

72

71

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

SESSION CASE NO. : 24/2 OF 2020  
DATE OF INSTITUTION : 11.12.2020  
DATE OF DECISION : 14.04.2021

STATE THROUGH DPP ORAKZAI  
------(Complainant)

VS

LAHOR KHAN S/O MIR AHMAD KHAN, AGED ABOUT 48 YEARS,  
TRIBE MISHTI, TAPA HAIDER KHEL, VILLAGE SARKOTE,  
DISTRICT LOWER ORAKZAI

------(Accused Facing Trial in Custody)

**Present:** Umar Niaz, District Public Prosecutor for the state.  
: Sana Ullah Khan Advocate for accused facing trial.

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**JUDGEMENT**  
14.04.2021


On 22.10.2020, the local police upon information regarding the instant occurrence when reached to the Civil Hospital Mishti Mela, the accused/complainant, Lahor Khan was found present there in the emergency room with the dead body of his daughter, Shaina Bibi. At about 12:20 hours, the accused/complainant reported to the local police to the effect that 07/08 months prior to the present occurrence, he found her daughter with one, Shah Mir s/o Akhtar Gul in an objectionable position but by that time Shah Mir was able to escape from the house of accused/complainant. That accused/complainant, Lahor Khan intended to kill both, Shaina Bibi and Shah Mir on the pretext of honour but Shah

*Asghar Shah*

(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela



Mir never came back to village while her daughter was at home. On the day of occurrence, Shaina Bibi, daughter of the accused/complainant, Lahor Khan was present in courtyard of the house of Lahor Khan who started firing at her with the intention to kill due to which Shaina Bibi got hit and died on the spot. The motive for the occurrence was disclosed as illicit relations of deceased Mst. Shaina Bibi with Shah Mir. The report was verified by one, Shehzad Gul s/o Raza Gul who thumb impressed the Murasila Ex. PA/1. The matter was incorporated through Murasila Ex. PA/1 and was sent to the PS where FIR Ex. PA in question was registered against the accused facing trial. Hence the accused facing trial was implicated in the instant case.

  
(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela

- (2). 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 and their statements were recorded, the gist of which are as follows;



- I. Dr. Haleema Habib appeared as PW-1 and deposed in respect of the post-mortem examination of the deceased, Shaina Bibi carried out by her through report Ex. PM as well as to

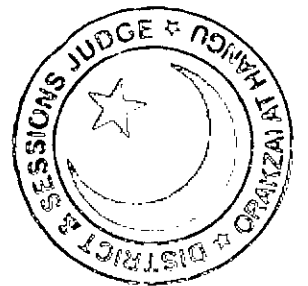
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have had endorsed the injury sheet Ex. PW 1/1 and inquest report Ex. PW 1/2 of the deceased.

- II. Muhammad Shafiq SHO as PW-2 deposed that he had submitted complete challan Ex. PW 2/1 on 29.10.2020 against the accused facing trial.
- III. Ain Ullah Moharrir appeared in court as PW-3 in respect of receipt of Murasila and incorporating the contents of Murasila into FIR Ex. PA. He further deposed that he handed over copy of FIR and Murasila to IO Shal Muhammad.
- IV. Constable, Khan as PW-4 being marginal witness deposed in respect of the blood through cotton (Ex. P1) recovered from the spot in his presence vide recovery memo Ex. PC. The witness also deposed being marginal witness of the pointation memo Ex. PC/1 vide which the accused himself pointed out his place and place of deceased to the IO. He further deposed that constable, Abdul Saif brought blood-stained garments of the deceased and handed over these to the IO who packed and sealed the same in parcel no. 2 (Ex. P2) vide recovery memo Ex. PC/2 in his presence. He also deposed that the IO on 27.10.2020 handed over parcel no. 1 and 2 alongwith application addressed

*Asghar Shah*

(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela



75  
74

to the incharge FSL and road permit certificate to him and he took the same to FSL for chemical examination.

V. Khursheed Anwar ASHO as PW-5 deposed in respect of recording initial report of the accused/complainant through Murasila Ex. PA/1, preparation of injury sheet Ex. PW 5/1 and inquest report of the deceased, Shaina Bibi Ex. PW 5/2, card of arrest Ex. PW 5/3 and sending the injury sheet and inquest report to the lady doctor through constable, Abdul Saif as well as sending the Murasila to the PS through constable, Maaz Ullah for registration of FIR.

VI. Shehzad Gul s/o Raza Gul, verifier of the Murasila, in his statement as PW-6 deposed in respect of verifying the report of the complainant in the hospital by thumb impressing the same.

VII. Shal Muhammad Khan SI as PW-7 deposed in respect of the investigation carried out by him in the instant case including preparation of site plan Ex. PB, recovery of blood of deceased from the spot vide recovery memo Ex. PC, pointation of the place of occurrence by the accused through pointation memo Ex. PC/1, taking into possession

*Asghar Shah*  
(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela



76  
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the blood-stained garments of the deceased through recovery memo Ex. PC/2, recoding statement of marginal witnesses, production of accused before the court of JM for obtaining his physical custody vide applications Ex. PW 7/1 and Ex. PW 7/2, recoding statements of Ghameen Gul, Muhammad Shafiq and Shehzad Gul, sending the blood-stained garments alongwith application Ex. PW 7/3 and road permit certificate Ex. PW 7/4, receiving the FSL report Ex. PK, placing on file list of legal heirs of deceased Ex. PW 7/5, production of copy of register 19 Ex. PW 7/6 and lastly handing over of case file to the SHO for onward proceedings.

*Asghar Shah*  
(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela

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



(4). From the arguments and record available on file it reveals that in the instant case allegedly the accused facing trial himself reported the matter through Murasila Ex. PA/1 wherein he cited himself as the sole eyewitness of the occurrence. As such except the complainant no other

77  
76

eyewitness of the occurrence is available and even the inmates of the house of the accused have neither charged him nor arrayed as eyewitnesses during the investigation. The case of the accused facing trial is thus of circumstantial evidence based upon the report of the complainant Ex. PA and evidence of the verifier Shehzad Gul PW-6, post-mortem report Ex. PM, pointation the place of occurrence, recovery of blood from the spot, blood-stained garments of the deceased given to the IO by the doctor after PM examination, report of the FSL Ex. PK regarding blood-stained garments and blood recovered from the spot, evidence of the police officials and the motive of illicit relations.

*Asghar Shah*  
(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela


(5). In the instant case, no doubt, the deceased has met an unnatural death but we have to see as to whether she was killed by the accused facing trial or otherwise. With regard to the report of the complainant/accused, it is necessary to mention here that the same was denied by him during the trial and even the verifier Shehzad Gul while appearing as PW-6 admitted in his cross examination that the local police obtained his thumb impression on a white paper and thus he could not support the report Ex. PA/1. The said verifier in his evidence deposed even to the extent that neither he was present in the hospital by the time of report nor seen the accused facing trial in the hospital nor he recorded any statement to this effect. Moreover, the accused facing trial



was admittedly arrested on the very day of the occurrence i.e., 22.10.2020 through card of arrest Ex. PW 5/3 and on the next day he was produced before the court of Judicial Magistrate Orakzai for obtaining his physical custody and accordingly he was remanded to the local police for one day. So, had there been any report made by the accused, there was no need to obtain his physical custody and, in that scenario, he would have confessed his guilt straight away besides would have produced the weapon of offence and empties to the police. However, neither he confessed his guilt either upon his first appearance before the court or upon expiry of police remand nor his police custody proved effective regarding the recovery of weapon of offence or empties from the spot, which is the house of accused facing trial. Moreover, the deceased as per list of legal heirs Ex. PW 7/5 is survived by her mother, three minor sisters and four minor brothers but none of them came forward either to charge the accused facing trial for the offence or to deposed in evidence during the trial. As such the very report alleged to have been made by the accused facing trial neither established nor verified.

- (6). No doubt the post-mortem report Ex. PM has confirmed the death of deceased by means of firearm, however, its nexuses with the accused facing trial could not be established. As such the said corroborative piece of evidence is of no use.

78  
77

  
(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela



(7). As far as the pointation of the place of occurrence by the accused facing trial through pointation memo Ex. PC/1 is concerned, in this regard no recovery or discovery was effected in pursuance of the alleged pointation besides the spot is the house of the accused which is well known to him. As such the said piece of evidence is also very weak and not sufficient for the conviction of accused facing trial.

(8). With regard to recovery of blood of deceased from the spot through recovery memo Ex. PC and the blood available on the garments of the deceased taken vide recovery memo Ex. PC/2 when sent to the FSL for chemical analysis, then it was reported through report Ex. PK that it was human blood, however, no opinion was given with regard to the blood recovered through cotton from the spot and the one available on the garments of the deceased is one and the same. As such the very spot of occurrence could not be determined.

(9). The evidence of the police officials being corroborative in nature could not support the report of the complainant or rest of the events to conclude the case in hand in favour of the prosecution.

(10). Lastly, with regard to the motive of illicit relations allegedly concluded in the murder of the deceased Mst. Shaina Bibi, it is mentioned in the initial report that the accused have seen the deceased and one, Shah Mir in an objectionable condition some 07/08 months before the

*Asghar Shah*  
 (ASGHAR SHAH)  
 Sessions Judge, Orakzai,  
 at Baber Mela






80  
79  
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occurrence. Had it been the case, the occurrence might have taken place by the same time when the accused allegedly seen both of them in an objectionable position and waiting of 07/08 months of the same is not appealing to a prudent mind.

(11). In a criminal trial, the prosecution has to prove beyond any shadow of doubt their version connected with facts and material available on the record like a chain and the break-up of a single chain means cropping up of doubts and thereby providing exist to the accused nominated for such offence and when the break-ups are too much, the exists and doubts in the same number would follow. In the present case after detailed discussion above, it is held that sufficient dents and doubts are attracted to the case of prosecution thereby creating doubts and providing safe exists to the accused facing trial. 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, Lahor Khan, he is acquitted of the charges levelled against him through the FIR in question. Accused is in custody, he be released forthwith, if not required in any other case. Proper release/acquittal warrant be prepared and send to the sub-jail, Orakzai. Case property be disposed of in accordance with law but after the expiry of

  
(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela



period provided for appeal/revision. Copy of judgement be issued to the prosecution, complainant and accused free of cost.

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

Announced  
14.04.2021

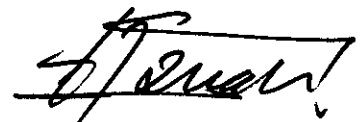


(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela

CERTIFICATE

Certified that this judgment consists of thirteen (13) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 14.04.2021



(ASGHAR SHAH)  
Sessions Judge, Orakzai,  
at Baber Mela

