

*In the name of almighty Allah who has unlimited jurisdiction over and beyond the universes.*

(88)

BEFORE THE COURT OF  
ADDITIONAL SESSIONS JUDGE, ORAKZAI

Case No.9/2 of 2022

Date of institution: 25.10.2022

Date of decision: 04.07.2023

The State through Saif ur Rehman son of Sarwar Khan, Qaum Mishti village  
Mama Khel, Orakzai ..... (Complainant)

...Versus...

Muhammad Zubair son of Ali Muhammad Jan, Qaum Mishti resident of Mir  
Ghara, Orakzai. .... (Accused on trial)

**Case FIR No. 17, Dated 29.04.2022 u/s 302 of the Pakistan Penal Code,  
1860; registered at Police Station, Mishti Mela, District Orakzai.**

**JUDGMENT**

The facts contended in first information report are such that on 29-04-2022, complainant Saif ur Rehman while reporting the incident stated that he was informed through Mobile Phone by Muhammad Saeed that Muhammad Zubair (accused) has committed the murder of Pirbat Khan (deceased) during fight. The accused Muhammad Zubair hit a stone on the forehead of Pirbat Khan (nephew of the complainant) due to which he died on the spot. On such information, the complainant rushed to the spot where he found the dead body of the deceased. The complainant with the help of co-villagers shifted the dead body to the Hospital for medical examination. Dispute over the payment of debt amount was disclosed as motive of the offence. The contents of Murasila have been based for lodging FIR bearing No.17 dated 29-04-2022 that has been registered under Section 302 of the Pakistan Penal Code, 1860, in the Police Station Mishti, Orakzai. The accused was later on arrested and complete challan followed by supplementary challan was submitted.

2. On arrest of accused, complete challan was routed to the Court of Hon'ble, the District & Sessions Judge, Orakzai, which was entrusted to this Court. The

  
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Court has examined the record and found sufficient material to proceed with the case for trial.

3. Muhammad Zubair 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.

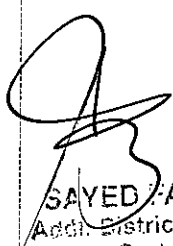
4. Prosecution was directed to produce evidence. The Prosecution in order to prove its case against the accused, produced as many as fourteen (14) witnesses. The prosecution evidence is sketched below for ease of reference in determination of guilt or innocence of the accused:

5. Dr. Osama Ahmed, Medical Officer was examined as PW-1, who has conducted the Post Mortem of deceased Pirbat Khan. He verified the Post Mortem report as Ex.PM and Injury Sheet, Inquest Report as Ex.PW-1/1 and 1/2 respectively. PW-2 is the statement of constable Saeed Khan (recovery witness), who stated that IO took into possession Qamees Shalwar and Banyan of deceased in his presence from constable Muhammad Asif and prepared recovery memo Ex.PW-2/1 and IO also took into possession vehicle bearing No. B-1826/Bannu and prepared recovery memo Ex.PW-2/2 in his presence. He added that IO had prepared pointation memo in his presence as well. PW-3 is the statement of constable Khalil Khan who accompanied the IO to the spot. The IO took into possession the stone in his presence and sealed into parcel No. 1 Ex.PA and prepared recovery memo Ex.PW-3/1. Naseeb Khan SI was examined as PW-4, who has chalked out the FIR Ex.PW-4/1 in the light of Murasila. He has also submitted the complete challan Ex.PW-4/2. Asif Wazir SI was examined as PW-5, who has conducted the investigation in instant case. He prepared site plan Ex.PW-6/1. He took into possession the stone Ex.PA and cloths of the deceased

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Ex.PB. The same PW searched the house of the accused and prepared search memo Ex.PW-6/2. He prepared the list of legal heirs of the deceased Ex.PW-6/3. He made an application (Ex.PW-6/4) before the Court u/s 204 Cr.PC as the accused was absconder. He produced application (Ex.PW-6/5) which was submitted before the Court u/s 87 Cr.PC, application (Ex.PW-6/6) before DPO, Orakzai regarding the recovered vehicle and letter (Ex.PW-6/7) of the DPO to FSL. On his application, Court issued warrant u/s 204/87 (Ex.PW-6/8 and 6/9). He submitted application (Ex.PW-6/10) before DPO Orakzai to issue letter to ETO Bannu regarding the vehicle; the letter under reference is Ex.PW-6/11. FSL report regarding the vehicle is exhibited as Ex.PW-6/12. After completion of investigation, he handed over the case file to SHO for submission of complete challan. PW-6 is the statement of Abdul Hameed ASI who has incorporated the report of complainant in shape of Murasila. The same PW drafted the Murasila (Ex.PW-5/1) and prepared Injury Sheet (Ex.PW-5/2). PW-7 is the statement of complainant Saif ur Rehman son of Sarwar Khan who has charged the accused for murder of his nephew but later on retracted and declared hostile witness. PW-8 is the statement of Hidayat Ullah son of Yaqoob Khan who has identified the dead body of deceased Pirbat Khan before the Police and Doctor in DHQ Hospital Mishti Mela. Muhammad Saeed was examined as PW-9 who has taken the dead body to home from Hospital. PW-10 is Abdul Manaf OII who has conducted partial investigation in instant case. He arrested accused and issued his card of arrest as Ex.PW-10/1, exhibited application as Ex.PW-10/2 which was submitted before Illaqa magistrate. He prepared pointation memo Ex.PW-10/3. He exhibited Application (Ex.PW-10/4) which was submitted by him before Illaqa Magistrate for confessional statement of accused. After completion of partial investigation he handed over the case file to SHO for onward proceedings. Statement of Muhammad Younis SI was examined as PW-11, who has submitted

  
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supplementary challan Ex.PW-11/1 in instant against the accused. PW-12, Muhammad Ibrahim was entrusted with warrant of arrest who produced warrant of arrest and report as Ex.PW-12/1 and 12/2. Similarly, proclamation under section 87 of the Code of Criminal Procedure, 1898 was produced by him with report as Ex.PW-12/3 and Ex.PW-12/4. PW-13 is the statement of Muhammad Asif constable who stated that Abdul Hameed ASI handed over to him injury sheet and inquest report and he handed over the same to the Doctor in the Hospital. After Post Mortem examination, the Doctor handed over to him the PM report along with garments of the deceased which he handed over to the IO, who sealed the same in Parcel No. 2 by affixing seal. PW-14 is the statement of Islam Khan son of Sultan Khan who deposed that the complainant reported the matter to the Police in his presence. On 14-06-2023, 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 neither opted to produce defense evidence nor 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 dispute over the payment of debt amount. 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.



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8. On the contrary, Mr. Muzahir Hussain Advocate, learned counsel for the accused, contended that there is no ocular evidence of the incident. 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 reasonable 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, followed by FIR Ex.PW-4/1, for murder of Pirbat Khan (deceased). The matter was reported by uncle of the deceased namely Saif-ur-Rehman. Motive of the case is dispute over the debt amount. There is no ocular evidence of direct source and the case of prosecution is solely based on circumstantial evidence. Whether case has been proved through circumstantial evidence against the accused by the prosecution is what to be discussed for entailing conviction or attracting acquittal of instant case.

11. No ocular evidence of direct source is available and prosecution is relying on circumstantial evidence for proving the case. 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

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Asst. District Sessions Judge  
Orakzai at 11/1/18~~

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 continued 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 deceased Pirbat Khan due to hitting a stone on his forehead is proved by the prosecution on production of Dr. Osama Ahmed examined as PW-1 coupled with the inquest report, injury sheet and postmortem report. Connected fact to the proved fact of cause of death as hitting stone injury is that who has committed the murder is not proved beyond reasonable doubt for so many factors. The Doctor who has conducted the Post Mortem of the dead body stated that such type of injury can be happened due to falling on the ground. No blood stained earth is obtained from place of occurrence. The alleged stone being weapon of offence is neither carrying blood stains nor identified by anyone to be the stone used for murder of deceased. The investigation officer himself confirmed the fact that this stone was picked up from other stones lying on site and he has no source of information or satisfaction for terming it the actual stone used for commission of offence.

12. The complainant Saif ur Rehman charged the accused for commission of offence but he stated in his cross examination that he is not an eye witness of the occurrence and was informed by Muhammad Saeed. This informer, Muhammad Saeed stated that he was not present on the spot and was informed by someone else about the occurrence. That "someone else" is unknown in the evidence of prosecution. Similarly, the informer of complainant categorically stated that he is not the eye witness of the occurrence. The complainant further stated that deceased is not his nephew but the same is mentioned as uncle of the deceased in the contents of FIR and Murasila.

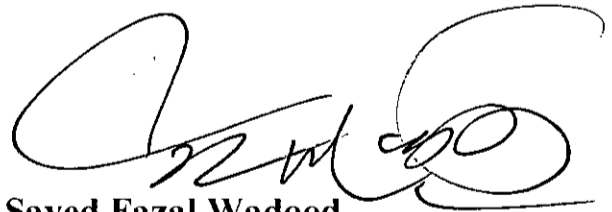
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13: Stone is recovered but it is not proved that whether it the same stone by which deceased was hit and died. Any such type of stone can be recovered from ground as such stone was having no blood stains and was picked up randomly from other stones lying on the spot.

14. Absconson of the accused is factor that can be attracted against the accused as an circumstance but when the chain as discussed above is broken, it lose its importance. Mere absconson is no ground for conviction.

15. For what has been discussed above, the prosecution has not proved the offence of murder of deceased namely Pirbat Khan against the accused facing trial namely Muhammad Zubair beyond reasonable doubt. Resultantly, in case FIR bearing No. 17 dated 29-04-2022, registered under section(s) 302 of the Pakistan Penal Code, 1860 at Police Station Mishti Mela Orakzai, for the murder/Qatl-e-amad of deceased named above, the accused facing trial Muhammad Zubair son of Ali Muhammad Jan, is hereby acquitted from the charges levelled against him. 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**  
04.07.2023



**Sayed Fazal Wadood**  
Additional Sessions Judge Orakzai

**CERTIFICATE:**

Certified that this Judgment consists of seven (07) pages; each page has been read over and signed by me after making necessary corrections therein.



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