

(23)

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

State vs Khalid Noor

**Order---65**

03.09.2024

Accused on bail is present.

Complainant through representative is present.

DPP for state is in attendance.

Through this order I shall decide an application filed by Khalid Noor son of Hajat Noor, the accused facing trial, under section 265-K Criminal Procedure Code 1898 for his acquittal in FIR No. 29 dated: 26.08.2019 registered under sections 302/34 PPC of Kalaya Police Station, Orakzai.

Arguments heard and record perused.

On 26.08.2019, Mst Sajira Bibi, complainant, reported that she was present at home when an altercation took place between her and her step sons namely Sajjad and Khalid Noor; that in the meanwhile her husband entered in the house after performing Maghrib prayer and Khalid Noor caught him and ordered Sajjad to hit; that Sajjad holding a knife in his hand hit her husband with blows of knife due to which her husband got severe injuries and became unconscious; that after the commission of offence, both the accused escaped from house; that she alongwith her brother-in-law and others were shifting the injured to the KDA Hospital Kohat but he succumbed to the injuries and died on way to Kohat; that she has charged Khalid Noor and Sajjad for murder of her husband, hence, FIR.

Since, both the accused were at large; thus, on 22.11.2019, prosecution submitted the complete challan against them under section 302/34 PPC read with section 512 CrPC. The statement of search witness was recorded, both the accused were declared proclaimed offenders and prosecution was permitted to record its evidence in absence of the accused. On conclusion of evidence, perpetual warrants of arrest were issued against both the accused. On 12.01.2022, the accused facing trial applied for bail before arrest and was formally shown arrested, where after, he was released on bail and the prosecution submitted supplementary challan against Khalid Noor on 22.03.2022, which was entrusted to this court for trial.

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03/09/2024  
Abdul Basit  
Addl. District & Sessions Judge-II  
Orakzai or Baher Mela,  
Hangu

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Accused facing trial was summoned, who attended the court and copies under section 265-C CrPC furnished to him. Accused facing trial was charge sheeted under sections 302/34 PPC, to which he did not plead his guilt and claimed the trial. Prosecution was directed to adduce evidence.

Prosecution produced following evidence in support of its case. Dr. Shaban Ali was examined as PW-1, who has conducted post-mortem of deceased. PW-2 is the statement of Muhammad Shafiq, who has submitted supplementary challan against arrested accused Khalid Noor. Mujahid Khan SI was examined as PW-3, who has submitted complete challan u/s 512 Cr.PC against Khalid Noor and Sajjad Noor. Statement of Ainullah Muharrir was recorded as PW-4, who incorporated the contents of murasila into FIR. PW-5 is statement of Muhammad Zahid who is the marginal witness to the recovery memo through which investigation officer took into his possession the blood stained garments of deceased. Muhammad Riaz constable was examined as PW-6, who handed over injury sheet and inquest report to the doctor in hospital and taken over the blood stained garments of the deceased after post mortem. Statement of Khursheed Anwar was recorded as PW-7, who reduced the report of complainant into murasila, Exh.PW 7/1, prepared the injury sheet, Exh.PW 7/2, and inquest report, Exh.PW 7/3, of the deceased. Mehdi Hassan SI was examined as PW-8. who prepared the card of arrest of accused facing trial, Exh.PW 8/1, produced the accused facing trial before the learned Judicial Magistrate vide applications, Exh.PW 8/2 and Exh.PW 8/3. Prosecution also recorded the statement of complainant Mst. Sajira Bibi as PW-9, however, she has not supporting the case of prosecution; therefore, learned counsel for accused facing trial referred the application for acquittal of accused facing trial under section 265-K CrPC. The notice of application was again given to prosecution; however, this time Fawad Hussain, learned counsel for complainant, endorsed no objection over the application on acquittal of accused facing trial.

*Handwritten signature and date:*  
03/09/2024  
**Abdul Basit**  
Addl. District & Sessions Judge-II  
Orakzai at Baber Mela,  
Hangu

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Iftikhar Ahmad, DyPP, for State resisted the application.

In view of arguments advanced by learned counsel for parties & record placed on file, this is concluded that although the Mst. Sajira Bibi, the complainant, has directly charged accused facing trial for catching hold of her husband and his issuance of direction to co-accused to hit; however, when she appeared in the witness box, she straightaway denied to prosecute him and stated that she has pardoned the accused facing trial in the name of Allah almighty and has no objection if he is acquitted from the charges. Though, the statement of complainant (PW-9) cannot be taken as a compromise statement because there are other legal heirs of the deceased, however, record provides that she was the sole eye-witness of the occurrence and there is no one else on the record, who had directly witnessed the accused facing trial catching hold of the deceased and his issuance of direction to the co-accused Sajjad to hit. Besides above, there is no other independent and circumstantial evidence available on file to connect the accused facing trial with the commission of offence.

In absence of evidence, this is also not certain that while issuing the direction to co-accused Sajjad, what was the intention of accused facing trial because the mere wordings "to hit" does not necessarily mean "to kill" and there may be probability that the accused facing trial might have just directed to hit him with a slap or blow of fist etc. Besides, the statement of doctor (PW-1) further suggests that he had not observed a single bruise or abrasion mark or scuffling mark on the body of deceased, which further favors the accused facing trial in a way that he might not be catching hold of the deceased.

It equally important to note that prosecution has submitted the complete challan against accused facing trial on 22.03.2022 but till date the prosecution failed to complete the evidence despite repeated summonses and special diaries, which further shows that prosecution has no strong case against accused facing trial and not interested to prosecute against him. The above

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03/09/2024  
**Abdul Basit**  
Addl. District & Sessions Judge-II  
Orakzai of Baber Wala,  
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IN THE COURT OF ABDUL BASIT,  
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

State vs Khalid Noor

**Contd. 65** discussed scenario, in no way suggests the conviction of accused  
03.09.2024 facing trial, wherein, leading of further evidence would be  
wastage of time of court and accused as the end result would be  
acquittal, to which complainant has also endorsed her on  
objection, therefore, I hereby acquit accused facing trial Khalid  
Noor from the charges leveled against him under section 302 PPC  
and discharge his sureties from the liability of producing him  
before the court. As, perpetual warrants of arrest had also been  
issued against co-accused Sajjad Noor; therefore, case property be  
kept intact till his arrest and trial.

File consigned to record room after necessary completion.



**Announced**  
03.09.2022

**(Abdul Basit)**  
Addl. Session Judge-II, Orakzai