

2d (23) (24)

STATE VS MUHAMMAD SALEEM  
FIR No. 07 | Dated: 02.02.2021 | U/S: 302 PPC | Police Station: Ghiljo

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

SESSION CASE NO. : 01/02 OF 2021  
DATE OF ORIGINAL INSTITUTION : 22.04.2022  
DATE OF PRESENT INSTITUTION : 09.10.2024  
DATE OF DECISION : 17.12.2024

STATE THROUGH MUHAMMAD SALEEM S/O TAZA GUL, R/O  
QAUM MISHTI

.....(COMPLAINANT)

**-VERSUS-**

MUHAMMAD SALEEM ASHO, PS GHILJO

..... (ACCUSED FACING TRIAL)

JUDGEMENT  
17.12.2024

Accused/petitioner Muhammad Saleem ASHO  
being exempted through counsel present. Learned Sr. PP  
for the state present.

(2). Accused/petitioner/facing trial, Muhammad Saleem  
ASHO is charged in the instance case FIR no. 07, dated  
02.02.2021, registered u/s 302 PPC at PS Ghiljo, District  
Orakzai. Application u/s 265-K Cr. PC. already submitted  
and notice given to opposite party.

(2). Brief facts of the case as per FIR no. 07, dated  
02.02.2021, registered u/s 302 PPC are that at the  
application of complainant Muhammad Saleem s/o Taza  
Gul on the order of the high-ups, the instant case is  
registered. Accordingly to the application, complainant  
Muhammad Saleem s/o Taza Gul has alleged that the  
deceased Itbar Gul s/o Taza Gul, caste Misthi was his real

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brother, who on 31.01.2021 got injured at the place of occurrence Mula Patey near Ghiljo Bazar at the firing of accused Muhammad Saleem ASHO. He was referred to LRH Peshawar for treatment and where he was died. There is no eyewitness present of the occurrence. That when the clash started accused Muhammad Saleem ASHO was armed with firearm made firing at Itbar Gul who got injured and later on died. He charged Muhammad Saleem ASHO for commission of offence.

It is mentioned in naqal Mad no. 10, Dated 02.02.2021 that case FIR no. 06. Dated 31.01.2021, U/S 302/324/353/427/148/149/7-ATA has already been registered in respect of the occurrence at PS Ghiljo, investigation on way, but the complainant/applicant and his family member have blocked the road by putting the dead bodies of the deceased Muhammad Shafiq, Khanzeb Ullah and Itbar Gul on the road in front of the Orakzai Headquarter at Baber Mela. They were insisting upon registration of FIR against Saleem Khan ASHO for murdering Itbar Gul, therefore, the instant FIR no. 07, dated 02.02.2021 u/s 302 PPC was registered.

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- (3). For investigation of the case special investigation team was constituted at the order of District Police Officer, Orakzai consisted of (1) Mr. Ali Hassan SP investigation District Orakzai (2) Diswar Ali SDPO Upper (3) Inspector Bakht Munir PS Kalaya (4) Naseeb Khan SHO PS Ghiljo

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(5) Mr. Wajid Khan DSB incharge District, Orakzai (6) SI  
Awal Zaman.

(4). Incharge Investigation Officer placed on file copy of the same site plan which was prepared in the case FIR no. 07, dated 31.01.2021 and it is mentioned that as the occurrence is the same and the present FIR no. 06 was only registered at the insistence and protest of the family of the deceased. The Investigation Officer instead of complete challan submitted final report for dismissal of case and the accused Muhammad Saleem was declared to be innocent in the case, but the learned Magistrate Senior Civil Judge, Orakzai did not agree with the version of the prosecution and directed the Moharrir to prepare complete challan within the meaning of section 190 (3) Cr. PC.

(5). Accused Muhammad Saleem on bail was summoned, who appeared 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 24.05.2022, to which he pleaded not guilty and claimed trial.

(5). The prosecution produced and recorded the statements of as many as eleven (11) PWs. The gist of their evidence is as follows;

I. PW-01, Muhammad Hanif Constable: On 31-01-2021, he along with constable Ashraf Ali

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were present with Inspector Investigation Bakht Munir. In their presence, constable Gul Nawaz brought the blood-stained garments consist of Shalwar Qamees black in color along with Banyan Khaki color of deceased Muhammad Shafiq which were packed into parcel No. 5; similarly, constable Muslim Badshah brought the blood-stained garments of deceased Khanzeb Ullah consist of Qamees Shalwar Kharr colour along with Banyan white in colour which were sealed in parcel No. 6. Similarly, constable Abdul Raziq brought the blood-stained garments consist of Qamees Kharr color along with white Banyan of injured Itebar Gul and sealed the same into parcel No. 7. All the parcels were duly packed in sealed and having the monogram of GJ and took the same on recovery memo. He along with co-marginal witness signed the same. His statement was recorded U/S 161 Cr. PC on 31.01.2023 & 04.02.2023. He was cross examined by the defense counsel.

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- II. PW-02, Constable Muslim Badshah. He stated that on 31.01.2021 at about 15:00 hrs, deceased Khanzeb Ullah along with injury sheet and inquest report were entrusted to him by the complainant for the purpose to escort the

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deceased to hospital for post-mortem examination. He shifted the dead body to THQ Hospital, Ghiljo. The dead body along with documents handed over to doctor concerned for post-mortem examination. After PM examination, the post report along with blood-stained garments (consisting of qamees, shalwar and banyan) of the deceased were handed over to me by the doctor. He brought the same to PS and delivered it to investigating officer. His statement was recorded by the IO U/S 161 Cr. PC.

III. PW-03, Constable Gul Nawaz. He stated that on 31.01.2021 at about 15:00 hrs, deceased Muhammad Shafiq along with injury sheet and inquest report were entrusted to him by the complainant for the purpose to escort the deceased to hospital for post-mortem examination. He shifted the dead body to THQ Hospital, Ghiljo. The dead body along with documents handed over to doctor concerned for post-mortem examination. After PM examination, the post report along with blood-stained garments (consisting of qamees, shilwar and banyan) of the deceased were handed over to me by the doctor. He brought the same to PS and

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delivered it to investigating officer. His statement was recorded by the IO U/S 161 Cr. PC.

IV. PW-04, Constable Ihsan Ullah. He stated that on 31-01-2021, the IO took into possession motorcar white in color no. DGE-9333/Punjab, pickup no. C-519/Orakzai double cabin white in color which was damaged by the accused in the occurrence was taken into possession in the police station. IO prepared recovery memo which is correctly signed by him and one Abdul Manan Muharrir PS Ghiljo. His statement was recorded by IO U/S 161 Cr. PC.

V. PW-05, Bakht Munir CIO: He stated that he came to the spot and during spot inspection, he prepared site plan on the pointation of complainant Muhammad Naseem SHO which is Exh.PW 5/1 (four pages). He recovered and took into possession blood-stained earth from the place of deceased Muhammad Shafique and sealed the same in parcel No. 01 Ex. P1. Similarly, he recovered and took into possession blood-stained pebble from the place of deceased Jahanzeb Ullah and sealed the same in parcel No. 02 Exh.P2. Likewise, he recovered and took into possession ashes of burned article and sealed the same in parcel No. 03 Ex.P3. More so, during

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spot inspection, he recovered and took into possession 04 empties of dunger bore and 01 empty of 303 bore and sealed the same in parcel No. 04 Ex.P4. He affixed his signature upon the recovered empties. 3/3 seal monogram of GJ were affixed on each parcel whereas, 01 sample of sealed monogram was kept inside each parcel. To that effect he prepared recovery memo Ex.PW-5/2, in the presence of marginal witness. He recorded the statements of PWs u/s 161 Code of Criminal Procedure, 1898. Similarly, he also took into possession the blood-stained garments of deceased Muhammad Shafiq handed over by the Doctor to constable Gul Nawaz. He sealed the same in parcel no. 5 Exh.P5. Constable Muslim Badshah hand over to me the blood-stained garments of deceased Khanzebullah which were sealed into parcel no. 6 Exh.P6. Constable Abdul Razaq handed over to him the blood-stained garments of injured Itbar Gul which were sealed into parcel no. 7 Exh.P7 duly stamped with the monogram of GJ. He prepared the recovery memo in this respect which is Exh.PW 5/3 which is correct and correctly bears my signature. He also took into possession one motorcar bearing no. DGE-9333/Panjab and Pickup no.

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519/Orakzai double cabin white in colour was also taken into possession from the spot. In this respect, he prepared the recovery memo which is Exh.PW 5/4. On dated 31.01.2021, he produced accused before the court of Judicial Magistrate which is Exh.PW 5/5. Seven days custody was granted. On dated 20.05.2021, he submitted discharge report against the accused Muhammad Saleem ASHO before DPO Orakzai which is placed on file and is Exh.PW 5/6. On dated 10.02.2021, he produced Hafizullah, Mehmood ul Hassan and Khan Wazir before the Judicial Magistrate for recording their statements u/s 164 Cr.PC vide his application Exh.PW 5/7. Their statements were recorded by the Judicial Magistrate which are placed on file. He recorded the statement of the accused under Section 161 Cr.PC. He was cross examined by the defense counsel at length.

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- VI. PW-06, Irshad Gul: He was present with CIO and repeated the same story as alleged by PW-05. His statement was also recorded by the I.O u/s 161 Code of Criminal Procedure, 1898.
- VII. PW-07, Umar Gul HC: He stated that on 31.01.2021, at about 1330 hours, he was present in the disputed constructed rooms which were



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under the supervision of police. He was on duty there for security of the rooms, meanwhile, people of sections (aqwam) Mishti, Daradar Mamozai, Aakhel, Rabia Khel in illegal assembly attacked on us and they destroyed the rooms and set on fire the rooms, as a result, his bedding, cloths and one uniform, burnt and destroyed. In this regard, his statement under Section 161 Cr.PC was recorded by the IO.

VIII. PW-08, Muhammad Zahid: He was present with PW-07 and repeated the same story as alleged by PW-07. His statement recorded by the IO U/S 161 Cr. PC.

IX. PW-09, Constable Sajjad: He stated that on 11.02.2021, the investigation officer handed over to him parcel no.1, 2 and 4 to 7 along with road certificate Exh.PW 12/1 and Exh.PW 12/2 and application. He took the same and submitted the parcels and application to FSL and received acknowledgement on the road certificate. On his return, the road certificate was handed to the IO. His statement was recorded by the IO U/S 161 Cr. PC.

X. PW-10, Muhammad Saleem (Complainant): He stated that deceased Itbar Gul was his real

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brother. On 31.01.2021, at Mulla Pattay situated near Ghiljo Bazar, Orakzai. His brother namely Gul Faraz called him that his brother Itbar Gul has been fired by accused Saleem Khan and is lying in DHQ Hospital, Mishti Mela. On his reaching the hospital, his brother was already referred by the doctor concerned. As his brother was referred to Peshawar, but due to lack of oxygen in ambulance, he was taken to Kohat and after the arrangement of private ambulance. He accompanied his brother to LRH, Peshawar for treatment. Where in LRH, Peshawar succumb to his injuries after two hours. His brother was done to death by accused Muhammad Saleem Khan ASHO. Occurrence is witnessed by PW Wakeel Khan, Muhammad Yousaf and Abdul Baqi. He submitted application to DPO, Orakzai for lodging of FIR against accused Muhammad Saleem.

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XI.

PW-11, Wakeel Khan: He stated that there was a land dispute in between Qaum Rabia Khel, DDM, Mishti and Sheikhan with the tribe of Akhel. He along with other persons of our tribe went to the spot. It was about 1500 hours when the deceased then injured Itbar Gul was fired by accused facing trial namely Muhammad Saleem

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Khan, due to which Itbar Gul was hit and injured.

We had taken the deceased then injured from place of occurrence to Algada situated near Ghiljo Bazar. Then the 1122 rescue officials approached there and shifted the injured to THQ Hospital, while he remained present there. He charge the accused for the commission of the offense.

Arguments heard and available record perused.

(7). **FINDINGS**

The perusal of case file shows that statements of eleven (11) PWs have been recorded, so far in the instant case, including the statements of the complainant, Investigation Officer and marginal witnesses of the recovery memo, but even the complainant has uttered nothing about the crime scene rather he has registered the FIR at the telephonic call of his another brother namely, Gul Faraz whose name is not even included in the challan as eyewitness. The complainant during his statement as PW-10 has not stated a single word that he has seen the occurrence with his own eyes rather he has mentioned the name of one Wakeel Khan as eyewitness of the occurrence, who attended and recorded his statement as PW-11,

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but his statement is also silent about the direct ocular account of the occurrence. He stated in his examination in chief that at 1500 hours, when the deceased then injured Itbar Gul was fired by the accused Muhammad Saleem Khan, due to which Itbar Gul got hit and sustained injuries, but his statement is silent to the effect that whether the deceased than injured told anything to him about the occurrence before his death. He admitted in his cross examination that indiscriminate firing was started after setting on fire the rooms by the people present there. He failed to state the name of single official present in the rooms at the time occurrence. The investigation officer during his statement as PW-5 has categorically stated that firing was made by all the people present there. It is also stated that the people of all the tribe were present there and they made firing at the police check post. He admitted that the people of Akhel tribe were present at 1348 feet from the other tribe and a person cannot be visible from 100 feet at the place of occurrence due to depressions in the place of occurrence (land of Algada). In the present case at the conclusion of investigation, the investigation officer submitted his report wherein he has categorically stated the present case is part in parcel of FIR no. 06, dated 31.01.2021 and the present FIR no. 7 is also pertaining to the

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same occurrence. It is further mentioned that accused facing trial Muhammad Saleem has been charged for the commission of offence only on the ground that he belongs to Quom Akhel and that he was present in the hospital at the time of occurrence and his presence at the place of occurrence is not proved from the statements of PWs. No incriminating recovery from the possession of accused facing trial has been effected. In such a big clash where firing has been made from all sides, the determination of fact that who got hit with the fire shot of whom is next to impossible and in such like situation where no direct ocular account of occurrence is available. In such like circumstances, there is no probability of conviction of any of the accused facing trial, therefore, I hereby accepted the instant application u/s 265-K Cr. PC. and acquit the accused facing trial from the charges levelled against him. The accused is on bail his sureties are discharged from the liability of his bail bonds. Case property i.e., motorcar and double cabin pick-up be returned to its lawful owners on the production of proof of legal ownership/ registration documents. Copy of this judgement be sent to SHO PS concerned for deletion of names of proclaimed offenders in the instant case from the register of POs.

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(10). Judgment announced. Case file be consigned to record room after its necessary completion and compilation.

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**CERTIFICATE**

Certified that this judgment consists of fourteen (14) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 17.12.2024

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