

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

Case No.....13/2 of 2022.

Date of Institution.....08.03.2022.

Date of Decision.....14.04.2023.

State through:

Hashmat Ullah S/O Rehmat Gul R/O Qaum Sheikhan, Village Kach Kalay,
District Orakzai**Complainant**

VERSES

Farman Ullah S/O Peer Badshah, R/O Qaum Shiekhan, Village Kach
Kalay, District Orakzai..... **Accused**

Case FIR No. 44, Dated 06.12.2021 U/S 324 PPC, PS Mishti Mela.

JUDGEMENT

14.04.2023


Through this judgement, I am going to dispose of the instant case registered against accused Farman Ullah vide Case FIR No. 44, Dated 06.12.2021 U/S 324 PPC, PS Mishti Mela.

1. Brief facts of the prosecution's case as unfolded in the FIR are that complainant namely Hashmat Ullah reported to the local police of PS Mishti Mela to the effect that he is serving as constable in police department and on the day of occurrence, he after obtaining short leave from PS, was present in front of his house, when accused Farman Ullah, who is his cousin, started firing at him with intention to kill him. He luckily escaped unhurt. There is no motive behind the occurrence. Complainant charged the accused facing trial for the commission of the offence.


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2. Accused facing trial was arrested and later on, released on bail.
3. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
4. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused was formally indicted. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
5. Prosecution produced five (05) witnesses to prove its case against the accused.
6. PW-01, is Muhammad Saeed, MHC. He stated that on 17.12.2021, he handed over parcels containing case property to constable Muhammad Ibrahim for the purpose of sending it to FSL, Peshawar. His statement was recorded by IO U/S 161 Cr. PC.
7. Constable Ibrahim was examined as PW-02. He stated that case property along with application for FSL and road certificate was handed over to him by Moharrir on the direction of IO. The case property was handed over to incharge FSL and signature of the official concerned was obtained accordingly. His statement was recorded by the IO U/S 161 Cr. PC in the PS.
8. PW-03, is the statement of SI Muhammad Riaz. He stated that during the days of occurrence, he was posted as incharge investigation officer at PS Mishti Mela. Copy of FIR and other relevant documents were handed over to him for investigation. He proceeded to the spot and prepared site plan on the pointation of complainant. Site plan is



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Ex. PB. Search of the accused was made in nearby vicinity but accused was not found. Accused facing trial was arrested by SHO and was handed over to him for interrogation/completion of investigation. On 07.12.2021, he, vide his application, Ex. PW-3/1 applied for physical custody of the accused. Request for physical custody of the accused was turned down and accused was committed to judicial lock-up. He recorded statement of accused and PWs u/s 161 Cr. PC. He has placed on file Mad reports No. 11 dated 06.12.2021 and Mad No. 3 & 19, dated 06.12.2021. The same are Ex. PW-3/2 and Ex. PW-3/3. After completion of investigation, he handed over the case file to SHO for submission of complete challan against the accused.

9. Hashmat Ullah (complainant) was examined as PW-04. He stated that he is serving as constable in police department. On the day of occurrence, after obtaining short leave from PS Mishti Mela, he changed clothes and was standing in front of his house. At 12:40 p.m, accused Farman Ullah fired at him with intention to kill him. He luckily escaped unhurt. He proceeded to PS Mishti Mela and reported the occurrence to SHO. His report was reduced into writing and he signed the same as token of its correctness. He pointed out the spot to the IO who prepared site plan on his pointation. He charged the accused for the commission of the offence.

10. PW-05, is the statement of Naseeb Khan SHO. He stated that complainant namely Hashmat Ullah came to PS and reported to him


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regarding the occurrence. Report of complainant was reduced into writing in shape of FIR Ex.PA. Report was read over to the complainant who signed the same as token of its correctness. Copy of FIR was handed over to investigation staff for investigation. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex.PW-5/1.

11. On conclusion of prosecution evidence, statement of accused was recorded u/s 342 Cr.PC, in which he professed his innocence, however, he did not opt to record his statement on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in his favour.

12. The alleged occurrence took place on 06.12.2021 at 12:40 hours at Kach Mela, Shiekhan Orakzai. It was reported at 14:00 hours and FIR was registered at 14:10 hours. Per contents of FIR, there is no motive behind the occurrence.


13. PW-01, stated in his cross examination that the pistol was weapon of offence in the instant case. Per record, 01 pistol 30 bore without number was recovered from possession of accused and separate case was registered vide FIR No. 45 dated: 06.12.2021 u/s 15-AA at PS Mishti Mela. There is nothing in the said FIR which could show that the pistol was weapon of offence. The said pistol was not taken into possession as weapon of offence in the instant case. No FSL report is placed on file. Accused facing trial has already been acquitted in case registered u/s 15-AA. PW-02, stated in his cross examination


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that he does not remember the exact date when his statement was recorded by the IO. PW-03, stated in his cross examination that he left the PS for spot inspection at 14:20 hours and reached there at 14:30 hours. No empty shell was recovered from the spot. He has not recorded statement of any private/independent person regarding the occurrence at the spot. He recorded statement of complainant at the spot at the time of spot inspection. Complainant and accused have land dispute. PW-04, stated in his cross examination that he left the PS Mishti Mela on short leave at about 11:30 a.m. Accused fired at him from a distance of 100 yards. Soon after the occurrence, he went to PS. The IO reached to the spot at about 03:00 p.m. He does not remember who else accompanied IO to the spot. He also deposed that he did not return back from PS after lodging report. He remained in the PS. As he was not present at the spot at the time of spot inspection, therefore, he cannot tell how much time, the IO spent at the spot. His statement was not recorded by the local police.


14. There are so many contradictions in the statements of PWs. PW-03, who investigated the case, deposed that he recorded statement of complainant at the spot during spot inspection but when complainant himself deposed as PW-04, stated that he did not return back from PS after lodging report and he remained there for his duty. Complainant also deposed that he was not present at the spot at the time of spot inspection, therefore, he cannot tell how much time the IO spent at the spot. He also stated that his statement was not



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recorded by the IO. Moreso, per site plan Ex.PB, complainant was present at point 01 while accused was present at point 02 at the time occurrence and the distance between point 01 & 02 is 20 paces but when complainant deposed as PW-04, he stated that accused fired at him from a distance of 100 yards.

- 15.** Record shows that no empty has been recovered from the spot. There are no bullet hitting marks on the walls despite the fact that the occurrence took place near the house of complainant. No independent witness has been associated. None from the family members of the accused recorded statement to the IO to support the version of complainant despite the fact that the occurrence took place near the house of complainant. Report of the complainant is not verified by any family member of the complainant. Per contents of FIR Ex.PA, there is no motive behind the occurrence but SI Muhammad Riaz, who deposed as PW-03 stated in his cross examination that complainant has got land dispute with accused facing trial, therefore, false implication of accused cannot be ruled out. Accused has not confessed his guilt before the court. Nothing incriminating has been recovered from possession of the accused or on his pointation. As far as recovery of pistol vide FIR No. 45 dated 06.12.2021 u/s 15-AA PS Mishti Mela from possession of the accused at the time of his arrest is concerned, the said pistol has not been taken into possession in the instant case. There is no FSL report or copy of FSL report on the record. Accused facing trial has already


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been acquitted in case FIR No. 45 dated 06.12.2021 u/s 15-AA.
Nothing was brought on record to the effect that complainant was on short leave from PS on the day of occurrence.

- 16.** Prosecution was bound to prove its case against the accused beyond any shadow of doubt but there are so many dents and doubts in the prosecution case benefit of which goes to the accused facing trial. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.
- 17.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Farman Ullah is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds stand cancelled. Sureties are discharged from his liability.
- 18.** Case file be consigned to Record room after its completion and necessary compilation.

Announced
14.04.2023



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CERTIFICATE

It is certified that this judgment consists of 07 pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
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