

87

In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL SESSIONS JUDGE, ORAKZAI

Case No.7/2 of 2021

Date of institution: 16.03.2021

Date of decision: 24.05.2022

The State through Fazal Hameed son of Gul Hameed, resident of
Qaum Shekhan, Tappa Samozai, village Shakar Tangi, District
Orakzai.(Complainant)

...Versus...

Liaqat Ullah son of Mohammadi Gul, Caste Rabia Khel, tappa Piyao
Khel village Seri Mela, District Orakzai.

.....(Accused facing Trial)

**Case FIR No.57, Dated 13.06.2020 u/s 302/34 of the Pakistan
Penal Code, 1860
Registered at Police Station Kalaya Orakzai.**

JUDGMENT

On 12th of June, 2020, Fazal Hameed (complainant) while reporting the incident stated that his son Asif Rehman who was missing since 10-06-2020. During fanatic search, dead body of his son was found in a highland of Khawray Ghar (place of occurrence) which was transmitted to District Headquarter Hospital, Mishti Mela Orakzai (Hospital). Deceased has been murdered through suffocation and his face was found blurry. His son was killed despite the fact that he has got no enmity whatsoever with anyone. Complainant charged unknown accused for the commission of murder of his son Asif Rehman (deceased). The dead body was referred for Post Mortem Report and a Murasila was sent to Police Station for registration of case.

Consequently, FIR bearing No. 57 dated 13-06-2020 was registered in Police Station Kalaya, Orakzai by attracting section 302 of the Pakistan

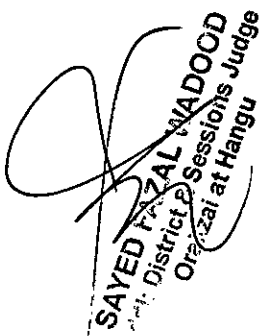
SAYED FAZAL WALOOD
Addl. District & Sessions Judge
Orakzai - Hangu

23

Penal Code, 1860, charging therein unknown accused. Later on, Complainant has recorded his Statement dated 25-07-2020 before the Learned Area Magistrate under Section 164 of the Criminal Procedure Code, 1898 and charged Rafiullah son of Muhammadi Jan for murder of deceased. Pointation Memo dated 28-07-2020 was prepared which provided base for further accusation. Complainant once again moved the Court for recording statement under Section 164 of the Criminal Procedure Code, 1898. He charged Naqeeb ullah son of Miyan Khan and Liaqat ullah son of Muhammadi Gul for commission of reported offence in addition to Rafi Ullah. His 2nd statement has been recorded on 7th of August, 2020. Accused Naqeeb Ullah and Rafi Ullah for being juvenile have separately been trialed under the provisions of Special Law; whereas, the accused Liaqat Ullah is facing trial in instant case.

2. After conclusion of the investigation, complete challan was routed to the Court of Hon'ble the District & Sessions Judge, Orakzai which was entrusted to this Court for further proceedings. The accused being on bail was summoned by the then learned Trial Judge on seeing that reasonable grounds to proceed with the trial of accused are existing. On appearance, he was supplied copies of statements and other documents prescribed under Section 265-C (1) of the Code of Criminal Procedure-1898. Charge against the accused Liaqat ullah (accused facing trial) was framed to which he pleaded not guilty and claimed trial.

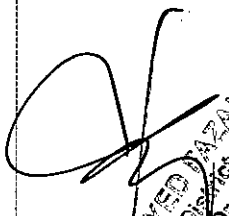
3. Prosecution was directed to produce evidence. The prosecution, in order to prove its case against the accused, produced as many as nine (09) witnesses. Such evidence is reproduced below for ease of reference and for just determination of guilt or innocence of the accused:


SAYED FAZAL HAIDOOD
District & Sessions Judge
Orakzai at Hangu

(84)

4. Khurshid Anwar SI CTD District Orakzai, was examined as PW-1, who stated that *"on 10-06-2020 I received information about the occurrence and came to Mishti Mela Hospital. In the emergency room along with the dead body of Asifur Rehman his father Fazal Hameed reported the occurrence to me. I reduced his report in the shape of Murasila Ex.PA and it was read over and explained to the complainant Fazal Hameed who after admitting the same correct thumb impressed the same while Muhammad Faraz also thumb impressed the Murasila as verified. I prepared the injury sheet and inquest report of the dead body and referred the dead body under the escort of Constable Muhammad Haneef to the Doctor for PM examination. I sent the Murasila to the PS as special report for registration of FIR against accused through Hamayun HC. The injury sheet of deceased is Ex.PW-1/1 and inquest report is Ex.PW-1/2. Today I have seen the above documents which are correct and correctly bears my signatures.*

5. PW-2 is the statement of Khanwada Constable Headquarter at Baber Mela District Orakzai, who deposed that *"I am the marginal witness of pointation Memo Ex.PW-2/1 vide which the accused Rafi Ullah led the Police party to the spot and rightly pointed out the place of occurrence as well as his point mentioned in the site plan. He also pointed out the place of accused Naqeeb Ullah which is also mentioned in site plan. I along with the other marginal witness constable Muhammad Zahid signed the pointation memo. The accused Rafi Ullah also signed the pointation Memo. Similarly, I am also the marginal witness of the search memos Ex.PW-2/2 and 2/3 respectively. I signed the search Memo in the presence of other marginal witness namely Muhammad Zahid. My statement was recorded u/s 161 CrPC. Today I*


SAYED NAZAL WADOODI
Asstt. District & Sessions Judge
Orakzai at Hangu

have seen all the relevant documents which are correct and correctly bears my signatures.”

6. Statement of Dr. Muhammad Hafeez, Medical Officer DHQ, KDA Kohat, was recorded as PW-3, who stated that “during the relevant days I was posted as Medical Officer at Mishti Mela Orakzai. On 12/06/2020 I have conducted post mortem examination of deceased Asif Rehman s/o Fazal Hameed aged about 23/24 years’ r/o caste Shekhan, Tappa Samozai District Orakzai brought by police officials/family members identified by father, on examination of the dead body I found the following;

External Appearance:

There was a single mark of ligature.

Condition of subject stout emaciated, decomposed etc, clothing:

Decomposed and decaying body smell.

Wounds, bruises, position, size and nature:

A 23/24 years old Asif Rehman s/o Fazal Hameed was abducted on 10th June, 2020 and was 12th June, 2020 he was found dead in the nearby hills. The body was recovered and then carried/brought by in the Police/family members to DHQ, MM Mishti Mele for the purpose of autopsy and cause of death. On physical examination of the dead body there was a decaying body smell and the body was decomposed but ligature mark was visible and easily identified. Also, there was a protruded tongue. There was a single mark of ligature on interior side of neck/size of ligature of about 01 inch in width.

Post Mortem of the dead body done.

Wounds details

i. Cranium and Spinal Cord:

Nil

(Signature)
SAVING HUMAN RIGHTS
ADDITIONAL DISTRICT SESSIONS JUDGE
Orakzai District
Orakzai District

qb

ii. **Thorax:**

Nil.

iii. **Abdomen:**

Nil.

iv. **Remarks of the medical officer:**

In the physical examination of the dead body there was a single ligature mark on the interior side of the neck. The size of ligature mark was 01 inch about in width. Also there was a protruded tongue. There was a decaying body smell and body was decomposed but ligature mark was visible and easily identified. The cause of death is strangulation.

Probable time that elapse.....

i. **Between injury and Death;** unknown. As no anybody know about the time between injury and death.

ii. **Between death and Post Mortem;** 02 days

I have also endorsed the injury sheet Ex.PW-3/1 and inquest report as Ex.PW-3/2. I have prepared the Post Mortem report Ex.PM consist of 06 sheets including the Pictorial. Today I have seen all the relevant documents which are correct and correctly bear my signatures.

7. PW-4 is the statement of Statement of Ain Ullah Khan MHC Lower Police Station Kalaya Orakzai, who deposed that “on receipt of Murasila from ASHO Khursheed Anwar from Mishti Mela Hospital through head constable Humayun, I incorporated the contents of the Murasila which is correct and correctly bears my signature. After registration of the case, I handed over the copy of FIR to incharge investigation”

8. Muhammad Shafiq SI NET District Orakzai, was examined as PW-5; stated that “during relevant days, I was posted as SHO PS

SAVED BY
FARAL WAZOOD
District Sessions Judge
Orakzai


Kalaya. In the instant case, I have submitted challan under section 512 Cr.PC against the accused Liaqat Ullah on 19-12-2020 which is Ex.PW-5/1. I have also submitted supplementary challan against the said accused on 08-01-2021 which is Ex.PW-5/2. Similarly, I have submitted the juvenile challan against the accused Naqeeb Ullah and Rafi Ullah on 19-12-2020 which is Ex.PW-5/3. Today I have seen the relevant documents which are correct and correctly bear my signatures."

9. PW-6 is the statement of Shal Muhammad SI PS Lower Orakzai Kalaya, who deposed that *"during relevant days, I was posted as OII PS Kalaya. On 13.06.2020 I was present in PS and received copy of FIR and Murasila. As it was late night so I did not visit the spot just after registration of the case and at morning time I visited the spot along with Police Nafri. On the spot complainant pointed out the place of occurrence to me and I prepared site plan Ex.PB on his pointation. On the spot I recorded of PW Khalil ullah and Tuseef Khan under Section 161 Cr.PC. after completion of investigation on spot came back to PS. I recorded statements of Ain Ullah Muharrir, Constable Humayun and Constable Muhammad Hanif under Section 161 Cr.PC. On 24.07.2020 I recorded statement of Fazal Hameed under Section 161 Cr.PC. and on 25.07.2020 I produced complainant Fazal Hameed before the court of Judicial magistrate vide my application Ex.PW6/1 and the complaint recorded his statement under Section 164 Cr.PC which is Ex.PW6/2. On 26.07.2020 I arrested accused Rafi ullah and issued his card of arrest which is Ex.PW6/3. On 27.07.2020 I produced accused before the court of Magistrate vide my application Ex.PW6/4 for obtaining physical custody of accused, as a result of which two days*

SAYED FAZAL WADOOD
Addl. District & Sessions Judge
Orakzai - Mangu

88

of custody was granted. Accused confess his guilt before me during course of investigation and himself with his own consent pointed out the spot to me. On pointation of Rafiullah I made addition in the site plan on 28.07.2020 with red ink which is Ex.PB/1. I have also prepared pointation memo on pointation of accused and in presence of PWs Khanwada and Muhammad Zahid already Exhibited as PW2/1. I have taken photographs of the accused and spot during course spot inspection and placed the same on judicial file which are Ex.PW6/5 to Ex.PW.6/8. On 29.07.2020 I produced accused before the court of judicial magistrate vide my application Ex.PW6/9 for recording his confessional statement but the accused refused and sent the accused to Judicial lockup. On 06.08.2020 I recorded statement of complainant under section 161 Cr.PC and produced complainant before the court of Judicial magistrate who charge the accused Naqeeb Ullah and Liaqat ullah for the commission of offence and my application is Ex.PW.6/10. 164 statement is Ex.PW6/11. On 05.09.2020 accused Naqeeb Ullah brought BBA documents and I formally arrested him and issued him card of arrest Ex.PW6/12. On 11.09.2020 after rejection of BBA, I produced accused Naqeeb ullah before the court of judicial magistrate vide my application is Ex.PW6/13, as a result of which two days of custody was granted and accused was interrogated in sub jail Orakzai being juvenile. On 14.09.2020 I again produced accused Naqeeb ullah before the court JM for obtaining further physical custody of accused vide my application is Ex.PW6/14, as a result of which two days of custody was granted. On 16.09.2020 I again submitted application before JM for obtaining further physical custody of accused vide my application is Ex.PW6/15 but my custody application was turned down


SAYED FAZAL MAHMOOD
Magistrate Sessions Judge
Orakzai District

and accused was sent to judicial lockup. I recorded the statement of accused Nageeb under Section 161 Cr.PC. on 10.12.2020 I submitted application for warrant 204 Cr.PC Ex.PW6/16 and then on 16.12.2020 I submitted application for proclamation of under Section 87 Cr.PC and recorded statement of search witness under Section 161 Cr.PC. After completion of investigation, I submitted complete Challan against the accused. On 04.01.2021 after refusal of BBA of accused Liaquat ullah, I arrested him vide my application is Ex.PW6/17 and on 05.01.2021 I produced him before the court of JM for obtaining the physical custody Ex.PW6/18, as result of which two days of custody was granted. Accused confessed his guilt before me I recorded his statement under Section 161 Cr.PC. I produced accused before the court of JM on 07.01.2021 for recording confessional statement of accused Ex.PW6/19 but accused refused to confess his guilt before the court and sent to judicial lockup. Accused has also pointed out the spot to me and I made pointation memo Ex.PW6/20. I also made addition in the site plan on pointation of accused Liaquat ullah which is Ex.PB/2. After completion of investigation, I handed over the case file to SHO for submission of challan. All the documents prepared by me are correct and correctly bear my signatures.”

10. Identifier Toseef Rehman son of Fazal Hameed R/O Qaum Shekhan Tappa Samozai Mishti Mela District Orakzai, was examined as PW-7, who stated that “I identified the dead body of the deceased namely Asif ur Rehman before the local police and doctor at Hospital. My thumb impression was also obtained on the inquest report in the relevant column. My statement was recorded u/s 161 Cr.PC by the IO.”

[Handwritten Signature]
MAJID FAZAL WADOOD
 District & Sessions Judge
 Orakzai at Mangra

11. PW-8 is the statement of Fazal Hameed son of Gul Hameed (complainant) resident of Caste Shekhan Sub Caste Samoozai, Post Office Mishti Mela Tehsil Central, District Orakzai, who deposed that "I reported to the local police on 12-06-2020 at about 2330 hours in Emergency Room Mishti Mela Hospital that my son Asif Rehman deceased came out from the house on 10-06-2020 at about 1300 hours and did not come back to home. I started search him in the surrounded area. At about 1830 hours the dead body of my son was lying at Khawri Mountain and found his blurred face. He was asphyxiated by some unknown accused. The dead body of the deceased with the help co-villagers taken to the Hospital through local pickup. We have no enmity with anyone. I charged unknown accused for the murder of my son Asif Rehman (deceased). After due satisfaction, I charged the accused. After reading over the contents of my report by the local police, I thumb impressed as a token of correctness. The one Muhammad Faraz son of Muhammad Yaseen R/O Caste Shekhan sub Caste Samoozai, Lower Orakzai verified my report and thumb impressed the same. On 13-06-2020, the IO prepared the site plan on my pointation which is already Ex.PB. On 24-07-2020, the IO recorded my supplementary statement in which I charged the accused namely Rafi Ullah for the murder of my son namely Asif Rehman. On 25-07-2020, I recorded my statement under section 164 Cr.PC before the Illaqa Judicial Magistrate in which I charged the accused Rafi Ullah which is already Ex.PW-6/2. Further my due satisfaction the IO recorded my supplementary statement on 06-08-2020 in which charged the other co-accused namely Liaqat Ullah and Nageeb Ullah were involved in the murder of my son. On 07-08-2020 I recorded my statement u/s 164 CrPC before the Illaqa Judicial


SAYED FAZAL WADOOD
 Addl. District & Sessions Judge
 Orakzai & Tangay


9

Magistrate which is already Ex-PW-6/11 in which I charged the accused Laiqat Ullah and Naqeeb Ullah.”

12. Muhammad Faraz son of Muhammad Yaseen, was examined as PW-9, who stated that “I verified the report of complainant Fazal Hameed. I thumb impressed the report of complainant as a mark of verification in form of Murasila report already Ex.PA. Similarly, the FIR report is also verified by me. My statement was recorded by the IO under section 161 Cr.PC.

13. On closure of prosecution evidence, statement of accused was recorded u/s 342 of the Code of Criminal Procedure-1898; wherein, accused professed innocence and did not opt to produce defense evidence or to be examined on oath.

14. Learned APP for the State argued that deceased was missing who was later on found dead due to suffocation. Initially, FIR No.57 dated 13-06-2020, u/s 302 PPC, PS Kalaya was registered against unknown accused. On 25-07-2020, statement of complainant u/s 164 before the Illaqa Magistrate was recorded; wherein, he charged accused Rafi ullah for murder of his son. Later on, Naqib Ullah and Liaqat Ullah were also charged for the commission of offence; that too, with specific role of committing murder of deceased. Evidence available on the file is sufficient to establish the guilt of accused. There is no delay in reporting the incident and the FIR has promptly been lodged. The circumstantial evidence in shape of recoveries, medico legal report and scientific evidence corroborates the incident. He added that the offence is heinous in nature which has been proved beyond reasonable doubt entailing conviction of the accused. It was added that, pointation memo, post mortem report and other material available on file prove the case



SAYED FAZAL WADOOD
Asstt. District & Sessions Judge
Chakwal at Chakwal

beyond shadow of doubt which may be culminated into conviction and sentencing of accused with capital punishment.

15. On the contrary, counsel representing the accused contended that evidence available on the file is deficient and the story advanced by the prosecution is not appealable to prudent mind. It was added that there is no eye witness of the occurrence and the evidence available on the file is either irrelevant or contradictory. The very source of information for accusation has not been disclosed. The occurrence has allegedly been happened on 10th June, 2020 but the FIR was registered on 13th June, 2020. He submitted that prosecution has not been able to prove the case and requested for acquittal of the accused.

16. The guilt or innocence of accused facing trial is being determined below on the basis of all types of evidence available on file that is duly assessed and appreciated in light of the professional assistance rendered by learned the prosecutor and counsel for accused.

17. Motive is energetic source of mind which provides propelling force and gives impetus to perform any action or to do any act. It is the cause, manner and method of thoughts in the mind of a person for performing action which is hidden in the mind of accused. In present case, the complainant has categorically stated in the contents of FIR that he has got no enmity with anyone and charged unknown accused. Not disclosing motive was okay when the accused was unknown but when complainant specifically charged the accused, motive being integral part of the offence was required to be mentioned. The complainant even did not disclose the source of information for charging the accused.


SAYED FAZAL
Addl. District & Sessions Judge
Orakzai at Herat

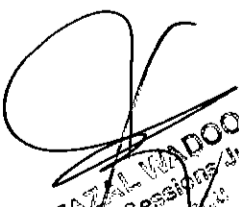
93

18. Promptness in reporting the incident to police is another area which is required to be focused after discussing nomination and identification of accused. The deceased was missing on 10-06-2020 and the matter was reported on 12-06-2020 when the dead body was found and FIR has been lodged on 13th of June, 2020. Similarly, the distance between the place of occurrence and Police Station Kalaya is recorded as 70 to 75 KMs and the time consumed in reporting the matter is two days which is obviously a delay that has not been explained or atleast cannot be justified.

19. The mode and manner in which crime is committed is the next question to be discussed. It is the case of prosecution that the deceased had been murdered through suffocation by the accused facing trial and co-accused in the highland of Khawray Ghar.

20. Direct evidence of primary source is oral or ocular account is missing in the present case. The occurrence has allegedly taken place in the hilly area some two days before reaching to the dead body and had not seen by anyone. There is no eye witness of the incident and case cannot be proved through direct evidence.

21. Circumstantial evidence comes to field when ocular evidence is missing. Statements, recoveries and medico legal reports etc. are the areas wherefrom circumstantial evidence can be gathered from and corroboration and connectivity can be checked. The initial statement (FIR) is registered with delay; that too, against the unknown person. The statement of complainant recorded under section 164 of the Code of Criminal Procedure, 1898, did not disclose the source of information which is very much necessary; especially, when the motive of the crime


SAYED FAZAL MADOOD
District Sessions Judge
District of Balochistan

has not been mentioned. Similarly, no confession has been made by the accused or co-accused. The charge has also been denied in the framing of charge and recording statement of accused.

22. Nothing has been recovered from the place of occurrence that may connect the accused with the commission of offence or can create piece of circumstantial evidence against accused. Even the Police had failed to collect any incriminating material during search of the house of accused and thus this is case of no recovery at all.

23. Medical evidence in shape of Post Mortem Report Ex.PM is on file speaking about strangulation as cause of death but did not carry the probable time that elapsed between injury and death. This MLC is only confirming the unnatural death of deceased but cannot be stretched for determination that who has committed the murder.

24. To sum up the assessment, this is unseen incident seen by no one that has been reported with considerable delay of two days, with no confession on part of accused and with no disclosing source of information for accusation. The motive has not been mentioned and the small portion of circumstantial evidence has neither corroborating each other nor have strength to cross the insufficient degree of cogency.

25. Sequel to above, the mode and manner in which the crime has allegedly been committed is reasonably doubtful; the benefit of which shall always be given to the accused not as a matter of grace but as a matter of right.

26. For what has been discussed above, the prosecution has not proved the offence of murder of deceased namely Asif Rehman, the son of complainant, against the accused facing trial namely Liaquat ullah son


SAYED FAZAL WAJOOD
District & Sessions Judge
Orakzai at Herat

95

of Muhammadi Gul beyond reasonable doubt. Resultantly, in case FIR bearing No. 57 dated 13-06-2020, registered under section(s) 302/34 of the Pakistan Penal Code, 1860 at Police Station Kalaya Orakzai, for the murder/Qatl-e-amad of deceased named above, the accused facing trial Liaqat ullah son of Muhammadi Gul, is hereby acquitted from the charges levelled against him. He is on bail, his bails bonds stand canceled and his sureties are absolved from the liabilities of bail bonds. Case property be dealt with as per law after expiry of period of appeal/revision. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

ANNOUNCED

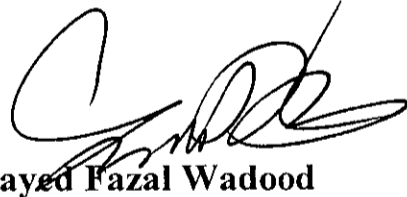
24.05.2022



Sayed Fazal Wadood
Additional Sessions Judge Orakzai

CERTIFICATE:

Certified that this Judgment consists of fourteen (14) pages; each page has been read over and signed by me after making necessary corrections therein.



Sayed Fazal Wadood
Additional Sessions Judge Orakzai