

**IN THE COURT OF SHAUKAT AHMAD KHAN**  
**SESSIONS JUDGE, ORAKZAI AT BABER MELA**

SESSION CASE NO. : 57/3 OF 2021  
DATE OF INSTITUTION : 18.10.2021  
DATE OF DECISION : 29.07.2022

STATE THROUGH AJMAL SIDDIQUE S/O KHAWAJA MIR, R/O  
CASTE UTMAN FERAZ KHEL, QIMAT KHEL, PO FERAZ  
MIRAZI KHEL, AGED ABOUT 34 YEARS TEHSIL LOWER  
DISTRICT ORAKZAI

------(Complainant)

VS

ABDULLAH S/O MORCHA KHAN, AGED ABOUT 33 YEARS,  
R/O CASTE ZAKHA KHEL, KHAL FERAZ KHEL, DISTRICT  
ORAKZAI

------(Accused Facing Trial)

**Present:** Umar Niaz, District Public Prosecutor.  
: Khursheed Alam Advocate for accused.  
: Akbar Yousaf Khalil Advocate for complainant.

**FIR No. 91**  
**U/S: 15AA**

**Dated:** 17.07.2021  
**Police Station:** Kalaya

**JUDGEMENT**  
**29.07.2022**

The accused named above faced trial for the  
offence u/s 15AA vide FIR no. 91, dated 17.07.2021 of  
PS Kalaya.

- (2). The case of the prosecution as per contents of Ex.  
PA Murasila based FIR Ex. PA/1 is; that on 17.07.2021  
at 1000 hours at DHQ hospital Mishti Mela, the  
injured/complainant, Ajmal Siddique, PW-8, made a  
report to the local police to the fact that he along with his  
father (deceased) were present in the veranda of Azan  
Hotel when at about 1000 hours, accused facing trial  
Abdullah duly armed with pistol came and made firing at

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them as a result of which his father got hit and died on the spot while he sustained injury on his left-hand palm. The complainant charged the accused for the commission of offence. The report of the complainant was verified by Arbab Khan s/o Lal Hakim (PW-7) by putting his thumb impression over the same. The Murasila Ex. PA was drafted by Shal Muhammad SHO/PW-3 which was sent to the PS through constable Raza Ali/PW-1, on the basis of which FIR Ex. PA/1 was drafted by Muhammad Ayyub AMHC/PW-4. On the same day, PW-11/Muqadar Khan ASHO during patrolling, on receipt of information regarding occurrence, raided the house of accused where the accused was found present in front of his house. He was arrested vide card of arrest Ex. PW 11/1. At the time of arrest, he was also found in possession of 9MM pistol bearing no. AT6407 along with a fixed charger containing two rounds and a spare charger which were taken into possession vide recovery memo Ex. PC/2 and section 15AA was added in the FIR.

(3).


After completion of investigation separate challan u/s 15AA was submitted. Upon receipt of case file for the purpose of trial, the accused was summoned, 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

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examined as many as 14 witnesses. The gist of the evidence of prosecution is as follow;

- I. Constable Raza Ali is PW-1. He received Murasila from Shal Muhammad SHO for taking the same to Police Station which he handed over to MHC Muhammad Ayyub for registration of FIR.
- II. Constable Nikzad Ali appeared in the witness box as PW-2 being marginal witness of recovery memos Ex. PC vide which the IO has taken into possession blood-stained earth and two empty shells of 9MM pistol. He has also taken parcels no. 1 to 4 to the FSL vide road permit certificates and applications addressed to the incharge FSL.
- III. Shal Muhammad SHO is PW-3. He has drafted the Murasila Ex. PA. He also stated that he had prepared injury sheets Ex. PW 3/1 of the injured, injury sheet Ex. PW 3/2 and inquest report Ex. PW 3/3 of the deceased and forwarded the same to doctor through constable Javid Ali for medical examination of injured and autopsy on dead body of deceased respectively.

  
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- IV. Muhammad Ayyub AMHC appeared in the witness box as PW-4. He has incorporated the contents of Murasila into FIR Ex. PA/1. Similarly, he has received the case property i.e., parcels no. 1 to 4 which was kept by him in mal khana of the PS. The details of case property were also entered by him in register no. 19.
- V. Dr. Farzand Ali, CMO, DHQ Mishti Mela is PW-5. He has conducted post-mortem examination of the deceased vide his report Ex. PM. He has also examined the injured/complainant vide his report Ex. PW 5/3.
- VI. Muhammad Alamzeb s/o Awaz Mir is PW-6. He has identified the dead body of deceased Khwaja Mir before the local police and doctor. He stated that the inquest report correctly bears his thumb impression.
- VII. Arbab Khan s/o Lal Hakim appeared in the witness box as PW-7. He has verified the report of complainant by putting his thumb impression over the same.

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VIII. Injured/complainant Ajmal Siddique is PW-8.

He has repeated the same story as narrated in the FIR Ex. PA/1.

IX. Constable Khan Saeed appeared in witness box as PW-9 being marginal witness of recovery memo Ex. PC vide which the IO in his presence has taken into possession blood-stained earth and two empty shells of 9MM, packed and sealed the same in parcels no. 1 & 2.

X. Constable Javid Ali is PW-10. He has received injury sheets and inquest report which he has handed over to the doctor for post-mortem examination of deceased and medical examination of injured.

XI. Muqadar Khan ASHO was examined as PW-11. He stated that he has raided the house of accused and recovered one 9MM pistol along with a fixed charger containing two rounds and one spare charger used in commission of offence vide recovery memo Ex. PC/2 besides issuing card of arrest of accused Ex. PW 11/1.

XII. Fazil Hussain is PW-12. He is the marginal witness of the recovery memo Ex. PC/2 vide which the ASHO had taken into possession

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9MM pistol along with a fixed charger containing two rounds and one spare charger used in commission of offence.

XIII. Aftab Hassan SI is PW-14. He has conducted investigation by visiting the spot, taking into possession blood-stained earth from the place of deceased and two empty shells of 9MM pistol vide recovery memo Ex. PC, preparing list of LRs of deceased Ex. PW 13/1, preparing the site plan Ex. PB. He has also taken into possession blood-stained garments of the deceased (P3) vide recovery memo Ex. PC/1, recorded statements of marginal witnesses, added section of law 15AA in the instant case, produced the accused before the court of Judicial Magistrate vide his application Ex. PW 13/3, prepared pointation memo on pointation of accused Ex. PW 9/1, sent parcels no. 1 to 4 to FSL vide his applications and road permit certificates through constable Nikzad Ali, produced the accused before the court of Judicial Magistrate vide his application Ex. PW 13/9 where the accused had confessed his guilt and placed on file medico legal documents of injured and

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deceased, recorded statements of Arbab Khan, Bait Ullah and Muhammad Alamzeb and placed on file FSL reports Ex. PK, Ex. PK/1 and Ex. PK/2 regarding blood-stained earth, 9MM pistol and blood-stained garments of the deceased.

XIV. Mr. Rehmat Ullah, Senior Civil Judge/Judicial Magistrate, Orakzai appeared in the witness box as PW-14. The accused was produced before him on 19.07.2021 for recording confessional statement and the accused has confessed his guilt answering to a questionnaire Ex. PW 14/1.

(4). The prosecution closed its evidence whereafter statement of accused recorded u/s 342 Cr.P.C wherein he did not opt for defence evidence but wished to be examined on oath leading to the statement of accused u/s 340 (2) CrPC. Thereafter, arguments of the learned DPP for the State and counsel for the accused facing trial heard and case file perused.

(5). Learned DPP for the State argued that the accused facing trial is directly nominated in the FIR. The case of the prosecution is also supported by statement of PW-11, who has recovered the pistol in question along with two rounds from possession of the accused facing trial and

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statement of PW-12, one of the marginal witnesses of the recovery memo Ex. PC/2. He further submitted that the prosecution has proved its case beyond shadow of any doubt.

- (6). Learned counsel for the defence argued that the story of prosecution regarding arrest of accused and recovery of alleged weapon of offence, is fake and concocted as no person of prudent mind would believe that as to how a person being accused of the offence of murder would wait with the weapon of offence for arrival of police in front of his house, that despite availability of the private persons on the spot no one from the public has been associated as witness with process of search or recovery, that samples have been sent to FSL with a delay of about more than 10-days and that there are various dents in the case of prosecution which lead to failure of prosecution to prove its case beyond shadow of doubt entitling the accused to honourable acquittal.

After having heard the arguments and after having gone through the material available on file, the case of prosecution is, that 9MM pistol bearing AT6407 with fixed charged containing two rounds and a spare charger, the weapon of offence, has been recovered from possession of accused facing trial by Muqadar Khan ASHO who has been examined as PW-11 while the

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marginal witness of recovery memo Ex. PC/2 has been examined as PW-12. Both the above named PWs have alleged that on 17.07.2021, PW-11 during patrolling of the area received information regarding the occurrence at which they went to the house of accused where he was found present near his house. He was arrested via card of arrest Ex. PW 11/1. He was also found in possession of 9MM pistol bearing number AT6407 with a fixed charger containing two rounds of 9MM and a spare charger which were taken into possession vide recovery memo Ex. PC/2. After recovery, the weapon along with 02 rounds were sealed on the spot. The case property, after return of PW-11 to Police Station, was handed over by him to Moharrir/PW-4 who kept the same in Mal khana and made entry of the same in register no. 19. PW-11 and PW-12 have been cross examined but nothing contradictory could be extracted from them regarding the mode, manner and venue of recovery except that no private person has been associated with the process of search and recovery which, in circumstances of the case, is not fatal to the case of prosecution for, in such like cases keeping in view the present societal set up no one poke nose into the affairs of others. Moreover, the police witnesses are considered as good witnesses as any other private witnesses except some malafidi is proved on behalf of police witness but in


  
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instant case no malafidli on behalf of police witness has even been alleged by the defence.

With respect to the safe custody and transmission of same to the FSL, the case property has been properly handed to PW-4/Muharrir of the Police Station who has deposited the same in Mal khana after making entry of the same in register no. 19. On 19.07.2021 the case property has been handed over to the Investigation Officer for sending the same to FSL which has been sent through PW-2/Nikzad Ali. PW-4 has been cross examined wherein he has confirmed that parcels no. 1 to 4 (blood-stained earth, 02 empty shells of 9MM and blood-stained garments) were handed over to him by Investigation Officer at 15:00 hours and that he handed over parcels no. 1 to 4 to the Investigation Officer on 19.07.2021 at 07:00 am. The carrier of case property to the FSL is constable Nikzad Ali who has been examined as PW-2. As per his statement, on 19.07.2021 the Investigation Officer handed over to him parcels no. 1 to 4 for taking the same to FSL with applications addressed to Incharge of FSL and road permit certificates. He transmitted the same to FSL where parcels no. 2 and 3 (empties and pistol) were not received.

On 28.07.2021, he again took parcels no. 2 and 3 to the FSL. The applications addressed to the official of the FSL, Ex. PW 13/5 & Ex. PW 13/6 with road permit certificates,

  
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Ex. PW 13/7 & Ex. PW13/8, all bear the date as 19.07.2021. The road permit certificates further shows that they have been delivered to FSL on 19.07.2021; however, the return of parcels no. 2 and 3 by the officials of the FSL has contributed to the delay and cannot be counted as delay on part of the Investigation Officer. As per report of FSL Ex. PK/1, the empties recovered from the spot were found fired from the pistol recovered from possession of accused facing trial. Hence, in view of what is discussed above, the case of the prosecution regarding the recovery of 9MM pistol bearing no. AT6407 with a fixed charger containing two rounds of 9MM and a spare charger has been proved beyond shadow of doubt, regarding which the accused facing trial has no valid license or permit.

(10). In view of what is discussed above, it is held that the prosecution has proved its case against the accused facing trial beyond shadow of any doubt. The accused facing trial Abdullah s/o Morcha Khan is held guilty of the offence u/s 15AA and accordingly convicted and sentenced to simple imprisonment for three (03) months and a fine of Rs. 3000/- (three thousand). In case of default of payment of fine the accused shall further undergo simple imprisonment for 10 (ten) days. As the accused has also been convicted in the same FIR for the

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offence u/s 302/324 PPC in sessions case trial no. 34/2 of dated 28.09.2021; therefore, the sentence in the present case shall run concurrently with the sentence awarded to the accused facing trial in the aforementioned sessions trial. The benefit of section 382-B Cr.P.C is extended to the accused. The case property i.e., chargs be destroyed after the expiry of period provided for appeal/revision. Copy of the judgement delivered to the accused today free of cost and his thumb impression to this effect obtained at the margin of the order sheet. The copy of judgement also be issued to the District Public Prosecutor u/s 373 of the Cr.P.C free of cost. Consign.

**Pronounced**  
29.07.2022




  
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**CERTIFICATE**

Certified that this judgment consists of twelve (12) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 29.07.2022

  
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