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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II/JUDGE SPECIAL COURT,
ORAKZAI

Case No. 11/03 of 2023

Date of institution: 20.03.2023

Date of decision: 02.05.2024

Date of consignment:

The State through Saleh Khan son of Haider Hussain, r/o village Navi Mela, Qaum Mishti Tappa Haider Khel, District Orakzai (Complainant)

Versus

Awaidullah son of Jan Ashgar residents of village Navi Mela, Qaum Mishti, District Orakzai (accused facing trial)

FIR N. 46 DATED 07.12.2022 U/S 15-AA
OF MISHTI MELA POLICE STATION, ORAKZAI

JUDGMENT

1. Accused named above are facing trial in the subject case.
2. Concise facts of case are that local police on receipt of information about incident rushed to the place of occurrence, where Saleh Khan, complainant, reported that on 07.12.2022, he along with his family members was present in house when in the meanwhile Awaidullah, Javed and Jehanzeb duly armed with Kalashnikovs as soon entered into their house from main gate and opened fires as a result of which his son Muhammad Haroon got hit and died on the spot, whereas, they have escaped unhurt; that accused have fled away from the spot after the commission of offence; that motive behind the offence was altercation that has taken place a day earlier over children; that the occurrence was also witnessed by Muhammad and family members; therefore, he has charged accused Awaidullah, Jehanzeb and Javed for attempt at their lives and murder of his son.

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3. Accused was arrested and complete challan received for trial.
4. Accused was summoned through *zamima bay*. On his attendance, copies of the case furnished to accused under section 265-C Cr.PC. The accused was charge sheeted u/s 15-AA, to which he pleaded not his guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. PW-1 is Muhammad Younis, who arrested the accused Awaidullah and Javed on 07.12.2022 and issued their card of arrest, Exh.PW 1/1 and Exh.PW 1/2; he has prepared the recovery memo, Exh.PW 1/3, through which took into possession Kalashnikov along with 09 live rounds from the place near the house of accused Awaidullah; he has sealed and packed the recovered weapon in parcel no. 1, Exh.P1, prepared the recovery sketch, Exh.PW-1/4, also arrested the accused Jehanzib and issued his card of arrest, Exh.PW 1/5; he has submitted complete challan against the accused, Exh.PW 1/6 and 1/7. Amanat Khan ASI was examined as PW-2, who drafted murasila, Exh.PA-1, prepared the injury sheet, Exh.PW 2/1, and inquest report, Exh.PW 2/2 of deceased Muhammad Haroon. Dr. Asif Khan, Medical Officer Civil Hospital Mishti Mela was examined as PW-3, who has conducted the post-mortem examination of deceased Muhammad Haroon; he has exhibited the injury sheet, Exh.PW 3/1, inquest report, Exh.PW 3/2, and post mortem report, Exh.PM. Abdul Manaf SI was examined as PW-4, who has conducted the investigation in instant case; he has prepared site plan, took into possession blood stained earth and pebbles from the place of deceased and sealed into parcel no. 2; he has also recovered 6 empties of 7.62 bore, which were sealed into parcel no. 3 and prepared recovery memo, Exh.PW

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4/1; he has taken into possession blood stained garments of deceased, sealed into parcel no. 4 and prepared its recovery memo, Exh.PW 4/2; he has also prepared the list of legal heirs, Exh.PW 4/3, of the deceased, issued parwana, Exh.PW 4/4, in connection of addition of section 15-AA and vides application, Exh.PW 4/5, produced accused Awaidullah and Muhammad Javed before Judicial Magistrate for police custody; he has prepared the pointation memo, Exh.PW 4/6, on the pointation of accused through which he has led the police part to the place from where the SHO has recovered the weapon of offence from him; that vides application, Exh.PW 4/7, he produced accused before the Judicial Magistrate for recording confessional statement; that accused Jehanzeb was arrested on 09.12.2022, who was produced by him before Judicial Magistrate vide application, Exh.PW 4/8, for physical custody; that during interrogation, the accused correctly pointed out their places, to which effect, he has prepared pointation memo, Exh.PW 4/9; that accused Jehanzeb was produced before Judicial Magistrate for confession vide application, Exh.PW 4/10, whereas, he has drafted 2 applications, Exh.PW 4/11 and 4/12, addressed to the FSL and also exhibited transit receipts, Exh.PW 4/13 and 4/14, of the applications; he has exhibited FSL reports, Exh.PZ and Exh.PZ-1, placed on file the attested copies of arrival and departure reports, Exh.PW 4/15, and also placed on file copy of register no. 19, Exh.PW 4/16 and 02 photos of the deceased which are Exh.PW 4/16 and Exh.PW 4/17; that on the completion of investigation, he handed over the file to SHO for submission of challan. PW-5 is the statement of Waheedullah, who has identified the dead body of Muhammad Haroon to police and doctor during

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post mortem examination. Saleh Khan was examined as PW-6, who reiterated facts of the complainant in verbatim stating that accused Awaidullah, Javed and Jehanzeb have killed his son Muhammad Haroon and made life attempt at them. PW-7 is the statement of Muhammad, who is another eye witness of the occurrence and fully supported the facts narrated by complainant. Fazal Hameed was examined as PW-8, who is marginal witness to recovery of weapon of offence and endorsed the recovery of the Kalashnikov by SHO from the accused in his presence. PW-9 is statement of Raheemullah constable, who stated that on 07.12.2022, IO took into possession blood stained earth and pebbles from the place of deceased which were sealed into parcel no. 2, Exh.P1, and 06 empties of 7.62 bore sealed into parcel no. 3, Exh.P2, vide recovery memo, Exh.PW 9/1, in his presence; he has also verified the taking into possession of the blood stained garments of deceased brought by constable Abdul Qayum and its sealing into parcel no. 4, Exh.P3, by the investigation officer in his presence through recovery memo Exh.PW 9/2. Wajid Khan son of Eidbar Gul was examined as PW-10, who stated that complainant has reported the matter to police in the hospital in his presence; he has also identified the corpus of deceased Muhammad Haroon before the doctor. PW-11 is the statement of Saeed Khan, who has taken the parcel no. 1 to 4 along with application to FSL for chemical analysis. Muhammad Saeed Muharrir was examined as PW-12, who incorporated the contents of murasila into FIR, Exh.PA, and kept the case property in *malkhana* for safe custody.

7. The prosecution closed its evidence.

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8. The statement of accused was recorded under section 342 CrPC, wherein, he has again denied from the charges and adhered to his innocence. In reply to questions, he has neither wished to be examined under oath nor to produce evidence in his defense.
9. Arguments heard and record perused.
10. Learned Dy.PP for State argued that the prosecution has proved the case against the accused beyond shadow of reasonable doubt; that prosecution witnesses are consistent in their statements; that FSL result is in positive; that there is no malafide on part of prosecution to falsely involve the accused in the case, therefore, requested to award him maximum punishment.
11. Counsel for accused argued that prosecution has failed to prove its case against accused facing trial beyond shadow of doubt; that the prosecution evidence contradicts & suffers major inconsistencies; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that accused has not confessed his guilt; that recovery of weapon of offence is not genuine; that case against accused is not proved & request is made for his acquittal.
12. In view of arguments advanced by learned counsel for parties, the evidence and record before the court, it is held that local police has recovered the weapon of offence from possession of accused facing trial in pursuance to his arrest in the above referred case registered under sections 302, 324, 452 PPC r/w section 34 PPC and submitted a separate challan against him under section 15-AA. As per report, the complainant alleged that on day of occurrence, he along with his sons Muhammad Haroon, Muhammad and other family members

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were present at house, when, accused facing trial along with two other persons armed with Kalashnikov entered into their house and opened fires, due to which his son Muhammad Haroon died on the spot and the rest escaped unhurt. Although, the accused facing trial was not arrested on the spot, however, Muhammad Younis (PW-1) succeeded to arrest him on the very day of occurrence from the hilly area situated near his house and recovered from his possession the Kalashnikov in question, which the accused had alleged to have used in the commission of offence.

13. In this respect, statement of Muhammad Younis (PW-1) is of worth importance as on eventful day, he was on patrolling of the area, when got the information about the incident and arrested the accused Awaidullah, issued his card of arrest and prepared the recovery memo, Exh.PW 1/3, according to which accused Awaidullah being in possession of weapon of offence and ammunitions was making attempt to escape a in the hilly area situated near to his house. On recovery of weapon of offence, he has prepared the recovery memo witnessed by marginal witnesses and sealed the weapon into a parcel, which was handed over to investigation officer in sealed condition.

14. Statement of Fazal Hameed (PW-8), marginal witness to recovery memo, is also consistence with prosecution case. He has corroborated stating that Muhammad Younis has arrested accused Awaidullah and also recovered weapon of offence having fixed charger containing 9 rounds, which was used by accused in the commission of offence and sealed it into the parcel. He has fully corroborated the statement and facts narrated by Muhammad Younis.

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15. Complainant (PW-6) and eye-witness Muhammad reiterated facts of murasila report in verbatim without any deviation about the date, time, place of occurrence, motive behind the commission of offence, and their presence on the spot. They have adhered to their stance and remained consistent throughout except a fact that they were not sure as to with whose fire shot, the deceased got hit and died.
16. Statement of Amanat Khan (PW-2) clarifies that on receipt of the information about occurrence, he along with police officials rushed to the spot, where the complainant has made the report and he has drafted the murasila, which was thumb impressed by complainant and verified by Wajid.
17. Statement of Muhammad Saeed (PW-12) also provides that after drafting the murasila by Amanat Khan ASI, it was received by him through Constable Muhammad Rehman and he has registered the FIR, Exh.PA.
18. After the registration of case, the case was entrusted to Abdul Manaf (PW-4) for investigation. The statement of investigation officer is also in coherence with material and evidence available on file. He remained consistent with his time of departure to the place of occurrence, time in respect of his visit to the spot, the persons who were present at the place of occurrence when he has visited the spot, the number of empties and places of recoveries he has effected from the spot and recording of the statements of prosecution witnesses etc. He even provided exact detail about the police officials accompanied with him to the spot.

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19. The site plan prepared on pointation of complainant, the recoveries of crime empties and blood stained earth by the investigation officer from the spot also substantiate the prosecution version, according to which the deceased has been shown present at point '1', complainant and eye-witness were shown at points '5 & 6', whereas, accused facing trial has been shown at points '2', from where he has made fires at the deceased, who died on the spot. On same way, the investigation officer has recovered six crime empties of 7.62 mm bore from point 'B', which is situated at distance of four feet to right side next to point '2' attributed to accused Awaidullah, which also clarifies that when accused has made fire at deceased, the six crime empties of 7.62 mm bore ejected from the weapon naturally fell on his right side, which completely links the prosecution case.
20. Raheemullah (PW-9) is also marginal witness to recovery memos prepared by the investigation officer. He has corroborated stating that investigation officer has recovered the crime empties from the spot in his presence.
21. The recovered Kalashnikov No. HT3293 along with six crime empties of 7.62 mm bore marked 'C1 to C6' and five 7.62 mm bore live cartridges for test fires were sent for sent to laboratory for the chemical analysis, and FSL report, Exh. PZ/1, revealed that all six crime empties of 7.62 mm bore marked 'C1 to C6' were fired from Kalashnikov No. HT3293 in view of similarity in striker pin marks, breech face marks and ejector marks etc., which not only endorses genuine recovery of six crime empties of 7.62 mm bore from point 'B' situated next to point '2' attributed to accused Awaidullah but

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also shows the genuine recovery of Kalashnikov in question by the seizing officer from possession of accused Awaidullah vide recovery memo, Exh.PW 1/3, and establishes that the accused facing trial has unlawfully used the weapon in question in commission of serious and heinous offence.

22. Admittedly, both marginal witnesses to recovery memo are police officials but it is by now a settled law that police officials are as good witnesses as private persons; therefore, their testimony can be relied equally. Defense counsel failed to shatter the prosecution evidence or to bring on record any major discrepancy. This is also an admitted fact that the local police has not registered an independent case against the accused under section 15-AA, however, the record provides that accused has used the weapon in question in a heinous offence; therefore, the weapon in question was taken into possession by the local police as a case property in the main offence and in this respect submitted a separate challan, which is equally justified. The accused has failed to produce a valid permit or license in respect of weapon in question in his name till date and thus establishes the fact of retaining a prohibited weapon without lawful authority.

23. In view of above facts, it is observed that prosecution has proved its case against accused facing trial by producing confidence inspiring evidence on record establishing the fact that accused facing trial was carrying the Kalashnikov without any license in his name through which he has killed Muhammad Haroon, that is why, he deserves conviction for commission of offence under section 15 The Khyber Pakhtunkhwa Arms Act, 2013. On his proven guilty, accused facing

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trial Awaidullah son of Jan Ashgar is convicted and sentenced to simple imprisonment for three (03) years and to pay the fine of Rs. 20,000/- (twenty thousand). In default of payment of fine, he has to suffer further three (03) months simple imprisonment. Benefit of section 382-B CrPC is extended to accused/convict.

24. Attested copy of this judgment is furnished to the convict free of cost and to this effect his thumb impression is obtained on margin of order sheet as acknowledgment receipt with further direction that he can prefer appeal against this judgment & order before august Peshawar High Court as per law. Another copy is sent to The District Public Prosecutor, Orakzai within the meaning of section 373 of The Criminal Procedure Code, 1898.
25. Case property is confiscated to State and be dealt with in accordance with law after expiry of period of appeal or revision.
26. File consigned to record room after completion and compilation.

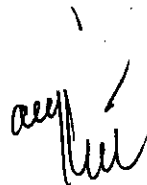


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CERTIFICATE

It is certified that this judgment consists of ten (10) pages and each page is duly signed by me after necessary correction.



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