near Kandar Mela, accused facing trial, Said Alam armed with Kalashnikov was found present there and who on seeing them started firing at them with the intention to kill as a result of which Sarteef Khan got hit and died on the spot whereas Muhammad Khalid got injuries on both legs while the complainant luckily escaped unhurt. The motive for the occurrence was disclosed as the land dispute between the parties. The report was verified by one, Shah Nawaz s/o Kutab Khan who thumb impressed the Murasila Ex. PA/1. The matter was incorporated through Murasila Ex. PA/1 and was sent to the PS where FIR Ex. PA in question was registered against the accused facing trial. Hence the accused facing trial was implicated in the instant case.



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(2). After completion of investigation, complete challan was submitted and accordingly accused 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 and their statements were recorded, the gist of which are as follows;

- I. Dr. Mujahid Afridi appeared before the court as PW-1 and deposed in respect of the post-mortem examination of the deceased, Sarteef Khan carried out by him through report Ex. PM as well as to have had medically examined the injured, Muhammad Khalid through medico legal report Ex. PW 1/3 besides deposed to have had endorsed the injury sheets of both the deceased and injured through Ex. PW 1/1 and Ex. PW 1/4 as well as endorsement of inquest report Ex. PW 1/2 of the deceased.

  
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- II. Constable, Muhammad Fayyaz as PW-2 being marginal witness deposed in respect of the blood-stained stone as well as 10 empty shells of 7.62 bore taken by the IO from spot in his presence through recovery memo Ex. PC. The witness also deposed being marginal witness of the recovery memo Ex. PC/1 vide which the IO in his presence taken into possession the last worn clothes of the deceased and injured sent by the doctor through constable, Iftikhar Ali.
- III. Mir Wali in his statement as PW-3 stated that he accompanied the dead body of Sarteef to the hospital and identified the same in presence of doctor and police.
- IV. Complainant, Gul Muhammad as PW-4 and injured, Muhammad Khalid as PW-5 in their evidence repeated the story of Murasila Ex. PA/1.
- V. Constable, Iftikhar Ali as PW-6 deposed that on 06.05.2020, the SHO handed over to



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him the injury sheet, inquest report of deceased, Sarteef Khan and injury sheet of injured, Muhammad Khalid and accordingly he handed over the same to the doctor inside the hospital. He further deposed that after the post-mortem examination of the deceased and medico legal examination of the injured, the doctor handed over to him the blood-stained garments of the deceased and injured which he handed over to the IO in the PS.

- VI. Khursheed Khan ASHO as PW-7 deposed to have had registered FIR Ex. PA from the contents of Murasila Ex. PA/1.
- VII. Muhammad Shafiq SHO as PW-8 deposed in respect of recording initial report of the complainant through Murasila Ex. PA/1, preparation of injury sheet and inquest report of the deceased, Sarteef Khan Ex. PW 1/1 and Ex. PW 1/2 as well as preparation of injury sheet of injured,

  
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Muhammad Khalid Ex. PW 1/4 besides deposited that after completion of investigation, he had submitted complete challan Ex. PW 8/1 against the accused facing trial.


VIII. Shal Muhammad Khan SI as PW-9 deposited in respect of the investigation carried out by him in the instant case including preparation of site plan Ex. PB, recovery of blood-stained stone and 10 empty shells of 7.62 bore from the spot vide recovery memo Ex. PC, taking into possession the blood-stained garments of the deceased and injured through recovery memo Ex. PC/1, preparation of list of legal heirs Ex. PW 9/1, drafting of applications Ex. PW 9/2 and Ex. PW 9/3 to the FSL Peshawar regarding the recovered blood-stained stone and 10 empty shells of 7.62 bore from the spot as well as its comparison with the blood on the garments of deceased and injured, arrest of the accused through card of arrest Ex. PW

  
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9/6, proceedings against the accused facing trial regarding obtaining his physical custody from the court of JM, Orakzai through applications Ex. PW 9/7 and Ex. PW 9/8, receipt of FSL reports Ex. PK and Ex. PK/1 regarding the recoveries, addition of section 337-F (iii) PPC and recording statements of the witnesses.


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

- (4). From the arguments and record available on file it reveals that the prosecution assisted by the counsel for complainant mainly based their case on the points of being single accused charged for the occurrence, in the daylight, ousting the chances of substitution, statements of ocular account, medical

  
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account, spot recoveries and other circumstantial evidence. It was their version that the District Orakzai by the time of occurrence was newly merged where people were unaware as to how and where to report, the police were unable to record reports and doctors were unable to carry out proper examination of deceased and injured. Their main stress was to avoid technicalities and to focus on the material produced on the case file. On the other hand, the defence pointed out some material contradictions in the evidence of the prosecution as well as in the mode and manner of the occurrence alleged and the evidence recorded in the court.

- (5). However, no doubt a person is killed and the other received injuries but the court has to see whether the accused facing trial has committed the offence? and whether the complainant and injured/witness were present during the occurrence? and whether the injured/witness received injuries during the same occurrence? And whether the evidence produced? support the version of the complainant and eyewitness besides the


  
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circumstantial, medical and other corroboratory evidence including mode and manner of the occurrence are in line with their version. In the instant case, one thing has to be noted that single charging of the accused is by no means the automatic proof that he has committed the offence. Secondly, the ignorance of law is no excuse. Thirdly, the case in hand pertains to case FIR no. 36 meaning thereby that 35 other occurrences have been reported prior to the present one and by the time of occurrence, the Orakzai District was not newly merged but has already taken the start for more than one year and the police stations and courts were also working there. Last, but not the least for presence of technicalities, contradictions and doubts let the evidence and their evidentiary value to be scanned to deliberate anything further on the same.

- (6). In the initial report, the time of occurrence has been mentioned by the complainant as 1130 am whereas the matter was reported in the civil hospital Mishti Mela at 1545 hours as such there is delay of four hours and fifteen minutes in lodging the report.

  
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In the initial report the delay has not been explained but the complainant, Gul Muhammad as PW-4 in his cross examination explained that after 20 minutes of the occurrence, charpai was arranged from the nearby house of one, Musa Khan and the dead body of the deceased was put on the same and was brought to the metttled road by foot in 25 minutes and that they waited on the metttled road for arrival of vehicle for about 50 minutes and thereafter travelled in the vehicle for one hour and reached the hospital where they lodged the report to the local police. The same was the stance of injured/eyewitness, Muhammad Khalid PW-5. By the said calculation, it means that the complainant and the dead body reached to the hospital at about 02:05 pm. The Muhammad Shafiq SHO PW-8 who recorded the initial report admitted in his cross examination that police officials are deputed in the Mishti Mela hospital. Then question would arise that upon reaching the hospital at about 02:05 pm why the report was further delayed by 35 minutes and lodged at about 1545 hours. The PW-8 in his cross examination mentioned the distance

  
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between the place of occurrence and hospital as 15 km and as per version of the ocular account, they spent some time while shifting the dead body from the spot to the mettled road whereafter they boarded in the vehicle. Thus, the distance of 15 km has been further lessened to certain extent by travelling the same on foot but even if we presume that the road leading towards hospital was a kacha road having measurement of 15 km even then the question would arise that how an hour is spent in covering an area of 15 minutes which is something beyond the understandings of a prudent mind. The PM report shows that the doctor has mentioned the time of arrival of dead body as 02:20 pm and that the same was brought by the police personnel of Lower Kalaya which means that by the time of 02:20 neither the complainant nor eyewitness were available for the report otherwise the doctor might have mentioned their presence with the dead body in his PM report and it gives the clear meaning that only the local police were present with the dead body and the matter was not reported and kept on waiting till 1545


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hours when the ocular account was arranged who thereafter reported the case in the present shape. The doctor as PW-1 in his cross examination stated that he started post-mortem examination at 02:20 pm and completed the same in 30 minutes which means that the same was carried out before recording the report (report time is 1545 hours) and the report was lodged thereafter in order to make the same in line with the PM report. In this scenario, the version of the defence looks appealable when they alleged that the complainant and injured/witness were not available at the time of occurrence and the report was lodged upon their arrival in the hospital. Thus, the delay in lodging the report has not been sufficiently explained and is fatal to the case of the complainant i.e., it means that the report was lodged by the ocular account who were in fact neither available at the scene of occurrence nor have seen the same with their own eyes and that the report is lodged with deliberate and unexplained delay, proper consultation, deliberation with malafidy intention of nominating

  
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the accused facing trial for ulterior motives after when the complainant and eyewitness were arranged.

(7). The ocular account when further scanned would provide that the injured/witness, Muhammad Khalid has neither reported the matter nor verified the report of the complainant nor from his place any blood was recovered by the IO nor he has shown or verified the place of occurrence to the local police. The interesting thing is that one, Mir Wali PW-3 was produced as the alleged identifier of the dead body before the doctor and police in the hospital. The name of Mir Wali is mentioned in the inquest report Ex. PW 1/2 with another identifier namely, Taj Muhammad. But, however, when the situation is confronted with the PM report Ex. PM, then in the column of body identification, the doctor has mentioned the name of one, Muhammad Alam cousin as identifier of the dead body. The said Muhammad Alam is neither named in the inquest report nor was produced for evidence. Besides when the evidence of the alleged identifier, Mir Wali PW-3 gone through, it provides that in his cross examination he has

  
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mentioned that after 40 minutes of receipt of information about the occurrence, he boarded in the vehicle with the dead body towards hospital and that was 11:00 am. Though in the report the time of occurrence is mentioned as 11:30 am but as per version of PW-3 they started travelling towards hospital at 11:00 am and that 40 minutes before that he received information about the occurrence which means that the occurrence has been committed somewhere at about 10:20 am which has totally negated the version of the ocular account regarding the timing of occurrence.

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(8). The complainant in his evidence deposed that the accused facing trial has made indiscriminate firing upon them and that at the time of firing he took shelter behind an embankment near the house of Musa Khan but further admitted that he has not shown the said embankment to the IO. Also, when the version of the complainant is placed in juxtaposition with the site plan and medical account, then it reveals that as per site plan Ex. PB the complainant party and accused are facing each other with distance


of 12 to 15 paces whereas distance between the deceased, injured and complainant is shown two paces each. The indiscriminate firing with Kalashnikov from such a short range would oust the possibility of sparing anybody but surprisingly despite recovery of 10 empties of 7.62 bore from the spot neither any spent bullet was found on the spot nor any bullet mark on the nearby house of Musa Khan have been noticed by the IO. The PM report is showing that the deceased received a single fire shot on his left shoulder making exit on the right side of scapular and the direction of receipt of bullet from entry to exit is up to down which means that by the time of occurrence the deceased and assailant were not facing each other and that the assailant was at somewhat at higher position than the deceased. The complainant has mentioned in the initial report that after purchasing household articles from the Utman Khel market, they were on their way back to their home when the occurrence took place but however neither they produced the said household articles to the IO nor the IO recovered the same from the spot.



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As such, the ocular, circumstantial evidence of site plan and medical account are not in line with each other but rather contradicts in between. The statements of the ocular account coupled with the manner of reporting the incident as discussed above clearly shows that the ocular account was absent during the occurrence and they have not deposed regarding the occurrence in the mode and manner in which the same was alleged to have had been committed. The ocular account is having material contradictions, omissions in between their statements and their evidence is full of doubts and not worth reliance.

- (9). With regard to the report of the complainant, the SHO Muhammad Shafiq PW-8 deposed that he has recorded the report of the complainant with his own handwritings however when in evidence he was asked to rewrite some lines from the Murasila and the rewriting of the said SHO which is available at page 81 of the Judicial file is gone through, it reveals that there is a hell of difference between the said writings and the writings of the Murasila. No daily diary was

  
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produced regarding the departure and arrival of the said SHO to the PS on the day of occurrence to determine that in fact he has gone to the hospital and recorded the report by his own handwriting. The same is giving the meanings that he never gone to the hospital and that the report was taken by some unknown official at some other place but not at hospital and the said unknown official was never produced for evidence. Thus, the very reporting of the matter is mysterious, dubious and not supporting the ocular account with regard to the mode and manner of the occurrence.

- (10). With regard to the spot recoveries of blood-stained stone, 10 empties of 7.62 bore and the blood-stained garments of the deceased and injured when confronted with reports of the FSL, then it reveals that with regard to the empties it was reported that the same have been fired with the single 7.62 bore weapon but however the same is immaterial on account of no recovery of weapon of offence from the possession of accused facing trial. With regard to the report of FSL regarding blood available on



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recovered stone from the spot and blood-stained garments of the deceased and injured, it was never reported that the blood available on the same is of the same group. Moreover, with regard to the said recoveries, neither register 19 nor the concerned Moharrir was produced to determine its safe custody besides the same were sent to the FSL after 05 days of the occurrence and the reason of delay has not been explained. As such, the said piece of evidence is inconclusive, unreliable and not worth consideration.

  
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(11). With regard to the motive, the land dispute between the parties has been cited as the bone of contention in the initial report as well as in the evidence of the ocular account but however in the evidence of the complainant, Gul Muhammad PW-4 admitted in his cross examination that he has not produced any proof regrading land dispute to the local police and that he has only cited the same as motive for the occurrence. The injured/witness, Muhammad Khalid also deposed with regard to the motive that he is not in possession of any proof regarding the motive of land dispute otherwise he

would have presented the same to the IO. He deposed further that he has not even specified the said place before the local police as to where the said lands are situated. The motive is always a double-edged weapon and can injured either of the parties. The motive for land dispute was alleged by the complainant party but in response the accused taken the plea/motive that he works in Arab countries for years and have got sound financial background which the reason for which the complainant party has charged him for the occurrence. However, the burden to prove the motive is upon the complainant but he alongwith the ocular account failed to provide any proof as to when, where the last altercation, fight or any exchange of words or any jirga or settlement held with regard to the disputed lands resulting in the present occurrence. It is not appealing to a prudent mind that complainant citing the land dispute as motive for the occurrence but failed even to specify the same to the IO. When there is no motive, how the court would believe that for nothing the accused facing trial has taken the life of an innocent person



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besides injuring the other. Thus, the motive alleged failed to establish.

(12). The deliberate and unexplained delay in nominating the accused facing trial for the occurrence, the delay proved to be the consequence of consultation and deliberation, absence of independent witnesses, absence of pointation, confession or recovery of crime weapon from the possession of accused facing trial, no past criminal history of accused facing trial, contradictions in the version of the complainant and the eyewitness, failure to prove the motive would denote that the occurrence has not taken place in the mode and manner as alleged by the complainant in the initial report and evidence. The occurrence is unwitnessed on the part of complainant party who was proved not present at the site of occurrence at the relevant time otherwise they would have narrated the occurrence in the mode and manner in which it was alleged to have been committed.

(13). In a criminal trial, the prosecution has to prove beyond any shadow of doubt their version connected



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with facts and material available on the record like a chain and the break-up of a single chain means cropping up of doubts and thereby providing exist to the accused nominated for such offence and when the break-ups are too much, the exists and doubts in the same number would follow. In the present case after detailed discussion above, it is held that sufficient dents and doubts are attracted to the case of complainant thereby creating doubts and providing safe exists to the accused facing trial. The prosecution failed to martial their troops in a right way for conclusion of trial in their favour. 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, Said Alam, he is acquitted of the charges levelled against him through the FIR in question. Accused is in custody, he be released forthwith, if not required in any other case. Proper release/acquittal warrant be



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prepared and send to the sub-jail, Orakzai. Case property be disposed of in accordance with law but after the expiry of period provided for appeal/revision. Copy of judgement be issued to the prosecution, complainant and accused free of cost.

(14). File be consigned to Session Record Room after its completion and compilation.

**Announced**  
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**CERTIFICATE**

Certified that this judgment consists of twenty-two (22) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 06.02.2021



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