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State VS Dil Nawaz
FIR no. 85, Dated 06.07.2021, u/s 322/279/427 PPC
PS: Kalaya

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

SESSION CASE NO. : 31/2 OF 2021
DATE OF INSTITUTION : 20.08.2021
DATE OF DECISION : 16.02.2022

STATE THROUGH SHAHZEK KKHAN S/O KASHMALO KKHAN,
AGED ABOUT 41 YEARS, R/O FEROKZ KHEL, TAPA GHAIKAT
KHEL, VILLAGE SAM DISTRICT ORAKZAI

------(Complainant)

VS

DIL NAWAZ S/O MUHABAT KKHAN, AGED ABOUT 33/34 YEARS,
TRIBE BEZOTE, TAPA BITHANI, JALAKA MELA, TEHSIL LOWER,
DISTRICT ORAKZAI

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

Present: Umar Niaz, District Public Prosecutor.
: Khursheed Alam Advocate, for accused facing trial.

FIR No. 85 **Dated:** 06.07.2021 **U/S:** 279/322/427 PPC
Police Station: Kalaya

JUDGEMENT
16.02.2022

The accused named above faced trial for the
offence u/s 279/322/427 PPC vide FIR no. 85, dated
06.07.2021 of PS Kalaya.

(2). The case of the prosecution as per contents of
Murasila Ex. PA/1 converted into FIR Ex. PA is; that on
06.07.2021, the local police upon receipt of information
regarding the occurrence reached the hospital where the
complainant, Shahzeb Khan/PW-3, the uncle of the
deceased reported the matter to the local police to the fact

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that on the day of occurrence he was present in his house when he received information about the accident of his (complainant) nephew, at which he came to the hospital and found his nephew in injured and unconscious condition. That the complainant came to know that his nephew, the injured then deceased Ikram Ullah was hit due to rash and negligent driving of accused Dil Nawaz on a public road. The report of the complainant was drafted by PW-4 in the form of Murasila Ex. PA/1 and was sent to the PS through constable Abbas Ali Shah which was converted into FIR Ex. PA by PW-1, Moharrir Muhammad Zahid. The injury sheet Ex. PW 1/1 of the injured was prepared and forwarded to doctor for medical examination. The doctor concerned examined the then injured vide his report Ex. PW 8/1 and referred him to LRH. On 06.07.2021 the then injured succumbed to injuries. On 07.07.2021 the doctor conducted autopsy on dead body of deceased vide PM report Ex. PM.

(3).

After registration of FIR, it was handed over to IO/PW-6, Mehdi Hassan SI for investigation. Accordingly, after receipt of FIR, he/PW-6 reached the spot, prepared site plan Ex. PB at pointation of the complainant/PW-3, took into possession the motorcycles

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of accused and injured (Ex. P1 and Ex. P2) vide recovery memo Ex. PC, prepared list of legal heirs Ex. PW 6/5, recorded statements of PWs, produced the accused before the Judicial Magistrate and made addition in the site plan Ex. PB/1. After completion of investigation, he handed over the case file to SHO Shal Muhammad who submitted complete challan Ex. PW 6/8 against the accused facing trial.

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

- I. Moharrir Muhammad Zahid is PW-1. He has registered FIR Ex. PA by incorporating the contents of Murasila Ex. PA/1 therein.
- II. Constable Nikzad Ali appeared in the witness box as PW-2 being marginal witness of recovery memo Ex. PC deposed in respect of investigation carried out by the IO in his presence and taking into possession the

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motorcycles of deceased and accused (Ex. P1 & Ex. P2).

III. Complainant, Shahzeb Khan is the complainant and PW-3. He deposed that he was present at his house when he received information about the accident of his nephew, injured then deceased Ikram Ullah at which he reached the hospital where he found his nephew in injured and unconscious condition. He further stated that he came to know that his nephew was hit by the accused facing trial with his motorcycle who was rashly and negligently driving on a public road.

IV. Muqadar Khan ASHO appeared in the witness box as PW-4. He deposed that upon receipt of information, he reached to the hospital where the complainant reported the matter to him. He drafted Murasila Ex. PA/1, prepared injury sheet Ex. PW 4/1 on dictation to constable Zahid. He further deposed that he sent the Murasila through constable Abbas Ali Shah for registration of FIR Ex. PA.

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- V. Khadi Khan s/o Kashmali Khan, the father of deceased, is PW-6. He deposed that a day prior to occurrence his son complained that the accused facing trial used to tease and chase him (the deceased). He further stated that his son was hit by accused facing trial with his motorcycle riding by him near HQ chowk and that he reached to the hospital where he found his son in injured and unconscious condition who was referred to Peshawar.
- VI. The Investigation Officer, Mehdi Hassan SI is PW-6. He has prepared site plan Ex. PB, took into possession the motorcycles of accused and injured (Ex. P1 and Ex. P2) vide recovery memo Ex. PC, recorded statements of PWs, added sections of law after the death of injured Ikram Ullah, arrested the accused vide his card of arrest Ex. PW 6/1, produced the accused before the Judicial Magistrate vide his application Ex. PW 6/2, recorded statements of eyewitness Jahanzeb Khan and complainant Shahzeb Khan u/s 161 and 164 CrPC, made addition in the site plan Ex. PB/1, prepared list

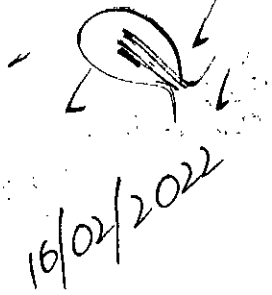
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of legal heirs of deceased Ex. PW 6/5, examined both the motorcycles from private mechanic and placed on file receipts of payment Ex. PW 6/6 & Ex. PW 6/7 and after completion of investigation, he handed over the case file to SHO Shal Muhammad who submitted complete challan Ex. PW 6/8 against the accused facing trial.

VII. Jahanzeb Khan, the eyewitness of the occurrence is PW-7. He stated that he was present near the shop of Noor Jama and Zalif Khan when the accused facing trial intentionally accelerated his motorcycle and hit the motorcycle of Ikram Ullah as result of which he got injured. He further stated that he has informed the relatives of injured namely, Shahzeb Khan (the complainant) whereafter the injured was taken to hospital by rescue 1122 for medical treatment wherefrom he was referred to Peshawar for further treatment.

VIII. Dr. Irfan Ullah, CMO, DHQ Mishti Mela is PW-8. He has conducted autopsy on the dead body of deceased vide post-mortem report Ex.


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PM. He has prepared injury sheet Ex. PW 8/1
after his initial examination of the injured.

(5). Prosecution closed its evidence whereafter statement of the accused was recorded u/s 342 Cr.P.C but he neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of the learned DPP for the State and counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the State submitted that the accused facing trial is directly nominated in the FIR, that the IO has conducted investigation on the spot and has recovered the motorcycle of accused which was 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 and that the prosecution has proved its case beyond shadow of any doubt.

(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, but there is no ocular or circumstantial evidence available

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on file to connect the accused facing trial with the commission of offence. As per contention of prosecution, the occurrence has allegedly taken place near a shop of one Zalif Khan but neither the statement of said Zalif Khan nor that of any other private witness has been recorded by the IO. That the statement of Jahanzeb Khan, PW-7, the alleged eyewitness of occurrence has been recorded by the IO on 12.07.2021 after about 06 days of the occurrence. Moreover, he is close relative of the complainant. Learned counsel for defence argued that the prosecution has badly failed to bring home the charge against the accused facing trial.

- (8). As per contents of Murasila Ex. PA/1 the matter has been reported to the police by complainant Shahzeb (uncle of the deceased then injured Ikram Ullah) at DHQ hospital Mishti Mela. As per Murasila Ex. PA/1 the complainant was present at his house where he received information regarding the occurrence at which he reached the hospital and came to know that the accused Dil Nawaz while rashly and negligently riding his motorcycle has collided with motorcycle of the then injured Ikram Ullah.

The said Shahzeb Khan (the complainant) on 13.07.2021 recorded his statement u/s 164 Cr.P.C before

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the court wherein he alleged that after reporting the matter to police at hospital when he returned to the spot of occurrence, he was informed that the accused Dil Nawaz has intentionally hit the then injured Ikram Ullah through his motorcycle and that the motive behind the occurrence was previous ill will. On the same day one Jahanzeb Khan also recorded his statement u/s 164 Cr.P.C before the court wherein he alleged himself as eyewitness of occurrence and contended that he was present on the spot at the time of occurrence, that the accused Dil Nawaz intentionally hit the deceased Ikram Ullah with his motorcycle near the spot on the other side of the road. He also stated that the motive behind the occurrence was previous ill will.

In view of aforementioned contentions of the prosecution, the points for determination of charge are;

- I. Whether the occurrence has taken place due to rash and negligent driving of the accused facing trial?
- II. Whether the accused facing trial has intentionally hit the deceased Ikram Ullah with his motorcycle?
- III. Whether the alleged motive has proved?

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As discussed above the first version regarding the rash and negligent driving by the accused colliding with the motorcycle of deceased then injured Ikram Ullah, has been advanced by the prosecution in Murasila Ex. PA/1 converted into FIR Ex. PA. In that respect the report has been made by complainant/PW-3. He is not eyewitness of the occurrence and he has charged the accused facing trial for the commission of alleged offence on the basis of his information. The source of information has neither been disclosed by him in his report nor in his court statement recorded as PW-3. The site plan Ex. PB has been prepared on the same day at the pointation of complainant wherein the accused facing trial has been shown riding the motorcycle and has hit the motorcycle of deceased Ikram Ullah. The IO has also recovered both the motorcycles of the accused and deceased from the spot vide recovery memo Ex. PC.

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So far, the second version of prosecution is concerned, the complainant has recorded his statement u/s 164 Cr.P.C on 13.07.2021 while his statement, as per court statement of the IO as PW-6, has been recorded on 12.07.2021 by the police. Similarly, the statement of alleged eyewitness of the occurrence, as per his courts

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statement as PW-7, has been recorded on 06.07.2021 but as per statement of IO his statement u/s 161 Cr.P.C has been recorded by police on 12.07.2021 and his statement u/s 164 Cr.P.C has been recorded on 13.07.2021. As per statement of complainant u/s 164 Cr.P.C after the occurrence when he returned to the spot of occurrence, he was informed that the accused facing trial has intentionally hit the deceased with the motorcycle. It is neither explained by complainant in his statement u/s 164 Cr.P.C nor in his court statement as PW-7 that as to when he has returned to the spot. However, as per available record, the site plan has been prepared at the pointation of complainant on 06.07.2021; therefore, he has returned to the spot on the very day of occurrence but nothing about the second version has been disclosed by him to police by recording supplementary statement nor anything has been disclosed to the IO while making pointation of the spot, rather the site plan has been prepared is in line with the first version of the complainant. Similarly, while preparing site plan the alleged eyewitness (PW-7 Jahanzeb Khan) has neither been shown in the site plan nor his statement has been recorded on that day rather the statement regarding second version of the complainant

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and that of the alleged eyewitness of occurrence have been recorded by the police on 12.07.2021, after six days of the occurrence. The statement of Khadi Khan regarding the alleged motive of the occurrence has also been recorded by the police on 12.07.2021. Moreover, the ocular evidence in the form of site plan Ex. PB and recovery memo Ex. PC are also in contradiction with the second version of complainant i.e., as per site plan Ex. PB, the deceased then injured has been shown riding a motorcycle at the time of occurrence and as per recovery memo Ex. PC the motorcycle of deceased then injured has also been recovered from the spot of occurrence but as per second version of complainant the deceased then injured has been shown present on other side of motorcycle while hit by the accused facing trial with his motorcycle. He has not been shown riding the motorcycle at the time of occurrence. The motive alleged by the prosecution has also not been proved through any oral or documentary evidence.


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- (9). In view of the aforementioned discussion, it is concluded that the allegations regarding rash and negligent driving of accused facing trial are based on hearsay evidence and no ocular evidence is available on file in this respect. Similarly, there is no circumstantial

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evidence available on file to prove that the occurrence has taken place due to rash and negligent riding of accused facing trial. So far, the version of the complainant regarding intentionally hitting the deceased by the accused facing trial with his motorcycle, are based on afterthought and result of consultation and deliberation. The alleged motive is also not proved. Hence, the prosecution failed to prove the charge against the accused facing trial; therefore, accused Dil Nawaz is acquitted of the charges levelled against him. He 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 after the expiry of period provided for appeal/revision. Consign.


Pronounced
16.02.2022


(SHAUKAT AHMAD KHAN)
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: 16.02.2022


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