

**IN THE COURT OF REHMAT ULLAH WAZIR,**  
SCJ/JM, ORAKZAI AT BABER MELA

CASE NO. : 14/2 OF 2022  
DATE OF INSTITUTION : 16.02.2022  
DATE OF TRANSFER IN : 01.07.2022  
DATE OF DECISION : 19.12.2022

STATE THROUGH: AFTAB HASSAN, SHO, PS: KUREZ BOYA,  
TEHSIL: LOWER, DISTRICT: ORAKZAI.

------(Complainant)

VS

1. MUHAMMAD AFZAL KHAN S/O KHANBAZ
2. BAKHTIAR AKBAR S/O KHANBAZ  
*R/O Qoum Mishti, Tappa Haider Khel, Chappar  
Mishti, Tehsil: Lower, District: Orakzai*  
------(Accused Facing Trial)

**Present:** Mr. Zubair Qureshi, Assistant Public Prosecutor for complainant.  
: Zahoor-Ur-Rehman advocate for the accused facing trial.

**ORDER**


19.12.2022

1. Accused facing trial, Muhammad Afzal Khan and Bakhtiar Akbar produced in custody, who are charged in case FIR No. 31, Dated: 24.11.2021, U/S 324/353/189/34 PPC & 15AA of PS: Kurez Boya, L/Orakzai for attempt to commit Qatl-i-Amd, Assault or criminal force to deter public servant from discharge of his duty, threat of injury to public servant in furtherance of common intention and possession of pistols.
2. Briefly stated factual background of the instant case is that

  
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the complainant namely Aftab Hassan reported the matter for attempt to commit Qatl-i-Amd, Assault or criminal force to deter public servant from discharge of his duty, threat of injury to public servant in furtherance of common intention and possession of pistols.

3. Upon which, the instant case was registered at PS: Kurez Boya, L/Orakzai on 24.11.2021 vide FIR. 31.
4. After completion of the investigation, the complete challan was submitted on 16.02.2022 to the court. The accused on bail was summoned and the accused in custody was summoned through Zamima "Bay". The accused on bail appeared and the accused in custody produced and the provisions of 241-A Cr.P.C were duly complied with. The formal charge against the accused was framed on 02.03.2022, to which the accused person pleaded not guilty and claimed trial while, the absconding accused were proceeded U/S 512 Cr.P.C.

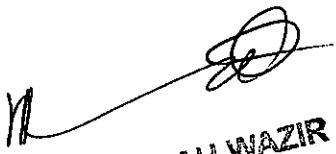
  
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5. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;
  - i. Muhammad Ayaz, DFC as SW-01
  - ii. Mr. Junaid Ali, constable as PW-01.
  - iii. Mr. Libab Ali, Muharrir as PW-02.

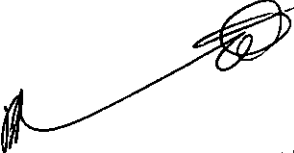
- iv. Mr. Aftab Hassan, SI, PS Kurez, SHO in the instant case as PW-03.
- v. Mr. Shamshir Ali, constable as PW-04.
- vi. Mr. Muhtashim Ali, constable as PW-05.
- vii. Mr. Istiaq Hassan, SI, HQ Orakzai, SI/OII in the instant case as PW-06.
- viii. Mr. Daswar Ali, DSP HQ, Orakzai as PW-07.

6. In documentary evidence, prosecution has produced the following;

- i. Complete Challan. **Ex. PW-3/7**
- ii. Injury sheet **Ex. PW-3/6**
- iii. Copy of FIR. **Ex. PA**
- iv. Murasila **Ex. PW-3/5**
- v. Site plan **Ex. PW-6/1**
- vi. Card of arrest of the accused Muhammad Afzal Khan in FIR No. 316 PS Usterzai, Kohat & FIR No. 37 PS Kurez Boya, Orakzai **Ex. PW-3/4**
- vii. Card of arrest of the accused Muhammad Afzal Khan and Bakhtiar Akbar in FIR. 31, PS Kurez Boya, Orakzai **Ex. PW-3/2**
- viii. Card of arrest of the accused in FIR. 69 & 250, PS Usterzai, Kohat **Ex. PW-3/3**

  
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- ix. Recovery memo of pistols **Ex.PW-3/1**
- x. Recovery Memo of empties **Ex.PW-4/1**
- xi. Application for issuance of warrant u/s 204 Cr.P.C against the absconding accused Wali Ullah and Zahid Ullah **Ex.PW-6/3**
- xii. Application for police custody of the accused Muhammad Afzal Khan and Bakhtiar Akbar **Ex.PW-6/2**
- xiii. Warrant u/s 204 Cr.P.C against the absconding accused Wali Ullah and Report of DFC **Ex.SW-1/1 & Ex.SW-1/3**
- xiv. Warrant u/s 204 Cr.P.C against the absconding accused Zahid Ullah and Report of DFC **Ex.SW-1/2 & Ex.SW-1/4**
- xv. Application for issuance of publication u/s 87 Cr.P.C against the accused Wali Ullah and Zahid Ullah **Ex.PW-6/4**
- xvi. Proclamation u/s 87 Cr.P.C against the absconding accused Wali Ullah and Report of DFC **Ex.SW-1/5 & Ex.SW-1/7**
- xvii. Proclamation u/s 87 Cr.P.C against the absconding accused Zahid Ullah and Report of DFC **Ex.SW-1/6 & Ex.SW-1/8**

  
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- xviii. Naqalmaid No. 13 & 07 Ex.PW-6/5
- xix. Naqalmaid No. 16 & 08 Ex.PW-6/6
- xx. Road Permit Certificate Ex.PW-6/8
- xxi. Report of the Fire Arms Expert Ex.PW-6/9
- xxii. FIR No. 69, PS Usterzai, Kohat Annexure-A
- xxiii. FIR No. 316, PS Usterzai, Kohat Annexure-B
- xxiv. FIR No. 250, PS Usterzai, Kohat Annexure-C

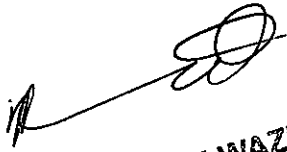
7. Then after, on 13.12.2022, the learned APP for the state closed the evidence on behalf of the prosecution.

8. Statements of the accused on u/s 342 Cr.P.C were recorded wherein they neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor did they want to produce any defence evidence in their defence.

9. The accused in reply of the question that what is your statement and why you are charged, submitted that; "They are innocent and have been falsely charged with malafide intention on the part of the local police"

10. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the APP for the complainant/state heard and record perused.


11. Both the accused are charged with the offence U/S 324/353/189/34 PPC and 15AA. Sec. 324 PPC deals with punishment of attempt to commit Qatl-i-Amd, Sec. 353

  
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PPC deals with assault or criminal force to deter public servant from discharge of his duty, Sec. 189 deals with threat of injury to public servant, Sec. 34 PPC deals with acts done by several persons in furtherance of common intention, each of such person is liable for that act in the same manner as if it were done by him alone and Sec. 15AA deals with possession of unlicensed weapon.

12. Keeping in view, the record on file and the depositions of PWs, the prosecution is required to prove its case against the accused beyond reasonable doubts.

13. PW-03, the complainant/SHO concerned has admitted in his cross examination that on directions of his high-ups present on the spot, he arranged police nafri around the raided house but he does not remember the number of police officials who made firing upon the accused party

  
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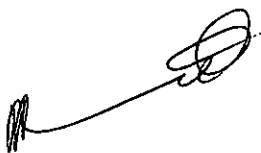
and that both the parties continued firing for half-an-hour with interval. Further that it is correct that no empty was shown to be recovered from the standing place of police nafri as per the site plan. That he has not mentioned the features of the 02 persons who decamped from the spot towards the jungle. That some family members of the accused were present inside the house at the time of search but he does not remember the exact number of the inmates

of the house. That he conducted search of the house but no recovery of any ammunition has been effected from the house except the recovery mentioned in the report. That no private person was associated at the time of recovery.

14. **PW-04**, Shamshir Ali, constable, the witness of the recovery memo has admitted in his cross examination that only SHO along with 04 police officials were present on the spot at the time of their arrival and no one else was present there.

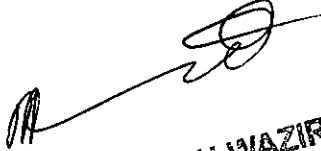
15. **PW-06**, the concerned I.O, has admitted that no empties were recovered from the standing place of police party as per site plan. That no DD report regarding arrival and departure of the police officials mentioned in the FIR is available on file except Ex.PW-6/5. That features of the 02 decamped accused from the spot have not been mentioned in the FIR. That no lady constable was accompanied with the raiding party of the police and no elder of the locality/private witness was associated with the police at the time of either the raid or the recovery. That it is correct that I did not record statement of any impartial witness regarding occurrence in the instant case. That no police official sustained any injury in the instant case.

16. **PW-07**, the then SDPO, L/Orakzai, has admitted in his

  
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cross examination that he was present at the time of raid but the I.O did not recorded his statement in the case. That they did not associate elders of the locality during raid. That a lady constable was accompanied with police party but it is not mentioned in the Murasila. That he does not remember the number of police officials who made fire upon the accused party.

17. In the light of the above discussion, it is clear that the case of prosecution is full of contradictions. As it is admitted by all the PWs that no empty being recovered has been shown from the standing place of the police as per the recovery memo, which negates the claim of the prosecution and shun the impression that there was any type of encounter between police and the present accused. Further, it is admitted that the house of the accused was occupied by their family including female inmates but the house-search/recovery has been made without the company of a lady constable/an elder of the locality which is mandatory as per the law. Admittedly, the house of the accused was cordoned from all sides by the police nafri then how 02 of the accused can safely escape from the house to the nearby jungle. Also, no injury has been sustained by any police official which could have established that there was

  
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effective firing by the accused. At the end, there is no piece of evidence in the shape of a statement of any independent private witness regarding the occurrence.

18. Thus, there are doubts in the evidence of prosecution and the accused are ultimately entitled to the benefits of doubts and are accordingly extended to the accused.

19. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused facing trial. Therefore, the accused namely Muhammad Afzal Khan s/o Khanbaz and Bakhtiar Akbar s/o Khanbaz are acquitted of the charges levelled against them. As the accused Bakhtiar Akbar is on bail, his bail bonds stand cancelled and sureties are discharged from their liability of

bail bonds while the accused Muhammad Afzal Khan is in judicial lock-up, Kohat, therefore, he be released forthwith if not required in any other case.

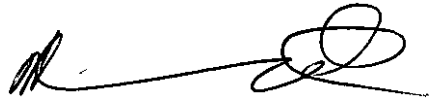
20. It is pertinent to mention here that Wali Ullah s/o Abdul Akbar and Zahid Ullah s/o Khyal Akbar are absconding. To this extent statement of DFC and statements of other prosecution witnesses are recorded. On the basis of statements of DFC and other prosecution witnesses, prima facie the case of prosecution is established against these accused and are declared as "proclaimed offender" and

  
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perpetual warrant of arrest be issued against them. Their name may be entered in the relevant register of the PS.

21. File be consigned to record room after its necessary completion and compilation.

**Announced**  
19.12.2022


  
(Rehmat Ullah Wazir)  
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**CERTIFICATE**

Certified that this order consists of ten (10) pages.

Each page has been read, corrected where-ever necessary and signed by me.

**Dated: 19.12.2022**

  
(Rehmat Ullah Wazir)  
SCJ/JM,  
Orakzai (at Baber Mela)