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**IN THE COURT OF BAKHT ZADA,**  
**SCJ/JM, ORAKZAI AT BABER MELA**

CASE NO. : 27/2 OF 2022

DATE OF INSTITUTION : 24.10.2022

DATE OF DECISION : 31.01.2024

STATE THROUGH: MUHAMMAD ULLAH S/O KHYAL ZAR  
SHAH, R/O QOUM ALI KHEL, GHONDA MELA, ORAKZAI.  
------(Complainant)

VS

1. Muhammad Daud s/o Ayub
2. Shafiq Ur Rehman s/o Dilbar Shah

*Both R/O Zargiri, District Hangu*

------(Accused Facing Trial)

3. Misri Khan s/o Zarin Shah

*R/O Qoum Qoum Buland Khel, Tapp Masti Khel, District  
Orakzai.*

------(Absconding accused)

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**ORDER**

31.01.2024

Accused Muhammad Daud s/o Ayub and Shafiq Ur  
Rehman s/o Dilbar Shah, Both R/O of Zargari, District Hangu  
are facing trial in case FIR No. 16, Dated: 28.07.2022, u/s  
324/337F(ii)/34 PPC of PS Dabori, U/Orakzai.

Facts of the case as alleged in the FIR are that a written  
Murasila was received from Muhammad Jan ASI though  
Muhammad Asif constable; wherein, it is mentioned that on  
information he went to RHC Dabori and found Abdul Qasim  
s/o Zar Muhammad, aged about 25/26 years and Muhammad  
Ullah s/o Khyal Zar Shah, aged about 28/29 years, both R/O

*Arif*  
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Ali Khel, Ghunda Mela, in the emergency room in injured condition. Complainant Muhammad Ullah, Cell No. 0332-9811156, reported the matter that on 28.07.2022 at 16:40 hrs, he was present in his house, meanwhile, on hearing loud music outside, he came out of the house and saw accused Misri Khan s/o Zarin Shah, Daud s/o Ayub and Shafiq s/o Dilbar sitting outside and were busy in hearing loud music through MP3. That the complainant tried to restrain them from hearing loud music, on which all the 03 accused attacked him and started beating him. Meanwhile, maternal uncle of the complainant namely Abdul Qasim, came out of the house who was also attacked upon with stones and sharp objects by accused, as a result of which Abdul Qasim received injuries. The accused Misri Khan took a pistol from co-accused Muhammad Daud and started firing at him (complainant), as a result of which he got injury on elbow of his right hand and hence, the present FIR. Motive for the occurrence is switching loud music by the accused.

After completion of the investigation, complete challan was submitted against the accused (1) Muhammad Daud s/o Ayub, (2) Shafiq Ur Rehman s/o Dilbar Shah and (3) Misri Khan s/o Zarin Shah on 24.10.2022. The accused were summoned who appeared before the court on 19.11.2022 and

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formalities U/S 241-A Cr.P.C were complied with. Formal charge against the accused was framed on 09.01.2023 to which they pleaded not guilty and claimed trial; whereafter, the prosecution was asked to produce PWs.

During the course of evidence, accused Misri Khan absented himself and was proceeded u/s 512 Cr.P.C and his sureties were proceeded u/s 514 Cr.P.C.

The prosecution produced and recorded statements of as many as 10 PWs. The gist of statements of prosecution witnesses are as follows;

**PW-01: Asif Khan**, constable, PS Dabori. He took Murasila to the PS on 28.07.2022 which was handed over to him by ASHO Muhammad Jan. His statement u/s 161 Cr.P.C was recorded by the IO

**PW-02- Wrekhmin Badshah**, constable PS Dabori. On 28.07.2022, ASHO Muhammad Jan handed over injury sheets of injured Muhammad Ullah and Abdul Qasim to him, which were taken to the hospital and handed over to the doctor. The medicolegal officer handed over blood-stained clothes of injured Muhammad Ullah and Abdul Qasim, which were handed over by him to the IO. His statement was recorded u/s 161 Cr.P.C and was cross-examined by the defence counsel.

  
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**PW-03: Imtiaz Khan, SHO, PS Dabori.** He has submitted complete challan in the instant case on 02.08.2022, which is Ex.PW-3/1 and correctly bears his signatures. He also exhibited the Murasila as Ex.PW-3/2 and has prepared injury sheet of injured complainant Muhammad Ullah and Abdul Qasim and sent the same under escort of constable Wrekhmin Badshah to the hospital. Injury sheets of complainant Muhammad Ullah and Abdul Qasim are Ex.PW-3/3 and Ex.PW-3/4 respectively. He has arrested the accused and their card of arrest is Ex.PW-3/5. As ASHO Muhammad Jan has died and he is well acquainted with his signatures and all the above documents are correct and correctly bear his signatures. He was cross-examined by the defence counsel.

**PW-04: Kalim Ullah, constable, PS Dabori.** The IO handed over him 02 sealed parcels containing blood-stained garments along with road permit certificate and FSL application addressed to Incharge FSL Peshawar. The same were handed over to the Incharge FSL and obtained his signatures on road permit certificate and on return, handed over the same to the IO.

**PW-05: Gul Asghar, ASHO, PS Dabori.** He has registered FIR No. 16, Dated: 28.07.2022 u/s 324/34 PPC at the receipt of Murasila through Muhammad Asif, No. 947. The

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FIR is Ex.PA and correctly bears his signatures. His statement was recorded u/s 161 Cr.P.C.

**PW-06: Muhammad Ullah**, complainant. He has reproduced the whole story as alleged in the FIR. He has lodged the FIR which is thumb impressed by him. Later on, the investigation officer prepared site plan at his pointation. He was thoroughly cross-examined by the defence counsel.

**PW-07** is the statement of injured and eye-witness Abdul Qasim s/o Zar Muhammad. He also repeated the same story during his statement as alleged in the FIR and was cross-examined by the counsel for the accused facing trial.

**PW-08** is the statement of Habib Noor, Medical Nurse, Type-D Hospital, Dabori. He has examined injured complainant Muhammad Ullah s/o Khyal Zar Shah on 28.07.2022 and reported that the injured was physically assaulted. There was wound on right arm near elbow. First Aid provided and the patient was referred to DHQ Hospital Mishti Mela for further management. In his findings, he mentioned that there was trauma wound on right arm near elbow (patient do not know where it is hit by). Dressing at elbow and there was mild pain. Movement at elbow and wrist joint were normal. Radial pulse was intact. A small abrasion was found

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on right upper knee. Today he seen his report which is correct and correctly bears his signatures and is Ex.PW-8/1.

Later on, at the application of the prosecution PW-08 was re-examined on the ground that in his statement as PW-08, he has not mentioned the medicolegal report of injured Abdul Qasim.

During re-examination, he stated that he also examined Abdul Qasim on 28.07.2022 at 05:45 PM. The injured was physically assaulted and was complaining of pain in the whole body. No bleeding from the body noted. He was referred to DHQ Hospital Mishti Mela for further investigation i.e X-Ray and Ultrasound etc.

He was cross-examined by the counsel for the accused.

PW-09 is the statement of Saif Ur Rehman, Investigation Officer, PS Dabori. He visited the spot after registration of FIR, but the complainant was admitted in the hospital. He again visited the spot on 29.07.2023 and prepared the site plan at the instance of the complainant which is Ex.PB. He produced the accused Muhammad Daud, Shafiq Ur Rehman and Misri Khan vide his application Ex.PW-9/1 before the Illaqa Judicial Magistrate with the request for obtaining their 05 days physical custody in favour of the police, but his application was turned down and the accused were remanded

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to the judicial lock-up, Orakzai. He sealed the garment of injured Muhammad Ullah in parcel no. 01 and that of injured Abdul Qasim in parcel no. 02 by affixing 3/3 seals of DB on each parcel. 01 sample of monogram was kept inside each parcel. Ther recovery memo is Ex.PW-9/2. Application for sending parcel no. 01 & 02 to FSL is Ex.PW-9/3. The transit receipt is Ex.PW-9/4. The FSL report received is Ex.PZ. The attested copy of relevant page of register no. 19 is Ex.PW-9/5. He also recorded the statements of PWs u/s 161 Cr.P.C and at the completion of investigation, handed over the case file to SHO for submission of complete challan.

Learned DPP for the state abandoned the statement of PW Ghani Rehman being unnecessary. He was subjected to cross examination by the counsel for the accused at length. On 15.05.2023, learned DPP for the state also abandoned the statement of PW Abdul Hameed being unnecessary and closed the prosecution evidence.

Statement of accused U/S 342 Cr. PC were recorded on 23.01.2024. They neither wished to produce any evidence in defence nor wished to be examine on oath.


Arguments of the learned Sr.PP for the state and counsel for the accused facing trial heard and available record perused.

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It is the case of prosecution that on 28.07.2022 at 17:50 hrs, complainant Muhammad Ullah reported the matter to the local police in emergency room of RHC Dabori in injured condition along with Abdul Qasim that he was present in his house; meanwhile, he heard loud music outside and when he came out of the house, he found accused Misri Khan s/o Zarin Shah, Daud s/o Ayub and Shafiq s/o Dilbar Shah were busy in hearing loud music through MP3. They were restrained, but the accused attacked the complainant; meanwhile, his uncle Abdul Qasim came to rescue, but he was also attacked upon and he got injured. Accused Daud took pistol from accused Misri Khan and made firing at them with intention to kill and due to his fire the complainant got injured on his right elbow, while Abdul Qasim escaped unhurt. He charged all the 03 accused for the commission of offence.

In order to prove their stance, the prosecution have recorded the statements of as many as 10 PWs. The statement of PW-08, Habib Noor, Medical Nurse, Type-D Hospital Dabori is worth perusal. He has mentioned in his medicolegal report Ex.PW-8/1 that "there was trauma wound on the right arm near elbow (*patient do not know where it is hit by*)". It is also mentioned in the report that after X-Ray, patient was re-examined at DHQ Hospital Mishti Mela and a single wound

  
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was found at right arm near elbow which was red in colour measuring 1x1 cm in width not so deep with punched out margins showing subcutaneous tissues. There was mild swelling and redness around the wound. X-Ray do not show any fracture of bone. Ex.PW-8/1 also shows that Abdul Qasim was complaining of pain in his body and there was no bleeding.

The medicolegal report Ex.PW-8/1 cannot be taken into consideration for proving the allegations against the accused facing trial on the following grounds;

- i. The date and time of arrival of both the injured is mentioned in the report as 28.07.2022 at 05:45 PM, but the time of examination of each injured is not mentioned in the report.
- ii. The report is silent about probable duration between the injury and examination.
- iii. The report is also silent about the weapon of offence and the nature of injury.
- iv. The report is also silent about the fact that who was accompanied with the injured at the time of examination in the hospital.
- v. It is also not mentioned in the report that whether the injury at the person of the complainant and his uncle

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were fresh or old one and whether the injury at the person of complainant was firearm or otherwise.

- vi. The last but not the least is that the person, who has examined the complainant and his injured uncle, is not authorized medicolegal officer, rather he is medical nurse and by no stretch of imagination he could be consider proper person to conduct medicolegal case and prepare report. He himself has admitted in his cross-examination that he was not legally authorized to conduct medicolegal case and in response to his report dated: 28.07.2022 and subsequent report dated: 20.08.2022, no opinion of the concerned medicolegal officer of DHQ Hospital Mishti Mela has been received to them. So, the evidentiary value of the medical report Ex.PW-8/1 seized to exist and can not be used against the accused facing trial.

The most important evidence in the cases u/s 324 PPC is the statement of injured complainant and the eye-witnesses. If the statement of injured complainant and eye-witness are in line with each other, the same cannot be easily discarded on the basis of other evidence, but in the present case, the report of injured complainant, his statement recorded as Ex.PW-06 are contradictory to the statement of PW-07, eye-witness Abdul

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Qasim. Complainant during his cross-examination as PW-06 has stated that *"it is correct that I have stated in my report that all the 03 accused attacked me, however I cannot specify the specific blows advanced by each accused"*. PW-07, eye-witness Abdul Qasim also stated during his cross-examination that he cannot specify the names of the accused at whose blows/hit he got injured. He introduced another version of the case during his cross-examination and stated that the accused were 06 in number, contrary to the report and statement of complainant as PW-06 because only 03 accused are charged in the FIR and statement of complainant as PW-06. As far as, the allegation regarding the firearm injury at the person of the complainant is concerned, there is corroborative evidence regarding the same in shape of medicolegal report and any blood-stained earth taken into possession by the IO from the place of occurrence. The complainant has not mentioned the bore of weapon of offence in his report, furthermore the IO has not recovered a single empty from the place of occurrence to support the stance of the complainant and similarly no weapon of offence has been recovered from the possession of the accused. So, in present circumstances, the report of complainant is neither supported by the statement of eye-witness nor there is any corroborative evidence to make this

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court believe that the occurrence has taken place in the mode and manner as reported by the complainant in his report.

The statement of investigation officer recorded as PW-09 is also worth perusal. He has mentioned during his cross-examination as PW-09 that FIR was handed over to him on 17:50 hrs and he left for the place of occurrence on the same day at 18:50 hrs and reached the place of occurrence at 19:15 hrs. He inspected the spot by his own soon after the occurrence but he neither found any empty and blood-stained earth at the spot nor he has noticed any bullet marks on the surrounding walls. He has admitted during cross-examination that the place of occurrence is surrounded by several shops, but he has not recorded the statement of any shopkeeper present at the time of occurrence. The blood-stained clothes of the complainant were allegedly taken into possession by the investigation officer from constable Wrekhmin Khan vide recovery memo Ex.PW-9/2 on 29.07.2022, which were allegedly handed over to him by the medicolegal officer but the perusal of record shows that the accused was medically examined by nurse technician Habib Noor (PW-08) on 28.07.2022 and his report Ex.PW-8/1 is silent about handing over the blood-stained clothes to constable Wrekhmin Khan, but astonishingly the same were taken into possession on 29.07.2022 by the investigation

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officer and it has not been explained that in whose possession the alleged blood-stained clothes were lying for 01 day. The blood-stained clothes were sent to FSL vide receipt No. 40, dated: 01.08.2022 through constable Kalim Ullah, No. 849/HC as mentioned in Ex.PW-9/3 which further makes doubts that after receiving the same by the IO on 29.07.2022 where and whose possession, the alleged blood-stained clothes were lying for next 03 days. The chain of possession of the blood-stained clothes before sending it to FSL is missing and also creating doubts on the score that the medicolegal report is silent about its handing over it to constable Wrekhmin by nurse technician, Habib Noor (PW-08).

In the view of the above discussion, it has become crystal clear that there is contradiction in the statement of complainant (PW-06) and eye-witness (PW-07) about the number of accused. The medicolegal report is prepared by the nurse technician instead of authorized medicolegal officer and the same seized to have any legal effect. The nature of injury as well as the kind of weapon of offence are not proved on record. No blood-stained earth and empty has been recovered from the spot are all fatal grounds for the case of prosecution and the prosecution badly failed to prove their case against the accused facing trial. I therefore, acquit the accused facing trial from the

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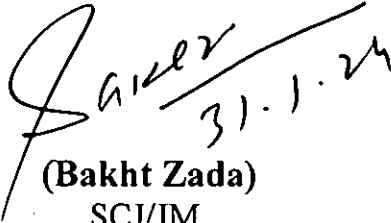
charges levelled against them. They are on bail. Their sureties are discharged from the liability of their bail bonds.

As far as the case of absconding accused Misri Khan is concerned, prima facie case exists against him, therefore, perpetual warrant of arrest be issued against him. Copy of this order be sent to DPO Orakzai and SHO PS concerned for including the name of absconding accused Misri Khan in the register of POs.

Case property if any be kept intact till the expiry of period provided for filing revision/appeal.

Case file be consigned to the record room after its completion and compilation.

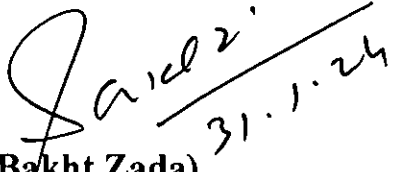
**Announced**  
31.01.2024

  
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(Bakht Zada)  
SCJ/JM,  
Orakzai (at Baber Mela)

**CERTIFICATE**

Certified that this order consists of fourteen (14) pages. Each page has been read, corrected where-ever necessary and signed by me.

**Dated: 31.01.2024**

  
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(Bakht Zada)  
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