

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

Case No..... 16/2 of 2023.

Date of institution.....30.03.2023.

Date of decision.....19.06.2023.

FIR No. 03, dated 12.01.2023, U/S 504, 506, 452/34 PPC, PS Kalaya

Mr. Abid Ali Advocate counsel for accused facing trial.

Mr. Asad Ijaz Advocate counsel for complainant.

Order. No. 08

19.06.2023

Accused Sabereen on bail along with counsel present. Complainant Shah Fayaz along with Mr. Asad Ijaz Advocate present. W/N on behalf of complainant in favour of Mr. Asad Ijaz Advocate submitted. PWs SI Shal Muhammad, SI Muqadar and SI Murtaza present. Their statements recorded as PW-01 to PW-03 respectively. Counsel for accused facing trial opted not to cross-examine PW-01 and PW-02. PW-03 was cross-examined.

Counsel for accused filed application U/S 249-A Cr. PC. Arguments on application heard and record gone through.

Brief facts of the prosecution case as unfolded in the FIR are that, complainant Shah Fayaz reported to the local police to the effect that on 06.01.2023 at 11:00 hours, accused facing trial along with co-accused Dawood Khan, beaten the nephew of complainant namely Afsar Ullah and forcibly entered his house where they used abusive language and criminally intimidated the women folk. Motive behind the occurrence is disputed of Gutter. Report of the complainant was entered in DD vide

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mad No. 11 of 06.01.2023. After inquiry by ASHO, the case in hand was registered against accused facing trial and co-accused Dawood Khan (deceased).

After completion of investigation, complete challan was put in court against the accused. Accused Sabereen, who was on bail, was summoned and he appeared before the court. Copies were delivered to him U/S 241-A Cr.PC. Accused Dawood Khan was absconding but later on, it was reported that he has been murdered in an occurrence reported vide case FIR No. 26 dated 14.03.2023 u/s 302, 324/34 PPC, PS Kalaya. Abatement report was submitted by SHO and proceedings were abated accordingly. Formal charge against accused Sabereen was framed. He pleaded not guilty and claimed trial.

Thereafter, prosecution was directed to produce evidence against accused Sabereen. Prosecution produced 03 witnesses.

PW-01, SI Shal Muhammad. He stated that during the days of occurrence, he was posted as SHO, PS Kalaya. Complainant namely Shah Fayaz reported the occurrence to the local police which was entered vide mad No. 11 dated 06.01.2023. Inquiry was conducted by ASHO Muqadar Khan. After completion of inquiry, he submitted final report dated 10.01.2023. Final report is Ex.PW-1/1. On the basis of final report, case in hand was registered against accused facing trial. After completion of investigation, he submitted interim and complete challan against the accused.

PW-02, SI Muqadar, stated that he has conducted inquiry u/s 157 (3) Cr. PC. After completion of inquiry, case file was handed over to


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SHO Shal Muhammad who submitted final report. He has also chalked FIR. Copy of FIR is Ex.PA which is in his hand writing and correctly bears his signature.

PW-03, SI Murtaza has investigated the case. He prepared the site plan Ex.PB on pointation of PW Afsar Ullah in presence of complainant. As accused were avoiding their lawful arrest therefore, he vide applications Ex.PW-3/1 and Ex.PW-3/2 applied for warrant u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC. He recorded statement of search witness. Later on, accused Sabereen applied for BBA. He submitted application to DPO and SP investigation, Orakzai professing his innocence. Application was entrusted to him. He collected relevant record from HBL, Kohat and CDR data as per which accused was present in Kohat on the day of occurrence. Attested copy of the bank record and CDR data are Ex.PC and Ex.PZ. BBA of the accused was confirmed. He recorded statement of accused u/s 161 Cr.PC. After completion of investigation, case file was handed over to SHO for submission of complete challan against the accused wherein, accused Sabereen was put in column No. 2 of the challan form because per his investigation, accused Sabereen was innocent.

Per contents of FIR Ex.PA, the alleged occurrence took place on 06.01.2023 at 11:00 hours at Tor Khawrai, Kalaya Orakzai, it was reported at 12:00 hours and FIR was registered on 12.01.2023 at 14:00 hours.

Record transpires that there is unexplained delay of 06 days in registration of the FIR. Per contents of FIR, inquiry u/s 157 (3) Cr.PC




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was conducted by ASHO PS Kalaya but there is nothing on record which could show that any permission whatsoever was obtained from the court for the inquiry. Not a single inquiry paper was referred to by ASHO Muqadar Khan who deposed as PW-02. He has not recorded statement of any witness which could support the version of complainant. There is nothing on record which could show that he even visited the spot during the inquiry.

PW-03 stated in his cross examination that accused facing trial (Sabereen) was found innocent, therefore, his name was put in column No.2 of the challan form. He was satisfied from the bank record and CDR data exhibited as Ex.PC and Ex.PZ that accused facing trial was innocent. He also deposed that co-accused Dawood Khan has already been murdered in another occurrence. Per contents of FIR, PW Afsar Ullah was beaten by the accused but neither any injury sheet nor any medical report is placed on file to support the version of complainant. Accused allegedly entered the house of complainant, used abusive language and intimidated the women folk but statement of not a single female has been recorded by the IO. No specific point is allotted to women folk in the site plan. No independent person has been associated during inquiry and investigation. Per investigation of IO, accused facing trial was not present at the spot at the time of occurrence rather he was present in Kohat.

Civil litigation is pending between the parties. Father of complainant namely Torak Jan is plaintiff and accused facing trial is defendant in the civil suit pending before this court and fixed for today


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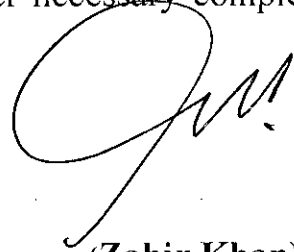
for evidence of plaintiff, therefore, false implication of accused facing trial in the instant case cannot be ruled out. Complainant stated at the bar that if the instant criminal case is disposed of today, he has got no objection.

Record shows that case of prosecution is full of dents and doubts. Per record, there is no history of accused which could show his involvement or conviction in such like cases. Accused facing trial has not confessed his guilt before the court. No incriminating article has been recovered from possession of accused or on his pointation.

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 is acquitted from the charges leveled against him. He is on bail. His sureties stand discharged from their liability. Proceedings in respect of co-accused Dawood Khan has already been abated.

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

Announced
19.06.2023



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