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

SESSION CASE NO. : 27/2 OF 2021

DATE OF INSTITUTION : 23.04.2021

DATE OF DECISION : 10.11.2021

STATE THROUGH MUHAMMAD NASEEM S/O MUHAMMAD JALIL, AGED ABOUT 23 YEARS, R/O CASTE AKHEL, TAPA SARKI KHEL, DOPKE GHILJO DISTRICT ORAKZAI

------(Complainant)

VS

1. TAJMIN KHAN S/O KHALIL UR REHMAN, AGED ABOUT 25 YEARS, R/O VILLAGE KOYI KALAY, YAKHO KANDAO DISTRICT ORAKZAI

------(Accused Facing Trial in custody)

2. QADIR KHAN S/O KHALIL UR REHMAN, AGED ABOUT 18/19 YEARS, R/O VILLAGE KOYI KALAY, YAKHO KANDAO DISTRICT ORAKZAI

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

Present: Umar Niaz, District Public Prosecutor.

: Sana Ullah Khan Advocate, for complainant.


: Syed Muzahir Hussain Advocate, for accused facing trial.

FIR No. 10

Dated: 26.02.2021

U/S: 302/34 PPC

Police Station: Ghiljo


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JUDGEMENT
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The accused named above faced trial for the offence u/s 302/34 PPC vide FIR no. 10, dated 26.02.2021 of PS Ghiljo.

(2). The case of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA is; that on 26.02.2021, the local police upon receipt of information

regarding the occurrence reached the hospital where the dead body of Mst. Shumaila Bibi was lying in the emergency room. The complainant, Muhammad Naseem, PW-5, the brother of the deceased, at about 1120 hours reported the matter to the local police to the fact that on the preceding night he alongwith other inmates of the house were present at home when at about 03:00 pm he received information about the death of his (complainant) sister through his maternal uncle namely, Khaista Mir Shah, PW-6 at which he alongwith other family members came to the house of Tajmin Khan, the accused facing trial, where he found the dead body of Mst. Shumaila Bibi lying on bed. That the complainant came to know that his sister, deceased Mst. Shumaila Bibi was murdered by Qadir Khan and Tajmin Khan sons of Khalil Rehman through strangulation. The motive behind the occurrence was stated to be that Mst. Shumaila Bibi had eloped with Tajmin, the accused facing trial and thereafter a compromise regarding marriage of Mst. Shumaila Bibi with accused Tajmin but the family members of the accused were not happy with the marriage. The Murasila Ex. PA/1 was drafted which was verified by one, Abdul Qadir s/o Tajamal Khan, PW-8,

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who put his thumb impression upon it. That the IO prepared site plan Ex. PB on the pointation of complainant/PW-5. Murasila Ex. PA/1 was sent to the PS through constable Muhammad Zubair which was converted into FIR Ex. PA by PW-3 Muhammad Ibrahim SI.

- (3). After registration of FIR, it was handed over to IO/PW-9, Sajjad Khan SI for investigation. Accordingly, after receipt of FIR, PW-9 reached the spot. He prepared site plan Ex. PB at the pointation of complainant/PW-5. On 27.02.2021, after the arrest of accused vide card of arrest Ex. PW 9/1, the IO produced both the accused before the court of Judicial Magistrate vide his application Ex. PW 9/2. The IO took into possession a rope measuring two yards Ex. P1 and packed and sealed the same into parcel no. 1 vide pointation memo Ex. PW 1/1 and prepared recovery sketch Ex. PW 9/3. The IO took two photographs Ex. PW 9/4 and Ex. PW 9/5 of the crime scene and the rope, prepared list of legal heirs Ex. PW 9/6, recorded statements of PWs, placed on file copy of affidavit Ex. PW 9/7 regarding dispute between the parties. After completion of investigation, he handed over the case file to Inspector Naseeb Khan, PW-4, who

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submitted complete challan Ex. PW 4/3 against the accused facing trial.

(4). Upon the receipt of case file for the purpose of trial, the accused Tajmin being in custody was summoned through addendum B while accused Abdul Qadir being on bail was issued summon. 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 09 witnesses. The gist of their evidence is as follow;

I. Abdul Malik ASI appeared in the witness box as PW-1 being marginal witness of pointation memo/recovery memo Ex. PW 1/1 deposed in respect of investigation carried out by the IO in his presence and taking into possession rope measuring two yards Ex. P1.

II. Dr. Anum Usman, MO, THQ hospital Ghiljo is PW-2. She has conducted autopsy on the dead body of deceased vide post-mortem report Ex. PM.

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- III. Muhammad Ibrahim SI is PW-3. He deposed to have had registered FIR Ex. PA from the contents of Murasila Ex. PA/1.
- IV. Inspector Naseem Khan appeared in the witness box as PW-4. He deposed that on receipt of information, he reached to the hospital where the complainant reported the matter to him in shape of Murasila Ex. PA/1. He also deposed that the report was verified by one, Abdul Qadir. He has prepared injury sheet Ex. PW 4/1 and inquest report Ex. PW 4/2 and forwarded the dead body to the doctor for post-mortem examination. He further deposed that he sent Murasila through constable Muhammad Zubair for registration of FIR Ex. PA. He has also submitted complete challan Ex. PW 4/3 against the accused facing trial.
- V. Complainant, Muhammad Naseem as PW-5 in his evidence repeated the story of Murasila Ex. PA/1.
- VI. Khaista Mir Khan is PW-6. He deposed that he received information about the murder of Mst. Shumaila Bibi and informed her father about

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the occurrence. He further deposed that he alongwith Muhammad Naseem/PW-5, brother of deceased and Muhammad Jalil/PW-7, father of the deceased went to the house of accused Tajmin Khan and found the dead body of Mst. Shumaila Bibi which was shifted to the house of Muhammad Jalil.

VII. Muhammad Jalil, father of deceased appeared as PW-7 and deposed that upon receipt of information regarding the murder of his daughter Mst. Shumaila Bibi, he went to the house of accused Tajmin and found therein dead body his daughter. He further deposed that he took the dead body to his house and then to the hospital for post-mortem report.

VIII. Abdul Qadir is PW-8 who deposed that he has verified the report of complainant and identified the dead body of Mst. Shumaila Bibi to the local police and to the doctor as well as thumb impressing the inquest report as well.

IX. Sajjad Khan SI as PW-9 deposed in respect of the investigation carried out by him in the instant case including preparation of site plan

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Ex. PB, recording statement of Abdul Qadir u/s 161 Cr.P.C, production of accused before the court of Judicial Magistrate vide his applications Ex. PW 9/2 and Ex. PW 9/8, taking into possession a rope measuring two yards Ex. P1 vide pointation memo Ex. PW 1/1, preparation of recovery sketch Ex. PW 9/3, taking two photographs of crime scene and the rope Ex. PW 9/4 and Ex. PW 9/5, preparation of list of legal heirs Ex. PW 9/6, production of copy of affidavit Ex. PW 9/7 regarding the dispute between parties and submission of case file to SHO for onward investigation.

After closure of evidence of the prosecution, statements of both the accused were recorded u/s 342 Cr.P.C but they neither wished to be examined on oath nor opted to produce any 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 are

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directly nominated in the FIR, that both the accused have confessed their guilt before the police and made pointation of the spot, that the IO has conducted investigation on the spot and has recovered a rope used in commission of offence, that 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. So far plea of the suicided by deceased is concerned, in this respect the defence has not produced an iota of evidence even the accused have not dared to come to the witness box and record their statements on oath.

Original copy of the
 Pleaded in Court and
 Original at District Court
 10/11/21 (7).

Learned counsel for the defence argued that though the accused facing trial are directly nominated in the FIR, but there is no ocular or circumstantial evidence available on file against the accused facing trial. The deceased Mst. Shumaila Bibi had contracted love marriage with accused Tajmin and there were no reasons for him to cause her murder. Actually, the complainant being annoyed of the love marriage of deceased with the accused Tajmin, had

restrained the deceased of visiting her parents which forced the deceased to commit suicide in cattleshed near the house of complainant. After the death of deceased, the accused informed the parents of deceased who came and took the dead body to their house. The accused also attended the Fatiha; however, later on with the connivance of the relatives of complainant, they took the dead body to the hospital and lodged a false report and that is why the delay of about 10 hours has occurrence in lodging the report. Learned counsel for defence argued that the prosecution has badly failed 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 learned counsel for complainant, arguments of the learned counsel for the defence and the available record it is observed that the moot question for determination of the charge against the accused facing trial is;

Whether the deceased Mst. Shumaila Bibi has been murdered by strangulations or she has committed suicide?


Admittedly the deceased was lawfully wedded wife of accused facing trial Tajmin, residing with him at

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his house and her unnatural death has occurred at the house of accused facing trial. However, no direct or ocular evidence is available on file to prove the charge against the accused facing trial. Similarly, circumstantial evidence in the form of recovery of any incriminating material is also not available on file except a rope which has allegedly been recovered on the pointation of accused facing trial vide pointation memo Ex. PW 1/1 but as the alleged recovery has been made after two days of the occurrence, the place of alleged recovery being the house of accused facing trial is situated in a populated area but no witness from the public has been associated to witness the process of search and recovery and the rope has not been sent to FSL as to confirm that it has actually been used in the commission of offence; therefore, the alleged recovery cannot be used as a piece of circumstantial evidence against the accused facing trial. In these circumstances, the only evidence available on file is, the post mortem report and the conduct of the accused facing trial towards the unnatural death of the deceased. As per PM report the cause of death is mentioned as 'strangulation'. A ligature mark on the frontal side of the neck has been noted with no marks of ligature on the


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wrists or feet of the deceased as to suggest that she has been hanged after tying her hands and feet. Similarly, no marks of violence have been noted by the doctor as to suggest that she has been tortured or that she has struggled to evade her strangulations. In short, as per medical report and statement of the lady doctor as PW-2, the deceased has committed suicide. So far the conduct of the accused facing trial towards the unnatural death of the deceased, is concerned, through the accused facing trial have neither attempted to report the matter to police nor they have shifted the deceased to the hospital; however, as per contention of the accused facing trial after the unnatural death of the deceased, they contacted the parents of the deceased who came and took the dead body to their house where they attended Fatiha of the deceased, however, later on with the connivance of relatives of the complainant party they shifted the dead body to the hospital and made a report. The contention of the accused facing trial to the extent of passing of information regarding the death of deceased and shifting of the dead body by the complainant party to their house, is admitted by the complainant party. With respect to remaining story though the accused facing trial have not brought any evidence on file but the delay of


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about 10 hours in making a report to the police, lends support to the story of the accused facing trial.

(9). In view of what is discussed above, it is held that there is no ocular or circumstantial evidence available on file against the accused facing trial except the medical evidence which also does not support the case of prosecution. Moreover, the conduct of the accused facing trial towards the unnatural death of the deceased is also justified leading to failure of the prosecution to bring home the charge against the accused facing trial. Hence, accused Tajmin and Qadir Khan are acquitted of the charges levelled against them. The accused Tajmin is in custody, he be released forthwith, if not required in any other case while the accused Qadir Khan is on bail. His bail bonds stand cancelled and his sureties are relieved of the liabilities of bail bonds. Case property be disposed of in accordance with law but after the expiry of period provided for appeal/revision.


Pronounced
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CERTIFICATE

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

Dated: 10.11.2021


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Sessions Judge, Orakzai,
at Baber Mela

