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IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI

Case No .....8/2 of 2022.

Date of institution.....24.01.2022.


Date of decision.....26.06.2023.

Case FIR No. 34 Dated: 02.10.2021 U/S 324,427,511/34 PPC, PS Mishti Mela

Order. No. 25  
26.06.2023

Dy.PP for the state present. Accused Naqeeb Ullah on bail along with counsel present. Rest of the accused are exempted. Complainant absent. Counsel for accused requested for disposal of application u/s 249-A Cr.PC already filed. Arguments on application on behalf of counsel for accused facing trial already heard. Arguments of Dy.PP for the state heard today. Complainant party has already opted not to engage private counsel which fact is duly reflected in order dated 23.06.2022. Record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that complainant namely Mst. Rehmana Bibi reported to the local police to the effect that on 06.09.2021 at Asar time near the house of complainant situated at Masood Pakha, Mishti Mela Orakzai, Hazrat Ullah, son of complainant, on his way to madrassa was attempted to be kidnapped by accused Fazal Janan, Abdul Rehman and Qeemat Khan R/O Qaum Sheikhan, Lower Orakzai who were duly armed. They forcibly put him in a vehicle but on hue and cry of the complainant,

  
ZAHIR KHAN  
Civil Judge/JM  
Kalaya Orakzai

26/06/23

her son and other fellow students of madrassa, she succeeded to rescue her son. The accused started firing at the complainant and her son which caused damage to the wall and windows of the house. Motive behind the occurrence is that her ex-husband namely Saif Ur Rehman is the uncle of accused Fazal Janan while rest of the accused are cousins of her ex-husband. Accused are demanding custody of her minor son Hazrat Ullah. Report of the complainant was entered vide mad No. 03 dated 07.09.2021 and on acceptance of 22-A Cr.PC petition, the instant case was registered against the accused facing trial.

After completion of investigation, complete challan was put in court against accused. 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.

Mst. Rehmana Bibi (complainant) was examined as PW-01. She stated that PW Hazrat Ullah is her son. Accused facing trial are her relatives. Her nikah was solemnized with Saif Ur Rehman some 17 years ago. From the wedlock, PW Hazrat Ullah was born. After 10 years of marriage, her husband Saif Ur Rehman divorced her. After birth of Hazrat Ullah, her husband ousted her and her son from his house and they started residing with their parents for the last 14/15 years, They are residing in the house of her parents. All the expenses are borne by her parents. On the day of occurrence, her son PW Hazrat Ullah was proceeding to Madrassa. She heard Hazrat Ullah screaming. Accused facing trial namely Qeemat Khan, Naqeeb Ullah, Abdur




**ZAHIR KHAN**  
 City Judge/JM  
 Kalaya Orakzai

26/06/23


Rehman and Fazal Janan attempted to abduct her son Hazrat Ullah. Accused also made firing with intention to kill her son. The walls and door of the house of her parents were hit with the bullets. On the following day, they went to PS where she lodged report. Her thumb impression was obtained on the report. On her report, FIR was not registered against accused facing trial, resultantly, they approached the court of Sessions at Baber Mela, Hangu for registration of the case and on the directions of the Sessions court, the instant case was registered against accused facing trial. After registration of the case, she pointed out the spot to the local police in presence of her son Hazrat Ullah. Motive behind the occurrence is that her ex-husband namely Saif Ur Rehman is the uncle of accused Fazal Janan while rest of the accused are cousins of her ex-husband. Accused are demanding custody of her minor son Hazrat Ullah. She charged the accused for commission of the offence.

PW-2, is the statement of Hazrat Ullah who stated that complainant namely Rehmana Bibi is his mother. Accused Fazal Janan is uncle of his father while rest of the accused are sons of Fazal Janan. On the day of occurrence, he was proceeding to Deeni Madrassa named Abu Bakar Saddique Madrassa situated at Masood Pakha. When he reached the spot, a Datson/vehicle was parked there. Shams Ur Rehman was the driver of the said vehicle. He was attacked by accused Naqeeb Ullah and his Qamees was torn. When he was running back to the house, accused facing trial started firing with intention to kill him. His mother was standing near the door of the house. He

  
**ZAHIR KHAN**  
Judge/JM  
W. Va. Orakzai  
26/06/23

started calling his mother. Accused facing trial attempted to kidnap him and they also attempted to kill him. His mother pointed out the spot to the local police in his presence. His statement was recorded by the local police. He charged accused facing trial for commission of the offence.

SI Asif Wazir was examined as PW-03. He stated that during the days of occurrence, he was posted as OII at PS Mishti Mela. After receiving copy of FIR along with relevant documents, he proceeded to the spot and prepared site plan Ex.PB on the pointation of complainant Mst. Rehmana Bibi in presence of her son eye witness Hazrat Ullah. He recorded statements of PWs u/s 161 Cr.PC. During spot inspection, PW Hazrat Ullah produced his torn shirt which he took into possession in presence of marginal witnesses vide recovery memo Ex.PW-3/1. He also took into possession pick-up/Datson bearing registration NO. C-5004 Lower Dir which was parked in PS in connection with case FIR No. 28 dated 06.09.2021 u/s 324, 427/34 PPC, PS Mishti Mela. Recovery memo is Ex.PW-3/2. On 16.10.2021, he deleted section 365 PPC and added 427 PPC vide insertion/deletion memo Ex.PW-3/3. Accused facing trial had applied for BBA. They came to PS and he issued their card of arrest Ex.PW-3/4. BBA of accused was turned down and on 20.10.2021, he vide his application Ex.PW-3/5, produced the accused before the court for obtaining their physical custody which was turned down and accused were committed to judicial lock-up. He recorded statement of accused u/s 161 Cr.PC. After completion of

  
**ZAHIR KHAN**  
Civil Judge/JM  
Kalaya Orakzai

26/06/23


investigation, case file was handed over to SHO for submission of complete challan against the accused.

Perusal of record transpires that the alleged occurrence took place on 06.09.2021 at Asar time near the house of complainant situated at Masood Pakha and it was reported on 10.09.2021 and FIR was registered on 02.10.2021.

PW-01, stated in her cross examination that she knows that accused facing trial have lodged FIR against her brothers namely Fazal Kareem and Fazal Rafique. It is correct that a Datson/vehicle along with her brothers were taken to the PS by the local Police. One person namely Naqeeb Ullah got injured in that separate occurrence. It is correct that she has not told time of occurrence to the local police. Accused Abdur Rehman is serving in Police Department. Her ex-husband was not present at the spot at the time of occurrence.

PW-02 stated in his cross examination that his statement was recorded by the local police on 02.10.2021. It is correct that FIR was registered against his maternal uncles after the present occurrence. Datson was hit during cross firing. The Datson was taken by driver Shams Ur Rehman, however, he cannot tell where he took it.

PW-03 stated in his cross examination that It is correct that no empty was recovered from the spot. It is correct that per statements of malaks/elders of the locality no attempt for kidnapping of PW Hazrat Ullah was made by accused. Per statements of malaks/elders, no offence of kidnapping or attempted kidnapping was committed. It is also correct that he has not associated any independent witness in

  
**ZAHIR KHAN**  
Civil Judge/JM  
Kalaya Orakzai

26/06/23

support of report of complainant. On both the recovery memos Ex.PW-3/1 and Ex.PW-3/2, police officials are cited as witnesses. No private person was associated during recovery proceedings. It is correct that uncles of PW Hazrat Ullah and brothers of complainant were accused in attempted murder case registered on 06.09.2021.

Per contents of FIR, accused facing trial attempted to abduct PW Hazrat Ullah and fired at complainant with intention to kill her. PW-03, who investigated the case, categorically stated that offence of kidnaping/attempted kidnaping have not been committed by accused facing trial. Allegations of kidnaping/attempted kidnaping are false, resultantly, sections 365/511 PPC were deleted from the record and section 427 was added. All the accused facing trial are charged for general role of ineffective firing from a distance of 215/220 paces. No empty has been recovered from the spot. The pick-up, taken into possession vide recovery memo Ex.PW-3/2 was already parked in the PS in connection with case FIR No. 28 dated 06.09.2021 u/s 324,427/34 PPC, PS Mishti Mela. In the occurrence, brother of complainant was charged for effective firing. False implication of accused facing trial in the instant case cannot be ruled out. The factum of cross firing is nowhere mentioned in the report of the complainant. Moreso, the torn shirt was allegedly produced by PW Hazrat Ullah to the IO on 02.10.2021 after 26/27 days of the occurrence which he took into possession vide recovery memo Ex.PW-3/1. Per contents of mad No. 13 dated 07.09.2021, the occurrence was reported by complainant

ZAHIR KHAN  
Judge/JM  
Kala Orakzai

26/06/23

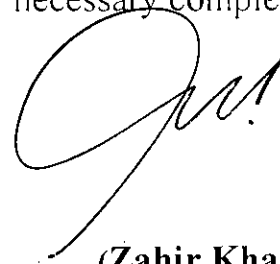
to the local police but no torn shirt was produced to the local police at that time.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused as of right. No empty has been recovered from the spot. Nothing incriminating has been recovered from possession of accused or on their pointation. Accused have not confessed their guilt before the court. 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 facing trial are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability.

Case property be dealt with in accordance with the law.

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

**Announced.**  
26.06.2023



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