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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II,
ORAKZAI, AT BABAR MELA, HANGU**

Session Case No.11 of 2020
Date of Original Institution: 04-09-2020
Date of present Institution: 17-12-2020
Date of Decision: 03-02-2021

State through Jahanzeb Khan SHO PS Upper Orakzai
.....(*Complainant*)

VERSUS

Azam Khan s/o Mowez Khan r/o Rabia Khel, Tapa Payo Khel, Ghiljo District
Upper Orakzai (*Accused Facing Trial*)

Represented by:

Mr. Javid Iqbal Anwar Sr.PP for State
Mr. Amir Shah APP for State
Mr. Syed Anwar Sadat Advocate, counsel for accused

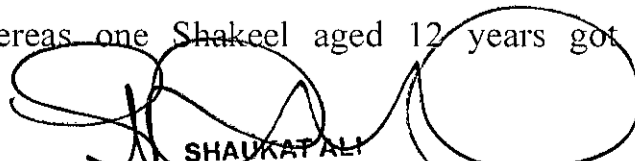
Case FIR No. 25 Dated 17-06-2020 u/s 322 PPC /15-AA PS Upper Orakzai

ORDER

03.02.2021

This order is intended to disposed of application u/s 265-K
Cr.PC submitted by the accused/petitioner for his acquitted in Case
FIR No. 25 Dated 17-06-2020 u/s 322 PPC/15-AA PS Upper
Orakzai.

Brief facts of the case are that on 16-06-2020 the complainant
along with other police official was on gasht of the locality and during
gasht received information that on the previous night Ghoz Garh
Azam Khan s/o Mowez Khan committed the murder of a women by
firing with 12 bore riffle and also injured a young person, on that
information the complainant reached to village Ghoz Garh where after
due satisfaction it was confirmed that Azam Khan by firing through
12 bore riffle committed the murder of Mst: Lal Huja w/o Mowez
Khan whereas one Shakeel aged 12 years got injured, that the

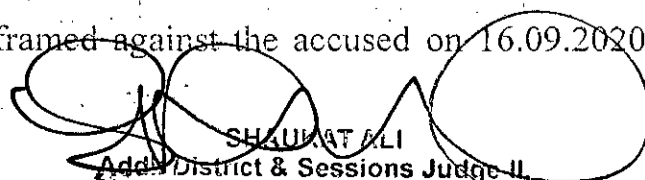

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deceased was buried without any PM examination whereas the injured Shakeel did not report to the police and is not willing to report the occurrence to the police, that the occurrence was inadvertent. The complainant drafted the Murasila Ex.PA and sent the same to the PS through Constable Ameer Muhamad for registration of FIR against the accused who was yet to be arrested.

After registration of the FIR, the case was investigated. During investigation, the investigation officer inspected the spot and on the pointation of Mowez Khan prepared the site plan Ex.PB. The IO took into possession one riffle 12 bore vide recovery memo Ex.PW-4/1 and also took into possession blood stained garments of deceased. The IO arrested the accused and produced before the Magistrate for recording his confessional statement who refused to confess and was sent to judicial lock-up. The dead body was buried without PM examination therefore on application of the IO after the exhumation of the dead body PM examination was conducted. The 12 bore riffle was also sent to the FSL for report and the report was received and placed on file which is EX.PZ. The I.O, during investigation, recorded the statements of PWs and accused u/s 161 Cr.P.C. After completion of investigation, the IO submitted the case file to the SHO for submission of complete challan who submitted complete challan against the accused for trial.

On 04.09.2020, complete challan was received for the trial of accused. The accused was summoned who appeared before the court on 11-09-2020 and after compliance of provision of 265-C Cr.P.C, charge was framed against the accused on 16.09.2020, to which the


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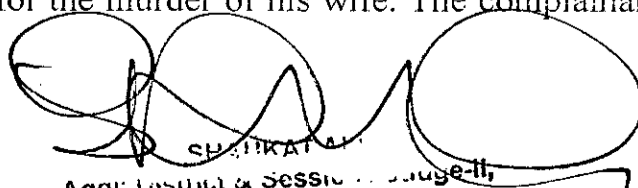
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accused pleaded not guilty and claimed trial, therefore, the prosecution was allowed to produce its evidence. During the trial of the case, the prosecution examined 04 PWs.

On 20-01-2021 the counsel for accused submitted application u/s 265-K Cr.PC for the acquittal of accused. The notice of the application was issued to the prosecution and the application was fixed for arguments.

Arguments of the learned counsel for the accused/petitioner and learned APP for the state heard and record perused.

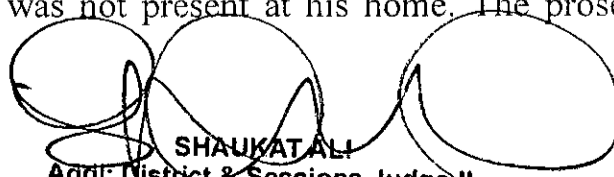
The complainant received information about the occurrence and went to the place of occurrence however at the spot no one came forward to report the occurrence to the police. The injured Shakeel who was present on the spot when the complainant reached to the spot but the injured Shakeel also did not report to the police. The complainant on his own registered the case where the accused facing trail was charged however it is not mentioned in the report Ex.PA that who informed the complainant about the commission of offence by the accused whereas the injured Shakeel did not report despite the fact that his presence was shown by the complainant at the place and at the time of occurrence, which creates doubts regarding the involvement of accused in the commission of offence. The report of complainant is also not supported by Mowez Khan (PW-02) who is the husband of deceased who sated in his cross examination that the accused facing trial is his son who is innocent in the instant case and he does not charge accused for the murder of his wife. The complainant Jahanzeb


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Khan (PW-01) stated in his cross examination that the legal heirs of deceased did not charge the accused for the commission of offence.

The IO of the case namely Muhammad Ishaq SI recorded his statement as PW-04 and during cross examination the IO stated that according the Murasila one Shakeel was also injured in the occurrence and his statement was not recorded by me and he did not charge any one for the offence. The Io further stated in his cross examination that the daughters of the deceased who were present inside the house at the time of occurrence did not charge anyone for the murder of her mother. It is evident from the record and investigation of the case that none from the inmates of the house nor the injured Shakeel charged the accused for the commission of offence nor they recorded their statement in the instant case therefore the version of the complainant in the Murasila which could not be substantiated is not worthy of credit and could not be believed to connect the accused with the commission of offence. Furthermore the IO during spot inspection did not recovered blood from the place of occurrence and the IO stated that no blood was available on the spot. The IO also did not recovered any empty from the spot, hence the place of occurrence is also not confirmed which further creates dents in the prosecution case. The statement of IO that Mowez Khan the father of accused produced one rifle 12 bore which was taken into possession vide recovery memo Ex.PW-4/1 was also negated by Mowez Khan during his cross examination who stated that he did not handed over any rifle to the police and further stated that he is not the eye witness of the occurrence and was not present at his home. The prosecution could


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not produce any cogent and authentic evidence to support the version of complainant. The available evidence on file is not sufficient to connect the accused with the commission of offence. The injured Shakeel is also not supporting the case of prosecution who neither recorded his statement before the police nor reported the occurrence.

There is no probability of the conviction of accused even if the statements of remaining prosecution witnesses are recorded. The accused can be acquitted at any stage of the case u/s 265-K Cr.PC when there is no probability of the accused being convicted of any offence. From the statement of PWs who recorded their statement before the court, it is evident that there is no possibility of the conviction of the accused and to proceed further with the case of accused, it would be a futile exercise and the ultimate result would be the acquittal of accused.

In view of the above discussion the application submitted by the accused for his acquittal u/s 265-K Cr.PC is accepted and the accused is acquitted from the charges levelled against him. The accused is on bail, his sureties are discharged from the liability of bail bonds. Case property be dealt with in accordance with law after the expiry of period of appeal of revision.

File of this court be consigned to record room after its necessary completion and compilation.

Announced
03.02.2021



(SHAUKAT ALI)
Additional Sessions Judge-II,
Orakzai at Babar Meia