

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

SESSION CASE NO. : 1/2 OF 2023
DATE OF INSTITUTION : 02.01.2023
DATE OF DECISION : 27.01.2023

STATE THROUGH COMPLAINANT AHMAD GUL S/O MOMAND KHAN, CASTE MALA KHEL, GHOZTANG DABORI, DISTRICT ORAKZAI

------(Complainant)

VS

MUHAMMAD AMEEN S/O MASTI JAAN, AGED ABOUT 29 YEARS, R/O CASTE MALA KHEL, TAPA CHAR KHELA, TEHSIL UPPER, DISTRICT ORAKZAI

------(Accused facing trial)

Present: Nisar Ahmad, Assistant Public Prosecutor.
: Abid Ali Advocate for accused facing trial.

FIR No. 07
U/S: 302/311/34 PPC

Dated: 08.02.2020
Police Station: Ghiljo

JUDGEMENT
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The accused named above is charged for the offence u/s 302/311/34 PPC vide FIR no. 07, dated 08.02.2020 of Police Station Ghiljo.

- (2). The case of the prosecution as per Murasila based FIR is; that on 08.02.2020 the local police on receipt of information regarding a dead body at Civil Hospital Mishti Mela reached the hospital where the complainant Ahmad Gul with the dead body of his son Muhammad Shafiq made a report to the local police to the fact that on that day his son after offering prayers at mosque was on way back to his house when reached the spot of occurrence, the accused facing trial Muhammad Ameen along with acquitted co-accused Javid and Noor Rehman

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duly armed laying in wait, on seeing his son started firing at him who got hit and died on the spot. The complainant charged the accused facing trial along with acquitted co-accused for the commission of offence. The report was drafted in the shape of Murasila by Saleem Khan ASHO which was sent to the Police Station through Constable Aslam Farooq, on the basis of which FIR was registered.

(3). After registration of FIR, it was handed over to IO, Nawaz Sharif SI for investigation. Accordingly, after receipt of FIR, he reached the spot and took into possession blood from the place of deceased and sealed the same into parcel no. 1, 03 empty shells of 30-bore from the place of acquitted co-accused Noor Rehman, 03 empty shells of 30-bore from the place of acquitted co-accused Javid and 05 empty shells of 30-bore from the place of accused facing trial Muhammad Ameen and sealed the same into parcel no. 2 to 4 and drafted recovery memo. He also took into possession blood-stained shalwar, Kamees and vest along with black colour leather coat of the deceased and sealed the same in parcel no. 5. On pointation of acquitted co-accused Noor Rehman, a 30-bore pistol without number was also recovered and taken into possession vide recovery memo. The IO sent parcels containing blood-stained garments of the deceased and pistol along with empty shells to FSL


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vide his applications and road permit certificates, the reports whereof received by him and placed on file.

(4). After completion of investigation, the acquitted co-accused Noor Rehman and Javid were challaned while the present accused facing trial, being absconder, was proceeded u/s 512 CrPC. The acquitted co-accused faced the trial and were acquitted vide order/judgment dated 16.04.2021 of learned Additional Sessions Judge-II, Orakzai while the present accused facing trial was declared proclaimed offender. After arrest of the present accused, supplementary challan was submitted, the accused was summoned, copies of the record were provided to him u/s 265-C Cr.P.C and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses and the complainant were summoned but neither the complainant nor the witnesses appeared before the court.

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(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 case file shows that as per contents of FIR, the complainant who is the father of deceased, has introduced himself as eyewitness of the occurrence; however, after one day of the occurrence, statement of

one Ihsan Ullah has been recorded, who has alleged himself, as seen the occurrence and informed the complainant (the father of deceased) about the occurrence. The complainant while reporting the matter has not narrated this fact to the scribe of the Murasila creating serious doubt as to the fact that which of the version i.e., as that of the complainant or that of the alleged eyewitness, is correct. Another important aspect of the case is, that the acquitted co-accused Noor Rehman has recorded his confessional statement before the magistrate wherein he has exonerated the present accused facing trial, which, though has discarded by the learned trial court during trial of acquitted co-accused but has created serious doubt regarding mode and manner of the occurrence. Moreover, during the same occurrence, one Gul Nawab s/o Hamesh Gul has also died regarding which a separate FIR No. 8, dated 08.02.2020 u/s 302/311/34 and 15AA of Police Station Ghiljo has been registered but the complainant of this case has not told this fact in his report which means that the real facts have been suppressed. Above all, the evidence of the prosecution has already been discarded during the trial of acquitted co-accused Noor Rehman and Javid.

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- (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 opportunity to produce the witnesses; therefore, accused namely, Muhammad Ameen, on acceptance of his application, is acquitted from the charges levelled against him u/s 265-K Cr.P.C. The accused is on bail. His bail bonds stand cancelled and his sureties are discharged of the liabilities of bail bonds. The case property be destroyed after expiry of period provided for appeal/revision Consign.



Pronounced
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CERTIFICATE

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

Dated: 27.01.2023

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at Baber Mela