

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

SESSION CASE NO. : 13/2 OF 2023
DATE OF INSTITUTION : 13.09.2023
DATE OF DECISION : 05.11.2024

STATE THROUGH UMAR JAHAN S/O TAJ MUHAMMAD, AGED ABOUT 26 YEARS, R/O CASTE AKHEL, TAPA MOHSIN KHEL, NAKA KALEY GHILJO, DISTRICT ORAKZAI

------(Complainant)

VS

SAID JANAN S/O NOOR MUHAMMMAD, AGED ABOUT 40 YEARS, R/O CASTE AKHEL, NAKA KALEY, GHILJO DISTRICT ORAKZAI

------(Accused Facing Trial)

Present : Umar Niaz, District Public Prosecutor for State.
: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 15 **Dated: 05.08.2023** **U/S: 302 PPC**
Police Station: Ghiljo

JUDGMENT
05.11.2024

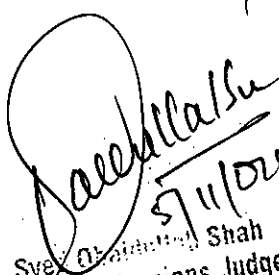
The accused named above faced trial for the offence u/s 302 PPC vide FIR no. 15, Dated 05.08.2023 of Police Station Ghiljo.

- (2). The case of the prosecution as outlined in the Murasila based FIR is as follows: On 05.08.2023, the local police upon receipt of information regarding the occurrence, reached DHQ Hospital Mishti Mela and found the dead body of Taj Muhammad s/o Hanif Khan lying in the emergency room where the complainant, Umar Jahan, the son of deceased reported the matter to the local police to the fact that on that day he received information that his father has been hit through a stone by


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a person namely, Said Janan after *fajar* prayer and has been shifted to Peshawar for treatment who later on succumbed to his injuries and died. On this information, he (complainant) rushed to DHQ Hospital Mishti Mela and found the dead body of his father. The report of the complainant was verified by Anwar Shah s/o Hanif Shah by putting his thumb impression over the same. The motive for the commission of offence has also not been mentioned in the report. The injury sheet and inquest report were drafted by Naseem Khan SHO and forwarded the deceased to the doctor for post-mortem examination. Murasila was drafted and sent to the police station through constable Abdul Khanan for registration of FIR.

- (3). After registration of FIR, it was handed over to PW-1, Abdul Malik SI for investigation. Accordingly, after receipt of copy of FIR, he reached the spot, prepared site plan Ex. PB on pointation of the eyewitness Khadim Gul. He took into possession a stone of yellow colour from the spot and sealed it in parcel no. 1 (Ex. P1) vide recovery memo Ex. PC, sealed blood-stained garments of the deceased including Kamees and Bunyan in parcel no. 2 (Ex. P2) vide recovery memo Ex. PC/1 which were placed/affixed with monograms of "GJ". The IO also prepared list of LRs of deceased which is Ex. PW 1/1. The IO prepared pointation memo Ex. PC/2 on pointation

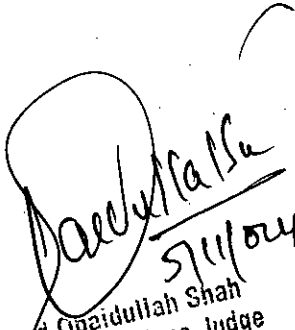

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of the accused. On 09.08.2023 the IO sent parcel no. 2 through constable Rooh Ul Ameen to FSL against and road permit certificate, the result whereof was received and placed on file by him as Ex. PK and after completion of investigation he submitted the case file to SHO for onward proceedings.

(4). Upon receipt of case file for the purpose of trial, the accused was summoned through addendum- B from Sub-Jail, Orakzai, 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. The prosecution examined as many as 10 witnesses.

The gist of their evidence is as follow;

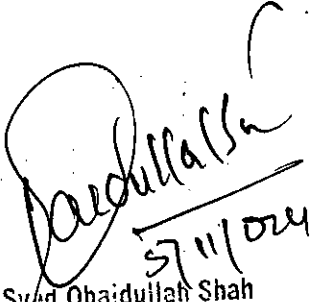
- I. Abdul Malik SI is PW-1. He deposed in respect of the investigation carried out by him in the instant case including preparation of site plan Ex. PB on pointation of the eyewitness Khadim Gul. He took into possession a stone of yellow colour from the spot, packed and sealed it in parcel no. 1 (Ex. P1) vide recovery memo Ex. PC, packed and sealed blood-stained garments including Kamees and Bunyan of white colour in parcel no. 2 (Ex. P2) vide recovery memo Ex. PC/1. He has


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prepared list of LRs of deceased Ex. PW 1/1, recorded statements of witnesses, prepared recovery sketch on pointation of the accused Ex. PC/2, sent parcel no. 2 to FSL through constable Rooh Ul Ameen, the result Ex. PK was received and placed on file by him, and after completion of investigation, he has submitted the case file to SHO for onward proceedings.

II. Naseem Khan SHO is PW-2. He has drafted the report of complainant in shape of Murasila Ex. PA besides prepared injury sheet Ex. PW 2/1 and inquest report Ex. PW 2/2. He has arrested the accused vide card of arrest Ex. PW 2/3 and submitted complete challan Ex. PW 2/4 against the accused facing trial.

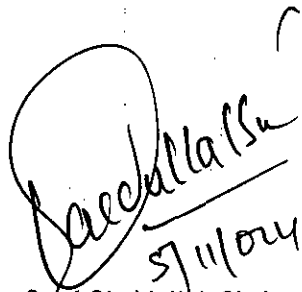
III. Constable Gul Hassan appeared as PW-3. He has handed over injury sheet and inquest report of the deceased to the doctor for post-mortem (PM) examination and taken the blood-stained garments of the deceased to police station.


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IV. Constable Abdul Khanan is PW-4. He has taken the Murasila to police station and handed it to Moharrir for registration of FIR.

V. Constable Rooh Ul Ameen appeared in the witness as PW-5 being marginal witness of the recovery memos Ex. PC, Ex. PC/1 and Ex. PC/2. He has also taken parcel no. 2 containing blood-stained garments of the deceased to the FSL along with road permit certificate and application addressed to the Incharge FSL and upon his return he handed over the receipt to the Moharrir of the police station. He is also the marginal witness of the pointation memo Ex. PC/2.

VI. Moharrir Abdul Manan appeared as PW-6. He has incorporated the contents of Murasila Ex. PA into FIR Ex. PA/1. He has received parcels no. 1 to 2, keeping it in mal khan and making its entry in register no. 19. He has handed over parcel no. 2 to the IO for sending it to FSL on 09.08.2023.

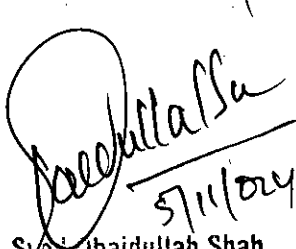

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VII. Complainant Umar Jahan, the son of deceased, is PW-7. He repeated the same

story as narrated by him in the Murasila
Ex. PA.

VIII. Anwar Shah is PW-8 who is the verifier of
the report of complainant. He has also
identified the dead body of deceased before
the police and the doctor.

IX. Khadim Gul, the eyewitness of the
occurrence appeared in the witness box as
PW-9. He deposed that he along with
deceased Taj Muhammad were present in
the Mosque at Naka Kaley Ghiljo and after
offering Fajar prayer at 0500 am. He was
reciting Holy Quran while the deceased
was busy in Tasbih (Zikr e Elahi) when the
accused Said Janan having a heavy stone in
his hand came there and hit the deceased
with the stone on his head from behind due
to which he received injuries. The accused
escaped from the spot. He has shifted the
deceased to the hospital whereafter he was
referred to the DHQ hospital Kohat and
then to LRH Peshawar where he
succumbed to his injuries and died.
Thereafter, we brought the dead body to
the DHQ hospital Mishti Mela for PM

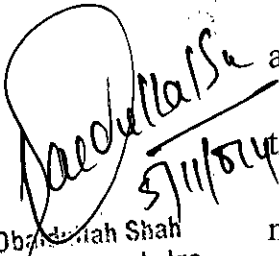

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examination. He has also pointed the spot to the IO.

X. Lastly, Dr. Imtiaz Yahya, Medical Officer DHQ Hospital Mishti Mela, was examined as PW-10. He has conducted autopsy on the dead body of deceased Taj Muhammad vide post-mortem report Ex. PM. He has endorsed the inquest report Ex. PW 10/1 and injury sheet Ex. PW 10/2. He has also endorsed initial referral slip Ex. PW 10/3. He has exhibited OPD slip as Ex. PW 10/4, slip of DHQ Hospital as Ex. PW 10/5 and treatment slip of LRH Peshawar as Ex. PW 10/6.

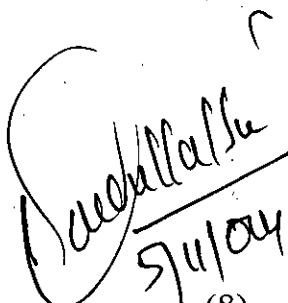
(5). After closure of evidence of the prosecution, statement of the accused was recorded u/s 342 Cr.P.C but he neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of learned DPP for the state and counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the State submitted that the accused facing trial is directly nominated in the FIR, that the accused has confessed his guilt before the police and made pointation of the spot, that the IO has conducted investigation on the spot, that the complainant, the


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witness of the recovery and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

- (7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, but the occurrence has not taken place in the mode and manner as alleged by the complainant in the FIR and in his court statement. The eyewitness and other witnesses who are close relatives of the complainant party, are not natural and neither the presence of complainant nor that of other witnesses is proved. Similarly, the matter has also not been reported in the mode and manner as alleged by the prosecution. Moreover, the investigations have also not been conducted on the spot in the mode and manner as alleged by the prosecution. No motive has been cited for the commission of offence. Learned counsel for defence argued that the prosecution has badly failed to bring home the charge against the accused facing trial.

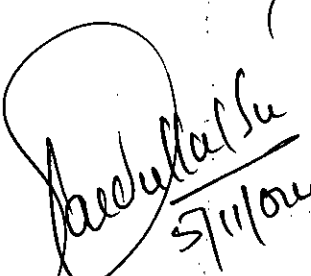

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The arguments advanced by the learned prosecutor and counsel for the accused facing trial and

record available on file reveal that no doubt the deceased has met an unnatural death and a single accused has been charged for the commission of offence but the main point to ponder over is that whether he was killed by the accused facing trial or otherwise.

In the initial report, the time of occurrence has been mentioned by the complainant/PW-7 as 05:30 am whereas the matter was reported in the hospital at 1900 (07:00 pm) hours as such there is delay of about 13 hours. According to the complainant's version, this delay was due to ignorance of the law. However, this explanation is contradicted by him in his court statement that they were in Fateh Jang where they received information about the murder of his father, which prompted them to travel to District Orakzai, thereby consuming considerable time. The relevant portion of his statements is reproduced below;

"The delay in report occurred due to the reason that we are unaware about the report in such like cases to the police and also, I was residing in Fatehjhang, so my co-villagers and relatives present with the dead body were waiting for me for lodging report."

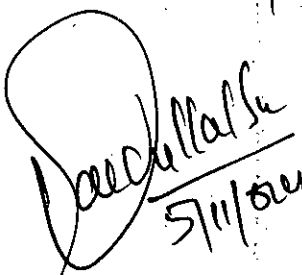

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Moreover, PW-9/Khadim Gul who presented himself as the sole eyewitness of the occurrence stated that they had taken the deceased to the hospital where the deceased succumbed to injuries but he has not made the report to the local police rather it was the complainant/PW-7 who has made the report, which further weakens the case of the complainant. In this regard, PW-9 explained that being unaware of the legal proceedings, he did not report the matter to the local police. However, it has to be noted that ignorance of law is no excuse.

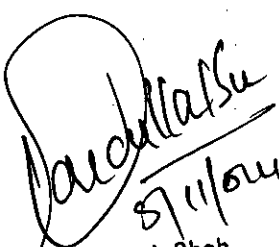
Additionally, it is astonishing that the name of the eyewitness/PW-9, is not mentioned in the report filed by the complainant/PW-7, and it is noteworthy that this report was not verified by PW-9, who was present at the time the report was made. Thus, the delay in lodging the report waiting for the legal heirs of the deceased, has not been sufficiently explained and is fatal to the case of the complainant. This delay suggests that the occurrence may not have been seen by PW-9 and that the report is lodged with deliberate and unexplained delay, proper consultation, deliberation with malafidy intention of nominating the accused facing trial for ulterior motives after when the complainant and eyewitness were arranged.


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As per contents of Murasila Ex. PA/1, the report was made to Naseem Khan SI/PW-2 in the hospital. He in his court statement, deposed that he received the information regarding the occurrence in the police station whereafter he left for the hospital but the daily dairy (DD) showing his departure from the police station is neither available on file nor produced later on by the prosecution to determine that in fact he has gone to the hospital. This witness also stated that he with his police personnel reached the hospital at about 06:55 pm and the report has been made to him at 1900 hours (07:00 pm). However, one of the police personnel who accompanied him, PW-3/Constable Gul Hassan in his cross examination indicated that their arrival time in the hospital is 09:30 pm, further clarifying that they had arrived there at 08:00 pm. He stated that;

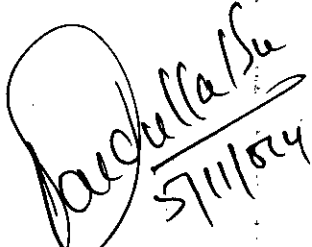
“We reached to the hospital at about 09:30 pm. Again, stated that we reached to the hospital at about 08:00 pm.”

Both these conflicting timings are not in line with the statement of Naseem Khan SI/PW-2 or the Murasila report. Moreover, the statement of PW-3/Constable Gul Hassan appears inconsistent, as on one hand he could not recall the name of the constable who was present with them at the hospital, while on the other hand, he stated the


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constable's name later in his testimony. Thus, the very reporting of the matter is mysterious, dubious and not supporting the ocular account with regard to the mode and manner of the occurrence.

In order to prove the mode and manner of the investigation conducted by the IO/PW-1 on the spot, the prosecution relied upon the testimonies of the eyewitness/PW-9, Constable Rooh Ul Amin/PW-5 and the complainant/PW-7. The time of arrival of the IO/PW-1 to the spot and the time spent by him on the spot are also contradicted by the prosecution witnesses. According to the statements of the IO as PW-1 and PW-5, the witness who accompanied him, the IO/PW-1 reached the spot for investigation at about 09:10 pm while the eyewitness/PW-9 mentioned this time as 10:00/10:30 pm. The eyewitness revealed the time spent by the IO on the spot as 01 hour which is contradicted by PW-7 who cited it in his cross examination as 15/20 minutes. With regard to recovery of a stone stained with the blood of deceased from the spot through recovery memo Ex. PC and the blood available on the garments of the deceased taken vide recovery memo Ex. PC/1 which were sent to the FSL for chemical analysis, it was reported through report Ex. PK that it was human blood; however, no opinion has been obtained in respect of the blood available on the

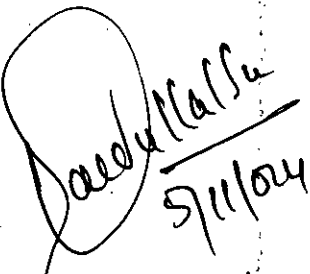

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stone and the one available on the garments of the deceased is one and the same. As such, this piece of evidence is inconclusive, unreliable and not worth consideration. As per statement of the Medical Officer/PW-9, he stated post-mortem examination of the deceased in Mishti Mela Hospital on 05.08.2023 at around 06:20 pm and completed it at around 06:55/07:00 pm. Whereas the report was made to the local on the same day at about 07:00 pm, indicating that the post-mortem was conducted prior to making of the report. In this regard, the IO/PW-1 has not provided any satisfactory explanation on record which further undermines the case of prosecution.

With regard to motive of the occurrence, the complainant/PW-7 has not mentioned any specific reason or cause for the incident in either his report or his statement. In other words, he has not provided any explanation or motive for why the event occurred or what might have led to it. Although, PW-7 has cited the motive for the occurrence in his cross examination in unsure way by stating that;

"Self-stated that at the time of report I had not disclosed the motive but it seems to me that the motive might be that my paternal aunt was married to the accused facing


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trial some 20 years ago and accused divorced her after 02 years of marriage."

But this statement is not automatically treated as conclusive or definitive for the reason that no other witness has corroborated the same stance which triggered the accused facing trial to commit the murder of the deceased. Moreover, the IO/PW-1 failed to gather any evidence in this regard.

- (9). In a criminal trial, the prosecution has to prove beyond any shadow of doubt their version connected with facts and material available on the record like a chain and the break-up of a single chain means cropping up of doubts and thereby providing exit to the accused nominated for such offence and when the break-ups are too much, the exits and doubts in the same number would follow. In the present case after detailed discussion above, it is held that sufficient dents and doubts are attracted to the case of complainant thereby creating doubts and providing safe exits to the accused facing trial. The prosecution failed to martial their troops in a right way for conclusion of trial in their favour. The evidence led in the case is not confidence inspiring and have failed to prove the case against the accused facing trial beyond any shadow of doubts. Hence, benefit of doubt so cropped up must be extended in the favour of accused facing trial.


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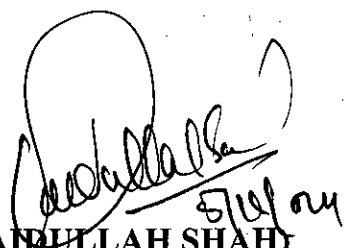
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Accordingly, accused facing trial, **Said Janan**, is acquitted of the charges levelled against him through the FIR in question. Accused is in custody, he be released forthwith, if not required in any other case. Case property be disposed of in accordance with law after the expiry of period provided for appeal/revision.

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

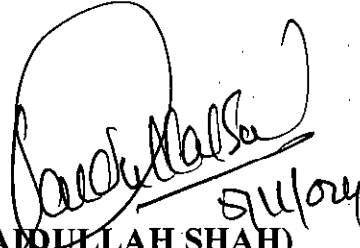
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CERTIFICATE

Certified that this judgment consists of fifteen (15) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 05.11.2024


(SYED OBADULLAH SHAH)
Sessions Judge, Orakzai,
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