

46

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

SESSION CASE NO. : 2/2 OF 2022
DATE OF INSTITUTION : 10.01.2022
DATE OF DECISION : 16.02.2022

STATE THROUGH COMPLAINANT ISAR KHAN S/O SYED
BADSHAH, AGED ABOUT 65 YEARS, R/O TRIBE MISHTI, SUB
TRIBE HAIDER KHEL, PO RAISAN, DISTRICT ORAKZAI

------(Complainant)

VS

AFZAL KHAN S/O WALAD KHAN BAZ, R/O CASTE ZOR
CHAPPAR MISHTI, DISTRICT ORAKZAI

------(Accused facing trial)

Present: Umar Niaz, District Public Prosecutor.
: Zahoor Ur Rehman Advocate for accused facing trial.

FIR No. 37
U/S: 302/148/149 PPC

Dated: 16.03.2021
Police Station: Kalaya

JUDGEMENT
16.02.2022

The accused named above faced trial for the
offence u/s 302/148/149 PPC vide FIR no. 37, dated
16.03.2021 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
16.03.2021 at 1930 hours at DHQ hospital Mishti Mela,
the complainant, Isar Khan, father of the deceased Shahid
Khan made a report to the local police to the fact that his
son Shahid Khan was working as security guard in coal
mine of Raza Khan and Abdul Wali. That on that day, at
about 14:30 hours, he was informed by the kids of the

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
16.02.2022

47

locality regarding the dead body of his son lying on the spot. Accordingly, he reached on the spot and found his son Shahid Khan murdered. The complainant charged unknown accused for the murder of his son. The Murasila Ex. PA/1 was drafted by Muhammad Riaz SI which was sent to the PS through constable Muhammad Asghar, on the basis of which FIR Ex. PA was drafted by PW-4 Malak Abdul Janan SHO.

- (3). After registration of FIR, it was handed over to IO/PW-8, Shal Muhammad SI for investigation. Accordingly, after receipt of FIR, he reached the spot. He took into possession blood-stained pebble Ex. P1 from the place of deceased vide recovery memo Ex. PC and on 18.03.2021 sent the same to FSL vide his application Ex. PW 8/1 and road permit certificate Ex. PW 8/2. He prepared site plan Ex. PB at the pointation of complainant. He took into possession blood-stained shalwar, Kamees and vest of the deceased vide recovery memo Ex. PC/1 and on 25.03.2021 sent the same to FSL vide his application Ex. PW 8/3 and road permit certificate Ex. PW 8/4 through constable Raza Ali.

- (4). On 07.04.2021, Iqbal Khan, Isar Khan the complainant and Habib Ur Rehman PW-9 recorded their

Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Bahawalpur
16.02.2021

WB

statements u/s 164 Cr.P.C wherein they charged the accused namely, Afzal Khan, Wali Ullah, Sajid Khan, Mujahid and Umar Hayat. The PW-9 Habib Ur Rehman and Iqbal Khan shown themselves present on the spot when the accused threw the dead body of deceased Shahid Khan on the spot from the cabin of pick-up. Addition in the site plan Ex. PB was made with red ink on pointation of eyewitnesses Iqbal Khan and Habib Ur Rehman. The accused namely, Sajid Khan, Mujahid and Umar Hayat were arrested while accused Afzal Khan and Wali Ullah absconded against whom after issuance of warrant 204 Cr.P.C and proclamation notice u/s 87 Cr.P.C, they were proceeded u/s 512 Cr.P.C. The arrested accused namely, Sajid Khan, Mujahid and Umar Hayat were acquitted vide order/judgment dated 30.10.2021 of this Court while the accused Afzal Khan and Wali Ullah were declared proclaimed offenders.

After arrest of accused Afzal Khan, supplementary complete challan was submitted against him.

- (5). Upon the receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to them u/s 265-C Cr.P.C and formal charge was framed against him to which he pleaded not

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Moya
10.02.2022

09

guilty and claimed trial. Accordingly, the witnesses were summoned and the prosecution examined as many as 09 witnesses namely, Muhammad Shafiq SHO, DFC Takbeer Ali, Minhaz Hussain OII, Malak Abdul Janan SHO, constable Raza Ali, Dr. Nabeel Shehryar, Shah Muhammad, Shal Muhammad SI and Habib Ur Rehman as PW-1 to PW-9 respectively.

(6). Thereafter, counsel for the accused submitted application for acquittal of the accused u/s 265-K CrPC for the reasons mentioned therein.

(7). I heard arguments and perused the record.

(8). Perusal of the case file shows that the accused facing is not nominated in the FIR Ex. PA rather he has been nominated by the complainant and the alleged eyewitnesses in their statements u/s 164 Cr.P.C after about 22 days of the occurrence. As per contents of Murasila Ex. PA/1, the complainant was informed by the kids of the locality regarding the dead body of deceased Shahid Khan; however, as per statements of the complainant and the alleged eyewitnesses recorded u/s 164 Cr.P.C, the complainant was informed by his son Habib Ur Rehman and his brother Iqbal Khan who were allegedly present near the spot where the dead body was

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber
16.02.2022

50

thrown away by the accused. This stance was also repeated by Habib Ur Rehman, PW-9, the alleged eyewitness in his court statement. However, in his cross examination he admitted that the complainant was informed by the kids of the locality. The story regarding seeing of the accused by the PW-9 and Iqbal Khan while throwing the dead body on the spot, also seems concocted, for, PW-9, Habib Ur Rehman is the brother of the deceased while Iqbal Khan is the real uncle of the deceased. Their silence for about 22 days regarding the factum of seeing the accused while throwing the dead body due to fear of the accused Afzal Khan, is not appealable to a prudent mind. Similarly, if the PW-9 and the eyewitness Iqbal Khan were present on the spot, allegedly saw the accused throwing the dead body of the deceased then what prevented them either to inform the complainant or to take the dead body either to PS or hospital.

Moreover, no circumstantial evidence is available on file to connect the accused facing trial with the commission of offence.

Furthermore, the co-accused namely, Sajid Khan, Mujahid and Umar Hayat with similar roles as that of

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Bahawalpur


16.02.2022

(51)

accused facing trial, have already been acquitted by this Court and the evidence of prosecution has been disbelieved. Even PW-9, the son of complainant, in his statement has categorically conceded that they are not going to proceed further with the case against the accused facing trial.

- (9). Hence, in view of what is discussed above, it is held that there is no probability of the conviction of accused facing trial, even if the prosecution is given further opportunity to produce the remaining witnesses; therefore, accused namely, Afzal Khan on acceptance of application of accused Afzal Khan is acquitted from the charges levelled against him u/s 265-K Cr.P.C. The accused is in custody. He be released forthwith, if not required in any other case. The case property be destroyed after expiry of period provided for appeal/revision Consign.

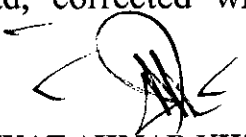
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16.02.2022


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

CERTIFICATE

Certified that this judgment consists of six (06) 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

