

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

SESSION CASE NO. : 5/2 OF 2022
DATE OF INSTITUTION : 13.07.2022
DATE OF DECISION : 24.11.2022

STATE THROUGH COMPLAINANT MOEEN ALI S/O MOMEEN ALI, AGED ABOUT 51 YEARS, R/O CASTE MANI KHEL, TAPA SABZI KHEL, MAMANAYE, PO KALAYA, TEHSIL LOWER, DISTRICT ORAKZAI

------(Complainant)

VS

1. GHAFFAR ALI S/O NASAR ALI, AGED ABOUT 54 YEARS, R/O CASTE MANI KHEL, TAPA SABZI KHEL, VILLAGE MAMANI DISTRICT ORAKZAI
2. WASIM ALI S/O REHMAN ALI, AGED ABOUT 36 YEARS, R/O CASTE MANI KHEL, TAPA SABZI KHEL, VILLAGE MAMANI DISTRICT ORAKZAI

------(Accused facing trial)

Present : Umar Niaz, District Public Prosecutor.
: Malak Imad Azam Advocate for accused facing trial.
: Syed Muzahir Hussain Advocate for complainant.

FIR No. 01 **Dated:** 01.01.2022
U/S: 302/34 PPC **Police Station:** Kalaya

JUDGEMENT
24.11.2022

The accused named above faced trial for the offence u/s 302/34 PPC vide FIR no. 01, dated 01.01.2022 of Police Station Kalaya.

- (2). The case of the prosecution as per contents of Murasila converted into FIR is; that the local police acting on information regarding the occurrence reached DHQ Hospital Mishti Mela where the complainant, Moeen Ali, the brother of deceased on 01.01.2022 at 1730 hours made a report to the local police to the fact that on that day he was present in his house when he heard reports of fire shots at which he came out of his house and saw the accused facing trial duly

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armed leaving the spot and that he found his brother Naseeb Ali murdered. The complainant charged the accused facing trial for the murder of his brother. The Murasila was drafted by Muqadar Khan ASHO which was sent to Police Station through constable Karim Hussain, on the basis of which, FIR was drafted by Asmat Ali AMHC.

(3). After registration of FIR, it was handed over to IO Minhaz Hussain SI for investigation. Accordingly, after receipt of FIR, he reached the spot. He took into possession blood-stained earth from the place of deceased vide recovery memo, 15 empties of 7.62 bore from near the place of accused Ghaffar Ali, 02 empties from near the place of accused Waseem Ali and packed the same into parcels no. 1 to 3 and on 01.01.2022 sent the above-mentioned parcels to FSL vide his applications and road permit certificates. He prepared site plan on the pointation of Rihan Ali, the son of complainant. He also took into possession blood-stained Shalwar, Kamees and vest of the deceased vide recovery memo, sealed the same into parcel no. 4 followed by sending it to FSL on 04.01.2022 through constable Ali Hussain.


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(4). Upon receipt of case file for the purpose of trial, the accused were summoned, copies of the record were provided to them u/s 265-C CrPC and formal charge was framed against them to which they pleaded not guilty and claimed

trial. Accordingly, the witnesses were summoned and the prosecution examined as many as 06 witnesses namely, Muhammad Shafiq SI, Shal Muhammad SHO, constable Ali Hussain, Dr. Aziz Ur Rehman, Moeen Ali and Rihan Ali as PW-1 to PW-6 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 the case file shows that the star witnesses of the occurrence are, the complainant Moeen Ali and the eyewitness Rihan Ali but none of them have seen the accused while making firing at the deceased rather they have alleged to have seen the accused while fleeing from the scene of occurrence. This fact has also been admitted by both the complainant and eyewitness in their statements as

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PW-5 and PW-6 respectively. Moreover, the medicolegal evidence available on file also does not support the version of prosecution, for, as per PM report Ex. PM, the deceased besides firearm injuries, had also sustained lacerated injuries caused through sharp object resulting into his death which does not synchronise with the mode and manner of occurrence as reported by complainant. Above all, the complainant in his cross examination has stated that they had charged the accused on the basis of suspicion, that now

they have satisfied themselves regarding the innocence of accused and that they have got no objection upon their acquittal.

(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, **Ghaffar Ali** and **Waseem Ali**, on acceptance of their application, are acquitted from the charges levelled against them u/s 265-K CrPC. The accused are on bail. Their bail bonds stand cancelled and their sureties are discharged of the liabilities of their bail bonds. The case property be destroyed after expiry of period provided for appeal/revision. Consign.




Pronounced
24.11.2022


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at Baber Mela

CERTIFICATE

Certified that this judgment consists of four (04) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 24.11.2022


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