

*In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.*

BEFORE THE COURT OF  
ADDITIONAL SESSIONS JUDGE, ORAKZAI

Case No.8/2 of 2021

Date of institution: 12.06.2021

Date of decision: 28.06.2022

The State through Taj Wali son of Adil Baz Khan, r/o Qaum Feroz Khel,  
Tappa Qasim Khel, village Saam, Tehsil Lower, District Orakzai.

..... (Complainant)

...Versus...

Inam Gul son of Khial Wazir, r/o Qaum Feroz Khel, Tappa Qimat Khel,  
Mirbak, Tehsil Lower, District Orakzai.

..... (Accused facing Trial)

**Case FIR No.35, Dated 13.03.2021 u/s 302 of the Pakistan Penal Code,  
1860 read with Section 15 of KP Arms Act, 2013;  
registered at Police Station Kalaya, Orakzai.**

**JUDGMENT**

On 13<sup>th</sup> March of 2021, Muhammad Riaz SI received information that a dead body has been brought to Civil Hospital Mishti Mela. He along with other Police officials rushed to the Emergency Unit of Civil Hospital, Mishti Mela; where, the dead body of Bismillah son of Adil Baz (deceased hereinafter) was lying. Taj Wali (complainant hereinafter) being brother of deceased was present who reported that he along with his deceased brother were on visit to Feroz Khel Mela in connection of purchasing household groceries. His deceased brother was present inside the shop of the one Sher Ali while he (complainant) was available outside the shop. Meanwhile, Inaam Gul son of Khayal Wazir (accused herein), duly armed with pistol reached to the spot and opened fire at his brother due to which he got hit and died on the spot. The contents of Murasila have been based for lodging FIR bearing No.35 dated 13.03.2021; registered under Section 302 of the


**SAYED YAZAL WADOOD**  
A.D.C. District & Sessions Judge  
Orakzai at Hangu

Pakistan Penal Code, 1860 read with Section 15 of the KP Arms Act, 2013, in the Police Station Kalaya, Orakzai.

2. On conclusion of the investigation, complete challan was routed to the Court of Hon'ble the District & Sessions Judge, Orakzai which was entrusted to this Court for further proceedings. It was concluded on its face that reasonable grounds are existing to proceed with the trial of accused; therefore, accused was summoned through *Zamima Bay*. On appearance, he was supplied copies of statements and other documents prescribed under Section 265-C (1) of the Code of Criminal Procedure-1898. Charge against the accused was framed to which he pleaded not guilty and claimed trial.

3. Prosecution was directed to produce evidence. The prosecution, in order to prove its case against the accused, produced as many as ten (10) witnesses. Such evidence is reproduced below for ease of reference and determination of guilt or innocence of the accused:

4. Ain Ullah HC, of PS Kalaya Orakzai was examined as PW-1, who stated that, *during relevant days I was posted as Muharrir of the PS, Lower Kalaya. On 13-03-2021, in the instant case on receipt of Murasila sent by Muhammad Riaz SI through the hand of constable Maizullah, I incorporated its contents into FIR Ex.PA. After registration of FIR, I handed over the copy of the FIR along with the Murasila to the investigation staff. The SHO Abdul Janan brought the arrested accused Inam Gul to the PS. The SHO also handed over to me case property in sealed condition along with recovery memo, recovery sketch and accused. I locked the accused in the lockup of the PS and entered the case property in Register No.19 and kept the case property in the Malkhana for safe custody. My statement was recorded u/s 161 Cr.PC. On 15-03-2021, I had handed over the parcels to the IO for FSL. My statement was also recorded to this extent*

  
**SAYED NAZAL WADOOD**  
Addl. District & Sessions Judge  
Orakzai at Hangu

*u/s 161 Cr.PC. Today I have seen the relevant documents which are correct and correctly bear my signatures.*

*(Re-examination)... The parcel No.2, 3 and 5 were returned from the FSL which was handed over to me and I kept the same in the Malkhana of the PS for safe custody. To this extent my statement was recorded under section 161 Cr.PC. On 18-03-2021, I handed over the parcel No.2, 3 and 5 to the IO for FSL and to this extent my statement was also recorded under section 161 Cr.PC.*

5. PW-2 is the statement of Mehnaz Hussain Constable Police Station Kalaya, who deposed that, during relevant days I was posted at investigation staff of PS Kalaya Orakzai. I am the marginal witness to recovery memo Ex.PW2/1. Vide which IO took into possession blood stain piece of paper board (ghaty ka tukra) from the place of deceased and sealed the same in parcel No.1. Similarly, the IO also secured 03 empty of 30 bore near the place of accused and sealed the same in parcel No.2. 3/3 monogram in the name of SH were affixed on parcels. I along with the other marginal witness namely Raza Ali signed the recovery memo. Similarly, I am also the marginal witness to the recovery memo Ex.PW2/2. Vide which IO took into possession blood stained garments belonging to deceased Bismila which containing Shalwar kamiz of cream color, Banyan of black color having corresponding two cut marks the same into parcel No.4 and two spent bullet (sika goli) of 30 bore which was sealed into parcel No.5 brought by the constable Janat Gul from the DHQ Meshti Melo Orakzai which were sent by the doctor. I along with Constable Raza Ali also signed the recovery memo Ex.PW2/2. Similarly, I am the marginal witness of the pointation memo which is Ex.PW-2/3 vide which the accuse Inam Gul let the Police party to the spot and rightly pointed out the place

SAVED  
FAYZAL WADOOD  
District & Sessions Judge  
Addl: Orakzai at Hangu

of occurrence and also shown to the IO as well as his own point from he made firing on the deceased. I and Raza Ali signed the pointation memo prepared by the IO which was also thumb impress by the accused. I took the parcels to the FSL on 15.03.2021 which was handed over to me by IO and I submitted the same at FSL laboratory. The parcels NO. 2, 3 and 5 returned to me after some objection and parcels No. 01 and 04 were submitted I obtained the receipt. On my returned back to the PS, I handed over the road certificate to the IO. My statement was recorded by the IO to this extent. The application for FSL is Ex.PW2/4 and road certificate Ex.PW2/5. On 18.03.2021, IO handed over to me parcel No. 2, 3 and 05 along with application Ex.PW2/6 and road certificate. I went to the FSL laboratory and also obtained receipt. When I returned I hand over the receipt/road certificate to the IO which is Ex.PW2/7. My statement was recorded under Section 161 Cr.PC. Today I have seen all the relevant documents which is correct and correctly bearing my signature.

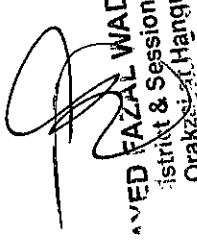
6. Statement of Dr. Nabeel Sheharyar Medical Officer Civil hospital Mishti Mela Orakzai, was recorded as PW-3, who Stated that, "on 13/03/2021 I have conducted post mortem examination of deceased namely Bismillah Khan s/o Adil Baz Khan aged about 42 years' r/o Feroz Khel, District Orakzai brought by police identified by one Juma Gul and Mir Wali. On examination of the dead body I found the following;

**External Appearance:**

There was no mark of the ligature.

Condition of subject stout emaciated, decomposed etc, clothing: Fresh dead body, blood stained clothes. A case of fire arm injury brought to DHQ MM for Post Mortem examination.

Wounds, bruises, position, size and nature:

  
NAVED FAZAL WADOOD  
District & Sessions Judge  
Orakzai, Harq

**Injuries Detail;**

- a. An entry fire arm wound on right eye about 1x1 cm and an exit wound on right temporal region about 6x6 cm.
- b. An entry wound on right side of chest medial to nipple about 1x1 cm and exist wound on right side of neck about 2x2 cm. (Bullet stuck which was removed).
- c. 3rd entry wound on left side of chest below nipple about 1x1 cm and exit wound on left side of abdomen 2x2 cm, 2 cm  
From midline just below costal margin.
- d. 4th entry wound of exterior aspect of right fore arm just above wrist joint and exit wound on posterior aspect of right fore arm about into 2x2 cm above wrist joint.

**Cranium and Spinal Cord:**

Scalp, skull, membrain, brain (injured)

Vertebra and spinal card (Healthy)

**Thorax:**

Walls. Pleurae, right lung, left lung, blood vessel damaged, pericardium and heart (injured)

**Abdomen:**

Walls, peritoneum, diaphragm, small intestine, large intestine and their contents (injured)

**Muscles, bones and joints:**

As per injury sheet.

**Remarks of the medical officer:**

In my opinion the deceased died due to injury to the brain, major vessels in the neck, right and left lung, left diaphragm, small and large intestine and their associated vessels due to fire arm. (There were no charring marks.)

**SAYED FAZAL WADOOD**  
Addl. District & Sessions Judge  
Orakzai at Hangu

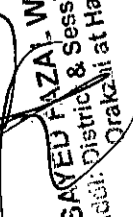
Probable time that elapse.....

- a) Between injury and death; immediate.
- b) Between death and Post Mortem; approximately 2 to 4 hours.

Today I have seen the PM report prepared by me consist of 06 sheets including the pictorial which is Ex.PM which correctly bears my signature. Similarly the injury sheet and inquest report also correctly bears my endorsement which are Ex.PM/1 and Ex.PM/2 respectively.

7. PW-4 is the statement of Muhammad Riaz SI presently posted at DHQ Hospital Mishti Mela, who deposed that, "on 13-3-2021 I was present at DHQ Hospital Misthti Mela. In emergency room of the Hospital the dead body of deceased Bismillah was lying. The brother of deceased namely Taj Wali reported the occurrence to me. I incorporated his report in shape of Murasila Ex.PA/1, which was read over to the complainant. Murasila was thumb impressed by the complainant as a token of its correctness. The report was also verified by one Mir Wali Khan son of Suleman Khan, who also thumb impressed the same. I have also prepared the injury sheet and inquest report of the deceased, which are Ex.PW-4/1 and 4/2 respectively. I handed over these documents to the constable Jannat Gul for Doctor. I sent the Murasila to the PS for registration of the case through the hand of Constable Maiz Ullah.

8. Statement of Malak Abdul Janan, SHO of Police Station Daboori, was recorded as PW-5, who stated that, "during relevant days I was posted as SHO PS Kalaya. On 13-03-2021, I have arrested the accused and recovered and took into possession one 30-bore pistol without number along with fixed magazine containing 03 rounds of 30 bore and sealed the same into parcel No. 3 Ex.P-1 and affixed 03 monograms in the name of MS vide recovery memo Ex.PW-5/1 in the presence of marginal witnesses

  
**SAYED FAZAL WADOOD**  
 Addl. District & Sessions Judge  
 Orakzai at Hangu

constable Junaid Ali and constable Shah Wali. I also issued the card of arrest of the accused Ex.PW-5/2 and also prepared recovery sketch Ex.PW-5/3. After completion of investigation I have also submitted complete challan of the accused Ex.PW-5/4. Today I have seen all the relevant documents which are correct and correctly bear my signatures.

9. Junaid Ali, constable Police Station, Kurez Orakzai was examined as PW-6, who deposed that, "during the relevant days, I was posted at PS Kalaya. I am the marginal witness of the recovery memo already Ex.PW-5/1 vide which SHO Malak Janan recovered and took into possession one 30-bore pistol without No. along with fixed magazine containing 3 rounds of 30-bore and sealed the same into parcel No.3 and also affixed 3 monograms in the name of MS at the time of arrest of the accused. I along with the other marginal witness namely Shah Wali signed the recovery memo on the spot. My statement was recorded under section 161 Cr.PC. Today I have seen the recovery memo which is correct and correctly bear my signature.

10. Statement of Shal Muhammad, Sub Inspector under Training at Training Center Kalaya, was recorded as PW-7, who stated that, "during the relevant days, I was posted at PS Kalaya. After registration of the instant case, I was entrusted with its investigation. On the same day I visited the spot and prepared the site plan on the pointation of the complainant which is Ex. PB with the help of torch light. During spot inspection, I took into possession blood-stained one piece of package paper ( کاغذ کے گتے کا ) and sealed the same into parcel no. 1 Ex. P2 from the place of deceased and also recovered and took into possession three empties of 30 bore from the place of accused, sealed the same into parcel no. 2 Ex. P3 after signing with sharp object. 3/3 monogram in the name of SH were

SAVED FAZAL-WADOOD  
Sessions Judge  
District & Sessions at Hangu  
Orakzai

affixed on each parcel while one monogram was put inside the parcels vide recovery memo already Ex. PW-2/1 in the presence of marginal witnesses. I went to the house of the deceased. I recorded the statement of the PWs. I took into possession the blood-stained garments of the deceased Bismillah containing one Qamees, Shalwar cream colour and Bunyan of black colour having corresponding cut marks and two spent bullets (سکہ گولی). I sealed the blood-stained garments into parcel no. 4 as Ex. P4 and spent bullets into parcel no. 5 as Ex. P5. 1/1 monogram in the name of SH were put inside the parcels while 3/3 monogram were affixed on each parcel vide recovery memo already Ex. 2/2 in the presence of the marginal witnesses. The accused was already arrested by the SHO. Card of arrest, recovery sketch, recovery memo, case property and accused was handed over to me. I recorded the statements of PWs U/S 161 CrPC. I added section 15AA and in this respect I issued addition memo which is Ex. PW-7/1. I cursorily interrogated the accused in the PS and produced the accused before the Ilaqa Magistrate for obtaining 3 days police custody vide my application Ex. PW-7/2, one day custody was granted. I interrogated the accused and he admitted his guilt before me and he led the police party to the spot of occurrence and rightly pointed out the spot of occurrence and in this respect I prepared the pointation memo in the presence of the marginal witnesses which is already Ex. PW-2/3, which was also thumb impressed by the accused. I also took the photographs of the proceeding which is Ex. PW-7/3 to Ex. PW-7/5. After expiry of the police custody, I produced the accused before the Ilaqa Magistrate for recording his confessional statement U/S 164/364 CrPC vide my application Ex. PW-7/6. Accused refused to confess before the court and was sent to the Judicial Lock-up. I sent the case property to the FSL vide my application already Ex. PW-2/4

SIYED FAZAL WADOOD  
 District & Sessions Judge  
 District Orakzai at Hangu



and Ex. PW-2/6 vide road certificates already Ex. PW-2/5 and Ex. PW-2/7 and received the FSL result as Ex. PZ and Ex. PZ/1. I have also prepared the legal heirs list of the deceased Ex. PW-7/7. I have annexed the DD regarding departure and arrival of SHO which is already available on file Ex. PW-7/8. I recorded the statements of PWs U/S161 CrPC. After completion of investigation, I handed over the case file to the SHO for onward submission of challan against the accused. All the documents prepared by me are correct and correctly bear my signatures.

11. Mir Wali Khan S/O Sulaiman Khan, Caste Feroz Khel, Sub caste Qasim Khel, Village Saam, District Orakzai was examined as PW-8, who deposed that, "on 13.03.2021 after the occurrence, I rushed to the spot of occurrence from where we shifted the dead body with the help of other people present from the spot to the Hospital. The complainant reported the occurrence to the local Police which was reduced into writing in shape of Murasila. I have also verified the report of the complainant Taj Wali. My thumb impression was obtained on the report. I have also identified the dead body of the deceased before the doctor and police. My thumb impression was obtained on the inquest report. My statement was recorded by the IO U/S 161 Cr.PC. Today I have seen the relevant documents which are correct and correctly bears my thumb impression.


12. Statement of Taj Wali S/O Adil Baz Khan Caste Feroz Khel, Sub caste Qasim Khel, Village Saam, District Orakzai, was recorded as PW-9, who stated that, "on 13.03.2021 I alongwith my brother Bismillah Khan (deceased) had gone to Feroz Khel Mela for the purpose of purchasing groceries etc. At about 1600 hours my brother was present inside the shop of Sher Ali Shopkeeper and I was present outside the shop. Meanwhile, the accused duly armed with pistol came to the spot and opened fire at my

**SAYED FAZAL WADOOD**  
 Addl: District & Sessions Judge  
 Orakzai at Hangu

brother Bismillah Khan due to which he got hit and died on the spot. The occurrence was also witnessed by one Jumma Gul S/O Door Shah Khan and Noor Khan S/O Muhammad Ameen. After the occurrence the accused decamped from the spot. We shifted the dead body with the help of other people present from the spot to the Hospital where I reported the occurrence to the local Police. My report was reduced into writing in shape of Murasila already Ex. PA/1 which was read over to me and I thumb impressed the same as a token of its correctness. My report was also verified by Mir Wali Khan who also thumb impressed the same. The IO prepared site plan on my pointation. Today I have seen my report which is correct and correctly bear my thumb impression. I am the eye witness of the occurrence. I charged the accused facing trial for the murder of my deceased brother.

13. Jumma Gul Caste Feroz Khel, Sub caste Qasim Khel, Village Saam, District Orakzai was examined as PW-10, who deposed that, "on 13.03.2021 at about 1600 hours, I was present at Feroz Khel Mela near the shop of one Sher Ali, meanwhile the accused Inam Gul S/O Khyal Wazir caste Feroz Khel entered into the shop and opened fire at Bismillah Khan through pistol, as a result of which, Bismillah Khan got hit and died on the spot. We shifted the dead body with the help of other people present from the spot to the Hospital where I identified the body of the deceased before the doctor and police. My thumb impression was obtained on the inquest report. I am the eye witness of the occurrence. My statement was recorded by the IO U/S 161 CrPC. I charged the accused for the commission of offense.

14. On closure of prosecution evidence, statement of accused was recorded under Section 342 of the Code of Criminal Procedure-1898;

  
**SAYED FAZAL WADOOD**  
 Addl: District & Sessions Judge  
 Orakzai at Hangu

wherein, accused professed innocence and did not opt to produce defence evidence or to be examined on oath.

15. Senior Public Prosecutor representing State argued that accused is directly charged in the contents of FIR; that too, with specific role of committing murder of deceased. There is no delay in reporting the incident and the FIR has promptly been lodged. Ocular evidence available on the file is sufficient to establish the guilt of accused. The circumstantial evidence in shape of recoveries, medico legal report and scientific evidence corroborates the ocular account of evidence. He added that the offence is heinous in nature which has been proved beyond doubt entailing conviction of the accused.

16. Asif Paracha Advocate representing the complainant endorsed the arguments of the Senior Public prosecutor and added that, blood stained cloths, direct evidence, post mortem report and other material available on file prove the case beyond shadow of doubt which may be culminated into conviction and sentencing of accused with capital punishment.


17. On the contrary, Mr. Khurshid Alam Advocate assisted by Mr. Hidayat Ullah Khan Afridi Advocate, both representing the accused contended that evidence available on the file is deficient and the story advanced by the prosecution is not appealable to prudent mind. It was added that eye witnesses of the occurrence are relatives of the deceased and no independent witnesses had testified the event. It was added that the evidence available on file is either irrelevant or contradictory. The motive has not been disclosed which renders the case useless and fit for honorable acquittal. The pistol allegedly recovered is recorded without number in investigation but was shown numbered in the Forensic Science Laboratory

**SAYED FAZL HADDOOD**  
Judge  
District & Sessions  
Orakzai (Hangu)

Report. It was time and again pressed that the shopkeeper has neither been shown in the site plan nor his statement was recorded. They jointly concluded that prosecution has not been able to prove the case and requested for acquittal of the accused.

18. The guilt or innocence of accused facing trial is being determined below on the basis of all types of evidence available on file that is duly assessed and appreciated in light of the professional assistance rendered by learned the prosecutor and counsel for accused.

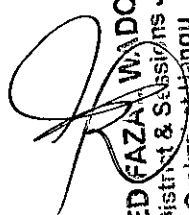
19. Motive is energetic source of mind which provides propelling force and gives impetus to perform any action or to do any act. It is the cause, manner and method of thoughts in the mind of a person for performing action which is hidden in the mind of accused. In present case, the complainant has not disclosed motive and has rightly been objected by learned counsel representing accused; but, absence of motive or non-setting of any motive cannot be detrimental to the case of prosecution case if on the basis of direct evidence the charge has been proved. In a case reported as 2007 SCMR 586, the Hon'ble Court settled the notion of law by stating that existence of motive/enmity has neither a substantive nor a direct evidence. It is not a corroborative piece of evidence either. It is only a circumstance, which may lead to the commission of offence. It is a starting point for committing a crime but under no circumstance it can be taken as evidence. In this legal background, not disclosing motive is the phenomena that can easily be ignored if other evidence is of sufficient degree of cogency. Besides, it is further observed that the motive is not being disclosed in all cases involving matter of honor in the Tribal District of

  
**SAYED FARAZ AHMAD**  
W. A. D. O. O. D.  
District & Sessions Judge  
Orakzai at Harigu

Orakzai; however, this observation is not case specific and articulated as general phenomena prevailing in the region.

20. The accused has directly been nominated by the complainant for Qatl-e-Amd of deceased in the first information report. According to the contents of case FIR as well as of the statement of complainant recorded as PW-9, the complainant has nominated only the accused facing trial for the commission of offence in the shape of murder/qatl-e-amd of his brother and no other person was charged for the crime; therefore, it is well evident that a single accused has been charged in instant case. Moreover, parties are also known to each other and hence, it can be observed that in the given circumstances there exist no possibility of substitution by the complainant party. It is also well settled principle that usually the substitution of an accused person who is actually involved in a crime is very rare phenomena; particularly, when a single accused has been charged. Furthermore, it is also not appealable to the mind of a prudent person that a person would be so foolish to let an actual culprit go uncharged by substituting an innocent person. Concluding the discussion, the accused being directly nominated in the contents of FIR as well as in the statement recorded under oath as PW-9 as a single accused excludes the chances of misidentification or substitution of accused.


21. Promptness in reporting the incident to police is another area which is required to be focused after discussing nomination, substitution and identification of accused; especially, where there is single accused. Under Section-154 of the Code of Criminal Procedure, 1898, it is the responsibility and obligation of the Police Officer to immediately record the statement of person reporting any incident but at the same time, it is also

  
**SAYED FAZAL WAJIDOOD**  
Accy: District & Sessions Judge  
Orakzai at Hangu

the responsibility of every citizen to immediately lodge the FIR for every cognizable offence so that the Law may be set into motion and timely action could be taken against the criminals. Promptness in reporting the matter is encouraged with the object to obtain first hand spontaneous information of the occurrence in order to exclude the possibility of fabrication of story or consultation and deliberation. The instant has promptly been reported which is followed by registration of FIR without any delay as the incident had taken place on 13<sup>th</sup> of March of 2021 at 1600 hours; reported on 1715 hours and FIR was lodged on 1800 hours of the same day; whereas, distance between the place of occurrence and the Police Station is 3 to 4 Kilometers.

22. The mode and manner in which crime is committed is the next area for determination. It is the case of prosecution that the Police party received information on 13<sup>th</sup> of March, 2021 regarding murder of deceased whose dead body is lying in the Emergency Unit of Hospital. The Local Police rushed towards Civil Hospital Mishti Mela. The complainant being brother of deceased, available in Hospital, has narrated the story reflected in Murasila scribed by Muhammad Riaz SI. Accused was charged for Qatl-e-Amd of deceased and two persons namely Juma Gul and Noor Khan were termed the eye witnesses of the occurrence.

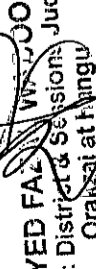
23. Oral evidence of direct source in the present case is Mir Wali examined as PW-8, Taj Wali examined as PW-9 and Juma Gul examined as PW-10. Mir wali Khan is independent witness is co-villager of the deceased has stated that he with the help of other people had shifted the dead body of deceased from the place of occurrence to the Hospital. He verified his endorsement on Murasila Ex.PA. He owned his statement recorded under Section 161 Cr.PC by the IO as well as his thumb

  
**SAYED FAZAL WADOOD**  
 Addl. District Sessions Judge  
 Orakzai at Hangu

111

impression on documents. The presence of witness or anything detrimental to the case of prosecution has not been subjected in the cross examination and thus his evidence is deemed confidence inspiring with sufficient degree of cogency; that too, with the seal of independent evidence. The complainant recorded his statement as PW-9. He being brother of deceased while accompanying him in purchase of groceries is natural witness of the incident as ocular evidence who remained well consistent with the other eye witnesses. He confirmed the contents of Murasila and his statement recorded during investigation. He verified the site plan Ex.PB as well. Juma Gul while deposing as PW-10, testified the story of FIR as true and correct and referred his statement recorded under Section 161 Cr.PC. He was cross examined to considerable length but the defense has failed to extract a minor discrepancy in it.

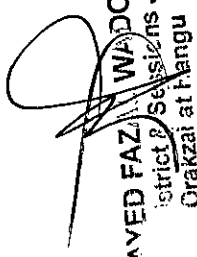
24. The ocular account of the occurrence as discussed under Paragraph No.23 is confidence inspiring, natural in presence, consistent and of high degree of cogency; however, objection has been raised that one of eye witnesses is brother and second witness is relative of deceased and thus two out of three eye witnesses are interested witnesses. The witness when his testimony is otherwise confidence inspiring, natural and corroborated cannot be discarded on mere ground of being relative of deceased. In case titled "Lal Mast vs the State", reported in NLR-2006 Criminal 435 [Peshawar], the Hon'ble Court has determined that close relationship of eye witness with deceased would be no ground to discard his evidence when he was natural witness of murder occurrence. Therefore, the objection of learned defense counsel is of no value; especially, when other independent ocular evidence is also available.

  
SAYED FAZL WAJID  
Addl: District & Sessions Judge  
Orakzai at Hangu

25. Circumstantial evidence of the incident when consulted reveals that there are different recoveries, statements, site plan, medico legal report and FSL reports etc. which are fully corroborating the ocular account of evidence.

26. Site plan Ex. PB establishes the place of occurrence on one hand and shows the presence of the accused at the spot on the other hand. Similarly, the eye witnesses had seen the occurrence from short distance shown in site plan. Their presence as was discussed earlier is natural. The spot recoveries have been specified therein as well. It is correctly objected by learned counsel for defense that the shopkeeper was one of the star witnesses and he was supposed to be the witness of the prosecution; but, the question is that whether prosecution is bound to produce all witnesses and that is it the quality or quantity of evidence that will be seen? The simple answer of this query is that the prosecution is duty bound to prove the case beyond reasonable doubt but cannot be dictated to produce or not to produce such and such evidence. In a case titled "Khan Ahmad Khan etc. vs State" reported in 2012 PCr.LJ 1662, it has been determined that the quality and not the quantity of the evidence has to be seen by the Court.

27. The pointation memo Ex.PW-2/3 has been prepared by the IO in the presence of marginal witnesses. The place of occurrence was duly identified by the accused and photographs thereof have been produced and Ex.PW-7/3 to Ex.PW-7/5. These photographs have not been objected in the statement of accused except on the score of no independent witnesses associated with. It means that his willingness in pointation and presence in photographs has not been denied.

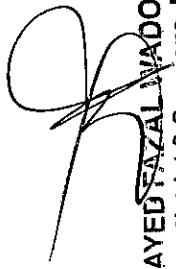
  
SAYED FAZL WAJOOD  
District & Sessions Judge  
Orakzai at Hangu



28. Blood-stained piece of cloth of deceased has been sealed in parcel no. 1 Ex. P1 from the place of deceased. The Investigation Officer recovered three empties of 30 bore and sealed the same into parcel No.2 Ex.P3. The garments containing Qamees Shalwar of green color and bunyan of black color having cut marks are sealed in parcel No. 4; whereas, spent bullets of 30 bore pistol have been sealed in parcel No.5. The pistol of 30 bore along with fixed magazine containing 03 rounds have been recovered from direct possession of the accused as Ex.P1. Recovery sketch has been prepared as Ex.PW-5/3. All the recovered materials have been sent to FSL vide documentation Ex.PW-2/4 to Ex.PW-2/7. The result of all such recoveries available on file is Ex.PZ and PZ-1 are positive and supported the version of prosecution against the accused. All these recoveries and positive reports of FSL corroborate the ocular account evidence.

29. Injury sheets and inquest reports of the deceased are available on file as Ex. PW-4/1 to Ex. PW-4/2 which speak about the un-natural death of the deceased. Dr. Nabeel Shehryar was examined as PW-3 who produced the Post-Mortem report of the deceased as Ex. PM. He testified the injury sheet and inquest report Ex. PM-1 and PM-2 as well. He categorically stated that, this is a case of firearm injury and cause of death was injury to the brain and major vessels in the neck. His report is in consonance with the injury sheet. The medical evidence is fully supporting the prosecution case.

30. Not only the case of prosecution has been supported by the trustworthy and confidence inspiring evidence of the oral account but even the medical evidence has also supported the complainant regarding time of occurrence, unnatural death of deceased, cause of death and other ancillary matters.

  
**SAYED FAZAL WADOOD**  
 District & Sessions Judge  
 Orakzai at Hangu

31. The direct nomination of accused with no chance of misidentification; promptly reporting the incident and lodging FIR; oral evidence of direct source as ocular account; recoveries of blood stained garments and weapon of offence with shell; connected circumstantial evidence; corroboration through post mortem reports; FSL reports and evidence in shape site plan, pointation memo, inquest report and injury sheet etc. have proved the mode and manner of the offence committed by the accused facing trial.

32. For what has been discussed above, the prosecution has been able to bring home charge against the accused facing trial beyond any shadow of doubts; that too, through cogent, concrete and tangible direct and circumstantial evidence that shall lead to conviction. It has been proved that the offences of murder of deceased Bismillah has been committed by accused on trial namely Inaam Gul. Resultantly, in case FIR bearing No. 35 dated 13-03-2021, registered under Section 302 of the Pakistan Penal Code, 1860 and Section 15 of the KP Arms Act, 2013 at Police Station Kalaya Orakzai, for the murder/Qatl-e-amad of deceased Bismillah son of Adil Baaz, the accused facing trial Inaam Gul son of Khayal Wazir, is hereby convicted and sentenced under Section 302 of the Pakistan Penal Code-1860 to life imprisonment (25 years) rigorous imprisonment as Tazir and the accused/convict shall also pay an amount of Rupees one Million (1,000,000) as compensation to the legal heirs of deceased within the meaning of Section-544(a) of the Code of Criminal Procedure-1898 and in default of payment of the same amount, he shall further undergo six months simple imprisonment while the amount shall be recovered as land revenue under the provision of West Pakistan Land Revenue Act-1967. The benefit of Section 382(b) of the Code of Criminal Procedure-1898 is also extended

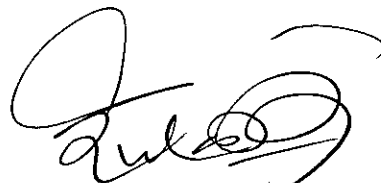
**SAYED FAZAL AHMED**  
Additional District & Sessions Judge  
Orakzai, Hangu

115

in favour of the convict. The accused facing trial is also convicted under Section 15-AA for imprisonment of 05 years and fine of Rs. 50,000. The convict/accused is already in custody; hence, he is being sent to Jail through conviction warrant. Attested copy of this Judgement be sent to District Public Prosecutor within the meaning of Section-373; whereas, attested copy of this Judgement be supplied to convict in term of Section-371 of the Code of Criminal Procedure-1898. All the punishments pertaining to imprisonment shall run concurrently. Case property be dealt with as per law after expiry of period of appeal/revision. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

**ANNOUNCED**

28.06.2022



**Sayed Fazal Wadood**  
Additional Sessions Judge Orakzai

**CERTIFICATE:**

Certified that this Judgment consists of nineteen (19) pages; each page has been read over and signed by me after making necessary corrections therein.



**Sayed Fazal Wadood**  
Additional Sessions Judge Orakzai