

IN THE COURT OF ADDITIONAL SESSIONS JUDGE ORAKZAI, AT BABAR MELA

Sessions Case No. 22/03 of 2022

Date of Institution: 12-10-2022

Date of decision: 30-10-2023

State vs Muhammad Sadeeq

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	30/10/2023	<p>Accused on bail, DyPP for the State and Counsel for accused are in attendance. Arguments have already been heard; whereas, this is the disposal of application u/s 265-K Code of Criminal Procedure, 1898.</p> <p>2. Allegation against the accused facing trial is that on 21.07.2022 at 12:00 hours, he committed Qatl-e-Amd of deceased Mst Bibi Sherina (wife of Mir Khan) by effective firing at her on the pretext of honor which was registered vide case FIR No.27 dated 21.07.2022 u/s 302/311 of Pakistan Penal Code, 1860, in Police Station Central Mishti Mela, District Orakzai. Later on, the Pistol was recovered which led to add section 15 of the KP Arms Act 2013.</p> <p>3. On arrest of the accused, the local police investigated him and on conclusion of such investigation, complete challan was submitted in the Court of District &amp; Sessions Judge Orakzai on 12-10-2022. The case was entrusted to this Court for trial. Accused being on bail was summoned who appeared; provisions of 265-C Code of Criminal Procedure, 1898 complied with and charge was framed against the accused to which he pleaded not guilty by claiming trial.</p> <p>4. The prosecution in support of its case produced 05 (five) witnesses. PW-1 is the statement of Muhammad Ayub ASI, who was posted to Mishti Mela Police Station as MHC. PW concerned stated that he has incorporated the contents of Murasila into FIR (Ex.PA); made entry of the parcels in Register No. 19; and, handed over the parcels to the IO for FSL analysis. PW-2 is the statement of Complainant Muhammad Shafiq who stated that he does</p>

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not know about the occurrence. This witness was declared hostile and was cross examined by the prosecution. Statement of Abdul Manaf OII was recorded as PW-3 who has conducted partial investigation in instant case. This PW has drafted road permit certificate and FSL application and exhibited the same as Ex.PW-3/1 and 3/2. He also exhibited the colorful photocopy of Passport of father of the complainant containing 04 pages as Ex.PW-3/3. PW-4 is the statement of Muhammad Younis SI, who has submitted the complete challan Ex.PW-4/1 in the Court. Statement of Dr. Fatima Sarfaraz was recorded as PW-5, who has conducted the Postmortem examination Ex.PM of deceased. Meanwhile, application for acquittal of accused under Section 265K of the Code of Criminal Procedure, 1898, was presented which was heard at length.

5. Counsel for accused/petitioner argued that the witnesses shown to be eye witnesses of the occurrence are denying the occurrence in its totality. There is no probability of the conviction of accused in future as the eye witnesses failed to testify against the accused. The complainant has also recorded his statement on oath that he charges no one. The evidence is deficient and proceeding further with the trial is of no value.

6. DyPP representing State is of the view that strong evidence is available and if rest of the evidence is tested, there is a strong case for conviction of the accused.

7. The prosecution story is that Muhammad Shafiq (complainant) reported that his mother (deceased) had given birth to a child sequel to which he telephonically informed his father Mir Khan who is abroad in Gulf country Behrain for the last two years. Mir Khan responded that inform maternal uncle Muhammad Sadeeq (accused) who on reaching to the spot killed his mother (deceased). The motive behind the occurrence was honor killing.

8. It is on record that the eye witnesses of the incident shown by the Police are denying the incident at all. Complainant is not charging the accused for commission of

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offence as well. Record further transpires that the deceased lady was living in the joint family system where pregnancy cannot be kept hidden for 06 to 09 months under single roof; that too, on active interaction with other inhabitants of the dwelling house; it is therefore, can easily be inferred that no one was intending to kill the deceased lady on pretext of honor in her in laws' home. Accused allegedly came from the parents' home of the deceased lady who is her brother and therefore his presence in the house of deceased got pivotal role to be established beyond doubt. The ocular evidence denies the presence of accused at place of occurrence on one hand and negates the incident on other hand. In such situation, circumstantial evidence is required to establish the presence of accused at the house of complainant. There is neither geofencing of accused nor other circumstantial evidence collected by the prosecution. Similarly, accused has already been acquitted in major offence under Section 302/311 of the Pakistan Penal Code, 1860 levelled against him in the same FIR.

09. Considering the above noted facts and circumstances presently, no case against the accused is made out and there is no probability of conviction of the accused facing trial. Consequently, charges against the accused seems to be baseless and groundless. Application under section 265-K Code of Criminal Procedure, 1898 is, therefore, accepted and the accused facing trial namely Muhammad Sadeeq is acquitted in case. His sureties are discharged from the liability of the bond. Case property be disposed of after the expiry period of appeal or revision. File be consigned to District Record Room, Orakzai after necessary completion and compilation within span allowed for.

10. Announced in open Court.

  
Sayed Fazal Wadood,  
AD&SJ, Orakzai at Baber Mela