

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

Case No.....15/2 of 2021.

Date of Institution.....21.06.2021.

Date of Decision.....17.04.2023.

State through:

Muhammad Shaheen S/O Khana Gul, R/O Qaum Mishti, Chappar Mishti,
District Orakzai.....**Complainant**

VERSES

1. Faiz Ullah S/O Umat Khan
2. Hanat Khan S/O Adil Shah
3. Shafi Ullah S/O Ghalib Khan all R/O Qaum Mishti, Chappar
Mishti, District Orakzai..... **Accused**

Case FIR No. 11, Dated 28.01.2021 U/S 436/34 PPC, PS Kalaya.

JUDGEMENT

17.04.2023

Through this judgement, I am going to dispose of the instant case registered against accused Faiz Ullah and two others vide case FIR No. 11, Dated 28.01.2021 U/S 436/34 PPC, PS Kalaya.

- I.** Brief facts of the prosecution's case as unfolded in the FIR are that on 26.01.2021, complainant Muhammad Shaheen reported to the local police to the effect that on 24.01.2021 at 1400 hours, accused Faiz Ullah S/O Umat Khan, Hanat Khan S/O Adil Shah and Shafi Ullah S/O Ghalib Khan put on fire the forest approximately 05 acres at Plun Patay, Chappar, Mishti. That the plants of pulse, liquid and lous tree etc in the forest were burnt by the accused and turned the same into ashes. Accused caused a big damage to the forest. The occurrence is


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witnessed by his brother Shahid Ullah. Motive behind the occurrence is previous altercation. Delay in lodging of report occurred as he (complainant) was in Peshawar to attend the marriage ceremony of his relative. One Ihsan Ullah signed the report as verifier. Report of the complainant was reduced into writing in shape of mad No. 14 dated 26.01.2021 and FIR was registered against the accused on 28.01.2021.

2. Accused nominated in the FIR procured ad-interim pre-arrest bail which was later on, confirmed by the court of Worthy Sessions Judge, Orakzai vide order dated 15.02.2021.
3. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
4. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused were formally indicted. They pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
Prosecution produced seven (07) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.
6. SI, Shal Muhammad deposed as PW-01. He stated that report of the complainant namely Muhammad Shaheen was recorded vide Mad No. 14 dated 26.01.2021. After obtaining permission from the court concerned, inquiry was initiated to dig out real facts. Permission for inquiry was sought by SI Aftab through a written application dated


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27.01.2021. He has partially conducted inquiry in the instant case.

He recorded statements of Ilyas Khan, Hanat Khan, Habib Khan, Malak Syed Habib, Malak Mehboob Shah and Malak Khan Tehseel.

After inquiry, He submitted final report which he placed on file.

Report is Ex.PW-1/1.

7. PW-02, is the statement of SI Muhammad Shafeeq. He stated that during the days of occurrence, he was posted as SHO PS Kalaya. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex.PW-2/1.

8. PW-03, is the statement of Aftab Ahmad SHO. He stated that during the days of occurrence, he was posted as ASI in operation branch of police station Kalaya. Report of the complainant namely Muhammad Shaheen was recorded vide Mad No. 14 dated 26.01.2021. On 27.01.2021, he, vide his application Ex.PW-3/1, sought permission for inquiry u/s 156 (3) Cr.PC. Inquiry was not conducted as they were directed by the prosecution to register FIR. FIR was registered against the accused accordingly.

9. Ain Ullah, Muharrir PS Kalaya, was examined as PW-04. He stated that during the days of occurrence, he was posted as Muharrir at PS Kalaya. On 26.01.2021, complainant Muhammad Shaheen reported to him regarding the occurrence. Report of the complainant was recorded vide Mad No. 14 dated: 26.01.2021. Report was read over to the complainant who thumb impressed the same as token of its correctness. One Ihsan Ullah signed the report as verifier. Mad report


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was handed over to ASI Aftab Ahmad. On 28.01.2021, he registered the instant case vide FIR Ex.PA. Copy of FIR along with relevant documents were handed over to IO for investigation.

10. Aftab Hassan, ASHO was examined as PW-05. He stated that during the days of occurrence, he was posted as SI in the investigation branch of PS Kalaya. After registration of FIR, the investigation of the instant case was entrusted to him. On 28.01.2021, he visited the spot and prepared sketch of the spot. Complainant was in judicial custody in a criminal case. During spot inspection, he took into possession ashes vide recovery memo Ex.PW-5/1. It was packed and sealed into parcel No. 1. He took pictures of the spot. The same are Ex.PW-5/2 to Ex.PW-5/10. When complainant was released from jail, then the eye witness pointed out the spot and to this effect, addition was made in the site plan with red ink on 01.02.2021. The same is Ex.PB/1. He recorded the statements of PWs and marginal witness u/s 161 Cr.P.C. Accused had procured ad-interim pre-arrest bail from the court of Sessions. As he was transferred from PS Kalaya, therefore, accused appeared before the SI concerned. Ad-interim pre-arrest bail of the accused was confirmed by the court of Sessions. After completion of investigation, the case file was handed over to the SHO for submission of complete challan.


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11. Muhammad Shaheen (complainant) was examined as PW-06. He stated that PW Shahid Ullah is his brother while PW Ihsan Ullah is his cousin. Accused facing trial are his cousins. On the day of

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occurrence, he was in Peshawar in connection with marriage ceremony of his cousin. He was telephonically informed by his family members that accused facing trial have put on fire trees at Plun Patay at Chapar Mishti, Lower Orakzai. On his return from Peshawar, he reported the occurrence to the local police. His report was reduced into writing and he thumb impressed the same as token of its correctness. PW Ihsan Ullah also thumb impressed the report as verifier. He pointed out the spot to the local police in presence of eye witness Shahid Ullah. He charged the accused for the commission of the offence.

12. Shahid Ullah (eye witness) was examined as PW-07. He stated that complainant Muhammad Shaheen is his brother. PW Ihsan Ullah is his cousin. Accused facing trial are also his cousins. On the day of occurrence, his entire family had gone to Peshawar for attending marriage ceremony of their cousin. He was present at his home situated at Chappar Mishti. On the day of occurrence, at 2:00 p.m, he came out from his home for making ablution. He saw accused facing trial putting on fire trees in Plun Patay. He saw the accused and after some time, he left for janaza of his co-villager. The occurrence took place on 24.01.2021 and report was made on 26.01.2021.

13. PW Ihsan Ullah and rest of the PWs were abandoned by prosecution and closed its evidence.

14. On conclusion of prosecution evidence, statements of accused were recorded u/s 342 Cr.PC, in which they professed their innocence,


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however, they did not opt to record their statements on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in their favour.

- 15.** Record transpires that the alleged occurrence took place on 24.01.2021 at 1400 hours at Plun Patay situated at Chapper Mishti, Lower Orakzai and it was reported to the local police on 26.01.2021. Report was recorded vide Mad No. 14, dated 26.01.2021. FIR was registered on 28.01.2021. There is unexplained delay of 02 days in report and further 02-days delay in registration of FIR. Complainant Muhammad Shaheen, who deposed as PW-06, stated in his cross examination that the local police visited the spot once and he does not remember the date on which the local police inspected the spot. He admitted that he has no proof regarding ownership of the disputed land/forest. He also deposed that the spot is situated at a distance of 1000 paces from his house. On the other hand, eye witness namely Shahid Ullah, who deposed as PW-07, stated in his cross examination that he did not report the occurrence to the local police till 26.01.2021. The local police visited the spot once. The distance between the spot and his house would be 200/300 yards. It does not appeal to prudent mind that eye witness (PW-07) identified accused facing trial from such a long distance that too in the area having plants and trees in it. The local police inspected the spot twice i.e. on 28.01.2021 and 01.02.2021 which contradicts PW-06 and PW-07.


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Marginal witnesses to the recovery memo Ex.PW-5/1 were not produced by prosecution.

- 16.** Complainant namely Muhammad Shaheen, who deposed as PW-06 is not eye witness to the occurrence as on the day of occurrence, he was present at Peshawar in connection with marriage ceremony of his cousin. One, Shahid Ullah, who is brother of complainant, is cited as eye witness did not bother to report the occurrence to the local police. He waited for 02 days for arrival of complainant to lodge report. When complainant lodged report, the alleged eye witness Shahid Ullah, who deposed as PW-07, did not verify report of the complainant. The cousin of complainant party namely Ihsan Ullah who signed report of the complainant as verifier was not produced as witness during trial. The accused party had registered a criminal case against the complainant party vide case FIR No. 02 dated 07.01.2021 u/s 337-F(v), 352, 148, 149 PPC, PS Lower Kalaya. The present case was registered as cross case against accused facing trial. Accused facing trial submitted application for inquiry to DPO, Orakzai. During course of inquiry, 06 persons were examined by the inquiry officer SI Shal Muhammad who deposed as PW-01. Per statements of the witnesses, report of the complainant was termed as baseless. The original statements are placed on file. The trees burnt in the alleged occurrence are not the ownership of complainant party. Accused facing trial did not confess their guilt before the court. There is no criminal history of the accused. No independent witness was


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associated during course of investigation to support the version of complainant party. There are so many contradictions in the statements of PWs.

- 17.** There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.
- 18.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Faiz Ullah, Hanat Khan and Shafi Ullah are hereby acquitted from the charges leveled against them. They are on bail. Their bail bonds stand cancelled. Sureties are discharged from their liability. Case property be dealt in accordance with law.
- 19.** Case file be consigned to record room after its completion and necessary compilation.

Announced

17.04.2023



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CERTIFICATE

It is certified that this judgment consists of 08 pages. Each page has been dictated, read, corrected and signed by me.



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