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In the name of almighty Allah who has unlimited jurisdiction over and beyond the universes.

BEFORE THE COURT OF
ADDITIONAL SESSIONS JUDGE, ORAKZAI

Case No.11/2 of 2021

Date of institution: 28.09.2021

Date of decision: 14.03.2023

The State through Mazeed Ali son of Hussain Ali resident of Qaum Mani Khel, Tappa Essa Khel, village Doranki, Tehsil Lower, District Orakzai.

..... (Complainant)

...Versus...

1. Inab Ali son of Shad Ali

2. Zubair Ali son of Sadaf Ali

..... (Accused on trial)

3. Hajat Ali son of Azmeen Ali

4. Kiramat Ali son of Nizam Ali

..... (Accused absconding)

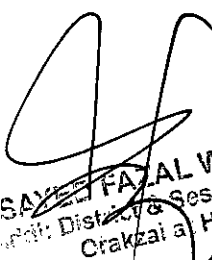
(All residents of Qaum Mani Khel, Tappa Essa Khel, village Doranki, Tehsil Lower, District Orakzai).

Case FIR No. 100, Dated 10.08.2021 registered under Section(s) 302/324/336/337Ai/34 of the Pakistan Penal Code, 1860; and Section 15 of KP Arms Act, 2013 at Police Station, Kalaya, District Orakzai.

JUDGMENT

The Police party headed by SHO Shal Muhammad rushed to the place of occurrence. Mazeed Ali (complainant) along with two injured Mst Madeeha Bibi and Razeed Ali were present on the spot. Complainant while narrating story of the incident told Police that he along with other residents of his joint dwelling house, available at home, rushed to the outdoor of the house where their kids were at each other's throats with the children of accused party residing in their neighborhood. The altercation led to the

incident where accused facing trial and absconding accused appeared whose were duly armed. Accused Inab Ali has opened fire which resulted into death


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of Miraj Hussain. Rest of the accused namely Zubair Ali, Zubair Ali and Kiramat Ali opened fire over Razid Ali and Mst Madeeha where from they sustained injuries. Murasila was drafted and sent to the Police Station. Consequently, the captioned FIR was registered to bring criminal law into motion. Sections 302 of the Pakistan Penal Code 1860 and Section 15 of the KP Arms Act, 2013 have been inserted against the accused Inaab Ali and Sections 324/336/337Ai/34 of Pakistan Panel Code, 1860 have been inserted against accused Zubair Ali, Hajat Ali and Kiramat Ali. Accused Inaab Ali and Zubair Ali were arrested on the spot; whereas, accused Kiramat Ali and Hajat Ali are absconding and are proclaimed offenders.

2. Complete challan was routed to the Court of Hon'ble, the District & Sessions Judge, Orakzai, which was entrusted to this Court. Kiramat Ali and Hujat Ali (absconding accused) were avoiding their lawful arrest as was confirmed from the examination of DFC who recorded statement as SW-1 and thus evidence against them was procured in absentia by attracting provisions under Section-512 of the Code of Criminal Procedure, 1898. The Court has examined the record and found sufficient material to proceed with the case for trial.

3. Inaab Ali and Zubair Ali being behind the bar were summoned through "Zamima Bay"; whereas, notices have been issued to the Prosecution and Complainant. On production, accused were supplied statements and documents prescribed in Section 265-C (1) of the Code of Criminal Procedure-1898. Charge against the accused was framed to which they pleaded not guilty and claimed trial.

4. Prosecution was directed to produce evidence. The Prosecution in order to prove its case against the accused, produced as many as thirteen (13)


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witnesses. The prosecution evidence is sketched below for ease of reference in determination of guilt or innocence of the accused:

5. Muhammad Zahid constable, Muharrir of the PS was examined as PW-1, who incorporated the contents of Murasila into FIR Ex.PA and handed over the same to the Investigation Officer for investigation. He also kept the case property in the Malkhana of the Police Station for safe custody and made entry in Register No. 19 Ex.PW-1/1. PW-2 is the statement of Raza Ali Constable, who handed over the dead body along with documents to the Doctor for Post Mortem Examination of the dead body. After Post Mortem Examination, the Doctor handed over him the blood stained garments of the deceased including Qamiz Shalwar and two Chadar along with Post Mortem Report and the same were handed over by him to the SI in the Police Station. Shal Muhammad SHO, was examined as PW-3, who reduced the report of complainant into Murasila Ex.PA. He prepared injury sheet and inquest report of the deceased produced as Ex.PW-3/1 and 3/2; Injury sheet of injured Madeeha is Ex.PW-3/3 and injury sheet of injured Zahid Ali is Ex.PW-3/4. After completion of investigation, he has submitted complete challan against arrested accused and challan under Section 512 of the Code of Criminal Procedure, 1898 against the absconding accused as Ex.PW-3/5. Dr. Farooq Azam was examined as PW-4, who conducted Medical Examination of injured Madiha and Razid Ali. He had prepared Medico Legal Certificates and Injury sheets of both the injured and exhibited the same as Ex.PW-4/1 to Ex.PW-4/4. PW-5 is the statement of constable Zeeshan Haider who has taken both the injured along with injury sheet to the Hospital for medical examination. After completion of medical proceedings, he handed over the injury sheet of both the injured to SI Aftab Hussain in the


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Police Station. Khan Saeed constable was examined as PW-6, who is the marginal witness to the recovery memo Ex.6/1 through which the Investigation Officer took into possession blood stained earth from the place of deceased Miraj Hussain. Another recovery memo Ex.PW-6/2 through which IO took into possession one Kalashnikov having fixed charger along with 04 live cartridges of 7.62 bore from the possession of accused Inaab Ali. He is also marginal witness to the recovery memo Ex.PW-6/3, through which, the IO took into possession the blood stained garments. He also exhibited the pointation memo as Ex.PW-6/4. Dr. Aziz ur Rehman was examined as PW-7, who has conducted the Post Mortem proceedings of deceased Miraj Hussain. He exhibited the Post Mortem report as Ex.PM, Injury sheet and Inquest report as Ex.PW-7/1 and Ex.PW-7/2. PW-8 is the statement of Shams ul Ghani who is another Marginal Witness to the recovery memos. The same witness has taken the parcel No. 1 to 6 containing blood stained earth, four empties of 7.62 bore, Kalashnikov and blood stained garments. He exhibited the FSL applications and road permit certificates regarding all the parcels as Ex.PW-8/1 to Ex.PW-8/8 respectively. Private Witness Madeeha daughter of Razid Ali was examined as PW-9, who stated that she along with other children were playing near main gate of their house. A quarrel took place between the children; meanwhile, Inab Ali, Hujat Ali, Kiramat Ali and Zubair came to the spot and started firing. Her brother got hit and died with the firing of accused Inab Ali, she himself got injured with the firing of Hujat Ali and her father got injured with the firing of Zubair. Statement of Mazeed Ali (complainant) was recorded as PW-10, who stated that our children were playing with neighbor's children and a quarrel took place. He along with his brother Razid


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ali and nephew Miraj Hussain came to the spot; meanwhile, Inab Ali, Zubair Ali, Kiramat Ali and Hujat Ali came duly armed with Kalashnikov and started firing upon them. In result of the firing of Inab Ali, his nephew Miraj Hussain hit and died on the spot. Razid Ali hit and injured with the firing of Zubair Ali and Madeeha hit with the firing of Hujat Ali, and injured. Police prepared site plan on the pointation of this PW. He also identified the dead body of the deceased Miraj Gul to the police and Doctor. He charged the all the accused for commission of different offences with specific role attributed to both set of accused. Injured person Razid Ali son of Hussain Ali was examined as PW-11 who stated that he was got hit and injured by the firing of Zubair Ali and became unconscious. His son Miraj Hussain died on the spot by the firing of Inab Ali and his daughter Madeeha got hit and injured with the firing of Hujat Ali. PW-12 is the statement of Qaiser Abbas son of Amal Hassan who has identified the dead body of deceased Miraj Hussain to the Doctor and Police. He has also thumb impressed the inquest report to the police. He has also verified the report of the complainant in shape of Murasila and thumb impressed the same. Aftab Hassan SI/IO was examined as PW-13 who has conducted the investigation proceedings in the case. He has prepared the site plan Ex.PB on pointation of the complainant. He took into possession blood stained earth from the place of occurrence and sealed the same into parcels No. 1 to 3 (Ex.P-1 to Ex.P-3). He took 04 empties of 7.62 bore and packed into parcel No. 4 (Ex.P-4). He arrested the accused Inab Ali and Zubair Ali and recovered Kalashnikov bearing No. 133634 along with fixed charger having 04 live rounds of 7.62 bore packed and sealed into parcel No. 5 Ex.P-5 and taken the same on recovery memo. He issued card of arrest of both the arrested accused Ex.PW-13/1. He drafted


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Parwana Izadgee of section of law regarding the recovery of weapon Ex.PW-13/2. He drafted the list of legal heirs Ex.PW-13/3. He exhibited applications written to Illaqa Magistrate as Ex.PW-13/4 and 13/5. He has sent the parcels No. 1 to 6 to the FSL through the hand of Shams ul Ghani. He also exhibited applications as Ex.PW-13/6 and Ex.PW-13/7 through which proceedings under Section 204 and 87 Code of Criminal Procedure, 1898 were initiated against absconding accused. He placed on file FSL reports Ex.PK-1 to Ex.PK-2. He prepared *Parwana* addition of section of law regarding injuries of the injured Ex.PW-13/8. After completion of investigation, he handed over the case file to the SHO for onward proceedings. On 24-11-2022, prosecution closed its evidence on its completion.

6. On closure of prosecution evidence, statement of accused was recorded u/s 342 of the Code of Criminal Procedure-1898; wherein, accused professed innocence and did not opt to produce defense evidence or to be examined on oath.

7. Learned APP for the State argued that accused are directly charged in the contents of FIR; that too, with specific role of committing murder of the deceased and firing upon the injured persons. Motive for the commission of offence is available in shape of quarrel between the children. The accused Inab Ali was specifically charged for the murder of the deceased and Zubair Ali for firing upon the injured and that the matter has promptly been reported. He added that the offences are heinous in nature and prosecution has proved its case beyond doubt entailing conviction of the accused.

8. Mr. Muzahir Hussain Advocate, representing the complainant endorsed the arguments of the Assistant Public Prosecutor and added that,


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recoveries, direct evidence, post mortem report and other material available on file prove the case beyond doubt which may be culminated into conviction and sentencing of accused with capital punishment.

9. On the contrary, learned counsel for the accused, Mr. Hamid Sarfaraz Advocate contended that ocular evidence of the incident is interested. The circumstantial evidence is not corroborating the ocular evidence. The evidence so recorded is contradictory and the mode and manner of the crime alleged has not been proved. Evidence available on the file is deficient and the story advanced by the prosecution is not appealable to prudent mind. It was added that the story has been concocted. He concluded that prosecution has not been able to prove the case beyond reasonable doubt and requested for acquittal of the accused.

10. The guilt or innocence of accused facing trial, on the basis of all types of evidence available on file; duly assessed and appreciated in light of the professional assistance rendered by learned the prosecutor and counsel representing accused, is being determined as follows.

11. Accused facing trial have directly been nominated by names with specific role in the contents of FIR Ex.PA. The accused facing trial have been attributed role of firing and as a result of which, the one "Miraj Hussain" died on the spot and two others have been injured. The motive in shape of clash between the children was existed between the parties. They are co-villagers and it was a broad daylight occurrence which is ruling out the chance of any doubt of the identity of accused. Furthermore, it is also not appealable to the mind of a prudent person that a person would be so foolish to let an actual culprit go uncharged by substituting an innocent person.

Concluding the discussion, the accused being directly nominated in the


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contents of FIR as well as in the statement of the complainant recorded under oath as PW-10 excludes the chances of misidentification or substitution of accused.

12. Motive is energetic source of mind which provides propelling force and gives impetus to perform any action or to do any act. It is the cause, manner and method of thoughts in the mind of a person for performing action which is hidden in the mind of accused. In this legal background, the factual situation of present case is quarrel between the children of both the parties. The deceased as well as one of the injured are Juveniles which establish the fact of motive alleged by the complainant.

13. Promptness in reporting the incident to police is another area which is required to be focused after discussing nomination, substitution and identification of accused. Under Section-154 of the Code of Criminal Procedure, 1898, it is the responsibility and obligation of the Police Officer to immediately record the statement of person reporting any incident but at the same time, it is also the responsibility of every citizen to immediately lodge the FIR for every cognizable offence so that the Law may be set into motion and timely action could be taken against the criminals. Promptness in reporting the matter is encouraged with the object to obtain first hand spontaneous information of the occurrence in order to exclude the possibility of fabrication of story or consultation and deliberation. The incident has promptly been reported which is followed by registration of FIR without any delay as the incident had taken place on 10th of August of 2021 at 9:00 hours; reported on 9:40 hours and FIR was lodged on 10:25 hours of the same day.

14. The mode and manner in which crime is committed is the next question to be discussed as identification, nomination of accused, existence

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of motive in shape quarrel between the children of both the parties. It is the case of prosecution that complainant Mazid Ali, his deceased nephew and injured brother were busy in stopping the fight between children on 10th of August, 2021 at 9:00 AM. Accused Inab Ali started firing over them. Resultantly, the deceased Miraj Hussain was died on the spot. Meanwhile, co-accused Zubair Ali started firing as a result of which, Razid Ali sustained injuries and shifted to the Hospital.

15. The injured Razid Ali and Maheeha recorded their statements as Eye Witness of the occurrence. Razid Ali happens to be the real father of deceased and thus natural witness need not to explain his presence at the spot. Both the eye witnesses testified that Inaab Ali and Zubair being accused have opened fire on them through Kalashnikov. Similarly, complainant is also part of the ocular evidence as eye witness. Miraj Hussain hit and died on the spot due to firing of the accused Inab Ali and Madeeha got injured with the firing of Hujat Ali while Razid Ali got injured with the firing of accused Zubair Ali. Ocular evidence of the occurrence is thus available; consistent on material facts; natural and confidence inspiring and thus no reason is available to disbelieve such evidence of the direct source. Statement of an Eye Witness can be made base for conviction as was held in "Khalid Mehmood vs State" case reported as 2022 SCMR-1148, and when three witnesses with natural presence; especially, two out of three are injured in such incident had testified the occurrence could not be deprecated.

16. Blood-stained earth of deceased Miraj Hussain have been sealed in parcel No. 1 and blood-stained earth from the place of injured Razid Ali sealed into parcel No. 2 and blood stained earth from the place of injured Madeeha Bibi sealed into parcel No. 3; 04 empties of 7.62 bore from the




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places of accused sealed into parcel No. 4, which were taken into possession vide Recovery Memo Ex. PW-6/1; Kalashnikov along with fixed charger containing 04 live rounds of 7.62 bore, which has been sealed in parcel No.5 vide Recovery Memo Ex.PW-6/2 further strengthen the case. Moreover, blood stained garments belonging to deceased Miraj Hussain containing Shalwar Qamees of Green color, Chadar yellow color and Chadar blue color were also taken into possession which were sealed into parcel No. 6 vide recovery memo Ex.PW-6/3. All the recoveries have been seen by the marginal witnesses and one of them Shams ul Ghani constable had testified the proceedings while deposing as PW-08. The case properties have been transmitted to FSL vide applications Ex. PW-8/1, 8/3, 8/5 and 8/7. Road certificates have been exhibited as Ex. PW-8/2, 8/4, 8/6 and 8/8. The reports of FSL Ex. PK and PK-2 opined regarding the parcels that blood stains on the articles were human blood and regarding the parcel containing 04 empties of 7.62 bore that empties were fired from 7.62mm bore (SMG) rifle No. 1975-133634. All these recoveries and positive reports of FSL corroborate the oral account on one hand and establish case on the strength of circumstantial evidence on the other hand.

17. Injury sheets and inquest reports of the deceased and injured are available on file as Ex. PW-3/1 to 3/4 which speak about the un-natural death of the deceased and injury of the injured persons. Dr. Aziz Rehman was examined as PW-07 who produced the Post-Mortem report of the deceased Miraj Hussain as Ex. PM. He testified the inquest report Ex. PW-3/1 as well. He categorically stated that, this is a case of firearm injury and cause of death was excessive bleeding and damage of vital organs. His report is in consonance with the injury sheet. Dr. Farooq Azam had conducted the


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Medical Examination of both the injured person who was examined as PW-4. He opined that, this is case of firearm injury. He endorsed head injury of injured Razid Ali and also opined that right side with complete vision loss of right eye of second injured Madeeha. The medical evidence is fully supporting the prosecution case.

18. Circumstantial evidence of the incident when consulted reveals that there are different recoveries, statements, site plan, medico legal reports and FSL reports etc. which are fully corroborating the ocular account of evidence.

19. The direct nomination of accused with no chance of misidentification; promptly reporting the incident and lodging FIR; recoveries of blood stained earth and garments; recovery of weapon of offence, empties from the spot, matching with weapon of offence, recovery of bullet from the wound, oral account of evidence from direct source; connected circumstantial evidence; corroboration through post mortem reports; FSL reports and other evidence documented have proved the mode and manner of the offence committed by the accused facing trial.

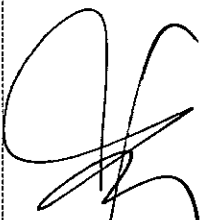
20. For what has been discussed above, the prosecution has been able to bring home charge against the accused facing trial beyond any reasonable doubts; that too, through cogent, concrete and tangible evidence that shall lead to conviction. It has been proved that the offence of murder of Miraj Hussain has been committed by accused Inab Ali. Resultantly, in case FIR bearing No. 100 dated 10-08-2021, registered under section 302/324/336/337Ai/34 Pakistan Penal Code, 1860 and Section-15 of the KP

Arms Act, 2013 at Police Station Kalaya Orakzai, for the murder/Qatl-e-amad of deceased Miraj Hussain, the accused facing trial Inab Ali son of


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Shad Ali, is hereby convicted and sentenced under Section 302 of the Pakistan Penal Code-1860 to life imprisonment (25 years) rigorous imprisonment as Tazir and the accused/convict shall also pay an amount of Rupees one Million (1,000,000) as compensation to the legal heirs of deceased within the meaning of Section-544(a) of the Code of Criminal Procedure-1898 and in default of payment of the same amount, he shall further undergo six months simple imprisonment while the amount shall be recovered as land revenue under the provision of West Pakistan Land Revenue Act-1967. The benefit of section 382(b) of the Code of Criminal Procedure-1898 is also extended in favour of the convict. The accused facing trial Inab Ali is also convicted under Section 15-AA for imprisonment of 05 years and fine of Rs. 50,000; in default of which, he shall undergo simple imprisonment for one month; however, the fine shall be recoverable as land revenue. Furthermore, in the same case, for the firing upon Razid Ali who got injured, the accused facing trial Zubair Ali son of Sadaf Ali, is hereby convicted and sentenced under section 324 of the Pakistan Penal Code-1860 to the imprisonment of ten year (10 years) rigorous imprisonment. Accused Zubair Ali is also convicted in the same case under Section 337A (i) of the Code of Civil Procedure, 1908 for imprisonment of two years as Tazir. The benefit of section 382(b) of the Code of Criminal Procedure-1898 is also extended in favour of the convict. The convict/accused are already in custody; hence, they are being sent to Jail through conviction warrant. Attested copy of this judgement be sent to District Public Prosecutor within the meaning of section-373; whereas, attested copy of this judgement be supplied to convict in term of section-371 of the Code of Criminal Procedure-1898. All the punishments pertaining to imprisonment shall run

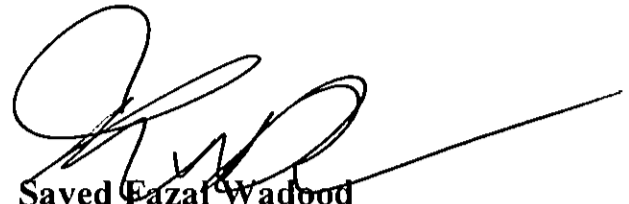

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concurrently. Case property be dealt with as per law after expiry of period of appeal/revision. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

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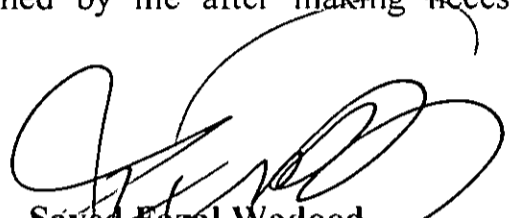
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CERTIFICATE:

Certified that this Judgment consists of Thirteen (13) pages; each page has been read over and signed by me after making necessary corrections therein.



Sayed Fazal Wadood
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