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

Session Case No. 14/02 of 2023

Date of institution: 08.09.2023

Date of decision: 03.09.2024

Date of consignment:

The State through Iftikhar Ahmed son of Olas Khan, caste Utman Khel, Tappa Fateh Khan Khel, District Orakzai (complainant)

Versus

1. Mehmood Khan son of Olas Khan, caste Utman Khel, Tappa Fateh Khan Khel, District Orakzai
2. Ghafoor Khan son of Olas Khan, caste Utman Khel, Tappa Fateh Khan Khel, District Orakzai (accused facing trial)
3. Mst. Bibi Saeeda wife of Slaem Khan, caste Utman Khel, Tappa Fateh Khan Khel, District Orakzai (absconding accused)

FIR NO. 61 DATED 12.06.2023 U/S 302, 202, 182/34 PPC

KALAYA POLICE STATION, ORAKZAI

JUDGMENT

1. Accused no. 1 & 2 are facing trial and accused no. 3 is absconding in the subject case.
2. Concise facts of the case are that initially on 13.05.2023, Ghafoor Khan, the then complainant, reported the matter that he was present in the bazar when received a call from his sister in law, who told him that her son Hamza son of Saleem Khan has killed himself through firearm, whereat, he rushed to the house and found his nephew lying besmeared with blood; that in order to conduct his post-mortem, he along with co-villagers shifted the deceased to DHQ Hospital Mishti Mela; that he did not show involvement of anyone into the death of deceased nor did charge anyone; that local police penned down his report through daily diary no. 9 dated 13.05.2023 and initiated the

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inquiry; that the postmortem of the deceased was conducted & post-mortem report brought on file; that on 12.06.2023, Iftikhar Ahmad appeared before the court and his statement recorded under section 164 CrPC, wherein, reported that his brother Mehmood Khan and aunt Mst. Saeeda Bibi were in contact through mobile calls and were in illicit relation with each other for the last one year; that on eventful day, deceased Hamza had seen them in an objectionable condition, whereat, deceased rushed to *bethak*, however, Mehmood Khan and Mst. Saeeda Bibi overpowered him and cut his throat through knife with common intention to commit the murder of Hamza; therefore, he has charged them for the murder; that Ghafoor Khan was also made accused in the case for furnishing false information to police, his intentional omission to provide the information to the police, which he was bound to inform and for keeping unlicensed weapon, hence, FIR.

3. On 12.06.2023, accused Mehmood Khan and Ghafoor Khan were arrested, while, Mst Saeeda Bibi was absconding. Investigation was conducted and challan was submitted for trial against them.
4. Accused were summoned. On their attendance, the copies of the case furnished to the accused facing trial under section 265-C Cr.PC. The statement of Ahmad Khel, the search witness recorded as SW-1, who was entrusted with warrant of arrest under section 204 CrPC against accused Mst. Saeeda Bibi, however, she has reportedly went into hiding; therefore, declared a proclaimed offender and in order to secure/protect the evidence against her, the prosecution was allowed to record evidence in her absentia. The accused Mehmood Khan was

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charge sheeted under section 302 PPC while accused Ghafoor Khan was charge sheeted under sections 182, 202 & 15AA, to which they pleaded not their guilt and claimed trial.

5. Prosecution produced following evidence in support of its case;
6. PW-1 is Aftab Ahmed SHO, who has submitted complete challan, Exh.PW 1/1, against the accused. Iftikhar Ahmad, complainant, was examined as PW-2, who stated that on 13.05.2023, deceased Hamza had seen his mother Saeeda Bibi & Mehmood Khan in objectionable condition, whereat, Hamza made attempt to run towards *bethak* but both of them caught him and cut the throat of deceased with knife and thereby committed his murder with the intent to cover their illicit relationship; that initially, the report was lodged by accused Ghafoor who has concealed the real facts, that after coming to know about the actual facts, he disclosed the same to police and then he charged them in his statement recorded before the Court. Dr. Farzand Ali, Medical Officer DHQ Mishti Mela, was examined as PW-3, who has conducted the post-mortem examination of deceased Hamza, that he referred the injury sheet, Exh.PW 3/1, inquest report, Exh.PW 3/2, and post mortem report, Exh.PM. Statement of the Muhammad Jamil, Muharrir was recorded as PW-4, who stated that Dilbar Ali ASHO handed over to him parcel no. 01 to 03 for keeping in safe custody of *malkhana* and in this regard he made entries in register no. 19; that on demand, he handed over the parcels to Dilbar Ali ASHO and he again made entries in register no. 19, Exh.PW 4/1. PW-5 is the statement of Menhaz Hussain OII, who has conducted investigation in the case; he stated that he has prepared the site plan,

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Exh.PW 5/1, and list of legal heirs, Exh.PW 5/2, of the deceased and arrested the accused Mehmood Khan on that day and issued his card of arrest, Exh.PW 5/3; that vide application, Exh.PW 5/4, he has produced the accused before Judicial Magistrate for police custody, that he issued memo of addition of accused Ghafoor Khan, Exh.PW 5/5, and also added section 311 of the Pakistan Penal Code, 1860 vide memo of addition, Exh.PW 5/6, that vide memo of addition, Exh.PW 5/7, sections 15AA and 182 of the Pakistan Penal Code, 1860 were also added in the case, that he also produced the accused Ghafoor Khan before Judicial Magistrate vide application, Exh.PW 5/8, that vide application, Exh.PW 5/9, he again produced accused Ghafoor Khan for physical custody before Judicial Magistrate and prepared pointation memo, Exh.PW 5/10, on pointation of accused Mehmood Khan, whereby, a knife was recovered from the cupboard inside the room of accused Mst. Bibi Saeeda, which was taken into possession vide recovery memo, Exh.PW 5/11, and sealed the knife being used as weapon of offence in parcel no. 4, Exh.P1; that he has prepared the sketch of recovery of weapon of offense, Exh.PW 5/12; that he produced both the accused before the Judicial Magistrate for recording their confessional statements through application, Exh.PW 5/13, that he took warrant u/s 204 Cr.PC already exhibit SW 1/1 vide application, Exh.PW 5/14, and handed over to Ahmed Khel DFC for execution; that on 22.06.2023 vide application, Exh.PW 5/15, he has placed on file CDR of the number of the accused; that CDR report is Exh.PW 5/16 (consisting of 05 pages); that photographs of deceased are Exh.PW 5/17 (04 pictures), that he placed on file FSL report,

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Exh.PW 5/18, and on completion of investigation, handed over the case file to SHO for submission of complete challan against accused facing trial and absconding co-accused. PW-6 is the statement of Khaleel Rehman, who is marginal witness to pointation memo vide which one knife being used as weapon of offence was recovered on the pointation of accused. Constable Abdul Wadood was examined as PW-7, who has taken parcels no. 1, 2 and 3 along with certificate, Exh.PW 7/1, and application, Exh.PW 7/2, to the FSL Peshawar. Statement of Wajidullah was recorded as PW-8, who stated that SHO has handed over him the inquest report of deceased in DHQ Hospital that he handed over to Doctor. PW-9 is the statement of Dilbar Ali Inquiry officer, who stated that on 13.05.2023, daily diary no. 9 was handed over to him for conducting the inquiry of the occurrence; that he prepared site plan, Exh.PW 9/1, that during spot inspection, he recovered one empty shell of 303 bore, one spent bullet from the spot and sealed the empty shell in parcel no. 1, Exh.P1, and spent bullet in parcel no. 2, Exh.P2, and in this regard, recovery memo was prepared which is Exh.PW 9/2; that Ghafoor Khan produced rifle 303 bore, which was taken in possession vide recovery memo, Exh.PW 9/3, and sealed into parcel no. 3, Exh.P3; that on 12.06.2023, he recorded the statement of Iftikhar Ahmed u/s u/section 161 Cr.PC and produced him before Judicial Magistrate for recording his statement u/s 164 vide application, Exh.PW 9/4; that after completion of inquiry, on 12.06.2023, he scribed FIR, Exh.PA, against the accused Mehmood Khan and Mst Bibi Saeeda, that on 15.06.2023, he arrested accused Ghafoor Khan and issued his card of

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arrest, Exh.PW 9/5. PW-10 is the statement of constable Shabir Khan, who is marginal witness to the recovery memo through which ASHO Dilbar took into possession one empty of 303 bore and one spent bullet from the spot; that he is also marginal witness of other recovery memo through which one rifle 303 bore was taken into possession. Muhammad Irshad constable was examined as PW-11, who stated that on 13.05.2023 at about 1450 hours, the SHO Aftab Ahmad handed over to him report for drafting a daily diary and he handed over the same to SHO Dilbar Ali in the police station, which is Exh.PW 11/1; that the daily diary report no. 9, Exh.PW 11/2, was prepared from the contents of report.

7. The prosecution closed its evidence.
8. The statements of accused facing trial were recorded under section 342 CrPC, wherein, they again denied from the charges and adhered to their innocence. In reply to a question, they 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 the prosecution witnesses are consistent in their statements; that there is no malafide on part of prosecution to falsely involve the accused in the case; therefore, requested to award them maximum punishment.
11. Counsel for accused argued that prosecution has failed to prove its case against accused facing trial beyond the shadow of reasonable doubt; that prosecution evidence contradicts and suffers from major inconsistencies; that there is wide conflict in the first information

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report and the statement of complainant; 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 facing trial is not proved and request is made for their acquittal.

12. Viewing the arguments advanced by learned counsel for parties and record on file, it is observed that initially Ghafoor Khan has lodged a report about death of minor Hamza through his own fire; however, later on Iftikhar Ahmad has reported that the minor was killed by Mst. Bibi Saeeda and Mehmood Khan for they had illicit relation and minor had seen them in an objectionable condition; therefore, prosecution has to prove the fact that whether deceased Hamza had actually seen Mehmood Khan and Mst. Bibi Saeeda in objectionable condition and both of them had killed the minor by cutting his throat to conceal the truth from being revealed. If it is so, then, whether deceased had told this fact to anyone before he had been brutally slaughtered or the report of Iftikhar Ahmad is baseless.

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13. To answer above queries, it is noted that there is nothing on record to suggest that deceased had disclosed the fact of seeing the accused Mehmood Khan and Mst. Bibi Saeeda in objectionable state to anyone before his death; therefore, this is to be sorted out that as to how the witness Iftikhar Ahmad had come to know that deceased had seen accused Mehmood and Mst. Bibi Saeeda in objectionable condition and they had slaughtered the minor with knife. In this respect the statement of Iftikhar Ahmad (PW-2) studied according to which he was not present in home at the time of occurrence nor had

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seen accused committing the offence. He even did not utter a single word about his source of knowledge leading to the inference that his statement is based on an evasive conclusion drawn by him or that he might have heard it from someone and lodged the report. He even deviated from the facts reported by accused Ghafoor Khan stating that he along with his uncle had shifted the deceased to the DHQ Hospital Mishti Mela, where Ghafoor Khan reached after the span of half an hour. Since, the proceedings of whole the case were based on the 164 CrPC statement of Iftikhar Ahmad recorded by the learned Judicial Magistrate; however, he has not only completely denied his appearance before any learned Judicial Magistrate but also from recording of his statement on oath. The investigation officer has prepared the site plan on his pointation; however, he has also denied making any pointation of the place of occurrence to the police or preparation of any site plan on his pointation.

14. If the statement of Iftikhar Ahmad (PW-2) is believed to be true that accused Mehmood and Mst. Bibi Saeeda had cut the throat of deceased with the knife, even then, the post-mortem report, Exh.PM, provides that deceased had died due to bullet injury on his asphyxia resulting to excessive bleeding from vessels of neck and there were no marks of physical assault found on body of deceased. There is not a single clue or the remark found in the post-mortem report, inquest report, the injury sheet and the statement of medical officer that the injury caused to the deceased was a result of knife cut/blunt object, which fact is also admitted by investigation officer in his statement recorded as PW-5.

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15. On the same footings, the statement of investigation officer (PW-5) though provides that he has recovered the knife on pointation of accused Mehmood Khan from the room of Mst. Bibi Saeeda through which they had allegedly cut the throat of deceased; however, there is nothing available on file that the said knife was sent to the forensic laboratory for expert opinion in order to ascertain that whether there was any signs of human blood etc. present on it or not. There are also wide differences observed in the site plans prepared by the investigation officer (PW-5) and the inquiry officer (PW-9), which creates reasonable doubt in the genuineness of prosecution story.

16. On same footings, Khaleel Rehman (PW-6) has accompanied the investigation officer to the place of occurrence and in his presence the pointation memo was prepared, however, in cross-examination he was blank about the number of rooms, the surrounding areas, the positioning of the house of accused and entry to their house, which leads to adverse inference and preparation of the pointation memo in his absence.

17. The inquiry officer (PW-9) admitted that he has not placed on file the copy of computerized national identity card of Ghafoor Khan nor had any proof about his identification. He has admittedly did not cite a single private person as witness to recovery memos nor did recover any blood from the spot or blood stained garments of the deceased. Though he stated that on the inspection of the spot, the crime scene was found washed out with the water, whereas, blood stained cloths of the deceased were drained into *khwar* (nallah) but this is strange to note that if inquiry officer had observed the washing out of the

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crime scene through water and draining out of the blood stained cloths of deceased in the *khwar*, then, why did he not put full efforts to find any clue about the blood from the spot or blood stained cloths from the *khwar*. On the contrary, Shabbir Khan (PW-10) deposed that when he has visited the spot with inquiry officer, the blood was present there but added that the inquiry officer did not collect the blood from the spot and thus precious piece of evidence was lost. The inquiry officer did not bother to recover the rifle through which the deceased had allegedly killed himself rather it was produced to him by accused Ghafoor Khan. Even, he did not mention any point from where the rifle was recovered and then negated his own stance stating that the rifle was lying adjacent to the wall, which he was supposed to collect by himself. Most importantly, the inquiry officer was bound to record the statement of Mst. Bibi Saeeda, who has not only allegedly witnessed the initially reported incident but has also lost her son and informed Ghafoor Khan about the incident; however, he has admittedly not recorded her statement and thus conducted the inquiry in casual manner, which resulted in the disappearance/loss of important pieces of evidences.

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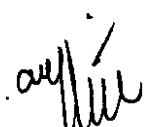
In this case, though a minor has died unnatural death and for this accused were charged, however, there is no solid & cogent evidence brought on file against accused facing trial revealing their active involvement in the commission of offence; therefore, I hold that prosecution has badly failed to prove the case against accused facing trial beyond shadow of doubt, hence, while extending the benefit of doubts, accused Mehmood Khan and Ghafoor Khan are acquitted

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from the charges leveled against them. Accused Mehmood Khan is behind the bars; therefore, he be released in the case forthwith, whereas, accused Ghafoor Khan is on bail; therefore, his sureties are discharged from the liability of bail bonds.

19. So far accused Mst. Bibi Saeeda is concerned, it is concluded that she is directly charged in FIR and in absence of rebuttal on her side, there exists prima facie strong case against her; therefore, perpetual warrant of arrest is issued against her. Name of accused Mst. Bibi Saeeda wife of Saleem Khan be entered in the register maintained for proclaimed offenders of the concerned police station and in the office of DPO, Orakzai. On arrest of accused Mst. Bibi Seeda, the supplementary challan along with detail of this file be submitted before the concerned court during court hours.
20. Case properties be kept intact till arrest and conclusion of the trial of absconding accused Mst. Bibi Saeeda.
21. 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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03.09.2024


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