

IN THE COURT OF SYED OBAIDULLAH SHAH
SESSIONS JUDGE, ORAKZAI AT BABER MELA

SESSION CASE NO. : 1/3 OF 2023
DATE OF ORIGINAL INSTITUTION : 15.08.2022
DATE OF TRANSFER IN : 15.03.2023
DATE OF DECISION : 19.12.2023

STATE THROUGH IBRAHIM KHAN SHO, POLICE STATION
GHILJO, TEHSIL UPPER, DISTRICT ORAKZAI.

-----(Complainant)

VS

AHMAD GUL S/O INJEER GUL, AGED ABOUT 23 YEARS, R/O
CASTE MAMOZAI, TAPPA ASHRAF KHEL, DISTRICT ORAKZAI.

-----(Accused facing trial)

Present: Umar Niaz, District Public Prosecutor.
: Ashiq Hussain Advocate for accused facing trial

FIR No. 12

Dated: 06.06.2022

U/S: 15AA PPC


Police Station: Ghiljo

JUDGEMENT

19.12.2023

The accused named above faced trial for the
offence u/s 15AA PPC vide FIR No. 12, Dated 06.06.2022
of Police Station Ghiljo.

- (2). The case of the prosecution as per contents of
Murasila based FIR is; that on 05.06.2022, the police
acting on information regarding murder of Mst. Nasreen
Bibi d/o Injeer Gul and Muneeb-Ur-Rehman s/o Siraj Gul
on the pretext of having illicit relations, reached DHQ
hospital Mishti Mela and found their dead bodies lying in
the emergency room. The report was drafted by Ibrahim
Khan SHO in shape of Murasila which was verified and


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thumb impressed by Injeer Gul and Siraj Gul. The Murasila was sent to the police station through Constable Adnan Ahmad, on the basis of which the instant FIR was registered by ASHO Tajmin Khan.

- (3). After registration of FIR, it was handed over to Incharge Investigation Abdul Malik/PW-4 who, after receipt of copy of FIR and Murasila visited the spot and took into possession blood-stained earth and one empty shell of 12-bore from the place of deceased Muneeb Ur Rehman and sealed it in parcels no. 1 and 2 (Ex. P1 & Ex. P2) vide recovery memo Ex. PC while took into possession blood-stained earth and one empty shell of 12-bore from the place of deceased Mst. Nasreen Bibi, packed and sealed it into parcels no. 3 and 4 (Ex. P3 & Ex. P4) vide recovery memo Ex. PC/1. The IO/PW-4 prepared site plan Ex. PB on pointation of the complainant. The IO also received blood-stained black colour Qamees of deceased Muneeb Ur Rehman and blood-stained red flowery colour Qamees of Mst. Nasreen Bibi brought to the police station by police constables, and sealed the same into parcels no. 5 and 6 (Ex. P5 and Ex. P6). The Investigating Officer also took into possession two phials, one of them containing 08 pellets recovered from the body of deceased Muneeb Ur Rehman and the other containing 01 pellet recovered from


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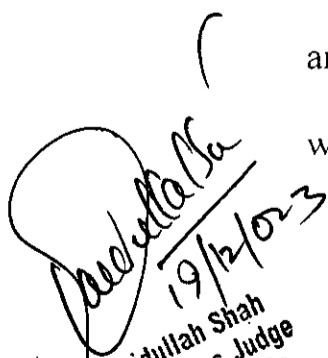
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the body of deceased Mst. Nasreen Bibi, vide recovery memo Ex. PC/2. The same were sealed by the OI in parcel no. 7 (Ex. P7). He also recovered and took into possession vide recovery memo Ex. PC/3, a Double Barrel Shotgun of 12-bore bearing No. F6935 on pointation of the accused, by making addition in the site plan Ex. PB/1. The Investigation Officer, after arrest of the accused, produced him before the court of Judicial Magistrate vide his applications Ex. PW 4/1 and Ex. PW 4/5. The OI/PW-4 has taken parcels no. 1 to 6 & 8 to the FSL for chemical analysis along with applications and road permit certificates. The FSL reports received by the IO were placed on file by him as Ex. PK and Ex. PK/1. The register no. 19 and post-mortem documents were also placed on file by the Investigation Officer. At last, he submitted the case file to SHO for onward proceedings.

(4). Upon receipt of the case file for the purpose of trial, the accused was summoned through addendum-B, copies of the record were provided to him u/s 265-C Cr.P.C and he was charge sheeted but he pleaded not guilty and claimed trial. The prosecution examined as many as 06 witnesses. The gist of their evidence is as follow;

1. Dr. Fatima Wali, WMO, THQ Ghiljo, Orakzai appeared as PW-1. She has conducted post-


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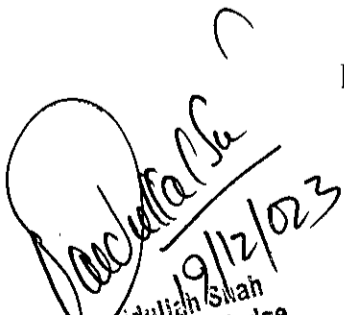
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mortem examination of the dead body of deceased Mst. Nasreen Bibi.

II. Moharrir Abdul Manan appeared as PW-2 and deposed in respect of receiving parcels no. 1 to 8, by making its entry in register no. 19 Ex. PW 2/1. He has handed over parcels no. 1 to 6 and 8 to the IO for sending it to FSL.

III. Complainant Muhammad Ibrahim SHO appeared in the witness box as PW-3. He has prepared injury sheets Ex. PW 3/1 & Ex. PW 3/2 and inquest report Ex. PW 3/3 & Ex. PW 3/4 of both the deceased and has forwarded the dead bodies to the doctor for post-mortem examination. He has drafted the Murasila Ex. PA/1 and sent it to the police station through constable Adnan Ahmad for registration of FIR. The accused was also arrested by him vide card of arrest Ex. PW 3/5 and submitted complete challan Ex. PW 3/6 against the accused facing trial.

IV. Abdul Malik SI Incharge Investigation appeared as PW-4. He deposed in respect of the investigation carried out by him in the instant case including taking into possession



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blood-stained earth and empty shells of 12-bore from the places of both of the deceased, blood stained Qamees of both the deceased, 02 phials containing pellets recovered from the bodies of both the deceased vide recovery memos, preparation of site plan Ex. PB and later on making addition in the same with red ink, recording the statements of PWs u/s 161 Cr.P.C, production of the accused before the court of Judicial Magistrate vide his applications, preparation of list of legal heirs of both the deceased, sending parcels no. 1 to 8 to the FSL vide his applications and road permit certificates, placing the FSL reports as well as register no. 19 and post-mortem reports along with other relevant documents and submission of the case file to SHO for onward proceedings.

V. Constable Rooh Ul Ameen appeared in the witness box as PW-5 being marginal witness of recovery memos Ex. PC, Ex. PC/1, Ex. PC/2 and Ex. PC/3, deposed in respect of investigation carried out by the IO in his presence.

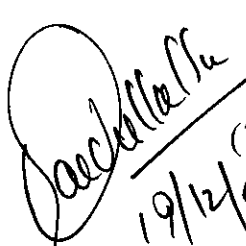

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VI. ASHO Tajmin Khan appeared as PW-6. He incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA.

(5). After closure of evidence of the prosecution, the 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 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 accused has confessed his guilt before the police and made pointation of the spot, that the IO has conducted investigation on the spot and has recovered a Double Barrel Shotgun used in the 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 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,


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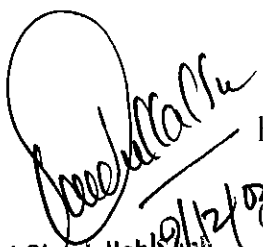
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but the recovery of the weapon of offence has not been made from possession of the accused, that the weapon has been planted against the accused, that there are various contradictions between the statements of PWs and that the prosecution has badly failed to bring home the charge against the accused facing trial.

(8). After having heard the arguments and after going through the available record, it is observed that as per version of prosecution, the weapon of offence has been recovered by PW-4/Abdul Malik SI. As per his court statement as PW-4, after the accused was arrested, he confessed his guilt before the IO and led the police party to the spot and pointed out different spots to the IO besides the weapon of offence i.e., Double Barrel Shotgun bearing No. F6935 was also recovered on pointation of the accused and sealed the same in parcel no. 8. The recovery has been witnessed by PW-5/constable Rooh Ul Ameen. PW-2/Moharrir Abdul Manan of the police station has received parcel no. 8 from the IO. On 10.06.2022 he has handed over parcels no. 1 to 6 and 8 to the IO/PW-4 who has taken the same to FSL for chemical analysis.

Perusal of the case file reveals that the IO/PW-4 has visited the place of occurrence on 06.06.2022 and 08.06.2022 and recovered crucial evidence in the form of blood-stained earth and empties from the places of

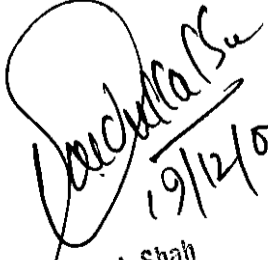

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deceased. He also recovered a Double Barrel Shotgun bearing No. F6935 on pointation of the accused from the spot at the time of his second visit. However, a doubt arose when he was asked about his first visit on 06.06.2022, he stated that the place of occurrence was searched by him, recovering blood-stained earth and empties from the spot but the weapon of offence was not found. In contrast, constable Rooh Ul Ameen/PW-5, during his cross examination, asserted that he was present with the IO during first visit to the spot but the IO had not searched for a weapon of offence. Moreover, the recovered empties and the shotgun were taken by the IO to the FSL for chemical analysis in parcels no. 2, 4 and 8 on 10.06.2022 but after the arrest of the accused. This unexplained delay in sending crucial evidence to the FSL, coupled with a lack of evidence regarding the safe custody of these items from 08.06.2022 to 10.06.2022, casts a shadow of doubts on the mode and manner of investigation conducted by the IO. Though the FSL report is positive for the recoveries but it is not a safe way to sustain conviction of the accused and it smacks foul play on the part of the IO for the reason that till recovery of weapon, he keeps the empties with him for no justifiable reason.

It's noteworthy to consider that, in determining the charges against the accused, guidance is drawn from the



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legal precedent established in the case reported in **2008 SCMR 1064**. It emphasizes that the empty and the weapon of offence recovered from the spot should be sent to the laboratory without any delay, failing to adhere to this principle creates doubt regarding the integrity of evidence and could not be used against the accused. Additionally, **2022 SCMR 1986 and 2010 SCMR 92** shed light on the fact of taking positive FSL report for conviction of the accused and underlines that the crime empty sent to the FSL after the arrest of the accused or concurrently with the weapon of offense, the report loses its evidentiary value. It's crucial to note that, in the absence of substantive evidence, a positive FSL report alone is insufficient for the conviction of the accused.

In these circumstances, it is held that the recovery of weapon of offence is doubtful, if Abdul Malik/PW-4 has visited the spot on 06.06.2022 then how it came possible that the weapon of offence was not found. Similarly, the unexplained delay in sending the empties and the shotgun to the FSL and its safe custody during this period, also make the case of prosecution doubtful. All these facts lead to the inescapable conclusion that the prosecution failed to bring home the charge against the accused facing trial beyond shadow of doubt. Therefore, the accused **Ahmad Gul** is acquitted of the charge levelled against him by


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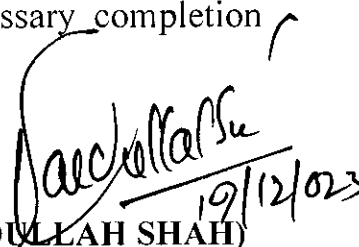
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extending him the benefit of doubt. Accused is in custody.
He be released forthwith, if not required in any other case.
Case property be disposed of in accordance with law after
the expiry of period provided for appeal/revision.

Judgment announced. File of this court be
consigned to record room after its necessary completion
and compilation.

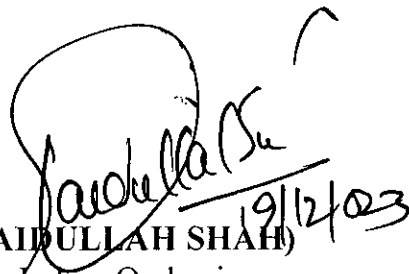
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CERTIFICATE

Certified that this judgment consists of ten (10)
pages. Each page has been read, corrected wherever
necessary and signed by me.

Dated: 19.12.2023


(SYED OBAIDULLAH SHAH)
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