

STATE VS KHIZAR HAYAT KHAN ETC.
FIR No. 46 Dated: 11.05.2022 U/S: 3/4 of The Khyber Pakhtunkhwa Explosive Substances Act, 2013 Police station: Kalaya

IN THE COURT OF SHAUKAT AHMAD KHAN
SESSIONS JUDGE, ORAKZAI AT BABER MELA

SESSION CASE NO. : 34/3 OF 2022
DATE OF INSTITUTION : 05.10.2022
DATE OF DECISION : 21.12.2022

STATE THROUGH COMPLAINANT NIQAB ALI S/O WAHAB ALI, AGED ABOUT 46 YEARS, R/O CASTE STORI KHEL, TAPA TAZI KHEL, SULTANZAI, PO TAZI KHEL, TARE KALAY, TEHSIL LOWER, ORAKZAI

------(Complainant)

VS

1. KHIZAR HAYAT KHAN S/O HASHMAT ULLAH, AGED ABOUT 44 YEARS, R/O CASTE SULTANZAI, TAPA ABDUL AZIZ KHEL, DISTRICT ORAKZAI
2. SHAH FAISAL KHAN S/O ALAM KHAN, AGED ABOUT 37 YEARS, R/O CASTE SULTANZAI, TAPA ABDUL AZIZ KHEL, DISTRICT ORAKZAI
3. QAREEB KHAN S/O KHIWA GUL, AGED ABOUT 33 YEARS, R/O CASTE QAMAR KHEL, TAPA FAZAL KHEL, WACHA DARA

------(Accused facing trial)

Present : Umar Niaz, District Public Prosecutor.
: Sana Ullah Khan Advocate for accused facing trial.
: Abid Ali Advocate for complainant.

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ORDER

21.12.2022

The accused named above are charged for the offence u/s 3/4 of The Khyber Pakhtunkhwa Explosive Substances Act, 2013 vide FIR no. 46, dated 11.05.2022 of Police Station Kalaya.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
21/12/22

(2) The case of the prosecution as per contents of Murasila converted into FIR is; that the complainant, Niqab Ali on 30.03.2022 at about 0900 hours made a report to the local police to the fact that on a preceding night he was sleeping in his house when at about 0317 a bang of

explosion awoke him. He heard report of three consecutive explosions causing damage to the windows of the house and solar system. The complainant charged unknown accused for commission of the offence.

- (3). The matter was inquired by SHO Shal Muhammad and FIR was registered on 11.05.2022 against unknown accused.

On 24.05.2022, the complainant in his statement recorded u/s 164 CrPC before the court of Judicial Magistrate, charged the accused facing trial Qareeb Khan along with absconding co-accused Malak and Paidal Khan for throwing hand grenades at his house on the behest of accused facing trial Khizar Hayat Khan and Shah Faisal.

- (4). Upon receipt of case file for the purpose of trial, the accused facing trial were summoned, copies of the record were provided to them u/s 265-C CrPC and formal charge was framed against them to which they pleaded not guilty and claimed trial. With respect to absconding accused Malak and Paidal Khan, statement of DFC was recorded as SW and they were proceeded u/s 512 CrPC. Accordingly, the witnesses were summoned but so far, the prosecution has examined as many as 02 witnesses namely, Niqab Ali (complainant) and Muqadar Khan SHO as PW-1 to PW-2 respectively.

Shaukat Ahmad Khan
District & Sessions Judge,
Dy. J. at Eaber Meta

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(5). Counsel for the accused facing trial submitted application for acquittal of the accused u/s 265-K CrPC for the reasons mentioned therein.

(6). I heard arguments and perused the record.

(7). Perusal of the case file shows that the star witness of the occurrence is, the complainant Niqab Ali but he has not seen the accused facing trial or absconding accused while throwing hand grenades at his house. This fact has also been admitted by the complainant in his statement as PW-1. Moreover, the occurrence has taken place on 30.03.2022 while the accused were charged for the commission of offence on 24.05.2022 after delay of about 02 months on the basis of information and satisfaction but no source of information or satisfaction has been disclosed by the complainant. Even in his court statement, the complainant failed to disclose the source of his information.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
28/11/22


(8). Hence, in view of what is discussed above, it is held that there is no probability of the conviction of accused facing trial, even if the prosecution is given further opportunity to produce the remaining witnesses; therefore, accused namely, **Khizar Hayat Khan, Qareeb Khan and Shah Faisal**, on acceptance of their application, are acquitted from the charges levelled against them u/s 265-K CrPC. The accused are on bail. Their bail bonds stand

cancelled and their sureties are discharged of the liabilities of their bail bonds.

With respect to absconding co-accused Malak and Paidal Khan, prima facie case has been made out; therefore, they are declared proclaimed offenders. Perpetual warrants of arrest be issued against them and their names be entered on the roll of register maintained for the purpose.

The case property be kept intact till arrest of the absconding accused and final disposal of the case. Consign.


Pronounced
21.12.2022


(SHAUKAT AHMAD KHAN)
Sessions Judge, Orakzai,
at Baber Mela

CERTIFICATE

Certified that this judgment consists of four (04) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 21.12.2022


(SHAUKAT AHMAD KHAN)
Sessions Judge, Orakzai,
at Baber Mela

