

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

SESSION CASE NO. : 5/2 (J) OF 2023
DATE OF INSTITUTION : 13.06.2023
DATE OF DECISION : 01.08.2024

STATE THROUGH COMPLAINANT AMJID ALI S/O RASHID ALI,
R/O CASTE BAR MUHAMMAD KHEL, TEHSIL LOWER, DISTRICT
ORAKZAI

------(Complainant)

VS

MUKHIAR HUSSAIN S/O BAKHTIAR ALI, AGED ABOUT 18
YEARS, R/O CASTE BAR MUHAMMAD KHEL, DISTRICT
ORAKZAI

------(Accused facing trial)

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

FIR No. 44
U/S: 302 PPC

Dated: 26.04.2023
Police Station: Kalaya

ORDER
01.08.2024

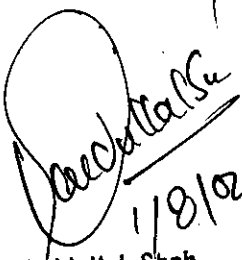
The accused named above is charged for the
offence u/s 302 PPC vide FIR no. 44, dated 26.04.2023 of
Police Station Kalaya.

- (2). The case of the prosecution as outlined in the
Murasila based FIR is: that on 26.04.2023 the local police
acting on information regarding the incident, reached the
spot of occurrence and found the dead body of Atif Ali s/o
Rashid Ali with a pistol without number and an empty shell
of 30-bore pistol, where at about 0800 hours the
complainant, Amjad Ali (brother of the deceased) made a
report to the local police to the fact that on the preceding
night after having supper, his brother Atif Ali had left for


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Hujra and on the day of occurrence at about 0700 hours his uncle, Gul Dast Ali informed him through his cellular phone that his brother Atif Ali has been murdered by some unknown person/s with firearm. Upon this information, he (complainant) reached the spot of occurrence and found the dead body of his brother besides his personal Android mobile phone was also laying there. The complainant charged unknown accused for the commission of offence. The report of the complainant was verified by one, Gul Dast s/o Jabeen Ali by putting his thumb impressing over the same. On the spot, the local police took into possession a 30-bore pistol without number along with an empty shell vide recovery memo. The Murasila was drafted by Aftab Ahmad SHO which was sent to the PS through constable Abdul Sattar, on the basis of which FIR was registered by Aftab Hassan SHO. The injury sheet and inquest report of deceased Atif Ali were drafted and forwarded to the THQ Hospital Kalaya through constable Tahir for post-mortem examination.

- (3). After registration of FIR, it was handed over to Muhammad Hanif OII/PW-8. Accordingly, after receipt copy of FIR Ex. PA/1, Murasila Ex. PA and recovery memo Ex. PC, he reached the spot and took into possession blood through cotton from the place of deceased, sealed the same into parcel no. 3 (Ex. P3) vide recovery memo Ex. PC/1 and


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then prepared site plan Ex. PB on pointation of the complainant. The IO/PW-8 also took into possession blood-stained garments of the deceased including Shalwar and Kamees and sealed it into parcel no. 4 (Ex. P4) vide recovery memo Ex. PC/2. On 28.04.2023 the Investigation Officer/PW-8 sent parcels no. 1 to 4 to the FSL vide applications Ex. PW 8/2 and Ex. PW 8/3 and road permit certificates Ex. PW 8/4 and Ex. PW 8/5. He arrested the accused vide card of arrest Ex. PW 8/7. The IO/PW-8 also took into possession a 30-bore pistol with a fixed charger containing 04 rounds and a smartphone recovered on pointation of the accused and sealed it into parcel no. 5 (Ex. P5) and parcel no. 6. On 06.05.2023 the IO/PW-8 sent parcel no. 5 containing the pistol to the FSL for examination vide application Ex. PW 8/16 through constable Abdul Wadood against road permit certificate Ex. 8/17. After receipt of FSL reports, these were placed on file by the IO/PW-8 as Ex. PK, Ex. PK/1 and Ex. PK/2. After completion of investigation, he handed over the case file to SHO for submission of challan.

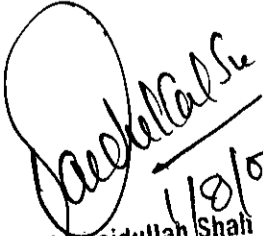
- (4). Upon receipt of the case file for the purpose of trial, the accused was summoned, copies of the record were provided to him u/s 265-C Cr.P.C and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned


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and the prosecution examined as many as ~~10~~ witnesses namely, Muhammad Jamil MHC, Dr. Farooq Azam MO, Aftab Ahmad SHO, Aftab Hassan SHO, Gul Dast Ali, Constable Tahir Ali, Constable Khalil Ur Rehman, Muhammad Hanif OII, Constable Abdul Wadood and Constable Abdul Sattar as PW-1 to PW-10 respectively.

- (6). I heard arguments and perused the record.
- (7). Perusal of the case file shows that the accused facing trial is not nominated in the FIR Ex. PA. Instead, he has been implicated by the complainant in a statement recorded u/s 164 Cr.P.C approximately nine days after the occurrence, based on information that lacks a disclosed source. Notably, as per contents of FIR, the occurrence is neither witnessed nor seen and no motive for the occurrence has been disclosed. The complainant in his statement recorded u/s 164 CrPC claimed that the motive was related to a past conflict between the accused and his deceased brother, specifically alleging that the accused had previously fired at his brother following a deterioration in their relationship. However, no supporting documentation, including a copy of the FIR, has been provided to substantiate this claim.

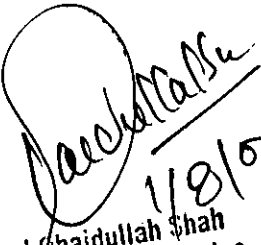
Moreover, the testimony of the investigation officer/PW-8 and the recovery memo Ex. PC/2 shows that the garments of the deceased were brought by Constable


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Tahir Ali to the police station where it were sealed in parcel; however, this account is contradicted by Constable Abdul Wadood who, as a marginal witness to the recovery memo Ex. PC/2, stated that the garments were brought by Constable Tahir Ali to the scene. Additionally, this PW also negates his signatures over different recovery memos and stated that he had only signed the one related to the garments.

The story of the prosecution regarding recovery of two pistols, also seems concocted, for, that the crime empty recovered from the spot and sealed in parcel no. 2 was astonishingly sent to the FSL along with the recovered pistols for chemical analysis reporting in a positive result. This presents an illogical situation that how can a single empty be discharged from two different pistols. It is also worth mentioning that the IO had taken into possession a smartphone recovered on pointation of the accused but no entry to this effect has been made in register no. 19 Ex. PW 1/1. The statements of the IO/PW-8 and Constable Abdul Wadood/PW-9, regarding whether the smartphone was sealed at the police station or at the spot are inconsistent, with Constable Abdul Wadood asserting it was sealed on the spot.

Furthermore, the complainant of the instant case, despite multiple notices and Non-Bailable Warrants of


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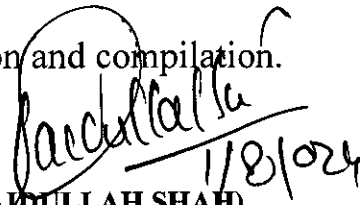
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Arrest has remained absent and has failed to appear before the court to record his statement.

- (8). Hence, in view of what is discussed above, it is held that there are significant inconsistencies and gaps in the prosecution's evidence and the complainant's continued absence despite multiple attempts to secure his presence and the lack of circumstantial evidence linking the accused to the offense further weaken the prosecution's position. Given these issues, the case against the accused appears to lack sufficient substantiation and coherence; therefore, the accused namely, **Mukhiar Hussain**, on acceptance of his application, is acquitted from the charges levelled against him u/s 265-K CrPC. The accused is on bail. His bail bonds stand cancelled and his sureties are discharged of the liabilities of his bail bonds. Case property be disposed of/dealt with in accordance with law after the period provided for appeal/revision.

Order announced. File of this court be consigned record room after its necessary completion and compilation.

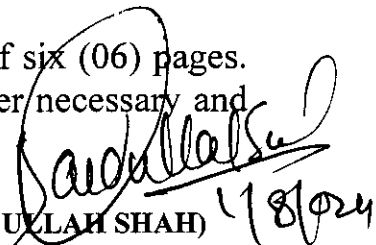
Dated: 01.08.2024


(SYED OBAIDULLAH SHAH)
Sessions Judge/Judge Juvenile Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this order consists of six (06) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 01.08.2024


(SYED OBAIDULLAH SHAH)
Sessions Judge/Judge Juvenile Court,
Orakzai at Baber Mela

