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

SESSION CASE NO. : 14/02 OF 2023  
DATE OF ORIGINAL INSTITUTION : 13.09.2023  
DATE OF TRANSFER IN : 21.11.2024  
DATE OF DECISION : 31.01.2025

STATE THROUGH ISMAIL S/O MIRAN SHAH, R/O CASTE STORI  
KHEL, TEHSIL LOWER DISTRICT ORAKZAI

------(Complainant)

VS

SHAHID GUL S/O SAID ANWAR, R/O CASTE STORI KHEL, TEHSIL  
LOWER DISTRICT ORAKZAI

------(Accused Facing Trial)

**JUDGEMENT**  
31.01.2025

The accused Shahid Gul s/o Said Anwar r/o Caste  
Stori Khel, District Orakzai is facing trial in case FIR No.  
63, Dated 16.06.2023, registered U/S 302/324/337-  
F(i)PPC/15AA of Police Station Kalaya.

(2). Brief facts of the instant Murasila based FIR are that  
SHO PS Kalaya after getting information rushed to the  
THQ hospital Kalaya and found the dead body of deceased  
Jameel Shah s/o Miran Shah, aged about 42/43 years and  
injured Muhammad Wakeel s/o Rahim Shah aged about  
59/60 years in the emergency room, where complainant  
Ismail reported that on 16.06.2023 at 0800 hours, he was  
present along with his brother Jameel Shah and relative

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Muhammad Wakeel at the place of occurrence, near their  
house situated at Khwa Dara Stori Khel, in the meanwhile

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Shahid Gul s/o Said Anwar r/o Khwa Dara Stori Khel duly armed with Kalashnikov came there and started firing at them with intention to kill. That his brother Jameel Shah hit with his firing and died at the spot, while his relative Muhammad Wakeel got injured and the complainant luckily escaped unhurt. Motive for the occurrence is dispute over the landed property. The occurrence is witnessed by injured Muhammad Wakeel besides the complainant. He charged accused Shahid Gul for the commission of offence. The Murasila was sent through constable Manzoor Ali no. 424, which is received by the Moharrir of the PS and hence the instant FIR No. 63, dated 16.06.2023, U/S 302/324/337-F(i)PPC/15AA was registered at police station Kalaya, District Orakzai.

(3). After registration of FIR, it was handed over to OII/PW-04, Minhaz Hussain SI for investigation. Accordingly, after receipt of FIR, PW-04 reached to the spot and prepared site plan Ex. PW-4/1 at the pointation of the complainant. He recovered blood from the place of presence of the deceased through cotton and sealed the same into parcel No. 1 Ex. P1. He also recovered 05 empties of 7.62 bore having smell of freshly discharged and lying in scattered condition at the spot. The OII itched his signature on the same with sharp object and sealed the same into parcel No. 2 Ex. P2. Both parcels No. 1 & 2 were

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taken into possession vide recovery memo dated 16.06.2023, in presence of the marginal witnesses, which is Ex. PW-4/2.

(4). The SHO raided the house of the accused and arrested him at the spot along with Kalashnikov from his house and his card of arrest is Ex. PW 5/5. The alleged recovered Kalashnikov bearing No. \_\_\_1960-KK4248 was sealed into parcel no. 4 Ex. PA and took into possession in presence of marginal witnesses vide recovery memo Ex. PW 5/6. After completion of investigation the case file was sent to SHO for submission of complete challan. Complete challan Ex. PW 5/7 was submitted by the SHO against the accused facing trial Shahid Gul.

(5). Upon receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to him u/s 265-C Cr.P.C on 19.09.2023 and formal charge was framed against him on 06.10.2023, to which he pleaded not guilty and claimed trial. The prosecution examined as many as 09 witnesses. The gist of the evidence of prosecution is as follow;

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I. PW-1, Statement of Dr. Usman Gul: Stated on oath that on 16.06.2023 the police brought injured Muhammad Wakeel to THQ hospital Kalaya, along with injury sheet. His findings are as under;

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**Name:** Muhammad Wakeel s/o Raheem Shah

**Aged:** 60-61 years

**Sex:** Male

**Cast:** Stori Khel

**Occupation:** Labour

**Residence:** Qaum Stori Khel, Tapa Mula Khel

**Date of Examination:** 16.06.2023

**Date and time of arrival:** 16.06.2023  
(09:55AM)

**Number and date of constable:** Constable  
Wajid Ullah (320)

**Date and hour of report sent to Police:**  
16.06.2023 (10:40 AM)

Particulars of injury or symptoms, in case of  
poisoning

1.5 cm abrasion on right shoulder

Mild scratches on face

No Active bleeding

**Right shoulder X-Ray done:** No positive  
findings (normal)

**Nature of injury** (simple)

**Kind of weapon** (blunt object)

II. PW-2, Statement of Humayun MMHC: He has incorporated Murasila into FIR, which is Ex. PA and correctly bears his signature. The SHO handed over to him parcel containing Kalashnikov along with magazine containing two live rounds of the same bore. The number was allotted to parcel which is parcel no. 4. He kept all the parcels i.e., parcels no. 1 to 6 in Mall Khana in safe custody and entries were made in register no. 19. His statement was recorded by the IO u/s 161 Cr. P.C.

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III. PW-3, Statement Dr. Saleem Ullah retired

CMO:

He was posted as Chief Medical officer DHQ KDA Kohat. On 16.06.2023 at 03:30 pm he conducted post mortem examination of deceased Jameel Shah s/o Miran Shah aged about 42 years Stori Khel, District Orakzai. He found the following on examination of the dead body;

I. Extenal Appearance:

There was no mark of ligature.

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

About 42 years young man with rigor mortis fully developed.

**Wound, bruises, position, size and Nature:**

- i. A firearm entry wound of about 1/8x1/8 inches on the posterolateral surface of left lower lumber region. X-rays abdomen done which shows bullet on right side of abdomen. Bullet was

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recovered from the lateral surface  
of left lumber region.

**II. Cranium and spinal cord:**

- i. Cranium normal.
- ii. Spinal cord normal.

**III. Thorax:**

- i. Walls Healthy
- ii. Pleura Healthy
- iii. Larynx and trachea Healthy
- iv. Right lung Healthy
- v. Left lung Healthy
- vi. Pericardium and heart Healthy
- vii. Blood vessels Healthy

**IV. Abdomen:**

Left side of wall peritoneum, small and  
large intestine and kidneys injured.

**V. Muscle, bones and joints:**

- i. Diseased or deformity: Nil
- ii. Fracture: Nil
- iii. Dislocation: Nil

**VI. Remarks of the medical officer:**

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In my opinion the death has occurred due to injury to the intestine and major blood vessels of the abdomen leading to profuse bleeding.

**Probable Times that Elapsed:**

a. **Between injury and death:** within 20 minutes

b. **Between death and Post Mortem:**

More than 06 hours.

He has also endorsed on back of the injury sheet, which is Ex. PW 3/1, while the postmortem report is Ex. PM consisted of 06 pages. He handed over the blood-stained garments along with postmortem report containing 06 pages and bullet recovered from the abdomen of the dead body sealed and handed over to the police officials.

IV. PW-4, Statement of Minhaz Hussain

Investigation Officer PS Mishti Mela:

On 16.04.2023 Moharrir of the PS handed over to him copy of FIR along with other relevant documents and thereafter he proceeded to the spot. He prepared site plan at the pointation of complainant which is Ex. PW 4/1.

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He took into possession blood stains through cotton from the place of deceased and sealed the same into parcel no. 1 Ex. P1. He recovered and took into possession five empties of 7.62 bore which were having smell of freshly discharged and itched his signatures on the same with sharp object and sealed the same into parcel no 2 Ex. P2. All the exhibits/parcels were duly stamped with monogram "MH". The recovery memo is Ex. PW 4/2. Constable Wajid Ullah handed over to him postmortem report, blood-stained garments of the deceased and the injured along with one spent bullet. The blood-stained garments of the deceased were sealed into parcel no. 3 Ex. P3. The blood-stained garments of the injured were sealed into parcel no. 5 Ex. P4 and the recovered spent bullet was sealed into parcel no 6 Ex. P5. All the parcels were duly stamped with monogram "MH" and recovery memo in this respect is Ex. PW4/3. The SHO arrested the accused along with Kalashnikov with fixed charger containing two live rounds of 7.62 bore which were handed over to him by the SHO in sealed condition in parcel no. 4. He submitted report for addition of

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section 15AA which is Ex. PW4/4. He also added section 337A(I) after receiving legal opinion of DPP which is Ex. PW 4/5. He produced the accused for physical custody before the Judicial Magistrate on 17.06.2023 vide his application Ex. PW 4/6 and obtained two days custody. During investigation on 18.06.2023 the accused confessed his guilt and at his pointation the investigation officer proceeded to the spot the pointation memo is Ex. PW 4/7, which is duly signed the marginal witnesses and thumb impressed by the accused. He prepared the list of legal heirs of deceased Jameel Shah which is Ex. PW 4/8. He produced the accused for recording his confessional statement vide application Ex. PW4/9, but he refused to confess his guilt. He recorded statements of Ismail and Muhammad Wakeel. He sent the recovered case property sealed in parcels no. 1,3 and 5 through constable Gul Karim to FSL vide application Ex. PW 4/9. The road certificate is Ex. PW4/10. Statements of constable Gul Karim and Moharrir Humayun were recorded. On 23.06.2023 he sent case property containing in parcel no. 2,6 and 4 to

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FSL vide application Ex. PW 4/11. Road certificate which is Ex. PW 4/12. Statements of Gul Karim and Moharrir Humayun were recorded. Later on, the FSL reports received which are Ex PW 4/13 and Ex. PW 4/14. He placed on file the relevant DDs consisted of 04 pages which is Ex. PW 4/15 and relevant page of register no. 19 is Ex. PW 4/16.

V. PW-5, Statement of Aftab Ahmad SI, Police

Line Hangu on oath:

He was posted as SHO PS Kalaya in the relevant days. On 16.06.2023, upon receiving information he rushed to THQ hospital Kalaya where he found the dead body of Jameel Shah along with injured Muhammad Wakeel. The matter was reported to him by one Ismail (brother of the deceased) which was reduced into the shape of Murasila, which was read over to him and he thumb impressed the same to be correct. The report was verified by injured Muhammad Wakeel and he also thumb impressed the same to be correct. The Murasila is Ex. PW 5/1. He prepared injury sheet of injured Muhammad Wakeel which is Ex. PW 5/2. He also prepared the injury sheet and

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inquest report of deceased Jameel Shah which is Ex. PW 5/3 and Ex. PW 5/4 respectively. The Murasila was handed over to constable Manzoor Ali for transmission to PS and the injury sheet and inquest report were handed over to constable Wajid Ali for handing over the same the doctor. He arrested the accused duly armed with Kalashnikov and issued his card of arrest which is Ex. PW 5/5. The took into possession Kalashnikov no. 1960-KK 4248 along with fixed charger having two live rounds of 7.62 bore and sealed the Kalashnikov along with charger and two live rounds in parcel no. 4 which is Ex. PA with the seal of monogram "AA". The recovery memo in this respect is Ex. PW 5/6 duly signed by him in presence of marginal witnesses. Complete challan was prepared which is Ex. PW 5/7.

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VI. PW-6, Statement of Constable Muhammad

Irshad, Police Line at Baber Mela:

He was posted at PS as constable in the relevant days and as marginal witness to recovery memo Ex. Pw 5/6 vide which the SHO took into

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possession the Kalashnikov along with fixed charge having two live rounds of 7.62 bore from the accused and sealed the same into parcel no. 4 Ex. PA. His statement was recorded u/s 161 Cr. P.C.

**VII. PW-7, Statement of constable Wajid Ullah, PS**

**Kalaya on oath:** On 16.06.2023 he was on duty with the SHO, who handed over the dead body along with injury sheet to him in Kalaya Hospital. The same were handed over to doctor, who referred the dead body to KDA hospital Kohat for postmortem examination. He also handed over the injury sheet of injured Muhammad Wakeel. The doctor handed over to him the blood-stained garments. He took the body of deceased along with the documents to KDA hospital Kohat and handed over the same to concerned doctor, who later on handed over one spent bullet and blood-stained garments of deceased and postmortem report. He took all the documents and on return to the PS and handed over the same to investigation officer, which were taken by the investigation officer vide recovery memo. His statement was recorded u/s 161 Cr. P.C.

*Wajid Ullah*  
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VIII. PW-8, Statement of Gul Karim, posted as

Moharrir at Police Station Dabori on oath: On

16.06.2023 he was present with the investigation officer. In his presence the IO took into possession blood through cotton from the place of deceased and sealed the same into parcel no. 1 Ex. P1. The investigation officer recovered and took into possession, from the place of accused, five crime empties of 7.62 bore giving smell of freshly discharged laying in scattered condition and sealed the same into parcel no. 2 (Ex. P2). Seal of monogram "MH" was affixed on both the parcels and recovery memo which is already exhibited as Ex. PW 4/2 was prepared which is correct and correctly bears his signatures along with signature of other marginal witness Khalil Ur Rehaman. The IO took into possession blood-stained garments of the deceased and injury and one spent bullet sent by the doctor through Wajid Ullah constable and sealed the same into parcels no. 4 to 6 respectively by affixing the seal of monogram "MH" in presence of marginal witnesses and took the same vide recovery memo which is already exhibited as Ex. PW

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4/3. In his presence the SHO handed over parcel no. 4 containing weapon of offence sealed by affixing monogram of "AA" to the investigation officer. He was also present at the time of pointation on 18.06.2023 where the accused led them to the place of occurrence and correctly pointed out the spot and place of accused, deceased and injured. Pointation memo which is already exhibited as Ex. PW 4/7. On 19.06.2023 the investigation officer handed over to him parcel no. 6 along with road certificate bearing no. 88-89/21 which are already exhibited as Ex PW 4/10 and Ex. PW 4/12 along with applications addressed to FSL authority which are already exhibited as Ex. PW 4/9 and Ex. PW 4/11 respectively. The parcels were taken to FSL and after submission of parcels no. 1, 3 and 5 he obtained the endorsing stamp of FSL over the receipt while the parcels no. 2, 4 and 6 were not submitted. Similarly, he took, on 23.06.2023 parcels no. 2, 4 and 6 containing five shells of 7.62 bore, spent bullet and Kalashnikov along with road certificate, to FSL Peshawar and after submission of the same to FSL authority he returned the road certificate

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having receiving stamp of FSL authority and handed over the same to IO. The recovery memos in this respect are correct and correctly bears his signatures. His statement was recorded by the IO u/s 161 Cr. P.C.

**IX. PW-9, Statement of Complainant Ismail s/o**

**Miran Shah aged about 48/49 years on oath:**

He stated that deceased Jameel Shah was his brother while PW Muhammad Wakeel is his distinct relative and accused Shahid Gul is his co-villager. On 16.06.2023 he along with his bother Jameel Shah and PW Muhammad Wakeel were present near the house of one Wazir situated at Khwa Dara Stori Khel. At about 0800 hours accused Shahid Gul duly armed with Kalashnikov appeared and started firing at them with intention to commit their murder. As a result of which Muhammad Jameel got hit and died at the spot and PW Muhammad Wakeel sustained injury, but luckily escaped unhurt. After the occurrence accused decamped from the spot. Motive behind the offence was dispute over the landed property. The deceased and injury were taken to THQ hospital Kalaya wherein the emergency

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room he lodged the report regarding the occurrence which was scribed in shape of Murasila already Ex. PW 5/1. The contents of report were read over to him and after admitting the same to be true and correct he thumb impressed the same as token of correctness. PW Muhammad Wakeel was medically examined thereafter the complainant pointed out the place of occurrence to the IO, who prepared site plan at his instance. The dead body was taken to KDA hospital Kohat as the facility of postmortem was not available in THQ Kalaya. He also identified the dead body before the doctor. He charged the accused for the commission of offence.

(6). The prosecution closed its evidence, whereafter statement of accused recorded u/s 342 Cr.P.C wherein he did not opt for defence evidence, thereafter, arguments of the learned DPP for the State and counsel for the accused facing trial heard and case file perused.

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Arguments:

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Learned counsel for the complainant and Sr. PP for the State argued that the accused facing trial is directly nominated in the FIR. The case of prosecution is also supported by site plan Ex. PW 4/1 which has been verified by accused by



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making pointation at the spot. The recoveries made from the spot in the form of blood and empties also support the case of prosecution. The medical evidence i.e. postmortem report Ex. PM also supports the version of prosecution. The complainant and the witnesses of recovery have been produced by the prosecution for recording their statements as witnesses, whom have fully supported the case of prosecution and their statements have been subjected to lengthy cross examination, but nothing contradictory could be extracted from the mouth of any of the witnesses of the prosecution. They argued that the prosecution has proved its case beyond shadow of any doubt.

(8). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR but there is an unexplained delay of about 01 hour and 25 minutes in reporting the matter to the police, the site plan Ex. PW4/1 also does not support the case of prosecution and that point "B" from where five empties of 7.62 bore were recovered is not shown in the site plan. He argued that the case of prosecution is hit by article 129 (g) of the Qanoon e Shahadat order 1984, because the name of one Muhammad Wakeel is mentioned in the report as injured eyewitness, but his statement is abandoned by the prosecution. That story of the prosecution regarding arrest of the accused recovery of alleged weapon of offence, is

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also fake and concocted as no person of prudent mind would believe that as to how a person being accused of the offence of murder would wait with the weapon of offence for arrival of police in front of his house. That the statement of investigation officer and other PWs are not in line with report of the complainant. That the alleged weapon of offence has been sent to the FSL with a delay of 07 days. He argued that there are various dents in the prosecution case which are fatal in nature in leads to the failure of the prosecution to prove its case beyond shadow of doubt entitling the accused facing trial to honourable acquittal.

In view of the available material on file and the arguments advanced by learned Sr. PP for the State, complainant and that of learned counsel for defence, the points for determination of charge are;

- I. Whether the occurrence has taken place in the mode and manner as detailed in Murasila Ex. PW5/1?
- II. Whether the report has been made to police in the mode and manner as detailed in Murasila Ex. PW 5/1?
- III. Whether the case of prosecution is supported by ocular account?
- IV. Whether circumstantial evidence supports the case of prosecution?
- V. Whether the accused has any motive for the commission of offence?

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(9). As per contents of Murasila Ex. PW-5/1, the date and time of occurrence is 16.06.2023 at 0800 hours. The place of occurrence is Khwa Dara, Stori Khel at the distance of 24/25 km from the police station towards east, where the complainant Ismail/PW-9 along with injured Muhammad Wakeel and his brother Jameel Shah (deceased) were present, when, at the time of occurrence, the accused facing trial Shahid Gul s/o Said Anwar duly armed with Kalashnikov has come and made firing at them with the intention to kill, as a result of which the brother of complainant namely Jameel Shah has been hit and died on the spot, his relative Muhammad Wakeel sustained injures, while the complainant luckily escaped unhurt. Motive for the occurrence is dispute over the landed property. After registration of FIR, PW-04/the IO has reached the spot where he has prepared the site plan Ex. PW5/1 on the pointation of complainant/PW-09 wherein he has confirmed the place of occurrence as near the house of one Wazir, Khwa Dara Stori Khel. In the site plan the deceased Jameel Shah has been shown at point "A" from where the blood was secured through cotton by the IO/PW-4 and sealed the same into parcel no. 1 (Ex. P1) and the same was taken into possession along with five empties of 7.62 bore giving smell of freshly discharged, recovered from the place of the accused, sealed in parcel no. 2 (Ex. P2), vide

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recovery memo Ex. PW 4/2 in presence of the marginal witnesses. Learned defense counsel pointed out that point "B" in the site plan, from where the empties have been recovered has not been shown and the said stance of the learned defense counsel is also admitted by the investigation officer during his cross examination recorded as PW-04, but he has stated that point "B" is allotted to the recovery of empties. Furthermore, in the description of the site plan, the detail of point "B" has been given by the IO according to which five empties of 7.62 bore were recovered from the said place. It is explained in the recovery memo Ex. PW-4/2 that point "B" is situated near the place of presence of the accused, therefore, mere non-mentioning of point B is a clerical mistake made by the IO and the complainant party cannot be penalized for the same. Another objection is regarding the mentioning of wrong FIR numbers on site plan and recovery memo which also is not fatal because the contents of recovery memo and site plan belongs to the instant case FIR No. 63.

*Fakir*  
31-1-25 (10).

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The prosecution in order to prove its case, examined complainant as PW-9, investigation officer as PW-04 and witness of recovery memo as PW-08. In examination in chief of all the three witnesses they are unanimous on the point of place of occurrence. During cross examination the complainant as PW-9 confirmed that he has pointed out the

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place of deceased, blood-stained earth and the place from where the accused made firing. After arrest of the accused facing trial, he was taken to the place of occurrence for pointation of the spot and in this respect pointation memo Ex. PW 4/7 was prepared which is duly thumb impressed by the accused facing trial and signed by the marginal witnesses besides the investigation officer. Statement of marginal witness of the pointation memo namely Gul Karim is recorded as PW-8, who has stated that on 18.06.2023 the accused led them to the place of occurrence and correctly pointed out the spot and places of accused, deceased and injured, but during the course of cross examination a single question or suggestion has not been put to him in order to shatter his statement on the point of pointation of place of occurrence made by the accused. So, the whole prosecution evidence as well as the pointation made by the accused vide pointation memo Ex. PW 4/7 are unanimous on the point of place of occurrence. The date and time of occurrence mentioned in the Murasila Ex. PW 5/1 is 16.06.2023 at 08:00 am. Complainant/PW-9 during his examination in chief has confirmed the time of occurrence. A single question has not been asked from complainant/PW-9, during his cross examination in respect of the time of occurrence. Furthermore, the defence has not checked the account of any of the prosecution witnesses on

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the point of date and time of occurrence and thus the statements of PWs are unanimous in respect of the place, date and time of occurrence and no fatal discrepancy is brought on record by the defense in this respect. Complainant/PW-9 during his statement has reiterated the contents of Murasila and stated that he has thumb impressed the same. Aftab Ahmad SHO, the scribe of report, has appeared as PW-5, wherein he stated that he reduced the report of the complainant into shape of Murasila and read over the same to him which he had admitted as correct and put his thumb impression on the same which is Ex. PW-5/1 and correctly bears his signature. He also stated that the report is verified by injured Muhammad Wakeel and the same was thumb impressed by him after admitting the report as correct. Statement of Humayun, MHC PS Kalaya was recorded as PW-2, who has registered the FIR on the basis of Murasila. Complainant during his statement as PW-9 has confirmed that the report has been made by him to the SHO/PW-5 at THQ hospital Kalaya. During cross examination complainant stated that he along with Muhammad Wakeel have shifted the dead body to the THQ hospital Kalaya, after arrangement of the vehicle. The scribe of report PW-5/SHO stated during his cross examination that he reached to the spot at 09:20/09:25 am which is in conformity with

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the time of report mentioned in the Murasila Ex. PW 5/1. PW-2, Moharrir Humayun has not been cross examined on the point that at what time and through whom he received the Murasila. PW-1, Dr. Usman Medical officer THQ hospital Kalaya has mentioned in his examination in chief the time of arrival of the injured Muhammad Wakeel before him for medical examination as 09:55am which is supporting the stance of the complainant regarding time of occurrence as well as the stance of the PW-5/SHO/scriber of Murasila, who stated that he reached to the hospital at 09:20/09:25 am and definitely the scribing of Murasila and preparation of injury sheet in the hospital might have taken at least 20 minutes. The distance between the place of occurrence and THQ hospital Kalaya, where the report is made, is mentioned about 25 km and the complainant at least might have taken more than one hour in arrangement of vehicle and shifting the dead body and injured to the hospital. Keeping in view the contention of the complainant in Murasila Ex. PW 5/1, all the above-named witnesses are unanimous regarding the date, time, place, mode and manner of report made by the complainant. During cross examination nothing contradictory could be extracted from them rather they have confirmed the aforementioned facts during their cross examination.

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(11). With respect to ocular account, the learned defence counsel time and again stated that the prosecution have abandoned the injured witness Muhammad Wakeel which brought the case of the prosecution under the ambit of article 129 (g) of the Qanoon e Shahadat order 1984, but it is noteworthy that several notices and warrants were issued by this court to injured witness Muhammad Wakeel, but the same returned un served with the report of DFC concerned that he searched the PW on the given address, but he was not available in his house and in the locality and that he was avoiding his lawful arrest and has gone to unknown place. Statement of DFC, Sirab Ali was recorded as SW-1 on 17.10.2024 wherein he has further stated that *“I had inquired about the witness from the people of locality, who had reported that the witness has hire assassin (contract killer) and most of the time leads hidden life. Therefore, I returned the warrants unexecuted along with my report on the back of the warrant Ex. SW1/1 and also obtained the signatures of one Muhammad Tahir s/o Mehmood Shah on the back of the warrant”*

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The statement of learned Sr. PP for the state recorded on 04.12.2024, while abandoning PW Muhammad Wakeel is also worth perusal wherein, he has stated that;



*“We abandoned PW Muhammad Wakeel, who being intentionally avoiding recording his statement being won over by the defense as he has affected compromise with the defence in his own case as far as our knowledge is concerned”*

The above statements of the DFC concerned recorded as SW-1 and joint statement of learned Sr. PP for the state and learned counsel for the complainant shows that injured PW Muhammad Wakeel has been abandoned by the prosecution under compulsion due to the above-mentioned reasons. It was not possible for the prosecution to procure the attendance of witness of such a character, furthermore, after reports of DFC concerned recorded as SW-1 mentioned above, the defence would definitely raise fingers at the evidentiary value of the statement of a PW of such a character.

Article 129 (g) of Qanoon e Shahadat order 1984 is reproduced below for ready reference;

*Article 129 (g)--- that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.*

So, in the present case, as reported by SW-1 his presence could not be procured, therefore, the case of prosecution does not fall within the ambit of 129 (g) of Qanoon e Shahadat order 1984. It is also worth mentioning

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here that complainant Ismail being eyewitness and brother of the deceased has recorded his statement as PW-9 and his statement has not been cross examined on the material points i.e., date, time and place, furthermore, his statement has remained intact on other material points during cross examination.

- (12). Learned defense counsel also laid stress upon the cross examination of investigation officer/PW-04 wherein he has mentioned that;

*"It is correct that according to information furnished by elders of the locality, I have mentioned the fact about 15 persons came there, demolished the stone built wall and were proceeding to house of accused, out of whom 04/05 persons were armed with pistols due to which the accused made 02/03 aerial firing because of fear, but they were still proceeding, therefore, the accused entered to in his house and cross firing was made between them, because of which the deceased Jameel Shah got hit and died on the spot.* This stance of investigation officer/PW-04 during his cross examination has no evidentiary value because the same is not supported by the statement of a single witness, furthermore, the investigation officer has neither collected and bring on record any evidence in this respect nor he has conducted his investigation on the same line. His examination in chief is also silent about this fact,

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therefore, such statement of investigation officer without supporting and corroborative evidence has no evidentiary value. PW-05, Aftab Ahmad SHO after scribing report Ex. PW 5/1, preparation of injury sheet of Muhammad Wakeel Ex. PW 5/2, injury sheet and inquest report of deceased Jameel Shah Ex. PW 5/3 and Ex. PW 5/4 proceeded for arrest of the accused, who was arrested duly armed with Kalashnikov. His card of arrest is Ex. PW 5/5. He took into possession the Kalashnikov no. 1960-KK 4248 along with fixed charger having two live rounds of 7.62 bore and sealed the same into parcel no. 4 Ex. PA, vide recovery memo Ex. PW 5/6. The statement of PW-5, Aftab Ahmad has remained unshattered during cross examination on the point of recovery of above-mentioned Kalashnikov from possession of the accused facing trial. Statement of PW-06, Muhammad Irshad, who is marginal witness of the recovery memo Ex. PW 5/6, vide which the SHO took into possession Kalashnikov No. 1960-KK 4248 along with fixed charger having two live rounds of 7.62 bore, who affirmed his signature on the recovery memo Ex. PW 5/6 as token of its correctness. During cross examination the defense failed to controvert the recovery of the above-mentioned weapon from the possession of the accused facing trial. So, the recovery of the weapon of offence from possession of the accused facing trial is proved on record.

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(13). The circumstantial evidence against the accused facing trial consists of recovery of blood from the place of deceased, recovery of five empties of 7.62 bore giving smell of freshly discharged, from the place of accused sealed in parcel no. 2 Ex. P2, recovery of blood stains from earth through cotton from the place of deceased, sealed in parcel no. 1 Ex. P1, recovery of weapon of offence from the accused facing trial vide recovery memo Ex. PW 5/6, the report of FSL regarding blood stained cotton Ex. PW 4/14, the report of FSL Ex. PW 4/13 regarding the empties recovered from the spot and Kalashnikov No. 1960-KK 4248 recovered from the possession of the accused facing trial and report of FSL Ex. PW 4/14 regarding blood stained garments of the deceased. The statements of witnesses recorded in respect of the above-mentioned recovery are unanimous regarding the mode, manner and venue of recovery and their statements have not been shattered in this respect.

(14). After recovery of weapon of offence by the SHO/PW-05 and sealing the same in parcel no. 04, the SHO returned to the police station and handed over the parcels containing Kalashnikov along with magazine and two live rounds of 7.62 bore to Moharrir of the PS, who in his statement as PW-2 has correctly mentioned the same. PW-02 has stated that parcel no. 4 was handed over to him by the SHO for

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keeping it in safe custody in Mall Khana and he made entries in register no. 19 in this regard. The statements of marginal witnesses of recovery memos, pointation memo, SHO/PW-05, investigation officer/PW-04 and complainant have been cross examined, but nothing contradictory could be extracted from them 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 for, in such like cases keeping in view our social setup no one poke noes into the affairs of other. Moreover, the police witnesses are considered as good witnesses as any other private witnesses except some malafide is proved on behalf of police witness, but in the present case no malafide on behalf of police witnesses have even been alleged by the defense. The safe custody and transmission of samples to the FSL, the case property has been properly handed over to PW-02, Moharrir of the police station, who has deposited the same in Mall Khana after making entries of the same in register no. 19. On 19.06.2023 the parcels have been handed over to constable Gul Karim for sending the same to FSL which entries are clearly shown on page Ex. PW 4/16 of the relevant register. The FSL report Ex. PW 4/13 shows that the five 7.62 MM bore crime empties marked C-1 to C-05 were fired from

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7.62 bore (SMG) rifle No. 1960-KK 4248 which has been recovered from the possession of the accused facing trial, furthermore the postmortem report of the deceased Jameel Shah available on record as Ex. PM and statement of the concerned medical officer Dr. Saleem Ullah recorded as PW-03 fully supports the version of prosecution and nothing favourable has been brought on record by the defense in its favour. Hence in view of what is discussed above, the case of prosecution has also been substantiated by the circumstantial evidence.

(15). With respect to motive behind the occurrence, the complainant in his report Ex. PW 5/1 and in his court statement as PW-09 has alleged that motive behind the occurrence is dispute over the landed property. The said stance of the complainant regarding the motive is nowhere shattered by the defense during the course of their cross examination.

(16). In view of what is discussed above, it is held that the prosecution has proved its case beyond shadow of any doubt through ocular and circumstantial evidence, hence the accused namely Shahid Gul s/o Said Anwar is held guilty of offence u/s 302 PPC for committing murder of Jameel Shah s/o Miran Shah and accordingly he is convicted.

*Saker*  
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(17). As for as section 324 PPC and 337 F(i) for attempting murder and inflicting injuries at the person of injured Muhammad Wakeel are concerned, as per medicolegal report Ex. PW 1/1, the said injuries occurred due to blunt object and its nature is simple, furthermore, there is no evidence on record that the said injuries were sustained due to the act of the accused facing trial, therefore, the same are not proved against the accused facing trial.

The accused facing trail is also held guilty of offence u/s 15-AA for having in possession illegal Kalashnikov which was 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.

(18). As the accused facing trial is an aged person having age of about more than 50 years and also relative of the complainant party, therefore the accused facing trial Shahid Gul s/o Said Anwar is sentenced to life imprisonment as Ta'azeer u/s 302 (b) PPC. Furthermore, the accused facing trial would also pay sum of Rs. 500,000/ (06 lac) as compensation in terms of section 544-A Cr. P.C. to the legal heirs of the deceased, recoverable as arrears of land revenue. In case of the default of the

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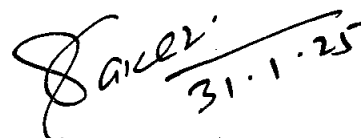
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payment of compensation, accused shall further undergo simple imprisonment for six months.

(19). 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 382B Cr. PC is 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 Shahid Gul 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: 31.01.2025

  
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**CERTIFICATE**

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

Dated: 31.01.2025

*Bakht Zada*  
*31-1-25*

**(BAKHT ZADA)**

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