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IN THE COURT OF BAKHT ZADA,
SENIOR CIVIL JUDGE/JUDICIAL MAGISTRATE,
ORAKZAI AT BABER MELA

CASE NO. : 09/2 OF 2023
DATE OF INSTITUTION : 15.09.2023
DATE OF TRANSFER IN : 21.05.2024
DATE OF DECISION : 25.07.2024

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

------(Complainant)

VS

1. Zahid Ullah S/O Khyal Akbar
2. Wali Ullah S/O Abdul Akbar
*Both residents of Qoum Mishti, Tappa Haider Khel,
Chappar Mishti, Tehsil: Lower, District: Orakzai*

------(Accused Facing Trial)

Present: Mr. Javed Ahmad Wazir, Senior Public Prosecutor for complainant.

: Zahoor-Ur-Rehman advocate and Ishfaq Ullah Khan advocate for the accused facing trial.

ORDER

25.07.2024

1. Accused facing trial Zahid Ullah and Wali Ullah on bail present, 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 use of 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 supplementary challan and complete challan were submitted on 15.09.2024 to the court. The accused on bail were summoned who appeared before the court and the provisions of 241-A Cr.P.C were duly complied with on 24.10.2023. The formal charge against the accused was framed on 31.10.2023, 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;
6. **PW-01:** Mr. Libab Ali, ASI Crime Reporter DHQ Hospital Kalaya, the then Muharrir of the PS Kurez Boya, Orakzai. He incorporated the contents of Murasila into FIR which is Ex.PA and correctly bears his signatures.
7. **PW-02:** Mr. Muhammad Yonus SHO, PS Mishti Mela, the

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then SHO of PS Kurez Boya. He has submitted supplementary challan Ex.PW-2/1 against the accused Zahid Ullah which correctly bears his signatures.

8. **PW-03:** Mr. Muhammad Ayaz DFC, PS Teko Check-post as PW-03. He was entrusted with warrant of arrest against accused Zahid Ullah s/o Khyal Akbar. He visited the village of the accused for execution of the warrant on 15.12.2021 but could not find him. In this respect his report overleaf the warrant u/s 204 Cr.P.C is Ex.PW-3/1 and his report is Ex.PW-3/2. He also executed notice u/s 87 Cr.P.C against the accused which is Ex.PW-3/3. He affixed the copy of the publication on notice board of the court and affixed one copy of the proclamation on the house of the absconding accused. His report and statement of the elders of the locality is Ex.PW-3/4.

9. **PW-04:** Mr. Shamshir Ali, constable as PW-04. He was present on the spot with the investigation officer and the IO took into possession 05 empty shells of 30 bore lying scattered in the place of presence of accused Afzal Khan. He also took into possession 05 empty shells of 30 bore lying scattered in the point of presence of accused Bakhtiar Akbar. The IO also took into possession 03 empty shells of 7.62 bore freshly discharged from the place of presence of

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accused Wali Ullah in his presence, 04 empty shells of 7.62 bore were taken into possession in his presence from the point of presence of accused Zahid Ullah. He signed the recovery memo Ex.PW-4/2 which correctly bears his signatures.

10. PW-05: Mr. Aftab Hassan, SI, PS Kurez, SHO in the instant case as PW-05. He is the complainant of the case. He stated that on 24.11.2021, upon information regarding accused Afzal Khan s/o Khan Baz proclaimed offender in case FIR No. 316, Dated: 25.11.2008, u/s 302/324/109/427/148/149 PPC of PS Usterzai Kohat, FIR No. 37, dated: 28.11.2020, u/s 302/311 PPC of PS Kalaya and accused Bakhtiar Akbar and Wali Ullah being proclaimed offenders in case FIR No. 25, Dated: 31.10.2021, u/s 380/148/149 PPC of PS Kurez. It was informed by the informer that the above-named proclaimed offenders are present in their house. The complainant along with Shabbir Khan ASHO, Hassan Jan SI, Naqeeb Hussain SI, Muhtashim Ali, Hasrat Ali, Inswar Ali, Mirajur-Rehman, Yaseen Ullah and other police officials. Similarly, DSP HQ along with police officials, Akhter Muneer ASHO, PS Mishti Mela, SP Investigation along with police officials, DPO Orakzai arranged the raiding

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party under his supervision and raided the house of the proclaimed offenders. When they came to know about the raid, they started firing with intention to kill the police party and threatened to cause injury to the public servant, in self-defence the police party also opened fire. About half an hour the firing continued. When they firing, 03 persons armed with deadly weapons jumped over the wall and tried to decamp to the nearest forest. One of the persons fell and got injured was arrested along with pistol which was taken into possession in presence of the marginal witnesses along with fixed charger containing 05 live rounds of 30 bore and 01 empty charger from his possession. During house search, injured PO Afzal Khan was arrested from the bunker inside the house and 01 30 bore pistol bearing No. 33008121 along with fixed charger containing 05 live rounds of 30 bore and 01 empty charger of 30 bore from his possession. The same were taken into possession in presence of the marginal witnesses. Other accused proclaimed offenders successfully decamped to the nearby hilly forest. Both the accused were sent to hospital for treatment through ASHO Shabbir Khan, Mirajur-Rehman, Yaseen Ullah and Inswar Ali. The recovered pistols were sealed into parcel which are Ex.P-1 and Ex.P-

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2 respectively. The recovery memo is Ex.PW-3/1. He also issued card of arrest of the accused which are Ex.PW-3/2 to Ex.PW-3/4. Murasila was drafted which is Ex.PW-3/5. Injury sheet of the injured Afzal Khan is Ex.PW-3/6. Complete challan against the accused facing trial was submitted which is Ex.PW-3/7.

11. **PW-06:** Mr. Daswar Ali, DSP Traffic Orakzai, DSP HQ Orakzai in the instant case as PW-06. He raided the house of the accused facing trial under the command of DPO Orakzai. According to him, there were information about the presence of absconding accused Wali Ullah and Zahid Ullah. When they the police party, they started firing upon them. He also repeated the same story as alleged by the complainant.

12. **PW-07:** Mr. Istiaq Hassan, ASHO, PS Kalaya, OII in the instant case as PW-07. He is IO of the case. He prepared the site plan Ex.PW-7/1 at the pointation of the complainant. He prepared the recovery memo Ex.PW-7/2 vide which he took into possession 05 empties of 30 bore from the point of presence of accused Afzal Khan and sealed into parcel No. 03 as Ex.PA. He took into possession 05 empties of 30 bore from the place of accused Bakhtiar Akbar and sealed the same into parcel No. 04

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which is Ex.PB. He took into possession 03 empties of 7.62 bore from the point of presence of Wali Ullah accused which is sealed into parcel No. 05 and is Ex.PC. 04 empties of 7.62 bore were recovered from the point of accused Zahid Ullah which is Ex.PG. Warrants u/s 204 Cr.P.C against accused Zahid Ullah and Wali Ullah are Ex.PW-7/3 and Ex.PW-7/4 respectively. He applied for proclamation u/s 87 Cr.P.C against the accused Zahid Ullah and Wali Ullah which are Ex.PW-7/5 and Ex.PW-7/6 respectively. Thereafter he handed over the case to SHO for onward submission of challan.

13. PW-08: Mr. Muhtashim Ali, constable as PW-08. He stated that he was present with DPO, SHO etc at the time of alleged raid at the house of accused Afzal Khan, Wali Ullah, Bakhtiar Akbar and Zahid Ullah. When they came to know about the raid, they started firing at the police party and in response the police party also made fire in self-defence. He also repeated the story as alleged by the complainant. He is also marginal witness of the recovery memo which is Ex.PW-8/1.

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4. Prosecution abandoned the PWs namely Hassan Jan, Niqab Hussain SI, Rameez Ul Hassan constable and Hasrat Ali and closed the evidence on 24.07.2024.

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15. After recording statements of the above-PWs, notice u/s 249-A Cr.P.C given to prosecution. Arguments heard and available record perused.
16. 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 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.
17. 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, but the statements of following PWs are contradictory and creating sufficient doubts regarding the case of prosecution.
18. PW-05, 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 intervals. 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.

19. 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.

20. PW-06, the then SDPO, L/Orakzai, has admitted in his cross examination that he was present at the time of raid but the I.O did not record 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

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remember the number of police officials who made fire upon the accused party.

21. PW-07, 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.

22. In the light of the discussion on the statements of the above PWs, 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

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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 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.

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.

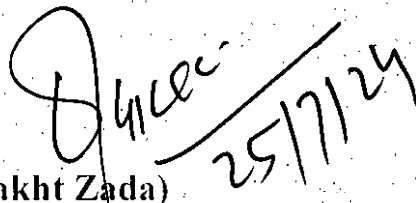
24. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused facing trial. Therefore, the accused namely Zahid Ullah and Wali Ullah are acquitted of the charges levelled against them. Accused are on bail. Their bail bonds stand cancelled and sureties are discharged from their liability of bail bonds. Case property if any be kept intact till the expiry of period provided for appeal/revision etc.

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

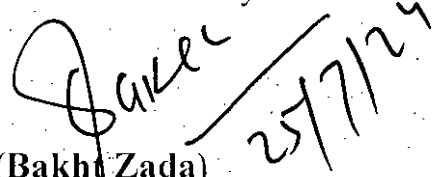
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CERTIFICATE

Certified that this order consists of twelve (12) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 25.07.2024


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SCJ/JM,
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