

IN THE COURT OF ASGHAR SHAH
SESSIONS JUDGE, ORAKZAI AT BABER MELA

SESSION CASE NO. : 18/2 OF 2020
DATE OF INSTITUTION : 07.08.2020
DATE OF DECISION : 30.03.2021

STATE THROUGH BILAWAR KHAN S/O MIR AHMAD KHAN,
AGED ABOUT 56 YEARS, R/O CASTE BAR MUHAMMAD
KHEL, TAPA ALAT KHEL, KUREZ, LOWER ORAKZAI.

------(Complainant)

VS

1. HUIAT HUSSAIN S/O NOOR MUHAMMAD, AGED ABOUT 19 YEARS, CASTE BAR MUHAMMAD KHEL, TAPA BABA NAWASI, LOWER ORAKZAI, DISTRICT ORAKZAI.
2. MUNTAZIR HUSSAIN S/O AJMAL KHAN, AGED ABOUT 30 YEARS, R/O R/O CASTE BAR MUHAMMAD KHEL, TAPA ALAT KHEL, KUREZ, LOWER ORAKZAI

------(Accused Facing Trial on bail)

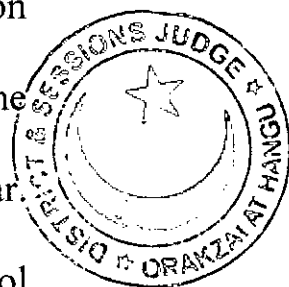
Present: Umar Niaz, District Public Prosecutor.
: Javid Muhammad and Jabir Hussain Advocates, for complainant
: Muzahir Hussain Advocate, for accused facing trial.

JUDGEMENT
30.03.2021

On 13.05.2020, the local police upon receipt of information reached KDA hospital Kohat where in the emergency room, the injured/complainant, Bilawar Khan was found lying in injured condition who reported the matter to the local police to the effect that he was going to his shop in Kurez Bazar. At about 06:30 am when reached to Payan Peer Kol

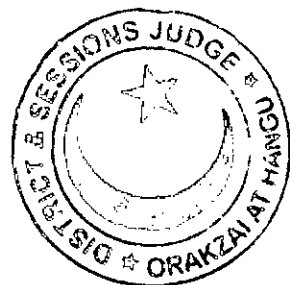


(ASGHAR SHAH)
Sessions Judge, Orakzai,
at Baber Mela



School road, two unknown persons having muffled faces boarded on a motorcycle came there and the person sitting on the rear seat of the motorcycle started firing at him due to which he received injuries on abdomen, right hand and right buttock. Thereafter, the injured/complainant, Bilawar Khan was shifted to KDA hospital where he reported the matter to the local police against two unknown persons which was reduced into writing in shape of Murasila Ex. PA/1 and the same was read over to him who thumb impressed the same as token of its correctness. The report was also verified by the son of complainant namely, Wasim Ali s/o Bilawar Khan by signing the same after ensuring the contents to be correct. The Murasila Ex. PA/1 was sent to the PS where FIR Ex. PA in question was registered against the unknown accused. Thereafter, on 10.06.2020 i.e., after 28 days of the occurrence complainant charged both the above-named accused for the commission of offence in his statement before the police as well as before Judicial Magistrate Orakzai u/s 164 Cr.P.C Ex. PW


Asghar Shah
 (ASGHAR SHAH)
 Sessions Judge, Orakzai,
 at Baber Mela



5/1. Hence, the accused facing trial were implicated in the instant case.

(2). After completion of investigation, complete challan was submitted and accordingly both the accused were summoned. Upon their appearance, the proceedings were initiated against them by providing copies of the case U/S 265-C Cr.P.C and they were charge sheeted to which they pleaded not guilty and claimed trial and accordingly the witnesses were summoned and their statements were recorded, the gist of which are as follows;

- I. Libab Ali Moharrir as PW-1 deposed to have had registered FIR Ex. PA from the contents of Murasila Ex. PA/1.
- II. Muhammad Shafiq SHO as PW-2 deposed that after completion of investigation, he had submitted complete challan Ex. PW 2/1 against the accused facing trial.
- III. Constable, Khan Wada as PW-3 being marginal witness of recovery memo deposed in respect of the 06 empty shells of

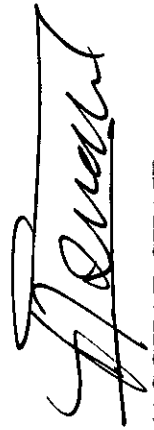

(ASGHAR SHAH)
Sessions Judge, Orakzai,
at Baber Mela



30 bore and a blood-stained stone from the spot taken by the IO in his presence through recovery memo Ex. PC. The witness also deposed being marginal witness of the recovery memo Ex. PC/1 vide which the IO in his presence taken into possession blood-stained shalwar and kamees of the injured/complainant produced to the police by one, Shaheen Ali s/o Kamal Hussain.

IV. Dr. Hashmat Ali, MO, DHQ hospital KDA Kohat appeared before the court as PW-4 and deposed in respect of examination of injured/complainant, Bilawar Khan through medico legal report Ex. PW 4/1. The witness further deposed in respect of discharge slip Ex. PW 4/2.


V. Injured/complainant, Bilawar Khan as PW-5 in his evidence repeated the story of Murasila Ex. PA/1 besides charged the accused facing trial by name for the occurrence.

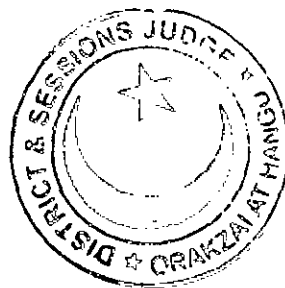


(ASGHAR SHAH)
Sessions Judge, Orakzai,
at Baber Mela



- VI. Waseem Ali s/o Bilawar Khan as PW-6 deposed that after the occurrence, he alongwith his cousin, Shaheen Ali has taken his injured/father, Bilawar Khan to KDA hospital as well as verified the report made by his father to the police by signing the same.
- VII. Aftab Ahmad SI as PW-7 deposed in respect of recording of report of the complainant through Murasila Ex. PA/1 as well as drafting his injury sheet Ex. PW 7/1.
- VIII. Shal Muhammad Khan SI as PW-8 deposed in respect of the investigation carried out by him in the instant case including preparation of site plan Ex. PB, recovery of blood-stained stone and 06 empty shells of 30 bore from the spot vide recovery memo Ex. PC, taking into possession the blood-stained shalwar and kamees of the injured/complainant through recovery

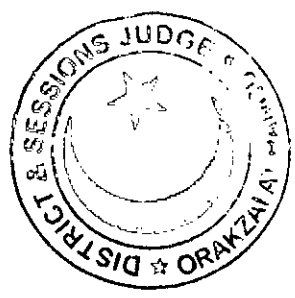

 (ASGHAR SHAH)
 Sessions Judge, Orakzai,
 at Baber Mela



memo Ex. PC/1, recording statements of PWs, addition in the site plan Ex. PB/1 as per pointation of the complainant, sending blood-stained stone and empty shells to the FSL through constable, Khan Wada through applications Ex. PW 8/1 and Ex. PW 8/2 alongwith road permit certificates Ex. PW 8/3 and Ex. PW 8/4, recording statement of complainant u/s 161 Cr.P.C and producing him before the court of Judicial Magistrate-I, Orakzai for recording statement u/s 164 Cr.P.C, arresting accused facing trial through card arrest Ex. PW 8/6, obtaining physical custody of accused through application Ex. PW 8/7, recording statement of accused u/s 161 Cr.P.C and receiving FSL reports regarding blood-stained stone Ex. PK, regarding empty shells Ex. PK/1, regarding blood-stained garments Ex. PK/2 and finally, after completion of investigation, submission of

Asghar Shah


(ASGHAR SHAH)
Sessions Judge, Orakzai,
at Baber Mela

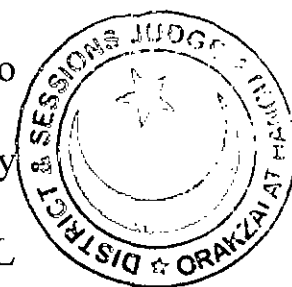


the case file to the SHO for onward submission of challan in the court.


(3). Thereafter, learned DPP for the state assisted by counsel for the complainant closed the prosecution evidence but the accused neither wished to be examined on oath nor produced evidence in defence. Accordingly, arguments of the learned DPP for the state assisted by counsel for the complainant and counsel for the accused facing trial heard and case file perused.

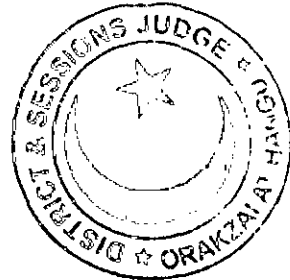
(4). From the arguments and record available on file it reveals that in the instant case the material based by the prosecution and the complainant is the 164 Cr.P.C statement of the complainant, his medico legal report Ex. PW 4/1, spot recoveries of 06 empty shells and blood-stained stone coupled with their FSL reports. But however admittedly the initial report was lodged against the unknown accused and the complainant in his initial report as well as in his court statement as PW-5 has mentioned that the assailants were muffled faces. The question would arise as to when the physique and feature of the accused are not


(ASGHAR SHAH)
Sessions Judge, Orakzai,
at Baber Mela



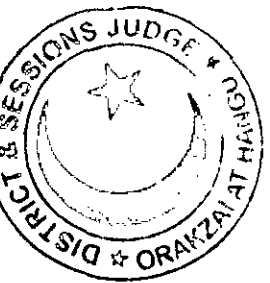
mentioned in the initial report and even after nomination of the accused facing trial, no identification parade was conducted through complainant to identify the accused facing trial being the same who in fact attacked on the complainant, how can the accused facing trial can be booked for the instant occurrence? The complainant in his initial report, in his statement recorded u/s 164 Cr.P.C has mentioned that he has got no enmity with anybody besides has not mentioned any motive for the occurrence. The complainant as PW-5 in his cross examination admitted that he has got no grudges with the accused facing trial, then the question would arise as to why he has charged them and what was the reason for the accused facing trial to make fire shots on the complainant? The complainant in his 164 Cr.P.C statement recorded after 28 days of the occurrence has mentioned that he is charging the accused upon his due satisfaction but however neither source of satisfaction nor information for nominating the accused facing trial is given either in the said statement or in the statement recorded in court.


 (ASGHAR SHAH)
 Sessions Judge, Orakzai,
 at Baber Mela



Moreover, even after nominating the accused facing trial on 10.06.2020, the complainant while pointing out the places of accused to the IO in the site plan could not specify the points of the accused on 23.06.2020. Moreover, the charging of the accused facing trial with delay of 28 days was also not explained. Moreover, the crime weapon was not recovered in the instant case during the investigation, hence the FSL report with regard to the empty shells Ex. PK/1 is of no use besides when the ocular account failed to establish their case against the accused facing trial then the rest of the FSL reports regarding blood-stained stone and blood-stained garments of the complainant coupled with his medico legal report Ex. PW 4/1 is also of no use in order to base the same for the conviction of the accused facing trial.

Asghar Shah
 (ASGHAR SHAH)
 Sessions Judge, Orakzai,
 at Baber Mela



- (5). Moreover, absence of pointation, confession or recovery of crime weapon from the possession of accused facing trial, no past criminal history, failure to disclose the motive or source of satisfaction on the part of complainant for nominating the accused

facing trial for the occurrence, late charging of the accused, no mentioning of the physique and feature of the accused, no identification parade being conducted would denote that the mode and manner of the occurrence as alleged failed to establish and has provided no connection of the offence being committed by the accused facing trial. The evidence led in the case is not confidence inspiring and have failed to prove the case against the accused facing trial beyond any shadow of doubts. Hence, benefit of doubt so cropped up must be extended in the favour of accused facing trial. Accordingly, while extending the benefit of doubt, accused facing trial, Hujat Hussain and Muntazir Hussain, they are acquitted of the charges levelled against them through the FIR in question. Accused are on bail, their bail bonds stand cancelled and sureties are discharged from the liabilities of bail bonds. Case property be disposed of in accordance with law but after the expiry of period provided for appeal/revision. Copy of judgement be issued to the prosecution, complainant and accused free of cost.

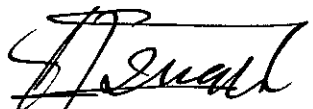


(ASGHAR SHAH)
Sessions Judge, Orakzai,
at Baber Mela



(6). File be consigned to Session Record Room after its completion and compilation.

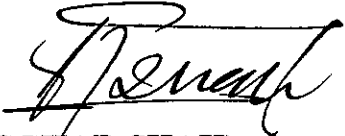
Announced
30.03.2021


(ASGHAR SHAH)
Sessions Judge, Orakzai,
at Baber Mela

CERTIFICATE

Certified that this judgment consists of eleven (11) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 30.03.2021


(ASGHAR SHAH)
Sessions Judge, Orakzai,
at Baber Mela

