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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.13/2 of 2021

Date of institution: 19.11.2021

Date of decision: 22.02.2023

The State through Muhammad Shafiq, SHO Police Station Kalaya, Orakzai
..... (Complainant)

...Versus...

Gul Nazeef son of Rafi Ullah, aged about 20 years, resident of Qaum Feroz
Khel, Tappa Qeemat Khel, village Mirazi Khel, Tehsil Lower, District
Orakzai. (Accused on trial)

**Case FIR No. 85, Dated 23.07.2020 u/s 302/311/324 of the Pakistan
Penal Code, 1860; registered at Police Station, Kalaya, District
Orakzai.**

JUDGMENT

The Police party received information that a person namely Gul Nazeef has committed murder of his sister-in-law namely Palin Bibi and Shah Haroon on the score of honor killing having illicit relationship and the dead bodies are shifted to the Civil Hospital Mishti Mela. Upon same information, the police party rushed to the emergency room of the Hospital, where the dead bodies were lying. Father of the deceased Shah Haroon namely Shafia Gul and uncle of the deceased Mst Palin Bibi namely Aseel were present who verified the occurrence. Muhammad Shafiq SHO Police Station Kalaya charged the accused Gul Nazeef 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 of the Pakistan Penal Code 1860 have been inserted against the accused. The accused was declared proclaimed


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into motion. Sections 302/311/324 of the Pakistan Penal Code 1860 have been inserted against the accused. The accused was declared proclaimed offender who 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. Gul Nazeef being behind the bar was summoned through "*Zamima Bay*"; whereas, notices have been issued to the Prosecution and Complainant. On production, accused 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.

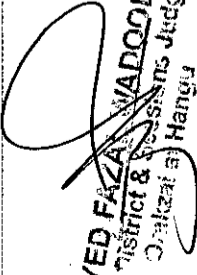
4. Prosecution was directed to produce evidence. The Prosecution in order to prove its case against the accused, produced as many as twelve (12) witnesses. The prosecution evidence is sketched below for ease of reference in determination of guilt or innocence of the accused:

5. Libab Ali, Muharrir of the PS was examined as PW-1, who incorporated the contents of Murasila into FIR Ex.PA and handed over the copy of FIR and Murasila to the IO for investigation. Muhammad Shafeeq SI, was examined as PW-2, who prepared inquest report Ex.PW-2/1; injury sheet Ex.PW-2/2 of deceased Palin Bibi; inquest report and injury sheet of the deceased Shah Haroon as Ex.PW-2/3 and Ex.PW-2/4. After completion of investigation, he has submitted the challan against accused under Section 512 of the Code of Criminal Procedure, 1898. Shahid Khan Constable was


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examined as PW-3, who handed over the inquest report and injury sheet of female deceased Palin Bibi to the Lady Doctor for Medical examination. Muhammad Dilshad Constable was examined as PW-4, who handed over the inquest report and injury sheet of the Male deceased Shah Haroon to the Male Doctor for Medical examination. PW-5 is the statement of Mehdi Hassan IO, who has conducted investigation in instant case. He prepared site plan Ex.PW-5/1, recovery memo(s) Ex.PW-5/2, 5/3, 5/4, list of legal heirs of deceased Shah Haroon Ex.PW-5/5 to Ex.PW-5/6 and application for FSL regarding blood stained garments Ex.PW-5/7. He applied for warrant against the accused under Section 204 and proceeded against him under Section 87 of Code of Criminal Procedure, 1898 which are Ex.PW-5/8 and 5/9; in this respect, he recorded the statement of Search Witness and handed over the complete challan to SHO Muhammad Shafiq. He exhibited application Ex.PW-5/10, Parwana Ex.PW-5/11 regarding addition of section, application for custody Ex.PW-5/12 and application for confession Ex.PW-5/13. After completion of investigation, he handed over the file to SHO Shal Muhammad for completion of Challan. Khanwada constable was examined as PW-6, who submitted that both the recovery memos were prepared by the IO in his presence. The IO handed over the Parcel(s) No. 1 to 4 for submission of the same to the FSL for chemical analysis. He exhibited Raseed Rahdari as Ex.PW-6/1. PW-7 is the statement of Eye Witness Mst Falak Bibi (mother of deceased Palin Bibi), who stated that on 23/07/2020, Gul Nazeef son of Rafi Ullah entered to her house duly armed with Kalashnikov and opened fire on Palin Bibi, she got hit and died on the spot. She further stated that accused started beating her with the Butt of Kalashnikov and she got injured. After five days of the occurrence, she visited the Police Station for registration of FIR and charged Gul Nazeef for



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murder of her daughter. Dr. Nabeel Shehryar, Medical Officer was examined as PW-8, who has conducted the Post Mortem of the deceased Shah Haroon. He exhibited Post Mortem Report as Ex.PM, injury sheet Ex.PW-8/1 and inquest report as Ex.PW-8/2. PW-9 is the statement of Dr. Zainab Amir, who has conducted the Post Mortem of the deceased Palin Bibi. She exhibited Post Mortem Report as Ex.PM-1, injury sheet Ex.PW-9/1 and inquest report as Ex.PW-9/2. Statement of Shafia Gul was recorded as PW-10 who is the father of deceased Shah Haroon. The same witness identified the dead body of the deceased Shah Haroon to the Police. PW-11 is the statement of Khoshal Meen Khan, who is the relative of deceased Palin Bibi. The same witness identified the dead body of the deceased Palin Bibi to the Police. Shal Muhammad SHO was examined as PW-12, who arrested the absconding accused on 15-10-2021 and issued his card of arrest Ex.PW-12/1. After completion of investigation, he submitted supplementary challan against the accused Ex.PW-12/2. On 08-12-2022, prosecution closed its evidence on its 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 did not opt to produce defense evidence or to be examined on oath.

7. Learned APP for the State argued that accused is directly charged in the contents of FIR; that too, with specific role of committing murder of both the deceased. Motive for the commission of offence is available in shape of honor killing. The accused was specifically charged for the murder of both the accused and that the matter has promptly been reported. He added that


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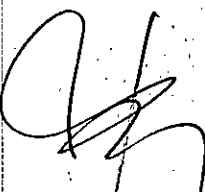
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the offence is heinous in nature and prosecution has proved its case beyond doubt entailing conviction of the accused.

8. On the contrary, learned counsel for the accused, Muhammad Kamran Khattak Advocate contended that there is no ocular evidence of the incident. The legal heirs and the relatives of both the deceased had not lodged the report against anybody. The accused has been charged by the SHO 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 shadow of doubt and requested for acquittal of the accused.

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 *Bhabee* (sister in law) Mst Palin Bibi (female deceased) and Shah Haroon (Male deceased). The reporting of matter and registration of case are obviously prompt as the Local Police has registered the case on its own for being the relatives and legal heirs of both the deceased were not willing to register case. Information of occurrence have been obtained from the father of male deceased and uncle of female deceased available with the dead bodies in the premises of Civil Hospital Mishti Mela.


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A single accused has directly been charged in double murder case in the contents of FIR.

11. Motive is the cause, manner and method of thoughts in the mind of a person for performing action which is hidden in the mind of accused. The factual situation of present case is that Dewar (brother in law) has been charged for Qatl-e-Amd of his Bhabee (sister in law) with a stranger on account of illicit relationship and thus motive of honor killing is existing.

12. Promptness in reporting the incident to police is another area which is required to be focused after discussing nomination and identification of accused; especially, where there is motive existing. Under Section-154 of the Code of Criminal Procedure, 1898, it is the responsibility and obligation of the Police Officer to immediately record the statement of person reporting any incident but at the same time, it is also the responsibility of every citizen to immediately lodge the FIR for every cognizable offence so that the Law may be set into motion and timely action could be taken against the criminals. Promptness in reporting the matter is encouraged with the object to obtain first hand spontaneous information of the occurrence in order to exclude the possibility of fabrication of story or consultation and deliberation. The instant FIR has been lodged without any delay despite the fact that no one was ready to register the case for being matter of honor killing that has got social recognition in the locality where the occurrence had taken place.

13. The mode and manner in which crime is committed is the next question to be discussed as identification, nomination of accused, existence of motive in shape of honor killing and promptness of report have already been discussed above. It is the case of prosecution that the Police party while

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patrolling in the area has received information regarding murder of Shah Haroon son of Shafia Gul and Mst Palin Bibi wife of Farman Ullah allegedly committed by Gul Nazeef. The Local Police rushed towards Civil Hospital Mishti Mela where dead bodies of both the deceased were lying. Shafia Gul being father of male deceased and Aseel being uncle of lady deceased, available in Hospital, have confirmed the incident as honor killing. The male and female deceased have been termed in illicit relation and reportedly killed by the accused who happened to be the *Dewar* of lady deceased. Murasila was drafted by the SHO leading the Police party and was accordingly sent to the Police Station. Consequently, the SHO of Police Station Kalaya Orakzai has registered the captioned FIR on his own as no one from the legal heirs and relatives of the deceased was ready to bring criminal law into motion. Accused was arrested by the SHO of the Police Station concerned vide card of arrest Ex.PW-12/1 when sufficient time has been lapsed of the proclamation.

14. Falak Bibi wife of Taza Gul recorded her statement as Eye Witness of the occurrence. He happens to be the real mother of female deceased and thus natural witness need not to establish her presence at the spot. She testified that Gul Nazeef being accused has opened fire on Mst Palin Bibi through Kalashnikov. Mst Palin Bibi died on the spot and she was luckily escaped despite indiscriminate firing upon her. The elders of locality were trying to mollify me not to register the case that resulted into delay in recording statement before Police. She owned her previous statement recorded under Section 164 of Code of Criminal Procedure, 1898 before Learned Magistrate. She was cross examined and nothing favorable to accused has been extracted except that the reason of delay in recording


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statement under Section 164 of the Code of Criminal Procedure, 1898, has not been explained therein but delay in recording the statement in the cases of honor killing is common phenomena in the prevailing cultural of Newly Merged District Orakzai. Therefore, delay in recording statement can lightly be ignored. Ocular evidence of the occurrence is thus available and solitary statement of an Eye Witness can be made base for conviction as was held in "Khalid Mehmood vs State" case reported as 2022 SCMR-1148.

15. Corroboratory evidence of the incident when consulted reveals that female deceased had been killed in the vicinity of single dwelling house owned and possessed by the accused. Site plan Ex. PA and Ex. PW-5/1 shows the presence of the accused at the spot. It was 19.11.2020 when the addition was carried out with red ink in the site plan on pointation of Eye Witness which is within the natural course of things.

16. Blood-stained earth of deceased Shah Haroon have been sealed in parcel No. 1 and blood-stained earth pertaining to deceased Mst. Palin Bibi have been sealed in parcel no. 2 which were taken into possession vide Recovery Memo Ex. PW-5/2. Similarly, blood-stained garments of both the deceased have been sealed in parcel No. 3 and 4 vide Recovery Memo Ex. PW-5/3. All the recoveries have been seen by the marginal witnesses and one of them Khanwada constable had testified the proceedings while deposing as PW-06. The case properties have been transmitted to FSL vide application Ex. PW-5/7. Road certificate has been exhibited as Ex. PW-6/1. The report of FSL Ex. PK opined regarding parcel no. 1 to 4 that blood-stains on these articles were human blood of the same groups. All these recoveries and positive reports of FSL corroborate the oral account on one hand and establish case on the strength of circumstantial evidence on the other hand.



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17. Injury sheets and inquest reports of both the deceased are available on file as Ex. PW-2/1 to Ex. PW-2/4 which speak about the un-natural death of both the deceased. Dr. Nabeel Shehryar was examined as PW-08 who produced the Post-Mortem report of the deceased Shah Haroon as Ex. PM. He testified the inquest report Ex. PW-8/1 as well. He categorically stated that, this is a case of firearm injury and cause of death was excessive bleeding and damage of vital organs. His report is in consonance with the injury sheet. Dr. Zainab Amir testified the Post-Mortem report Ex. PM-1 as well as endorsement on injury sheet Ex. PW-9/1. She also opined that, this is case of firearm injury that caused excessive bleeding and damaged the vital organs of female deceased led to her death. The medical evidence is fully supporting the prosecution case.

18. Protective custody is another ground that is of much importance; particularly when the murder of a female is involved. The accused is *Dewar* (brother in law) and one of the deceased is his *Bhabee* (sister in law). *Bhabee* is always presumed in the protective custody of her *Dewar* and when she was murdered, the accused being brother in law was duty bound to furnish explanation regarding un-natural death of his sister in law. The accused being brother in law of female deceased could not explain the murder and non-charging of anyone and easily be presumed joining hands of the family members and all consanguine in concealing the act of murdering deceased by accused.

19. Prime objection of the accused party is that neither the relatives nor the legal heirs of the deceased have charged him for commission of the offense and it is the local police that has brought law into motion on his own.

The cross examination of PW-10 (the father of male deceased) and PW-11

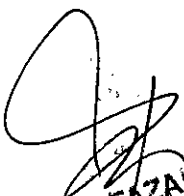


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(relative of female deceased) have been designed that they being elders and immediate consanguine of both the deceased are not charging accused. Both these witnesses are just identifiers of the dead bodies being relatives who brought them to the hospital. They are neither exclusive sole legal heirs of the deceased nor their not charging the accused may be treated as sole ground for acquittal of the accused. The police were bound by law to bring the law into motion when found two persons died with the un-natural death of firearm injury and nothing illegal had happened which could benefit the accused party.

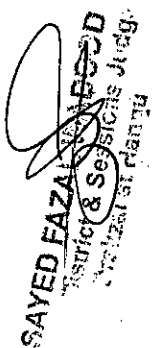
20. Abscondance, no doubt, is a weak type of evidence and the same per se is not sufficient to prove the guilt and sustain conviction, but it can be considered as one of the circumstances in the presence of sufficient, direct and circumstantial evidence to connect the accused with commission of offence. Accused disappeared from the date of incident and remained absconder for sufficient length of time and thus was proceeded in trial under Section 512 Code of Criminal Procedure, 1898. Thus, it furnishes corroboration to the ocular testimony against the accused and cannot be ignored being corroborative piece of evidence.

21. The direct nomination of accused with no chance of misidentification; promptly reporting the incident and lodging FIR; recoveries of blood stained earth and garments; established motive of honor killing; oral account of evidence from direct source; connected circumstantial evidence; absconsion for sufficient time; corroboration through post mortem reports; FSL reports and other evidence documented have proved the mode and manner of the offence committed by the accused facing trial.


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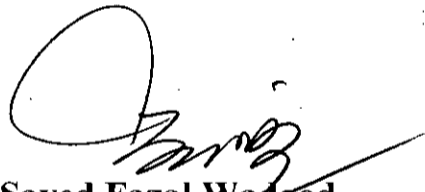
22. For what has been discussed above, the prosecution has been able to bring home charge against the accused facing trial beyond any shadow of doubts; that too, through cogent, concrete and tangible evidence that shall lead to conviction. It has been proved that the offences of murder of Mst. Palin Bibi (female deceased) and Shah Haroon (male deceased) have been committed by accused on trial namely Gul Nazeef. Resultantly, in case FIR bearing No. 85 dated 23-07-2020, registered under section 302/311 Pakistan Penal Code, 1860 at Police Station Kalaya Orakzai, for the murder/Qatl-e-amad of deceased Mst Palin Bibi, the accused facing trial Gul Nazeef son of Rafi Ullah Khan, is hereby convicted and sentenced under Section 302 of the Pakistan Penal Code-1860 to life imprisonment (25 years) rigorous imprisonment as Tazir and the accused/convict shall also pay an amount of Rupees one Million (1,000,000) as compensation to the legal heirs of deceased within the meaning of Section-544(a) of the Code of Criminal Procedure-1898 and in default of payment of the same amount, he shall further undergo six months simple imprisonment while the amount shall be recovered as land revenue under the provision of West Pakistan Land Revenue Act-1967. The benefit of section 382(b) of the Code of Criminal Procedure-1898 is also extended in favour of the convict. Furthermore, in the same case, for the murder/Qatl-e-amad of deceased Shah Haroon, the accused facing trial Gul Nazeef son of Rafi Ullah Khan, is hereby convicted and sentenced under section 302 of the Pakistan Penal Code-1860 to life imprisonment (25 years) rigorous imprisonment as Tazir and the accused/convict shall also pay an amount of Rupees one Million (1,000,000) as compensation to the legal heirs of deceased within the meaning of Section-544(a) of the Code of Criminal Procedure-1898 and in default of payment of the same amount, he shall further undergo six months simple


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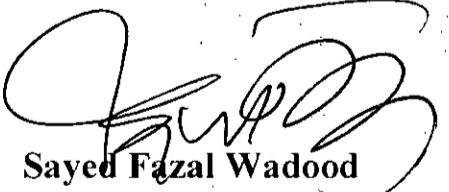
imprisonment while the amount shall be recovered as land revenue under the provision of West Pakistan Land Revenue Act-1967. Accused is also convicted and sentenced under Section 324 of the Pakistan Penal Code, 1860 to undergo imprisonment for **Five years** on account of attempt at the life of Falak Bibi. The benefit of section 382(b) of the Code of Criminal Procedure-1898 is also extended in favour of the convict. The convict/accused is already in custody; hence, he is being sent to Jail through conviction warrant. Attested copy of this judgement be sent to District Public Prosecutor within the meaning of section-373; whereas, attested copy of this judgement be supplied to convict in term of section-371 of the Code of Criminal Procedure-1898. All the punishments pertaining to imprisonment shall run concurrently. 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
22.02.2023


Sayed Fazal Wadood
Additional Sessions Judge Orakzai

CERTIFICATE:

Certified that this Judgment consists of Twelve (12) pages; each page has been read over and signed by me after making necessary corrections therein.


Sayed Fazal Wadood
Additional Sessions Judge Orakzai