IN THE COURT OF BAKHT ZADA
ADDITIONAL SESSIONS JUDGE-I, ORAKZAI (AT BABER MELA)

SESSION CASE NO.	:	11/JC OF 2024
DATE OF ORIGINAL INSTITUTION	:	22.04.2024
DATE OF PRESENT INSTITUTION	:	21.11.2024
DATE OF DECISION	:	04.01.2025

ABID ULLAH S/O MALANG BADSHAH, R/O QAUM MISHTI, BAHARR, DISTRICT ORAKZAI.

.....(COMPLAINANT)

-VERSUS-

HAMID KHAN S/O AMIN KHAN, R/O QAUM MISHTI, TAPPA HAIDER KHEL, DISTRICT ORAKZAI.

..... (ACCUSED FACING TRIAL)

JUDGEMENT
04.01.2025

Accused Hamid Khan S/O Amin Khan, Caste Mishti, R/O Bahar is facing trial in case FIR No. 06, dated 26.02.2024, registered U/S 302 PPC/15AA of PS Mishti Mela, District Orakzai.

(2). Complainant, Abid Ullah S/O Malang Badshah reported the matter to the local police of PS Mishti Mela in the emergency room of DHQ, Hospital Mishti Mela, where the injured namely Abdul Jalal S/O Laiq Shah aged about 33/34 years is lying in semi-conscious condition, that on the eventful day at 11:45AM, he was busy in removing snow from the roof top of his house, suddenly on hearing the sound of firing he came down from the roof top and rushed to the Hujra, where he saw his uncle namely Abdul Jalal lying in injured condition smeared with blood due to firearm injury. The minor children present in the Hujra disclosed that Hamid Khan S/O Amin

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Khan hit him by firing with pistol. The complainant with the help of other co-villagers took his uncle in the private vehicle for treatment to DHQ Hospital, Mishti Mela. He charged Hamid Khan S/O Amin Khan for the commission of offence. There is no motive for the occurrence. One Aqal Badshah S/O Hibat Shah aged about 44/45 years CNIC No. 21601-4513732-7 endorsed the report by putting his thumb impression. Injury sheet of the injured was prepared and was handed over to Constable Mahboob Shah No. 93 for medical examination of the injured, while the Murasila was sent to PS for registration of FIR through HC Faiz Ullah No. 1200.

(3). After providing first aid to the injured in the hospital, he was referred to tertiary care hospital Peshawar for further work up, but due to excessive bleeding and vital organ (brain) damage, he loss his vital organ functions and succumbed. Vide Madd No. 23, dated 26.02.2024 incharge casualty staff DHQ Hospital, Mishti Mela, Hazir Khan ASI informed the Moharrir of the PS at 1200 hours about the death of injured Abdul Jalal and thereafter Section 302 PPC was added in the FIR.

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(4). After receiving the copy of FIR, the investigation officer proceeded to the spot and prepared site plan Ex. PW-11/1 at the pointation of the complainant on 26.02.2024. The accused was arrested and after

completion of investigation, complete challan (juvenile challan) was submitted against him.

(5). Accused Hamid Khan S/O Amin Khan being in custody was summoned through Zamima Bay. He was brought before the court and provisions of Section 265-C of the Criminal Procedure Code, 1898 was complied with. Formal charge against the accused was framed on 11.05.2024, to which he pleaded not guilty and claimed trial.

(6). The prosecution produced and recorded the statements of as many as twelve (12) PWs. The gist of their evidence is as follows;

I. ***PW-01, Naseeb Khan SHO, PS Mishti Mela:*** He has prepared juvenile challan against accused Hamid Khan and sent the same to the court for trial which is Ex. PW-1/1 and correctly bears his signature. He was cross examined by the defense counsel.

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II. ***PW-02, Abid Ullah (complainant)***. He stated during examination in chief that on 26.02.2024 at about 11:35AM, he was busy in removing snow from the roof top of his house, meanwhile he heard the sound of fire shot and he rushed to the spot and found his uncle Abdul Jalal smeared with blood. He stated that when he came to the

spot, his brother Hameed Ullah along with other children were also present there and they told him that his uncle was fired at by accused through pistol. They took the deceased, then injured to the hospital where he reported the matter to the police which was scribed in shape of Murasila and he thumb impressed the same, while Aqal Badshah verified the same. That the deceased, then injured was referred to the Peshawar Hospital and later on he was called by his brother that his uncle has passed away. The Police came to the spot on the same day and prepared site plan at his pointation. The dead body of the deceased was shifted back to the Mishti Mela hospital where his Post-Mortem examination was conducted and thereafter his dead body was shifted back to home. The IO prepared the list of legal heirs of the deceased at his statement. He was cross examined by the defense counsel at length.

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III. ***PW-03, Bibi Shazia widow of Abdul Jalal.*** According to her statement, she was present at home on the day of occurrence. The accused came to their house and took a small knife from there. That after some time the accused came back and informed, that her husband Abdul Jalal

had been killed. On this information, she along with the accused proceeded to the Hujra where her husband was lying in injured condition. She stated that father of the accused was also present there and he had beaten the accused with sticks. The injured was shifted to the hospital and she returned back to home. She charged the accused for the murder of her husband.

IV. ***PW-04, Hameed Ullah S/O Malang Badshah***. According to his statement, he was present with the deceased Abdul Jalal at Hujra at the time of occurrence, who was cleaning his pistol whereafter he kept the same on the cot. At that time accused Hamid Khan also came to the Hujra and took the pistol from the cot, but he took the pistol back from him and kept it beneath the pillow, but accused again took the pistol and aimed at deceased than injured and asked him to look at him and soon after that he fired at him. As a result, Abdul Jalal got hit on his head and fell down. The accused decamped from the spot. After five minutes of the occurrence, Abid came there followed by Aqal Badshah and arranged the vehicle for shifting the injured to the hospital where the doctor after providing first aid to the injured referred him to Peshawar hospital, where

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he succumbed to the injuries. The police recorded his statement U/S 161 Cr. PC. He was cross examined by the defense counsel.

V. ***PW-05, Ameer Khan SI:*** He was posted as Incharge casualty hospital Mishti Mela during the days of occurrence. Injured Abdul Jalal was brought by his relatives to the hospital on 26.02.2024 at 12:10PM. He prepared injury sheet Ex. PW-5/1 and handed over the same to Constable Mahboob Shah for getting medical examination of the injured. The report was made by Abid Ullah, which was reduced into shape of Murasila, read over to him, which he admitted as correct and put his thumb impression over the same. The report was verified by Aqal Badshah as correct. The Murasila is Ex. PW-5/2 which was handed over to Constable Maiz Ullah for onward transmission to PS. Later on, injured died in Peshawar and was shifted to DHQ Hospital Mishti Mela for Post-Mortem examination. He prepared injury sheet Ex. PW-5/3 and inquest report Ex. PW-5/4 and handed over the same to doctor for Post-Mortem examination of the deceased. His statement was recorded U/S 161 Cr. PC.

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VI. ***PW-06, Dr. Farzand Ali Medical Officer DHQ Hospital Mishti Mela:*** He stated that he conducted PM examination of deceased Abdul Jalal brought by police officials and relatives and on examination of the dead body, he found the following.

i. ***External Appearance:***

1. No Mark of ligature on neck.
2. Condition of subject stout emaciated, decomposed etc, clothing fresh body blood stained and cloths.
3. Wounds, bruises, position, size and nature.

   A case of firearm injury presented to DHQ, Mishti Mela for PM Examination.

Wound detail:

1. Entry wound at right temporal region 2x3cm.
2. Exit wound on left temporal region 5x6cm.

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ii. Cranium and Spinal Cord:

Scalp: Damaged

Skull: Damaged

Vertebrae: Intact

Membranes: Damaged

Brain:Damaged

Spinal Cord: Intact

iii. ***Thorax***: Intact

iv. ***Abdomen:*** Intact

v. ***Muscles, bones and joints:***

1. Injury: as per injury sheet
2. Fracture: Temporal bone fracture

vi. ***Remarks of the Medical Officer***

According to his opinion, he stated that this is a case of firearm injury having entry and exit wound mentioned in injury sheet. The deceased died due to excessive bleeding and vital organ (brain) damaged.

Probable time that elapsed:

a) Between injury and death: 5 to 6 hours approximately.

b) Between death and Post Mortem: 6 to 7 hours approximately.

Post-Mortem report is Ex. PM which is correct and correctly bears his signature. He also endorsed the injury sheet and inquest report

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which are Ex. PW-6/1 and Ex. PW-6/2 respectively.

VII. ***PW-07, Dr. Rahmatullah Medical Officer DHQ Hospital, Mishti Mela:*** He stated that injured Abdul Jalal was brought to DHQ Mishti Mela Hospital and he examined the injured and gave findings on the back of injury sheet Ex. PW-7/1 and referred the injured to tertiary care hospital for further treatment. His statement was recorded by IO U/S 161 Cr. PC.

VIII. ***PW-08, Muhammad Saeed MM PS Misthi Mela:*** He stated that constable Maiz Ullah brought the Murasila to PS sent by ASI Muhammad Amir. He incorporated the contents of Murasila into Ex. PA. He also kept the case property i.e., parcel No. 1 to 4 and he made entries of the same in register-19. Extract of which is Ex. PW-8/1. He handed over the parcel No. 4 to IO for producing the same before the Judicial Magistrate. IO handed over the same back to him and entries in this regard also made in register-19. On 28.02.2024, he handed over the parcels to IO for sending the same to FSL. His statement recorded by the IO U/S 161 Cr. PC.

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IX. ***PW*-09, HC Mazullah DHQ Hospital Mishti Mela:** He stated that Muhammad Amir ASI handed over to him Murasila at casualty DHQ Mishti Mela for transmission to the PS. He took the same and handed it over to Moharrir Muhammad Saeed. His statement was recorded by IO U/S 161 Cr. PC.

X. ***PW-10, Constable Saeed Khan:*** He stated that he was present with IO during spot inspection. The IO took into possession the blood stained earth and sealed into parcel No. 1 Ex. P-1. He also took into possession one empty and sealed the same into parcel No. 2. Both recoveries were taken into possession vide recovery memo Ex. PW-10/1, to which he and Constable Raheem Ullah are the marginal witnesses. Constable Mahboob Shah handed over clothes, shirt brownish colour, banyan white colour to the IO which were sealed into parcel No. 3 Ex. P-3 and in this respect, the recovery memo Ex. PW-10/2 is signed by him along with Constable Raheem Ullah. On the same day the IO recovered 30 bore pistol at the pointation of the accused and sealed the same into parcel No. 4 Ex. P-4 and in this connection recovery memo Ex. PW-10/3 is prepared which is correctly signed by him along with Constable

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Raheem Ullah. On 28.02.2024, the IO handed over to him parcels No. 1 to 4 along with road certificates No. 23 & 24 and two applications for transmission of the same to FSL which he took to FSL and got endorsement of the FSL officials on the road certificate. His statement was recorded U/S 161 Cr. PC.

XI. ***PW-11, Shal Muhammad OII***: He proceeded to the spot along with investigation staff after getting copies of FIR and Murasila. Complainant was already present there and at his pointation, site plan Ex. PW-11/1 was prepared. He took into possession blood-stained earth from the place of deceased then injured and sealed the same into parcel No. 1 Ex. P-1 vide recovery memo already exhibited Ex. PW-10/1. The IO also took into possession vide the same recovery memo one crime empty of 30 bore from the place of accused which was freshly discharged. The crime empty was signed with sharp object and sealed the same into parcel No. 2 Ex. P-2. Seal of monogram "SH" was affixed on both the parcels and in the presence of marginal witnesses. Recovery memo was prepared. Accused was arrested by SHO Shabbir Khan and was confined behind the bars in the PS. The card of arrest of the accused was

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handed over to IO. Constable Mahboob Shah brought blood-stained garments of the deceased, then injured being sent by the doctor which the IO sealed into parcel No. 3 Ex. P-3. To this effect, recovery memo already Ex. PW-10/2 was prepared in the presence of marginal witnesses. Statements of PWs were recorded U/S 161 Cr. PC. The accused facing trial was interrogated, who confessed his guilt before the IO. He recovered 30 bore pistol/weapon of offence upon the pointation of the accused facing trial and disclosed that he made firing with the said pistol upon the deceased, then injured. He signed the pistol with sharp object and sealed the same into parcel No. 4 Ex. P-4. To this effect, recovery memo Ex. PW-10/3 was prepared. He also prepared the sketch of the place of the recovery of pistol which is Ex. PW-11/2. Addition of Section 15AA was made vide parwana Ex. PW-11/3. Addition in the site plan with red ink was made at the instance of the accused. The injured later on died and the IO placed on file Naqalmad No. 23, dated 26.02.2024 which is Ex. PW-11/4 and the Section 324 PPC was converted into 302 PPC vide parwana Ex. PW-11/5. Statement of accused U/S 161 Cr. PC was recorded. Accused

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was produced before the Ilaqa Judicial Magistrate for recording his confessional statement vide application Ex. PW-11/6, but accused refused to confessed his guilt whereafter, he was sent to Judicial Lock-up. The list of LRs of deceased is Ex. PW-11/7. The case property was sent to FSL on 28.02.2024 with road certificates Ex. PW-11/8 and Ex. PW-11/9 through constable Saeed Khan along with applications Ex. PW-11/10 & Ex. PW-11/11. The FSL report Ex. PW-11/12 & Ex. PW-11/13 were placed on file. The card of arrest of the accused is Ex. PW-11/14 vide which ASHO Shabbir Khan has arrested the accused. After completion of investigation, he submitted the case file to SHO for submission of complete challan against the accused facing trial.

XII. ***PW-12, Constable Mahboob Shah:*** On 26.02.2024, he was present in the emergency room of DHQ hospital Mishti Mela along with ASI Muhammad Ameer, who handed over to him the injured Abdul Jalal along with relevant documents for escort to medico legal officer. After examination of injured, the doctor handed over to him blood-stained garments of the injured which he handed over to the IO. Later on the injured died and he again escorted the dead body

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along with relevant documents. His statement was recorded by the IO U/S 161 Cr. PC.

(7). Learned DyPP for the state abandoned PW Aqal Badshah being witness of the same facts for which PW-02 & PW-04 has deposed. Learned Sr PP for the state closed the evidence.

(8). Statements of accused was recorded u/s 342 Cr. PC. but the accused neither wished to be examined on oath, nor opted to produce any evidence in defence.

ARGUMENTS:

(9). Learned Sr. PP for the state argued that the forensic report is in line with the ocular account of the PWs and recovery of the weapon of offence has been made at the pointation of accused which according to the FSL report has matched with the empty recovered from the place of occurrence. He prayed for conviction of the accused facing trial.

(10). On the other hand, learned counsel for the accused facing trial argued that the case of prosecution is full of contradictions and doubts and the statement of complainant is totally different from the report made by him. The complainant has made improvement in his statement at the time of recording evidence and has mentioned the presence of one Hameed Ullah as eye witness inside the Hujra at the time of occurrence. He

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further argued that if Hameed Ullah was present inside the Hujra at the time of occurrence, why he has not reported the matter to the police as a complainant. There are a lot of contradictions in the statements of PWs produced by the prosecution which cannot be overlooked. He prayed for acquittal of the accused facing trial.

(11). After hearing arguments, available record perused. It is the case of prosecution as per report that on 26.02.2024 at 1145 hours, complainant Abid Ullah S/O Malang Badshah was busy in removing snow from the roof top of his house and in the meanwhile, he heard the sound of firing, due to which he came down and rushed to the Hujra where he found his uncle namely Abdul Jalal is lying in injured condition smeared with blood due to fire shot. That some children present inside the Hujra told the complainant that one Hamid Khan S/O Ameen Khan has fired at him with pistol due to which he got hit. The complainant and other co-villagers took the injured to hospital for treatment in a private vehicle. The prosecution in order to prove their case has produced and recorded the statement of complainant Abid Ullah S/O Malang Jan as PW-02, wherein he made improvement during his examination in chief and stated that when he came to the spot, his brother Hameed Ullah along with children were present there. The complainant has not mentioned the presence of his brother Hameed Ullah at the place of

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occurrence while reporting the matter to the police vide Murasila Ex. PW-5/2. It is also astonishing fact that despite of alleged presence of Hameed Ullah at the spot at the time of occurrence, he neither reported the matter himself to the police, being eye-witness, as complainant nor his presence is mentioned in the Murasila Ex. PW-5/2 and subsequent FIR EX. PA. Hameed Ullah who recorded his statement as PW-04 has stated that he does not remember the exact time of shifting the injured to the hospital and one Abid Ullah reported the matter to the police in the hospital that he was not present with Abid Ullah at the time of report. From this statement of PW-04 a clear inference can be drawn that he was not present at the time of occurrence in the Hujra and thereafter in the hospital at the time of report. It is not appealing to prudent mind that when a close relative like uncle of someone get injured in one's presence and he did not accompany him to the hospital. This state of affairs not only makes his presence doubtful with the deceased at the time of occurrence, but also creates doubts about the mode and manner of the occurrence as mentioned by the complainant in his report Ex. PW-5/2. The mode and manner of the occurrence further become doubtful due to the fact that the names of children, who were allegedly present in the Hujra at the time of occurrence, were not disclosed in the report by the complainant. The statement

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of Mst. Shazia, widow of the deceased, recorded as PW-03 has create further confusion about the report Ex. PW-5/2 because according to PW-03, she was informed by the accused facing trial about the murder of her husband and when she rushed to the place of occurrence, she found her husband Abdul Jalal lying in injured condition in the Hujra. She stated during cross examination that she is not the eye-witness of the occurrence and that father of accused was also present at the place of occurrence and he beaten the accused with stick. This statement of PW-03 provides another version of the report and the presence of one Ameen, father of the accused and beating the accused facing trial with stick provides another story which is different from the one mentioned by the complainant in the Murasila Ex. PW-5/2 and his statement as PW-02. PW-04, Hameed Ullah stated during his cross examination that at the time of occurrence one of his minor niece namely Husna and his nephew Huzaifa were present, but these names are neither mentioned in the report of the complainant, nor in the statement of complainant recorded as PW-02. Similarly, PW-03 during her cross examination has introduced the presence of some other persons namely Janaf, Salah Ud Din and Pir Muhammad at the time of occurrence, which has badly discredited the evidence produced by the prosecution. There are four private witnesses of the prosecution including the complainant,

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whose statements are inconsistent with each other and each of them has narrated the story in a different manner which is contradictory to the story of other. The scenario of occurrence presented by PW-04 during his statement is so strange and unbelievable and in the ordinary parlance, the happening of such events before the commission of offence give alert call to the mind of a person present observing such events. He has stated that the deceased Abdul Jalal kept his pistol on the cot after cleaning and when the accused came to the Hujra, he took the pistol from the cot, which was taken back by him from the accused facing trial and kept the same under the pillow, which was again taken out by the accused facing trial and thereafter aimed the same at Abdul Jalal (deceased) and asked him to look at him and soon after that he fired at him. The happening of all such events provides enough time to a person to interfere and make the attempt unsuccessful, but in the present case all such events as described by him in his statement had happened in his presence, but he has not made any attempt to snatch the pistol from the accused facing trial or to make his attempt unsuccessful. Such scenario mentioned by the PW-04 makes the mode and manner of the occurrence further doubtful and also raise questions about the presence of PW-04 at the time of occurrence. It is another strange story that wife of the deceased Mst. Shazia, who recorded

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her statement as PW-03 has stated that she was informed by the accused facing trial about the murder of her husband in her house and when she came out, the father of accused facing trial was present in the Hujra and he beaten the accused facing trial with stick, meaning thereby that the accused facing trial was not in the possession of pistol soon after the occurrence, but on the other hand the efficient investigation officer during the course of investigation has not only recovered the pistol from the possession of accused facing trial, but also so called pointation for recovery of weapon of offence has been made vide site plan Ex. PW-11/2. The site plan of the place of occurrence Ex. PW-11/1 has been prepared at the pointation of the complainant Abid Ullah, but astonishingly no point for presence of the alleged eye-witness Hameed Ullah (PW-04) has been given by him. The site plan Ex. PW-11/1 is thus totally silent about the presence of children and eye-witness PW-04 which lead this court to draw an inference that the story presented by the complainant and alleged eye-witness PW-04 cannot be believed upon.

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There are plethora of judgements of the superior courts that benefit of doubt shall always be extended in favour of the accused.

1. It is to assert that the rule of criminal jurisprudence to give

benefit of doubt to accused is much more than a mere rule of law. It is a rule of prudence which cannot be ignored (PLD 1999 Lahore 56) (1999 SCMR 1220).

2. ***A single dent having created in the case of prosecution makes the accused entitled to benefit of doubt. It is to assort that the rule of criminal jurisprudence to give benefit of doubt to accused much more than a mere rule of law. It is a rule of prudence which cannot be ignored (PLD 1999 Lahore 56) (1999 SCMR 1220)***

(12). In view of the above discussion, the case of prosecution in absence of direct evidence is full of doubts and the prosecution badly failed to bring home charges against the accused facing trial beyond shadow of any reasonable doubt. I, therefore, acquit the accused facing trial from the charges levelled against him. He is in custody. He be released, if not cited in any other case. Case property be kept intact till the expiry of period provided for appeal/revision under the law.

(13). Case file be consigned to the record room after its necessary completion and compilation.

Announced:
04.01.2025

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CERTIFICATE

Certified that this judgment consists of twenty (20) pages. Each page has been read, corrected wherever necessary and signed by me.

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