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STATE VS AHMAD GUL
Case No. 6/2, FIR No.12, Dated 06.06.2022, u/s 302/311 PPC,
Police Station Ghiljo.

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

SESSION CASE NO. : 6/2 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 & Zulqarnain Mehmood Advocates for accused
facing trial

FIR No. 12
U/S: 302/311 PPC

Dated: 06.06.2022
Police Station: Ghiljo

JUDGEMENT
19.12.2023

The accused named above faced trial for the
offence u/s 302/311 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
thumb impressed by Injeer Gul and Siraj Gul. The

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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-5 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-5 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 the body of deceased Mst. Nasreen Bibi, vide recovery memo


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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 5/1 and Ex. PW 5/5. The OI/PW-5 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 11 witnesses. The gist of their evidence is as follow;

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


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conducted post-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. Dr. Naveed Afzal, THQ Ghiljo, appeared as PW-4. He has conducted autopsy on the dead body of deceased Muneeb Ur Rehman vide post-mortem report Ex. PM/1.


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V. Abdul Malik SI Incharge Investigation appeared as PW-5. He deposed in respect of the investigation carried out by him in the instant case including taking into possession 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.

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VI. Constable Rooh Ul Ameen appeared in the witness box as PW-6 being marginal witness of recovery memos Ex. PC, Ex. PC/1, Ex.

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PC/2 and Ex. PC/3, deposed in respect of investigation carried out by the IO in his presence.

VII. Constable Muhammad Inam appeared in the witness box as PW-7. He stated that the SHO handed over inquest report and injury sheet of Mst. Nasreen Bibi to him which was handed over by him to the doctor for medical examination. He also received blood-stained garments of female deceased including Qamees having corresponding bullet marks from lady doctor and handed over the same to the IO.

VIII. ASHO Tajmin Khan is PW-8. He incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA.

IX. Injeer Gul appeared in the witness box as PW-9. He is the father of deceased Mst. Nasreen Bibi while deceased Mubeeb Ur Rehman was the son of his nephew. He categorically denied to have seen the occurrence. The prosecution declared him hostile.

X. Adam Khan s/o Faqeer Khan appeared in the witness box as PW-10. He has identified the

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dead bodies of both the deceased to the local
police and to the doctor.

XI. Constable Sameen Ullah is the last witness
who appeared as PW-11. He received the
inquest report and injury sheet of deceased
Muneeb Ur Rehman from SHO which was
handed over by him to the doctor for medical
examination. He also received blood-stained
Qamees of deceased Muneeb Ur Rehman
having corresponding cut marks from doctor
which he handed over to the IO.

(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,

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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, but there is no ocular or circumstantial evidence available on file against the accused facing trial. That there are glaring contradictions in the statements of witnesses. Learned counsel for defence argued that the prosecution has badly failed to bring an iota of evidence on file against the accused facing trial.

(8). In the light of arguments advanced by the learned DPP for the State, arguments of the learned counsel for the defence and the available record, following are the points for determination of charge against the accused facing trial;

I. Whether the occurrence has taken place in the mode and manner as alleged in the Murasila Ex. PA/1?

II. Whether the investigation has been conducted in the mode and manner and the weapon of offence has been recovered from possession of the accused?


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III. Whether the motive has been proved by the
prosecution?

With respect to mode and manner of the occurrence, the prosecution produced Ibrahim Khan SHO as PW-3 and Injeer Gul as PW-9. However, it is essential to note that Ibrahim Khan SHO/PW-3 is not an eyewitness to the incident, and his statement relies on hearsay evidence. Ibrahim Khan SHO/PW-3 drafted the report, which was then verified by Injeer Gul/PW-9 and Siraj Gul. Both Injeer Gul/PW-9 and Siraj Gul affixed their thumb impressions on the Murasila, presenting themselves as eyewitnesses. But during Injeer Gul/PW-9's examination in chief, he refuted the occurrence and explicitly stated that he did not witness it. Consequently, he was declared a hostile witness and was subjected to cross-examination by the prosecution. When this PW was questioned on the point of putting his thumb impression over the Murasila, he stated that the police had obtained his thumb impression on a blank paper. Notably, the other star witness of the prosecution namely, Siraj Gul failed to appear before the court to record his evidence and was abandoned by the prosecution. Siraj Gul, who has alleged to have witnessed the incident, does not have a designated point on the site plan Ex. PB prepared in collaboration with Injeer Gul. Injeer Gul/PW-9, the sole witness

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produced by the prosecution to corroborate the occurrence has denied the event which creates doubts regarding its mode and manner.

With respect to mode and manner of the investigation conducted on the spot aimed at addressing the query regarding the murders of both persons, the prosecution relied on the testimonies of Investigation Officer Abdul Malik as PW-5 and constable Rooh Ul Ameen as PW-6. The IO as PW-5 stated that he has conducted investigation on the spot by visiting the place of occurrence on 06.06.2022 and 08.06.2022. During these visits, he unearthed crucial evidence in the form of blood-stained earth and empties from the places of deceased. He also recovered a Double Barrel Shotgun - the only evidence available on file to connect the accused/petitioner with the commission of offence - 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-6, 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.

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Moreover, as discussed above, the empties were recovered from the spot on 06.06.2022 and the shotgun on 08.06.2022. To ascertain whether the recovered empties were indeed fired from the Shotgun, it was taken to the FSL for chemical analysis by the IO 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 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**


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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.

When it comes to the motive aspect of the prosecution, although it is not incumbent upon prosecution to take plea of motive but once taken the burden to prove it shifts on the shoulders of prosecution through cogent and confidence instilling evidence. However, upon thorough examination of the record, its apparent that prosecution has fallen short in presenting even an iota of evidence to prove the alleged motive behind the occurrence which further weakens the case of prosecution as written in **2016 YLR 787**. According to this legal precedent, in case of failure to prove the motive, the accused would be entitled to the benefit of doubt.

It is an established legal and equitable principle that it is preferable to acquit 100 guilty persons than to subject one innocent person to undue suffering. The facts and circumstances of the case cast a shadow of doubts on the case of prosecution and has failed to link the accused facing trial with the commission of offence. A single

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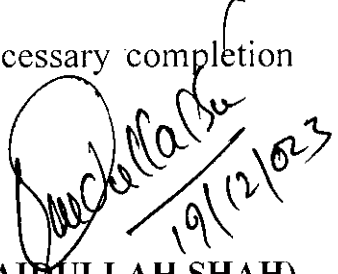
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circumstance which creates reasonable doubt in a prudent mind is sufficient for acquittal of the accused. Reliance is placed on **PLD 2019 SC 64, 1995 SCMR and 2019 SCMR 129**. In these circumstances, the accused **Ahmad Gul** is acquitted of the charges levelled against him. 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.

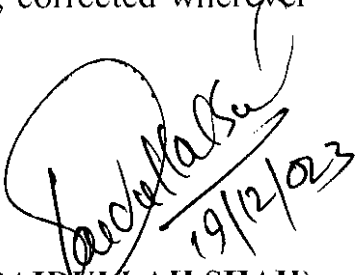
Dated 19.12.2023


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CERTIFICATE

Certified that this judgment consists of thirteen (13) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 19.12.2023


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