

*In the name of almighty Allah who has unlimited jurisdiction over and beyond the universes.*

BEFORE THE COURT OF  
ADDITIONAL SESSIONS JUDGE, ORAKZAI

Case No.1/2 of 2022

Date of institution: 10.01.2022

Date of decision: 31.01.2023

The State through Wasil Akbar HC, Incharge Police Post Chapar Mishti,  
Orakzai ..... (Complainant)

...Versus...

Afzal Khan son of Khan Baaz, aged about 43/44 years, resident of Qaum  
Mishti, Tappa Haider Khel, Tehsil Lower, District Orakzai.

..... (Accused on trial)

**Case FIR No. 97, Dated 22.08.2022 u/s 302/311/324/201 of the Pakistan Penal Code, 1860; registered at Police Station, Kalaya, District Orakzai.**

**JUDGMENT**

The Police party received information that a person namely Afzal Khan has committed murder of his wife namely Khaperay on the score of honor killing having illicit relationship with one Ismail. Police Party has rushed to the spot and on inquiry, they came to know about the occurrence that Afzal Khan son of Khan Baz had murdered his wife namely Khaperay and also attempted at the life of Ismail. The accused after commission of offence successfully fled away from the spot and dead body of deceased Khaperay was buried without Postmortem. Wasil Akbar HC Police Station Kalaya charged the accused Afzal Khan for commission of offence. Murasila was drafted by him and was accordingly sent to the Police Station. Consequently, the captioned FIR was registered on his own as no one from the legal heirs and relatives of the deceased was ready to bring criminal law into motion. Sections 302/311/324/201 of the Pakistan Penal Code 1860 have been inserted against the accused. The accused was declared proclaimed offender in trial conducted

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in absentia vide Order dated 14-09-2021 of Hon'ble, the District & Sessions Judge, Orakzai. The accused was later on arrested and supplementary challan was submitted.

2. On arrest of proclaimed offender, complete challan was routed to the Court of Hon'ble, the District & Sessions Judge, Orakzai, which was entrusted to this Court. The Court has examined the record and found sufficient material to proceed with the case for trial.


3. Afzal Khan being behind the bar was summoned through "Zamima Bay"; whereas, notices have been issued to the Prosecution and Complainant. On production, he was supplied statements and documents prescribed in Section 265-C (1) of the Code of Criminal Procedure-1898. Charge against the accused was framed to which he pleaded not guilty and claimed trial.

4. Prosecution was directed to produce evidence. The Prosecution in order to prove its case against the accused, produced as many as ten (10) witnesses. The prosecution evidence is sketched below for ease of reference in determination of guilt or innocence of the accused:

5. Muhammad Shafeeq, the then SHO of Police Station Kalaya Orakzai, was examined as PW-1, who has submitted the Challan under Section 512 Code of Criminal Procedure, 1898 and Supplementary challan against the accused. PW-2 is the statement of Muharrir Ain Ullah who incorporated the contents of Murasila into FIR Ex.PA. Menhaz Hussain OII/SI, Police Station Kalaya was examined as PW-3, who has conducted partial investigation in instant case. He issued card of arrest of accused which is Ex.PW-3/4 and prepared pointation memo Ex.PW-3/5. He exhibited site plan as Ex.PW-3/6 and application as Ex.PW-3/7 which was submitted by him to the Illaqa Magistrate. Muhammad Zahid constable was examined as PW-4, who submitted that both the recovery

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memos were prepared by the IO in his presence. The IO handed over the Parcel(s) No. 1 and 2 for submission of the same to the FSL for chemical analysis. He exhibited documents regarding the proceedings of FSL as Ex.PW-4/1 to 4/4. HC Wasil Akbar was examined as PW-5, who charged the accused for commission of offence and drafted Murasila. Dr. Haleema Habib, Medical Officer was examined as PW-6, who has conducted the exhumation proceedings and Post Mortem of the deceased Khaperay. She exhibited the injury sheet Ex.PW-6/1 and inquest report as Ex.PW-6/2. Statement of Constable Syed Iftekhar Hussain was recorded as PW-7, who stated that IO prepared pointation memo in his presence which is Ex.PW-7/1. Mr. Rehmat Ullah SCJ/Judicial Magistrate Orakzai was examined as PW-8, who stated that on 24-08-2020, Incharge Investigation Shal Muhammad SI submitted application for exhumation of the dead body which was allowed by him. He stated about the exhumation proceeding and submitted his report as PW-8/1. Statement of Moeen Khan was recorded as PW-9 who is the brother of deceased Khaperay. The same witness identified the grave and dead body of the deceased. The IO prepared pointation memo of the grave Ex.PW-9/1 and pointation memo of the dead body as Ex.PW-9/2. Shal Muhammad SHO was examined as PW-10, who has conducted the investigation in instant case. He prepared site plan Ex.PW-10/1. He produced Parcel No. 1 containing blood stained earth as Ex.P-A, Parcel No. 2 as Ex.PB, prepared and exhibited the documents; recovery memo as Ex.PW-10/1, search memo as Ex.PW-10/3, application for exhumation as Ex.PW-10/4, grave and dead body pointation memo as Ex.PW-10/5 and 10/6, injury sheet and inquest report as Ex.PW-10/7 and 10/8, legal heirs list as Ex.PW-10/9, Register No. 19 as Ex.PW-10/10. After completion of investigation, he submitted the case file to SHO for submission


  
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of challan under Section 512 Code of Criminal Procedure, 1898. On 20-12-2022, prosecution closed its evidence on completion.

6. On closure of prosecution evidence, statement of accused was recorded u/s 342 of the Code of Criminal Procedure-1898; wherein, accused professed innocence and neither opted to produce defense evidence nor to be examined on oath.

7. Learned DPP for the State argued that accused is directly charged in the contents of FIR; that too, with specific role of committing murder of the deceased. Motive for the commission of offence is available in shape of honor killing. Circumstantial evidence as well as the scientific evidence and other corroborating evidence available on the file is sufficient to establish the guilt of accused. The accused was specifically charged for the murder of the deceased and that the matter has promptly been reported. He added that the offence is heinous in nature and prosecution has proved its case beyond doubt entailing conviction of the accused.

8. On the contrary, Mr. Zahoor Rehman Advocate, learned counsel for the accused, contended that there is no ocular evidence of the incident. The legal heirs and the relatives of the deceased had not lodged the report against anybody. The accused has been charged by the HC Wasil Akbar on his own. The incident is unseen and the circumstantial evidence is full of contradiction that is not confidence inspiring. Evidence available on the file is deficient and the story advanced by the prosecution is not appealable to prudent mind. It was added that there is no independent witness of the occurrence and the story has been concocted. He concluded that prosecution has not been able to prove the case beyond reasonable doubt and requested for acquittal of the accused.

  
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9. The guilt or innocence of accused facing trial, on the basis of all types of evidence available on file; duly assessed and appreciated in light of the professional assistance rendered by learned the prosecutor and counsel representing accused, is being determined as follows.

10. Accused facing trial is single accused who has directly been charged by the Local Police in the contents of Murasila Ex.PA-1, followed by FIR Ex.PA, for murder of his wife Mst Khaperay (deceased). The reporting of matter and registration of case are obviously done by Local Police on its own as none of the relatives and legal heirs of the deceased Mst Khaperay as well as Ismail whose life has been attempted come forward to register case. Motive of the case is honor killing assigned by the Police. There is no ocular evidence of direct source and the case of prosecution is solely based on circumstantial evidence. Whether case has been proved through circumstantial evidence against the accused by the prosecution is what to be discussed for entailing conviction or attracting acquittal of instant case.

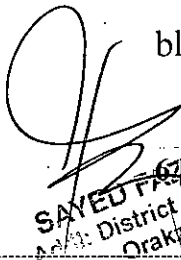
11. No ocular evidence of direct source is available and prosecution is relying on circumstantial evidence for proving the case. Circumstantial evidence is evidence of facts from which, taken with all other evidence, a reasonable inference is drawn about a fact directly in issue. Such evidence works cumulatively in geometrical progression, eliminating other possibilities. When evidence fails to satisfy the Court affirmatively of the existence of those circumstances the stage of drawing inference of guilt is not reached. It is well settled principle of law that circumstantial evidence must be incompatible with any reasonable hypothesis of the innocence of the accused. No link in the chain should be broken or missing. It should be so interconnected that it forms such continuous chain that its one end touches the dead body and the other neck of the

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accused. On this given criteria, the fact of death of deceased Mst Khaperay due to fire arm injury is proved by the prosecution on production of Dr. Haleema Habib examined as PW-6 coupled with the inquest report, injury sheet, postmortem report and exhumation report Ex.PW-10/7, PW-6/1, Ex.PW-6/2, Ex.PW-10/8 and Ex.PM. Connected fact to the proved fact of cause of death as fire arm injury is that who has committed the murder is not proved beyond reasonable doubt for so many factors. The prosecution witnesses are admitting the fact that the incident has taken place on 21-08-2020 while the date of lodging FIR is 22-08-2020 which speaks about one day unexplained delay that given birth to reasonable doubt. The recovery witness Muhammad Zahid examined as PW-4 has stated that the incident had occurred in front of the house; whereas, place of occurrence has been shown as inside the house from the very first day of the investigation. The place of occurrence as per site plan Ex.PW-3/6 and pointation memo Ex.PW-3/5 is room of the house which is within the contradiction of such witness. Blood stained earth is obtained from the room as per statement of the Investigation Officer PW-10 but the recovery witness stated it to be taken from outside of the house.

12. None of the legal heirs of the deceased have been included in investigation nor had they charged anyone for commission of offence. The Investigation Officer had not examined the alleged star witness Ismail who was attempted on his life by the accused and was eye witness of the incident as per version of the prosecution. Negative presumption in line with illustration (g) of Article-129 of the Qanun-e-Shahadat Order-1984 can safely be attracted to the non-production or examination of Ismail eye witness of the occurrence.

13. Weapon of offence has not been recovered. The recovery of empties and blood stained earth from the spot is dubious due to contradiction in the

  
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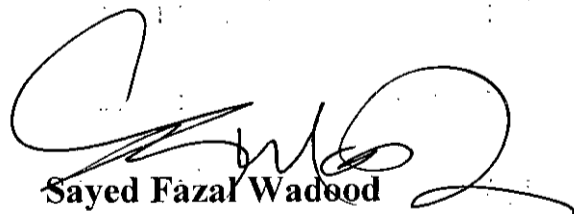
statement of IO and recovery witness and after all, have not been linked with the accused.

14. Absconsion of the accused is factor that can be attracted against the accused as an circumstance but when the chain as discussed above is broken, it lose its importance. Mere absconsion is no ground for conviction.

15. For what has been discussed above, the prosecution has not proved the offence of murder of deceased namely Khaperay, and attempt on the life of Ismail, against the accused facing trial namely Afzal Khan beyond reasonable doubt. Resultantly, in case FIR bearing No. 97 dated 22-08-2020, registered under section(s) 302/311/324/201 of the Pakistan Penal Code, 1860 at Police Station Kalaya Orakzai, for the murder/Qatl-e-amad of deceased named above, the accused facing trial Afzal Khan son of Khan Baz, is hereby acquitted from the charges levelled against him. The accused is in custody, he be released forthwith, if not required in any other case. Case property be dealt with as per law after expiry of period of appeal/revision. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

**ANNOUNCED**

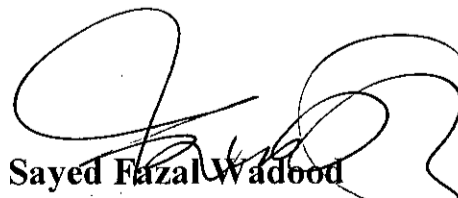
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**CERTIFICATE:**

Certified that this Judgment consists of seven (07) pages; each page has been read over and signed by me after making necessary corrections therein.



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Additional Sessions Judge Orakzai