

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

SESSIONS CASE NO. : 12/2 OF 2023
DATE OF INSTITUTION : 04.09.2023
DATE OF DECISION : 12.03.2024

STATE THROUGH COMPLAINANT MUHAMMAD IKRAM S/O ISLAM KHAN, CASTE SHEIKHAN, TAPA UMARZAI PO MISHTI MELA, TEHSIL CENTRAL, DISTRICT ORAKZAI

------(Complainant)

VS

GHANI BADSHAH S/O LUQMAN SHAH, AGED ABOUT 40/41 YEARS, R/O CASTE SHEIKHAN, TAPA UMARZAI, DISTRICT ORAKZAI

------(Accused Facing Trial)

Present: Umar Niaz, District Public Prosecutor.
: Shaheen Muhammad Advocate for complainant.
: Aziz Ur Rehman Advocate for accused facing trial.

FIR No. 64 Dated: 16.06.2023 U/S: 302 PPC
Police Station: Kalaya

JUDGEMENT
12.03.2024

The accused named above faced trial for the offence u/s 302 PPC vide FIR no. 64, dated 16.06.2023 of Police Station Kalaya.

- (2). The case of the prosecution as outlined in the FIR based on the Murasila is: that on 16.06.2023 the local police received information regarding the presence of a dead body in emergency room of THQ Hospital and upon arrival, they found the dead body of Muhammad Nawaz s/o Islam Khan in the emergency room where at 0830 hours the complainant, Muhammad Ikram, the brother of the deceased made a report to the local police to the fact that on the morning of the aforementioned day, his


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brother had gone to graze cattle in Gawak Dara Mountain. He accompanied by Ajmal were en-route to the mountain when they heard gunfire upon reaching the midway of the mountain. The complainant promptly informed the local residents who at the scene and found the complainant's brother, stained in blood, murdered by some unknown person/s with firearm. The report of the matter was verified by one, Ajmal by thumb impressing it which was drafted in shape of Murasila by ASHO Dilbar Ali. The Murasila was sent to the police station through constable Aleem UI Hassan, on the basis of which FIR was drafted by Muhammad Jameel MHC.

- (3). After registration of FIR, the initial investigation was handed over to Muhammad Hanif IO/PW-13. Accordingly, after receipt of FIR, the IO/PW-13 reached the spot and prepared site plan Ex. PB on pointation of the complainant Muhammad Ikram/PW-8. The IO took into possession blood-stained leaves from the place of deceased and sealed it into parcel no. 1 (Ex. P1) vide recovery memo Ex. PC. He also took into possession 03 empty shells of 7.62 bore from the place of accused and sealed it into parcel no. 2 (Ex. P2). The IO prepared recovery memo Ex. PC/1 vide which he took into possession blood-stained shalwar and Kamees of the deceased and sealed it into parcel no. 3 (Ex. P3). On 19.06.2023 he sent parcels no. 1 to 3 to the Forensic

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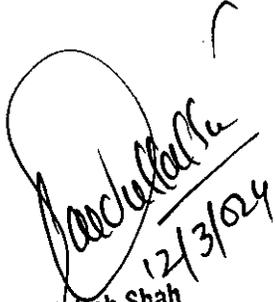

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Science Laboratory (FSL) vide his applications and road permit certificates through constable Gul Karim. The FSL reports was received and placed on file by the IO/PW-13 as Ex. PK and Ex. PK/1.

For further investigation the case was handed over to the Minhaz Hussain OII/PW-12 who recorded the statement of Mst. Kinar Jan/PW-9 u/s 161 CrPC and produced her before the court of Judicial Magistrate for recording her statement u/s 164 CrPC wherein she charged the accused facing trial Ghani Badshah for the murder of her son and shown herself present on the spot alleging herself to be the eyewitness of the occurrence. Upon her pointation, addition was made in the site plan which is Ex. PW 12/3, the accused was arrested and produced before the court of Judicial Magistrate. After completion of investigation, he submitted the case file to SHO who forwarded complete challan against the accused facing trial.

- (4). Upon receipt of the 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. The prosecution examined as many as 13 witnesses. The gist of the evidence is as follow:


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- I. Dr. Zahid, Medical Officer, THQ Kalaya is PW-1. He has conducted autopsy on the dead body deceased Muhammad Nawaz vide post-mortem report Ex. PM. He has also endorsed the injury sheet and inquest report of the deceased.
- II. Dilbar Ali ASHO is PW-2. The matter was reported by the complainant/PW-8 to him who drafted the Murasila Ex. PA. He has prepared injury sheet Ex. PW 2/1 and inquest report Ex. PW 2/2 of the deceased. He has arrested the accused vide card of arrest Ex. PW 2/3.
- III. Muhammad Ajmal appeared as PW-3. He has escorted the dead body of the deceased with the complainant to the hospital and verified the report of the complainant in the hospital.
- IV. Constable Abdul Wadood appeared in the witness box as PW-4 being marginal witness of recovery memos Ex. PC and recovery memo Ex. PC/1 vide which the IO has taken into possession blood-stained leaves from the place of deceased, 03 empty shells of 7.62 bore from the place of accused and blood-stained shalwar and kamees of the deceased.


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- V. Aftab Ahmad SHO is PW-5. He submitted complete challan Ex. PW 5/1 against the accused facing trial in the instant case.
- VI. Muhammad Jameel MHC appeared as PW-6. He has registered FIR Ex. PA/1 by incorporating the contents of Murasila Ex. PA therein. He has received parcels no. 1 to 3 and made its entry in register no. 19 Ex. PW 6/1. He has also made entries in DDs and handed over the parcels to the IO for its transmission to the FSL on 19.06.2023.
- VII. Arif Khan HC is PW-7. He has taken the Murasila Ex. PA to the police station and handed it over to the Moharrir for registration of FIR.
- VIII. The complainant, Muhammad Ikram as PW-8 repeated the same story as narrated in the Murasila Ex. PA. He further stated that he charged the accused Ghani Badshah for murdering his brother.
- IX. Mst. Kinar Jan, the mother of the deceased, appeared in the witness box as PW-9. She presented herself as the eyewitness and stated that on 16.06.2023 she saw the accused duly armed who committed the murder of her son


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and that she did not charge the accused initially as she was unaware of the courts and she was afraid of the accused. On 04.07.2023 she charged the accused facing trial in her court statement recorded u/s 164 CrPC.

- X. Constable Aleem Ul Hassan is PW-10. He has handed over the injury sheet and inquest report of the deceased to the doctor and handed over blood-stained garments of the deceased received from the doctor, to the IO.
- XI. Constable Gul Karim in his statement as PW-11 stated to have taken the case property i.e., parcels no. 1 to 3 to the FSL on 19.06.2023 and obtained its receipt which he has handed over to the IO upon his return from the laboratory.
- XII. The Investigating Officer, Minhaz Hussain is PW-12. He has recorded the statement of Mst. Kinar Jan u/s 161 CrPC, produced her before the court of Judicial Magistrate for recording her 164 CrPC statement, made addition in the site plan Ex. PW 12/3, produced the accused before the court of JM vide his applications Ex. PW 12/4 and Ex. PW 12/5 and submitted the case file to SHO for onward proceedings.


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XIII. Lastly, Investigation Officer Muhammad Hanif was examined as PW-13 who conducted initial investigation in the instant case. After registration of FIR, he has visited the spot, prepared the site plan Ex. PB and took into possession blood-stained leave (Ex. P1) from the place of deceased vide recovery memo Ex. PC. He has also taken into possession 03 empty shells of 7.62 bore from the place of accused vide the aforesaid recovery memo. Similarly, he has also taken into possession blood-stained shalwar and Kamees of the deceased vide recovery memo Ex. PC/1. On 19.06.2023 he has sent parcels no. 1 to 3 to FSL vide his applications and road permit certificates through constable Gul Karim. He has placed on file FSL reports Ex. PK and Ex. PK/1, DDs, PM documents, copy of register no. 19 Ex. PW 6/1 and submitted the case file to SHO for onward proceedings.

(5). After closure of evidence of the prosecution, statement of the accused 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 the learned DPP for the state assisted by


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counsel for the complainant and counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the state assisted by counsel for the complainant submitted that the accused facing trial has been charged for commission of the offence, the IO has conducted investigation on the spot, recovered blood-stained leaves from the place of deceased and 03 empty shells from the place of accused. The complainant, the witness of the recovery and the IO have been produced by the prosecution as witnesses, 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 of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

(7). Learned counsel for the defence argued that the accused facing trial is not directly nominated in the FIR rather he has been charged by the mother of the deceased in her statement recorded u/s 164 Cr.P.C and that too after more than 17 days of the occurrence besides the FIR has been lodged with a delay of more than 04 hours, that there is no ocular or circumstantial evidence available on file against the accused facing trial and that the prosecution has badly failed to prove to bring home the charge against the accused facing trial.


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(8). In the light of arguments advanced by the learned DPP for the state assisted by counsel for the complainant, arguments of the learned counsel for the defence and the available record, it is observed that admittedly the accused facing trial is not nominated in the FIR Ex. PA/1 rather he has been implicated by the mother of the deceased, Mst. Kinar Jan, the alleged eyewitness in her statement recorded u/s 164 Cr.P.C about 17 days after the occurrence. Regarding the report submitted by the complainant/PW-8, it is relevant to mention that during cross-examination, the aforementioned witness on one hand contradicted his own report by disavowing it, stating that;

"It is correct that the report recorded by the police is not mine. It is correct that the police tore the report which I made to them."

While on the other hand, repeated the same story in his examination in chief as narrated in the Murasila.

As per contents of Murasila Ex. PA, the complainant accompanied by one, Ajmal was en-route to the mountain where his brother Muhammad Nawaz had gone for grazing cattle when they heard reports of fire shots and after informing the local residents they reached there and found the dead body of his brother. The same story has been reiterated by the complainant/PW-8 during his testimony in the court. In contrast, Mst. Kinar Jan, the

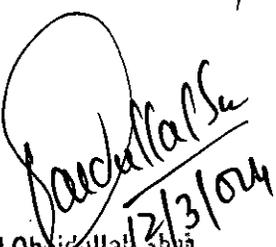

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alleged eyewitness of the occurrence, in her court statement as PW-9, discredited the statement of the complainant/PW-8. She claimed to have been present on the spot and have seen the accused committing the murder of her son, but neither the complainant/PW-8 nor the verifier of the report Muhammad Ajmal/PW-3 either in their statements or in the Murasila report asserted the presence of Mst. Kinar Jan/PW-9 on the spot, presenting two conflicting versions of events from the complainant's side burgeoning the burden of proof upon themselves to corroborate one side or the other. Additionally, Mst. Kinar Jan/PW-9 was not depicted in the site plan Ex. PB prepared on the instance of PW-8, the complainant, which raises doubts regarding her presence at the scene. It is puzzling why the complainant failed to include her in the site plan if she was indeed present, which casts doubt on her claimed presence.

In her testimony as PW-9, Mst. Kinar Jan stated that due to fear of the accused and her lack of knowledge about the law, she opted to remain silent and did not name the accused facing trial. Her silence regarding witnessing the accused while committing the murder of her son, due to fear of the accused, is not appealable to a prudent mind, especially in the circumstances of her son's tragic death despite the fact that the accused was present in the hospital at the time of reporting. She as PW-9 asserted that


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she had seen the accused murdering her son on the spot but in her cross examination she stated to have seen her son's dead body when it was brought to the house. Her inconsistency raises doubts about whether she was truly present at the scene or if she actually witnessed the accused committing the murder.

According to the statement of Mst. Kinar Jan recorded u/s 164 CrPC Ex. PW-12/2, the accused facing trial had threatened the deceased one day prior to the occurrence besides it is stated that the complainant party has got no enmity with the accused. Therefore, it is ironical that why someone would threaten an individual with whom he has no hostile relationship. Moreover, as per contents of the Murasila Ex. PA, the occurrence has taken place at 08:30 while the FIR was registered at 12:50. Dilbar Ali ASHO/PW-2 in his cross examination stated that the distance between the place of occurrence and the hospital can be covered in 30/40 minutes while. Considering this distance, the unexplained delay in filing the FIR raises suspicions that there may have been consultation and fabrication between the complainant, the police and potentially other parties interested in falsely implicating someone in the case.

After the arrest of the accused 04.07.2023, he was produced before the court of Judicial Magistrate and 03-days physical custody was granted but despite this no


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recovery or discovery has been made on pointation of the accused facing trial to connect him with the commission of offence. The circumstantial evidence available in the form of crime empties cannot suffice for the conviction of the accused facing trial as no weapon of offence has been recovered from his possession or as a result of his guidance. No doubt the post-mortem report Ex. PM has confirmed the death of deceased by means of firearm; however, its nexuses with the accused facing trial could not be established. As such the said corroborative piece of evidence is of no use.

- (9). In a criminal trial, the prosecution has to prove beyond any shadow of doubt their version connected with facts and material available on the record like a chain and the break-up of a single chain means cropping up of doubts and thereby providing exit to the accused nominated for such offence and when the break-ups are too much, the exits and doubts in the same number would follow. In the present case after detailed discussion above, it is held that sufficient dents and doubts are attracted to the case of prosecution thereby creating doubts and providing safe exits to the accused facing trial. The evidence led in the case is not confidence inspiring and have failed to prove the case against the accused facing trial beyond any shadow of doubts. Hence, benefit of doubt so cropped up must be extended in the favour of


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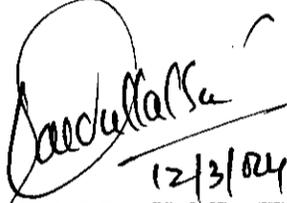
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accused facing trial. Accordingly, the accused **Ghani Badshah** is acquitted of the charges levelled against him through the FIR in question. Accused is on bail. His bail bonds stand cancelled and his sureties are released of the liabilities of bail bonds. 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.

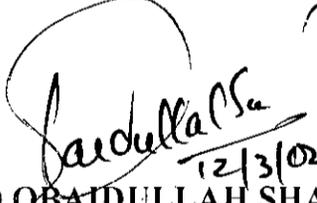
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CERTIFICATE

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

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