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

Case No. 03/02 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

1. Awaidullah son of Jan Ashgar
2. Muhammad Javed son of Jan Asghar
3. Jahanzeb son of Sultan Asghar all residents of village Navi Mela, Qaum Mishti, District Orakzai (accused facing trial)

**FIR N. 46 DATED 07.12.2022 U/Ss 302, 324, 452 & 34 PPC  
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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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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3. Accused were arrested and complete challan received for trial.
4. Accused were summoned. On their attendance, copies of the case furnished to accused under section 265-C Cr.PC. The accused were charge sheeted u/s 302, 324, 452 read with section 34 PPC to which they pleaded not their 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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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 statements of accused were recorded under section 342 CrPC, wherein, they have again denied from the charges and adhered to their innocence. In reply to questions, they have neither wished to be examined under oath nor to produce evidence in their 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, thus, requested to award them maximum punishment.
11. Counsel for accused argued that prosecution has failed to prove its case against accused beyond reasonable shadow of doubt; that prosecution evidence contradicts & suffers major inconsistencies; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that the accused facing trial have not confessed their guilt; that FSL report provides the making of fire from single firearm, whereas, three persons have been nominated for the commission of offence; that no weapon of offence has been recovered from the other two accused facing trial; that case against accused is not proved and request is made for their acquittal.

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In view of arguments advanced by learned counsel for parties, the evidence and record before the court, it is held that as per the report, complainant along with deceased, his son Muhammad and other family members were present at house, when, accused facing trial armed with Kalashnikov entered their house and opened fires due to

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which his son Muhammad Haroon died on the spot and the rest escaped unhurt, therefore, complainant has charged accused facing trial for the murder of his son and making life attempt at him and his family members. As the occurrence has allegedly taken place within the vicinity of house and there is no reason of its witnessing by an independent person thus reliance is to be placed on statements of complainant and his son, who are also eye-witnesses of the case. 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. Even, the defense side attempted to bring anomaly in their statements with respect of their presence on the spot at the time of occurrence and making of the report to the police by complainant, however, both of them have not only confirmed their presence in the lawn of the house at the time of occurrence, whereas, also endorsed the fact that complainant has made the report to local police. There is also no conflict found in the statements of prosecution witnesses about preparation of site plan by the investigation officer on pointation of complainant.

13. 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

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and eye-witness were shown at points '5 & 6', whereas, accused facing trial have been shown at points '2, 3 & 4, from where they have allegedly made fires at the deceased, who died on the spot. On same way, 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 have made fire at deceased, the six crime empties of 7.62 mm bore ejected from the weapon naturally fell on right side of the accused and completely links the prosecution case. Likewise, investigation officer has collected the blood stained earth from near the place of deceased, which along with blood stained garments of the deceased, were sent to forensic laboratory for chemical analysis and according to the FSL report, the blood recovered from the spot fully matched with the blood stained the garments of deceased being of same group.

- 14. Similarly, statement of doctor (PW-3) and medical report filed by him not only corroborates with prosecution version but the medical evidence brought on record also correlates with the details given by complainant with respect to timing about commission of offence and the injuries caused to the deceased because as per complainant, the occurrence has taken place at 0830 hours (08.30 am) and deceased has died on the spot, whereas, the doctor (PW-3) has conducted the post-mortem of deceased at 1320 hours (01.20 pm) and found that the time elapsed between the death and injury to the deceased was instantaneous i.e. died on the spot and the time elapsed between the death and post-mortem of the deceased was approximately 4-5 hours.

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15. The statement of Amanat Khan (PW-2) is also worth importance, who stated that on receipt of information about the occurrence, he along with police officials rushed to the place of occurrence, where the complainant has made the report and he has drafted the murasila, which was thumb impressed by complainant and verified by Wajid. In reply to a question, he answered that he was informed by the complainant at 08.35 am through mobile call, which was just five minutes after the occurrence has taken place and provides lucidity to the facts of case. He even confirmed that at the time of report, only Wajid was present there and he has verified the report.

16. Admittedly, Wajid (PW-10) is not an eye-witness of the occurrence, however, his statement is also worth importance because he stated that he was present in the house of his uncle Hazratullah when heard fire shot, whereat, he rushed to the spot and found deceased dead there. Although, there is a bit conflict noted in the statements of Wajid and the complainant about the place of lodging the report but this anomaly becomes irrelevant under the circumstances when the defense has failed to shatter the contention of prosecution or to bring on record any favorable material to contradict or put any dent with respect to mode and manner about the commission of offence by the accused facing trial. In this respect, this would suffice to mention that FIR is not an encyclopedia, which must contain each and every minute detail rather it is aimed at to set the law into motion. This is to be kept in mind that first information report is not be all and an end all of every criminal case nor it is a substantive piece of evidence, which can only be used for limited purpose like the


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corroboration and contradicting the maker thereof or to show that the implication of the accused was not an afterthought. Recording of FIR was to obtain firsthand information of occurrence, in order to exclude possibility of fabrication of story; or consultation or deliberation, and to safeguard the accused of such like happenings. It is well established law that registration of an FIR against a person, would not prove his guilt till decision by court of competent jurisdiction because such report could not be used as substantive piece of evidence against any accused unless proved in accordance with law, the wisdom is drawn from case laws reported in 2002 PCrLJ 1902 & 2016 YLR 1441 [Lahore].

- 17. The statement of investigation officer (PW-4) 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. The investigation officer has also endorsed not recording of the statement of mother of the deceased, which was also deposed by complainant. As the eye-witness Muhammad (PW-7) deposed that due to firing of the accused facing trial, no wall of the house was hit, which is also confirmed by investigation officer (PW-4) deposing that he has not found any bullet marks on the walls and tree.

  
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18. Raheemullah (PW-9) is also marginal witness to recovery memos prepared by the investigation officer and he has remained consistent with the prosecution case. He has also corroborated stating that the investigation officer has prepared the site plan on the pointation of complainant; that the investigation officer has recovered the crime empties and blood stained earth from the spot in his presence, whereas, took into his possession the blood stained garments of the deceased through separate recovery memo.

19. The statement of Muhammad Younis (PW-1) is of worth importance because on eventful day, he was on routine patrolling of the area, when he got the information about the incident, searched the house of accused facing trial, however, later on he has arrested the accused Awaidullah and Javed Khan, issued their cards of arrest & prepared the recovery memo, Exh.PW 1/3, according to which the accused Awaidullah was making attempt to escape along with the weapon of offence and ammunition in the hilly area situated near to his house. On recovery of weapon of offence, he has prepared recovery memo witnessed by marginal witnesses and sealed the weapon into a parcel, which was handed over to investigation officer in sealed condition.

20. 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 the accused Awaidullah and Javed and also recovered the weapon of offence along with fixed charged containing 9 rounds, which was used by the accused in the commission of offence and sealed it into the parcel. He has fully corroborated the statement and facts narrated by Muhammad Younis and there is no contradiction etc. brought in his statement as well.

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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 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 deceased has died due to fire shot made from the Kalashnikov in question.

22. Though, the mother of the deceased and other female inmates of the house were present in the house at the time of occurrence, who have also allegedly witnessed the occurrence but neither the investigation officer has recorded their 161 CrPC statements nor they have been produced as witnesses before the court but this fact must be kept in mind that in Pashtun's society, the appearance of female inmates in bazars or public places is deemed as against the norms of Pashtun culture, which is considered as to bring disgrace, dishonor and insult to the family, whereas, the occurrence has taken place in district Orakzai, which is newly merged district, where the appearance of female folks in public is often taken more serious than general Pashtun localities; therefore, non-recording of their statements by the investigation officer or their non-appearance before the court as witnesses cannot be taken into account as a serious flaw.

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23. So far motive part of the case is related, complainant and the eye-witness Muhammad not only remained steadfast to depose this fact in their statements that but prosecution has also failed to shatter their stance either by brining any anomaly in their statements or any contrary material on the record. More so, motive i.e. parties having an altercation over children issue day ago is something, which can only be perceived and no documentary evidence can be brought on file in this respect unless altercation was followed by use of force, assault or quarrel resulting into injuries to the parties etc. Besides, when, statements of accused facing trial were recorded, they have made evasive denials as per routine. Even, the accused did not opt to record their statements on oath nor did produce any evidence in their defense despite they were given full opportunity to do so.

24. All the above detailed discussion leads me to inference that although complainant has charged three persons armed with the Kalashnikov entering into their house, making fires at them, as a result whereof, his son Muhammad Haroon died and they remained unhurt, however, the evidence collected by the investigation officer, the crime empties recovered from the spot, weapon of offence used in the commission of offence coupled with the forensic report suggests that prosecution has succeeded to establish that only one accused has made fires at deceased and that was Awaidullah, who was caught by Muhammad Younis (PW-1) along with the weapon used in the commission of offence, which was sent to the laboratory for examination and as per FSL report, the crime empties recovered from the spot were fired from the weapon recovered from accused Awaidullah and thus leads to inference that accused Awaidullah has entered into the house of

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complainant, made fires and committed the murder of Muhammad Haroon. As far accused Muhammad Javed and Jehanzeb are related, they have accompanied accused Awaidullah to the spot, however, neither there is any solid evidence produced against them nor any weapon have been recovered from their possessions. So much so, only six crime empties have been recovered from the spot, which all were fired from the weapon recovered from accused Awaidullah and thus leads to inference that they have not made any fires. Had they any intention to commit the murder of deceased or to make attempt at the life of other inmates of the house, then, they must have also opened fires at them or at least any empty fired from their weapons must have been recovered from the spot because the victim party was completely at their disposal having no opportunity to defend, however, non-recovery of an empty, fired from a different weapon, from the spot rules out the probability of their making fires at victim party and sharing the common intention with accused Awaidullah towards the commission of offence.

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25. In the backdrop of above discussion, it is held that prosecution has failed to prove the guilt against the accused Muhammad Javed and Jehanzeb by producing and reliable evidence on file; therefore, both of them are acquitted from the charges leveled against them and their sureties are discharged from liabilities of bail bonds. As far accused Awaidullah is related, it is held that prosecution has only proved the criminal house trespass and murder of Muhammad Haroon against Awaidullah and not the charge of attempt at life of complainant etc.; therefore, I convict Awaidullah son of Jan Asghar under sections 302 and 452 PPC and award him sentences as below;

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a) I sentence Awaidullah the rigorous imprisonment for life under section 302 (b) PPC for the murder of Muhammad Haroon. He is further sentenced to pay compensation of Rs. 500,000/- (five lac) to legal heirs of deceased. The amount of fine realized shall be paid to legal heirs of Muhammad Haroon, as compensation under section 544-A CrPC, as per their Shari shares. In case of default of payment of fine, the convict shall further undergo simple imprisonment for a term of six (06) months.

b) I sentence Awaidullah to suffer rigorous imprisonment of three (03) years under section 452 PPC for committing house trespass of complainant to commit the murder of Muhammad Haroon. He is further sentenced to pay fine of Rs. 50,000/- (fifty thousand) to Saleh Muhammad, complainant, as compensation under section 544-A CrPC. In case of default in payment of fine, the convict shall undergo simple imprisonment for a term of one (01) month.

26. Benefit of section 382-B CrPC is extended to convict Awaidullah. The offences above shall run concurrently. The amount of fine and compensation shall be recoverable as arrears of land revenue from the person and estate of the convict, which will be paid to legal heirs of the deceased as per their legal and Shari shares. The amount of fine levied u/section 452 PPC shall be paid to Saleh Muhammad.

Certified copy of this judgment and order is delivered to convict Awaidullah free of cost with direction that he is at liberty to file an appeal before august Peshawar High Court as per law and to this effect his thumb impression is obtained on margin of order sheet as acknowledgment receipt.

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28. Another copy of the judgment is sent to the learned District Public Prosecutor, Orakzai within the meaning of section 373 of The Criminal Procedure Code, 1898.
29. Case properties, if any, are confiscated to the State and be dealt with in accordance with law after expiry of period of appeal or revision.
30. File consigned to record room after completion and compilation.



**Announced**  
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**CERTIFICATE**

It is certified that this judgment consists of fifteen (15) pages and each page is duly signed by me after necessary correction.



**Announced**  
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**Abdul Basit**  
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