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

Case No. 02/02 of 2023

Date of institution: 09.02.2023

Date of decision: 02.11.2024

Date of consignment:

The State through Muqaddar Khan ASHO, Kalaya Police Station, Orakzai
(the complainant)

Versus

Gul Haider son of Ali Haider, Qaum Bar Muhammad Khel, Tappa Alat
Khel, village Sarhobi Garhi, Tehsil Lower, District Orakzai (accused facing
trial)

FIR No. 151 DATED 27.12.2021 U/Ss 302/311/427 PPC
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 received information that accused Gul Haider son of Ali Haider has killed his daughter namely Mst. Rooh Taj Bibi and Shazir Ali on pretext of honor and their dead bodies were being shifted to Mishti Mela Hospital while motorcar was parked on the spot in damage condition; that on this information, the police rushed to the emergency room of DHQ Hospital Mishti Mela, where they found dead bodies of both the deceased; that upon interrogation, they came to know that the lady had eloped with the guy in a white color motorcar registration no. 1214 and Gul Haider, father of the lady, killed them on pretext of honor on the spot; thus, he was charged for the commission of offence.
3. Accused was arrested on 03.01.2022 and complete challan was put in court against him for initiation of trial.

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4. Accused was summoned. On his attendance, copies of the case were furnished to accused under section 265-C Cr.PC. The accused was charge sheeted u/sections 302 read with 311 PPC and 427 PPC, 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 Asmat Ali, who incorporated the contents of murasila into FIR, Exh.PA, kept the case property in *malkhana* for safe custody and parked the motorcar in the premises of the police station. Muqaddar Khan SHO was examined as PW-2, who is complainant of the 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, and prepared murasila report, Ex.PW-2/5. The statement of Ibad-ul-Hassan constable was recorded as PW-3, who stated that ASHO Muqaddar Khan prepared inquest report and injury sheet of the deceased in his presence; that doctor handed over to him the blood stained garments of female deceased Mst. Rooh Taj Bibi and he delivered the same to investigation officer. Statement of Noor Wali constable was recorded as PW-4, who stated that Muqaddar Khan prepared inquest report and injury sheet of the deceased Shazir Ali in his presence; that doctor handed over to him the blood stained garments of deceased Shazir Ali and he delivered the same to the investigation officer. Dr. Farzand Ali, Medical Officer DHQ Hospital Mishti Mela was examined as PW-5; he has conducted the post-mortem examination of the deceased Shazir Ali; he has referred the injury sheet, Exh.PW 5/1, inquest report, Exh.PW 5/2, and the post mortem report, Exh.PM. Statement of Muhammad Shafiq SHO was recorded as PW-6, who stated that after completion of provisional

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investigation, he submitted provisional challan, Exh.PW 6/1. Syed Shamim Hussain constable was examined as PW-7, who took the murasila & handed over to Asmat Ali Muharrir in the police station. Menhaz Hussain SI, investigation officer of the case was examined as PW-8, who stated that on 27.12.2021, he received copy of FIR and murasila report for investigation of the case; he has examined motorcar registration no. 1214/ICT on the spot, which was hit with bullets on both sides; he collected blood through cotton and sealed into parcels no. 01 and 02, Exh.P-1 and Exh.P-2; he recovered total 45 empty shells of 07.62 bore from the spot and sealed into parcels no. 03 and 04, Exh.P-3 and Exh.P-4; he took into possession a white color damaged motorcar registration no. 1214/ICT vide recovery memo, Exh.PW 8/1; he prepared site plan, Exh.PW 8/2, and list of legal heirs of deceased Mst. Rooh Taj Bibi and deceased Shahzair Ali, Exh.PW 8/3 and Exh.PW 8/4 respectively; he also took into possession the blood stained garments of deceased Shazir Ali vide recovery memo, Exh.PW 8/5, and sealed into parcel no. 05, Exh.P-5; he took into possession the garments of deceased Mst. Rooh Taj Bibi vide recovery memo, Exh.PW 8/6, and sealed into parcel no. 06, Exh.P-6; on 28.12.2021, he sent parcel no. 01 to 06 to FSL for forensic analysis vide road certificates, Exh.PW 8/7 and Exh.PW 8/8 respectively and application to FSL, Exh.PW 8/9 and Exh.PW 8/10; he issued card of arrest of the accused, Exh.PW 8/11; he recorded the statement of Auto Mechanic Shazmeen Ali, who handed over the receipt, Exh.PW 8/12, of repairing cost on the vehicle; he placed on file the FSL reports, Exh.PW 8/13 and Exh.PW 8/14; he placed on file the CDR of the mobile numbers of the deceased, Exh.PW 8/15

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containing 13 pages; he also took the photographs of the damaged vehicle, Exh.PW 8/16 (05 photographs); he handed over the case file for submission of interim challan; that on 29.06.2022, the bail before arrest of the accused was cancelled and on 30.06.2022 he produced the accused before the court of learned judicial magistrate vide his application, Exh.PW 8/17, and handed over the case file to SHO for submission of complete challan. Statement of Shams-ul-Ghani, marginal witness was recorded as PW-09, who stated that all the recoveries through recovery memos already Exh.PW 8/1 & Exh.PW 8/6 were made by the investigation officer in his presence. Ali Hussain constable was examined as PW-10, who stated that on 28.12.2021, he took parcels no. 01 to 06 along with applications for FSL and transit receipts to FSL Peshawar. Dr. Sania Malik, Medical Officer DHQ Hospital Mishti Mela was examined as PW-11, who has conducted the post-mortem examination of the deceased Mst. Rooh Taj Bibi; she has exhibited the injury sheet, Exh.PW 11/1, inquest report, Exh.PW 11/2, and post mortem report, Exh.PM. Noor Haider was examined as PW-12, who stated that on the day of occurrence, he was sleeping in his house and awoken due to the sound of fire shots; Waseem Ali came and told him that the firing has taken place but he did not take notice of this on pretext that a loafer might have fired; that Waseem Ali rushed towards the spot and he followed him and found that a huge crowd was gathered there but Waseem Ali told him that it that appeared to be a domestic problem; he then went towards his brother Gul Haider, who was sleeping; he awakened and told him the whole story; whereate, Gul Haider became unconscious and he went to the Hospital along with

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the deceased. Statement of Naseem Ali was recorded as PW-13, who has identified the dead body of Shahzir Ali before the doctor and local police in hospital. Shazmeen Ali son of Jamal Hassan was examined as PW-14 who is mechanic by profession; he examined motorcar registration no. 1214, which was damaged due to bullets and prepared an estimate of repairing cost of the motorcar.

- 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.
- 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 results are positive; that accused has murdered two persons in the name of honor; that there is no malafide on part of prosecution to falsely involve the accused in the case; therefore, request was made to award the accused facing trial the maximum punishment.
- 11. Counsel for accused argued that prosecution has failed to prove its case against accused beyond reasonable shadow of doubt; that there is no eye-witness to the occurrence; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that accused has not confessed his guilt; that actual weapon of offence has not been recovered; that case against accused is not proved and request is made for his acquittal.

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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 the murder of his daughter Mst. Rooh Taj Bibi and Shahzir Ali on pretext of their keeping illicit relation/honor killing. It is admitted fact that there is neither eye-witness to the occurrence nor the legal heirs of deceased or their relatives have reported the occurrence or charged the accused for commission of offence and the accused has been nominated in the case by local police on receipt of information. This is general principle of criminal law that when there is no direct evidence, then, in such an eventuality, prosecution has to prove its case by producing circumstantial evidence, which should be coherent, consistent, reliable and corroborate with medical or forensic laboratory reports and other material available on file. In this case, medical and forensic evidence is available on the file and according to the medical evidence; the death of both the deceased was unnatural as they had died as a result of the firearm injuries. Likewise, forensic laboratory report about the empties also suggests that 45 empties recovered from the spot were fired from one and the same weapon of offence; however, no weapon of offence has been recovered from possession of accused or on his pointation. On the contrary, a single witness namely Noor Haider (PW-12), brother of accused, was produced as witness before the court, who on eventful day was asleep in his house and woke-up on hearing the fire shots, to which Waseem Ali came and also told him about hearing the fire shots, whereat, they had gone outside and found that huge crowd was assembled there and the matter came out to be the domestic

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issue; therefore, he went after accused, who was stated to be asleep but he had awoken him and told him the whole story, whereat, the accused got unconscious, which part of evidence favors the accused and leads to the inference that accused was asleep at the time of occurrence. Likewise, statement of Noor Haider (PW-12) nowhere provides any clue about his seeing the accused escaping from the crime scene, or armed with weapon or near the place of occurrence rather all these facts casts serious doubt about the involvement of accused in the commission of offence.

13. Besides above, there are many contradictions, inconsistencies and anomalies noted in the prosecution case, which are not sufficient to hold the accused guilty about commission of the offence. There is admittedly no detail available on file as to how and from whom the complainant had come to know about the commission of offence by accused nor is this fact mentioned in murasila report. Admittedly, no daily diaries about the departure and arrival of complainant and other witnesses brought on record, while, Muharrir (PW-1) has admitted that there was no mentioning of any register no. 19 in his statement recorded u/section 161 CrPC. The time of occurrence is unknown. Surprisingly, on receiving information, complainant had not gone to the spot but to the hospital, where hospital police is available round the clock to register and report the matters. Although, complainant (PW-2) stated that people of the locality told him the name of the deceased but not a single person had been cited as witness nor the statement of a single private person has been recorded or brought on file.

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14. Importantly, Noor Wali (PW-4) endorsed the fact that the legal heirs of the deceased were present in the hospital at the time of post-mortem etc.; however, not a single legal heir reported the matter to the police nor the complainant had bothered to inquire from them. The doctor (PW-5) admitted that there was overwriting made over the time of arrival of the deceased Shahzib Ali, whereas, the sizes of all entry and exit wounds were different from each other, which does not rule out the possibility of commission of offence by more than one person or use of different weapons in commission of offence. There is no date available on daily diary report pertaining to bringing of murasila report by Syed Shamim (PW-7) to the police station at the relevant time.

15. The investigation officer (PW-8) in his statement admitted that there was neither any source of information and satisfaction available on file about the involvement of accused in the commission of offence. He also admitted that no one had charged the accused amongst the legal heirs of deceased nor the accused has confessed his guilt before him. He has also conceded that there was no direct evidence available against the accused. He has also not made any effort to collect the CDR data of the accused so as to show his presence on the spot at the relevant time. The investigation officer had admitted that the accused had also filed applications to his high-ups to prove his innocence. He also admitted that accused had filed an application under section 22-A CrPC for recording the statements of prosecution witnesses to prove his innocence and conducting of fair investigation in the case, which all facts create reasonable doubts.

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16. Since, complainant has received the information about honor killing; therefore, he was supposed to accompany with him a lady constable to the place of occurrence but he has failed to do so for whatever the reason may be.
17. 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 on file and while extending the benefit of doubt, the accused Gul Haider is acquitted from the charges leveled against him. As he is on bail; therefore, his sureties are discharged from liability of bail bonds.
18. Case properties be dealt with in accordance with law after expiry of period of appeal/revision.
19. File consigned to record room after completion and compilation.



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CERTIFICATE

It is certified that this judgment consists of nine (09) pages and each page is duly signed by me after necessary correction.



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