

In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL SESSIONS JUDGE, ORAKZAI

Case No.10/2 of 2022

Date of institution: 25.11.2022

Date of decision: 30.05.2023

The State through Hassan Jan SHO, Police Station Kurez Boya, Orakzai

.....(**Complainant**)

...**Versus**...

Fazal Ghani son of Khanai, aged about 62/63 years, resident of Qaum Shikhan, tappa Bazid Khel, Waam Panra, District Orakzai

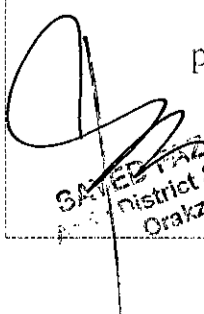
.....(**accused on trial**)

Case FIR No.18, Dated 01.10.2022 u/s 302/311 of the Pakistan Penal Code, 1860; registered at Police Station Kurez Boya, District Orakzai.

JUDGMENT

The Police party received information regarding murder of Muhammad Akram and Mst Afshan Bibi, on the pretext of honor, allegedly committed by Fazal Ghani. The Local Police rushed towards the spot where dead bodies of both the deceased were lying. The accused Fazal Ghani, after commission of offence successfully fled away from the spot. The male and female deceased have been termed in illicit relationship and reportedly killed by the accused who happened to be the uncle of lady deceased. Murasila was drafted and was accordingly sent to the Police Station. Consequently, the SHO of Police Station Kurez Boya Orakzai has registered the captioned FIR on his own as no one from the legal heirs and relatives of the both the deceased was ready to bring criminal law into motion.

2. On arrest of the accused, 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.


SAJID FAZAL WADCOO
District & Sessions Judge
Orakzai at Hangu

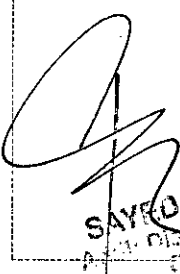
3. Fazal Ghani being behind the bar was summoned through "Zamima Bay"; whereas, notices have been issued to the Prosecution and Complainant. On production, he was supplied statements and documents prescribed in Section 265-C (1) of the Code of Criminal Procedure-1898. Charge against the accused was framed 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 fourteen (14) witnesses. The prosecution evidence is sketched below for ease of reference in determination of guilt or innocence of the accused:

5. Muhammad Shafeeq, the then SHO of Police Station Kalaya Orakzai, was examined as PW-1, who has submitted the Interim Challan Ex.PW-1/1 and complete challan Ex.PW-1/2. He arrested the accused vide card of arrest as Ex.PW-1/3 and submitted supplementary challan Ex.PW-1/4 against the accused. PW-2 is the statement of Muharrir Ain Ullah who incorporated the contents of Murasila into FIR Ex.PW-2/1. PW-3 Muhammad Ayaz was entrusted with warrant of arrest who produced warrant of arrest and report as Ex.PW-3/1 and 3/2. Similarly, proclamation under section 87 of the Code of Criminal Procedure, 1898 was produced by him with report as Ex.PW-3/3 and Ex.PW-3/4. Dr. Shaista Ibad, Medical Officer was examined as PW-4, who has conducted the Post Mortem of female deceased Afshan Bibi. She verified the Post Mortem report as Ex.PM and injury sheet as Ex.PW-4/1. PW-5 is the statement of Muhammad Shah Ayaz who brought the Murasila to the Police Station and handed over the same to Muharrir of the PS. Dr. Hameed Badshah, Medical Officer was examined as PW-6A, who has conducted the Post Mortem of male deceased Muhammad Akram. He verified the Post Mortem report as Ex.PM-1 and Injury Sheet, Inquest Report as Ex.PW-5/1 and 5/2. PW-6 is the statement of Hassan Jan SHO who is the complainant in instant case. He

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prepared injury sheets and inquest reports of both the deceased exhibited as Ex.PW-6/1 to Ex.PW-6/4. He prepared the Múrasila Ex.PW-6/5 and sent the same to the Police Station through Muhammad Shah Ayaz for registration of FIR. Medico legal documents and dead bodies have been transported by him to the Hospital through of constable. Khiyal Zad Khan for further proceedings. Khiyal Zad Khan Constable was examined as PW-7, who has taken the Inquest Reports and Injury sheets of both the deceased along with dead bodies to the Hospital. PW-8 is the statement of Amjad Khan Constable who took the clothes and 4 glass bottles containing sperms of both the deceased to the Police Station and hand over to the Investigation Officer which were given to him by the Doctor in the Hospital. Hashim Khan, OII was examined as PW-10, who has conducted the investigation in instant case. He prepared site plan Ex-PB. He produced Parcel No. 1 to parcel No.8 containing blood stained earth, three empty shells of 7.62, blood stained garments, blood stained clothes and 4 glass bottles of sperms of both the deceased and took the same into possession through recovery memos Ex.PW-10/1 to 10/3. He produced list of legal heirs Ex.PW-10/4 to 10/5, FSL application Ex.PW-10/6 to 10/8, road certificate Ex.PW-10/9, application before Illaqa Magistrate as Ex.PW-10/11, search memo Ex.PW-10/12, house sketch Ex.PW-10/13, Naqal mad regarding the arrival and departure as Ex.PW-10/14 to 10/16, FSL results as Ex.PZ to Ex.PZ/3, Naqal mad regarding raid of the house as Ex.PW-10/17 and 10/18, application before Illaqa Magsitrate for 05 days custody as Ex.PW-10/19, pointation memo Ex.PW-10/20, application to Illaqa magistrate for confessional statement of accused Ex.PW-10/21 and Naqal mad No. 3 as Ex.PW-10/22. He made addition in site plan on pointation of accused with red ink which is Ex.PB/1. After completion of investigation, he handed over the case file to the SHO for onward submission of challan. Khayal Hussain constable was examined as PW-11, who submitted that recovery memos were

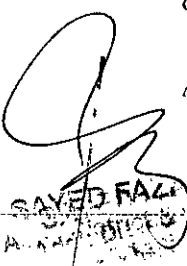

SAYED FAZAL WADOOD
Assistant District & Sessions Judge
District Court, Faisalabad

prepared by the IO in his presence. The IO handed over the Parcel(s) No. 1 and 8 for submission of the same to the FSL for chemical analysis which were taken by him to the FSL for chemical analysis. PW-12 is the statement of Shamsher Ali, who is another marginal witness to the recovery memos already exhibited by PW-10. Private witness Nasir Khan son of Nazeer Khan was examined as PW-13, who is close relative of the deceased Mst Afshan Bibi. Same PW identified the dead body of deceased Mst Afshan Bibi before the Police and Doctor in the Hospital. Another Private Witness Muhammad Sadiq son of Haleem Khan was examined as PW-13, who is relative of the deceased Muhammad Akram. Same PW identified the dead body of deceased Muhammad Akram before the Police and Doctor in the Hospital. On 04-05-2023, prosecution closed its evidence on 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 the deceased. Motive for the commission of offence is available in shape of honor killing. Circumstantial evidence as well as the scientific evidence and other corroborating evidence available on the file is sufficient to establish the guilt of accused. The accused was specifically charged for the murder of the deceased and that the matter has promptly been reported. He added that 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 Mr. Hamid Sarfaraz Advocate contended that there is no ocular evidence of the incident. The legal


SAYED FAZ
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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.PW-6/5, followed by FIR Ex.PW-2/1, for murder of Muhammad Akram and his niece Mst Afshan Bibi. The reporting of matter and registration of case are obviously done by Local Police on its own as none of the relatives and legal heirs of both the deceased come forward to register case. However, the complainant has categorically stated in his statement that he has neither disclosed source of information nor can tell the reasons for implicating accused.

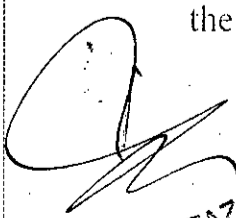
11. Motive of the case is honor killing assigned by the Police. Establishing motive of the Crime is the integral part of the prosecution evidence and prosecution is duty bound to prove the alleged motive but no direct or circumstantial evidence has been led as an independent proof of the alleged motive.

12. It is crystal clear that there is no ocular evidence of direct source available and prosecution is only relying on circumstantial evidence for proving the case.


SAYED IZAZUL HAQUE
AD. DIST. JUDGE
CANTONMENT

Circumstantial evidence is evidence of facts from which, taken with all other evidence, a reasonable inference is drawn about a fact directly in issue. Such evidence works cumulatively in geometrical progression, eliminating other possibilities. When evidence fails to satisfy the Court affirmatively of the existence of those circumstances the stage of drawing inference of guilt is not reached. It is well settled principle of law that circumstantial evidence must be incompatible with any reasonable hypothesis of the innocence of the accused. No link in the chain should be broken or missing. It should be so interconnected that it forms such continue chain that its one end touches the dead body and the other neck of the accused. On this given criteria, the fact of death of both the deceased due to fire arm injury is proved by the prosecution on production of Dr. Shaista Ibad examined as PW-4 and Dr. Hameed Badshah examined as PW-6A coupled with the inquest reports, injury sheets, postmortem reports. Connected fact to the proved fact of cause of death of both deceased as fire arm injury is that who has committed the murder is not proved beyond reasonable doubt for so many factors to be discussed separately.

13. None of the legal heirs of the deceased had charged anyone for commission of offence. Though statements of Piyao Khela being mother of female deceased, Yar Muhammad being brother of female deceased, Muhammad Yousaf being maternal uncle of the female deceased, Muhammad Taza Khan being father of male deceased, Muhammad Yaqoob, Saif Ullah and Muqif Ullah being brothers of male deceased have been recorded by the Investigation Officer under Section under Section 161 Cr.PC of the Code of Criminal Procedure, 1898; yet, they have not been produced by the prosecution in the Court. Negative presumption articulated in Article 129 Illustration-G of the Qanun-e-Shahadat Order 1984 can safely be attracted against prosecution on


 SAYED FAZAL WAJID
 District Judge
 District Court
 District Muzaffargarh

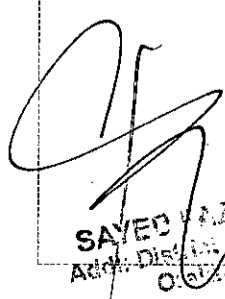
such withholding of best evidence as withholding of best evidence of vital importance will draw inference against the defaulting party.

14. Weapon of offence has not been recovered. The recovery of empties and blood stained earth from the spot is dubious due to contradiction in the statement of IO and recovery witness and after all, have not been linked with the accused. Similarly, when there is no recovery of weapon of offence, the empties recovered cannot be matched and obviously loses its evidentiary value. Moreso, the empties have been recovered on 01-10-2022 but sent to the FSL on 05-10-2022 with delay of five days that gives birth to serious question in safe custody and create doubt.

15. Absconsion of the accused despite being of short period of about one month is a factor that can be considered against the accused as an circumstance but when the chain as discussed above is broken, it lose its importance. Mere absconsion is no ground for conviction.

16. Protective custody is the principle applicible to the cases of honor killing where some part of the onus shifts to the accused to explain the circumstances in which female under his constructive supervision and custody had died in unnatural death; but still, initial onus of proof always laid upon the prosecution. If the prosecution is failed to produce reliable evidence, the accused cannot be convicted merely on the basis of lake of discharged of some part of onus on him. The Investigation Officer while deposing PW-10, the complainant while deposing as PW-6 and site plan Ex.PB speaks about the place of occurrence as open sky being outside the premises that further deteriorates such applicability of protective custody.

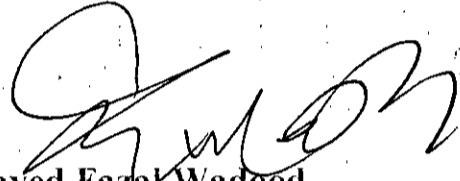
17. For what has been discussed above, the prosecution has not proved the case beyond reasonable doubt. The offence of murder of deceased namely Muhamimad Akram and Mst Afshan Bibi has not been established against the


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accused facing trial namely Fazal Ghani. Resultantly, in case FIR bearing No. 18 dated 01-10-2022, registered under section(s) 302/311 of the Pakistan Penal Code, 1860 at Police Station Kurez Boya Orakzai, for the murder/Qatl-e-amad of deceased named above, the accused facing trial Fazal Ghani son of Khanai, is hereby acquitted from the charges levelled against him by extending him benefit of doubt. The accused is in custody, he be released forthwith, if not required in any other case. 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

30.05.2023

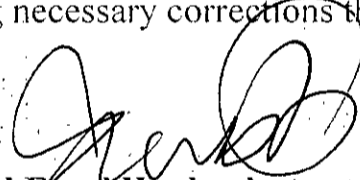


Sayed Fazal Wadood

Additional Sessions Judge Orakzai

CERTIFICATE:

Certified that this Judgment consists of eight (08) pages; each page has been read over and signed by me after making necessary corrections therein.



Sayed Fazal Wadood

Additional Sessions Judge Orakzai