STATE VS HAYAT WALI
FIR No. 111, Dated 14.11.2024, u/s 302 PPC
Police Station: Kalaya

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

SESSION CASE NO.	:	21/2 OF 2025
DATE OF INSTITUTION	:	25.04.2025
DATE OF TRANSFER-IN	:	02.09.2025
DATE OF DECISION	:	31.10.2026

STATE THROUGH REHMAN ULLAH S/O SIAL KHAN, CASTE STORI KHEL

----------(Complainant)

VS

HAYAT WALI ALIAS SIKANDER S/O MUHAMMAD HANIF, CASTE UTMAN KHEL

----------(Accused facing trial)

Present: Abul Qasim, Senior Public Prosecutor for state.
: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 111 || **Dated:** 14.11.2024
U/S: 302 PPC || **Police Station:** Kalaya

JUDGEMENT
31.10.2026

This case was registered against the accused Hayat Wali alias Sikander s/o Muhammad Hanif vide FIR No. 111, Dated 14.11.2024 at Police Station Kalaya u/s 302 PPC.

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

2. According to the prosecution's case, the local police, while responding to information about the occurrence, reached THQ Hospital Kalaya on 14.11.2024 where they found the dead body of Abdul Khanan s/o Sial Khan in the emergency room. The complainant/brother of the deceased, Rehman Ullah, reported the matter at 1855 hours of the even day that he along with his brother were returning home on a motorcycle after purchasing household articles at Feroz Khel Mela. They halted their motorcycle to attend the call of nature when they reached

to the place of occurrence. The brother of the complainant went a little bit away from the complainant. In the meanwhile, the accused Hayat Wali alias Sikandar arrived on a motorcycle from Indra Khel side. He stopped his motorcycle, alighted from it and made firing upon the brother of the complainant at 1720 hours through his Kalashnikov. Resultantly, the brother of complainant namely Abdul Khanan got hit and died on the spot. Motive behind the occurrence was reported to be "money transaction". The complainant charged the accused for the commission of offence.

3. After completion of investigation, challan u/s 512 CrPC was submitted against the accused. Statement of the SW was recorded and proceedings U/S 512 CrPC were initiated against him. However, supplementary challan was submitted against the accused later on after his arrest on 14.05.2025. The accused was summoned and copies were provided to him under Section 265-C CrPC. He was formally charged but 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;

Hao Nawaz
District & Sessions Judge
Orakzai at Baber Mela

I. Shal Muhammad SHO appeared before the Court and recorded his statement as PW-1. He

stated that he submitted supplementary challan Ex. PW 1/2 against the accused on 22.05.2025.

II. Aftab Hassan SI stood in the witness box as PW-2. He stated that he conducted proceedings u/s 87 CrPC against the accused. He handed over the case file to SHO for submission of challan before the Court after completion of investigation.

III. Moharrir Humayun Khan recorded his statement as PW-3. He deposed that the Murasila was received by him through constable Zeeshan Haider on 14.11.2024 which was incorporated into FIR Ex. PW 3/2. He handed over the copy of FIR to Incharge Investigation. The PW received parcels No. 1 to 3 from the IO on 15.11.2024 which were safely kept by him in Malkhana after making entries in register No. 19 Ex. PW 3/3. He handed over parcels No. 1 to 3 to IO for its transmission to FSL on 16.11.2024. The IO recorded his statements u/s 161 CrPC.

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

IV. Dr. Riaz appeared before the Court as PW-4. He stated that he conducted autopsy on the dead body of Abdul Khanan s/o Sial Khan on 14.11.2024 at 07:00 PM. During the post-

mortem examination, he found the following external appearance and injuries on the dead body;

I – External Appearance:

Mark of ligature on neck and dissection: Nil

Condition of subject stout emaciated, decomposed etc., clothing: Fresh body stained with blood.

Wound, bruises, position, size, nature: Entry wound approximately 02x02 on the base of neck on left side with exit wound through the mouth with broken teeth and lacerated upper lip (03 x 03 cm).

II – Cranium and Spinal Cord: Damaged.

III – Thorax: All organs were healthy.

IV – Abdomen: Healthy.

Probable time that elapsed –

a. **Between injury and death:** Immediate

b. **Between death and post-mortem:** 01 hour approximately.

According to opinion of the Medical Officer, the case was of firearm injury and the cause of death was vital organs damage and blood loss. The PW produced the post-mortem report as Ex. PW 4/1.

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

V. Murtaza SI appeared before the Court and recorded his statement as PW-5. He stated that he drafted application Ex. PW 5/2 to SP Investigation, Orakzai for the transfer of accused who was arrested by District police Khyber. He submitted application to Judicial Magistrate for issuance of Zamima Bay which was allowed and the accused was handed over to the PW. The PW arrested him vide card of arrest Ex. PW 5/3. He produced the accused before the Court of Judicial Magistrate vide application Ex. PW 5/4 for obtaining physical custody which was allowed and three-days custody was granted. The accused confessed his guilt before the PW during the course of interrogation and pointed out the place of occurrence to the PW who prepared pointation memo Ex. PW 5/5. He again produced the accused before the Court of Judicial Magistrate vide application Ex. PW 5/6 on 19.05.2025 for recording his confessional statement, but the accused refused to confess his guilt and was sent to judicial lockup. He handed over the case file to Shal Muhammad SHO for submission of supplementary Challan. He

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

verified the documents mentioned above and stated that the same are correct which correctly bear his signatures.

VI. Constable Zeeshan Haider is PW-6. He stated that he was handed over the Murasila by SHO Nasir Khan at THQ Hospital Kalaya on 14.11.2025 which was taken by him to police station where he handed it over to Moharrir Humayun Khan for registration of FIR. His statement was recorded by the IO u/s 161 CrPC.

VII. SHO Nasir Khan recorded his statement as PW-7. He stated that he rushed to THQ Hospital Kalaya on receiving information about the incident on 14.11.2024, where the complainant reported the matter to him. He reduced the same into writing in the shape of Murasila Ex. PW 7/2. He prepared the injury sheet of the deceased Ex. PW 7/3 and inquest report Ex. PW 7/4 and handed over the dead body to Constable Irshad for escorting it to Medical Officer for post-mortem. The Murasila was sent to police station through constable Zeeshan Haider for registration of FIR. He finally submitted complete challan Ex.

Haq Nawaz
District & Sessions Judge
Mansehra at Baba Ghazi

PW 7/5 against the accused. He verified the documents prepared by him to be correct and correctly bear his signatures.

VIII. Complainant, Rehman Ullah, appeared before the Court and recorded his statement as PW-8. He stated that the deceased Abdul Khanan was his brother. He along with his brother had gone to Feroz Khel Mela on a motorcycle to purchase household articles on 14.11.2024. On their return back to home, when they reached Kata Panra near the house of one Jajeel at about 05:20 pm, they stopped their motorcycle and the brother of the complainant went to attend the call of nature. In the meanwhile, the accused came there from Indara side on his motorcycle and fired upon his brother. The accused again fired four other shots upon the brother of complainant who fell down and died on the spot while the accused left his motorcycle on the spot and fled away. The motive behind the occurrence was stated to be money dispute of the accused with the brother of complainant/PW. He called 1122 and shifted the dead body to Kalaya hospital where he reported the matter to the local police. The

Ishtiaq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

PW identified the dead body to police and doctor for post-mortem. They shifted the dead body to their house after PM examination. The PW pointed out the place of occurrence to the IO and handed over the garments of deceased to him. He charged the accused for the murder of his brother.

IX. Minhaz Husssain Sub-Inspector stood in the witness box as PW-9. He stated that after entrustment of the investigation to him, he could not proceed to the spot as it was night time. He recorded the statements of some police officials and visited the Hujra of complainant on the next day on 15.11.2024 along with investigation staff. He recorded the statement of complainant and one Muhammad Khan u/s 161 CrPC with regard to identification of the deceased and prepared the list of his LRs which is Ex. PW 9/2. He, thereafter, visited the place of occurrence and prepared the site plan Ex. PW 9/3 on the pointation of complainant. He took into possession one motorcycle Honda Dylex bearing No. JMK 1814, Ex. P1, from the spot vide recovery memo Ex. PW 9/4. He also

Haq Nawaz
District & Sessions Judge
Shirkai at Babar Mela

recovered blood through cotton from the place of deceased, one crime empty shell of 7.62 bore from point D and four empty shells of 7.62 bore from point E of the site plan through recovery memo Ex. PW 9/4. The empties were packed and sealed into parcel No. 2, Ex. P2. He also took into possession blood-stained garments of the deceased and sealed it into parcel No. 3, Ex. P3. The PW searched the house of accused but he was not found. He handed over parcels No. 1 to 3 with applications to FSL Ex. PW 9/5 and Ex. PW 9/6 and route permits Ex. PW 9/7 and Ex. PW 9/8 to Constable Iftikhar Hussain for its transmission to FSL on 16.11.2024. The PW placed on file FSL reports regarding crime empties and blood-stained articles which are Ex. PW 9/9 and Ex. PW 9/10. As the accused was avoiding his lawful arrest, therefore, the PW drafted application Ex. PW 9/11 for obtaining warrant U/S 204 CrPC. He submitted application Ex. PW 9/12 to SP, Investigation for verification of the motorcycle from ETO, Kohat. He verified the documents

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

prepared by him and stated that the same are correct which correctly bear his signatures.

X. Constable Sajid Ullah stood in the witness box as PW-10. He stated that the accused led the police party to the spot on 18.05.2025 in his presence and pointed out the spot to the IO vide pointation memo Ex. PW 5/5. The IO recorded the statement of PW u/s 161 CrPC.

XI. Constable Iftikhar Hussain appeared before the Court as PW-11. He deposed that he was present with the IO on the spot on 15.11.2024 who took into possession crime vehicle from the spot and recovered empty shells and blood from the spot in his presence along with blood-stained garments of the deceased, handed over by the complainant, vide recovery memo Ex. PW 9/4. He verified the contents of the recovery memo to be correct which correctly bear his signature. He received parcels No. 1 to 3 along with route certificates and applications to FSL from the IO on 16.11.2024 for taking the same to FSL. He deposited it in FSL against proper receipt. His statement was recorded by the IO u/s 161 CrPC.

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

XII. Constable Muhammad Irshad deposed before the court as PW-12. He stated that the SHO handed over the dead body along with relevant documents to him on 14.11.2024. He escorted the dead body and handed it over to the doctor for PM examination. The PW received PM report of the deceased from the doctor which was handed over by him to the IO. His statement was recorded by the IO u/s 161 CrPC.

4. After completion of the 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.

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

5. I have heard learned Sr. PP for the state and counsel for the accused.

6. The learned Sr. PP argued that the accused has committed the murder of deceased and the complainant is eyewitness of the occurrence, who is the brother of deceased. The medical evidence supports the prosecution's case. The recoveries have been made from the spot in the shape of crime empties and blood-through cotton. The accused also pointed out the place of occurrence to the IO. The accused remained absconder for considerable period of time due to

which no weapon of offence was recovered. Hence, the prosecution remained successful to prove its case against the accused who is required to be punished exemplarily.

7. On the other hand, the learned defence counsel submitted that there is delay of about 01 hour and 18 minutes in lodging the FIR in spite of the fact that the place of occurrence was situated at a distance of 16/17 km from the police station. There were a police Check-Post and the police station on the way to hospital from the place of occurrence, but no report was made in the check-post or the police station and the dead body was taken to hospital. The complainant/PW-8 has made improvement in his statement regarding number of fire shots attributed to accused. He also has deposed that he never saw the accused before the occurrence. The complainant has admitted the blood feud enmity of his family with so many parties and involvement of the deceased in criminal cases. The spot was visited by the IO on the next day of occurrence without securing the crime scene. There is contradiction in the statements of IO and the marginal witness of recovery memo Ex. PW 9/4 with regard to the way adopted by them to reach the place of occurrence from the police station on next day of the occurrence. No record from the office of Rescue 1122 is available on record nor any Daily Diary is placed on file. The

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

statement of the private person, who informed the Rescue 1122, was not recorded by the IO. Similarly, the statement of shopkeeper from whom the groceries were purchased by the complainant and deceased was also not recorded nor the motorcycle of the deceased or purchased grocery were recovered from the spot. No registration number of the motorcycles of the complainant/deceased as well as the accused is mentioned in the Murasila. The medical evidence does not support the prosecution's case and no weapon of offence was recovered from the accused. He finally concluded that the prosecution's case is full of doubts; therefore, the accused be acquitted from the charges levelled against him.

8. After hearing both the parties and perusal of the record, it was found that the unfortunate incident was taken place on 14.11.2024 at 1720 hours on metalled road from Kalaya to Kohat near the house of Jajeel at village Kata Panra when the complainant PW-08 and his brother Abdul Khanan were coming back to their home from Feroz Khel Mela after purchase of grocery. They stopped at the place of occurrence to attend the call of nature. At the same time, the accused came on his motorcycle from Indara side. He parked his motorcycle, delighted from it and started firing through his Kalashnikov on Abdul Khanan brother of the complainant. Resultantly, the brother of complainant was

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

got hit and died on the spot. The accused left his motorcycle on the spot and fled away. The matter was reported to the local police by the complainant at THQ Hospital, Kalaya which was reduced into Murasila by PW-07 as Ex. PW-7/2. The motive behind the occurrence was reported to be money dispute between the accused and deceased brother of the complainant.

9. According to post-mortem report Ex. PW-4/1, the deceased sustained 01 entry wound on the base of his neck on left side with exit wound through his mouth with broken teeth and lacerated upper lip. According to the opinion of Medical Officer PW-04, it was a case of firearm injury and cause of death was vital organs damage and blood loss.

10. The complainant in his statement before the court while reproducing the facts leading to the occurrence submitted that when his brother Abdul Khanan went to attend the call of nature, the accused came there from Indara side on his motorcycle and fired upon his brother. He further submitted that the accused again fired four other shots upon his brother who fell down. The accused left his motorcycle on the spot and fled away. The complainant reiterated the motive behind the occurrence to be money dispute between the accused and his deceased brother. He submitted that the garments of deceased were handed over

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

by him to the IO on next day of the occurrence after pointation of the spot, Ex. PW-9/3, to him.

11. Though in his cross examination, the complainant admitted that he never met the accused before the occurrence but he categorically denied the fact that the accused was not known to him. Further that the complainant have explained in his examination in chief that the accused fired upon his brother and he again fired 04 other shots upon him. At the time of spot inspection, the IO recovered one 7.62 bore empty shell from Point D of the site plan Ex. PW-9/4 and 04 empty shells of the same bore from Point E of the site plan. The learned defence counsel termed the statement of the complainant as dishonest improvement to bring his statement in line with recoveries of empty shells effected by the IO from the spot. He further submitted that the medical report regarding single entry wound also does not support the recovery of 05 empty shells from the spot. Though the details, as given in the statement of the PW-08 in his statement before the court, regarding firing is not available in the Murasila Ex. PW-7/2 but a careful perusal of the Murasila in juxta-position with the statement of PW-08 shows that it was reported that the accused started firing with his Kalashnikov upon the brother of complainant. He merely explained in his statement before the court that the

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

144

accused fired upon his brother and again fired 04 shots. The core question of the case that the accused fired and caused death remained the same, therefore, the number of shots is elaboration, not contradiction. It is a natural conduct that a person lodging FIR in a hurry at the time when he faces agony of the occurrence may say "fired upon" without counting empties. Similarly, the medical evidence regarding one entry wound, does not mean that only one shot was fired. It only proves one shot hit and was fatal. Other shots may have missed, which is common. The single-entry wound is not in conflict with five firings as medical evidence is only conformity of the number of shots that hit but it cannot tell the number of shots fired. If post-mortem report had said no injury at all, then it would have a major contradiction which is not so in the case in hand.

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

12. In his cross examination, the complainant has explained that the Maghrib Azan had taken place at the time of occurrence at 1720 hours on 14th of November, but it was between Asar and Maghrib time. The matter was reported at 1855 hours and the FIR Ex. PW-3/2 was chalked out at 1940 hours whereafter, the investigation was entrusted to PW-09. The said PW-09 submitted that as it was night time, therefore he did not proceed to the spot and inspected the spot on next day. During the spot inspection,

145

the IO recovered blood through cotton from Point C of the site plan where the dead body of the deceased was present at the time of occurrence. He also took into possession five empty shells of 7.62 bore from Points D & E of the site plan along with motorcycle Ex. P1 from Point B of the site plan, leftover by the accused, as stated by the complainant in the Murasila as well as in his statement before the court, through recovery memo Ex. PW-9/4. The blood-stained garments of the deceased were produced by the complainant to the IO which was also taken into possession by the IO through the said recovery memo confirming the statement of complainant that he handed it over to the IO.

13. The parcel No. 1 (Ex. P2), having blood-stained cotton and parcel No. 3 (Ex. P4), having blood-stained garments of the deceased were sent to FSL on 16.11.2024 after two days of the occurrence and both the cotton and garments were found to have human blood of the same group as evident from FSL report Ex. PW-9/9. Similarly, the parcel No. 2 having five empty shells were also received in FSL on the same day revealing that the five 7.62mm bore crime empties marked C1 to C5 were fired from one and the same 7.62mm bore weapon. These facts further corroborate the statement of the complainant that the occurrence was taken place at the spot pointed out by him

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

146

and it was the accused alone who made firing upon the the brother of the complainant. Both the complainant and deceased being brother inter-se at the time of their way back to home from routine shopping, the complainant is a natural and direct witness to the incident. The presence of complainant was also admitted by the defence in his cross examination as PW-08 with a positive suggestion that "it is correct that we were coming from western side to eastern side".

14. The occurrence was taken place in November 2024, but challan U/S 512 Cr. PC was put in court in April 2024 due to absconsion of the accused. It was during the proceedings U/S 512 Cr. PC when the accused was arrested in District Khyber in another criminal case and was formally arrested in the instant case on 14.05.2025. Hence, he remained absconder for about 6/7 months after the occurrence. The record shows his involvement in other criminal cases as well.

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

2. So far the contradiction between the statements of IO/PW-09 and marginal witness PW-11 with regard to their arrival to the place of occurrence directly from the PS or otherwise on next day of the occurrence with other procedural irregularities or technicalities do not automatically entitle the accused to acquittal particularly in a newly merged district where the newly introduced

147

police system is in its initial stage. The **Hon'ble Peshawar High Court, Peshawar** in its judgment dated 26.11.2025 passed in the case of **"Misbah VS Sahir and the State"** bearing **Cr. Appeal No. 347-P/2025** has held about poor investigation in the newly merged districts as follows:

> *"Defects in investigation, especially in districts such as Khyber (erstwhile FATA including Orakzai), which is a newly merged district where many police officials are former Khasadar personnel still familiarizing themselves with modern investigation procedures, cannot be treated as fatal to the prosecution".*

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

15. In view of the above facts and circumstances, the prosecution remained successful to prove that the deceased Abdul Khanan was done to death by the accused Hayat Wali Alias Sikandar S/O Muhammad Hanif, R/O Uthman Khel, Lower Orakzai by firing at him through Kalashnikov. He is, therefore, convicted u/s 302 (b) PPC and sentenced to rigorous life imprisonment with the benefit of Section 382-B CrPC. The convict shall pay an amount of Rs. 10 lacs as compensation to the legal heirs of deceased Abdul Khanan S/O Siyal Khan, R/O Qoum Stori Khel, Lower Orakzai in terms of Section 544-A

CrPC. In default of payment of compensation, the convict shall undergo simple imprisonment for a period of 06 months. Case property be destroyed after the expiry of period provided for appeal/revision. File of this Court be consigned to record after its necessary completion and compilation.

Announced:
31.10.2026

(HAQ NAWAZ)
Sessions Judge, Orakzai,
at Baber Mela

CERTIFICATE

Certified that this judgment consists of twenty (20) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 31.10.2026

(HAQ NAWAZ)
Sessions Judge, Orakzai,
at Baber Mela