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

SESSION CASE NO. : 1/2 OF 2022
DATE OF INSTITUTION : 05.01.2022
DATE OF DECISION : 22.03.2022

STATE THROUGH COMPLAINANT NAIMAT ALI SHO, POLICE
STATION KUREZ BOYA, DISTRICT ORAKZAI

------(Complainant)

VS

GUL REHMAN S/O ABDUL AZIZ, AGED ABOUT 35 YEARS,
CASTE QAMBER KHEL AFRIDI R/O KUKO DARA

------(Accused facing trial)

Present: Umar Niaz, District Public Prosecutor.
: Kamran Khattak Advocate for accused facing trial.

FIR No. 18
U/S: 302/311 PPC

Dated: 05.09.2021
Police Station: Kurez Boya

JUDGEMENT
22.03.2022

The accused named above faced trial for the
offence u/s 302/311 PPC vide FIR no. 18, dated
05.09.2021 of PS Kurez Boya.

- (2). The case of the prosecution as per contents of
Murasila Ex. PA converted into FIR is; that on
05.09.2021 the complainant alongwith other police
officials on receipt of information regarding the murder
of Khial Jamil s/o Zarif Gul having illicit relations with
Mst. Waseema Bibi on the pretext of honour, reached the
spot where he found the dead body of Khial Jamil. The
complainant charged the accused facing trial for the


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commission of offence. The Murasila Ex. PA was drafted by Naimat Ali SHO which was sent to the PS through Head Constable Ishaq Ali, on the basis of which FIR was drafted.

- (3). After registration of FIR, it was handed over to IO, Ishtiaq Hassan SI for investigation. Accordingly, after receipt of FIR, he reached the spot and took into possession blood-stained earth and 04 empty shells of 7.62 bore from the place of accused vide recovery memo, packed the same in parcels no. 1 to 2. He also took into possession blood-stained shalwar, Kamees and vest of the deceased and sealed the same in parcel no. 3. The recovered Kalashnikov was sealed into parcel no. 4 and was taken into possession by him vide recovery memo. The IO on 07.09.2021 sent parcels no. 1 to 4 to FSL vide his applications and road permit certificates through constable Shamshir Ali. The reports whereof received by him and placed on file.

- (4). Upon receipt of case file for the purpose of trial, the accused was summoned, 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. Accordingly, the witnesses were

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summoned and the prosecution examined as many as 03 witnesses namely, Hashim Khan SI, Zaman Ali HC and Naimat Ali SHO as PW-1 to PW-3 respectively.


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

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

(7). Perusal of case file shows that the occurrence is unseen and unwitnessed. Naimat Ali SHO is complainant of the instant case but he himself is not the eyewitness of occurrence. None of the legal heir of the deceased have come forward to charge the accused facing trial for commission of offense. Even during the trial repeated summons were issued to the legal heir of deceased Khial Jamil but none of them turned up before the court. As per content of Murasila Ex. PA the complainant on receipt of information regarding the occurrence reached the spot where he has allegedly come to know that the offence was committed by the accused facing trial on the pretext of deceased's having illicit relations with Mst. Waseema Bibi, the wife of Muhammad Rehman but he has not disclosed the source of information. Even in his court statement he failed to utter a single word regarding the

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fact that as to how he came to know about the involvement of accused facing trial in commission of offense. In his cross examination as PW-3, he said that a lot of people were present on the scene of occurrence and it was the talk of town that the accused facing trial was involved in the commission of offense but he has not recorded statement of a single person in that respect. The motive as alleged in the Murasila Ex. PA is, that the deceased was having illicit relations with Mst. Waseema Bibi, the wife of Muhammad Rehman but not as iota of evidence has been collected by the IO in that respect. The only incriminating material against the accused facing trial is the alleged recovery of 04 empty shells of 7.62-bore from the spot of occurrence fired from the weapon of offence allegedly recovered from the accused facing trial. With respect to recovery of empties, the case of the prosecution is, that after registration of FIR, the IO came to the spot where he prepared the site plan on the pointation of complainant and during spot inspection 04 empties of 7.62-bore were recovered by the IO besides taking blood-stained earth from the spot. However, besides the fact that no person from public has been associated with the process of recovery when the


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complainant was cross examined on this point, he stated that

“On the spot besides the dead body, I did not find anything incriminating. I have not recovered anything incriminating from the spot”.

Similarly, with respect to recovery of the alleged weapon from accused facing trial, the case of prosecution is, that after drafting of the Murasila, inquest report and injury sheet the complainant on receipt of information regarding presence of accused near his house, reached on the spot, where the accused facing trial was found present. Accordingly, he was arrested and a Kalashnikov bearing no. 8737 was recovered from him. The complainant took into possession the Kalashnikov, vide recovery memo and drafted a Murasila for registration of separate case against the accused u/s 15AA but the said recovery memo is not available on this case file. Even copy of the recovery memo has not been placed on file. With respect to factum of recovery when the complainant was cross examined, he stated that


“I do not remember the exact time of the recovery of weapon of offense from the accused. I do not remember the exact number of alleged recovered weapon

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of offense. The weapon of offense was taken into possession by the IO on recovery memo. Many people were present at the time of recovery. I have not asked any person to become a witness of recovery. On arrival of the IO, the weapon was sealed in parcel”.

As evident from the aforementioned extract of the cross examination of complainant, despite availability of the people on the spot no private person has been associated with process of recovery. Besides above the complainant has also negated his version as detailed on case file i.e., as per report and recovery memo the alleged weapon of offense has been taken into possession by him on the recovery memo and thereafter, he has sealed the same in parcel but as per aforementioned statement of complainant the recovery memo has been drafted by the IO and he has also sealed the same in parcel.


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(8). 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, Gul Rehman, on acceptance of his application, is acquitted from the charges levelled against him u/s 265-K Cr.P.C. The accused is on bail. His

bail bonds stand cancelled and his sureties are discharged of the liabilities of bail bonds. The case property be destroyed after expiry of period provided for appeal/revision Consign.

Pronounced
22.03.2022


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CERTIFICATE

Certified that this judgment consists of seven (07) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 22.03.2022


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

