

33

STATE VS AJMIR KHAN ETC.
FIR No. 24 Dated: 02.07.2022 U/S: 15AA
Police Station: Mishti Mela

IN THE COURT OF SHAUKAT AHMAD KHAN
SESSIONS JUDGE, ORAKZAI AT BABER MELA

SESSION CASE NO. : 35/3 OF 2022
DATE OF INSTITUTION : 05.10.2022
DATE OF DECISION : 22.12.2022

STATE THROUGH COMPLAINANT TAJ WALI KHAN S/O DEEWAN
SHAH, AGED ABOUT 38 YEARS, R/O CASTE MISHTI, TAPA HAIDER
KHEL, VILLAGE MISHTI BAZAR, ORAKZAI

------(Complainant)

VS

AJMIR KHAN S/O DAULAT SHAH, AGED ABOUT 20 YEARS, R/O TRIBE
MISHTI TAPA HAIDER KHEL, PO MISHTI, MISHTI BAZAR, TEHSIL
CENTRAL, DISTRICT ORAKZAI

------(Accused facing trial)

Present : Umar Niaz, District Public Prosecutor.
: Jamal Hussain Advocate for accused facing trial.

FIR No. 24 : Dated: 02.07.2022
U/S: 15AA : Police Station: Mishti Mela

ORDER
22.12.2022

The accused named above is charged for the offence
u/s 15AA vide FIR no. 24, dated 02.07.2022 of Police Station
Mishti Mela.

- (2). The case of the prosecution as per Murasila based FIR
is; that the local police acting on information regarding the
occurrence reached Seroni mountains Asghardag where they
found a dead body which was shifted to DHQ hospital where the
complainant Taj Wali Khan on 02.07.2022 at 2010 hours made a
report to the police to the fact that his son aged about 13/14 years
was a student of madrassah who was on leave on 01.07.2022, a
day before the day of report. That on 01.07.2022 at about 1000
hours, he had left the house and when he did not return till
evening, he (the complainant) searched him in the houses of his
relatives and that now he found him dead in the hospital. The

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

(39)

STATE VS AJMIR KHAN ETC.
FIR No. 24 Dated: 02.07.2022 U/S: 15AA
Police Station: Mishti Mela

complainant charged unknown accused for commission of the offence.

(3). After registration of FIR, it was handed over to Investigating Officer for investigation. Accordingly, after receipt of FIR, he reached the spot. He took into possession some grass and blood-stained pebble from the place of deceased vide recovery memo Ex. PC, sealed the same into parcel No. 1. He also recovered 02 empties of 30 bore pistol near the place of deceased and sealed the same into parcel no. 4. He prepared site plan on the pointation of SHO and later on made addition in the site plan on the pointation of accused after their arrest. He also took into possession blood-stained Shalwar and Kamees of the deceased vide recovery memo, sealed the same into parcel no. 2 followed by sending parcels no. 1 & 2 to FSL on 04.07.2022 through constable Abdullah vide road permit certificate and application addressed to the incharge FSL.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

On 06.07.2022, the complainant in his statement recorded u/s 164 CrPC before the court of Judicial Magistrate, charged the accused facing trial Ajmir Khan along with co-accused Daulat Shah, Muhammad Siraj, Azi Ullah, Jahanzeb, Shahid and Zakir Ullah for the commission of offence.

After arrest of accused Ajmir Khan, a 30-bore pistol without number was recovered on his pointation. Therefore, section 15AA was added in the FIR. After completion of investigation, separate challan u/s 15AA was submitted against accused Ajmir Khan.

35

STATE VS AJMIR KHAN ETC.
FIR No. 24 Dated: 02.07.2022 U/S: 15AA
Police Station: Mishti Mela

(4). 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 CrPC and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned but so far, the prosecution examined as many as 04 witnesses namely, Muhammad Younas SHO, constable Khalil Ullah and constable Naveed Ullah as PW-1 to PW-3 respectively.

(5). Counsel for the accused submitted application for acquittal of the accused u/s 265-K CrPC for the reasons mentioned therein.

(6). I heard arguments and perused the record.

(7). Perusal of the case file shows that the weapon in question has not been recovered from direct possession of the accused facing trial rather on his alleged pointation from his house but there is nothing available on file that as to how the IO was able to identify the house as that of accused facing trial. Moreover, the place wherefrom the alleged weapon of offence is recovered, is situated in a thickly populated area but no witness from public is associated with the process. Furthermore, though, as per report of FSL, the empties recovered from the spot are found fired from the pistol allegedly recovered on the pointation of accused Ajmir Khan, but strange enough, as per recovery memo Ex. PC, prepared on 03.07.2022, no empties have been recovered from spot during spot inspection, rather the empties in question have allegedly been recovered on 26.07.2022 during reinspection of spot, after recovery of alleged weapon of offence

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

(36)


STATE VS AJMIR KHAN ETC.
FIR No. 24 Dated: 02.07.2022 U/S: 15AA
Police Station: Mishti Mela

on 08.07.2022, which clearly suggest that the recovery of empties and pistol have been subsequently manoeuvred.

(8). Hence, in view of what is discussed above, it is held that there is no probability of the conviction of accused facing trial, even if the prosecution is given further opportunity to produce the remaining witnesses; therefore, accused namely, **Ajmir Khan**, on acceptance of his application, is acquitted from the charges levelled against him u/s 265-K CrPC. Accused is on bail. His bail bonds stand cancelled and his sureties are discharged of the liabilities of their bail bonds. The case property be destroyed after the period provided for appeal/revision.

Consign.

Pronounced
22.12.2022



(SHAUKAT AHMAD KHAN)
Sessions Judge, Orakzai,
at Baber Mela

CERTIFICATE

Certified that this judgment consists of four (04) pages.

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

Dated: 22.12.2022


(SHAUKAT AHMAD KHAN)
Sessions Judge, Orakzai,
at Baber Mela

