

**IN THE COURT OF HAQ NAWAZ,**  
**SESSIONS JUDGE/JUDGE JUVENILE COURT,**  
**ORAKZAI AT BABER MELA**

SESSION CASE NO. : 4/2 JC OF 2024

DATE OF INSTITUTION : 08.11.2024

DATE OF DECISION : 16.10.2025

STATE THROUGH SAMI ULLAH S/O SEEN AKBAR, CASTE  
SHEIKHAN

------(Complainant)

VS

UMAR NAWAZ S/O UMAR KHITAB, AGED ABOUT 16 YEARS,  
CASTE SHEIKHAN, TAPA UMARZAI, PO RAISAN, TEHSIL  
CENTRAL, DISTRICT ORAKZAI

------(Accused facing trial)

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**JUDGEMENT**

16.10.2025

This case was registered against the accused Umar  
Nawaz s/o Umar Khitab, Caste Sheikhan, Tapa Umarzai,  
PO Raisan, Tehsil Central, District Orakzai vide FIR No.  
46, Dated 02.08.2024 at Police Station Kurez u/s  
302/324/337-F(iii)/337-A(i)/148/149 PPC.

2. According to the prosecution's case, the local police,  
while responding to information regarding the  
occurrence, reached THQ Hospital Kalaya on 02.08.2024  
where they found the dead body of Ameen Ullah in the  
emergency room. The cousin of the deceased namely  
Sami Ullah reported the matter at 2200 hours that he  
along with his cousin Ameen Ullah, nephew Raheem  
Ullah, another cousin Khan Afzal and uncle Awal Akbar  
were busy in excavating gravels from a nearby  
Algada/river on 02.08.2024 at 1800 hours when the

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present accused Umar Nawaz, co-accused Mola Jan and absconding accused Shah Nawaz, Mudassir and Umar Khitab arrived there. Among them, the accused Umar Nawaz and Shah Nawaz were armed with Kalashnikovs. The accused asked them that why are they excavating the gravels, to which the complainant replied that they are excavating it for their domestic need. Upon hearing this, the accused made assault on them with buttstocks of the arms and stones. The absconding accused Umar Khitab caused head injury to Khan Afzal while the accused facing trial caused injury on the ear of Awal Akbar whereas the accused Umar Nawaz and Shah Nawaz started firing at them; as a result of firing of the accused Umar Nawaz Ameen Ullah got hit while Raheem Ullah and one Abdul Majeed, who came there for rescue, received injuries from the firing of Shah Nawaz. The accused escaped from the spot. The injured Raheem Ullah and Abdul Majeed were shifted to KDA Hospital Kohat for treatment with the help of local inhabitants while the injured Ameen Ullah succumbed to his injuries on the way to THQ Hospital Kalaya. The injured Raheem Ullah also succumbed to his injuries on 06.08.2024. Motive behind the occurrence was reported to be excavation of gravels from the river. The complainant charged the accused for the commission of offence.

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3. After completion of investigation, complete challan against the accused was submitted. The accused was summoned and copies were provided to him under Section 265-C CrPC. The accused pleaded not guilty and claimed trial. The prosecution produced a total of 12 witnesses before the Court. A brief resume of the depositions of the prosecution witnesses is as under;

I. Dr. Farooq Azam, THQ Kalaya, appeared before the Court as PW-1. He stated that he conducted the autopsy on the dead body of Ameen Ullah on 02.08.2024 at 11:00 PM at THQ Hospital Kalaya. During the post-mortem examination, he found the following external appearance of the dead body;

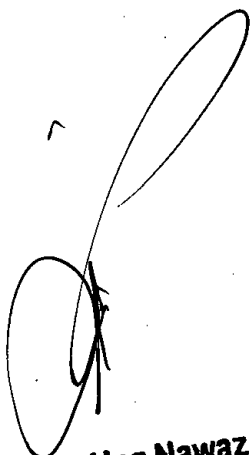
I. External Appearance.

- (i) No Mark of ligature on neck.
- (ii) Condition of subject stout emaciated, decomposed etc., clothing. Stiff hard body stained with blood.

Wounds, bruises, position, size, nature:

- (i) 01x01 cm entry wound 10 cm below left nipple.
- (ii) 2x2 cm exit wound in midline on back at the level of umbilicus.

II- Cranium and Spinal Cord: Healthy.

  
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III-Thorax: Walls, ribs and cartilages, pleurae, left lung and blood vessels are damaged. The rest were healthy.

IV-Abdomen: Walls, peritoneum, diaphragm, stomach and its contents, pancreas are damaged while the rest are healthy.

According to the opinion of Medical Officer, the cause of death was internal and external haemorrhage due to firearm injuries.

Probable time:

- (i) Between injury and death: 15-30 minutes approximately.
- (ii) Between death and post mortem: 05 hours approximately.

He produced the Post Mortem report as Ex. PM. He handed over the garments of deceased to police constable. The injury sheet was endorsed by the PW.

- II. Dr. Mubashir Medical Officer appeared before the Court as PW-2. He stated that he conducted autopsy on the dead body of Raheem Ullah on 06.08.2024 at 11:45 PM to 1245 hours on 07.08.2024 at THQ Hospital

  
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Kalaya. During the post-mortem examination, he found the following external appearance of the dead body;

**I. External Appearance.**

- (i) No Mark of ligature on neck.
- (ii) Condition of subject stout emaciated, decomposed etc., clothing. Stiff hard body, cleaned and wrapped.

Wounds, bruises, position, size, nature:

- (i) 01x01 cm entry wound in RHC.
- (ii) 3 cm stitched exit wound in left flank.
- (iii) 2x2 cm wound in the left Hemi abdomen lateral to umbilicus (brain side).
- (iv) Midline laparotomy wound – stitched
- (v) 4 cm wound just above right iliac fossa stitched properly (stoma side)
- (vi) Bruises in right and left flanks.
- (vii) Cannula marks in right wrist and left side of neck.

**II- Cranium and Spinal Cord: Healthy.**

**III- Thorax. Healthy.**

**IV-Abdomen: Walls, peritoneum, small intestine and their contents, large intestine**

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and their contents are damaged while the rest were healthy.

According to the opinion of Medical Officer, the cause of death was cardiopulmonary arrest secondary to septic shock.

Probable time:

- (i) Between injury and death: 05 days approximately.
- (ii) Between death and post mortem: 04 hours and 32 minutes.

He produced the Post Mortem report, the death certificate and discharge slip as Ex. PM/1, Ex. PW 2/1 and Ex. PW 2/2. The injury sheet was endorsed by the PW.

- III. Moharrir Ibad Ul Hassan recorded his statement as PW-3. He deposed that the Murasila was received by him through constable Said Rehman on 02.08.2024 which was incorporated by him into FIR Ex. PW 3/1. The copy of FIR was handed over by him to the Incharge Investigation. The PW received parcels No. 1 to 3 from the IO which were kept in the Malkhana of the PS after making its entry in register No. 19 which is Ex. PW 3/2.

  
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He handed over the said parcels No. 1 to 3 on 06.08.2024 to the IO who dispatched the same to FSL. His statements u/s 161 CrPC were recorded.

IV. SHO Altaf Ali stood in the witness box as PW-4. He stated that he submitted complete challan against the present accused Ex. PW 4/1, after completion of investigation.

V. Constable Ajmeen Ullah appeared before the Court and recorded his statement as PW-5. He stated that he was present with SHO at THQ Hospital Kalaya where he handed over the injury sheet and inquest report of the deceased Ameen Ullah to him and the PW handed the same over to the doctor for post-mortem examination on 02.08.2024. He also received blood-stained garments along with post-mortem report of the deceased from the doctor which were handed over by him to the IO on 03.08.2024. His statement was recorded u/s 161 CrPC.

VI. SHO Aftab Hassan recorded his statement as PW-6. He stated that he reached to THQ Hospital Kalaya on 02.08.2024 on receiving information about the occurrence. The

  
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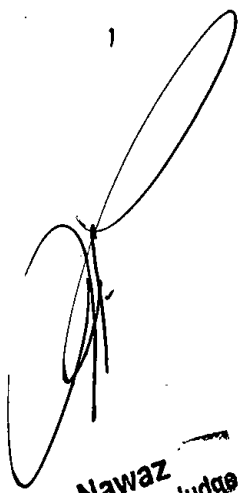
complainant reported the matter to him. He reduced it into writing in the shape of Murasila Ex. PA. The PW prepared injury sheet Ex. PW 1/1 and inquest report Ex. PW 1/2 of the deceased Ameen Ullah and sent the same to the doctor through Constable Ajmeen Ullah. The Murasila was sent to police station through Constable Syed Raheem for registration of FIR. He arrested the accused on 03.03.2024 at 0030 hours vide card of arrest Ex. PW 6/3. The PW verified the documents prepared by him and stated that the same are correct which correctly bear his signatures.

VII. The complainant, Sami Ullah, appeared before the Court as PW-7. He submitted that the deceased Ameen Ullah was his cousin and the deceased Raheem Ullah was his nephew. The injured Awal Akbar and Khan Afzal are his relatives whereas the injured Abdul Majeed is his co-villager. The accused facing trial and the absconding accused are brothers inter se and are the sons of absconding accused Umar Khitab. He along with Ameen Ullah, Raheem Ullah, Awal Akbar and Khan Afzal were mining shingles from a river situated near their

  
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house on 02.08.2024, when the accused Mola Jan, Umar Nawaz, Mudassir, Shah Nawaz and Umar Khitab arrived there at 1800 hours. The accused Umar Nawaz and Shah Nawaz were duly armed. The accused asked the complainant about the excavation of bajree/gravels to which they replied that it is their joint property. The accused were armed with Kalashnikov and churri. They assaulted the complainant party. The deceased Ameen Ullah and Raheem Ullah received injuries from the fire shots by the accused Umar Nawaz and Shah Nawaz respectively whereas Khan Afzal and Awal Akbar sustained injuries from the hands of Umar Khitab and Mola Jan respectively. One other person namely Abdul Majeed also received injuries. The accused fled away from the spot. They took the injured Ameen Ullah to the hospital, who succumbed to his injuries and died on the way. His dead body was shifted to Kalaya hospital for post-mortem examination. The other injured were shifted to KDA Hospital Kohat. The PW reported the matter to the local police in the Kalaya Hospital which was read over to him

  
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and his thumb impression was obtained on the same. He pointed out the place of occurrence to the IO on 03.08.2024. His statement was recorded u/s 161 CrPC. Motive behind the occurrence was stated to be excavation of bajree from the river by the complainant party. The injured Raheem Ullah also died in hospital at Peshawar on 06.08.2024. The PW charged the accused for the commission of offence.

VIII. The verifier of the report, Zil Akbar appeared before the Court as PW-8. He submitted that he verified the report of complainant and correctly thumb impressed it on 02.08.2024 at 2200 hours. He also identified the dead body of Ameen Ullah to the police as well as to the doctor at THQ Hospital Kalaya.

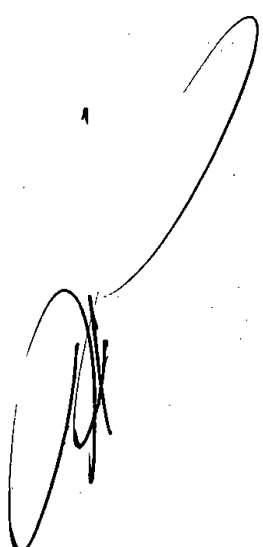
  
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IX. The injured Awal Akbar stood in the witness box as PW-9. He submitted that he was making ablution in the mosque on the eventful day when he heard noise. When he came out, he noticed that the inmates of his house and the accused were quarrelling with each other. He proceeded to rescue them. The accused Mola Jan hit him with a stone as a result of which the PW received injury on his left ear.

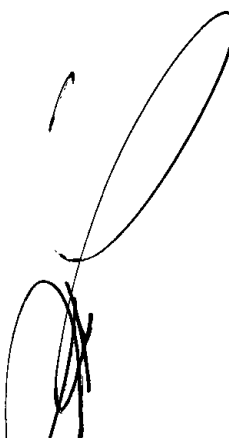
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The accused Umar Nawaz and Shah Nawaz fired upon his son Ameen Ullah and grandson Raheem Ullah who sustained injuries. His son died on the way to hospital at Raisan and they brought his dead body back whereas the injured Raheem Ullah died in hospital at Peshawar. He charged the accused for the commission of offence.

X. The Investigating Officer, Mohsin Ali appeared before the Court as PW-10. He stated that he interrogated the accused Mola Jan and Umar Nawaz during the course of investigation and produced them before the Court of Judicial Magistrate on 03.08.2024 vide application Ex. PW 10/1 for physical custody, which was allowed and two days police custody was granted. He visited the spot and prepared site plan Ex. PB on the pointation of complainant. The IO took into possession blood-stained stone from the place of deceased vide recovery memo Ex. PW 10/2 in presence of the marginal witnesses which was packed and sealed into parcel No. 1 which is Ex. P1. He affixed the monogram of 'HK' on the parcel. He also took into possession blood-

  
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stained garments of the then injured Raheem Ullah and deceased Ameen Ullah in parcels No. 2 and 3 with monogram of 'HK' which are Ex. P2 and Ex. P3 respectively through recovery memo Ex. PW 10/4. He prepared the list of legal heirs of the deceased Ameen Ullah which is Ex. PW 10/3. The PW handed over the parcels to the Moharrir. He added Sections 148 and 149 PPC in the case on 04.08.2024 and issued Parwana for addition of the said Sections of law which is Ex. PW 10/5. He recorded the statement of Raheem Ullah u/s 161 CrPC in Peshawar wherein he charged the accused Shah Nawaz for causing injuries to him. He produced the accused before the Court of Judicial Magistrate on 05.08.2024 vide application Ex. PW 10/6 for further physical custody, which was turned down and the accused were sent to judicial lock-up. He handed over parcels No. 1 to 3 along with route certificate Ex. PW 10/7 and the application to FSL Ex. PW 10/8 to Constable Khial Hussain for taking it to FSL on 06.08.2024. The PW produced the FSL report as Ex. PZ. He also prepared the list of legal

  
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heirs of the deceased Raheem Ullah as Ex. PW 10/9. The accused Shah Nawaz, Mudassir and Umar Khitab were avoiding their lawful arrest; therefore, the IO obtained warrant of arrest against them u/s 204 CrPC and got issued proclamation u/s 87 CrPC. He produced his applications for the said purpose which are Ex. PW 10/10 and Ex. PW 10/11. He produced register No. 19 as Ex. PW 10/12. He recorded statements of the PWs u/s 161 CrPC and handed over the case file to SHO for submission of complete challan against the accused.

XI. Constable Khial Hussain appeared before the Court as PW-11. He deposed that he accompanied the IO to the spot on 03.08.2024. The IO recovered blood-stained stone from the place of deceased through recovery memo Ex. PW 10/2 in his presence. He packed and sealed the same into parcel No. 1. The PW is also witness to the recovery memo Ex. PW 10/4 through which the IO took into possession the blood-stained garments of the deceased and the then injured, brought by Constable Ajmeen Ullah and the complainant. The same were

  
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packed in parcels No. 2 and 3. He took the parcels No. 1 to 3 along with route certificate and the application to FSL on 06.08.2024. The witness verified the contents of the said documents and his signatures thereon. His statement was recorded u/s 161 CrPC.

XII. Finally, Dr. Muhammad Tariq appeared the Court as PW-12. He stated that he has examined the injured Abdul Majeed on 02.08.2024 and found a firearm injury wound on lateral aspect of his left foot at malleolar region approximately 1x1 CM (lacerated wound). The injured was advised X-ray of left foot and referred to radiology/orthopaedic for opinion.

Nature of the injury was to be submitted later on.

Kind of weapon FAI on left foot.

The witness verified the contents of medico legal report Ex. PW 12/1 and his signature thereon. He also examined the injured Khan Afzal on the same day and found the following injuries on his person;

  
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1. Blunt trauma to scalp on left temporal region approximately 2x2 cm (lacerated wound).
2. FAI entry wound medial aspect left toe and exit wound back of toe posterior aspect approximately 1x1 cm each.

X-ray of left foot was advised and injured was referred to Radiology and Orthopaedic for opinion and management. Nature of injury RLO. Kind of weapon blunt and FAI.

He also verified the medico legal report of the injured which is Ex. PW 12/2 and endorsed his signature thereon.

After completion of prosecution evidence, statement of the accused was recorded u/s 342 Cr.P.C. The accused claimed innocence; however, he neither wished to be examined on oath nor opted to produce any evidence in defence.

  
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The learned Sr. PP, assisted by counsel by the complainant submitted that it was a daylight occurrence which was promptly reported to the local police. The complainant and other injured are eyewitnesses of the occurrence who appeared before the Court as PW-7 and PW-9. The specific role of effective firing upon the deceased Ameen Ullah is attributed to the present

accused. The incident took the lives of two precious human being. Medical evidence also supports the prosecution's case. Similarly, the recovery of blood-stained pebbles was also effected from the spot. There is no material contradiction in the statements of PWs; therefore, the accused is liable to be punished exemplarily.

6. On the other hand, the learned counsel for the accused submitted that there is a delay of 04 hours in lodging the FIR. All the family members with a father and four sons have been charged for the commission of offence. The present accused is a juvenile. The PWs have contradicted in their statements with regard to the exact place of occurrence. The IO did not collect any evidence to establish motive behind the occurrence. There is no medical report in respect of the injured PW-9 nor his statement was recorded u/s 161 CrPC. The injured Raheem Ullah, who later on died in hospital, did not mention the presence of complainant on the spot in his statement u/s 161 CrPC. The two injured namely Abdul Majeed and Khan Akbar were not produced before the Court presuming that they were not supporting the prosecution's case. He concluded that the prosecution's case is full of doubts; therefore, the accused be acquitted from the charges levelled against him.

  
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7. After hearing both the parties and perusal of the record it was found that the unfortunate occurrence was taken place on 02.08.2024 at 1800 hours reportedly at thoroughfare near the house of Rehan situated at Village Gazdara in which two precious lives were lost and three others sustained injuries. According to the FIR, the incident took place when the complainant and his family members were excavating gravels (bajree) from a nearby river (Algada) when the present and the absconding accused came there and asked as to why the gravels are being excavated. When the complainant party replied that the same is excavated for their domestic need, the accused assaulted on the complainant and his companions with buttstocks of weapons and stone. Resultantly, the absconding accused Umar Khitab caused head injury to Khan Afzal and the present accused Mola Jan caused injury to PW-9. The accused Umar Nawaz and absconding accused Shah Nawaz started firing with their Kalashnikovs; as a result of which, Ameen Ullah got hit from the firing of Umar Nawaz whereas Raheem Ullah sustained firearm injury from the firing of absconding accused Shah Nawaz. The injured Ameen Ullah succumbed to his injuries on the way to hospital whereas Raheem Ullah died later on 06.08.2024. One relative of the complainant namely

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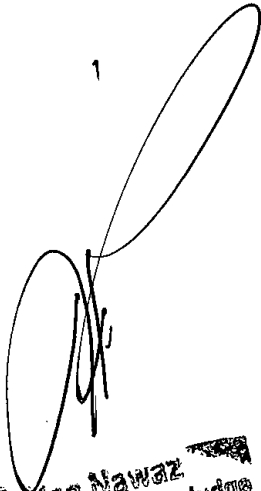
8. During the course of evidence, the complainant stated that the accused were armed with Kalashnikov and churri at the time of their assault instead of buttstock and stone as reported initially by him in his report. In his cross examination, the complainant submitted that the gravels were excavated by the minors/kids of their family and he was present in his house at the time of excavation of gravels. Needless to mention that in his initial report he had submitted that he along with the injured and deceased were excavating the gravels. The complainant further submitted that the place of occurrence was pointed out to the IO by him, but he does not know as to which side the deceased Ameen Ullah and Raheem Ullah were present to the place of his presence on the spot. He is also not the identifier of the dead body to the Medical Officer at the time of post-mortem examination.

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examination, as plain field instead of thoroughfare near the house of Rehan as reported by the complainant.

10. PW-11 is the marginal witness to the recovery memo Ex. PW 10/2 through which the IO recovered blood-stained stone from the place of deceased Ameen Ullah on the spot. The IO has given point No. 1 to the place of deceased Ameen Ullah in the site plan Ex. PB which is situated on southern side of the Barani Algada at some distance. However, in his cross examination, the PW-11 submitted that the place of occurrence is Algada from where the bajree was excavated and the blood-stained stone was recovered from there.

11. Except the said blood-stained stone, no empty was recovered from the spot. No weapon of offence was recovered from any of the accused nor any pointation was made by the accused to the IO during the course of investigation. The IO has also not recovered any tool used for excavating of gravels nor it was produced to him. The IO/PW-10 admitted in his cross examination that he has not given any specific point to the place from where the bajree was being excavated. The two injured Abdul Majeed and Khan Afzal were medically treated by PW-12 at DHQ Hospital, KDA Kohat, but none of them were produced before the Court. According to Article 129 illustration (g) of the Qanun-e-Shahdat Order, 1984, "the

  
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*evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it".*


12. The deceased Raheem Ullah in his dying declaration, recorded in LRH, Peshawar by the IO on 04.08.2024 nominated the absconding accused Shah Nawaz for inflicting firearm injuries to him and Abdul Majeed without any mention of the present accused.
13. Finally, the accused was shown to be arrested on 03.08.2024 vide card of arrest Ex. PW 6/3 but the police file discloses that the IO has mentioned their arrest in his diary noted on 02.08.2024.
14. The above facts and circumstances with regard to contradictions in the statements of PWs regarding the place of occurrence i.e., the thoroughfare near the house of Rehan as mentioned in the report or the plain field as mentioned by the PW-9 or river/algada mentioned by the PW-11, lead us to the conclusion that the prosecution remained fail to establish the taking place of the incident at the place of occurrence as reported in the Murasila. Similarly, the non-production of injured Abdul Majeed and Khan Afzal may lead us to presume that their evidence was not favourable to prosecution. Though father of the accused with his two brothers are still absconding but the present accused seems to be nominated

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in the report, lodged after 04 hours of the incident at 2200 hours, when he came in the police custody at the night of occurrence as evident from the police record as against his formal arrest shown on the next day. No piece of evidence was collected by the IO to establish motive behind the occurrence.

15. Resultantly, the present accused Umar Nawaz s/o Umar Khitab, Caste Sheikhan, Tapa Umarzai, PO Raisan, Tehsil Central, District Orakzai is acquitted from the charges levelled against him by extending the benefit of doubt in his favour. The accused is in custody. He be released from custody, unless he is liable to be detained for some other matter. The case property be kept intact till arrest of the absconding accused and final disposal of the case. File of this Court be consigned to record room after its necessary completion and compilation.

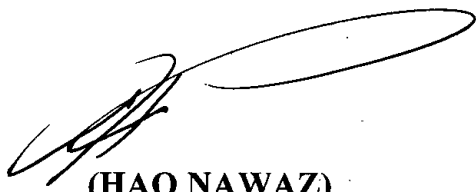
**Announced:**  
16.10.2025

  
(HAQ NAWAZ)  
Sessions Judge/Judge Juvenile  
Court, Orakzai, at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of twenty-one (21) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 16.10.2025

  
(HAQ NAWAZ)  
Sessions Judge/Judge Juvenile  
Court, Orakzai, at Baber Mela