

128

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

BEFORE THE COURT OF  
ADDITIONAL SESSIONS JUDGE, ORAKZAI

Case No.4/2 of 2021

Date of institution: 19.01.2021

Date of decision: 01.10.2022

The State through Noor Muhammad son of Musafir Gul, resident of Qaum Rabia Khel, Tappa Behram Khel, village Jerab Samana, District Orakzai. .... (Complainant)

...Versus...


1. Muhammad Hussain son of Saleem Shah, resident of Qaum Rabia Khel, Tappa Behram Khel, village Jerab Samana, District Orakzai.
2. Mir Azam son of Muhammad Hussain, resident of Qaum Rabia Khel, Tappa Behram Khel, village Jerab Samana, District Orakzai.

..... (Accused facing Trial)

**Case FIR No. 52, Dated 07.11.2020 u/s 302/324/34, 337-A (i) of the Pakistan Penal Code, 1860 read with Section-15 of KP Arms Act, 2013; Registered at Police Station Ghiljo Orakzai.**

**JUDGMENT**

Police party has rushed to Tehsil Headquarter Hospital, Ghiljo and found dead body of Sherin Gul son of Mehrab Gul (hereinafter deceased) aged about 75 years; who was the resident of Qaum Rabia, Tappa Behram Khel of Jerib Samana, Orakzai. Noor Muhammad son of Musafir Gul aged about 26 years, resident of Jerib Samana (hereinafter complainant) being injured in the incident has told the police that on 7<sup>th</sup> of November, 2020 at 8:30 AM, deceased and complainant were grazing goats in nearby places. They have been restrained from grazing goats in that particular area by Muhammad Hussain son of Saleem Shah (principal accused hereinafter) and his son Mir Azam son of Muhammad Hussain (co-accused hereinafter). It was responded that it is the property

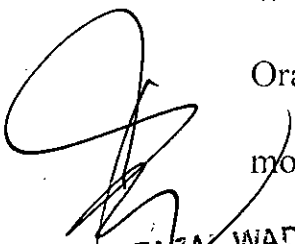
  
**SAYED FAZAL WADOOD**  
Addl. District & Sessions Judge  
Orakzai at Hangu

owned by the complainant party and on such response, principal accused started firing over them. Resultantly, the deceased was died on the spot and complainant escaped luckily. Meanwhile, co-accused started firing as a result of which, complainant sustained injuries and shifted to Hospital. The incident so reported was reduced into writing of Murasila which was converted into FIR No. 52 dated 07-11-2020 under Section 302/324/337A(i) read with Section 34 of the Pakistan Panel Code, 1860 in Police Station Ghiljo. During course of investigation, Section 15 of KP Arms Act, 2013 was added in the relevant column of FIR.

2. After 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. Accused Mir Azam facing trial being on bail was summoned and Accused Muhammad Hussain being in custody was summoned through *Zamima Bay* by the then learned Trial Judge on seeing that reasonable grounds are existing to proceed with the trial of accused. On appearance, they were supplied copies of statements and other documents prescribed under Section 265-C (1) of the Code of Criminal Procedure-1898. Charges against the accused were framed to which they 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 nine (09) witnesses. Such evidence is sketched below for ease of reference and for just determination of guilt or innocence of the accused:

4. Dr. Mujahid Hussain, Medical Officer Civil Hospital Mishti Mela, Orakzai, was examined as PW-1, who stated that he conducted post mortem examination of deceased Sherin Gul son of Mehrab Gul. The

  
SAYED FAZAL WADOOD  
Addl. District & Sessions Judge  
Orakzai at H-2111 page

172

dead body was brought by Police and was identified by Adbul Rehman son of Daulat Khan. During Post Mortem examination, he found the following.

**External Appearance:**

There is no mark of the ligature

**Condition of subject stout emaciated, decomposed etc, clothing:**

Fresh body, old age, blood stained brown color clothes.

**Wounds, bruises, position, size and nature:**

A case of fire arm injury received dead to ER DHQ for PM examination

**Wounds Detail;**

Entry about 1 X 1 cm on left shoulder on the mid of clavicle

An exist fire arm wound about 3 X 3 cm on left lower back above the iliac crest level

Lacerated wound about 4 X 2 cm on left lateral thigh skin deep only

**Cranium and Spinal Cord: Intact**

**Thorax:**

Walls damaged with entry wound, ribs and cartilages intact. Pleurae, left lung, pericardium and heart and blood vessels are damaged

**Abdomen:**

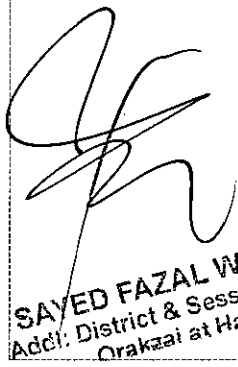
Walls damaged at exist wound on back, peritoneum, mouth, pharynx, esophagus, diaphragm, small intestine and their contents, large intestine and their contents, spleen and left kidney are damaged.

**Muscles, bones and joints:**

Left clavicle damaged

**Remarks of the medical officer:**

The dead body was in brown color clothes. A case of fire arm injury having wounds on;



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

123

Entry about 1 X 1 cm on left shoulder on the mid of clavicle.

An exist fire arm wound about 3 X 3 cm on left lower back above the iliac crest level and a Lacerated skin deep wound on left thigh. Cause of death-extensive bleeding, vital organ damaged.

**Probable time that elapse.....**

- a) **Between injury and death;** On spot death.
- b) **Between death and Post Mortem;** About 05 hours.

He exhibited the factorial which is Ex.PM, injury sheet and inquest report which are Ex.PM/1 and Ex.PM/2 respectively. Similarly he also examined injured Noor Muhammad s/o Musafar Gul aged about 27/28 years and on examination he found the following.

A case of fire arm having wounds on the nasal septum; no active bleeding; initial management done at Ghiljo hospital; packing refreshed; wounds washed and dressing finalized. Patient is stable hemodynamically.

Vitals: BP 120/70

Pulse: 66/ mints

SPO-2: 95 %

He also exhibited medical report prepared by him which is Ex.PW-1/1.

5. PW-2 is the statement of Muhammad Naseem Line Officer Police Headquarter at Baber Mela, Hangu, who has arrested the accused and recovered from his possession one Rifle of 303 bore along with fixed 20 live rounds. He prepared recovery memo Ex. PW-2/1 and card of arrest Ex.PW-2/2. He also arrested the accused Mir Azam on 10-11-2020 and issued his card of arrest Ex.PW-2/3. He produced the case property before the Court as Ex.P-1 to Ex.P-3.

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

124

6. Abdul Manan, Muharrir, Police Station Ghiljo Orakzai deposed as PW-3 by stating that he received Murasila and incorporated his contents into FIR Ex.PA.

7. PW-4 is the statement of Rasool Rehman constable Police Station Ghiljo. He being marginal witness to recovery memo of one rifle of 303 bore gun alongwith 20 rounds and pistol alongwith fixed and spare magazine containing 05 rounds of 30 bore and further recovery of one pistol along with fixed and spare charger containing 05 rounds.

8. Muhammad Sartaj son of Kasteer Khan (PW-5) is the person who identified the dead body of the deceased namely Sherin Gul before the police and doctor in Mishti Mela Hospital.

9. Saleem Khan SI Police Line, HQ Orakzai was examined as PW-6 who stated that he rushed to the Hospital and forwarded the report of Noor Muhammad in shape of Murasila Ex.PA/1. He prepared the injury sheet Ex.PW-6/1 and inquest report Ex.PW-6/2. He also prepared the injury sheet of injured person Ex.PW-6/3.

10. Noor Muhammad son of Musafir Gul (complainant/injured) appeared as PW-7, who stated that on 07-11-2020 at about 08:30 Muhammad Hussain abused his uncle and started firing upon him. His uncle hit and died on the spot. I tried to escape but on some distance, Mir Azam started firing upon him due to which he got hit and sustained injury on his nose. He reported the matter to the Police. He exhibited prescription chits of Ghiljo and Kohat Hospitals as Ex.PW-7/1, Ex.PW-7/2 and Ex.PW-7/3. He recorded his statement as the eye witness of occurrence.

11. Muhammad Ishaq SI/OII of Police Station Daboori was examined as PW-8. He is witness to recovery of four blood stained stones, one fresh



125

empty, 7.62 bore empty from the place of accused Mir Azam and drafted the recovery memo which is Ex.PW-8/1; recovery memo regarding the blood stained garments is Ex.PW-8/2; recovery memo regarding the blood stained garments of injured person is Ex.PW-8/3; and, also exhibited the search memo Ex.PW-8/4. He confirmed *Parwana Izadgi Jurm* regarding the recovered Rifle 303 bore and Pistol Ex.PW-8/5; road permit certificate to the FSL Ex.PW-8/6 and Ex.PW-8/7, FSL report Ex.PW-PK-1. He added that accused Mir Azam was handed over to him for investigation and he produced him before the Judicial Magistrate for physical custody vide application Ex.PW-8/8. He again produced the accused for further physical custody vide application Ex.PW-8/9. He prepared the list of legal heirs of the deceased Ex.PW-8/10. Accused Muhammad Hussain was also handed over to him for investigation and he produced him before the Judicial Magistrate vide application Ex.PW-8/11 for obtaining his physical custody. He also produced Call Data Report of accused consist of 03 pages as Ex.PW-8/13. He concluded that after completion of investigation, he handed over the case file to SHO for submission of challan.

12. Habeeb Ullah son of Sherin Gul was examined as PW-9. He stated that he was present with Investigation Officer on the spot and is witness of all the recoveries from Ex.PA to Ex.PE as well as Ex.PW-8/1 to Ex.PW-8/3.

13. On closure of prosecution evidence, statements of both the accused were recorded u/s 342 of the Code of Criminal Procedure-1898; wherein, accused professed innocence and did not opt to produce defense evidence or to be examined on oath.



SAYED FAZAL WADOOD  
Addl: District & Sessions Judge  
Orakzai at Habq Page

14. Learned APP for the State argued that accused are directly charged in the contents of FIR; that too, with specific role to accused Muhammad Hussain for committing murder of deceased and to accused Mir Azam who made firing over Noor Muhammad who sustained injuries. There is no delay in reporting the incident and the FIR has promptly been lodged. Motive for the commission of offence is available in shape of dispute over landed property. 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. He added that the offence is heinous in nature which has been proved beyond doubt entailing conviction of the accused.

15. Mr. Haseeb ullah Khan Advocate representing the complainant endorsed the arguments of the learned prosecutor and added that, blood stained cloths, direct evidence, motive, 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.

16. On contrary, Mr. Muzahir Hussain Advocate being counsel of accused contended that there is delay in reporting the matter. The accused has been shown in depression in site plan at Point No. 2 and 3 which negates the total case of prosecution on the sole ground that how the deceased has been fired over shoulder and the exit wound is on left lower back. The dead body has not been identified by the complainant. The CDR of the co-accused reflects that he was some elsewhere at the time of occurrence. The recovery is not matching with scientific evidence. The evidence so recorded is full of contradictions and that is



SAYED FAZAL WADOOD  
 Addl. District & Sessions Judge  
 Orakzai at Haidra g e

127


not confidence inspiring. He submitted that prosecution has not been able to prove the case beyond shadow of doubt and requested for acquittal of the accused.

17. The guilt or innocence of accused facing trial is being determined on the basis of all types of evidence available on file which is duly assessed and appreciated in the forthcoming paragraphs while keeping in view the professional assistance rendered by learned the prosecutor and counsel representing parties.

18. 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 this legal background, the factual situation of present case is that there is landed property which is apple of discord between the complainant party and accused party. The complainant party was grazing goats in the land under dispute which fueled the commission of offence. Both the parties are co-villagers belonging to the same sub tribe of Behram Khel and having dispute over land, are known to each other and thus question of misidentification of accused or incorrect implication is out of question at all.

19. Promptness in reporting the incident to police is another area which is required to be focused after discussing motive, nomination and identification of accused. The distance between the place of occurrence and Police Station Ghiljo is recorded as 26 to 27 Kilo Meters; whereas, the time consumed in reporting the matter is 3 hours and 15 minutes;

which is, obviously prompt in the hilly topography of District Orakzai.

  
SAYED FAZAL WADOOD  
Addl. District & Sessions Judge  
Orakzai at Hangar




128

20. The mode and manner in which crime is committed is the next question to be discussed as identification, nomination of accused, existence of motive in shape of dispute over landed property and promptness of report have already been discussed above. It is the case of prosecution that complainant Noor Muhammad and his deceased uncle namely Sherin Gul were grazing goats in land disputed between the parties on 7<sup>th</sup> of November, 2020 at 8:30 AM. Accused Muhammad Hussain started firing over them. Resultantly, the deceased Sherin Gul was died on the spot and complainant escaped luckily. Meanwhile, co-accused started firing as a result of which, complainant sustained injuries and shifted to the Hospital. The motive is dispute over landed property.

21. The ocular evidence is that of complainant examined as PW-7. He is the nephew of the deceased and accompanying him in grazing goats renders him natural witness of the incident. He sustained injuries in the occurrence that further confirms his presence at the spot. This eye witness testified about the contents of the FIR with addition of associating himself with the Investigation Officer in preparation of Site Plan Ex. PB. Fair opportunity was provided to the defense but nothing favorable has been extracted from such witness as he remained contented over nomination, motive, presence of accused at the spot, time and place etc. This is the ocular evidence of direct source which testified the mode and manner of the offence committed.

22. Though the ocular evidence of the occurrence is available but the same is required to be corroborated by circumstantial evidence.


23. The Site Plan Ex. PB has been prepared on pointation of the complainant who is natural witness of the occurrence. This document

  
**SAYED FALAL WATTOO**  
Addl. District & Sessions Judge  
Orakzai at Hangw

129

proves the presence of accused on the spot and place of occurrence. The single objection that has been pressed by learned defense counsel is that Point No. 2 has been allotted to deceased while Point No.3 is allotted to accused Muhammad Hussain. Point No. 3 is admittedly in depression in comparison to Point No. 2 and it is impossible that person from depression fires that hits in left shoulder of the deceased with exit wound on left lower back. This matter has been termed by learned defense counsel as serious doubt in prosecution case. But perusal of the medical evidence and the statement of Doctor as PW-1 is answering this objection by clarifying in following words. *“There is an entry wound on the left shoulder of the deceased, the exit of which is on the left lower back just above illicit. The injury on shoulder might be due to firing from an upper side or it may be caused when the person sustaining injury or escaping from firing fell on the ground or it may be from any direction.”* The explanation of the Doctor as PW-1 in his cross examination is sufficient to answer the objection so raised by the learned defense counsel as it is very much natural that deceased had fallen over the soil during fire and thus cannot be termed mismatching of site plan Ex.PB with Post Mortem report Ex.PM.

24. The Investigation Officer recovered blood stained garments belonging to deceased containing Shalwar Qamees and Bunyan of White color and sealed in Parcel No. Ex.PD vide recovery memo Ex.PW-8/2. Blood stained pebbles sealed into parcel No. 2 Ex.PA; empty shell sealed in Parcel No. 3; empty shell of 7.62 bore Ex.PC; Rifle 303 bore bearing No. R-11380 along with fixed magazine containing 20 live round and Kamarband Ex.P-1; one 30 bore pistol bearing No. 9315 along with fixed

  
SAYED FAZIL WAD  
Asst. District & Sessions Judge  
Orakzai at Hangu

130

charger, a spare charger containing 05 live rounds Ex.P-2 and one 30 bore pistol bearing No. 1139 along with fixed charger and a spare charger containing 05 live rounds Ex.P-3, are other recoveries reflected on recovery memo Ex.PW-8/1 and Ex.PW-8/2. The blood stained shalwar qamees, pebbles and bunyan have been transmitted to Forensic Science Laboratory vide application Ex. PW-8/6 and road certificate Ex.PW-8/7; the result thereof is positive as per Ex.PK-1. Similarly, weapons of offence and empties have been sent to FSL for examination and the result thereof Ex.PK-2 reflects that all of these were in proper working order. However, it has not been opined that crime empty of 303 bore and that of 762 bore have been fired at that particular time which makes no difference at all as the empties are matching the weapons of offence and which duly recovered from the spot.


25. The injury sheet and inquest report of the deceased are available on file as Ex.PW-6/1 and Ex.PW-6/2 followed by Post Mortem Report Ex.PW-PM. According to Post Mortem Report the deceased received a single fire arm injury upon his left shoulder on the mid of clavicle having corresponding exit wound on left lower back. The Eye Witness of the occurrence has recorded his statement as PW-7 wherein he asserted that on relevant time of occurrence the principal accused opened fire on deceased who died on the spot. The Post Mortem Examination is confirming the version of the prosecution regarding time of occurrence, on the spot death, its cause and other allied matters. The 2<sup>nd</sup> objection of learned defense counsel is that the dead body has not been identified by the complainant despite the fact that he was close relative and was available in the Hospital. Perusal of case file transpires that identifier was



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

one Abdur Rehman son of Daulat Khan as per the inquest report and he was accompanied by one Muhammad Sartaj son of Kasteer Khan. This fact is verified by one of them (Muhammad Sartaj) in his statement recorded as PW-5 and sufficient to prove that body of deceased was duly identified.

26. The correct nomination of accused, directly charged, existence of motive, ocular evidence of the natural witness, corroboration of ocular evidence by circumstantial evidence in form of recoveries, FSL reports, medical evidence and site plan etc. are sufficient to prove the case against principal accused beyond reasonable doubt. As for as co-accused Mir Azam is concerned, his case is different and required to be adjudged independently. It is by now established facts that the principal accused had been given the role of firing over both, the deceased and complainant/injured. It is highly probable that the complainant has been injured in firing of either principal accused or that of co-accused. The ocular evidence in shape of single witness (PW-7) is not being corroborated by the CDR Ex.PW-8/3 which shows his presence in Naway Kalay of District Hangu, an area far away from place of occurrence. Though, the CDR Ex.PW-8/3 is not the conclusive proof of the matter that co-accused was not available on the spot but at least this can be treated as single circumstance creating doubt in a prudent mind. It has been ordained in Judgement reported as 2002 PCr.LJ 1312 that if there is one circumstance which creates reasonable doubt in prudent mind about the guilt of accused he would be entitled to benefit of doubt not as a matter of grace or concession but as a matter of right. Hence, by


  
SAYED FAZAL WADOOD  
Judge  
District & Sessions Judge  
Orakzai at Hangu

132

extending benefit of doubt the co-accused Mir Azam son of Muhammad Hussain is acquitted from the charge levelled against him.

27. Discussion can be summarized by holding that the prosecution version against principal accused is supported by ocular account furnished by the complainant PW-7 which is confidence inspiring and has got its intrinsic value; that too, in consonance with circumstantial evidence available on file in shape of site plan, medical evidence, FSL reports, recoveries and other material.

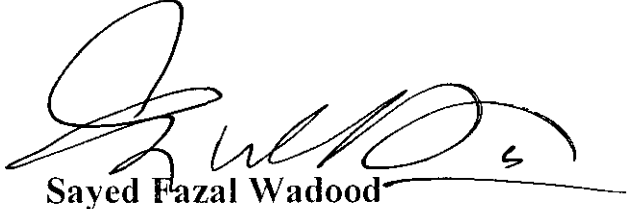
28. For what has been discussed above, the prosecution has been able to bring home charge against the accused facing trial beyond any shadow of doubts; that too, through cogent, concrete and tangible evidence that shall lead to conviction. It has been proved that the offence of murder of Sherin Gul (deceased) has been committed by accused on trial namely Muhammad Hussain. Resultantly, in case FIR bearing No. 52 dated 07-11-2020, registered under section 302/324/337A(i) of Pakistan Penal Code, 1860 and Section 15 of the KP Arms Act, 2013 at Police Station Ghiljo Orakzai, for the murder/Qatl-e-amad of deceased Sherin Gul, the accused facing trial Muhammad Hussain son of Saleem Shah, 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 per provision of West Pakistan Land Revenue Act-

  
SAYED FAZAL WADOOD  
Jdd: District & Sessions Judge  
Orakzai at Hang

133

1967. The benefit of section 382(b) of the Code of Criminal Procedure-1898 is also extended in favour of the convict. The accused 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. As far as co-accused Mir Azam son of Muhammad Hussain is concerned, he is acquitted from the charges of attempt to commit qatl-e-amd and Shajjah-i-Khafifa for the reasons recorded under paragraph No. 26 of this Judgement. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

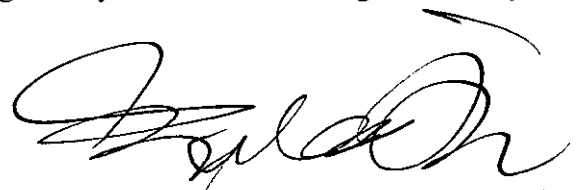
**ANNOUNCED**  
01.10.2022



**Sayed Fazal Wadood**  
Additional Sessions Judge Orakzai

**CERTIFICATE:**

Certified that this Judgment consists of fourteen (14) pages; each page has been read over and signed by me after making necessary corrections therein.



**Sayed Fazal Wadood**  
Additional Sessions Judge Orakzai