

(104)

IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II/JUDGE JUVENILE COURT/
CHILD PROTECTION COURT, ORAKZAI

Case no. 04/24 JC of 2024

Date of institution: 10.05.2023

Date of decision: 03.05.2024

Date of consignment:

The State through Saeed Ullah son of Noor Sahib Khan, caste Buland Khel,
District Orakzai (complainant)

Versus

Ameenullah son of Noor Sahib Khan caste Buland Khel, District Orakzai
(accused facing trial)

FIR NO. 04 DATED 05.03.2023 U/S 302 PPC

Ghiljo Police Station, Orakzai

JUDGMENT

1. Accused named above is facing trial in the subject FIR No. 04 dated 05.03.2023 u/s 302 PPC of Ghiljo Police Station, Orakzai.
2. Concise facts of the case are that the police party on receiving an information, rushed to emergency room of Civil Hospital, Thall and found the dead body of deceased Rasheedullah there, where Saeed-Ullah, the complainant and also brother of deceased, reported that on 05.03.2023 at 1645 hours, an altercation took place between his two brothers Ameenullah and Rasheedullah over going abroad and Dubai visa, whereat, Ameenullah (accused) got annoyed and opened fire at Rasheedullah, who got hit near left armpit and died on the spot; that the accused decamped from the spot; that occurrence was witnessed by complainant and the motive behind the commission of offence was stated to be visa issue, therefore, he has charged Ameenullah for murder of Rasheedullah.

ayy
03/05/2024

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

105

3. On 06.03.2023, accused was arrested, investigation was conducted and challan under Juvenile Act was submitted for trial against him.
4. Accused was summoned through *zamima bay*. On his attendance, the copies of the case furnished to accused under section 265-C Cr.PC. The accused was charge sheeted u/s 302 PPC, to which he pleaded not his guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. PW-1 is Rooh-ul-Ameen, who stated that recovery memos, Exh.PW 1/1 and Exh.PW 1/2, were prepared in his presence by investigation officer, who has also prepared pointation memo, Exh.PW 1/3, which he has signed correctly. Arifullah ASI was examined as PW-2, who has incorporated the report of complainant into murasila, Ex.PA-1, prepared injury sheet, Exh.PW 2/1, and inquest report, Exh.PW 2/2. PW-3 is the statement of Muharrir Abdul Manan, who incorporated contents of murasila into FIR, Exh.PZ, and kept the case property in *malkhana* for safe custody. Statement of Tajmeen Khan ASHO was recorded as PW-4, who has arrested the accused on 06.03.2023 and issued his card of arrest, Exh.PW 4/1. PW-5 is the statement of Muhammad Naseem Gul SI, who has submitted complete challan before the court in instant case against the accused. Dr. Sajjad, Medical Officer THQ Thall was examined as PW-6, who has conducted the post-mortem examination of deceased Rasheedullah. He referred the injury sheet, Exh.PW 6/1, inquest report, Exh.PW 6/2, and post mortem report, Exh.PM. Saeedullah, the complainant, was examined as PW-7, who stated that on 05.03.2023 at about 1645 hours, he was present in his second house when in the meanwhile,

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

02/05/2024

(106)

widow of his deceased brother told him that his brothers Rasheedullah and Ameenullah were quarreling, whereat, he went to their house and found his brothers quarreling on matter of visa for Dubai, however, after altercation, his deceased brother slapped to the accused, who got hyper and went to his other house, from where the accused took rifle and went to the house of Rasheedullah and made two fires at him, out of which one fire was hit on the wall and the second hit the deceased, who sustained injury. He stated that after receiving the injury by deceased, he with the help of his neighbor has shifted his brother to the hospital in private pickup, where he has made the report to the police and the murasila was drafted, Ex.A-1, which was thumb impressed by him and verified by Rahatullah. He also stated that the investigation officer has prepared the site plan on his pointation and recorded his statement. Abdul Malik OII was examined as PW-8, who has conducted the investigation in instant case, prepared site plan, Exh.PW 8/1, took into possession blood stained earth from the place of deceased and sealed in parcel no. 1. He has also recovered one empty of 12 bore, which was sealed in parcel no. 2 and prepared the recovery memo in this regard. He has prepared list of legal heirs, Exh.PW 8/2, of the deceased and vide application, Exh.PW 8/3, produced the accused before Judicial Magistrate for physical custody. On 08.03.2023, he has prepared pointation memo in the presence of marginal witnesses and accused and recovered a rifle 12 bore on the pointation of accused, which was sealed in parcel no. 3. Upon this recovery, he made addition at overleaf of the site plan, Exh.PW 8/4. Vides application, Exh.PW

awf /
08/05/2024

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Haragu

(107)

8/5, he produced accused before Judicial Magistrate for recording his confessional statement and wrote an application, Exh.PW 8/6, to FSL for the examination of blood stained earth and recovered garments. He also made an application, Exh.PW 8/7, to FSL for chemical examination of recovered rifle and empty. That he himself has taken the parcels no. 1 to 3 to FSL Peshawar vide road permit certificate, Exh.PW 8/9. He produced FSL reports, Exh.PK and Exh.PK/1, and on recovery of weapon of offence, he added section 15-AA in the instant case and in this regard his report is Exh.PW 8/10. He produced blood stained earth in parcel no. 1, Exh.P1, one empty of 12 bore parcel no. 2, Exh.P2, blood stained shalwar of deceased in parcel no. 3, Exh.P3, and one short gun 12 bore in parcel no. 4, Exh.P4. After completion of investigation, he handed over the file to SHO for submission of challan. Statement of Zar Wali was recorded as PW-9, who stated that he was present with ASI Arifullah in THQ Hospital, where ASI handed over him murasila, which he took to the police station and handed over to Muharrir of the police station and FIR was registered. Yaqoot Khan was examined as PW-10, who took the injury sheet and inquest report to the doctor for post-mortem, which were handed over to him by ASI Arifullah in the hospital. After post-mortem examination, the doctor handed over him blood stained garments of the deceased, which he handed over to investigation officer at Police Station check post Buland Khel. PW-11 is the statement of Shazim Khan, who has identified the dead body of Rasheedullah to police and doctor during post mortem examination. Statement of Rahatullah was recorded as PW-

ayy
29/05/2024

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

12, who stated that complainant has made report to the police in the hospital and the murasila was drafted in his presence.

- 7. The prosecution closed its evidence.
- 8. The statement of accused was recorded under section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In reply to a question, he neither wished to be examined under oath nor to produce evidence in defense.
- 9. Arguments heard and record perused.
- 10. Learned DyPP for State argued that the prosecution has proved the case against accused beyond shadow of doubt; that prosecution witnesses are consistent in their statements; that FSL result is in positive; that there is no malafide on part of prosecution to falsely involve the accused in the case, thus, requested to award him maximum punishment.
- 11. Counsel for accused argued that prosecution has failed to prove its case against accused beyond shadow of reasonable doubt; that prosecution evidence contradicts & suffers major inconsistencies; that there is wide conflict in the first information report and the statement of complainant; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that the accused has not confessed his guilt; that case against accused is not proved and request is made for the acquittal of accused.
- 12. Viewing the arguments advanced by learned counsel for parties and record on file, it is observed that complainant has charged accused for murder of his brother Rasheedullah by making fire at him. It is known to all that in criminal cases, prosecution is always duty bound

accy
03/05/2024

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

to prove the allegations against the accused and the most reliable evidence in this regard is direct evidence that helps court to reach to just conclusion of case.

13. Before parting with my judgment, I would like to mention that FIR is not an encyclopedia, which must contain each and every minute detail rather it is aimed at to set the law into motion. This is to be kept in mind that first information report is not be all and an end all of every criminal case nor it is a substantive piece of evidence, which can only be used for limited purpose like the corroboration and contradicting the maker thereof or to show that the implication of the accused was not an afterthought. Recording of FIR was to obtain firsthand information of occurrence, in order to exclude possibility of fabrication of story; or consultation or deliberation, and to safeguard the accused of such like happenings. It is well established law that registration of an FIR against a person, would not prove his guilt till decision by court of competent jurisdiction because such report could not be used as substantive piece of evidence against any accused unless proved in accordance with law, the wisdom is drawn from case laws reported in 2002 PCrLJ 1902 & 2016 YLR 1441 [Lahore]. Likewise, it is not legal requirement for provider of such an information to canvass the whole scene of the occurrence of a cognizable offence giving description and details of accused, details of the weapon used by him, his specific role, motive behind the occurrence, and the names of eye-witnesses etc. but to set the law into motion and to punish the wrong doer, the wisdom is drawn from case law reported in PLD 2016 Supreme Court 484.

02/05/2024

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

(112)

14. This case is also one of the examples of above discussed situation, where the complainant is not only the brother of victim/deceased but also of the accused and he has appeared before the court as sole eye-witness of the occurrence. Contents of the first information report, however, when studied keeping in juxtaposition with the statement of complainant (PW-7), it revealed missing of some facts happened before and after the occurrence. The missing of those facts though appeared to be a dent in the prosecution case, however, when these facts were seen in corroboration with the medical evidence, recovery and FSL reports etc., it reflected complete coherence in prosecution story and the dent appearing therein vanished away.

15. It is worth to note that occurrence has taken place on 5th March 2023 and the statement of complainant was recorded on 08th April 2024 after more than a year of occurrence, where he was subjected to tough test of cross-examination but the defense failed to shatter him materially. He has not only remained consistent in his stance but also provided complete detail of facts stating that on eventful day at about 1645 hours, he was present in his second house when in the meanwhile, widow of his deceased brother told him that his brothers Rasheedullah and Ameenullah were quarreling, whereat, he went to their house and found his brothers quarreling on matter of visa for Dubai, however, after altercation, his deceased brother slapped to the accused, who got hyper and went to his other house, from where the accused took rifle and went to the house of Rasheedullah and made two fires at him, out of which one fire was hit on the wall and the second hit the deceased, who sustained injury. In his statement, he

awp/
MEL
03/05/2024

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

(111)

also stated that after receiving the injury by deceased, he was lying there in injured condition for about 15 minutes, where after, he with the help of his neighbor has shifted his brother to the Thall Forte, where his brother expired after around 10-20 minutes and they have first shifted the deceased to the house at Asr time and then to the hospital at night time. He also stated that his statement was penned down by police officials of the Thall police station, which is also stated by Rahatullah (PW-12), but he has also endorsed the presence of police officials of Ghiljo Police Station in hospital, which above facts find corroboration from the statement of doctor (PW-6), who stated that the dead body of the deceased was brought to him by police officials of both the police stations at 08 pm (2000 hours), where after, he has conducted the autopsy, according to which the probable duration that elapsed between the injury and death was 2½ to 3 hours and between death and post-mortem was half to one hour, which means that the deceased would have died between 1700 hours to 1730 hours timings, which exactly commensurate with the time of death of deceased in the Thall Forte and thus excludes any possibility of false accusation and inconsistency in the prosecution story.

2
 aey
 03/05/2024

16. It is on record that the investigation officer has prepared the site plan on the pointation of complainant and according to site plan, Exh. PW 8/1, the presence of deceased has been shown at point '1' and presence of accused at point '3', from where he has made fire at the deceased, which both points are though shown situated at distance of 10 feet from each other, while, complainant (PW-7) in his statement disclosed that the distance between accused and deceased was 4/5

Abdul Basit
 Addl. District & Sessions Judge-II
 Orakzai at Baber Mela,
 Hangu

112

feet, however, when the post-mortem report is perused, it provided the presence of charring marks sign on the body of deceased, which provides that distance shown by complainant in his statement was accurate because according to the statement of doctor (PW-6), the charring marks are caused of firing made from a short distance. On same way, the investigation officer has recovered the 12 bore empty shell from point 'A', which is situated at distance of two feet on right side of the accused present at point '1', which further clarifies that when the accused has made fire at deceased, the 12 bore empty ejected from the rifle naturally fell on right side of the accused and corroborates the prosecution case.

17. Similarly, when the recovered 12 bore double barren rifle without number along with 12 bore empty marked 'C' and five 12 bore live cartridges for tests were sent for examination, the FSL report, Exh. PK, revealed that the one 12 bore crime empty marked 'C' was fired from the left barrel of 12 bore (DBBL) shotgun in question in view of similarity in striker pin marks and breech face marks etc., which further shows that the recovery of 12 bore crime empty from point 'A' and the recovery of 12 bore double barrel rifle in question from additional point 'A', Exh.PW 8/4, prepared on pointation of accused were genuine and concludes that accused has fired at the deceased with rifle in question due to which he died.

18. Importantly, the FSL report, Exh.PK/1, about the blood stained earth recovered from place of accused and his blood stained saleti colored shalwar sent for forensic science laboratory through sealed parcels no. 1 and 3 provides that those blood stains were of human blood of

Handwritten signature and date: 03/05/2024

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

the same group, which further strengthen the presence of deceased at point '3' at the time of commission of offence.

19. So far statement of competence of doctor with respect to conduct the post-mortem of the deceased is related, it is held that though the doctor (PW-6) has candidly stated that in those days he was not legally authorized to conduct the autopsy of deceased being resident of another district, however, he has explained that he has conducted the said autopsy on direction of Medical Superintendent; therefore, the post-mortem report cannot be discarded for this reason on two grounds; first that he has not conducted the autopsy at his own but on the direction of Medical Superintendent concerned and second that he was a regular doctor and being doctor, he had full knowledge as to how to conduct the autopsy/post-mortem thus it makes no difference that in which district he was residing.

20. The statement of investigation officer (PW-8) is also in coherence with the material and evidence available on file. Even, he remained consistent with his time of departure to the place of occurrence, time in respect of his visit to hujra and then to spot. He even provided exact detail about the police officials accompanied him to the spot on different occasions and the fact that no elders were present with him during the spot inspection and he did not make any house search of the accused on that day, which is also in corroboration with the statement of PW-1. The complainant stated that the investigation officer has not recorded the statements of his parents, which fact is also confirmed by investigation officer in his statement.

02/05/2024

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

114

21. Though, the widow of the deceased was an important witness of the occurrence and neither the investigation officer has recorded her 161 CrPC statement nor she has been produced as witness before the court but this fact must be kept in mind that in Pashtun's society, the appearance of female inmates in bazars or public places is against the norms of Pashtun culture, which is considered as to bring disgrace, dishonor and insult to the family, whereas, the occurrence has taken place in district Orakzai, which is newly merged district, where the appearance of female folks in public is often taken more serious than general Pashtun localities; therefore, non-recording of her statement by the investigation officer or her non-appearance before the court as witness cannot be taken into account as a serious flaw.

22. As far statement of complainant that accused has made two fires at deceased, out of which the one was hit on the wall and the second to the deceased, it is held that statement of investigation officer clearly provides that he has recovered only one 12 bore crime empty from the spot, whereas, he has not observed any bullet hit marks on wall of the house, which part of statement of the complainant appears to be nothing but to extend a favor to accused being his brother, which is understandable because on one side, he has permanently lost his brother Rasheedullah and on the other side, the conviction of the accused shall deprive him from his second brother, nevertheless, the law is blind and never driven by emotions/sympathies.

23. The statement of marginal witness to recovery memos (PW-1) is also consistence with the prosecution case. He has corroborated stating that the investigation officer has prepared the site plan on

all
11/11/24
03/05/2024
Abdul Basit
District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

(113)

pointation of complainant; that there were cut marks present on the blood stained shirt of the deceased, which was handed over to the investigation officer on same day at 11.30 am; that they have proceeded to the spot along with accused on whose pointation the investigation officer has prepared the pointation memo, which was admittedly not signed by the accused. Even, he endorsed the fact of recovery of rifle beneath the cot pointed out by the accused. In the similar way, the murasila drafter (PW-2) also provided accurate details and endorsed the fact that there was one injury wound on the left armpit of the deceased, which if seen in line with the statement of doctor, it exactly provides the existence of a large laceration on the left upper arm medially size about 4 inches in length and half inches in width with 7 pellets entries being very closed to each other.

24. Admittedly, the mode and manner mentioned in the FIR and narrated by the complainant in his statement in respect of commission of the offence by the accused are in contrast, however, it nowhere creates a single shadow of doubt that a dispute erupted between accused and deceased on the motive of arranging a visa for Dubai, whereat, the accused has made fire at deceased, who died as consequence thereof. Had there been any shadow of doubt about making of fire by the accused or involvement of third person in it, then, its benefit must have been extended to the accused. Even, the accused did not opt to record his statement on oath nor did produce any evidence in his defense. Even, he could have produced his mother or sister in law (widow) in his defense but he was having nothing to defend despite he was given full opportunity, therefore, he did not produce them.

Abdul Basit
District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu
02/05/2024

116

25. In the backdrop of above discussion, it is held that prosecution has proved the charge against the accused beyond shadow of doubt on strength of cogent, reliable, unimpeachable, un-rebuttable evidence, which provides coherency; therefore, leads to the circumstances to make one believe that accused has actually committed the murder of his brother Rasheedullah; therefore, I convict Ameenullah son of Noor Sahib Khan under section 302 PPC.

26. Since, accused is the juvenile and there is maximum probability of his reformation, whereas, he has committed the murder of his brother under the heat of discussion on subject of arranging the visa for him for Dubai, which resulted into an altercation between him and the deceased, due to which he could not have controlled his emotions; therefore, keeping in mind these facts as mitigating circumstances, I sentence accused Ameenullah s/o Noor Sahib Khan the fourteen years simple imprisonment under section 302 (c) PPC for the murder of Rasheedullah. He is further sentenced to pay compensation of Rs. 500,000/- (five lac) to legal heirs of deceased. The amount of fine so realized shall be paid to legal heirs of Rasheedullah as compensation under section 544-A CrPC as per their Shari shares. In case of default of payment of fine, the convict shall undergo further simple imprisonment for a term of six (06) months.

27. Benefit of section 382-B CrPC is extended to convict Ameenullah. The amount of fine and compensation shall be recoverable as arrears of land revenue from the person and estate of the convict, which will be paid to the legal heirs of the deceased as per their legal and Shari shares.


Handwritten signature and date: 03/05/2024

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

117

28. Certified copy of this judgment and order is delivered to the convict Ameenullah free of cost with direction that he is at liberty to file an appeal before august Peshawar High Court as per law and to this effect his thumb impression is obtained on margin of order sheet as an acknowledgment receipt. Another copy is sent to the District Public Prosecutor, Orakzai within the meaning of section 373 of The Criminal Procedure Code, 1898.
29. Case properties, if any, are confiscated to the State and be dealt with in accordance with law after expiry of period of appeal or revision.
30. File consigned to record room after completion and compilation.

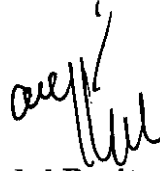
Announced
03.05.2024


Abdul Basit
Additional Sessions Judge-II,
Judge Juvenile Court/CPC,
Orakzai

CERTIFICATE

It is certified that this judgment consists of fourteen (14) pages and each page is duly signed by me after necessary correction.

Announced
03.05.2024


Abdul Basit
Additional Sessions Judge-II,
Judge Juvenile Court/CPC,
Orakzai