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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II/JUDGE SPECIAL COURT,
ORAKZAI

Case No. 29/03 of 2023

Date of institution: 17.10.2023

Date of decision: 03.06.2024

Date of consignment:

The State through Nasir Ahmed SHO, Kalaya Police Station, Orakzai (the complainant)

Versus

Khaleel-ur-Rehman son of Daulat Shah, Qaum Utman Khel, Tappa Bazran Khel, Khalki Khel, Tehsil Lower, District Orakzai (accused facing trial)

FIR N. 78 DATED 30.07.2023 U/S 15-AA
OF KALAYA POLICE STATION, ORAKZAI

JUDGMENT

1. Accused named above is facing trial in the subject case.
2. Concise facts of case are that local police on receipt of information about incident rushed to the place of occurrence, where they got to know that Khaleel-ur-Rehman son of Daulat Shah has committed the murder of his sister-in-law Mst. Bibi Meena w/o Hameed-ur-Rehman and Shafi Muhammad s/o Yarwali Shah by making firing on seeing them in objectionable condition/illicit relation in the residential room of Mst. Bibi Meena; that accused Khaleel-ur-Rehman had ran away from the spot after commission of offence; that dead bodies of both the deceased were lying on the spot; however, no one from the area was ready to report the matter; that according to the information, husband of Mst. Bibi Meena was abroad to support his family; that Shafi Muhammad and Mst. Bibi Meena were killed by Khaleel-ur-Rehman for keeping illicit relationship, hence, the FIR.

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3. Accused was arrested and complete challan submitted for trial.
4. Accused was summoned through *zamima bay*. On his attendance, copies of the case furnished to accused under section 265-C Cr.PC. The accused was charge sheeted u/s 15-AA, to which he pleaded not his guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. PW-1 is the statement of Humayun Khan, who incorporated the contents of murasila into FIR, Exh.PA, and kept the case property in *malkhana* for safe custody; he made entry in register no. 19, Exh.PW 1/1, and produced copies of register no. 21, Exh.PW 1/2 to Exh.PW 1/3; he also produced arrival & departure report, Exh.PW 1/4. Nasir Ahmed SHO was examined as PW-2, who is complainant in instant case; he verified the contents of FIR; he prepared injury sheets and inquest reports of both the deceased, Ex.PW-2/1 to Ex.PW-2/4; he prepared the murasila report, Ex.PW-2/5, arrested the accused and issued his card of arrest, Exh.PW 2/6; that he has also prepared the complete challan, Exh.PW 2/7 and Exh.PW 2/8. The statement of Manzoor Ali constable was recorded as PW-3, who has taken the dead body of Shafi Muhammad along with injury sheet and inquest report to Hospital and after post mortem, he brought the blood stained garments and bullet to the police station. Statement of Lal Ahmed constable was recorded as PW-4, who has taken the dead body of Mst. Bibi Meena along with injury sheet and inquest report to the hospital and after post mortem, he brought the blood stained garments, five plastic tubes and one glass tube to the police station. Menhaz Hussain OII was examined as PW-5, who has conducted the investigation in instant case; he has prepared site plan, Exh.PW 5/1,

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he took into possession blood stained cotton from the place of deceased Shafi Muhammad and sealed into parcel no. 01, Exh.P-5, and blood stained blanket piece, which was sealed into parcel no. 02, Exh.P-6; he also took into possession 07 empties of .30 bore and sealed into parcel no. 03, Exh.P-7, and to this effect he prepared the recovery memo, Exh.PW 5/2; he prepared list of legal heirs, Exh.PW 5/3 and Exh.PW 5/4, of the deceased as well as prepared recovery memo, Exh.PW 5/5, through which he took into possession blood stained garments of deceased Shafi Muhammad and sealed into parcel no. 04, Exh.P-1; the spent bullet was sealed into parcel no. 05 Exh.P-2; he also prepared a recovery memo, Exh.PW 5/6, through which he took into possession blood stained garments of female deceased, which were sealed into parcel no. 06, Exh.P-3, and 05 plastic tubes along with one glass tube sealed into parcel no. 07, Exh.P-4; accused was produced by him before Judicial Magistrate vide application, Exh.PW 5/7; he also drafted application to FSL, Exh.PW 5/8; prepared pointation memo, Exh.PW 5/9, and also took into possession a pistol along with fixed charger of .30 bore through recovery memo, Exh.PW 5/10, which were sealed into parcel no. 08, Exh.P-8; he also prepared the site plan on pointation of accused, Exh.PW 5/11, and vide application, Exh.PW 5/12, produced accused before the Judicial Magistrate for recording confessional statement; he vide application, Exh.PW 5/13, applied for addition of section 15-AA, and produced the FSL reports, Exh.PW 5/14 and Exh.PW 5/15; on completion of investigation, he handed over the case file to SHO for submission of the challan. PW-6 is the statement of Gul Kareem constable, who is the marginal witness to the recovery memos and


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pointation memo; he took parcels no. 1-7 to FSL on 01.08.2023, he also took parcel no. 8 to FSL on 08.08.2023. Dr. Farooq Azam, Medical Officer THQ Hospital Kalaya was examined as PW-7, who has conducted the post-mortem examination of the deceased Shafi Muhammad; he has exhibited the injury sheet, Exh.PW 7/1, inquest report, Exh.PW 7/2, and post mortem report, Exh.PM. PW-8 is the statement of Ayub Khan, who has accompanied the dead body of deceased Mst. Bibi Meena to the hospital and identified the dead body of Mst. Bibi Meena to police and doctor during post mortem examination. Statement of Wajidullah constable was recorded as PW-9, who has taken the murasila to the Police Station and handed over to the Muharrir for registration of case. Dr. Syed Aisha Bahar, Medical Officer THQ hospital Kalaya was examined as PW-10, who has conducted the post-mortem examination of deceased Mst. Bibi Meena; she exhibited the injury sheet, Exh.PW 10/1, inquest report, Exh.PW 10/2, and the post mortem report, Exh.PM. PW-11 is the statement of Laiq Shah, who has accompanied the dead body of deceased Shafi Muhammad to the hospital and identified the dead body of Shafi Muhammad to the doctor during the post mortem examination.

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7. The prosecution closed its evidence.
8. The statement of accused was recorded under section 342 CrPC, wherein, he again denied from the charges leveled against him and adhered to his innocence. In reply to questions, he neither wished to be examined under oath nor to produce evidence in his defense.
9. Arguments heard and record perused.

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10. Learned Dy.PP for State argued that the prosecution has proved the case against the accused beyond shadow of reasonable doubt; that prosecution witnesses are consistent in their statements; that FSL result is positive; that accused has committed murder of two persons with the weapon in question; that there is no malafide on the 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 reasonable shadow of doubt; that the prosecution evidence contradicts and suffers major inconsistencies; that accused has not confessed his guilt; that FSL report provides that fire was not made from the recovered pistol; that case against accused is not proved and request is made for his acquittal.
12. In view of arguments advanced by learned counsel for parties, the evidence and record before the court, it is held that accused has been charged for murder of two person with the pistol in question. The record provides that investigation officer (PW-5) has recovered seven .30 bore crimes empties, Exh.P7, from the place of occurrence, while, the statement of investigation officer also provides that he has recovered .30 bore pistol i.e. weapon of offence from the living room of the accused on his pointation, which both recovered empties and crime pistol were sent to the forensic laboratory for chemical examination but the FSL report, Exh.PW 5/15, clearly provides that though the seven .30 bore crime empties marked C1 to C7 were fired from one and the same .30 bore weapon, however, those seven.30 bore crime empties were not fired from .30 bore pistol, which was

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allegedly recovered on the pointation of accused and sent to the laboratory, and thus leads to the inference that the alleged recovered pistol was not used in the commission of offence and casts serious doubt about commission of offence by accused.

13. The record also provides preparation of two sites plans; first prepared on the pointation of complainant, which is Exh.PW 5/1, and second was prepared on pointation of accused, which is Exh.PW 5/11. Both site plans provide details about the place of occurrence and room of the accused on second floor but in both sites plans, room of accused is shown at different places. Even, the investigation officer (PW-5) also deviated saying that room of the accused was on first floor and room of deceased was on the ground floor. Even, the statement of investigation officer is in contrast with the points attributed to both the deceased in the site plan, Exh.PW 5/1, as he alleged that both points no. 1 and 2 were on double bed lying in the room of deceased having no space between them, while, contents of site plan shows point no. 1 to be on bed and point no. 2 to be on ground.
14. In like manner, the investigation officer has stated to have recovered the pistol from residential room of accused, while, Gul Kareem (PW-6), marginal witness to recovery memo, stated that the investigation officer has recovered the pistol from the room of deceased and the recovery memo of the pistol was prepared in the police station, which leads to inference that marginal witness to the recovery memo has not accompanied the investigation officer to the spot and signed the recovery memo in police station. The presence of Gul Kareem at the place of occurrence and even his signing the recovery memo

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becomes further doubtful when he stated that he usually signs in English and he had signed all the recovery memo in English but perusal of recovery memo, Exh.PW 5/10, admittedly provides that it was signed by him in Urdu and therefore reflects that someone else would have signed this in his place and thus makes the recovery of weapon of offence etc. doubtful.

15. On same way, complainant (PW-2) stated that constables Manzoor Ali and Lal Ahmad did not return to the spot and he did not meet them till his arrival to the police station at 07.20 pm, which means that he met them on same day after 07.20 pm, however, constable Lal Ahmad negated him stating that he did not meet him on that day. Likewise, Lal Ahmad (PW-4) stated that when he went to the police station at 11.50 am, investigation officer (PW-5) was already present there; however, the statement of investigation officer shows that at relevant time, he was present on the spot and then left for the hujra of deceased Shafi Muhammad at 01.00 pm and reached to the police station at 07.30 pm, which is not only a wide contradiction in the statements of both these witnesses but also infers that Lal Ahmad did not accompany the complainant to the spot and his name was later on entered in the record to fill up the lacunae.

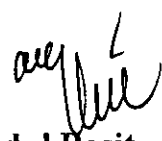
16. Statement of complainant provides that there were other brothers of the accused also living in the house; however, there is not an iota of evidence on file to establish that the pistol in question was in fact the ownership of accused and he has committed the offence. There is no confession of accused on record nor did he plead his guilt before the court rather he has flatly denied the commission of offence.

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- 17. Importantly, the occurrence has allegedly taken place on 30.07.2023 and as per statement of investigation officer (PW-5), the custody of accused was handed over to him on very day of the occurrence but statement of complainant (PW-2) provides that accused has himself surrendered to him on 31.07.2023, where after, he has prepared his card of arrest and the custody was handed over to the investigation officer, which also creates doubt about day of arrest of accused.
- 18. In the backdrop of my above findings, this court concludes that prosecution has failed to bring an iota of evidence on record to prove the fact that accused has committed the offence; therefore, in absence of coherent, corroborative and solid evidence and while extending the benefit of doubt, the accused Khaleel-ur-Rehman is acquitted from the charge leveled against him. As he is behind the bars; thus, he be released forthwith if not required in any other case.
- 19. Case property i.e. pistol is confiscated to the State and be dealt with in accordance with law after expiry of period of appeal or revision.
- 20. File consigned to record room after completion and compilation.


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CERTIFICATE

It is certified that this judgment consists of eight (08) pages and each page is duly signed by me after necessary correction.

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