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**IN THE COURT OF ABDUL BASIT**

ADDITIONAL SESSIONS JUDGE-II/JUDGE SPECIAL COURT,

ORAKZAI

Case no. 10/02 of 2023

Date of institution: 02.06.2023

Date of decision: 05.06.2024

Date of consignment:

The State through Janan Ali son of Ahmed Ali, caste Bar Muhammad Khel, Tappa Alat Khel, village Khandoo, District Orakzai (complainant)

Versus

1. Muqaddas Khan s/o Yousaf Ali
2. Rang Wali s/o Aman Ali both resident of Qaum Bar Muhammad Khel, Tappa Alat Khel, village Khandoo, District Orakzai (accused)

**FIR No. 08 DATED 08.03.2023 U/S 302/34 PPC**  
**KUREZ BOYA POLICE STATION, ORAKZAI**

**JUDGMENT**

1. Accused named above are facing trial in the subject case.
2. Concise facts of the case are that the police party on receiving an information, rushed to THQ Hospital, Kalaya and found dead body of deceased Mudassir Ali s/o Kamtar Ali in emergency room, where Janan Ali, the complainant and also the paternal uncle of deceased, reported that on 07.03.2023 at 2330 hours, he along with his nephew Mudassir Ali (deceased) and Zeeshan Ali were busy in cutting and digging the roots of walnut trees in their landed property, when in the meanwhile, Muqadas Khan and Rang Wali duly armed came there and Rang Wali ordered Muqadas Khan to fire; that on *lalkara* of accused Rang Wali, accused Muqadas Khan opened fire at Mudassir Ali with intention to kill, whereat, Mudassir Ali got hit and died on the spot; that the accused decamped from the spot; that occurrence was witnessed by him and Zeeshan Ali; therefore, he has charged Rang Wali and Muqadas Khan for murder of Mudassir Ali.

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3. Accused were arrested and complete challan received for trial.
4. Accused Rang Wali being on bail was summoned while the accused Muqadas Khan being in custody was summoned through *zamima bay*. On their attendance, copies of the case furnished to them under section 265-C Cr.PC. The accused were charge sheeted u/s 302 r/w/s 34 PPC, to which they did not plead guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. PW-1 is the statement of Intekhab Ali, who incorporated contents of *murasila* into FIR, Exh.PA; kept the case property in *malkhana* for safe custody and made entries in register no. 19, Exh.PW 1/1. PW-2 is the statement of Khalid Ali DFC, who was entrusted warrant 204 Cr.PC against accused Muqadas Khan and Rang Wali. Statement of Hashim Khan OII was recorded as PW-3, who has conducted the investigation in the instant case, prepared site plan, Exh.PB, on the pointation of complainant, took into possession blood stained earth from the place of deceased and sealed in parcel no. 1, Exh.P-1, recovered one empty shell of 7.62 bore and sealed into parcel no. 2, Exh.P-2, prepared the recovery memo, Exh.PW 3/1, and also took into possession blood stained garments of deceased Mudasir Ali and sealed into parcel no. 3, Exh.P-3, vide recovery memo, Exh.PW 3/2; he has prepared list of legal heirs of the deceased, Exh.PW 3/3, he has drafted application, Exh.PW 3/4, for obtaining warrant u/s 204 Cr.PC and another application, Exh.PW 3/5, for publication u/s 87 Cr.PC, he sent parcels no. 1 to 3 to FSL through constable Khayal Hussain vides applications, Exh.PW 3/6 to Exh.PW 3/7, and scribed road permit certificate, Exh.PW 3/8 to Exh.PW 3/9; he placed on file FSL reports, Exh.PZ and Exh.PZ/1, he annexed daily diary regarding

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arrival and departure of SHO and investigation officer etc. which are Exh.PW 3/10, to Exh.PW 3/12; he arrested accused and issued his card of arrest, Exh.PW 3/13, that he vide application, Exh.PW 3/14, produced the accused before Judicial Magistrate for police custody, he prepared pointation memo, Exh.PW 3/15, vides application Exh.PW 3/16 produced the accused for further police custody. After completion of investigation, he handed over the file to SHO for submission of challan. Hassan Jan SI was examined as PW-4, who has incorporated the report of complainant into murasila, Exh.PB; prepared injury sheet, Exh.PW 4/1, and inquest report, Exh.PW 4/2; he submitted challan u/s 512 Cr.PC, Exh.PW 4/3, arrested accused Muqadas Khan and issued his card of arrest, Exh.PW 4/4; he also submitted supplementary challan against the accused Muqadas Khan and Rang Wali, Exh.PW 4/5 and Exh.PW 4/6. PW-5 is Khayal Hassan FC, who is marginal witness to recovery memos; he has also taken parcels no. 1-3 for FSL; he is also marginal witness to the pointation memo. Dr. Farooq Azam, Medical Officer THQ Kalaya was examined as PW-6, who has conducted the post-mortem of deceased Mudassir Ali; he referred the injury sheet, Exh.PW 6/1, and post mortem report, Exh.PM. PW-7 is the statement of Burhan Ali, who has identified the dead body of Mudassir Ali to the police and doctor. Zeeshan Ali s/o Shermeen Ali was examined as PW-8, who stated that on 07.03.2023 at 2330 hours, he along with Mudassir Ali was present in their landed property and were busy in cutting plants; that in the meanwhile, Muqadas Khan and Rang Wali armed with weapons suddenly came, the accused Rang Wali ordered Muqaddas Khan to fire at deceased Mudassir Ali; that both the accused opened

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fire at them; that he escaped luckily unhurt while the deceased Mudassir Ali sustained bullet injuries and fell down on the ground, which resulted into his death; that accused ran away from the spot while deceased Mudassir Ali was shifted to their house and after sometime, the dead body of deceased Mudassir Ali was shifted to the nearby THQ Hospital Kalaya in the pickup of their relative Sajid Ali; that post-mortem of the deceased was conducted by the doctor; that the complainant Janan Ali uncle of the deceased reported the matter to the police in his presence and the investigation officer prepare the site plan on his pointation on the spot on 08.03.2023. Janan Ali, the complainant, was examined as PW-9, who stated that he along with Zeeshan and deceased Mudassir were busy in cutting the roots of walnut tree, that in the meanwhile, Rang Wali and Muqaddas came there; that Rang Wali ordered Muqaddas Khan upon his direction Muqaddas Khan opened fire through which Mudassir Ali got hit and injured who remained alive for half an hour and then died on the spot; that on their telephonic message, elders of the locality came to the spot and took the dead body to their village and then shifted the dead body to THQ Kalaya, where the dead body was examined by the doctor; that he made the report to the local police at about 4 to 4:30 am; that after conducting the post-mortem, the dead body was shifted to his house; that on 08.03.2023, the local police came there at about 8 am; that investigation officer prepared site plan on his pointation, recovered blood stained earth and empties from the place of occurrence in his presence. PW-10 is the statement of Afsar Ali Shah, who stated that SHO handed over to him murasila for transmission to the police station, which he took and handed over

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to Muharrir of the police station and case was registered. Statement of Syed Abbas Ali Shah was recorded as PW-11, who stated that the doctor handed over him the blood stained garments of deceased after medical examination, which he handed over to investigation officer in the police station.

- 7. The prosecution closed its evidence.
- 8. The statements of accused were recorded under section 342 CrPC, wherein, they again denied from the charges and adhered to their innocence. In reply to questions, they neither wished to be examined under oath nor to produce evidence in their 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 the prosecution did not leave any stone unturned in proving its case against the accused; that prosecution witnesses are consistent in their statements; that FSL result is in positive; that there is no malafide on the part of prosecution to falsely involve the accused in this case; therefore, requested to award them maximum punishment.
- 11. Counsel for accused argued that prosecution has failed to prove its case against accused beyond shadow of doubt; that the prosecution evidence contradicts and suffers major inconsistencies; that there is wide conflict in first information report, statement of complainant and the statement of eye witness; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that the accused have not confessed their guilt; that case against accused is not proved and request is made for the acquittal of accused.

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12. Viewing the arguments advanced by learned counsel for parties and record on file, it is observed that complainant has charged accused for sharing common intention for the willful murder of his nephew Mudassir Ali with fire shot made by accused Muqaddas Khan on the command of accused Rang Wali. It is known to all that in criminal cases, prosecution is duty bound to prove the allegations against the accused and the most reliable evidence in this regard is the direct evidence, which helps the court to reach to just conclusion of case. In this case, beside complainant, Zeeshan Ali is also cited as witness of the occurrence; therefore, their statements are of worth importance.
13. To prove the guilt against accused, the mode, manner and time are the essence to establish the commission of offence because in many cases, the deceased had though died an unnatural death, however, the prosecution fails to corroborate evidence and prove the commission of offence in the mode, manner and stated time, the benefit of which ultimately goes to accused and he is set free.
14. In the instant case, statements of complainant and eye-witness were though recorded, who made attempt to justify their presence on the spot at the time of commission of offence by the accused, however, there were few anomalies & inconsistencies noted in the prosecution evidence, which not only created doubt about the mode and manner about the commission of offence at given time but also their presence on the spot as well. As per contents of report, the deceased on receipt of firearm injury, fell down on the ground and died on the spot, which infers that the death of the deceased was instantaneous but the complainant deviated from his stance stating that the deceased after

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receipt of firearm injury remained alive for half an hour and then died on the spot, which does not appeal to prudent mind because had they been with the deceased at the time of occurrence, then, after receiving the firearm injury by the deceased, they must have shifted him to the hospital for medical aid instead to wait for his death. On the other side, Zeeshan Ali (PW-8) also narrated the same facts but he has not shown the presence of complainant with them to the spot rather categorically stated that he along with the deceased went to the spot, where the accused opened fires at them, due to which the deceased died and he luckily escaped unhurt. There is no mentioning of the presence of complainant with them. In similar manner, the complainant (PW-9) stated that Zeeshan Ali is his nephew, who also resides near to his house, which means that complainant and the eye-witness were residing in different houses, however, both of them though stated that they have shifted the dead body of the deceased to their house but it is not certain that to whose house the dead body of the deceased was shifted. Even, there is conflict in the statements of complainant and eye-witness, as the earlier deposed that after shifting the dead body of the deceased to house, they then shifted it to the hospital, whereas, eye-witness stated that before shifting the dead body to the hospital, they had also shifted it to *Imam Bargah*, which further creates doubt.

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15. Importantly, as per statement of complainant and contents of report, both the accused were armed with weapons, however, accused Rang Wali was given role of *lalkara*, whereat, the accused Muqaddas has allegedly made fires at deceased, which deduces different inferences; first, if the accused Rang Wali was also armed with weapon, then,

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why did he contend to pass a command to accused Muqaddas to fire at deceased instead of personally making fire at him; secondly, according to recovery memo, the local police has just recovered one empty from the spot, whereas, complainant (PW-9) has alleged the recovery of two empties; third, the eye-witness (PW-8) not only alleged the making of fires by accused at deceased alone but also stated that the accused had made fires at them, which altogether is a different story and envisages that accused had made more fires than two but complainant and the eye-witness have luckily escaped the receiving of bullet, which also creates doubt about their presence on the spot at the time of commission of offence.

16. More so, the contents of report clearly provide that the occurrence was reported to the police at 02.00 am and the case was registered at 03.20 am, however, complainant deposed that he has reported the matter to local police at about 04.00 am to 04.30 am having availed the fact neither the occurrence has happened in the mode and manner stated in the report nor the complainant or eye-witness was present on the spot at the time of occurrence rather they had got knowledge after the occurrence, where after, they had gone to the hospital and the report was made.

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17. The absence of complainant and eye-witness on the spot can further be envisaged from the fact that Burhan Ali (PW-7), the identifier of the dead body of the deceased, stated that he was the only person (presumably first person), who has reached to the hospital at 01.00 am, therefore, if it is supposed that dead body of the deceased was shifted to the house after half an hour of the occurrence, where it was placed for 1-1½ hour and thereafter it was shifted to the hospital



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as per statement of complainant, which will be no earlier than 1-1½ am, then, how the identifier had reached to the hospital before the decision of elders of locality about shifting the dead body to the hospital. Importantly, had complainant or eye-witness accompanied the deceased to the hospital, any one of them could have been cited as identifier of the dead body being relatives of the deceased but record speaks otherwise. There is no time mentioned in post-mortem report as to whence the dead body was brought to the hospital. Likewise, post-mortem report provides that the dead body of the deceased was brought to the hospital by relatives and police, which avails that matter was already reported to the police; therefore, the police had accompanied the dead body of deceased to the hospital.

18. Besides above, it is also observed that the eye-witness (PW-8) stated that when the investigation officer has visited the spot at 04.30 am, he alone was present with him at that time and no private person was there and the investigation officer has prepared the site plan on his pointation, which infers that complainant has not accompanied them to the spot, however, complainant totally contradicted him deposing that he along with investigation officer and police have visited the place of occurrence in the morning at 08.00 am and the investigation officer has prepared the site plan on his pointation. On contrary, the investigation officer (PW-3) stated that he has visited the spot with complainant and eye-witness at 05.00 am and prepared the site plan on pointation of complainant, whereas, site plan, Exh.PB, available on file provides that it was prepared on the pointation of complainant and eye-witness, which above statements are contradictory to each other and make them distrustful witnesses. More so, eye-witness has

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done FA and an educated person, however, when he was questioned about specific positions of complainant, deceased and himself in the site plan, Exh.PB, he failed to specify those despite he and the investigation officer had alleged the preparation of site plan on his pointation and thus casts serious doubt about the preparation of site plan on his pointation and the prosecution story.

19. This is also observed that complainant (PW-9) alleged the cutting of around 20 kg walnut roots and eye-witness alleged the cutting of around 10-12 kg walnut roots at the place of occurrence, however, neither the investigation officer has admittedly taken into possession those cut roots of the walnuts nor the same have been shown in the site plan nor the statement of single person has been recorded in this respect and thus precious piece of evidence was lost due to poor investigation on the part of investigation officer that also leads to inference that no roots of walnuts trees etc. as such were cut on the spot and false/concocted story was hatched by complainant to show their presence with the deceased at the time of occurrence.

Even, complainant and eye-witness stated that after the occurrence, around 8-10 villagers attracted to the spot on their call but this is strange to note that they did not remember the name of single co-villager, who came to the spot and helped them in shifting the dead body of deceased to their house. Even, not a single villager has been cited as witness to verify the post occurrence proceedings.

21. Above all, complainant and eye-witness have categorically denied about the existence of any motive behind the commission of offence nor did they disclose the same till today, which does not appeal to prudent mind because there can be hardly any offence without any

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motive especially when it is committed in the night time, however, their non-disclosure of motive behind the offence makes the story more weak and suspicious.

22. In the wake of above detailed discussion, it is held that there are many contradictions and inconsistencies noted in the prosecution evidence, which cast serious doubts about the commission of offence by accused; therefore, while extending the benefit of doubt, both the accused Rang Wali and Muqaddas Khan are acquitted from the charges leveled against them. As accused Muqaddas Khan is behind the bars; therefore, he be released forthwith, if not required in any other case, whereas, accused Rang Wali is on bail; therefore, his sureties are discharged from liability of bail bonds.
23. 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.
24. File consigned to record room after completion and compilation.


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**CERTIFICATE**

It is certified that this judgment consists of eleven (11) pages and each page is duly signed by me after necessary correction.

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05.06.2024

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