

IN THE COURT OF IJAZ MAHSOOD, SCJ/JM,
ORAKZAI AT BABER MELA, HANGU

CASE NO. : 05/JC OF 2024

DATE OF INSTITUTION: 05.09.2024

DATE OF DECISION: 03.05.2025

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STATE THROUGH: Naushed Ali s/o Nazeer Ali R/O
Qoum Bar Muhammad Khel, Tappa Mirazi Khel, Sra Mela,
Tehsil Lower, District Orakzai.

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

VS

- 1. Yasir Abbas s/o Sher Azam Khan.
- 2. Sajawal Hussain s/o Lal Bat Khan.

*Both R/O Qoum Bar Muhammad Khel, Tappa Mirazi Khel,
Tehsil Lower, District Orakzai.*

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

JUDGMENT
03.05.2025

This judgment is to decide a criminal case instituted on FIR 34 lodged at the behest of Mr. Naushed Ali, the complainant, against Mr. Yasir, Mr. Sajawal, and Mr. Gul Azam. It is pertinent to highlight that the former two accused being minors were tried separately. In the case in hand, ‘accused’ shall primarily refer to Mr. Yasir Abbas and Mr. Sajawal only.

Complaint/Report:

The matter, as reported to the Police who first reduced it into a Dispatch/Murasila, and then into FIR No 34, reads that

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complainant was on his way back home after paying his condolences to the heirs of deceased Mr. Bashir when at Injeer Mela, he was attacked by the accused persons. The juvenile accused accompanied by a major accused who was tried separately started firing at him. Mr. Sajawal shot at him with a pistol, while the other two, including the accused Mr. Gul Azam shot at him with a Kalashnikov. The complainant narrowly escaped the scene by rushing away on his bike. Motive, as related, is previous blood enmity.

Police furnished its report after completion of investigation endorsing trial of the accused persons on the charges levelled. The court, agreeing with the suggestion, formally drafted the charge on 01/10/24.

Charge(s):

After compliance with section 241 Cr.P.C, the accused persons were charged with the commission of offence to attempt Qatl-i-Amd as defined by sections 324 PPC.

The accused pleaded not guilty and claimed trial. Thereafter, the court allowed/invited the prosecution to produce its evidence in proof of the charge.

Witnesses/Exhibits:

Prosecution produced and examined five witnesses, including Mr. Libab Ali Muharrir, Mr. Aftab Hassan OII, Mr.

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Arif Gul SI/IO, Mr. Khial Hassan and Naushed Ali, the complainant. They have exhibited the following documents;

- i. Copy of FIR as Ex.PA.
- ii. Register No. 19 as Ex.PW-1/1.
- iii. Card of arrest of accused Gul Azam Khan as Ex.PW-2/2.
- iv. Complete juvenile challan as Ex.PW-2/3.
- v. Parcel No. 01 regarding empty shell as Ex.P-1.
- vi. Application to FSL as Ex.PW-4/1.
- vii. Road Permit Certificate as Ex.PW-4/2.
- viii. Card of arrest of accused Yasir, Sajawal and Gul Azam Khan as Ex.PW-4/3.
- ix. Card of arrest of accused Yasir, Sajawal and Gul Azam after cancellation of BBA as Ex.PW-4/4.
- x. Application for physical custody of the accused as Ex.PW-4/5.
- xi. Application for issuance of warrant u/s 204 Cr.P.C Ex.PW-4/6.
- xii. Application for physical custody of the accused Gul Azam Khan as Ex.PW-4/7.
- xiii. FSL report as Ex.PK.

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xiv. Copy of DD dated: 29.05.2024 as Ex.PW-4/8.

After the prosecution had recorded and closed its evidence, the accused were confronted under Section 342 CrPC with incriminating evidence/material produced against them during trial. They denied the charge and rebutted the evidence as false.

The probative worth, consistency or otherwise of the testimonies of the witnesses is appraised as follows.

Reasoning:

Instant accused persons and one major accused separately tried, are charged for attempted murder under section 324 of the Pakistan Penal Code. Prosecution has concluded its evidence, and attempted to discharge the burden of proof.

Below the court shall examine the quality of evidence, and decide whether prosecution has successfully brought the charges home to the accused persons.

The narrative of the prosecution reads that complainant was attacked and shot at 25 times by the accused armed with automatic rifles and pistol when he was on his way back home after paying condolences on a relative's death.

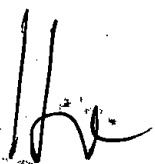
- Mr. Arif Gul, the investigation officer IO, testified as PW-03. He has stated that only one empty shell of 7.62 bore was recovered from the site of the occurrence. There

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is no account of what might have happened to the remaining 19/24 empties.

- No weapon has been recovered which renders moot the question of matching the strike marks with the weapon to determine its use in the incident. The FSL report of a single empty shell reads, ' . . . no opinion can be expressed as to when it (empty shell) was fired'.
- The complainant has stated in his statement that he was fired at from a distance of 20/30 feet. He further confirms that he rode off smoothly out of the place of occurrence without being hit. So much so that his bike did not fall or get hit. Three men, lying in wait for the complainant, open fire at him from a distance of 20/30 feet, firing 20 shots but fail to hit him or his bike. The complainant's good luck can be matched only by the poverty of the shooting skills of the accused persons.
- An interesting contradiction about the description of the site of occurrence can be found in the statement of the IO and complainant. The IO, in fact all of the official witnesses, report presence of human dwellings near the site of occurrence, including the houses of the accused persons. The complainant on the other side denies the presence of human dwellings.



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- The fact gets significant when considered in the context that complainant has held previous blood enmity as the motive of the accused persons for the current offences. If the parties are embroiled in a previous blood feud, the complainant must have accurate knowledge of the location of the houses of the accused persons.
- The death knell to the prosecution's case was struck by the contradiction on the point of spot inspection between the IO and the complainant. The IO reports he visited the spot later the same night. The complainant contradicts him and states that IO visited the next morning.
- The IO reports he visited the site at 21:00 hours on the night of occurrence. The complainant contradicts him and reports his visit the next morning. His statement reads, *'First, the IO came to the spot and then I proceeded to the spot. The IO came to the spot in morning time'*.
- Such a glaring contradiction in the statement of the IO and the complainant casts doubt on the entire narrative of the prosecution. For instance, since the IO claims to have visited the spot at 21:00 hours at night, he adds that light was managed from the headlights of the police vehicle.

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But when the complainant, a layperson, reports the visit

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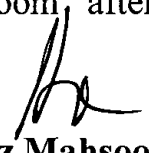
of the IO in the morning, at day time, the story of using headlights crumbles and brings down with it the credibility of the IO.

- Moreover, other than the complainant, who admits to having previous enmity with the accused persons, the incident has no eye witness. In such case, motive exists for both sides apparently to harm the other directly in person, or through the weapon of law.
- The threads of the prosecution's case are too flimsy and weak to carry the load of conviction.

Ruling:

Prosecution has failed to establish the charges held against the accused. They are acquitted of the charges; Their sureties are discharged of their liability under the bond. Case property if any be confiscated to the state.

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


(Ijaz Mahsood)

SCJ/JM,
Orakzai (at Baber Mela)

Announced
03.05.2025

CERTIFICATE

Certified that this order consists of seven (07) pages. Each page has been read, corrected where ever necessary and signed by me.


(Ijaz Mahsood)

SCJ/JM,
Orakzai (at Baber Mela)

Dated:03.05.2025