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

Case No.....81/2 of 2022.

Date of Institution.....08.12.2022.

Date of Decision.....07.06.2023.

State through:

Rehmat Kareem S/O Sharbat Khan R/O Qaum Stori Khel, Tehsil Lower,
District Orakzai**Complainant**

VERSES


Siyal Khan S/O Yar Baz Khan R/O Qaum Stori Khel, Tehsil Lower,
District Orakzai**Accused**

Case FIR No. 101, Dated 12.10.2022 U/S 324, 427 PPC PS Kalaya.

JUDGEMENT
07.06.2023

Through this judgement, I am going to dispose of the instant case registered against accused Siyal Khan vide case FIR No. 101, Dated 12.10.2022 U/S 324, 427 PPC, PS Kalaya.

1. Brief facts of the prosecution's case as unfolded in the FIR are that SHO Shal Muhammad, on receipt of information regarding the occurrence, proceeded to the spot situated at Tarkho Saam, Lower Orakzai where injured Jehad Ullah was lying in unconscious condition. Father of complainant namely Rehmat Kareem reported the occurrence to SHO Shal Muhammad to the effect that on 12.10.2022 at 16:00 hours, he along with his sons namely Jehad Ullah and Taj Muhammad were present in their fields,


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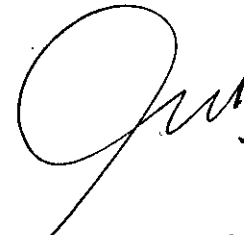
ploughing the land with tractor bearing No. MF-240 driven by Taj Muhammad when in the meanwhile, accused Siyal Khan, duly armed came out of his house and started firing with intention to kill them, as a result of the firing of accused, his son Jehad Ullah got hit and sustained injury while he and his other son namely Taj Muhammad luckily escaped unhurt. Motive behind the occurrence is alleged as land dispute. On the strength of murasila, the case in hand was registered against the accused.

2. Accused facing trial was arrested and after completion of investigation, complete challan was submitted by prosecution against him.

3. Accused is in custody. He was produced from sub-jail Orakzai at Baber Mela. Legal formalities under Section 241-A Cr. PC were complied with. Formal charge was framed. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.

Prosecution produced ten (10) witnesses to prove its case against the accused facing trial.

5. Dr. Zahid Ullah, Medical Officer deposed as PW-01. He stated that on 12.10.2022, injured Jehad Ullah S/O Rehmat Kareem was given first aid at DHQ, Mishti Mela. The injured was referred to THQ, Hospital Kalaya. The injured was brought to the hospital under the escort of constable Muhammad Rasool No. 1423. He


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examined the injured and the following injuries were found on his person.

The patient was presented with history of fire arm injury, at the left side below scapula, single wound was found with blood stained clothes. There was single entry wound with no exit.

Patient was attended at DHQ hospital, Mishti Mela and then referred to THQ, Kalaya for MLC. Treatment was given at DHQ, Hospital, Mishti Mela, he received the patient and referred him to tertiary care unit (HMC Peshawar). The injured was treated at HMC, Peshawar and after treatment, he was discharged. He received treatment report of HMC as per which bullet was seen in the back. After receiving treatment report of HMC, he furnished final opinion/report. As per final report;

- (a). Kind of weapon used..... fire arm
- (b). Nature of the injury..... dangerous
- (c). Probable duration of injury.....01 to 02 hours.

Medico-legal report is Ex.PW-1/1. His endorsement on the injury sheet is Ex.PW-1/2. Report of HMC is Ex.PW-1/3. Medical report along with blood stained garments was handed over to the local police on 02.11.2022.

- 6. Mansoor Khan, son of complainant and brother of injured, was examined as PW-02. He stated that complainant Rehmat Kareem




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is his father and injured Jihad Ullah is his brother. His father/complainant reported the occurrence to the local police at the spot in his presence. He has thumb impressed the report as verifier.

7. PW-03, SI Shal Muhammad stated that during the days of occurrence, he was posted as SHO, PS Kalaya. On the day of occurrence, he was on gasht when received information regarding the occurrence. He proceeded to the spot situated at Tarkho Saam, Stori Khel, Orakzai, where injured Jihad Ullah was lying in injured and in unconscious condition. His father namely Rehmat Kareem was present with the injured and he reported to him regarding the occurrence which he reduced into writing in shape of murasila. The report was read over to the complainant who thumb impressed the same as token of its correctness. Another son of complainant namely Mansoor thumb impressed the report as verifier. He prepared injury sheet of the injured and sent him to THQ, Hospital Kalaya under the escort of constable Muhammad Rasool No. 1423. Murasila was drafted at the spot and it was sent to PS for registration of the case through constable Muhammad Ayaz No. 446. Injury sheet of the injured is Ex.PW-3/1. Murasila is Ex.PW-3/2. On the same day i.e. 12.10.2022, he arrested the accused facing trial and issued his card of arrest as Ex.PW-3/3.

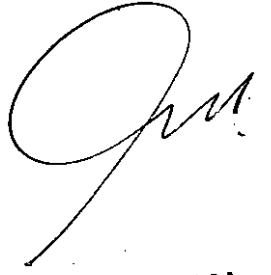

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After completion of investigation, he submitted complete challan against the accused. Challan form is Ex.PW-3/4.

8. PW-04, is the statement of constable Muhammad Jamil. He stated that on receipt of murasila from SHO Shal Muhammad through constable Muhammad Ayaz No. 446, he correctly incorporated contents of murasila into FIR. Copy of the FIR is Ex.PA. Copy of FIR was handed over to IO for investigation. Case property in sealed condition was handed over to him by IO. Tractor was brought to PS by SHO and was parked in PS. The parcels containing the recovered empties and blood-stained clothes in sealed condition were handed over to IO for the purpose of sending the same to FSL, Peshawar. Entry was made in register 19. Copy of register 19 is Ex.PW-4/1. He has also made entries in DD regarding departure of SHO from PS and his arrival to PS. Copy of mad report is Ex.PW-4/2. Similarly, entry was made in DD regarding departure from and arrival to PS of constable Khalil-ur-Rehman. Copies of the same are Ex.PW-4/3 and Ex.PW-4/4.

9. ASI Murtaza, who investigated the case, was examined as PW-05. He stated that after receiving copy of FIR along with original murasila, he proceeded to the spot and prepared site plan on pointation of complainant Rehmat Kareem in torch light. Site Plan is Ex.PB. During spot inspection, he took into possession tractor




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bearing registration No. MF-240, engine No. 060323, chassis No. MTL/A1231/26, red color having bullet hitting marks in presence of marginal witnesses. Similarly, during spot inspection, he took into possession 03 empties of 7.62 mm bore lying in scattered condition from point "C". The empties were packed and sealed into parcel No. 1 by affixing 03 seals with mark of MH while one seal was put inside the parcel. Recovery memo is Ex.PW-5/1. Parcel No. 1 is Ex.P-1. On the following day of the spot inspection, son of complainant namely Mansoor brought blood stained garments of injured to PS consisting of one blood stained mehandi colored shirt and one mehandi colored shalwar and he took the same into possession vide recovery memo Ex.PW-5/2 in presence of marginal witnesses. Blood stained garments were packed and sealed into parcel No. 2 which is Ex.P-2 by affixing 03 seals with mark of MH. One seal was put inside the parcel. Accused facing trial was arrested by SHO PS Kalaya and was handed over to him for interrogation/investigation. On 13.10.2022, he produced the accused before the court for obtaining his police remand vide application Ex.PW-5/3. 02 days custody was granted. He interrogated the accused and after expiry of police custody, he produced the accused before the court with request for further custody vide his application Ex.PW-5/4 which was turned down and accused was committed to judicial lock-up. He recorded



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statements of PWs and accused u/s 161 Cr.PC. He vide his applications, sent blood stained garments and 03 empties of 7.62 mm bore to FSL. Copies of applications are Ex.PW-5/5 and Ex.PW-5/6. FSL reports are Ex.PW-5/7 and Ex.PW-5/8. Medical documents of injured were received from HMC, Peshawar which he placed on file. On 01.11.2022, he recorded statement of injured Jehad Ullah in his house. After completion of investigation, case file was handed over to SHO for submission of challan against the accused.

10. PW-06, is the statement of Constable Muhammad Khalil. He stated that he accompanied the IO during spot inspection and in his presence, the IO took into possession tractor bearing registration No. MF-240, red color having bullet hitting marks. Similarly, during spot inspection, the IO took into possession 03 empties of 7.62 mm bore lying in scattered condition from point "C". The empties were packed and sealed into parcel No. 1 by affixing 03 seals with mark of MH while one seal was put inside the parcel. On the following day of the spot inspection, son of complainant namely Mansoor brought blood stained garments of injured to PS. Blood stained garments were packed and sealed into parcel No. 2. The IO recorded his statement u/s 161 Cr.PC.


11. Complainant Rehmat Kareem was examined as PW-07. He stated that injured PW Jehad Ullah is his son. Accused Siyal Khan is his


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2nd cousin. On the day of occurrence, at 4:00 p.m. he along with injured PW Jehad Ullah were present in their fields. They were ploughing the fields with tractor driven by Taj Muhammad. Accused Siyal Khan fired at them with intention to kill them, resultantly, with firing of the accused, his son PW Jehad Ullah got hit and received injury. At 16:30 hours, the local police came to the spot and he reported the occurrence to the police. Report was read over to him and he thumb impressed the same as token of its correctness. Injured PW Jehad Ullah was shifted to DHQ, hospital Mishti Mela and thereafter, he was shifted to Kalaya hospital. Injured Jehad Ullah was later on, shifted to HMC, Peshawar for treatment. 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.

- 12. PW-08,** is the statement of Jehad Ullah. He stated that complainant Rehmat Kareem is his father. PW Mansoor Khan is his brother. Accused Siyal Khan is his cousin. On the day of occurrence, he, his father and his cousin Taj Muhammad were present in their fields. They were ploughing the fields with tractor when accused Siyal Khan appeared and started firing at them with intention to kill them, resultantly, he got hit and sustained injury. He became unconscious and he knows nothing what happened



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next. He charged the accused facing trial for the commission of the offence.

13. Constable Muhammad Rasool was examined as PW-09. He stated that he was present with SI Shal Muhammad at the spot. SI Shal Muhammad prepared injury sheet of injured Jehad Ullah at the spot which was handed over to him along with injured. He escorted the injured to THQ, Hospital Kalaya. The injured was thereafter, referred to Peshawar for further treatment and he was asked to collect medical report later on. His statement was recorded by IO u/s 161 Cr.PC.

14. PW-10, is the statement of Taj Muhammad. He stated that complainant Rehmat Kareem is his uncle. Injured PW Jehad Ullah and Mansoor are his cousins. Accused facing trial is his relative. On the day of occurrence, he along with complainant, injured PW Jehad Ullah and Mansoor were present in their fields ploughing the land with tractor. He was driving the tractor. Accused facing trial came out and started firing with intention to kill them. As a result of the firing of the accused, tractor received 06 bullets. His cousin Jehad Ullah also got hit with the firing of the accused. Injured was shifted to hospital in vehicle.


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15. 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

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envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in his favour.

- 16.** Afterwards, arguments of counsels for the parties were heard. Counsel for complainant and APP for the state argued that accused facing trial is directly and by name charged in a promptly lodged report. The occurrence took place in a day light, therefore, there is no chance of misidentification or non-identification of accused. Medico-legal report of the injured PW Jehad Ullah support the case of prosecution. There are eye witnesses to the occurrence. Empties of 7.62 mm bore have been recovered from the spot and per FSL report, the three 7.62 mm bore crime empties were fired from one and the same 7.62 mm bore weapon. Motive i.e. land dispute has been proved by prosecution. On the other hand, counsel for accused facing trial argued that case of prosecution is full of dents and doubts. No blood stained earth has been recovered from the spot. There are contradictions in the statements of PWs. Motive has not been proved by prosecution and it was lastly, requested that accused facing trial be acquitted from the charges leveled against him.


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- 17.** Per Ex.PW-3/2 (murasila) and Ex.PA (FIR), the alleged occurrence took place on 12.10.2022 at 16:00 hours at Tarkho Saam, Stori Khel, Orakzai. The occurrence was reported at 16:30 hours and FIR was registered at 17:15 hours. The distance in

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between place of occurrence and PS, Kalaya is 17/18 KMs. Motive behind the occurrence is land dispute. The occurrence, beside the injured Jehad Ullah (PW-08), was allegedly witnessed by complainant Rehmat Kareem (PW-07) and Taj Muhammad (PW-10). Mansoor Khan (PW-02), brother of injured and son of complainant, is verifier of the report of complainant reduced into writing in shape of murasila Ex.PW-3/2.


- 18.** SI Shal Muhammad, who deposed as PW-03 stated in his cross examination that he received information regarding the occurrence when he was present at Mandra Khel near Khwa Darah, Lower Orakzai. The spot is at a distance of 01 KM from Mandra Khel, Khwa Darah. He reached to the spot within 15/20 minutes where injured was lying in unconscious condition. He also deposed that he reached the spot at 15:55 hours. Per Ex.PW-3/2 (murasila) and Ex.PA (FIR), the occurrence took place at 16:00 hours and it was reported at 16:30 hours. FIR was registered at 17:15 hours. It means that PW-03 reached the spot before the occurrence which contradicts the contents of murasila and FIR. PW-07 (complainant) stated that SI Shal Muhammad (PW-03) reached the spot at 16:30 hours. On the other hand, eye witness Taj Muhammad (PW-10), stated in his cross examination that the occurrence took place at about 3:00 pm. He again stated that the occurrence took place between 3:00 pm and 4:00 pm. He also


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stated that the injured was shifted from the spot to the hospital in a vehicle within 05 minutes after the occurrence which means that injured and complainant were not present at the spot at the time of report which was allegedly made at 16:30 hours. PW-10 further deposed that the police party was already present at the spot at the time of firing. He further stated that SI Shal Muhammad came to the spot at about 5:00/5:30 pm which contradicts the record.


- 19.** ASI Murtaza, who investigated the case, deposed as PW-05, stated that he prepared site plan Ex.PB on the pointation of complainant/PW-07. He reached the spot at 17:50 hours. Complainant/PW-07 was present at the spot however, he stated in his cross examination that he accompanied the injured to DHQ, hospital Mishti Mela at 5:30/6:00 pm and he remained there for about 20 minutes. They reached to THQ, Kalaya at about 7:00 pm and remained there for 30 minutes. Thereafter, injured was shifted to Peshawar. He accompanied the injured to Peshawar. They reached to Peshawar at about 11:00 pm. He also deposed that the investigation staff visited the spot after an hour of the occurrence. He pointed out the spot to the IO at about 11:00/12:00 pm. He further deposed that nothing else was done by the IO except preparation of site plan. It does not appeal to prudent mind that complainant/PW-07 returned from Peshawar to the spot situated in District Orakzai within an hour. It establishes that complainant


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who accompanied the injured to Peshawar was not present at the spot at the time of spot inspection. Complainant/PW-07 has also denied recovery of crime empties by IO during spot inspection by stating that only site plan was prepared and nothing else was done. Constable Muhammad Khalil, who deposed as PW-06 stated that he accompanied the IO to the spot and he is one of the marginal witnesses to the recovery memos Ex.PW-5/1 and Ex.PW-5/2. In his cross examination he stated that they left for the spot inspection at 19:00 hours and reached there within 10 minutes at 19:10 hours. They remained at the spot for about 30 minutes. There are so many contradictions in the statements of PW-05, PW-06 and PW-07.

- 20.** Per statement of IO, site plan Ex.PB was prepared on the pointation of complainant. The site plan has not been verified from injured PW-08 and eye witness PW-10 which is injurious to the case of prosecution. Per Ex.PB, point No. 1 is given to injured PW, point No. 2 to complainant, point A to tractor, point No. 4 is the point of presence of accused facing trial at the time of occurrence. Point C is where from 03 empties of 7.62 mm bore were recovered. The distance between point 1, 2 to 4 is 100 paces, point A to 4 is 103 paces, point B, 3 to point 4 is 120 paces. Per statements of PW-07, PW-08 and PW-10, the distance between accused facing trial and complainant party at the time of



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occurrence was 50/60 paces and 40/50 paces respectively which contradicts the distances shown in Ex.PB.

21. Per contents of murasila and FIR, Jehad Ullah (PW-08), sustained injury at 16:00 hours. Report was made at the spot at 16:30 hours. It does not appeal to prudent mind that complainant party waited for arrival of police for 30 minutes without shifting the injured in unconscious condition to the hospital. No blood stained earth has been recovered from the spot despite the fact that the injured remained at the spot for 30 minutes in injured condition. There is nothing in the medical reports that the blood was absorbed.

22. The injured Jehad Ullah (PW-08), complainant (PW-07) and eye witness Taj Muhammad (PW-10) did not say anything about the motive behind the occurrence in their examination in chief. Motive of incident is shrouded in mystery and witnesses did not highlight issue of motive rather suppressed the same. Mere land dispute is not motive, unless it was fully elaborated through evidence and its decree whether it is so grave that in retaliation accused could take extreme step of eliminating the entire complainant party. In cross examination, PW-08 stated that he came into senses at HMC, Peshawar. He has not verified the site plan. He deposed that his statement was not recorded by the police/IO.




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23. The IO took into possession tractor bearing registration No. MF-240 of red color allegedly having bullet hitting marks but there is no such report placed on file which could show that the tractor was hit during firing. Tractor was released on superdari to the complainant party. It was not produced during trial which is also fatal to the case of prosecution.

24. Medical Officer, Dr. Zahid Ullah, who deposed as PW-01 stated that he examined the injured on 12.10.2022 at 7:30 pm. The injured was given first aid at DHQ, hospital Mishti Mela and thereafter, he was referred to THQ, Hospital Kalaya. He was then referred to HMC, Peshawar. There is no MLC report of DHQ, hospital Mishti Mela which could show that the injured was initially treated at DHQ, hospital Mishti Mela. Medical documents prepared by the medical officer of HMC, Peshawar are placed on file as Ex.PW-1/3 but the medical officer concerned was not produced as witness during trial. Furthermore, there is nothing in the medical report exhibited as Ex.PW-1/1, that at the time of examination, the injured victim was in unconscious condition. The medical officer has not mentioned the dimension of the injury: whether any fresh blood was present around the wound. Medical reports are materially deficient in its contents and did not qualify to be material evidence. There is nothing in the MLC report that the blood was absorbed. PW-01 stated that he handed


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over medical report and blood stained garments to the police on 02.11.2022 but recovery memo Ex.PW-5/2 shows that the same were taken into possession by IO on 13.10.2022. Moreso, complainant/PW-07, stated in his cross examination that they reached DHQ, hospital Mishti Mela at 5:30/6:00 pm where they remained for 20 minutes and thereafter, the injured was shifted to THQ, hospital Kalaya at about 7:00 pm where they remained for 30 minutes. There are contradictions in the statements of injured (PW-08), eye witnesses and medical officer (PW-01).

25. Accused facing trial has neither confessed his guilt before the IO nor before the court. No incriminating article has been recovered from possession of the accused or on his pointation. Weapon of offence has not been recovered. Accused facing trial has no criminal history. Per record, complainant party is accused in another attempted murder case registered against them on the report of the accused party. False implication of accused facing trial cannot be ruled out.



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26. Record shows that the occurrence has not taken place in the manner described in the murasila and FIR. Evidence of eye witnesses was badly shaken and shattered during cross examination. Eye witnesses did not corroborate each other on material aspects of the case. Evidence of eye witnesses is not straightforward, trustworthy and confidence inspiring. Medical

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evidence did not support the ocular account furnished by eye witnesses. There are so many dents and doubts in case of prosecution benefit of which goes to the accused not as a matter of grace but as a matter of right. Prosecution badly failed to prove its case against accused beyond shadow of doubts through ocular, medical and circumstantial evidence.

27. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Siyal Khan is hereby acquitted from the charges leveled against him in case FIR No. 101 dated 12.10.2022 u/s 324, 427 PPC, PS Kalaya. He is in custody. He be released, if not required in any other case.

28. Case file be consigned to Record Room after its completion and necessary compilation.

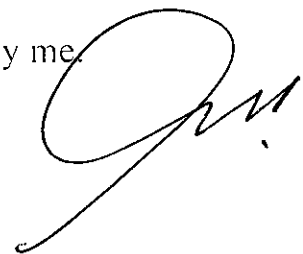
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CERTIFICATE

It is certified that this judgment consists of 17 pages. Each page has been dictated, read, corrected and signed by me.



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