

IN THE COURT OF ADDITIONAL SESSIONS JUDGE ORAKZAI, AT BABAR MELA

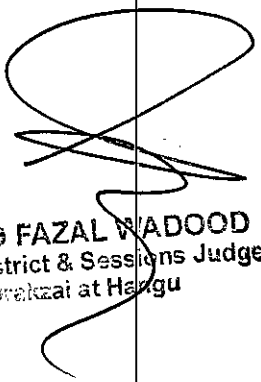
Sessions Case No. 02/02 of 2022

Date of Institution: 10-01-2022

Date of decision: 04-02-2023

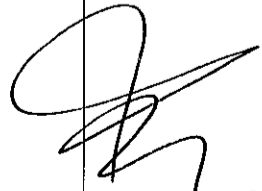
State etc. vs Diltaj Ali

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	04/02/2023	<p>Accused produced in custody. APP for the State and Counsel for accused are in attendance. Arguments have already been heard; whereas, this is the disposal of application u/s 265-K Code of Criminal Procedure, 1898.</p> <p>2. Allegation against the accused facing trial is that on 16.11.2021 at 07:00 hours, he committed Qatl-e-Amd of deceased Shadeed Hussain (uncle of the complainant) by effective firing at him and attempting on life of the complainant and his brother which was registered vide case FIR No.29 dated 16.11.2021 u/ss 302/324 of Pakistan Panel Code, 1860 in Police Station Kalaya, District Orakzai.</p> <p>3. On arrest of the accused facing trial, the local police started investigation and on completion of investigation, complete challan was submitted in the Court of District & Sessions Judge Orakzai on 10-01-2022, which was entrusted to this Court for trial. Accused being in custody was summoned through <i>Zamima Bay</i> who was produced; provisions of 265-C Code of Criminal Procedure, 1898 complied and charge was framed against the accused to which he pleaded not guilty by claiming trial.</p> <p>4. The prosecution in support of its case produced 06 (six) witnesses. PW-1 is the statement of Jabeen Hussain constable, who stated that he handed over the inquest report and injury sheet to the Doctor which were handed over to him by the SHO. After Post Mortem, the Doctor handed over to him inquest report, injury sheet, post mortem report along with blood stained garments which he handed over back to the SHO. Ain Ullah Muharrir of the PS was examined as PW-2, who has incorporated the contents of</p>


SAYED FAZAL WADOOD
 District & Sessions Judge
 Orakzai at Hangu

Murasila into FIR Ex.PA. PW-3 is the statement of Dr. Asif Khan, who has conducted the Postmortem examination Ex.PM of deceased Shadeed Hussain. Aftab Hassan SI was examined as PW-4, who reduced the report of complainant into shape of Murasila Ex.PW-4/1, he drafted Injury Sheet Ex.PW-4/2 and Ex.PW-4/3 respectively. He arrested the accused and issued his card of arrest Ex.PW-4/4. He also submitted the complete challan Ex.PW-4/5 against the accused after completion of investigation. Ishtiaq Hussain SI was examined as PW-5, who has conducted the investigation proceedings in the instant case. Documents exhibited by this PW including Site plan Ex.PB, recovery memos Ex.PW-5/1 and 5/2, list of the deceased's legal heirs Ex.PW-5/3, applications to Judicial Magistrate Ex.PW-5/4 and 5/5, FSL application Ex.PW-5/6, Road Certificates Ex.PW-5/7, 5/8 and 5/9, FSL results Ex.PZ and PZ-1 and extract of Register No. 19. Akseer Ali constable was examined as PW-6, who has carried parcels to the FSL.

5. Complainant Nawazish Abbas and Khurram Abbas are the eye witnesses of the occurrence and they are star witnesses of the prosecution. Prosecution failed to procure their attendance for evidence and thereby, the Court has processed to ensure their examination. The DFC reported that both the eye witnesses have been shifted to some unknown place and are not available for recording evidence. Such DFC was examined in the Court as SW-1 where he confirmed the fact that private witnesses are abroad and had shifted their families to some unknown place. Sequel to this, the SHO of Police Station Kalaya was asked to trace out the legal heirs of deceased so that the location of witnesses may be determined. The SHO has entered Naqalmad No. 6 of Daily Diary dated 20-01-2023 by stating therein that he alongwith other Police Constable visited the house of deceased and examined Qurban Ali and Saif Ali (Local inhabitants of the village) for tracking the address of the legal heirs of deceased. They have obtained the pictorial evidence of their visit and annexed it to the


SAYED FAZAL WADOOD
 Addl. District & Sessions Judge
 Orakzai at Hangu

report confirming that the whereabouts of the legal heirs of deceased are unknown. Meanwhile, application for acquittal of accused under Section 265K of Code of Criminal Procedure, 1898, deferred earlier was pressed again and was heard at length.

6. Counsel for accused/petitioner argued that accused is behind the bar for sufficient length of time. There is no probability of the conviction of accused in future as the eye witnesses failed to testify against the accused. The evidence is deficient and the accused may not be kept behind the bar for indefinite period.

7. APP representing State is of the view that a strong evidence is available but their location is so far unknown. Adjournment for indefinite period as *sine die* is best available course as acquittal on such ground of absence of evidence is not justifiable under the law.

8. It is on record that the eye witnesses of the incident are not available despite being tracked by the DFC and SHO concerned as they have admittedly shifted to some unknown place. Similarly, the legal heirs are also shifted their residence to some unknown place and their whereabouts are unknown in the locality. Consequently, the case is being assessed on the touch stone of circumstantial evidence alone.

9. Case of prosecution which rested upon circumstantial evidence required to be so transparent that by no hypothesis there could be any doubt regarding any chain of circumstantial evidence. Motive is the first ever item in the line of circumstantial evidence when it is assessed as an independent fact for connectivity with other facts. Motive assigned by the prosecution is that nephew of the deceased was considered responsible for establishing fake ID of net spreading videos about the disrespect of local notable and clergy; that too, some one year back. Neither videos nor the details of such ID has been produced by the prosecution. Similarly, the link of deceased and holding him responsible for the act of his nephew

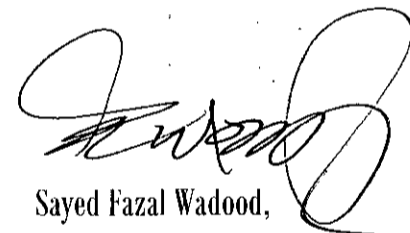

SAYED FAZAL WAJOOD
District & Sessions Judge
Orakzai at Hangu

24

committed some one year back makes no sense at all. Similarly, no weapon of offence or other incriminating materials have been recovered from the accused. Last seen evidence, motive, recovery of weapon of offence, pointation of place of occurrence are all phenomena those had rendered the chain of events broken; especially, where ocular evidence is not available.

10. Considering the above noted facts and circumstances presently, no case against the accused is made out and there is no probability of conviction of the accused facing trial. Consequently, charges against the accused seems to be baseless and groundless. Application under section 265-K Code of Criminal Procedure, 1898 is, therefore, accepted and the accused facing trial namely Diltaj Ali is acquitted in case. He being in custody be released forthwith, if not required in any other case. Case property be disposed of after the expiry period of appeal or revision. File be consigned to District Record Room, Orakzai after necessary completion and compilation within span allowed for.

11. Announced in open Court.



Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela