

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

SESSION CASE NO. : 24/3 OF 2022
DATE OF INSTITUTION : 01.08.2022
DATE OF DECISION : 24.02.2023

STATE THROUGH ZARWAR KHAN S/O TOR KHAN, AGED ABOUT 62 YEARS, R/O CASTE BEZOT, TAPA BETHAYI, STAR BEZOT, PO FERAZ KHEL, TEHSIL LOWER, DISTRICT ORAKZAI

------(Complainant)

VS

MAROOF KHAN S/O NOOR HABIB, AGED ABOUT 42 YEARS, R/O CASTE BEZOT, DISTRICT ORAKZAI

------(Accused Facing Trial)

Present: Umar Niaz, District Public Prosecutor for State.
: Hamid Sarfaraz Advocate, for accused facing trial.

FIR No. 40
U/S: 15AA PPC

Dated: 21.04.2022
Police Station: Kalaya

JUDGEMENT
24.02.2023

The accused named above faced trial for the offence u/s 15AA vide FIR no. 40, Dated 21.04.2022 of Police Station Kalaya.

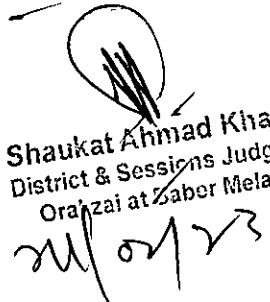
- (2). The case of the prosecution as per contents of Murasila based FIR is; that on 21.04.2022, the local police upon receipt of information regarding the occurrence, reached DHQ Hospital Mishti Mela and found the dead body of Kamran s/o Zarwar Khan, aged about 25 lying in the emergency room where the complainant, Zarwar Khan, the father of deceased reported the matter to the local police to the fact that on that day he along with his son Kamran, after purchasing household articles, on way back to their house when reached the place of occurrence the

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accused facing trial appeared, started altercation with his son that as to why he (son of complainant) is used to walk around with nephew of the accused at which he (complainant's son) replied that nephews of the accused are his friends and that he would continue to walk around with them, the accused got furious, put out a pistol from his trouser-fold and made fire shots at them as a result of which he (complainant's son) got hit and died on the spot while he luckily escaped unhurt. Report of the complainant in the shape of Murasila Ex. PA/1 was drafted by Shal Muhammad SHO which was also thumb impressed by one, Arab Khan s/o Umar Khan testifying the same to be true. The Murasila was sent to police station through constable Yousaf Ali, on the basis of which FIR Ex. PA was drafted by PW-1/MHC Muhammad Jamil, while the dead body under the escort of constable Abdul Sattar along with injury sheet and inquest report were forwarded to the doctor for post-mortem examination. After scribing the Murasila, Shal Muhammad SHO/PW-2 went towards the house of accused where the accused facing trial was arrested with a pistol which was taken into possession vide recovery memo and sealed into parcel no. 3. The accused could not produce any license; therefore, section 15AA was added in the FIR.


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(3). After registration of FIR, it was handed over to IO/PW-6, Mehdi Hassan SI who visited the spot and conducted investigation over there. After completion of investigation, separate challan u/s 15AA was submitted against the accused facing trial.

(4). Upon receipt of case file for the purpose of trial, 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. The prosecution examined as many as 07 witnesses. The gist of their evidence is as follow;

I. Moharrir Muhammad Jamil appeared as PW-1 and deposed that upon receipt of Murasila, he incorporated its contents into FIR Ex. PA. He has received parcels no. 1 to 4 by keeping it in mal khan and making its entry in register no. 19. He has put the accused behind the lockup of the police station. He has handed over parcels no. 1 to 4 to the IO for sending it to FSL on 23.04.2022.



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II. Shal Muhammad SHO as PW-2 in his evidence deposed that on receipt of information, he reached the hospital and found the dead body of Kamran in emergency room where he drafted the report of complainant in

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shape of Murasila Ex. PA besides prepared injury sheet and inquest report which were sent of police station by him through constable Abdul Sattar and forwarded the dead body to the doctor for post-mortem examination. Thereafter, he went towards the house of accused where he was arrested the accused vide card of arrest Ex. PW 2/3 and recovered 30-bore pistol from possession of accused facing trial, sealing the same into parcel no. 3 which was taken into possession by the SHO vide recovery memo Ex. PW 2/4. On his arrival to police station, he handed over card of arrest, recovery memo and recovery sketch along with accused to Moharrir of police station. Lastly, he has submitted complete challan Ex. PW 2/6 against the accused facing trial.


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III. Constable Muhammad Rasool appeared in the witness box as PW-3 being marginal witness of recovery memo Ex. PW 2/4, deposed in respect of arrest of the accused facing trial by SHO Shal Muhammad in his presence and taking into possession 30-bore pistol recovered from possession of the accused.

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IV. Constable Abdul Sattar is PW-4. He has handed over the Murasila, injury sheet and inquest report to the doctor and taken the blood-stained garments of the deceased to police station.

V. Constable Shams Ul Ghani as PW-5 stated that he has taken parcels no. 1 to 4 along with road permit certificates and applications to the FSL and obtained its receipt which he has handed over to the IO upon his return.

VI. Mehdi Hassan SI is PW-6. He deposed in respect of the investigation carried out by him in the instant case including taking into possession blood through cotton from the place of deceased, sealing the same into parcel no. 1 and 02 empty shells of 30-bore, sealing the same into parcel no. 2 vide recovery memo Ex. PC, preparation of site plan Ex. PB on the pointation of the complainant, recording statements of PWs u/s 161 Cr.P.C, taking into possession blood-stained garments of the deceased vide recovery memo Ex. PC/1, production of accused before the court of Judicial Magistrate vide his applications, sending parcels no. 1 to 4 to FSL for chemical


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analysis, preparing pointation memo Ex. PW 6/7 on the pointation of accused facing trial, placing on file reports of FSL which are Ex. PK and Ex. PK/1, production of original register no. 19 before the court, placing on file the photocopy of register no. 19 as Ex. PW 6/9 and submission of case file to SHO for onward proceedings.

VII. Lastly, constable Muhammad Khalil appeared in the witness box as PW-7 being marginal witness of recovery memos Ex. PC and Ex. PC/1, deposed in respect of investigation carried out by the IO in his presence and taking into possession blood through cotton, 02 empty shells of 30-bore and blood-stained garments of the deceased. He is also marginal witness of the pointation memo Ex. PW 6/7 prepared by the IO at the instance of accused facing trial.

(5). After closure of evidence of the prosecution, statement of the accused was recorded u/s 342 Cr.P.C but he neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of learned DPP for the state and counsel for the accused facing trial heard and case file perused.

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(6). Learned DPP for the State submitted that the accused facing trial is directly nominated in the FIR, that the accused facing trial has been arrested on the same day with a pistol used in the commission of offence, that the witness of the recovery and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, but the recovery of the weapon of offence has not been made from possession of the accused, that the weapon has been planted against the accused with connivance of PW Shal Muhammad SHO and that there are various contradictions between the statements of PWs and that the prosecution has badly failed to bring home the charge against the accused facing trial.

(8). After having heard the arguments and after going through the available record, it is observed that as per version of prosecution, the weapon of offence has been recovered by PW-2/Shal Muhammad SHO. As per his court statement after completion of proceedings at hospital,


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he along with police nafri went to Jalaka Mela Bezot in search of the accused and arrested the accused with 30-bore pistol. The recovery has been witnessed by PW-3/constable Muhammad Rasool. PW-1/Moharrir of the police station has received the case property from IO and accused from SHO Shal Muhammad/PW-2. On 23.04.2022 he has handed over the case property to PW-6/IO who has dispatched the same to FSL through PW-5/Shams Ul Ghani.

As mentioned above, as per court statement of PW-2/Shal Muhammad SHO after making proceedings in the hospital he went to Jalaka Mela Bezot for arrest of accused but the IO as PW-6 told that on his arrival to spot PW-2/Shal Muhammad SHO was present on the spot. He remained with him for about 30/35 minutes and thereafter proceeded to the police station.

Secondly, as per sketch of the arrest of accused and recovery of weapon of offence Ex. PW 2/5, the spot of arrest is Kacha Road surrounded by fields. PW-2 has also stated that there is no house near the spot of arrest; however, PW-3, who was allegedly present with PW-2 at the time of arrest and has seen the recovery, has stated that the accused was arrested from village Bezot from his house. He has further stated that other inmates of the house were present at the house.


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Third, as per stance of PW-2 after arrest of accused and recovery of the weapon of offence he came to the police station, handed over card of arrest, recovery memo and recovery sketch to Moharrir of the police station along with the accused and case property (parcel No. 3) but Moharrir of the police station in his examination-in-chief has told that the parcels no. 1 to 4 were handed over to him by IO (PW-6).

Similarly, as per FSL report Ex. PK parcel no. 2 and 3 were also accompanied by five 30-bore live cartridges but neither there is any entry of five live cartridges in the application addressed to the FSL Ex. PW 6/11 nor in *rahdari* receipt Ex. PW 6/6. PW-6 in his cross examination has also stated that no live cartridges have sent by him to the FSL.

In view of what is discussed above, it is held that the recovery of weapon of offence is doubtful, if Shal Muhammad SHO/PW-2 was present with the IO on the spot and from there he has proceeded to the police station then as to when he has arrested the accused and made recovery of weapon of offence. Similarly, the spot of arrest of accused is also doubtful as to the fact that whether the accused has been arrested from his house or from the spot as alleged by PW-2 on the Kacha Road. All these facts lead to the inescapable conclusion that the prosecution

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failed to bring home the charge against the accused facing trial beyond shadow of doubt. Therefore, the accused **Maroof Khan** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. Case property be disposed of in accordance with law after the expiry of period provided for appeal/revision. Consign.




Pronounced
24.02.2023


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CERTIFICATE

Certified that this judgment consists of ten (10) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 24.02.2023


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Sessions Judge, Orakzai,
at Baber Mela