

183

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

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

SESSION CASE NO. : 32/2 OF 2021
DATE OF INSTITUTION : 20.08.2021
DATE OF DECISION : 19.04.2022

STATE THROUGH RIAZ ALI S/O SUNJAF ALI, AGED ABOUT 42 YEARS, R/O CASTE SEPOYE, TAPA META KHAN KHEL, KHWARA PO KHADIZAI PALOSAYI, TEHSIL LOWER DISTRICT ORAKZAI

------(Complainant)

VS

1. AQIB KHAN S/O GUL NAWAZ, AGED ABOUT 21 YEARS, R/O LAL MELA, MUHAMMAD ZAI, KOHAT
2. MUHAMMAD SAJID S/O NASEER KHAN, AGED ABOUT 21 YEARS, R/O YEARS, R/O LAL MELA, MUHAMMAD ZAI, DISTRICT KOHAT
3. MUHAMMAD RAZA HUSSAIN S/O SYED MUHAMMAD DEEN SHAH AGED ABOUT 45 YEARS, R/O TRIBE SIPOYE, SUB TRIBE BABA NAWASI, KHWARRA, DISTRICT ORAKZAI
4. SYED AMIR HUSSAIN ALIAS AMRIL HUSSAIN S/O SYED MUHAMMAD KAZIM ABOUT 53 YEARS, R/O TRIBE SIPOYE, SUB TRIBE METHA KHAN, KHWARRA, DISTRICT ORAKZAI

------(Accused Facing Trial)

Present: Umar Niaz, District Public Prosecutor.

: Syed Muzahir Hussain Advocate for complainant.

: Amad Azam Advocate for accused Syed Amir Hussain alias Amril Hussain and Syed Muhammad Raza Hussain

: Imtiaz Ul Haq Shinwari Advocate for accused Muhammad Sajid and Aqib

FIR No. 01
U/S: 302/34 PPC

Dated: 20.03.2021
Police Station: Kurez Boya

JUDGEMENT
19.04.2022

The accused named above faced trial for the offence u/s 302/34 PPC vide FIR no. 01, dated 20.03.2021 of Police Station Kurez Boya.

- (2). The case of the prosecution as per contents of Murasila Ex. PA/1 based FIR Ex. PA is; that on 20.03.2020 at 05:25 at DHQ hospital Mishti Mela, the

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
19/04/22

184

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

complainant, Riaz Ali/PW-1 made a report to the local police to the fact that on 19.03.2021 at morning time his brother Shah Nawaz and his cousin Gul Abbas went to nearby mountain for grazing cattle, but they did not return till evening. The complainant went to the mountain to inquire about his brother and cousin where he found both of them murdered. The complainant alongwith co-villagers brought down the dead bodies and shifted to Mishti Mela hospital where he reported the matter to police. The complainant/PW-1 charged unknown accused for the commission of offence. The report of the complainant was verified by Parvez Ali by putting his thumb impression over the same. The Murasila Ex. PA/1 was drafted by Muhammad Riaz SI/PW-8 which was sent to the PS through constable Syed Muhammad Badshah, on the basis of which FIR Ex. PA was drafted by PW-3 Ishtiaq Hassan OII. The injury sheets of deceased Gul Abbas and Shah Nawaz Ex. PW 8/1 and Ex. PW 8/2 respectively while their inquest reports Ex. PW 8/3 and Ex. PW 8/4 respectively were drafted by PW-8/Muhammad Riaz SI and forwarded both the deceased to the doctor for post-mortem examination, upon which PW-5/Dr. Muhammad Riaz, the Medical Officer, conducted autopsy on the dead bodies of the deceased vide his reports Ex. PM and Ex. PM/1.

Shaukat Ahmad Khan
District & Sessions Judge
Qazal at Baber Mela
19/03/21

155

(3). After registration of FIR, initially it was handed over to IO/PW-11, Minhaz Hussain SI for investigation. Accordingly, after receipt of FIR, PW-11 reached the spot, prepared the site plan Ex. PW 11/1 on pointation of the complainant and eyewitnesses, Ijad Ali and PW-2/Ibrar Hussain, who shown themselves present with both the deceased in the company of two unknown accused, took tea with them and left the spot and after sometime they heard reports of fire shots at which they looked towards the spot and saw both the unknown persons leaving the spot. The IO took into possession blood-stained earth from the places of both the deceased and sealed the same into parcel no. 1 & parcel no. 2, took into possession 01 empty shell of 30-bore from Point A and 03 empty shells of 30-bore from Point B and sealed the same into parcel no. 3 by affixing monogram of 'IH' on all the parcels vide recovery memo Ex. PC. The IO/PW-11 took into possession blood-stained garments of both the deceased vide recovery memo Ex. PC/1. The IO/PW-11 prepared lists of legal heirs of both the deceased, on 25.03.2021 he produced the complainant and Yaqoot Ali before the court and got recorded their statements u/s 164 CrPC wherein they charged the accused Aqib and Sajid for murder of Shah Nawaz and Gul Abbas having hired by co-accused Syed Raza

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Meia

19/03/21

156

Hussain and Syed Amir Hussain alias Amril Hussain. The IO applied for warrants 204 CrPC and proclamation notice u/s 87 CrPC against accused Aqib Khan besides being placed on file FSL reports of blood-stained earth and crime empties which are Ex. PK and Ex. PK/1 respectively.

After arrest of the accused Aqib Khan, he made pointation of the spot of occurrence vide pointation memo Ex. PW 10/10 and the IO made addition in the site plan with red ink. The IO/PW-10 recorded statements of marginal witnesses, conducted identification parade of the accused Aqib Khan and Sajid Khan through Ijad Ali and PW-2/Ibrar Hussain at Central Jail Kohat before the Judicial Magistrate, Orakzai/PW-4. After completion of investigation, he handed over the case file to SHO for submission of complete challan.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
19/03/21 (4)

Upon receipt of case file for the purpose of trial, the accused were summoned, copies of the record were provided to them u/s 265-C Cr.P.C and formal charge was framed against them to which they pleaded not guilty and claimed trial. The prosecution examined as many as 11 witnesses. The gist of the evidence of prosecution is as follow;

- I. Complainant, Riaz Ali is PW-1. He repeated the story of Murasila Ex. PA/1. He also

157

verified his statement recorded u/s 164 Cr.P.C Ex. PW 1/1 wherein he has charged the accused for the commission of offence. He also deposed that he was informed by eyewitnesses Ibrar Hussain and Ijad Ali who identified the accused during identification parade at Central Jail Kohat.

II. Ibrar Hussain appeared in the witness box as PW-2. He stated that he is the eyewitness of the occurrence, that on the day of occurrence he alongwith PW Ijad Ali had gone to the nearby hill where they met Gul Abbas and Shah Nawaz who were accompanied by Sajid Khan and Aqib Khan (not known to them at that time) duly armed where they took tea with them and left the spot. After some time, they heard reports of fire shots upon which they looked down towards the spot and saw Sajid Khan and Aqib Khan duly armed running from the spot. He further stated that he informed the complainant about the occurrence who alongwith co-villagers came there and took the dead bodies of both the deceased. He also deposed that he has identified the accused

Shaukat Ali Khan
District & Sessions Judge,
Orakzai at Baber Mela
19/02/21

158

Sajid Khan and Aqib Khan during identification parade at Central Jail Kohat.

III. Ishtiaq Hassan OII is PW-3. He stated that he has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA, arrested the accused Syed Amir Hussain and Syed Raza Hussain vide joint card of arrest Ex. PW 3/1, arrested the accused Muhammad Sajid vide card of arrest Ex. PW 3/2, submitted complete challan against the arrested and absconding accused Ex. PW 3/3 and submitted supplementary challan against accused Aqib Khan Ex. PW 3/4.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
19/04/22

IV. Mr. Rehmat Ullah, CJ/JM-I, Orakzai appeared in the witness box as PW-4. He has conducted identification parade of accused Aqib Khan and Sajid Khan through identifiers Ibrar Hussain/PW-2 and Ijad Ali on 03.06.2021. He has drafted his report which consists of 03 pages, Ex. PW 4/1.

V. Dr. Muhammad Riaz, MO, DHQ Mishti Mela is PW-5. He has conducted post-mortem examination of both the deceased vide his reports Ex. PM and Ex. PM/1.

159

VI. Constable Libab Ali appeared in the witness box as PW-6. He has received the case property in parcels no. 1 to 5 from the IO Minhaz Hussain and kept the same in mal khana of the PS. He further stated that on 26.03.2021 he has handed over the above-mentioned parcels to the IO for dispatching the same to the FSL.

VII. Head Constable Ibad Ul Hassan is PW-7. On 26.03.2021 he has taken the case property in parcels no. 1 to 5 to the FSL and handed it over to the official of FSL and obtained its receipt.

VIII. Muhammad Riaz SI is PW-8. He has drafted the Murasila Ex. PA/1. He also stated that he has prepared injury sheets Ex. PW 8/1 & Ex. PW 8/2 and inquest reports Ex. PW 8/3 & Ex. PW 8/4 of both the deceased and handed over the same to doctor through constable Muqadar Ali.

IX. Parvez Ali is PW-9 who has verified the report of complainant by putting his thumb impression over it and has also identified the dead bodies of deceased Gul Abbas and Shah Nawaz before the local police and doctor. He

Shaukat Ahmad Khan
District & Sessions Judge,
Faisalabad

160

stated that the inquest reports correctly bears his thumb impressions.

X. Hashim Khan SI appeared in the witness box as PW-10. He stated that on 20.03.2021 he accompanied the IO, Minhaz Hussain to the spot who took into possession blood-stained earth from the places of both the deceased and 04 empty shells of 30-bore from Points A & B. He further stated that he has partially investigated the case i.e., arrested the accused Aqib Khan, submitted application for transfer of accused vide application Ex. PW 10/1, prepared card of arrest of accused Aqib Khan Ex. PW 10/7, drafted application Ex. PW 10/8 for one-day transit custody of accused, obtained police custody of accused vide his application Ex. PW 10/9, prepared pointation memo Ex. PW 10/10, made addition in site plan, carried out identification parade of accused at Central Jail Kohat and submitted case file to SHO for its onwards submission.

Shaukat Ahmad Khan
District & Sessions Judge,
Cokezai of Bahawalpur
19/04/21

XI. Minhaz Hussain SI is PW-11. Partial investigation was conducted by him. He stated that he prepared site plan Ex. PW 11/1, took into possession blood-stained earth from the

161

places of both the deceased alongwith empty shells & sealed the same into parcels no. 1 to 3 vide recovery memo Ex. PC, took into possession blood-stained garments of both the deceased vide recovery memo Ex. PC/1 & sealed the same into parcels no. 4 to 5, prepared list of LRs of both the deceased Ex. PW 11/2 and Ex. PW 11/3, prepared parvana Ex. PW 11/4 for correction in the name of accused, produced the complainant Riaz Ali and Yaqoot Ali before Judicial Magistrate for recording their statements u/s 164 CrPC vide his application Ex. PW 11/5, produced the accused before Judicial Magistrate, recorded statements of witnesses and accused, submitted application Ex. PW 11/10 for proceedings against the absconding accused and placed on file FSL reports of blood-stained earth and crime empties which are Ex. PK and Ex. PK/1.

Shahid Ahmad Khan
District & Sessions Judge,
Crakani at Baler Mela
9/04/22

- (5). After closure of evidence of the prosecution, statements of the accused recorded u/s 342 Cr.P.C but they neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of the learned DPP for the State assisted by counsel for the

162

complainant and counsels for the accused facing trial heard and case file perused.

- (6). Learned DDP for the state submitted that though the accused facing trial are not nominated in the report; however, the investigation officer has recorded the statements of eyewitnesses Ijad Ali and Ibrar Hussain on the same day who have seen the accused Aqib and Sajid Khan in the company of both the deceased Shah Nawaz and Gul Abbas, both the eyewitness have made pointation of the spot of occurrence to the IO, the recovery of blood-stained earth from the places of the deceased and recovery of empties from the spot of occurrence on one hand confirm the venue of occurrence while on other hand it render support to the case of the prosecution, that after the arrest of accused Sajid and Aqib both the eyewitnesses have duly identified the accused at Central Jail Kohat during identification parade conducted by Judicial Magistrate Orakzai, that the medico-legal evidence brought on file also supports the case of prosecution, that the prosecution produced as many as 11 witnesses including the complainant, one of the eyewitness, the learned Judicial Magistrate Orakzai, the concerned doctor, that all the PWs have supported the contention of prosecution they have been lengthy cross-examined but nothing contradictory could be extract from the mouth of

Sheukat Ahmed Khan
District & Sessions Judge,
Orakzai at Buzdar Wala
19/03/21

163

any of the witness and that the prosecution has proved its case beyond the shadow of doubt.

(7). On the other hand learned counsels for defence submitted that initially the report has been made to the police against unknown accused and none of the accused facing trial was nominated therein, that the occurrence is unseen and eyewitness, that the so for eyewitnesses of the occurrence are the close relatives of the complainant, that neither they were present on the spot nor they have seen the occurrence as alleged by them, that the occurrence has not taken place in the mode and manner as alleged in the report, that the accused Aqib Khan and Sajid were shown to both the alleged eyewitnesses of the occurrence prior to the identification parade conducted in the Jail, that the identification parade has not been conducted in accordance with the rules, that there is no ocular or circumstantial evidence available on file to connect the accused facing trial with commission of offence and that the prosecution has badly failed to bring home the charge against the accused facing trial.

Shaukat Ahsan Khan
District & Sessions Judge,
Cantonment at Bahawalpur

(8). After having heard the argument and after having gone through the record with the assistance of learned DPP and learned counsels for defence, it is observed that the case of the prosecution is, that on 19-03-2021 Shah Nawaz and Gul Ayaz had gone to the nearby hill for

164

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya


grazing their cattle and when they did not return their house till evening time, the complainant Riaz Ali, the PW-1 went to the hill for tracing the whereabouts of Shah Nawaz and Gul Abbas where he found both Shah Nawaz and Gul Abbas murdered. The complainant Riaz Ali alongwith co-villagers took the dead bodies to the DHQ Hospital Mishti Mela where on 20-03-2021 at 05:25 hours he made a report to the police and charged unknown accused for commission of offense. The report of PW-1 complainant Riaz Ali was scribed by PW-8 Muhammad Riaz SI investigation in the form of Murasila Ex. PA/1. The report was thumb impressed by PW-1, the complainant and verified by PW-9 Parvez Ali. The injury sheets of both the deceased Gul Abbas and Shah Nawaz and inquest reports of both the deceased were prepared by PW-8 as Ex. PW 8/1 to PW 8/4 and forwarded the dead bodies to the doctor for PM examination under the escort of constable Muqadar Ali while the Murasila was sent to the PS through constable Syed Muhammad Badshah for registration of FIR where PW-3 registered the FIR Ex. PA on the basis of Murasila. Copy of the FIR was handed over to Minhaz Hussain SI, PW-11 for investigation who visited the spot where he prepared the site plan on the pointation of complainant and eyewitnesses Ijad Ali and PW-2/Ibrar Hussain who shown themselves present with

Shankar Ahmad Khan
District & Sessions Judge
District: Kurez Boya
20/03/21

165

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

both the deceased in the company of two unknown accused, took tea with them and left the spot and after sometime they heard report of fire shots at which they looked towards the spot and saw both the unknown persons leaving the spot. During spot inspection the IO recovered blood-stained earth from the places of deceased and 04 empties of 30-bore pistols from the places of accused vide recovery memo Ex. PC. The IO took into possession the blood-stained clothes of deceased sent by the doctor vide recovery memo Ex PC/1. The blood-stained earth alongwith blood-stained clothes and empties recovered from the spot were sent to FSL, reports of which Ex. PK and Ex. PK/1 were received and place on file by the IO. PW-5, Dr. Muhammad Riaz conducted PM examination of the deceased Gul Abbas and Shah Nawaz


Shauket Ali
District & Sessions Judge,
Orakzai at Peshawar
19/03/21

vide PM report Ex. PM and Ex. PM/1. On 25-03-2021 the complainant Riaz Ali and Yaqoot Ali recorded their statements u/s 164 Cr.P.C wherein they charged accused Aqib Khan and Sajid Khan for committing murder of the deceased by taking money from the accused Syed Muhammad Raza and Syed Amir Hussain alias Amril Hussain. Motive for the commission of offense was also told by both the complainant and Yaqoot Ali as blood feud enmity between the complainant and accused Syed Muhammad Raza and Syed Amril Hussain. After arrest of

166

the accused Aqib Khan and Sajid Khan they were identified by eyewitnesses Ibrar Hussain/PW-2 and Ijad Ali during identification parade in Central Jail Kohat. After completion of investigation challan was submitted for trial.

On the other hand the defence objected to the aforementioned story of the prosecution on the grounds, that the occurrence has not been reported to the police in the mode and manner as detailed on case file, that the occurrence is unseen and unwitnessed and both the alleged eyewitnesses are close relatives of the complainant party, that they were neither present on the spot nor they have seen the occurrence, that the complainant has not charged the accused facing trial for the commission of offence in the report rather they have been charged after

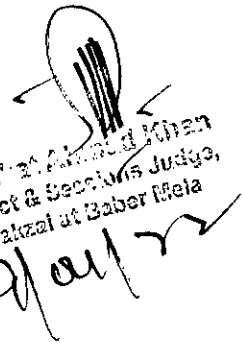
19/04/21

about six days of the occurrence in his statement recorded u/s 164 CrPC on the basis of his information and satisfaction but the source of information has not been disclosed by him, that the accused Aqib and Sajid, after their arrest were shown to the alleged eyewitnesses and the identification of both the accused has not been conducted in accordance with rules and that there is no ocular or circumstances evidence available on file against the accused facing trial.

167

In light of the aforementioned diverse contention of the prosecution and that of defence, following are the points for the determination of the charged against the accused facing trial;

- I. Whether the occurrence has taken place in the mode and manner as reported to the police in the Murasila based FIR Ex. PA?
- II. Whether the eyewitnesses Ibrar Hussain and Ijad Ali were present with the deceased prior to the occurrence and whether they have seen the accused Sajid and Aqib in the company of deceased?
- III. Whether they have seen the occurrence with their own eyes as alleged by them?
- IV. Whether the alleged eyewitnesses have identified the accused Aqib and Sajid during identification parade at Central Jail Kohat.
- V. Whether the circumstantial evidence collected by the IO from the scene of the occurrence connect the accused facing trial with commission of offence?
- VI. Whether the accused Muhammad Raza Hassan and Syed Amril Hussain have paid money to the accused Aqib Khan and


Syed Amril Hussain
District & Sessions Judge,
Orakzai at Baber Mela
19/03/21

168

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

Muhammad Sajid for the murder of deceased
Gul Abbas and Shah Nawaz?

VII. Whether the alleged motive is proved by the
prosecution?

With respect to the mode and manner of the occurrence and its report to the police, the case of the prosecution is, that on 20.03.2020 at 05:25 at DHQ hospital Mishti Mela, the complainant, Riaz Ali/PW-1 made a report to the local police to the fact that on 19.03.2021 at morning time his brother Shah Nawaz and his cousin Gul Abbas went to nearby mountain for grazing cattle, but they did not return till evening. The complainant went to the mountain to inquire about his brother and cousin where he found both of them murdered. The complainant alongwith co-villagers brought down the dead bodies and shifted to Mishti Mela hospital where he reported the matter to police. The complainant/PW-1 charged unknown accused for the commission of offence. The report of the complainant was verified by Parvez Ali by putting his thumb impression over the same. The Murasila Ex. PA/1 was drafted by Muhammad Riaz SI/PW-8 which was sent to the PS through constable Syed Muhammad Badshah, on the basis of which FIR Ex. PA was drafted by PW-3 Ishtiaq Hassan OII. The injury sheets of deceased Gul Abbas and Shah

Shaukat Ahmad Khan
District & Sessions Judge,
Faisalabad
19/03/21

(189)

STATE VS MUHAMMAD SAJJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

Nawaz Ex. PW 8/1 and Ex. PW 8/2 respectively while their inquest reports Ex. PW 8/3 and Ex. PW 8/4 respectively were drafted by PW-8/Muhammad Riaz SI and forwarded both the deceased to the doctor for post-mortem examination, upon which PW-5/Dr. Muhammad Riaz, the Medical Officer, conducted autopsy on the dead bodies of the deceased vide his reports Ex. PM and Ex. PM/1.

The prosecution in order to prove its aforementioned version, produced the complainant as PW-1, Muhammad Raza SI investigation who has scribed the report as PW-8 while Dr. Muhammad Riaz who has conducted autopsy on the dead bodies has been produced before the court as PW-5. The complainant in his statement as PW-1 has reiterated almost the same story as narrated in the FIR, the scribe of the report and the doctor as PW-5 have almost narrated the facts in line with story of the prosecution. As per aforementioned story of prosecution as detailed in the form of Murasila Ex. PA/1, the deceased Shah Nawaz and Gul Abbas when did not return till evening, the complainant went to nearby hill for tracing out the whereabouts of them, where he found both Shah Nawaz and Gul Abbas murdered by some unknown accused; however, in his court statement as PW-1 he has told a different story i.e., that he was informed by Ibrar


Shaukat Ahmad Khan
District & Sessions Judge,
District of Bahawalpur

19/04/21

170

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

Hussain and Ijad Ali about the murder of Shah Nawaz and Gul Abbas who had gone for grazing cattle in the nearby hill. On receiving this information, he alongwith other co-villagers went over there and shifted the dead bodies to DHQ Hospital Mishti Mela where he reported the matter to the police. The complainant in his report Ex. PA/1 has neither disclosed the factum of the receipt of information of the murder of the deceased nor he has disclosed the names of informers Ijad Ali and Ibrar Hussain. Similarly, as per contents of Murasila Ex. PA/1 and court statement of the complainant the deceased after shifting from the spot of occurrence were taken to DHQ Hospital Mishti Mela where PW-8 Muhammad Riaz SI being posted over there scribed the report of complainant in the form of Murasila Ex. PA/1; however, when the complainant was cross examined in this respect, he stated that;


Shaukat Ahmad Khan
District & Sessions Judge,
Court at Balher Mela
19/03/21

"The dead bodies were brought down from the hill through a cot (charpayi). Firstly, the dead bodies were brought to our house where the police came. The report was made to the police in the house. Again, stated that the report as per Murasila was made by me to the police in the hospital. The dead bodies were brought to the Imam Bargah outside our house. Police accompanied us to the hospital."

171

He further stated regarding the report made by him to the police that;

"The report was not scribed in my presence, rather after scribing of the same it was bought to me and I put thumb impression over the same."

Regarding preparation of the injury sheets and inquest reports of the deceased, the story of the prosecution as per Murasila Ex. PA/1 is, that after scribing of the Murasila by PW-8, he prepared injury sheets and inquest reports of the deceased and forwarded the dead bodies to the doctor under the escort of constable Muqadar Ali for post-mortem examination. As per contents of Murasila Ex. PA/1, the time of the report is 05:25 am of 20.03.2021, whereafter the scribe of report must have consumed some time upon scribing of Murasila, the injury sheets and inquest reports of the deceased and thereafter PW-5, Dr. Muhammad Riaz would have conducted PM examination of Gul Abbas and thereafter PM examination of the dead body of Shah Nawaz but as against this the starting time of PM examination upon both the dead bodies as per PM reports Ex. PM and Ex. PM/1 is 05:24 am which suggests that the PM examinations upon the dead bodies have been conducted prior to the report. Similarly, on the other hand if the PM examination upon the dead body of Gul Abbas has been started on 05:24 am

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Echer Mela

19/04/21

172

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

then the starting time of PM examination upon the dead body of Shah Nawaz must be some time after 05:24 am, but as against the natural course of things, the starting time of PM examination of both the dead bodies is shown as 05:24 am. The story regarding the scribing of injury sheets and inquest reports of the deceased by PW-8 and then forwarding of the dead bodies to the doctor for PM examination also seems not happened in the sequence as reported by the police, for, as per PM examination report of Gul Abbas Ex. PM cherry marks are shown over the entry wounds below the right eye and the injury sheet allegedly prepared by PW-8 also shows a query on behalf of the local police regarding presence of the cherry marks but as the PM report of deceased Shah Nawaz Ex. PM/1 does not show any cherry marks; therefore, no corresponding question regarding the cherry marks is shown in the injury sheet of deceased Shah Nawaz which puts strength to the allegation of defence that first the PM reports have been drafted and thereafter the injury sheets have been drafted in the line of PM reports. Had the case been otherwise the injury sheets of both the deceased would have been shown a question on behalf of police regarding the cherry marks?

Sinayat Ahmad Khan
District & Sessions Judge
Orkani at Bajer Mistra

19/04/21

In view of what is discussed above, it is held that the matter has not been reported to the police in the mode

173

and manner as detailed in the report Ex. PA/1. Similarly, the other proceedings regarding the autopsy of dead bodies of deceased have also not been conducted in the mode and manner as shown by the prosecution.

With respect to the presence of alleged eyewitnesses Ijad Ali and PW-2 Ibrar Husain on the spot, the story of the prosecution as per court statement of Ibrar Hussain and that of complainant as PW-1, is, that Ijad Ali and PW-2 Ibrar Hussain on the day of occurrence had gone to the mountain in connection of hunting where they met the deceased Shah Nawaz and Gul Abbas. The accused Aqib and Sajid were also present with the deceased. They took tea together and Ijad Ali and PW-2 Ibrar Hussain went for hunting. The accused Aqib was armed with Kalashnikov while accused Sajid was in possession of pistol. The alleged eyewitnesses also inquired from the accused Sajid and Aqib regarding their presence on the spot who told them that they were waiting for delivery of ammunition. After taking tea Ijad Ali and PW-2 Ibrar Hussain at 02:30 pm went ahead over the mountain and after an hour they heard the report of fire shots on which they look down towards the spot of occurrence and saw the accused Sajid and Aqib with Kalashnikov running from the spot. Ijad Ali and PW-2 Ibrar Hussain informed the complainant Riaz Ali at about

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

19/04/21

174

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

05:00 pm. The complainant alongwith co-villagers came on the spot and the dead bodies were taken to the hospital. Both the witnesses also made pointation of the spot of occurrence to the police and their statements were also recorded on 20.03.2021 during night time on the spot. Similarly, as per court statement of complainant as PW-1, on 19.03.2021 he was informed by Ijad Ali and PW-2 Ibrar Hussain regarding the murder of deceased Shah Nawaz and Gul Abbas at which he alongwith other co-villager went to the spot of occurrence and brought down the dead bodies and shifted to DHQ Hospital where he reported the matter to police.

However, keeping the court statement of complainant as PW-1 in juxtaposition to that of his report made in form of Murasila Ex. PA/1, both are contradictory to each other i.e., as discussed earlier as per Murasila Ex. PA/1 when the deceased did not return till evening, he went to the hill in search of them and found their dead bodies over there but as per his court statement, he was informed by Ijad Ali and PW-2 Ibrar Hussain regarding the murder of Shah Nawaz and Gul Abbas. He has nowhere disclosed the factum of information received to him from the above-named alleged witnesses. Had the occurrence taken place in the mode as described by him in his court's statement as PW-1, he would have definitely

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

19/3/21

175

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

disclosed this fact to the scribe of the report. Similarly, the statement of complainant has been recorded u/s 164 Cr.P.C on 25.03.2021 wherein he has charged the accused facing trial for the commission of offence but even in that statement he has not disclosed the names of the alleged eyewitnesses of the occurrence rather he has charged the accused on the basis of information and satisfaction. Be that as it may, even if the story of the prosecution to the extent of presence of both the alleged eyewitnesses on the spot and passing of the information regarding the murder of Gul Abbas and Shah Nawaz to the complainant, is admitted as true, in that case too the accused Sajid and Aqib were not known to both the witnesses till they were identified by them during identification parade conducted on 03.06.2021, then how the complainant was able to know the names of those unknown persons whom were allegedly seen by the alleged witnesses on the spot.

Shaukat Ahmad Ishaq
District & Sessions Judge,
Orakzai District, Peshawar

In this respect when the complainant was cross examined and he was put a suggestion that whether the names of accused Sajid and Aqib were told to him by the police he did not deny the suggestion rather stated that;

"I do not remember that whether the names of accused Sajid and Aqib were disclosed to me by the police or otherwise."

176

In view of what is discussed above, the story of prosecution regarding the presence of alleged eyewitnesses on the spot is not coherent rather a false story to procure the presence of eyewitnesses of the occurrence, seems to have been woven by it.

With respect to identification of the accused Aqib and Sajid neither the complainant in his report has disclosed the names of those alleged eyewitnesses whom had seen the accused unknown to them nor this fact has been disclosed by him in his statement recorded u/s 164 Cr.P.C. Similarly, Ibrar Hussain, one of the alleged eyewitness has appeared in the court as PW-2, he has also not told anything about the features of the accused noted by him at the time when they were lastly seen in the company of deceased.

19/01/22
District & Sessions Judge,
Kohat

With respect to the question that whether the accused prior to the identification parade were shown to the alleged eyewitnesses or otherwise, the complainant as PW-1 when cross examined, he stated that;

"The accused Aqib and Sajid while removing to central Jail Kohat were not accompanied by me self-stated that my cousins had accompanied the accused"

It is pertinent to mention here that both the alleged eyewitnesses are the cousins of complainant.

177

Similarly, Ibrar Hussain, one of the alleged eyewitnesses/identifiers was cross examined in this respect he stated that;

"The accused Sajid and Aqib were seen by me on run at a distance of about 7/8 paces from the deceased. The accused were identified by me in the police station. Again, stated that they were identified by me in the prison, not in PS."

In view of the aforementioned statement of complainant and of the alleged eyewitness, it is not proved by the prosecution that the alleged accused Aqib and Sajid were not shown to the alleged identifiers prior to identification parade conducted in the Jail. Even the process of identification conducted in the jail is contradicted by Ibrar Hussain/PW-2 i.e., as per identification parade he and his co-witness Ijad have identified both the accused in jail, but in his cross examination as PW-2 Ibrar Hussain stated that;

"The accused Aqib was identified by me three times. The accused Sajid was not shown to me."

The co-identifier Ijad Ali, the alleged eyewitness has not been produced before the court.

The circumstantial evidence collected by the IO from the spot in the form of blood-stained earth from the places of the deceased and recovery of four empties of a

Shauket Ahmad Khan
District & Sessions Judge,
Orangi, District Jail, (177)

178

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

30-bore pistol, though prove the death of both Shah Nawaz and Gul Abbas as homicides but does not independently connect the accused facing trial with the commission of offence.

The allegation of the complainant regarding hiring of accused Sajid and Aqib by the co-accused Syed Raza Hussain and Syed Amril Hussain for murder of Shah Nawaz and Gul Abbas is based upon the inquiry and satisfaction of the complainant but he has not disclosed the source of his information or satisfaction. Similarly, not an iota of evidence in this respect has been brought on record.

The motive as alleged by the complainant in his statement recorded u/s 164 Cr.P.C is also not proved. The prosecution has failed to brought on record any evidence in this respect.

- (9). In view of what is discussed above, it is held that the occurrence is unseen and unwitnessed, the presence of the alleged eyewitnesses has not been proved on the spot, the circumstantial evidence does not connect the accused facing trial with the commission of offence, the hiring of accused Sajid and Aqib for murder of Gul Abbas and Shah Nawaz by the co-accused Syed Amril Hussain and Syed Raza Hussain and the alleged motive behind the occurrence is also not proved; therefore, the prosecution

Shaukat Ahmad Khan
District & Sessions Judge,
Orangi at Cyber City

179

STATE VS MUHAMMAD SAJID ETC.
FIR No. 01 Dated: 20.03.2021 U/S: 302/34 PPC
Police Station: Kurez Boya

failed to bring whom the charged against facing trial beyond shadow of doubt, Hence, the accused Muhammad Sajid, Aqib Khan, Syed Muhammad Raza Hussain and Syed Amir Hussain are acquitted of the charges levelled against them. Accused Muhammad Sajid and Aqib Khan are in custody. They be released forthwith, if not required in any other case while accused Syed Muhammad Raza Hussain and Syed Amir Hussain are on bail. Their bail bonds stand cancelled and their sureties are released of the liabilities of bail bonds. Case property be disposed of in accordance with law but after the expiry of period provided for appeal/revision. Consign.

Pronounced
19.04.2022





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

CERTIFICATE

Certified that this judgment consists of twenty-seven (27) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 19.04.2022


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