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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II/JUDGE JUVENILE
COURT/CHILD PROTECTION COURT, ORAKZAI

Case no. 03/24 JC of 2024

Date of institution: 10.05.2023

Date of decision: 03.05.2024

Date of consignment:

The State through Saeed Ullah son of Noor Sahib Khan, caste Buland Khel,
District Orakzai (complainant)

Versus

Ameenullah son of Noor Sahib Khan caste Buland Khel, District Orakzai
(accused facing trial)

**FIR NO. 04 DATED 05.03.2023 U/SECTION
15 OF THE KHYBER PAKHTUNKHWA ARMS ACT 2013
OF GHILJO POLICE STATION, ORAKZAI**

JUDGMENT

1. Accused named above is facing trial in the subject FIR No. 04 dated 05.03.2023 u/s 15-AA of Ghiljo Police Station, Orakzai.
2. Concise facts of the case are that the police party on receiving an information, rushed to emergency room of Civil Hospital, Thall and found the dead body of deceased Rasheedullah there, where Saeed-Ullah, the complainant and also brother of deceased, reported that on 05.03.2023 at 1645 hours, an altercation took place between his two brothers Ameenullah and Rasheedullah over going abroad and Dubai visa, whereat, Ameenullah (accused) got annoyed and opened fire at Rasheedullah, who got hit near left armpit and died on the spot; that the accused decamped from the spot; that occurrence was witnessed by complainant and the motive behind the commission of offence was stated to be visa issue, therefore, he has charged Ameenullah for murder of Rasheedullah.

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3. On 06.03.2023, accused was arrested, investigation was conducted during which the investigation officer recovered the arm in question and complete challan under Juvenile Act was submitted for trial.
4. Accused was summoned through *zamima bay*. On his attendance, the copies of the case furnished to accused under section 265-C Cr.PC. Accused was charge sheeted u/s 15 of The Khyber Pakhtunkhwa Arms Act, 2013, to which he pleaded not his guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. PW-1 is Rooh-ul-Ameen, who stated that recovery memos, Exh.PW 1/1 and Exh.PW 1/2, were prepared in his presence by investigation officer, who has also prepared pointation memo, Exh.PW 1/3, which he has signed correctly. Arifullah ASI was examined as PW-2, who has incorporated the report of complainant into murasila, Ex.PA-1, prepared injury sheet, Exh.PW 2/1, and inquest report, Exh.PW 2/2. PW-3 is the statement of Muharrir Abdul Manan, who incorporated contents of murasila into FIR, Exh.PZ, and kept the case property in *malkhana* for safe custody. Statement of Tajmeen Khan ASHO was recorded as PW-4, who has arrested the accused on 06.03.2023 and issued his card of arrest, Exh.PW 4/1. PW-5 is the statement of Muhammad Naseem Gul SI, who submitted complete challan before the court in instant case against the accused. Dr. Sajjad, Medical Officer THQ Thall was examined as PW-6, who has conducted the post-mortem examination of deceased Rasheedullah. He referred the injury sheet, Exh.PW 6/1, inquest report, Exh.PW 6/2, and post mortem report, Exh.PM. Saeedullah, the complainant, was examined as PW-7, who stated that on 05.03.2023 at about 1645 hours, he was present in his second house when in the meanwhile, widow of his

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deceased brother told him that his brothers Rasheedullah and Ameenullah were quarreling, whereat, he went to their house and found his brothers quarreling on matter of visa for Dubai, however, after altercation, his deceased brother slapped to the accused, who got hyper and went to his other house, from where the accused took rifle and went to the house of Rasheedullah and made two fires at him, out of which one fire was hit on the wall and the second hit the deceased, who sustained injury. He stated that after receiving the injury by deceased, he with the help of his neighbor has shifted his brother to the hospital in private pickup, where he has made the report to the police and the murasila was drafted, Ex.A-1, which was thumb impressed by him and verified by Rahatullah. He also stated that the investigation officer has prepared the site plan on his pointation and recorded his statement. Abdul Malik OII was examined as PW-8, who has conducted the investigation in instant case, prepared site plan, Exh.PW 8/1, took into possession blood stained earth from the place of deceased and sealed in parcel no. 1. He has also recovered one empty of 12 bore, which was sealed in parcel no. 2 and prepared the recovery memo in this regard. He has prepared list of legal heirs, Exh.PW 8/2, of the deceased and vide application, Exh.PW 8/3, produced accused before Judicial Magistrate for physical custody. On 08.03.2023, he has prepared pointation memo in the presence of marginal witnesses and accused and recovered a rifle 12 bore on the pointation of accused, which was sealed in parcel no. 3. Upon this recovery, he made addition at overleaf of the site plan, Exh.PW 8/4. Vides application, Exh.PW 8/5, he produced accused before Judicial Magistrate for recording his confessional statement and wrote an

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application, Exh.PW 8/6, to FSL for the examination of blood stained earth and recovered garments. He also made an application, Exh.PW 8/7, to FSL for chemical examination of recovered rifle and empty. That he himself has taken the parcels no. 1 to 3 to FSL Peshawar vide road permit certificate, Exh.PW 8/9. He produced FSL reports, Exh.PK and Exh.PK/1, and on recovery of weapon of offence, he added section 15-AA in the instant case and in this regard his report is Exh.PW 8/10. He produced blood stained earth in parcel no. 1, Exh.P1, one empty of 12 bore parcel no. 2, Exh.P2, blood stained shalwar of deceased in parcel no. 3, Exh.P3, and one short gun 12 bore in parcel no. 4, Exh.P4. After completion of investigation, he handed over the file to SHO for submission of challan. Statement of Zar Wali was recorded as PW-9, who stated that he was present with ASI Arif-ullah in THQ Hospital, where ASI handed over him murasila, which he took to the police station and handed over to Muharrir of the police station and FIR was registered. Yaqoot Khan was examined as PW-10, who took the injury sheet and inquest report to the doctor for post-mortem, which were handed over to him by ASI Arifullah in the hospital. After post-mortem examination, the doctor handed over him blood stained garments of the deceased, which he handed over to investigation officer at Police Station check post Buland Khel. PW-11 is the statement of Shazim Khan, who has identified the dead body of Rasheedullah to police and doctor during post mortem examination. Statement of Rahatullah was recorded as PW-12, who stated that complainant has made report to the police in the hospital and the murasila was drafted in his presence.

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7. The prosecution closed its evidence.

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8. The statement of accused was recorded under section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In reply to a question, he neither wished to be examined under oath nor to produce evidence in defense.
9. Arguments heard and record perused.
10. Learned DyPP for State argued that prosecution has proved the case against accused beyond shadow of 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 so requested to award him maximum punishment.
11. Counsel for accused argued that prosecution has failed to prove its case against accused beyond shadow of reasonable doubt; that prosecution evidence contradicts & suffers major inconsistencies; that prosecution case is full of doubts as prosecution witnesses materially contradicted each other; that the accused has not confessed his guilt; that case against accused is not proved and request is made for the acquittal of accused.
12. Complainant (PW-7) narrated true facts of the case and his statement remained undented despite fact that his statement was recorded after period of more than a year and he was subjected to tough test of cross-examination but the defense failed to rebut that there was heat of discussion between accused and deceased over matter of arranging a visa for Dubai for him as a result whereof an altercation took place between him and the deceased, whereat, accused took rifle and made fire at Rasheedullah, who died as a consequence whereof.

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13. Statement of Zar Wali (PW-9) also provides that after drafting the murasila by Arifullah ASI at THQ Hospital Thall, it was handed over to him which he took to police station and handed over to Moharrir of the police station for registration of case. Likewise, Abdul Manan (PW-3) deposed that on receipt of murasila, he has chalked out the FIR. After registration of case, investigation of the case was entrusted to Abdul Malik (PW-8), who rushed to spot, conducted investigation and recorded statements of all prosecution witnesses.
14. It is on record that soon after the occurrence, accused has ran away from the spot, who was later on arrested by Tajmin Khan (PW-4) during patrolling on next day, issued his card of arrest and shifted him to police station. When the custody of accused was handed over to investigation officer, he took the accused to the place of occurrence, where the accused made pointation of places and on his pointation, the investigation officer has recovered the rifle in question from beneath the cot. Since, investigation officer (PW-8) has recovered a 12 bore crime empty from near the place of accused marked 'A' shown in the site plan and rifle being used as a weapon of offence in the commission of crime on pointation of the accused from additional point marked 'A', which both the crime empty and the rifle along with five live cartridges were sent to the forensic science laboratory for chemical analysis and as per the forensic report, the 12 bore crime empty marked 'C' was fired from the recovered rifle having similarity of striker pin marks and breach face marks etc., which also supports the prosecution version that accused took the rifle in question from the house & made fire at Rasheedullah, who died consequent thereto.

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15. Rooh-ul-Ameen (PW-1), marginal witness to recovery memos, also deposed that he has accompanied investigation officer to the spot and in his presence the investigation officer has recovered crime empty as well as rifle, the pointation of which was made by accused. In reply to a question, the witness (PW-1) deposed that it was about 09.30 am when they have reached to the place of occurrence, which is exactly corroborated by investigation officer (PW-8) in his statement, which above facts altogether rule out any possibility of afterthought, the malafide and false accusation of the accused by the prosecution.
16. In view of above facts, it is observed that prosecution has proved its case against accused by producing confidence inspiring evidence on record establishing the fact that accused has took the rifle without any license in his name through which he has killed Rasheedullah, that is why, he deserves conviction for commission of offence under section 15 The Khyber Pakhtunkhwa Arms Act, 2013. On his proven guilty, accused Ameenullah son of Sahib Noor is convicted and sentenced to simple imprisonment for three (03) years and to pay the fine of Rs. 10,000/- (ten thousand). In default of payment of fine, he has to suffer further two (02) months simple imprisonment.
17. Benefit of section 382-B CrPC is extended to the convict.
18. 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 CrPC.

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19. Case property is confiscated to State and be dealt with in accordance with law after expiry of period of appeal or revision.
20. File consigned to the record room after necessary completion and compilation.



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CERTIFICATE

Certified that my judgment consist of eight (08) pages. Each page is signed by me after necessary corrections, where needed.



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