

164

IN THE COURT OF BAKHT ZADA
ADDITIONAL SESSIONS JUDGE-I, ORAKZAI (AT BABER MELA)

SESSION CASE NO. : 08/02
DATE OF ORIGINAL INSTITUTION : 02.06.2023
DATE OF PRESENT INSTITUTION : 17.10.2024
DATE OF DECISION : 10.12.2024

SYED SHAH GUL S/O ALI ASGHAR, R/O QAUM STORI KHEL,
DAGO KALAY, ANDD KHEL, DISTRICT ORAKZAI.
.....(COMPLAINANT)

-VERSUS-

1. SYED TAHIR HUSSAIN,
2. SYED HABIB HUSSAIN
3. SYED QANON SHAH ALL SONS OF SYED GUL QASIM,
4. SYED YASIR HUSSAIN S/O SYED TAHIR HUSSAIN ALL RESIDENTS OF QAUM BAR MUHAMMAD KHEL, TAPPA BABA NAWASI.

..... (ACCUSED FACING TRIAL)

JUDGEMENT
10.12.2024

Accused (1). Syed Tahir Hussain, (2). Syed Habib Hussain, (3). Syed Qanoon Shah all sons of Syed Gul Qasim and (4). Syed Yasir Hussain S/O Syed Tahir Hussain are facing trial in case FIR No. 02, dated 30.01.2023, registered U/S 302/324/337-A(i)/337-A(ii)/34 PPC, 15AA of PS Kurez Boya, District Orakzai.

(2). Complainant, Shah Gul Hussain S/O Ali Asghar, aged about 62 years, caste Bar Muhammad Khel, R/O Dago Kalay reported the matter to SHO PS Kurez Boya, on 30.01.2023 at 1930 hours, in the emergency room of THQ Hospital, Kalaya to the effect that on the eventful day at 1730 hours, his brother (deceased) Syed Imam Ali was on his way to the mosque for performing his prayer ahead of them. When he reached the spot of occurrence,

Baker
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Hangu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boyā

the accused Tahir Hussain S/O Syed Gul Qasim duly armed already sitting there, made firing at Syed Imam Ali with intention to kill, as a result of which he got hit and died at the spot, while accused Syed Habib Hussain, Syed Qanoon Shah sons of Gul Qasim and Syed Yasir S/O Syed Tahir Hussain attacked them with knives etc, due to which he (complainant) got injured on his head, while Syed Muhammad Ameer Jan got injured on his head and right hand, Syed Muhammad Sajideen also sustained injuries on head and various parts of his body. The complainant charged the above named accused for attacking them with knives and making firing at Syed Imam Ali with intention to kill and committing his murder. The occurrence is witnessed by Syed Muhammad Ameer Jan, Syed Muhammad Sajideen beside the complainant. Motive for the occurrence is previous altercation between the parties. The report was endorsed by the complainant and Syed Muhammad Sajideen by putting their thumb impressions on the Murasila. Injury sheets and inquest report of the deceased were prepared and handed over to concerned medical officer through Constable Sohan Ali, while the injury sheet of the injured persons was handed over to medical officer concerned through Constable Dastan Ali. Murasila was sent to PS for registration of FIR through Constable Yasin Ullah and hence, the above-mentioned FIR was registered.

Saker
 10.12.24
 BAKHT ZADA
 Addl. District & Sessions Judge-1
 Orakzai Hangu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

(3). After receiving the copy of FIR, the investigation officer proceeded to the spot and took into possession, vide recovery memo, blood-stained earth from the place of presence of deceased. He also took into possession two empty shells of 7.62mm bore from the place of presence of accused Tahir Hussain, in presence of the marginal witnesses. He also prepared the site plan of the place of occurrence Ex. PW-6/1 at the pointation of complainant Shah Gul Hussain. After completion of investigation, the case file was handed over to SHO for submission of complete challan.

(4). Complete challan against the accused facing trial was submitted before the court of Hon'ble Sessions Judge, Orakzai U/S 190 (2) Cr.PC for trial, who entrusted the same to this court.

(5). Accused Syed Tahir Hussain being in custody was summoned through Zamima Bay, while the rest of accused being on bail were summoned. Accused Syed Tahir Hussain was produced in custody, while accused Syed Habib Hussain, Syed Qanoon Shah and Juvenile accused Syed Yasir being on bail, attended the court and provisions of Section 265-C of the Criminal Procedure Code, 1898 was complied with. Separate challan against juvenile accused namely Syed Muhammad Yasir was submitted. Formal charge against the accused were

Saker
10-12-24
BAKHT ZADA
Addl. District & Sessions Judge
Orakzai at Hangu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

framed on 20.06.2023, to which they pleaded not guilty and claimed trial.

(6). The prosecution produced and recorded the statements of as many as fifteen (15) PWs. The gist of their evidence is as follows;

I. PW-01, Ain Ullah, Moharrir DRC Office,

Orakzai at Kalaya: He was posted as MM at PS

Kurez Boya in the relevant days. On 30.01.2023,

he received Murasila from SHO Shafiq Khan

through Constable Yasin Ullah No. 41. He

incorporated the contents of Murasila into FIR

Ex.PA. He received parcels No. 1, 2 & 4 to 9

duly packed and sealed on 31.01.2023 and the

same was kept in Mall Khana and entered in

register-19. SHO handed over parcel No. 3 which

was also kept in Mall Khana of the PS and its

entry in register-19 was made. On 04.02.2023, he

handed over parcels No. 1 to 8, duly packed and

sealed for sending the same to FSL. His

statement was recorded U/S 161 Cr. PC on

31.01.2023 & 04.02.2023. He was cross

examined by the defense counsel.

II. PW-02, Dr. Farooq Azam, MO, Type-D

Hospital, Kalaya, Orakzai. He stated that on

30.01.2023, he has conducted Post-Mortem

Saxer.
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Hangu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

examination of deceased Syed Imam Ali S/O Ali Asghar, aged about 55/60 years. His dead body was brought by the police along with documents and was identified by Syed Muhammad Sajideen S/O Syed Shahadat Hussain and Syed Mir Jan S/O Syed Mir Said. He found the following on examination of the dead body.

External appearance.

1. Condition of subject, stout, emaciated, decomposed etc, clotting.

Stained in blood.

2. Wounds, bruises, position, size and nature:

Entry wound 2x1cm in size on lower part of the left flank breaking left iliac bone (iliac crest).

No exit wound identified.

X-Ray shows bullet in the dead body of the person.

3. Cranium and spinal Cord

Skull and vertebra are normal.

Lacerated wound 4x1cm in size on top of skull towards back side not extending to bone probably due to sharp object like stone.

4. Thorax

Kurez
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Hangu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

Blood vessels damage in abdomen, rest are healthy.

5. Abdomen

Walls, peritoneum, small intestine and their contents and large intestine and their contents are damaged. Rest are healthy.

6. Muscles, bones, joints

Already mentioned.

7. Remarks by medical officer: In my opinion the cause of death is haemorrhagic shock due to major vessels injury.

8. Probable time that elapsed:

a. Between injury and death: Approx one hour.

b. Between death and post mortem: Four hours

The medical report/Post Mortem report consisted of 06 pages duly signed by the concerned medical officer is Ex. PM and is correctly signed by him. The blood-stained clothes were handed over to the police after post mortem.

He was cross examined by the counsel for the accused at length.

Suiker
BAKHT ZADA
Addl: District & Sessions Judge-1
Orakzai at Harigu
30.12.24

III. PW-03, Dr. Faisal, Medical Officer, THQ

Kalaya.

Firstly, on 30.01.2023 at about 0815PM, he examined injured Syed Muhammad Amir Jan S/O Mir Hassan aged about 42/43 years brought by one Hamid. The injury sheet was handed over to him and on examination he found the following.

1. Lacerated wound on right parietal area with size of 3.5x1.5x1cm.

Lacerated wound on right occipital area with size of 2.5x1cm.

Traumatic injury on right hand fingers

No active bleeding.

Nature of injury was grievous, while the kind of weapon was sharp object

The medico legal report is Ex. PW-3/1.

Secondly: He also examined on 30.01.2023 at 0815PM injured Syed Muhammad Sajideen_S/O Syed Shahadat Hussain aged about 37/38 years brought by one Hamid. On examination of injured, he found the following.

2. Lacerated wound on left occipital region with size of 1.5x1cm.

Faisal
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

No active bleeding.

Nature of injury was simple, while the kind of weapon was sharp object

The medico legal report is Ex. PW-3/2.

Thirdly, on 30.01.2023 at about 0815PM, he examined injured Shah Gul Hassan S/O Ali Asghar, aged about 63 years brought by one Hamid. The injury sheet was handed over to him and on examination of the injured, he found the following.

3. Lacerated wound on the right zygomatic region above the rymous with bone exposed with size of injury 3x1x2cm

No active bleeding

Nature of injury was grievous, while the kind of weapon was sharp object.

The medico legal report is Ex. PW-3/3 which correctly bears his signatures. His statement was subjected to lengthy cross examination.

IV. PW-04, Muhammad Shafiq, Line Officer, HQ

Kalaya. He was posted as SHO PS Kurez. On 30.01.2023, after receiving information, he rushed to THQ, Kalaya where at about 1930 hours, complainant Shah Gul Hussain S/O Ali

Saicez
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1,
Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

Asghar present in the emergency room with the dead body of his brother Syed Imam Ali and other injured, reported the matter to him which was reduced into writing in shape of Murasila Ex. PA/1. The report of the complainant was verified by one Syed Muhammad Sajideen by thumb impressing the same. He prepared injury sheet and inquest report of the deceased and handed over the same to constable Sohan Ali, who escorted the dead body for the purpose of Post-Mortem examination to the hospital. The injury sheet is Ex. PW-4/1 and the inquest report is Ex. PW-4/2. Injury sheet of Syed Muhammad Ameer Jan, Syed Muhammad Sajideen and Shah Gul are Ex. PW-4/3 to Ex. PW-4/5. The injured were escorted by Constable Dastan Ali along with their injury sheets to the doctor for medical examination. The Murasila was sent to PS through Constable Yaseen Ullah for the purpose of registration of FIR. PW-04 conducted raid at the house of accused for their arrest and consequently accused Syed Tahir Hussain, Syed Qanoon Shah and Syed Muhammad Yasir were arrested from their Hujra at about 2325 hours and their card of arrest Ex. PW-4/6 was issued. At the time of raid, one Kalashnikov bearing No.

Dakeri
 10.12.24
BAKHT ZADA
 Addl. District & Sessions Judge-1,
 Orakzai at Haingu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

1963NX9509 with folding butt and fixed charger having five live rounds of 7.62mm bore were recovered from the possession of accused Syed Tahir Hussain which is Ex. P-1. He put his signatures on the body of Kalashnikov, sealed the same into parcel by affixing 03 monograms of "MS" on the parcel and one sample of seal monogram "MS" was kept inside the parcel. To this effect the recovery memo Ex. PW-4/7 is duly signed by the marginal witnesses. He has also submitted interim challan as well as complete challan in the instant case. The challan forms are Ex. PW-4/8 and Ex. PW-4/9. He was subjected to lengthy cross examination by the defense counsel.

- V. PW-05, Constable Khiyal Hussain: He is marginal witness to the recovery memo Ex. PW-5/1 vide which the IO took into possession blood-stained earth from the point of presence of deceased and sealed the same into parcel No. 1. The IO also took into possession two empties of 7.62mm bore from the place of presence of the accused. He etched his signatures on the recovered empties with sharp object and sealed the same into parcel No. 2 by affixing 3/3 seals of monogram "AH" on each parcel and one sample

Sincer
 BAKHT ZADA
 Addl. District & Sessions Judge-1
 Orakzai at Hangu
 19.12.24

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

of the same monogram seal was kept inside each parcel. PW-05 is also marginal witness to the recovery memo Ex. PW-5/2 vide which the IO took into possession a Kalashnikov with fixed charger having 05 live rounds of 7.62mm bore, produced by the SHO, and sealed the same by affixing 3/3 seals of monogram "MS" and kept one seal inside the parcel No. 3. The recovery memo was signed by PW-05 along with other marginal witnesses. On 31.01.2023, Constable Sohan Ali brought the blood-stained garments of the deceased and injured. The garments of deceased were consisted of Qamees Shilwar (sky blue) and brown Banyan, the IO sealed the same into parcel No. 4. Similarly, the garments of injured Syed Muhammad Ameer Jan consisted of Grey Qamees and Shilwar were sealed into parcel No. 5. The garments of Syed Shah Gul consisted of Green colour Qamees and Shilwar were sealed into parcel No. 6, while the white Banyan of injured Syed Muhammad Sajideen was sealed into parcel No. 7 by affixing 3/3 seals of monogram "AH" and keeping one seal of the same monogram in each parcel. To this effect the recovery memo prepared by the IO is Ex. PW-5/3 which is signed by PW-05 on the spot. PW-05 is

Daxer
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1,
Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

also witness to the recovery memo Ex. PW-5/4 vide which the IO took into possession blood-stained garments of injured Syed Qanoon Shah consisting of brown Qamees Shilwar which were sealed into parcel No. 8 while the torn brown waist coat of injured Muhammad Yasir was sealed into parcel No. 9 and sealed the same. On 01.02.2023, accused Syed Tahir Hussain, Syed Qanoon Shah and Yasir during investigation led the police party to the place of occurrence and correctly pointed out the place occupied by them at the time of occurrence. The pointation memo duly signed by PW-05 along with other marginal witnesses, which is Ex. PW-5/5. PW-05 received parcel No. 1 to 8 from the IO on 04.02.2023 along with two applications for FSL and two transit receipts for taking the same to FSL for chemical examination. He took the parcels and deposited the same with the concerned official in the FSL and obtained acknowledgment on the transit receipt. The transit receipt is Ex. PW-5/6 and Ex. PW-5/7. He is also witness to house search memo of accused Habib Hussain, which is Ex. PW-5/8. The accused was searched in his residence, but neither the accused was found, nor any incriminating article was found. The house

Bakht Zada
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Hangu
0.12.24

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Bōya

search memo is duly signed by PW-05 on the spot. His statement U/S 161 Cr. PC was recorded by the IO thrice. He was also cross examined by the defense counsel.

VI. PW-06, Hashim Khan SI/OII: He was posted as OII at PS Mishti Mela. After receiving relevant documents, he proceeded to the spot and prepared the site plan at the pointation of the complainant and eye witnesses. The site plan is Ex. PW-6/1. He prepared the recovery memo in presence of marginal witnesses which is already Ex. PW-5/1 vide which he recovered and took into possession blood-stained earth from the place of deceased and sealed the same into parcel No. 1 Ex. P-1. Similarly, he also recovered and took into possession two empties of 7.62mm bore from the place of accused, etched his signature on the recovered empties with a sharp object and sealed the empties into parcel No. 2 Ex. P-2 by affixing 3/3 seal monogram of "AH" on each parcel whereas, one sample of seal monogram was kept inside each parcel. He also prepared recovery memo already Ex. PW-5/2, vide which he took into possession from SHO a sealed Kalashnikov with fixed charger having 05 live rounds of 7.62mm bore by affixing 3/3 seals of monogram

Saxer
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

“MS”. He marked the parcel as No. 03. PW-06 sealed the blood-stained garments of deceased consist of Qamees Shilwar (sky blue) and brown Banyan and sealed the same into parcel No. 4 Ex. P-3. Similarly, the garments of Muhammad Ameer Jan consisting of Gray Qamees and Shilwar were sealed into parcel No. 5 Ex. P-4. Garments of Syed Shah Gul consisting of Green colour Qamees and Shilwar were sealed into parcel No. 6 Ex. P-5, while the Banyan of injured Syed Muhammad Sajideen was sealed into parcel No. 7 Ex. P-6 by affixing 3/3 seal monogram of “AH” on each parcel and one sample of seal monogram was kept inside each parcel. To this effect, he prepared recovery memo already Ex. PW-5/3. He vide recovery memo already Ex. PW-5/4 took into possession blood-stained garments of injured Syed Qanoon Shah consisting of Brown Qamees and Shilwar and sealed the same into parcel No. 8 Ex. P-7, while the torn brown waist coat of injured Muhammad Yasir and sealed the same in parcel No. 9 Ex. P-8 by affixing 3/3 seal monogram of “AH” on each parcel and one sample of seal monogram was kept inside each parcel. On 01.02.2023, accused Syed Tahir Hussain, Qanoon Shah and Yasir

Parcel
 10.12.24
BAKHT ZADA
 Addl. District & Sessions Judge-1
 Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

during interrogation led the police party to the place of occurrence and correctly pointed out the place occupied by them, to this effect he prepared pointation memo already Ex. PW-5/5 in presence of marginal witnesses. On 04.02.2023, he handed over parcel No. 1 to 8 along with two applications for FSL and two transit receipts for taking the same to FSL for examination. He placed the DD report consisting of 04 pages on the file Ex. PW-6/2. On 31.01.2023, he vide his application Ex. PW-6/3 produced the accused Tahir Hussain, Qanoon Shah and Syed Muhammad Ameer before the Ilaqa Judicial Magistrate for obtaining their physical custody, two days physical custody was granted. On 01.02.2023, he prepared the pointation memo already Ex. PW-5/5. He recorded the statements of PWs U/S 161 Cr. PC. On 02.02.2023, he produced the accused before Ilaqa Judicial Magistrate for recording confessional statement U/S 164/364 Cr. PC. The accused did not confess their guilt before the court and they were sent to Judicial Lock-up vide his application Ex. PW-6/4. On 03.02.2024, he prepared the list of LRs of deceased Imam Ali, which is Ex. PW-6/5. Letter to FSL for chemical examination of parcels were

Kurez
 30.12.24
BAKHT ZADA
 Addl. District & Sessions Judge-1
 Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

prepared by me and are Ex. PW-6/6 to Ex. PW-6/8. DD in this respect is also placed on file, which is Ex. PW-6/9. The FSL report regarding the blood-stained garments and the recovered ammunition are placed on file which are Ex. PA, Ex. PA/1 and Ex. PA/2. He vide insertion memo Ex. PW-6/10 added Sections 337A(i) and 337A(ii) on the opinion of doctor. He also placed DD Ex. PW-6/11 consisting of 03 pages. He vide application Ex. PW-6/12 and Ex. PW-6/13 applied for obtaining warrant U/S 204 Cr. PC and proclamation notice U/S 87 Cr. PC against the accused Syed Habib Hussain. After cancelation of BBA of accused Syed Habib Hussain, he prepared formal card of arrest Ex. PW-6/15. On 05.05.2023, he produced the accused before Ilaqa Judicial Magistrate for obtaining his physical custody vide his application Ex. PW-6/16, one day physical custody was granted. He recorded the statement of accused U/S 161 Cr. PC. On 06.05.2023, he vide his application Ex. PW-6/17 produced the accused before Ilaqa Judicial Magistrate for further custody, which was turned down and accused was sent to Judicial lock up.

Daker
10.12.24

BAKHT ZADA
Addl. District & Sessions Judge-1,
Orakzai Hangu

VII. PW-07, Constable Yaseen Ullah: He stated that he was present with SHO at Kalaya Hospital who

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

handed over Murasila to him which is already Ex. PA/1. The Murasila was handed over to Ain Ullah Moharrir by him. His statement was recorded by IO U/S 161 Cr. PC.

VIII. PW-08, Constable Dastan Ali: He stated that he was present with SHO at Kalaya Hospital where SHO handed over to him injury sheets alongwith injured namely Shah Gul Hussain, Syed Ameer Jan and Syed Muhammad Sajideen which are already Ex. PW-4/3 to Ex. PW-4/5. After medical examination by the medical officer, he handed over to him injury sheets. Later on, he along with SHO went to the house of accused/injured namely Syed Tahir Hussain, Syed Qanoon Shah and Muhammad Yasir, the SHO prepared injury sheets and they brought the injured and handed over to the doctor on duty. After examination, the doctor handed over the injury sheets to him. On 31.01.2023, he handed over all the injury sheets and garments to the IO. His statement recorded by the IO U/S 161 Cr. PC.

IX. PW-09, Constable Sabir Ali: He is marginal witness to the recovery memo already Ex. PW-4/7. On 31.01.2023, SHO raided and arrested accused Tahir Hussain, Qanoon Shah and Syed Yasir Hussain and issued their card of arrest

Kurez
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

already Ex. PW-4/6. The SHO recovered and took into possession one Kalashnikov folding butt. along with fixed charger and 05 live rounds of the 7.62mm bore in presence of marginal witnesses. The SHO after recovery of said weapon scribed his sign on the body of weapon through sharp object and sealed the same into parcel No. 3. His statement was recorded by the IO U/S 161 Cr. PC.

X. PW-10, Constable Sohan Ali: He stated that he was present with SHO, who handed over the injury sheet of deceased to him which is already Ex. PW-4/1. He handed over the same to medical officer along with deceased. Medical officer conducted post-mortem of the deceased, who handed over the post-mortem report to him. His statement was recorded by the IO U/S 161 Cr. PC.

XI. PW-11, Constable Khalid Ali: He was entrusted with warrant U/S 204 Cr. PC and proclamation notice issued against accused Syed Habib Hussain Ex. PW-11/1 and Ex. PW-11/2 respectively.

XII. PW-12, Complainant Shah Gul Hussain: He stated that on 30.01.2023, at about 1730 hours, he

Case 2
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

along with his brother Imam Ali was on way to Masjid for Maghrib prayer and he was behind him. On the way, accused Tahir Hussain duly armed was present there who fired on his brother Syed Imam Ali, resultantly he was hit and died at the spot, while Syed Hubaib Hussain, Syed Qanoon Shah and Syed Yasir Hussain duly armed with knives attacked them and from their blows, he sustained injuries on head, while Syed Ameer Jan sustained injuries on head and right hand, Syed Muhammad Sajideen got injured on head and other body parts. He along with other persons shifted the dead body to the hospital, where he reported the matter to the police. His report was scribed in shaped of Murasila duly thumb impressed by him, while injured Syed Muhammad Sajideen also thumb impressed the Murasila as verifier. Motive for the occurrence is prior altercation. In hospital, he along with other injured persons were examined by the doctor and first aid was given. Later on, during investigation the police prepared site plan on his pointation in presence of eye-witnesses.

Kurez
 10.12.24
BAKHT ZADA
 Addl. District & Sessions Judge-1
 Okatzi of Haigu

XIII. PW-14, Syed Ijaz Hussain: He stated that on 31.01.2023 at about 1730 hours, he along with his cousin Imam Ali was on way to Masjid for

103
STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

Maghrib prayer and he was behind him. On the way, accused Tahir Hussain duly armed was present there who fired on his brother Syed Imam Ali, resultantly he was hit and died at the spot, while Syed Habib Hussain, Syed Qanoon Shah and Syed Yasir Hussain attacked them and from their blows, he sustained injuries on head, Syed Ameer Jan sustained injuries on head and right hand and Syed Muhammad Sajideen got injured on head. After the occurrence, the accused decamped from the spot. He was shifted to DHQ Hospital, Kohat at about 10:00PM. After returning from hospital, the OII recorded his statement U/S 161 Cr. PC on next day. His pictures taken in injured condition are Ex. PW-14/1 (04 pictures) and receipts of hospital is Ex. PW-14/2 (03 sheets). X-Ray is Ex. PW-14/3 and other treatment receipts from private clinics are Ex. PW-14/4 and Ex. PW-14/5.

XIV. PW-15, Hassan Jan SHO PS Kurez Boya. He submitted supplementary challan Ex. PW-15/1 against accused Syed Habib Hussain on 08.05.2023.

(7). Learned DyPP for the state abandoned PW Murtaza Hassan No. 1563 being witness of the same facts for

Kurez
10.12.23
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

which PW Khiyal Hassan has deposed. Learned DPP for the state and counsel for complainant closed the evidence.

(8). Statements of accused were recorded u/s. 342 Cr. PC. but the accused neither wished to be examined on oath, nor opted to produce any evidence in defence.

ARGUMENTS:

(9). Learned Sr. PP for the state and private counsel for the complainant, Mohabbat Khan Bangash argued that the accused are directly charged in the FIR by complainant Shah Gul Hussain for the murder of his brother Syed Imam Ali and for inflicting injuries at the person of Syed Muhammad Ameer Jan and Syed Muhammad Sajideen besides the complainant himself. The specific role for making firing at the person of deceased Syed Imam Ali is attributed to accused Tahir Hussain. The occurrence is witnessed by complainant Shah Gul Hussain, Syed Muhammad Ameer Jan and Syed Muhammad Sajideen who also sustained injuries during the occurrence. He argued that the medical, forensic and circumstantial evidence fully support their version. The statements of PWs i.e., complainant and eye-witnesses are consistent in the date, time and place of occurrence. The recoveries of empties from the place of occurrence and recovery of weapon of offense from the possession of accused Syed Tahir Hussain supports the version of prosecution. The SHO, IO along with other marginal witnesses have

Daizer
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1,
Orakzai at Hangu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

strengthened the case of prosecution and their statements have remained intact despite of lengthy cross examination. He also prayed for conviction of the accused facing trial.

- (10). On the other hand, learned counsel for the accused facing trial argued that there are material contradictions and discrepancies in the statements of the prosecution witnesses, which are fatal for the case of prosecution. He contended that no source of light has been mentioned in the report by the complainant for identification of accused at the time of offense, despite of the fact that on 30th January the darkness almost prevail at 1730 hours. He argued that the medical report has not been prepared in accordance with law and PW-02 has mentioned the handing over of dead body to him at 06:00PM which is contradictory to the report and statements of the eye-witnesses. He also pointed out that the recovery of weapon of offense is planted one and the mode and manner of arrest of the accused facing trial mentioned by the SHO are against the natural conduct of the accused. Hey argued that the case of prosecution being full of doubts and has no feet to stand with, therefore, he requested that the accused facing trial being innocent may be acquitted by extending them benefit of doubt.

- (11). After hearing arguments, available record perused.

Bakht Zada
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

In view of the available material on file and arguments advanced by the learned counsel for the parties, the points for determination of charge are;

- I. That whether the occurrence has taken place in the mode and manner as detailed in Murasila Ex. PA/1.
- II. Whether the report has been made to police in the mode and manner as detailed in Murasila Ex. PA/1.
- III. Whether the case of prosecution is supported by the ocular account.
- IV. Whether the arrest of the accused facing trial is affected in the manner as alleged by the prosecution and recovery of weapon of offence is made in accordance with law.
- V. Whether the medical, forensic evidence and other circumstantial supports the case of prosecution.
- VI. Whether the accused have any motive for the commission of offence.

(12). As per contents of Murasila Ex. PA/1, the date and time of occurrence is 30.01.2023 at 1730 hours. The place of occurrence is Andkhel, Dago Kalay which is at the distance of 36/37 km towards north from the police station, where the complainant Shah Gul Hussain/PW-12 along with Syed Muhammad Sajideen and Syed Muhammad Ameer Jan were on their way to mosque for

Sajid
 30.12.23
BAKHT ZADA
 Addl. District & Sessions Judge-1,
 Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

performing *Maghrib* prayer, while his brother (deceased) Syed Imam Ali was going ahead of them. Accused Tahir Hussain s/o Syed Gul Qasim was already sitting in the way duly armed and started firing at him with intention to kill, due to which he got hit and died at the spot, while accused Syed Habib Hussain, Syed Qanoon Shah both sons of Gul Qasim and Syed Yasir s/o Tahir Hussain attacked the complainant and his companions with knives and sharp objects, due to which complainant got injured on head, Syed Muhammad Ameer Jan got injured on head and right hand and Syed Muhammad Sajideen got injured on head and other parts of the body. After registration of FIR, PW-6 Hashim Khan OII has reached to the spot where he has prepared site plan Ex. PW6/1 at the pointation of complainant and eye-witnesses. The investigation officer has confirmed the place of occurrence in the site plan Ex. PW 6/1, which can be further confirmed from the site plan prepared by the OII at the pointation of complainant Tahir Hussain (one of the present accused facing trial) in the cross report lodged by him vide naqal mad no. 13, dated 31.01.2023. Both the site plans prepared by the IO in the cross cases are establishing the presence of accused facing trial and confirming the same place of occurrence. In the sit plan Ex. PW 6/1 the presence of deceased Syed Imam Ali is shown at point no. 1 from where the blood-stained earth

Scanned
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

(Ex. P1) has been secured by the IO vide recovery memo Ex. PW-5/1. Accused Syed Tahir Hussain is shown at point no. 2 and from nearer point "B", two empties of 7.62mm bore were recovered and sealed into parcel no. 2 (Ex. P2). The presence of complainant Syed Shah Gul Hussain, eye-witnesses Syed Ameer Jan and Syed Muhammad Sajideen have been shown at point no. 3 to 5 respectively, which are at the distance 14 paces each from point no. 1 and at the distance of 8 paces from point no. 2. The objections of the learned defence counsel regarding visibility due to prevailing darkness at evening time and absence of other source of light is ruled out on the ground that although the parties belongs to *Fiqqa Jafria*, who perform their prayers 10 minutes later than the prayers of *Ahle-Sunnat*, but according to the schedule of monthly prayers times of District, Orakzai, the *Maghrib* prayers of *Ahle-Sunnat* used to commence on 05:44 pm on 30th January, while the prayer time of *Fiqqa Jafria* commence at about 05:55 to 06:00 pm at District Orakzai, while the occurrence has taken place at 05:30 pm (1730 hours) when the time of prayer was not yet commenced and they were on their way to mosque and the darkness was not yet prevailed and the visibility is usually clear at 05:30PM, furthermore, both the parties belongs to one and the same village and they know each other well, therefore, the question of misidentification of accused holds no ground.

S. Gulzar
 10.12.24
 BAKHT ZADA
 Addl. District & Sessions Judge-1
 Orakzai at Hangu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

The examination in chief of complainant, Syed Shah Gul Hussain recorded as PW-12 and of eye-witness Syed Muhammad Sajideen recorded as PW-13 and their examination in chief are unanimous on the date, time and place of occurrence. Syed Ijaz Hussain/PW-14 whose presence at the place of occurrence is established from the cross examination by the defense counsel as well as from the cross report of the complainant Tahir Hussain (present accused facing trial) in his report vide Naqalmaid No. 13, dated 31.01.2023. As far as the introduction of one Syed Abbas in the case by him is concerned, it is very much clear from the statement of Ijaz Hussain/PW-14 that the said Syed Abbas attacked him after the occurrence while he was on his way back to his home in injured condition after the occurrence, therefore, his alleged presence mentioned by PW-14/Syed Ijaz Hussain is not fatal to the case. Furthermore, Ijaz Hussain has also sustained injuries, however, he was shifted to DHQ Hospital KDA, Kohat where his treatment was carried out. Complainant Shah Gul Hussain (PW-12) eye-witness, Syed Muhammad Sajideen (PW-13) have not only accurately mentioned the date, time and place of the occurrence, but they also have correctly mentioned the locale of the injuries at their bodies and at the person of other witnesses, who were present at the spot. As for as, the question of two hours delay in the lodging of report by the complainant is

Saicez
 30.1.24
 BAKHT ZADA
 Addl. District & Sessions Judge-1
 Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

concerned, PW-13 and PW-12 have stated during in their cross examination that it took them about 30 minutes at the spot, after the occurrence, to arrange vehicle for shifting the dead body and injured to hospital. Their statements are also unanimous about the time of reaching to the hospital along with the dead body which according to them is 07:00PM. Complainant PW-12 has stated that after reaching the hospital at 07:00PM, they waited for the arrival of SHO and thereafter he reported the matter to him at his arrival. PW-04, SHO during his cross examination has stated that he was at Zerra when he received information about the occurrence and the distance between the hospital and Zerra is 43/45 Kms. After receiving information, it definitely took him considerable time to reach the hospital, scribing the report of the complainant, preparing injury sheets of the injured persons and inquest report of the dead body. He also stated that none of the injured were given medical aid until he reached the hospital. This stance of PW-04 is fully in line with the statement of complainant recorded as PW-12 and further clarifies the picture about the delay in report and thereafter in the medical examination and post mortem report. So, keeping these facts in mind; the statement of PW-12 and PW-13 has remained unshattered on material points i.e., place of occurrence, date of occurrence, time of occurrence and time consumed by

Sacer.

10.12.24
BAKHT ZADA
 Addl. District & Sessions Judge-1
 Orakzai at Hattigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

them in shifting the dead body and injured to the hospital.

The time of occurrence, place of occurrence, presence of the accused facing trial, injured eye-witnesses and deceased can be further confirmed and corroborated with the cross report lodged by the accused facing trial (complainant Tahir Hussain) vide Naqalmaid No. 13, dated 31.01.2023. The question that who were the aggressors and who were aggressed upon can also be resolved by perusing the cross report lodged vide Naqalmaid No. 13, dated 31.01.2023 and the medical reports of the present accused facing trial. During the occurrence 3/4 persons got injured (complainant and eye witnesses) and one person namely Syed Imam Ali died due to the firing and the attack of accused facing trial, but none of the accused facing trial sustained a single injury and they were returned by the doctors without giving them medical aid and prescriptions which is evident from their medical reports. From this it can be inferred that the accused facing trial were present at the place of occurrence with prior planning and preparation and they are the actual aggressors.

- (13). Dr. Farooq Azam was examined as PW-02, who has conducted post mortem Ex. PM of the deceased Syed Imam Ali. He has mentioned that there was one entry wound 2x1cm on lower part of the left flank breaking left iliac bone (iliac crest). According to his findings, no exit

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10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

wound was identified at the person of the deceased, while the X-Ray shows bullet inside the dead body. During cross examination, he stated that the dead body was handed over to him at 06:00PM, but there is no entry in the post mortem report Ex. PM relating to the time of handing over the dead body to PW-02 and he has mistakenly mentioned the time of death as 06:00PM for time of handing over of dead body. Furthermore, in absence of entry relating to time of handing over of dead body in the Post Mortem report Ex. PM, the oral statement of PW-02 is not fatal for the prosecution case because admittedly the occurrence has taken place at 17:30 hours as also evident from the cross report vide Naqalmad No. 13, dated 31.01.2023. So, the oral statement of medical officer in this connection is not fatal for the prosecution case.

(14). The objection regarding presence of eye-witnesses and complainant at the place of occurrence at the time of preparation of site plan is also not sustainable on the ground that the injured witnesses and complainant were present in the hospital for medical aid and after completion of the same on 18:30 hours, they identified the dead body in the hospital and were then called by the IO to reach the place of occurrence for preparation of site plan at the spot. PW-06 during cross examination has confirmed that he contacted the eye-witnesses and

Saker.
10.12.24
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai/Harrigu

193

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

complainant prior to his arrival to the place of occurrence to reach the place of occurrence so, the eye-witnesses and complainant have correctly identified the dead body of deceased Syed Imam Ali in the hospital and thereafter at the call of IO/PW-06, they reached to the place of occurrence for preparation of site plan. There is no fatal contradiction in the statements of eye-witness, complainant and IO regarding their presence in the hospital at the time of identification of dead body and at the time of preparation of site plan at the spot.

(15). PW-06/OII took into possession blood-stained earth from the place of deceased Syed Imam Ali and sealed the same into parcel No. 1 Ex. P-1. He recovered and took into possession two empties of 7.62 bore from the place of presence of accused Syed Tahir Hussain, sealed the same into parcel No. 2 Ex. P-2 by affixing 3/3 seals of monogram "AH". The recovery memo duly signed by the marginal witnesses in respect of the above two parcels is Ex. PW-5/1. Vide recovery memo Ex. PW-5/2, he took into possession from the SHO a sealed Kalashnikov with fixed charger and 05 live rounds of 7.62 bore having 3/3 seals of monogram "MS", which is marked as parcel No. 3, which was recovered by the SHO from the accused facing trial Syed Tahir Hussain at the time of his arrest vide recovery memo Ex. PW-4/7. The FSL report Ex. PA about the blood-stained earth and

Sacer.
BAKHT ZADA / 10.12.24
Addl. District & Sessions Judge-1
Orakzai at Harigu

184

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

clothes sealed in parcel No. 1 to 7 is positive and as per report IT WAS HUMAN BLOOD. Similarly, the report of the fire arms experts Ex. PA/2 relating to recovered empties of 7.62mm bore sealed in parcel No. 2 and Kalashnikov bearing No. 1963NX9509 is also in positive and the same supports the version of prosecution that the empties were fired from the recovered weapon. The statement of PW-06 & PW-05 relating to the recovery of empties of 7.62mm bore from the place of accused facing trial Syed Tahir Hussain and blood-stained earth from the place of deceased and its sealing, has remained intact during cross examination and both the witnesses are unanimous regarding the mode, manner and venue of recovery. The weapon of offence has been recovered from the possession of accused facing trial Syed Tahir Hussain by Shafiq Khan SHO who has been examined as PW-04, while Khiyal Hassan the marginal witness of recovery memo Ex. PW-5/2 has been examined as PW-05. PW-04 after scribing of report and injury sheets etc proceeded to the houses of accused for their arrest and the accused facing trial namely Syed Tahir Hussain, Syed Qanoon Shah and Syed Muhammad Yasir were arrested from their Hujra at about 2325 hours and their card of arrest Ex. PW-4/6 was issued. The SHO also recovered the weapon of offence Kalashnikov bearing No. 1963NX9509 along with fixed charger and 05 live rounds of 7.62mm bore vide

Q. Kurez.
 10.12.24
BAKHT ZADA
 Addl. District & Sessions Judge-1
 Orakzai at Hangu

195

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

recovery memo Ex. PW-4/7. The statement of marginal witness Sabir Ali of recovery memo Ex. PW-4/7 was recorded as PW-09. His statement relating to recovery of weapon of offence has remained intact and nothing contradictory was extracted from him regarding the mode, manner and venue of recovery except that no private person has been associated with the process of search and recovery which, in circumstances of the case is not fatal to the case of prosecution, keeping in view the present societal setup, where no one poke nose into the affair of others. Moreover, the police witnesses are considered as good witnesses as any other private witnesses until some malafide is proved on behalf of police. In the present case, no malafide on behalf of the police witnesses has even been alleged by the defense. So, the circumstantial evidence i.e., the forensic evidence and the mode and manner of recovery and arrest of the accused facing trial are in line with the prosecution evidence.

(16). With respect to the safe custody and transmission of parcels to the FSL, it is evident from the statement of IO recorded as PW-06 that all the case property has been properly sealed at the spot in presence of the marginal witnesses. PW-01 Ain Ullah Moharrir deposed and stated that he received parcel No. 1, 2 & 4 to 9 duly packed and sealed on 31.01.2023 and kept the same in the Mall Khana of the PS and made its entry in register-19. He also stated

Q. Kurez.
10.12.23
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Harigu

156

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

that SHO handed over him parcel No. 3 and he kept the same in Mall Khana of the PS and made its entry in register-19. It is also clearly mentioned in his examination in chief that he handed over parcels No. 1 to 8 duly packed and sealed for onward transmission to FSL on 04.02.2023, meaning thereby that the parcels were received by him duly packed and sealed and he handed over the same for transmission to FSL in sealed condition. PW-06 IO in his statement has also categorically mentioned that on 04.02.2023, he handed over parcel No. 1 to 8 along with two applications to FSL along with two transit receipts Ex. PW-5/6 & Ex. PW-5/7 to constable Khiyal Hassan for taking the same to FSL for chemical examination. The perusal of FSL report Ex. PA, Ex. PA/1 and Ex. PA/2 clearly shows that the seals on all the parcels were found intact when the same was received to FSL. The road permit certificate further shows that the same have been received to FSL in sealed condition. Nothing contradictory has been brought on record in respect of the safe custody and transit of the case property.

(17). With respect to motive behind the occurrence the complainant in his report Ex. PA/1 has alleged that motive behind the occurrence is previous altercation between the parties, although no documentary evidence is produced by the prosecution in this respect, but the same is admitted on record by the defense in their cross report lodged by one

Parcel.
BAKHT ZADA . 12.24
Addl. District & Sessions Judge-1
Orakzai at Harigu

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

of the accused facing trial Syed Tahir Hussain as complainant vide Naqalmd No. 13, dated 31.01.2023.

(18). In view of what has been discussed above, it is held that the prosecution has proved their case beyond any shadow of doubt through ocular and circumstantial evidence against the accused facing trial Syed Tahir Hussain, who has been attributed specific role for firing at the person of deceased Syed Imam Ali and according to post mortem report Ex. PM, he died due to firearm injury causing haemorrhagic shock due to major vessel injury. The report of prosecution as well as evidence produced by them is totally silent about the role of the other accused, that at whose hit, who got injured and no specific role for inflicting injury at the person of the eye witnesses and complainant has been attributed to any accused. I, therefore, acquit all the other accused facing trial namely Syed Qanoon Shah, Syed Habib Hussain both sons of Syed Gul Qasim and Syed Yasir Hussain S/O Syed Tahir Hussain from the charges levelled against them, while as discussed above, the prosecution succeeded to bring home charges against the accused facing trial Syed Tahir Hussain U/S 302 PPC, therefore, he is held guilty of the offense U/S 302 PPC for committing the murder of Syed Imam Ali.

(19). He is also held guilty of offence U/S 15AA for having in possession illegal Kalashnikov which was

Baker
10.12.23
BAKHT ZADA
Addl. District & Sessions Judge-1
Orakzai at Harigu

recovered from his possession by the SHO at the time of his arrest and which is also the weapon of offence and there is no legal justification for the same.

I. As the post mortem report Ex. PM clearly shows that the deceased Syed Imam Ali has sustained a single injury, which is on non-vital part and his death occurred due to firearm injury causing haemorrhagic shock due to major vessel injury, due to which excessive bleeding occurred and no medical aid was provided to him in time, therefore, the accused facing trial Syed Tahir Hussain is sentenced to life imprisonment as Ta'azeer U/S 302 (b) PPC. Further, the convict would also pay sum of Rs. 600,000/- (six lacs) as compensation in terms of 544-A Cr. PC to the legal heirs of the deceased, recoverable as the arrears of land revenue. In case of default of the payment of compensation, accused shall further undergo simple imprisonment for six (06) months.

II. He is further convicted U/S 15AA and sentenced to simple imprisonment for a term of three (03) years and fined Rs. 20,000/-. The amount of fine shall be deposited in the government ex-chequer against the proper receipt, in default of which convict has to undergo further simple imprisonment for 02 months. The benefit of Section 382-B Cr. PC is

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BAKHTZADA
Addl. District & Sessions Judge-1
Orakzai, Hangu
12.24

STATE VS TAHIR HUSSAIN ETC

FIR No. 02 | Dated: 30.01.2023 | U/S: 302/324/337-A(i)/337-A(ii)/34 PPC & 15AA | Police Station: Kurez Boya

extended to the accused/convict. Both the sentences shall run concurrently. The case property i.e., weapon of offence etc be kept intact till the expiry of period provided for appeal/revision. Copy of this judgement delivered to the accused/convict Syed Tahir Hussain today free of cost and his thumb impression to this effect is obtained at the margin of order sheet. The copy of judgement also be issued to the DPP, Orakzai within the meaning of Section 373 of the Criminal Procedure Code, 1898 free of cost.

(20). Judgement announced. File of this court be consigned to record room after its necessary completion and compilation.

Dated: 10.12.2024

Bakht Zada
10.12.24

BAKHT ZADA
Additional Sessions Judge-I,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment consists of thirty-six (36) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 10.12.2024

Bakht Zada
10.12.24

BAKHT ZADA
Additional Sessions Judge-I,
Orakzai at Baber Mela