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IN THE COURT OF BAKHT ZADA,
SCJ/JM, ORAKZAI AT BABER MELA

CASE NO. : 02/JC OF2022

DATE OF INSTITUTION : 01.03.2023

DATE OF DECISION : 09.05.2024

STATE THROUGH: MUHAMMAD ULLAH S/O HAKEEM GUL, R/O QOUM MULA KHEL, TAPPA CHAR KHELA, DABORI, TEHSIL UPPER, DISTRICT ORAKZAI

----------**(Complainant)**

VS

1. MUHAMMAD YASIN,
2. SHAHID ULLAH,
3. YOUSAF MEHMOOD ALL SONS OF SYED SALAM R/O QOUM MULA KHEL, TAPPA CHAR KHELA, DABORI, TEHSIL UPPER, DISTRICT ORAKZAI

----------**(Accused Facing Trial)**

JUDGEMENT
09.05.2024

1. Juvenile accused facing trial namely Muhammad Yasin, Shahid Ullah and Yousaf Mehmood charged in case FIR No. 12, Dated: 28.04.2022, U/S 324/337A(ii)/337F(ii)/337D/ 148/149 PPC of PS: Dabori, U/Orakzai for attempt to commit Qatl-i-Amd, for causing hurt and rioting armed with deadly weapons.

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2. Briefly stated factual background of the instant case is that the complainant namely Muhammad Ullah reported the matter for attempt to commit Qatl-i-Amd, causing hurt and rioting armed with deadly weapons in furtherance of common object of all the accused facing trial.

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3. Upon which, the instant case was registered at PS: Dabori, U/Orakzai on 28.04.2022 vide FIR. 12.

4. After completion of the investigation, the complete challan was submitted on 03.01.2023 to this court. The accused on bail were summoned. The accused on bail appeared and the provisions of 241-A Cr.P.C were duly complied with. The formal charge against the accused Muhammad Yasin and Shahid Ullah was framed on 19.01.2023 and formal charge against accused Yousaf Mehmood was framed on 07.02.2023 and the said charge was reframed on 23.05.2023, to which the accused person pleaded not guilty and claimed trial.

5. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;

i. Imtiaz Khan, SHO as PW-01
ii. Gul Asghar, SI the then Muharrir as PW-02.
iii. Muhammad Ishaq, OII as PW-03.
iv. Kalim Ullah, constable as PW-04.
v. Ismail Khan, constable as PW-05.
vi. Dr. Usama Ahmad, CMO, DHQ Hospital Mishti Mela as PW-06.
vii. Saif Ur Rehman, OII as PW-07.

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viii. Muhammad Ullah, complainant as PW-08

ix. Safi Ullah, injured as PW-09

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

i. Murasila **Ex. PW-1/1**

ii. Injury sheet of injured Safi Ullah with report **Ex.PW-1/2 & Ex.PW-6/1**

iii. Injury sheet of injured Abdul Samad with report **Ex.PW-1/3 & Ex.PW-6/3**

iv. Injury sheet of injured Hakeem Gul with report **Ex.PW-1/4 & Ex.PW-6/7**

v. Injury sheet of injured Samad Ullah with report **Ex.PW-1/5 & Ex.PW-6/5**

vi. Complete Challan **Ex.PW-1/6**

vii. FIR **Ex.PW-2/1**

viii. Site plan **Ex.PW-3/1**

ix. Card of arrest of the accused Syed Salam **Ex.PW-3/2**

x. Fard Parchat (memo) **Ex.PW-3/3**

xi. Application for police custody of the accused Syed Salam and Yousaf Mehmood. **Ex.PW-3/4**

xii. Search memo/recovery **Ex.PW-3/5**

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xiii. Recovery sketch **Ex.PW-3/6**

xiv. Insertion memo **Ex.PW-3/7**

xv. Applications to FSL **Ex.PW-3/8 to Ex.PW-3/9**

xvi. Road Certificate **Ex.PW-3/11**

xvii. FSL reports **Ex.PW-3/12 & Ex.PW-3/13**

xviii. Card of arrest of accused of Abdul Basit, Shahid Ullah and Muhammad Yasin **Ex.PW-3/14**

xix. Application for police custody of the aforesaid accused **Ex.PW-3/15**

xx. Application for warrant u/s 204 Cr.P.C of the accused Abdul Salam **Ex.PW-3/16**

xxi. Warrant u/s 204 Cr.P.C **Ex.PW-3/17**

xxii. Reports of LRH, Peshawar **Ex.PW-6/2, Ex.PW-6/4, Ex.PW-6/6 & Ex.PW-6/8**

xxiii. Application for further custody of the above accused **Ex.PW-7/1**

xxiv. Application for proclamation u/s 87 Cr.P.C of the accused Abdul Salam **Ex.PW-7/2**

xxv. Card of arrest of the accused Abdul Salam **Ex.PW-7/3**

xxvi. Application for police custody of the

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accused Abdul Salam **Ex.PW-7/4**

7. Thereafter, on 31.01.2024, the learned Sr.PP and counsel for the complainant closed the evidence on behalf of the prosecution.

8. Statements of the accused 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 have been falsely charged. The complainant party attacked and entered in their house and made firing upon them and also injured them through sticks and axes etc and with the firing of complainant, Safi Ullah got injured and malafidly and falsely charged them"

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

11. All the accused are charged with the offence U/S 324/337A(ii)/337F(ii)/337D/148/149 PPC. Sec. 324 PPC deals with punishment of attempt to commit Qatl-i-Amd, Sec. 337A(ii) PPC is Shajjah-i-mudihah, Sec. 337F(ii) PPC is Badi'ah, Sec. 337D PPC is Jaifah, Sec. 148 PPC deals with

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rioting armed with deadly weapon and Sec. 149 PPC fixes joint responsibility on every member of unlawful assembly, when that assembly commits an offence in prosecution of a common object.

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-01, the SHO concerned has admitted in his cross examination that the instant case is a cross one. That the complainant was injured at the time of report and his clothes were little bit smeared with blood but not his hands. Later on admitted that he has not prepared his injury sheet. Further that according to Murasila, only Safi Ullah has sustained FAI (Fire Arm Injury).

14. PW-02, Mr. Gul Asghar, SI, the then Muharrir of the PS has admitted that the I.O recorded his statement u/s 161 Cr.P.C firstly on 28.04.2022 while secondly on 29.04.2022 but he has not signed the said statement and the second statement is not available on record. Further that there is no extract of Register No. 19 available on file.

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15. PW-03, Mr. Muhammad Ishaq, OII of the PS have admitted in his cross-examination that no injury of the complainant has been disclosed by him or other PWs in the

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FIR. Further that as per Madd No. 06 and MLC of the accused party, they were also injured and that this fact was disclosed to him by the complainant party that they had beaten the accused party with stick and axe but this is not mentioned in the FIR by the complainant. That he prepared the site plan on the pointation of the complainant who got no scratch. Further that as per record, the one Safi Ullah got injured from firing of the accused Abdul Salam and Syed Salam but according to point 06 of the site plan, the complainant have stated that he got hit from the firing of Syed Salam only while according to point 07 of the site plan, he stated that he escaped from the firing of the accused Abdul Salam. Further that there is sharp difference between the story narrated in the FIR and the occurrence illustrated in the site plan. Further that according to injury sheet, the one Abdul Samad s/o Hakeem Gul did sustained FAI but according to FIR and site plan, no one else sustained FAI. That there is no recovery of any empty and the blood stains from the place of occurrence. That there was no recovery effected directly from anyone of the accused and they have not associated any private witness during the whole of the proceedings and there is no discovery made by anyone of the accused. Further that he has not recorded the statement of

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Muharrir of the PS for safe custody and he has not made any entry in Register No. 19 of the PS. That he has not sent the pistol to armorer to ascertain the fact that whether the pistol is in working condition or not. That according to report of FSL, it cannot be ascertained that when the said weapon was fired for the last time.

16. PW-04, the one Kalim Ullah, constable, the carrier of the parcels to FSL have admitted in his cross-examination that he does not remember that when he went to the FSL. That the pistol in question was sealed in parcel No. 05 but when he was confronted with his statement u/s 161 Cr.P.C, the said number given to the parcel was 07 not 05.

17. PW-05, the one Ismail Khan, constable, a witness to the recovery memo have admitted in his cross-examination that there were many people on the spot and the OII may have recorded their statements but he does not remember. That the OII recovered 30 bore pistol from the accused Syed Salam in his house. That no lady constable accompanied them to the house of the accused Syed Salam but no one from the elders of the locality was in our company. That the OII prepared the site plan on the pointation of some persons, whom I don't remember exactly by name but later on admitted that the complainant party is known to him being of the same tribe

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and that no one of the injured/complainant were present for pointation to the OII on the spot and nothing was recovery by OII on the spot. That his statement was recorded by the OII in the PS and the recovered pistol was without licence.

18. PW-06, Dr. Usama Ahmad, CMO, DHQ Hospital Mishti Mela have admitted in his cross-examination that he has not mentioned the time of examination in his Medico Legal Reports. That he has not observed any cheering marks on the bodies of the injured. That he has not mentioned the exit wounds on the body of the injured Safi Ullah. That the injury sheet of the one Muhammad Ullah (complainant) is not available on file. That that there was no FAI was found on the body of the injured Abdul Samad. That no bullets/pellets were recovered from the bodies during examination of all the injured.

19. PW-07, Saif Ur Rehman, the OII, who partially conducted investigation have admitted in his cross-examination that no recovery has been effected from the accused Abdul Salam.

20. PW-08, Muhammad Ullah/complainant have admitted in his cross-examination that he did not get any scratch in the occurrence and he has not mentioned the injuries sustained by the opposite party in his report. Further that he has not

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given any indiscriminate firing role in his report to police. That he has not mentioned the women folk from both the sides in his today's court statement. That the distance between him, the injured Safi Ullah and the accused Syed Salam and Abdul Salam was 02 paces. That the open fight between the parties continued for 20 minutes but he did not get scratch. That he took the injured Safi Ullah to their house but his hands and clothes were not smeared with blood of any injured.

21. PW-09, Safi Ullah, the injured, admitted in his cross-examination that he does not know when and where his statement u/s 161 Cr.P.C was recorded by the police. That he has not mentioned the names of other accused except Said Salam and Abdul Salam in his today's court statement. That his statement u/s 161 Cr.P.C was recorded by the I.O on 23.08.2022, wherein it is mentioned that he got hit from the firing of both the accused namely Abdul Salam and Syed Salam and the distance between us was 02 paces and the fight remained for 15 minutes. That he received only 01 bullet. That he never state anywhere in the entire case that he got injured from the fire of Syed Salam except his today's court statement. That he has not explained the delay of 04 months in recording statement u/s 161 Cr.P.C.

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22. 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/blood stains have ever been recovered from the place of occurrence and the same is not mentioned even in the site plan. The role of firing has been given the accused Syed Salam and Abdul Salam both in the FIR and the Murasila, as a result of which the injured Safi Ullah got injuries, the same too on both the sides of his chest but later on, the prosecution changed its stance at the stage of making site plan and in the evidence by alleging that it was only the accused Syed Salam, whose firing hit the injured Safi Ullah while the complainant party escaped from the firing of the accused Abdul Salam. But, the injured Safi Ullah when appeared as PW-09 have admitted that he received only 01 bullet but the concerned doctor as PW-06 have admitted that there was no exit wound on the body of the injured Safi Ullah and also there were no cheering marks on the bodies of the injured with further admission that no bullet/pallet was recovered from the bodies during examination of all the injured. As per Ex.PW-1/3, the injured Abdul Samad sustained FAI but according to Murasila and FIR, he sustained injury through axes and sticks. According to Murasila and FIR, the accused facing trial attacked on the

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complainant party through axes and sticks but according to point 12 & 13 of the site plan which is Ex.PW-3/1, they came there for separation/Khlasi between the parties. As per the Murasila, the report has been made in the civil hospital, Dabori but the complainant when appeared as PW-08, have admitted that he went to the PS and reported the matter at 11:00 AM in the PS.

23. 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.

24. Major co-accused have already been acquitted in the instant case by my learned predecessor in office vide his judgement and order dated 31.05.2024. Further, complainant Muhammad Ullah has recorded to the effect that he has effected compromise Ex. PA with the accused facing trial and have pardoned them in the name of Almighty Allah. Copy of his CNIC is Ex. PC. Statements of injured persons namely Samad Ullah, Safi Ullah and Abdul Samad recorded through WhatsApp. Screenshots of their WhatsApp are obtained and are Ex. PE to Ex. PG. All the above-named injured persons also waived off their right of Arsh/Daman under the law. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused

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(76) facing trial and complainant party effected compromise with the accused facing trial. Therefore, the accused Muhammad Yasin, Shahid Ullah and Yousaf all sons of Syed Salam are acquitted of the charges levelled against them. As the accused named above are on bail, their sureties are discharged from their liability of bail bonds.

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

Announced
09.05.2024

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(Bakht Zada)
Senior Civil Judge/JM,
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CERTIFICATE

Certified that this order consists of thirteen (13) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 09.05.2024

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(Bakht Zada)
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