

98

97

IN THE COURT OF SHAUKAT AHMAD KHAN
SESSIONS JUDGE, ORAKZAI AT BABER MELA

SESSION CASE NO. : 28/2 OF 2021

DATE OF INSTITUTION : 11.06.2021

DATE OF DECISION : 30.10.2021

STATE THROUGH COMPLAINANT ISAR KHAN S/O SYED
BADSHAH, AGED ABOUT 65 YEARS, R/O TRIBE MISHTI, SUB
TRIBE HAIDER KHEL, PO RAISAN, DISTRICT ORAKZAI

------(Complainant)

VS

1. SAJID ULLAH S/O ABDUL AKBAR, AGED ABOUT 20 YEARS, R/O
TRIBE MISHTI, TAPA HAIDER KHEL, ZOR KALAY, CHAPPAR
POST OFFICE RAISAN, DISTRICT ORAKZAI
2. UMAR HAYAT S/O HABIB UR REHMAN, AGED ABOUT 24
YEARS, R/O TRIBE MISHTI, TAPA MAMIZAI, MIR GHARA,
DISTRICT ORAKZAI

------(Accused Facing Trial on bail)

3. AFZAL KHAN S/O WALAD KHAN BAZ, R/O CASTE ZOR
CHAPPAR MISHTI, DISTRICT ORAKZAI
4. WALI ULLAH S/O ABDUL AKBAR, R/O CASTE ZOR CHAPPAR
MISHTI, DISTRICT ORAKZAI

------(Absconding co-accused)

Present: Umar Niaz, District Public Prosecutor.

: Javid Muhammad and Insaf Ali Advocates for complainant.

: Zahoor Ur Rehman Advocate for accused facing trial.

FIR No. 37

Dated: 16.03.2021

U/S: 302 PPC

Police Station: Kalaya

JUDGEMENT

30.10.2021

The accused named above faced trial for the
offence u/s 302 PPC vide FIR no. 37, dated 16.03.2021
of PS Kalaya.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
30/10/21

(2). The case of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA is; that on 16.03.2021 at 1930 hours at DHQ hospital Mishti Mela, the complainant, Isar Khan, PW-5, father of the deceased Shahid Khan made a report to the local police to the fact that his son Shahid Khan was working as security guard in coal mine of Raza Khan and Abdul Wali. That on that day, at about 14:30 hours, he was informed by the kids of the locality regarding the dead body of his son lying on the spot. Accordingly, he on the spot and found his son Shahid Khan murdered. The complainant/PW-5 charged unknown accused for the murder of his son. The Murasila Ex. PA/1 was drafted by Muhammad Riaz SI/PW-8 which was sent to the PS through constable Muhammad Asghar, on the basis of which FIR Ex. PA was drafted by PW-7 Malak Abdul Janan SHO.

(3). After registration of FIR, it was handed over to IO/PW-6, Shal Muhammad SI for investigation. Accordingly, after receipt of FIR, PW-6 reached the spot. The IO/PW-6 took into possession blood-stained pebble Ex. P1 from the place of deceased vide recovery memo Ex. PC and on 18.03.2021 sent the same to FSL vide his application Ex. PW 6/1 and road permit certificate Ex.

Shaukat Ahmad Khan
District & Sessions Judge,
Qazal at Baber Mela
30/10/21

PW 6/2. He prepared site plan Ex. PB at the pointation of complainant/PW-5. The IO/PW-6 took into possession blood-stained shalwar, Kamees and vest of the deceased vide recovery memo Ex. PC/1 and on 25.03.2021 sent the same to FSL vide his application Ex. PW 6/3 and road permit certificate Ex. PW 6/4 through constable Raza Ali.

On 07.04.2021, Iqbal Khan, Isar Khan the complainant/PW-5 and Habib Ur Rehman PW-4 recorded their statements u/s 164 Cr.P.C wherein they charged the accused namely, Afzal Khan, Wali Ullah, Sajid Khan, Mujahid and Umar Hayat. The PW-4 Habib Ur Rehman and Iqbal Khan shown themselves present on the spot when the accused threw the dead body of deceased Shahid Khan on the spot from the cabin of pick-up. Addition in the site plan Ex. PB was made with red ink on pointation of eyewitnesses Iqbal Khan and

Shaukat Ahmad Khan
District & Sessions Judge
Gazal at Baber Mela
30/10/21

Habib Ur Rehman. The accused on bail were arrested while accused Afzal Khan and Wali Ullah absconded against whom after issuance of warrant 204 Cr.P.C and proclamation notice u/s 87 Cr.P.C, they were proceeded u/s 512 Cr.P.C.

After completion of investigation, complete challan was submitted against the accused facing trial while a separate challan under Juvenile Justice System Act, 2018 was submitted against the juvenile accused Mujahid Khan.

(4). Upon the receipt of case file for the purpose of trial, the accused were summoned, copies of the record were provided to them u/s 265-C Cr.P.C and formal charge was framed against them to which they pleaded not guilty and claimed trial. The prosecution examined as many as 08 witnesses. The gist of the evidence of prosecution is as follow;

I. Dr. Nabeel Sheharyar, MO, Mishit Mela hospital Ghiljo is PW-1. He has conducted autopsy on the dead body deceased Shahid Khan vide post-mortem report Ex. PM.


II. Constable Raza Ali appeared in the witness box as PW-2 being marginal witness of recovery memo Ex. PC and recovery memo Ex. PC/1 vide which the IO has taken into possession blood-stained pebbles and blood-stained shalwar, kamees with vest respectively.

Shaukat Arifad Khan
District & Sessions Judge,
30/10/21
Jalozai at Baber Mela

He has also taken parcel no. 1 on 18.03.2021 and parcel no. 2 on 25.03.2021 to the FSL.

III. Shah Muhammad is PW-3 who has identified the dead body of deceased Shahid Khan before the local police and doctor. He stated that the post-mortem report Ex. PM correctly bears his thumb impression.

IV. Habib Ur Rehman appeared in the witness box as PW-4. He stated that he is eyewitness of the occurrence, that on the of occurrence he alongwith his Iqbal Khan were grazing cattle at Chapar Mishti when at about 1430 hours a pick -up of white colour came and stopped at some distance from them. Accused Afzal Khan, Wali Ullah, Sajid, Mujahid and Umar Hayat deboarded from the pick-up. They took out a dead body from the cabin of the pick-up and threw the same in a stream. When they came to the spot, they saw the dead body of his brother Shahid Khan. He informed his father, took the body to the hospital where his father Isar Khan made a report to the police against unknown persons. They cannot disclose the


Shaukat Amir Khan
District & Sessions Judge,
Orakzai at Baber Mela
30/10/21

100

name of accused to the police due to fear of accused Afzal Khan, the member of Taliban group. The report was also verified by him by putting his thumb impression over the same.

V. Complainant, Isar Khan as PW-5 in his evidence repeated the story of Murasila Ex. PA/1. He further deposed that his son was working on a coal mine as security guard of Raza Khan and Abdul Wali. That on the day of occurrence, he left the house for duty at morning time and at about 1430 hours he was informed by the kids of locality regarding the dead body of his son. That he has charged unknown accused for the commission of offence. That his brother Iqbal Khan and his Son Habib Ur Rehman told him that the murder was committed by the accused and that they (eyewitnesses) have seen the accused while throwing the dead body in the stream.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Melz
30/10/21

VI. The Investigating Officer, Shal Muhammad SI is PW-6. He has conducted investigation in the instant case. After registration of FIR, he has visited the spot, prepared the site plan Ex. PB

and took into possession blood-stained pebble Ex. P1 from the place of deceased vide recovery memo Ex. PC and on 18.03.2021 sent the same to FSL vide his application Ex. PW 6/1 and road permit certificate Ex. PW 6/2. He has also taken into possession blood-stained shalwar, Kamees and vest of the deceased vide recovery memo Ex. PC/1 and on 25.03.2021 sent the same to FSL vide his application Ex. PW 6/3 and road permit certificate Ex. PW 6/4 through constable Raza Ali. He has also made addition in the site plan Ex. PB with red ink on pointation of eyewitnesses Iqbal Khan and Habib Ur Rehman. He has also placed on file FSL reports Ex. PK and Ex. PK/1, inserted section 148/149 PPC in the case, arrested the accused vide card of arrest Ex. PW 6/9, produced the accused before the court of Judicial Magistrate vide his application Ex. PW 6/10 and Ex. PW 6/11, submitted applications Ex. PW 6/12 and Ex. PW 6/13 for proceedings against the absconding accused, placed on file CDR Ex. PW 6/14 and

Shaukat Ali Khan
District & Sessions Judge,
Sulzai at Baher Mela
30/10/21

10/24

submitted of case file to SHO for onward proceedings.

VII. Malak Abdul Janan SHO as PW-7 deposed that he had registered FIR Ex. PA by incorporating the contents of Murasila Ex. PA/1 therein and submitted complete challan Ex. PW 7/1 in the instant case.

VIII. Muhammad Riaz SI, Incharge report centre DHQ hospital Mishti Mela as PW-8 deposed in respect of drafting the Murasila Ex. PA/1. He also deposed that he had prepared injury sheet Ex. PW 8/1 and inquest report Ex. PW 8/2 of the deceased and handed over the same to doctor and sent the Murasila to PS through constable Muhammad Asghar for registration of FIR.

Shaukat Ali Khan
District & Sessions Judge,
Jalalpur Jalandhar
30/10/21
(5)

(5). After closure of evidence of the prosecution, statements of both the accused recorded u/s 342 Cr.P.C but they neither wished to be examined on oath nor wanted to produce evidence in defence. Accordingly, arguments of the learned DPP for the state assisted by counsel for the complainant and counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the state assisted by counsel for the complainant submitted that the accused facing trial is directly nominated in the FIR, the IO has conducted investigation on the spot, recovered blood-stained pebble from the place of deceased Shahid Khan. The complainant, the witness of the recovery and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution, that the prosecution has proved its case beyond shadow of any doubt.

(7). Learned counsel for the defence argued that the accused facing trial are not nominated in the FIR rather they have been charged by the complainant and the alleged eyewitnesses in their statements recorded u/s 164 Cr.P.C after about more than 20 days of the occurrence, that there is no ocular or circumstantial evidence available on file against the accused facing trial and that the prosecution has badly failed to prove to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by the learned DPP for the state assisted by counsel for the complainant,

Shaukat Ahmad Khan
District & Sessions Judge,
Chakral at Baher Nela
30/10/21

arguments of the learned counsel for the defence and the available record it is observed that admittedly the accused facing are not nominated in the FIR Ex. PA rather they have been nominated by the complainant and the alleged eyewitnesses in their statements u/s 164 Cr.P.C after about 22 days of the occurrence. As per contents of Murasila Ex. PA/1, the complainant was informed by the kids of the locality regarding the dead body of deceased Shahid Khan; however as per statements of the complainant and the alleged eyewitnesses recorded u/s 164 Cr.P.C, the complainant was informed by his son Habib Ur Rehman and his brother Iqbal Khan who were allegedly present near the spot where the dead body was thrown away by the accused. This stance was also repeated by Habib Ur Rehman the alleged eyewitness and the complainant in their court statements as PW-4 and PW-5 respectively. However, in their cross examination both of them have admitted that the complainant was informed by the kids of the locality. The story regarding seeing of the accused by the PW-4 and Iqbal Khan while throwing the dead body on the spot, also seems concocted, for, PW-4, Habib Ur Rehman is brother of the deceased while Iqbal Khan is the real uncle of the deceased. Their silence regarding the

Shaukat Ahmad Khan
 District & Sessions Judge
 Qazai at Baber Mela
 30/10/21

factum of seeing the accused while throwing the dead body for about 22 days due to fear of one of the accused namely, Afzal Khan, is not appealable to a prudent mind, especially in the circumstances where as per cross examination of complainant and eyewitness, the said accused Afzal Khan is alive and present in the locality. Similarly, if the PW-4 and the eyewitness Iqbal Khan were present on the spot allegedly saw the accused throwing the dead body of the deceased then what presented them either to inform the complainant or the dead body either to PS or hospital.

Moreover, no circumstantial evidence is available on file to connect the accused facing trial with the commission of offence.

- (9). In view of what is discussed above, it is held that the instant case is unseen and unwitnessed occurrence. The prosecution failed to bring home the charge against the accused facing trial. Hence, accused Sajid Khan and Umar Hayat are acquitted of the charges levelled against him through the FIR in question. Accused are on bail. Their bail bonds stand cancelled and their sureties is released of the liabilities of bail bonds. Case property be

Shaukat Ahmad Khan
District Sessions Judge,
Orakzai of Bajer Mela

28/10/21

disposed of in accordance with law but after the expiry of period provided for appeal/revision.

The absconding co-accused Afzal Khan and Wali Ullah, in the light of evidence recorded by prosecution in their absentia, are declared proclaimed offenders. Perpetual warrant be issued against them. The quarter concerned be informed to enter their names in register of proclaimed offenders. Consign.

Pronounced
30.10.2021



(SHAUKAT AHMAD KHAN)
Sessions Judge, Orakzai,
at Baber Mela

CERTIFICATE

Certified that this judgment consists of twelve (12) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 30.10.2021



(SHAUKAT AHMAD KHAN)
Sessions Judge, Orakzai,
at Baber Mela

