

IN THE COURT OF ZAHIR KHAN,
JUDICIAL MAGISTRATE-I, TEHSIL KALAYA, ORAKZAI

Case No. 73/2 of 2021

Case FIR No. 32 Dated: 14.09.2021 U/S 324/337-D/34 PPC,
PS Mishti Mela


Order. No. 26

29.03.2023

None present for the state. Accused Muhammad Rehman and Feroz Khan on bail present. Complainant also present. Arguments on application U/S 249-A Cr. PC already heard and record gone through.

Brief facts as per contents of FIR are that the complainant Khwaldad Khan reported to the police in the emergency room of Civil Hospital Ghiljo, to the effect that he, on receipt of information regarding his grandson namely Muhammad Nazim being fired at by some unknown persons, reached the spot where he found his grandson lying in injured and unconscious condition. The injured was shifted to Civil Hospital Ghiljo. The complainant charged unknown accused for the commission of the offence. Hence, the present FIR.

The injured was referred to LRH, Peshawar and on 16.09.2021, the injured Nazim Khan recorded his statement u/s 161 Cr.PC wherein, he charged accused facing trial namely Muhammad Rehman and Feroz Khan for the commission of offence to effect that he, being a watchman of under construction road, was present on his duty at the spot situated on main road near Tor Kot, where in the light of torch, he saw the accused named above armed with Kalashnikovs coming towards him. He called the accused at which they made firing on him as a result of which he received injuries. Motive behind the occurrence is land dispute.



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Accused were arrested and later on, released on bail. Complete challan was put in court against the accused. Accused were summoned. They appeared before the court. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. Prosecution produced 06 witnesses.

01) PW-01, Akbar Munir ASHO, PS Mishti Mela, who incorporated the contents of murasila into FIR Ex.PA.

02) PW-02, SI Abdul Manaf (IO of the case), who took blood stained garments of the injured vide recovery memo Ex.PW-2/1, insertion memo is Ex.PW-2/2, application for physical custody of accused is Ex.PW-2/3, application for further custody is Ex.PW-2/4, application for FSL is Ex.PW-2/5, road permit certificate is Ex.PW-2/6, copy of register 19 is Ex.PW-2/7, FSL report regarding blood stained earth/pebbles is Ex.PW-2/8, addition in site plan with red ink is Ex.PB/1, recovery memo in respect of torch produced by injured Muhammad Nazim is Ex.PW-2/9, insertion memo for addition of section 337-D is Ex.PW-2/10.

03) PW-03, SI Muhammad Naseem, who recorded report of the complainant in shape of murasila Ex.PW-3/2, prepared injury sheet as Ex.PW-3/1 and card of arrest as Ex.PW-3/3. He also submitted complete challan against the accused as Ex.PW-3/4.

04) PW-04, constable Naveed Ullah No. 1176, is one of the marginal witnesses to the recovery memo Ex.PW-2/9. Torch was exhibited as Ex. P-1.

05) PW-05, Muhammad Nazim (injured victim),


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06) PW-06, Khwaldad Khan (complainant).

PW Muhammad Bilal was abandoned by the prosecution being unnecessary.

As mentioned above, initially the case was registered against the unknown accused and later on, the present accused facing trial were nominated in the case by the injured in his statement recorded u/s 161 Cr.PC. PW-02, who investigated the case, stated in his cross examination that statements of injured victim and complainant were not got recorded u/s 164 Cr.PC. During first spot inspection, no torch was produced by the complainant. He also deposed that he has not recorded statement of the owner of the excavator/contractor with whom the injured was doing duty of watchman. Blood stained garments of the injured did not include shirt/qamees of the complainant. Per his investigation, there is no blood feud between accused and complainant party. He also admitted that the torch produced by the injured is easily available in the market. PW-03, who recorded report of the complainant in shape of murasila Ex.PW-3/2, deposed that complainant reported to him that he has got no blood feud. PW-04, who is one of the marginal witnesses to the recovery memo Ex.PW-2/9, deposed that he does not remember the date when the injured Muhammad Nazim produced torch to the IO.

The injured Muhammad Nazim, who deposed as PW-05, stated in his examination in chief that he does not remember who produced the torch to the IO at the spot. He stated in his cross examination that he does not remember name of the contractor with whom he was watchman. Khwaldad Khan, who is complainant, deposed as PW-06, admitted that he has not


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mentioned in his report that motive behind the occurrence is blood enmity. He also stated that on the day of pointation, no torch was produced before the local police. Self-stated that he was asked by the police to produce torch.

Perusal of record further shows that complainant is not the eye witness to the occurrence, therefore, he did not charge any one for the commission of the offence. The injured recorded his statement u/s 161 Cr.PC to the IO on 16.09.2021 wherein, he charged accused facing trial by name for the commission of the offence. Per medical report of the injured, he has sustained only one wound with entry on post wall of chest on left scapular region below spinus process of scapula and exit on Ant wall of chest on left side for which 02 persons are charged. No empty has been recovered from the spot so as to show that the firing was made by more than one person. It is a night occurrence. The complainant, in his report has not shown any source of light at the spot at the time of occurrence. Although, the injured victim, stated in his statement recorded u/s 161 Cr.PC, that he identified the culprits in the light of torch which was produced to the IO by him on 24.09.2021, however, the injured when deposed as PW-05 stated that he does not remember who produced the torch to the IO during spot inspection. No torch was produced to the IO at the time of spot pointation by the complainant on 15.09.2021. No motive was advanced by complainant in his report. The injured advanced motive behind the occurrence as land dispute but when he deposed as PW-05, he did not say anything about the alleged motive. Supplementary statement of complainant, who is grandfather of the victim has not been recorded.



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Statement of contractor has not been recorded by the IO. The contractor was relevant person to establish presence of injured on duty at the spot as watchman. The weapon of offence has not been recovered. No empty has been recovered from the spot. Accused have not confessed their guilt before the court. Moreso, there are contradictions in the statements of PWs. As per Ex.PW-3/2 (murasila), the injured was sent to the medical officer under the escort of constable Muhammad Asif No. 161 while MLC report shows that the injured was brought to the hospital by SI Asif Wazir. Moreso, per medical report Ex.PW-3/1, the injured Muhammad Nazim received fire arm injury on the chest but neither any blood-stained shirt nor any blood-stained banyan was taken into possession. Blood-stained shalwar has been taken into possession vide recovery memo Ex.PW-2/1. This fact is also admitted by IO in his cross examination but failed to give any explanation for not taking into possession blood-stained shirt and banyan of the injured victim. Similarly, per contents of report of the complainant, the injured was unconscious at the time of report lodged by the complainant but there is nothing in the medico legal report of the injured which could show that he was brought in unconscious condition.

There are so many dents and doubts in case of prosecution. Recording of remaining evidence would be a futile exercise and wastage of precious time of the court.

Keeping in view the above facts and circumstances, it is held that there is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused are


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acquitted from the charges levelled against them. They are on bail. Their sureties stand discharged from their liability.

Case property be dealt with in accordance with law.

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

Announced.
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(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai