

4IN THE COURT OF BAKHT ZADA
ADDITIONAL SESSIONS JUDGE-I, ORAKZAI (AT BABER MELA)

SESSION CASE NO.	:	05/03 OF 2024
DATE OF ORIGINAL INSTITUTION	:	23.07.2024
DATE OF PRESENT INSTITUTION	:	19.11.2024
DATE OF DECISION	:	17.04.2025

SHEHZAD KHAN S/O GUL BADAN, R/O QAUM RABIA KHEL,
TAPPA AFZAL KHEL, VILLAGE SAIFALDARA, DISTRICT
ORAKZAI.

.....(COMPLAINANT)

-VERSUS-

MUHAMMAD HAMID KHAN S/O NASRULLAH KHAN, R/O QAUM
RABIA KHEL, TAPPA AFZAL KHEL, VILLAGE MUSA MELA,
DISTRICT ORAKZAI.

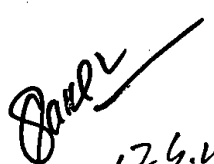
..... (ACCUSED FACING TRIAL)

JUDGEMENT

17.04.2025

Accused Muhammad Hamid Khan S/O Nasrullah
Khan R/O Qaum Rabia Khel, Tappa Afzal Khel, Village Musa
Mela, District Orakzai is facing trial in case FIR No. 11, dated
27.05.2024, registered U/S 302 PPC & 15AA of PS Ghiljo,
District Orakzai.

- (2). Facts of the prosecution case as reported in Murasila
are that the SHO received information during Gasht that a
dead body is brought to THQ hospital. On the said
information, he along with constable Sabz Ali No. 956, Sultan
Akbar No. 966, Ishan Ullah No. 114 came to emergency room
of THQ hospital Ghiljo, where the dead body of Umar Khan
s/o Hakeem Khan, aged about 30/31 years, r/o Qaum Rabia
Khel, Tappa Afzal Khel, village Musa Mela was laying and
uncle of the deceased namely Shehzad Khan s/o Gul Badan
aged about 69/70 years, CNIC No. 14101- 2344091-3, cell
phone No. 0331-9671270, reported the matter to the police


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that his nephew deceased Umar Khan on 26.05.2024 while leaving his house at "Isha Vela has told that he is going with Muhammad Hamid Khan and will return late, however, he did not return. That in the morning at 07:30AM, the complainant received information regarding presence of dead body of deceased Umar Khan near Musa Mela Tubewell. The complainant along with relatives reached to the spot where he found the dead body of his nephew lying smeared with blood. He inquired about the occurrence and came to know that his nephew has been murdered by accused Muhammad Hamid Khan. Motive of the occurrence is unknown. He charged the accused for the commission of the offence. He thumbs impressed his report and verified his report by thumb impressing the same as a token of its correctness. Injury sheet and inquest report of the deceased were prepared and handed over to constable Sabz Ali for handing over to medico legal officer for PM examination of the deceased. Murasila was handed over to constable Ihsan Ullah No.1141 for taking the same to PS for registration of FIR, hence, the present FIR.

(3). After receiving the copy of FIR, the investigation officer proceeded to the spot and prepared site plan Ex. PB at the pointation of the complainant on 27.05.2024. The accused was arrested and after completion of investigation, complete challan was submitted against him.

(4). Accused Muhammad Hamid Khan S/O Nasrullah being in custody was summoned through Zamima Bay. He was brought before the court on 19.08.2024 and provisions of Section 265-C of the Criminal Procedure Code, 1898 was

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complied with. Formal charge against the accused was framed on 30.08.2024, to which he pleaded not guilty and claimed trial.

(5). The prosecution produced and recorded the statements of as many as eleven (11) PWs. The gist of their evidence is as follows;

I. **PW-01, Muhammad Ibrahim, SHO PS Ghiljo:** He stated that on 27.05.2024, he received information during gasht that dead body has been brought to THQ Hospital Ghiljo. Upon this information, he along with police officials namely Sabz Ali No. 958, Sultan Akbar No. 966 and Ihsanullah No. 1141 proceeded to the THQ Hospital Ghiljo, where in emergency room, dead body of deceased Umar Khan son of Hakeem Khan was laying and his uncle Shahzad Khan reported the matter at about 1010 hours, which was reduced in shape of Murasila, Ex.PW 1/1. The contents of report were read over to the complainant and after admitting the same to be true and correct, one Muhammad Jalal son of Muhammad Rehman endorsed the report of complainant and thumb impressed the same. Thereafter, the SHO prepared injury sheet and inquest report of the deceased as Ex.PW 1/2 and Ex.PW 1/3 respectively. He handed over the injury sheet and inquest report to constable Sabz Ali no. 958 for presenting the same to medico legal officer for PM examination, while Murasila was handed over to constable Ihsanullha no. 1141 for its

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transmission to police station for purpose of registration of the case. He also arrested the accused facing trial Muhammad Hamid Khan vide card of arrest Ex.PW 1/4 on 27.05.2024. After completion of investigation, the case file was handed over to him and he submitted complete challan against the accused facing trial which is Ex.PW 1/5. He was cross examined by learned defence counsel.

- II. **PW-02, Muhammad Hanif SI.** He stated that on 27.05.2024, he was present with the IO during spot inspection and in his presence, the IO recovered and took into possession blood stained earth from the place of deceased and sealed the same into parcel no. 1 by affixing the monograms of SR vide the recovery memo Ex.PW-2/1 which is correct and correctly bears his signature along with co-marginal witness Zeeshan Ahmed. His statement was recorded by the IO U/S 161 Cr.PC. On their return to police station, constable Sultan Akbar 966 brought the blood stained garments consisted upon one shalwar and Qamees (sabz kharr color) sent by doctor and handed over the same IO which were taken into possession by the IO vide the recovery memo, Ex.PW-2/2 and sealed the same into parcel no. 2 by affixing the monogram of SR which is correctly signed by him as well as co-witness Zeeshan Ahmed. On 29.05.2024, the accused facing trial Muhammad Hamid Khan confessed his guilt to the IO and voluntarily led the IO to the place

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of occurrence and correctly pointed out the place of occurrence. From the spot pointation the accused led them to his house and pointed out the drum of wheat wherein he has concealed the weapon of offence i.e rifle and the empty shells which were lying on the wooden lid of the drum of wheat. The IO recovered rifle 3x3 bore bearing no. 8877 from the drum and two empty shells of 3x3 bore lying in open condition on the wooden lid of drum at the pointation of accused. The IO itched his signature upon the same with sharp object and sealed the same into parcel no. 3 and 4 respectively by affixing the monogram of SR. To this effect, pointation memo and recovery memo Exh.PW 2/3 was prepared which is correct and correctly bears his signature as well as signature of co-marginal witness Zeeshan Ahmed. His statement U/S 161 Cr.PC was recorded by the IO. He was cross examined by the defense counsel at length.

III. PW-03, Sabz Ali No. 958. He stated that on 27.05.2024, he was present with the SHO at THQ hospital Ghiljo. The SHO handed over to him the dead body of deceased Umar Khan along with relevant documents i.e injury sheet and inquest report of the deceased for handing over the same to medico legal officer for PM examination. After PM examination, the body of deceased was handed over to legal heirs of deceased. His statement U/S 161

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Cr.PC was also recorded by the IO. He was also cross examined by learned defence counsel.

IV. PW-04, Dr. Haroon Khan, Medical Officer, THQ

Ghiljo. He stated that on 27.05.2024, he conducted autopsy of the dead body of deceased Umar Khan S/O Hakeem Khan, R/O Mishti Mela and found the following;

EXTERNAL APPEARANCE:

Condition of subject stout, emaciated, decomposed etc, clothing: Clothing-emaciated. Bluish mark appeared on body.

Wounds, bruises, position, size, nature: Entry of bullet supraclavicular medial 1/3 and second entry in jagular area. Bruises on burn line of 1/3 lateral supraclavicular area about 2x3 inch. Bullet entry below scapula 1x2 cm wound posteriorly. Exit of bullet anterior right nipple lateral side with wound approx. 2 to 3cm hole type. Entry of bullet wound anterior pal of the hand with exit bullet posterior side approx. 2 to 3 inch exposed wound.

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CRANIUM AND SPINAL CORD:

THORAX: Left lung, pericardium and heart and blood vessels are injured while rest of the organs are intact.

ABDOMEN

All organs are intact.. There might be suspected injury in diaphragm.

REMARKS BY MEDICAL OFFICER:

Cause of death: The cause of death is cardiopulmonary arrest due to FAI.

Probable time that elapsed.

a) Between injury and death:

Between death and Post-Mortem: approx. 15 to 17 hours.

He was cross examined by the defense counsel.

V. **PW-05, Rooh Ul Amin, PS Ghiljo:** He stated that on 31.05.2024, the IO handed over to him parcel No. 1 to 4 containing blood-stained earth, blood-stained garments, one rifle 303 bore and two crime empties respectively along with road certificates and applications addressed to FSL authorities. He accordingly took the same to FSL Peshawar and deposited the same therein. After taking endorsement stamp over the receipts and on from FSL, Peshawar to PS, he handed over the receipts to Moharrir of the PS. His statement was recorded U/S 161 Cr. PC. He was also cross examined by the learned defence counsel.

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VI. **PW-06, Haq Nawaz, Police lines:** He stated that he was present in the PS Ghiljo and received Murasila from Ibrahim Khan SHO through Constable Ihsan

Ullah No. 1141. He correctly incorporated the contents of Murasila into FIR Ex. PW-6/1. On arrival of the IO to the PS, he handed over to him parcel No. 1 containing blood-stained earth having the monogram of "SR" which he placed in the safe custody of Mall Khana of PS. He made entries in this respect in register-19. On 29.05.2024, the IO handed over to him parcel No. 3 containing Rifle bearing No. 8877 & parcel No. 4 containing two empties of 303 bore, which he kept in safe custody of Mall Khana and also made entries in this respect in register-19. The extract of register-19 is Ex. PW-6/2. (Original seen and returned). On 31.05.2024, He handed over parcel No. 1 to 4 to the IO for its onward transmission to FSL Peshawar. The road certificates were affixed in the register-21. His statement U/S 161 Cr. PC was recorded by IO.

VII. **PW-07, Muhammad Jalal S/O Muhammad**

Rehman: He stated oath that on 27.05.2024, he verified the report of the complainant namely Shehzad Khan at THQ Hospital, Ghiljo by putting thumb impression over the report of the complainant.

Similarly, he also identified the dead body of deceased Umar Khan before the police as well as before the doctor at hospital. His statement was recorded by the IO U/S 161 Cr. PC.

VIII. **PW-08, constable Sultan Akbar:** He stated that deceased Umar Khan was his nephew. Accused

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facing trial is the son of his niece. On 26.05.2024 at Isha time the deceased at the time of leaving house, disclosed that he (deceased) is going with accused Hamid Khan to somewhere and will return after some time, but he did not return to the house. On the following day i.e. 27.05.2024 at 07:30AM, he received information that his nephew is lying dead at the place of occurrence. Upon this information, he along with other relatives proceeded to the spot i.e. near Musa Mela Tube Well where the dead body of his nephew was lying smeared with blood. He inquired about the occurrence and came to know that his nephew has been murdered/killed by accused Muhammad Hamid Khan due to unknown reasons. They shifted the dead body to THQ Hospital, Ghiljo where he lodged report to the local police which is already exhibited as Ex. PW-1/1. The same is correct and correctly bears his thumb impression, while one Jalal verified the report. He also identified the dead body before the police as well as before the doctor. He also pointed out the place of occurrence to the IO, who at his instance prepared the site plan. He charge the accused Muhammad Hamid Khan for the commission of offence. He was cross examined by the learned defence counsel.

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(Complainant): He stated that deceased Umar Khan was his nephew. Accused facing trial is the son of his

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niece. On 26.05.2024 at Isha vela the deceased at the time of leaving house, told that he (deceased) is going with accused Hamid Khan to somewhere and will return late however, he did not return to the house. On the following day i.e. 27.05.2024 at 07:30AM, he received information that dead body of his nephew is laying at the place of occurrence. Upon this information, he along with other relatives proceeded to the spot i.e. near Musa Mela Tube Well where the dead body of his nephew was lying dead smeared with blood. He inquired about the occurrence and came to know that his nephew has been murdered/killed by accused Hamid Khan. Motive for the occurrence is unknown. They shifted the dead body to THQ Hospital, Ghiljo where he lodged report to the local police already exhibited as Ex. PW-1/1 and one Jalal verified the same. He also identified the dead body before the police as well as before the doctor. He also pointed out the place of occurrence to the IO, who at his instance prepared the site plan. He charged the accused Muhammad Hamid Khan for the commission of the offence.

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- X. **PW-10, Muhammad Zain S/O Shehzad Khan:** He stated that on 26.05.2024 at Isha vela, he was sitting on *Charpai* at the court yard of his house. That deceased Umar Khan came out from his room, he was asked that where he is going. In reply he disclosed to him that he is called by accused

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Muhammad Hamid Khan and he is going met him and will return late, but he did not return at night. On the following day at about 07:30 he received information that the dead body of his cousin is lying at the place of occurrence. Upon this information, he along with other relatives proceeded to the spot i.e. near Musa Mela Tube Well where the dead body was lying smeared with blood. They inquired about the occurrence and came to know that his cousin has been murdered/killed by accused Hamid Khan due to unknown reasons. He verified the report of his father. He charged the accused Muhammad Hamid Khan for the commission of the offence.

XI. **PW-11, Saif Ur Rehman OII:** He stated that after registration of the instant case copy of FIR along with relevant documents were handed over to him for investigation. He along with investigation staff proceeded to the spot. Upon reaching the spot, complainant was present there and he started preparation of site plan Ex. PB at the instance of complainant. During spot inspection, he recovered and took into possession blood-stained earth from the place of deceased Umar Khan and sealed the same into parcel No. 1 (Ex. P-1) vide recovery memo already exhibited Ex. PW-2/1. From the spot inspection, he returned to the PS and constable Sultan Akbar handed over to him blood-stained garments of deceased consisted upon one Shalwar and Qamees

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(Kharr Colour) which he took into possession vide recovery memo already exhibited as Ex. PW-2/2 and sealed the same into parcel No. 2 (Ex. P-2). Thereafter, he went out in search of accused and inquired about him in locality, but failed. On his return to the PS, he was informed that accused had already been arrested by the SHO. The accused was handed over to him for interrogation and on 28.05.2024, he vide application Ex. PW-11/1 produced the accused before Judicial Magistrate and after obtaining physical custody of accused for two days. He interrogated the accused. During interrogation, accused confessed his guilt before him and he recorded his statement U/S 161 Cr. PC. He voluntarily led the IO to the place of occurrence and correctly pointed out the spot to him and addition with red ink was made on the back of site plan Ex. PB/1. From the spot inspection, the accused led them to his house and pointed out the drum of wheat where he has concealed the weapon of offence and empty shells lying on the wooden lid. He recovered and took into possession a rifle 303 bore bearing No. 8877 and two empty shells of 303 bore vide recovery memo already exhibited as Ex. PW-2/3 at the instance of accused which were sealed into parcel No. 3 (Ex. P-3) & parcel No. 4 (Ex. P-4) respectively and he also prepared sketch memo Ex. PB/2. All the above-mentioned parcels were taken into possession

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in presence of marginal witnesses and affixed all the parcels with the monogram of "SR". On 03.05.2024, he vide application Ex. PW-11/2 produced the accused before Judicial Magistrate for recording his confessional statement. Accused refused to confess his guilt and he was sent to Judicial Lock-up. He also prepared the list of legal heirs of the deceased. He also added section 15AA in the Challan and issued insertion memo Ex. PW-11/3. On 31.05.2024, he sent the blood-stained clothes etc and recovered rifle and empties to FSL for chemical examination through constable Rooh Ul Ameen along with applications addressed to FSL Ex. PW-11/4 & Ex. PW-11/5 respectively. On receiving FSL report regarding blood-stained articles and rifle and crime empties are Ex. PZ & Ex. PZ/1. He also recorded the statements of PWs U/S 161 Cr. PC. After completion of investigation, he handed over the case file to the SHO for submission of complete challan.

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- (6). Learned Sr. PP for the state and counsel for complainant abandoned PW Ihsan Ullah No. 1141 being unnecessary and closed the prosecution evidence.
- (7). Statements of accused was 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:

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(8). Learned Sr. PP for the state argued that the accused is directly charged in the FIR and as per statement of the deceased while leaving, he has told in his house that he is called by the accused facing trial namely Hamid Khan. The recovery of blood stained earth from the place of occurrence and recovery of weapon of offence along with empty shells at the pointation of accused from his residential house, shows the connection of the accused facing trial with the commission of offence. The FSL report also supports that the said bullets have been fired through the gun i.e. 303 bore, which was recovered from the house of accused facing trial. He prayed for conviction of the accused facing trial in the instant case.

(9). On the other hand, learned counsel for the accused facing trial argued that the occurrence is unseen one and there is no eye-witness of the same. The PM report clearly shows that rigor mortis has been developed in the dead body and the time laps between the death and PS examination is about 15 to 17 hours. He argued that the dead body is brought to the hospital by the police and there is no identifier mentioned on the PM report Ex. PM. The medicolegal officer has also stated that the dead body was brought to the hospital for PM examination by the police. He prayed that there is no motive for commission of the offence; therefore, prayed for acquittal of the accused in the instant case.

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(10). After hearing arguments, available record perused. It is the case of prosecution that SHO Ibrahim Khan after receiving information, rushed to THQ hospital Ghiljo, where he found the dead body of Umar Khan s/o Hakeem Khan, aged about

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30/31 years laying in the emergency room. Uncle of the deceased namely Shahzad Khan s/o Gul Badan reported that on 26.05.2024 at Isha Vela, his nephew Umar Khan while leaving his house, told that he is going to somewhere with Muhammad Hamid Khan and will return home late, but he did not return at night. The next morning at 07:30 am, he was informed that his nephew has been murdered and his dead body is laying at the place of occurrence i.e. Musa Mela Tubewell. He reached there along with relatives and found the dead body of his nephew laying at the place of occurrence smeared with blood. He came to know that his nephew has been murdered by Muhammad Hamid Khan. Motive for the occurrence is unknown. He charged the accused named above for the commission of offence.

- (11) The prosecution in order to prove its case produced and recorded the statement of complainant Shahzad Khan as PW-9, who repeated the whole story as alleged in the report Ex. PW 1/1 during his examination in chief. He stated during cross examination that he was informed by one Fazal Raheem that dead body of a person is laying at the place of occurrence. His statement is silent about any direct or circumstantial evidence. He failed to state that when the deceased was seen with the accused facing trial and by whom. The statement of other PW namely Muhammad Zain/PW-10 is also silent about the fact that who has seen the accused facing trial with the deceased for the last time, where and when. It is also not mentioned in the report Ex. PW 1/1 that while leaving the home, who was informed by the deceased that he is called by accused facing

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trial Hamid Khan and that he is going to meet him. The kind of circumstantial evidence is not supported by the last seen evidence for corroboration of the same. Motive for the occurrence is unknown. Although absence of motive does not automatically lead to acquittal of accused in offence u/s 302 PPC if there is strong direct evidence such as ocular account or forensic evidence. However, when the evidence is circumstantial absence of motive can create doubt and may lead to the benefit of doubt for the accused. In the present case there is no direct evidence against the accused facing trial. The only evidence on which the prosecution has relied for charging and prosecuting the accused is that while leaving his house the deceased has told that he is going to meet Hamid Khan will return back to home late night, but this is also not proved in accordance with law, because PW-10 during his examination in chief has stated that he asked the deceased that where he is going and in response he disclosed before him that he has been called by accused facing trial Muhammad Hamid Khan and he is going to meet him. This statement of PW-10 is amounting to improvement, because the report Ex. PW 1/1 is silent about the name of PW-10 Muhammad Zain. As for as, the recovery of the alleged weapon of offence by the Investigation Officer is concerned, after arrest of the accused facing trial, he made pointation of the place of occurrence and that, on his pointation the Investigating Officer succeeded and collecting one 303 bore rifle from the drum and two empties of 303 bore laying on the wooden lid of the drum claiming the same to be the weapon of offence, but it is not appealing to prudent mind

Done

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that a person, after commission of the offence would collect the empties and thereafter kept the same in his house, furthermore, there is corroborative evidence on the case file to show that the said gun is the weapon of offence and belongs to the accused facing trial. Investigating Officer Saif Ur Rehman during cross examination as PW-11 stated that no one has been cited as eyewitness of the occurrence. He admitted that no empty was recovered during spot inspection. Furthermore, he has not recorded the statements of any independent witnesses regarding the occurrence. The occurrence has taken place on 26.05.2024 while report is made on 27.05.2024 at 10:10 am and there is about 15 to 17 hours lapse between the death and PM examination of the deceased as mentioned in PM report Ex. PM. PW-4 medicolegal officer Dr. Haroon has stated that the dead body was brought before him by the police, meaning thereby that the complainant and other witnesses have not seen even the dead body of the deceased at the place of occurrence. This statement of the PW-4 finds support from the PM report, where upon the names of identifier are not mentioned.

- (12) All the above discussion clearly shows that the occurrence is unseen one and the time of occurrence is also unknown. No recovery of any empty shell has been made from the place of occurrence. Even the circumstantial evidence mentioned in the report is not proved on record in accordance with law. All these suggests that the case of prosecution is case of no evidence at all and they badly failed to bring home charges against the accused facing trial. I, therefore, acquit the accused facing trial from the charges levelled against him. He is on

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bail; his bails bonds stand cancelled and his sureties are absolved from the liabilities of bail bonds. Case property i.e. the weapon 303-bore gun be confiscated to the state.

(13). Case file be consigned to the record room after its necessary completion and compilation.

Announced:
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CERTIFICATE

Certified that this judgment consists of Eighteen (18) pages.

Each page has been read, corrected wherever necessary and signed by me.

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