

IN THE COURT OF ASGHAR SHAH
SESSIONS JUDGE, ORAKZAI AT BABER MELA

SESSION CASE NO. : 9/2 OF 2019

DATE OF INSTITUTION : 29.11.2019

DATE OF DECISION : 10.03.2020

STATE THROUGH MRS. FEROZA BIBI W/O MUHAMMAD
KAREEM AGED ABOUT 65/66 YEARS R/O GHOZ GARH
FAKIRAANO KALAY, DISTRICT UPPER ORAKZAI

------(Complainant)

VS

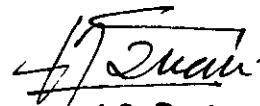
ABDUL WAHID ALIAS WAHID REHMAN S/O WAZIR REHMAN
AGED ABOUT 25 YEARS R/O RABIA KHEL, SUB-TRIBE PAYO
KHEL GHILJO, UPPER DISTRICT ORAKZAI.

------(Accused Facing Trial)

Present: Umar Niaz, District Public Prosecutor.
: Ahmad Nadeem Advocate, for accused facing trial.

JUDGEMENT
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On 16.08.2019, at about 2140 hours, complainant, Mrs. Feroza Bibi brought the dead body of her son Muhammad Zaman s/o Muhammad Kareem to the Police Post Ghoz Garh and reported to the effect that she alongwith his son and other inmates of the house were present in their house situated in the Ghoz Garh. After *isha* prayers, her son Muhammad Zaman was busy in walking inside the courtyard of the house, which house has got no boundary wall. That at about 2100 hours from the trees planted adjacent to the house, some body made firing on her son due to which he was hit and fell down on the ground in injured condition. Due to darkness of


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the night, unknown accused decamped from the spot. The injured by the help of inmate of the house and co-villagers was shifted to the hospital but on the way, he succumbed to his injuries and died. It was stated that they have got no enmity with anybody, hence unknown accused was charged for the occurrence. The matter was incorporated through Murasila Ex. PA and was sent to the PS where FIR Ex. PA/1 in question was registered.

(2). On 29.08.2019, Muhammad Kareem, father of deceased, in his statement u/s 164 Cr.P.C recorded before Judicial Magistrate-I, Orakzai charged the accused facing trial alongwith two unknown accused for the occurrence. On 12.10.2019, Mst. Zulija Bibi and Mst. Zuheri Bibi sisters of deceased, in their statements u/s 164 Cr.P.C recorded before Judicial Magistrate-I, Orakzai also charged the accused facing trial for the occurrence. Hence the accused facing trial was implicated in the instant case.

(3). After completion of investigation, complete challan was submitted and accordingly accused was summoned. Upon his appearance, the proceedings were initiated against him by providing copies of the case U/S 265-C Cr.P.C and he was charge sheeted to which he pleaded not guilty and claimed trial and accordingly the witnesses were summoned who deposed in the following manner.

Zahid Ameen SHO Police Station Ghiljo Upper Orakzai on oath as PW-1 deposed that,

"Stated that in the instant case I have arrested the accused on 30.08.2019 and issued his card of arrest which is Ex. PW-1/1. Similarly, after completion of

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investigation, I also submitted complete challan against the accused facing trial. Today I have seen the relevant documents which correctly bears my signatures."

Muhammad Imtiaz ASI, Incharge Police Post Balandkhel the then Incharge Police Post Ghari, Upper Orakzai as PW-2 deposed that,

"Stated that on 16.08.2019, complainant, Mst. Feroza Bibi w/o Muhammad Karim, PW Eid Zaman and some other members of the locality brought the dead body of deceased Muhammad Zaman to the Police post Ghari. Complainant, Feroza Bibi reported the incident to me regarding the murder of her son which I reduced into writing in shape of Murasila Ex. PA. The report of lady complainant was read over to her and after admitting its contents to be true, correctly thumb impressed the same. The report was also verified by PW Eid Zaman and he also thumb impressed the said report Ex. PA. I also prepared injury sheet Ex. PW-2/1 and inquest report of the deceased Ex. PW-2/2. I then sent the dead body of the deceased to DHQ Hospital, Hangu along with his injury sheet and inquest report in the escort of constable, Rab Nawaz for Post-Mortem examination. Similarly, I sent the Murasila to PS through constable, Muhammad Yousaf for registration of an FIR. After that I visited DHQ Hospital and there after Post-Mortem examination the doctor handed over to me blood-stained garments of the deceased Muhammad Zaman along with Post-Mortem report. On

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the next morning i.e. 17.08.2019, I visited the spot and there in my presence Malak Abdul Janan SI, Incharge investigation took into possession blood-stained earth from the place of deceased Muhammad Zaman and packed and sealed it into parcel no. 1. Similarly, the IO also took into possession two empty shells of 30bore, smell to be freshly discharged from the place of accused and packed and sealed them into parcel no. 2 Ex. P1. The IO prepared recovery memo Ex. PC which is correct and correctly bears my signature. I also handed over blood-stained garments of the deceased Muhammad Zaman including Shalwar and Qamees to the Incharge investigation, Malak Abdul Janan SI and he packed and sealed the same into parcel no.3 in presence of marginal witnesses. My statement was recorded by the IO U/S 161 Cr.P.C. All the documents prepared by me are correct and correctly bear my signatures.”

Muhammad Nabi Head Constable, Police Post Ghari, Upper Orakzai as PW-3 deposed that,

“Stated that I am marginal witness to the recovery memo vide which the IO took into possession blood-stained garments of the deceased Muhammad Zaman including Qamees and Shalwar which were handed over to the IO by the ASI, Muhammad Imtiaz on the spot. The blood-stained garments were packed and sealed by the IO in parcel no.3 in my presence. To this extent the IO prepared recovery memo Ex. PC/1 which is

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correct and correctly bears my signature. My statement was recorded U/S 161 Cr.P.C."

Eid Zaman S/O Mueen Shah as PW-4 deposed that,

"On oath Stated that on the day of occurrence, I escorted the injured, Muhammad Zaman from the place of occurrence i.e. house of complainant to the Police post, Ghari. The injured succumbed to his injuries on the way to Police post. In the Police post the complainant, Feroza Bibi reported the incident to the Incharge of Police post who reduced the same into writing in shape of Murasila and after admitting its contents to be true, the complainant correctly thumb impressed the same. I verified the report of complainant and also thumb impressed the same. Thereafter, we took the dead body to DHQ Hospital, Hangu for Post-Mortem examination. I identified the dead body of the deceased to the doctor and police. The relevant column in the inquest report also correctly bears my thumb impression. My statement was recorded by the IO U/S 161 Cr.P.C."

Dr. Sajjad Gul, CMO DHQ Hospital Hangu

PW-5 deposed that,

"Stated that on 16-08-2019, at about 11:40 Pm, I conducted post-mortem examination of the dead body of the deceased, Muhammad Zaman s/o Muhammad Kareem aged about 30/31 years, r/o Ghoz Garh, Darwezi, District Orakzai. The dead body of the deceased was identified by Teka Khan s/o Abdul Kareem r/o of

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District Orakzai. During post-mortem examination, I found the following;

External Appearance: Emaciated with blood-stained clothes.

Injuries: One firearm single bullet entry wound on the left buttock size about 2cm in the lateral left buttock. Single exit wound on the right flank of abdomen on the anterior.

Cranium and spinal cord: Skull, Scalp and vertebra are intact.

Thorax: Intact.

Abdomen: Right flank of abdominal walls, small intestine and their contents, large intestine and their contents and bladder probably ruptures with firearm bullet injury. Remaining abdominal organs intact.

Muscles, bones, Joints: Firearm bullet injury to the iliac bone with right flank abdominal muscle.

Remarks by the Medical Officer: In my opinion the deceased expired due to firearm injuries and the blood oozes in the abdomen, due to which the deceased goes in the hemorrhagic shock and become expired.

Probable time that elapsed:

- a) Between injury and death: Half to one hours.
- b) Between death and post mortem: 02-03 hours.

After post-mortem examination, I handed over blood-stained garments of the deceased to the escorting constable. Today, I have seen my post-mortem report

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consist of 06 sheets Ex. PM which is correct and correctly bear my signatures. The injury sheet already exhibited is Ex. PW 2/1 and inquest report already exhibited Ex. PW 2/2, also correctly bear my signatures."

Eid Zohera d/o M. Kareem, sister of deceased as PW-6 deposed that,

"Stated that deceased Muhammad Zaman is my brother, while complainant, Feroza Bibi is my mother. On the night of occurrence, I, along with my Bhabi, mother, sisters and children were present in our home. My deceased brother was walking in courtyard of the house. At about 09:00 Pm, someone fired upon my brother from outside the courtyard of the house due to which he got hit and fell down on the ground. When I along with my mother and sisters attended him, he told us that he was got hit by accused Abdul Wahid alias Wahid Ur Rehman. Thereafter, people of the locality including Eid Zaman attracted to our house upon our hue and cry and the pick-up was arranged. We put the injured in the pick-up and started traveling to police post Ghaz Gar. On the way my brother succumbed to his injuries and died. When we reached to police post Ghaz Gar, my brother Feroza Bibi reported the incident to the police and thereafter, we took the dead body of our brother to the hospital for post-mortem examination. After post-mortem examination, we brought the dead body to our home. My father at the time of occurrence was abroad in Qatar.

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When he came to his home, we narrated the whole story to him. Due to fear and threat of accused, we did not charge the accused in our initial report. On 12-10-2019, I recorded my statement before the police as well as in the court of Judicial Magistrate and charged the accused for the murder of my brother Muhammad Zaman. Today I have seen my statement recorded u/s 164 CrPC which is correct and correctly bears my thumb impression. The statement is Ex. PW 6/1. I charge the accused for the commission of offence."

Feroza Bibi w/o Muhammad Kareem, complainant and mother of deceased as PW-7 deposed that,

"Stated that deceased Muhammad Zaman was my son. PWs Eid Zohera and Zulija Bibi are my daughters. On the night of occurrence, I alongwith my daughters and daughter-in-law were present in our home. My son Muhammad Zaman was walking in the courtyard of our house. At about 09:00 Pm, someone fired at my son from outside the courtyard due to which he got hit and fell down on the ground. When I alongwith my daughters attended my son, he told us that accused Abdul Wahid alias Wahid Ur Rehman made firing. Thereafter, the people of the locality including Eid Zaman attracted to our home. The vehicle was arranged and the village people put the injured Eid Zaman to the vehicle. On the way to the police post Ghoz Gar, my son succumbed to his injuries and died. In the police post, I reported the

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incident to the police, my report was reduced into writing in shape of Murasila already exhibited as Ex. PA. The report was read over to me and I correctly thumb impressed the same. The report was also verified and thumb impressed by PW Eid Zaman. Thereafter, we took the dead body to DHQ hospital for post-mortem examination. After post-mortem examination, we turned to our home alongwith dead body. My husband was abroad at the time of occurrence. On the following day he came back from Qatar and I alongwith my daughters informed him about the occurrence. On the following day of the occurrence, the police came to the spot for investigation. The local police collected the blood and empty shells from the spot. The investigation officer prepared site plan on my pointation. Due to fear and threat of the accused, I did not charge the accused in my initial report but later on, I alongwith my daughters and my husband charged him for the murder of my son. I charge the accused for the commission of offence."

Muhammad Kareem s/o Eid Kareem, father of deceased as PW-8 deposed that,

"Stated that deceased Muhammad Zaman was my son. PWs Feroza Bibi is my wife, while PW Eid Zoreha is my daughter. I was informed about the occurrence by my daughter. At that time, I was in Qatar in connection with earning livelihood. On this information, I came back to my home. I informed the village people to point out the

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real culprit to me. My wife and daughters told me about the commission of occurrence at the hands of accused Abdul Wahid. On 29-08-2019, I charged the accused before the local police and I recorded my statement before the court after probe and due satisfaction. Today I have seen my statement recorded u/s 164 CrPC which is correct and correctly bears my thumb impression. The same is Ex. PW 8/1. I charge the accused for the murder of my son."

Investigating Officer Malik Abdul Janan
Sub-Inspector/IO, Police Station Upper Orakzai (Ghiljo)
 as PW-9 deposed that,

"Stated that the investigation in the instant case was interested to me and on 17.08.2019, I visited the spot alongwith my official staff. On the spot, I prepared site plan Ex. PB on pointation of complainant Feroza Bibi and PW Eid Zaman. During spot inspection, I took into possession blood stained earth from place of the deceased Ex. P2 and packed and sealed the same into parcel no. 1. I also took into possession two empty shells of 30 bore smelled to be freshly discharged Ex. P1 and packed and sealed the same into parcel no. 2. The above-mentioned recoveries were affected from the spot in presence of marginal witnesses vide recovery memo already exhibited Ex. PC. On the spot Muhammad Imtiaz ASI brought blood stained garments of the deceased including Kamis and Shalwar which

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were handed over to him by the doctor of DHQ hospital Hangu and I packed and sealed the same into parcel no. 3 Ex. P3 in presence of marginal witnesses vide recovery memo already exhibited as Ex. PC/1. Thereafter, I recorded statements of PWs u/s 161 Cr.P.C. During course of investigation, I have taken 06 photographs of the crime scene. These photographs are Ex. PW 9/1. I have also drafted applications addressed to the in-charge FSL for examination of blood-stained articles, the copy of application is available on police file. On 25.08.2019, I recorded statement of father of deceased, namely Muhammad Karim u/s 161 Cr.P.C. On 28.08.2019, I recorded supplementary statement of father of deceased, namely Muhammad Karim u/s 161 Cr.P.C and on 29.08.2019, I produced him before the court Judicial Magistrate vide my application Ex. PW 9/2. Pw Muhammad Karim recorded his statement before the court which is already exhibited as Ex. PW 8/1 and charged the accused Abdul Wahid alongwith two other unknown accused for the commission of offence. Accused facing trial was arrested by SHO of PS Upper Orakzai (Ghiljo) and was handed over to me for onward investigation. On 31.08.2019, I produced accused before the court of Judicial Magistrate vide my application Ex. PW 9/3 for obtaining physical custody of accused, as a result of which three days physical custody was granted. On 03.09.2019, I again produced


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the accused before the court of Judicial Magistrate for obtaining his further police custody vide my application Ex. PW 9/4 but my request was turned down and accused was sent to judicial lock-up. I recorded the statement of accused u/s 161 Cr.P.C. During the course of investigation, I prepared the list of legal heirs of the deceased which is Ex. PW 9/5. I have also received the FSL report of blood-stained articles which is Ex. PK. On 12.10.2019, I recorded statements of sisters of the deceased namely Zulija Bibi and Eid Zoheri u/s 161 Cr.P.C and produced both of them before the court of Judicial Magistrate vide my application Ex. PW 9/6. Both the above-mentioned PWs recorded their statements u/s 164 Cr.P.C. The statement of Zulija Bibi is Ex. PW 9/7 while the statement of Eid Zoheri is already exhibited as Ex. PW 6/1. After completion of investigation, I handed over the case file to the SHO for submission of challan. In the instant case, PW Gul Asghar have registered the FIR from the contents of Murasila. I am well acquainted with the signature of PW Gul Asghar. His signature on the FIR is correct. The FIR is Ex. PA/1. All the documents prepared by me are correct and correctly bears my signature."

(4). Thereafter, learned DPP for the State closed the prosecution evidence but the accused neither wished to be examined on oath nor produced evidence in defence. Accordingly, arguments of the

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learned DPP for the state and counsel for the accused facing trial heard and case file perused.

(5). From the arguments and record available on file it reveals that initially complainant, Mrs. Feroza Bibi, the mother of deceased through her initial report Ex. PA dated 16.08.2019 charged unknown accused for the occurrence. However, it was on 29.08.2019 when Muhammad Karim, father of deceased in his statement before the local police as well as before the Court of Judicial Magistrate Orakzai, charged the accused facing trial Abdul Wahid alias Wahid Rehman by name for the occurrence. In the said statement Muhammad Kareem has not disclosed the source of information and satisfaction on the basis of which he charged the accused by name. The story of the prosecution got another turn when on 12.10.2019 i.e. after one month and twenty-seven days of the occurrence, two ladies namely Zulija Bibi and Eid Zuheri sisters of deceased came forward by recording their 164 Cr.P.C statements charging the accused by name by disclosing that at the time of occurrence they were present inside the house (where the occurrence took place). That by the time of occurrence their mother i.e. complainant Mrs. Feroza Bibi was also present. That some unknown persons from the trees outside from their house fired upon their brother due to which he got injured and when they attended him then it was told by the injured Muhammad Zaman that he was fired at by the accused facing trial. The alleged naming of accused facing trial by the deceased then injured to the sisters of deceased means that the sisters of deceased are not the eyewitness of the occurrence and thus, they relied on the alleged deposition of the

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deceased then injured. In the said statements, the reason of delay was shown that by that time due to fear and being frightened, they were unable to disclose the name of the accused and the same was their stance in evidence before this court as well.

(6). However, when the statement of complainant Mrs. Feroza Bibi PW-7 and that of Eid Zuheri PW-6 are placed in juxta position with the post-mortem report Ex. PM, then it reveals that the deceased received a single firearm entry wound on his left buttock which means that by the time of firing he was having his back towards the assailant and as such there was no possibility of the deceased to have had seen the accused by the time of occurrence, which time of occurrence is shown 2100 hours i.e. at night time. So, when the deceased himself was unable to see the accused at the time of occurrence, then how it was disclosed to the sisters of deceased that the accused facing trial was the real culprit responsible for making firing at the deceased.

(7). The sister of deceased Mst. Eid Zuheri in her statement u/s 164 Cr.P.C as well as in her statement before this Court as PW-6 deposed that due to fear and threat of the accused, they could not charge the accused in their initial report. However, in evidence as PW-6, she further deposed that on the following day of the occurrence her father came from abroad and she told her father regarding the commission of offence by the accused facing trial. The complainant Mrs. Feroza Bibi PW-7 in her statement also taken the similar stance as taken by PW-6 but however none of the PWs explained the nature, mode and manner of the alleged threats being extended by the accused facing trial which restrained the

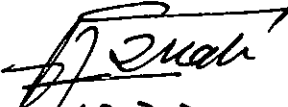
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complainant party to name the accused facing trial soon after the occurrence. Here one thing is clear that if the sisters and mother of deceased informed Muhammad Kareem, the father of deceased, on the following day of the occurrence regarding the name of the accused facing trial, then the father of deceased might have charged the accused facing trial by name for the occurrence. In this regard, it is necessary to mention here that the occurrence has taken place on 16.08.2019, which means that father of deceased arrived from abroad on 17.08.2019 and he was informed on the same day regarding the name of accused facing trial but in his statement recorded u/s 161 Cr.P.C on 25.08.2019 i.e. after 08 days of his arrival, he charged unknown accused for the occurrence besides in his supplementary statement recorded u/s 161 Cr.P.C on 29.08.2019, he charged the accused facing trial by name for the occurrence. So, had the sisters and mother of the deceased were present by the time of occurrence? and had the deceased have disclosed the name of the accused to them? and had they have disclosed the name of the accused to the father of deceased?, then certainly the accused facing trial would have been nominated for the occurrence by name soon after the occurrence either by the complainant or by his father or by his sisters. But it was not the case and the late nomination of the accused facing trial have thrown doubts not only regarding the presence of complainant and sisters of deceased at the venue of occurrence at the relevant time but also on the fact that accused facing trial was charged after thorough deliberation and consultation for certain ulterior motives.

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(8) Admittedly, the occurrence took place at the dark night and no source of light is mentioned in the statements of the PWs or initial report of the complainant besides no independent witnesses are available to support the version of complainant party, hence charging of the accused facing trial for the occurrence without proper identification, source of light and motive is something beyond comprehension. It is also necessary to mention here that the complainant in her initial report has not named the sisters of the deceased to have been present with her by the time of occurrence and the sisters of deceased even after recording their initial statements before the police and Judicial Magistrate Orakzai have not been assigned any place in the site plan Ex. PB. Which means that besides night occurrence, it was an unwitnessed occurrence as well.

(9). When a heinous offence like murder is taken place, then there is certain motive for the same but in the instant case no motive was alleged or proved right from recording the initial report to the statements of the PWs in the court. No doubt absence of motive is no ground of acquittal however, some sort of ill-will, previous enmity or dispute over the female folk might existed between the deceased and assailant resulting in the present occurrence which was not brought to light to determine the guilt and linkage of the accused facing trial with the murder of deceased. The complainant party in fact has suppressed the facts for the reasons best known to them due to which their case has been badly damaged and their version is thus not worth reliance.


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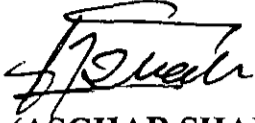
(10). The unexplained delay in nominating the accused facing trial for the occurrence, the occurrence been committed at the night time without disclosing the source of light, absence of independent witnesses, absence of pointation, confession or recovery of crime weapon from the possession of accused facing trial, no past criminal history of accused facing trial, contradictions in the version of the complainant, sisters and father of deceased as well as contradiction in their evidence, failure to disclose the motive would denote that the occurrence has not taken place in the mode and manner as alleged by the complainant and rather the mode and manner alleged by the complainant party failed to establish. It seems that either the complainant party was not present at the site of occurrence at the relevant time or has not narrated the occurrence in the mode and manner in which it was alleged to have been committed.

(11). Thus, in the light of above, sufficient dents and doubts are attracted to the case of complainant, the evidence led in the case is not confidence inspiring and have failed to prove the case against the accused facing trial beyond any shadow of doubts. Hence, benefit of doubt so cropped up must be extended in the favour of accused facing trial. Accordingly, while extending the benefit of doubt, accused facing trial, Abdul Wahid alias Wahid Rehman, he is acquitted of the charges levelled against him through the FIR in question. Accused is on bail, his sureties stand discharged from the liability of bail bonds. Case property be disposed of in accordance with law but after the expiry of period provided for appeal/revision.


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(12). File be consigned to Sessions Record Room after its completion and compilation.


Announced
10.03.2020


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at Baber Mela
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CERTIFICATE

Certified that this judgment consists of eighteen (18) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 10.03.2020.


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