

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

Case No .....46/2 of 2022.

Date of institution.....31.08.2022.

Date of decision.....26.06.2023.

Case FIR No. 51 Dated: 20.05.2022 U/S 506,148,149 PPC, PS Kalaya

Order No. 14

26.06.2023

Dy.PP for the state present. Accused Liaqat Ali on bail along with counsel present. Accused Lal Zali has already been died. Accused Muqarab S/O Khial Meen and accused Muqarab S/O Meer Hassan Shah are absconding. Rest of the accused are exempted from appearance. Complainant Nabi Rehman along with Mr. Insaf Ali advocate present. W/N submitted. Statement of complainant Nabi Rehman recorded as PW-01. Counsel for accused facing trial submitted application u/s 249-A Cr.PC. Arguments on application heard and record gone through.

**ZAHIR KHAN**  
Civil Judge JM  
Kalaya Orakzai

26/06/2023

Brief facts of the prosecution's case as unfolded in the FIR are that report of the complainant Nabi Rehman was recorded vide mad No. 04 dated 14.05.2022 wherein, it is alleged that on the day of occurrence, he along with his guests were present in the hujra situated at Dana Khwala Oblan when accused Liaqat Ali , Min Ajat, Gul Zali, Nawab Khan, Yar Zali, Khano, Muqarab Khan, Wayalat Khan, Khan Faras, Hikmat Ali, Ijaz, Muhammad Alam, Lal Zali R/O Qaum Bezot,

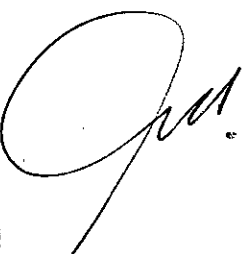
Muqarab R/O Qaum Utman Khel, duly armed came to the spot hujra and criminally intimidated them by making aerial firing. On the strength of report, the instant case was registered against the accused facing trial on 20.05.2022. Motive behind the occurrence is dispute over coal mine.

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.

Complainant Nabi Rehman was examined as PW-01. He stated that PW Khani Khel is his father and PW Shams Rehman is his cousin. On 13.05.2022, guest from Dara Adam Khel had come to their hujra. They were preparing meal etc for the guests and in the meanwhile firing started. On 14.05.2022, he reported the occurrence to the local police. His report was reduced into writing and he signed the same as token of its correctness. His father PW Khani Khel thumb impressed the report as verifier. The local police visited the spot on 20.05.2022. He pointed out the spot to the police.


Perusal of record transpires that the alleged occurrence took place on 13.05.2022 at 17:30 hours at Dana Khwala Oblan and it was reported on 14.05.2022 at 09:00 hours and FIR was registered on 20.05.2022 at 07:30 hours.

PW-01, stated in his cross examination that the occurrence took place at about 5:00 pm. Beside he, his father, guest and Jamshid were

  
ZAHIR KHAN  
Civil Judge JM  
Karnal Orakzai

26/06/23

present at the spot. He can tell the names of accused nominated in the FIR. Names of the accused are, Liaqat, Min Ajat, Lal Zali, Hikmat Ali, Gul Zali. He cannot tell names of the remaining accused. The moment accused came to the spot, they started firing from all 04 sides. As firing was made from the mountain/hill, therefore, no empty was found at the spot. He reported the occurrence on the following day of the occurrence. On 20.05.2022, the police visited the spot. On 20.05.2022, he pointed out to the police the place from where firing was made and place of their presence at the relevant time. In his presence, no empty was recovered by the police. It was aerial firing but boundary wall of the hujra was also hit with bullets. He has pointed out the bullet hitting marks on the wall to the police. Accused were armed with different types of weapons. He did not take the guest to the PS. He was not accused in the FIR registered on the report of accused Liaqat Ali. His brother is accused in that case. Accused are his relatives.

  
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Civil Judge/JM  
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26/06/23

Per contents of FIR, the occurrence took place on 13.05.2022 at 17:30 hours at Dana Khwala Oblan. The occurrence was reported to the local police on 14.05.2022 which was recorded vide mad No. 04 dated 14.05.2022. There is unexplained delay in lodging of the report. No permission whatsoever for inquiry was obtained from the court. Per record, site plan was prepared on 14.05.2022, however, complainant Nabi Rehman who deposed as PW-01, stated in his cross examination that he pointed out the spot to the police on 20.05.2022. He also deposed that there were bullet hitting marks on the boundary wall of

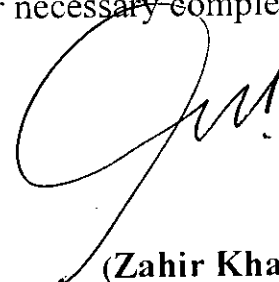
the spot hujra which contradicts the record. No empty has been recovered from the spot.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused as of right. Nothing incriminating has been recovered from possession of accused or on their pointation. Accused have not confessed their guilt before the court. No empty has been recovered from the spot. There is no documentary proof of the motive. 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.

Accused Lal Zali has already been died. Proceedings were abated accordingly. Accused Muqarab S/O Khial Meen and accused Muqarab S/O Meer Hassan Shah are absconding. A prima facie case exists against them. They are declared proclaimed offenders. Their names be entered in the list/register of proclaimed offenders.

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

**Announced.**  
26.06.2023



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