

38

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

SESSION CASE NO. : 3/2 (J) 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

1. ZAKIR ULLAH S/O YAQOOB KHAN, AGED ABOUT 15 YEARS,
R/O CASTE MISHTI, TAPA HAIDER KHEL, VILLAGE NAKA,
DISTRICT ORAKZAI
2. JAHANZEB S/O JUMA GUL, AGED ABOUT 15 YEARS, R/O CASTE
MISHTI, TAPA HAIDER KHEL, VILLAGE NAKA, DISTRICT
ORAKZAI
3. AZI ULLAH S/O WATAN BADSHAH, AGED ABOUT 16 YEARS,
R/O CASTE MISHTI, TAPA HAIDER KHEL, VILLAGE NAKA,
DISTRICT ORAKZAI
4. MUHAMMAD SIRAJ S/O SHAMSHIR KHAN, AGED ABOUT 16
YEARS, R/O CASTE MISHTI, TAPA HAIDER, VILLAGE
HASSANZAI
5. SHAHID S/O SAR GUL, AGED ABOUT 15 YEARS, R/O CASTE
MISHTI, TAPA HAIDER, VILLAGE HASSANZAI

------(Accused facing trial)

Present : Umar Niaz, District Public Prosecutor.
: Sana Ullah Khan Advocate for accused facing trial.
: Bakhtiar Muhammad Advocate for complainant.

FIR No. 24
U/S: 302/109/148/149/404 PPC

Dated: 02.07.2022
Police Station: Mishti Mela

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

ORDER
22.12.2022

The accused named above are charged for the
offence u/s 302/109/148/149/404 PPC 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 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,
Mishti 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 Muhammad Siraj, Azi Ullah, Jahanzeb, Shahid and Zakir Ullah along with co-accused Ajmir Khan and Daulat Shah for the commission of offence.

(4). Upon receipt of case file for the purpose of trial, the accused were summoned, copies of the record were provided to them u/s 265-C CrPC and formal charge was framed against them to which they 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, Dr. Muhammad Ameer and constable Naveed Ullah as PW-1 to PW-4 respectively.

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

(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 occurrence is unseen and unwitnessed. The accused facing trial are not directly nominated in the FIR rather they have been charged by complainant in his statement u/s 164 CrPC recorded after 06 days of the occurrence and that too on the basis of his information and satisfaction without disclosing the source of

(4)

his information and satisfaction. There is nothing available on file except the statement of complainant, who too despite being given repeated opportunities, failed to give evidence in the court. So far, the recovery of golden ornaments and pistol on the pointation of accused Ajmir Khan, is concerned, the place wherefrom the articles and alleged weapon of offence are recovered, is situated in a thickly populated area but no witness from public is associated with the process. Moreover, as per report and statement of complainant recorded u/s 164 CrPC, there is no mention of deceased being in possession of any golden ornaments. 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 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

Shahid Ahmad Khan
District & Sessions Judge,
Orakzai at Baber

22/7/22

opportunity to produce the remaining witnesses; therefore, accused namely, **Muhammad Siraj, Azi Ullah, Jahanzeb, Shahid and Zakir Ullah**, on acceptance of their application, are acquitted from the charges levelled against them u/s 265-K CrPC. Accused **Muhammad Siraj, Azi Ullah, Jahanzeb and Shahid** are on bail. Their bail bonds stand cancelled and their sureties are discharged of the liabilities of their bail bonds. While accused **Zakir Ullah** is in custody. He be released forthwith, if not required in any other case. The case property be destroyed after the period provided for appeal/revision. Consign.

Pronounced
22.12.2022



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

CERTIFICATE

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 22.12.2022




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