

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

SESSION CASE NO. : 16/2 OF 2020
DATE OF INSTITUTION : 15.07.2020
DATE OF DECISION : 10.04.2021

STATE THROUGH SABIR JAMAL S/O NOOR JAMAL, AGED ABOUT 16 YEARS, R/O CASTE ALI KHEL, VILLAGE TAMBE, DISTRICT LOWER ORAKZAI

------(Complainant)

VS

AQAL JAFFAR S/O NOOR JAFFAR, AGED ABOUT 56 YEARS, CASTE ALI KHEL, VILLAGE TAMBE, LOWER ORAKZAI, DISTRICT ORAKZAI.

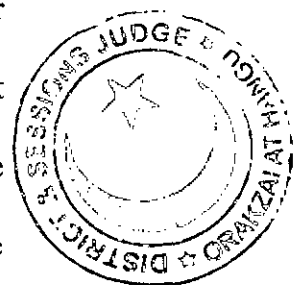
------(Accused Facing Trial on bail)

Present: Umar Niaz, District Public Prosecutor.
: Abid Ali Advocate, for complainant.
: Sana Ullah Khan Advocate, for accused facing trial.

JUDGEMENT
10.04.2021

On 08.04.2020, the local police upon receipt of information reached civil hospital Kalaya where in the emergency room injured/complainant, Sabir Jamal was found lying in injured condition who reported the matter to the local police at about 09:50 am to the effect that he alongwith other people of the village were present in village Tambe. At about 08:30 am, accused facing trial, Aqal Jaffar was cutting a tree of mulberry while the complainant and other people of village were restraining him from doing so. That resultantly an altercation took place between the complainant and accused

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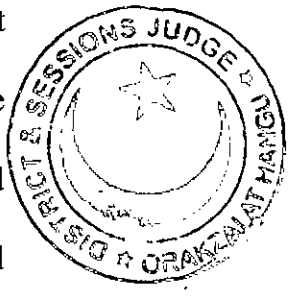


who in turn opened firing at the complainant with Kalashnikov due to which complainant got hit and injured on his left foot. The motive for the commission of offence was the cutting of mulberry tree. The report of the complainant was reduced into writing in shape of Murasila Ex. PA/1 and the same was read over to him who thumb impressed the same as token of correctness. The report was verified by one, Gulab Khel who also thumb impressed the Murasila Ex. PA/1. The Murasila Ex. PA/1 was sent to the PS where FIR Ex. PA in question was registered against the accused facing trial. Hence, the accused facing trial was implicated in the instant case.

(2). After completion of investigation, complete challan was submitted and accordingly accused was summoned. Upon his appearance, the proceedings were initiated against him by providing copies of the case U/S 265-C Cr.P.C and he was charge sheeted to which he 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. Ain Ullah Moharrir as PW-1 deposed to have had registered FIR Ex. PA from the contents of Murasila Ex. PA/1.

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- II. Dr. Sajjad Akbar, MO, THQ Kalaya appeared before the court as PW-1 and deposed in respect of examination of injured/complainant, Sabir Jamal through medico legal report Ex. PW 2/1.
- III. Constable, Najeeb Ullah as PW-3 deposed that on 08.04.2020, SHO Muhammad Shafiq handed over to him the injury sheet of injured/complainant, Sabir Jamal and accordingly he handed over the same to the doctor inside the hospital. He further deposed that after medico legal examination of the injured, the doctor handed over to him the blood-stained garments including yellow colour shalwar-kamees of the injured which he handed over to the IO in the PS.
- IV. Injured/complainant, Sabir Jamal as PW-4 in his evidence repeated the story of Murasila Ex. PA/1.
- V. Constable, Muhammad Fayyaz as PW-5 being marginal witness of recovery memo Ex. PC deposed in respect of the 01-empty shell of 7.62 bore taken by the IO from spot 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



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taken into possession yellow colour blood-stained kamees of the injured sent by the doctor.

VI. Muhammad Shafiq SHO as PW-6 deposed in respect of recording initial report of the complainant through Murasila Ex. PA/1, preparation of injury sheet of the injured/complainant, Sabir Jamal Ex. PW 6/1 besides deposed that after completion of investigation, he had submitted complete challan Ex. PW 6/2 against the accused facing trial.

VII. Shal Muhammad Khan SI as PW-7 deposed in respect of the investigation carried out by him in the instant case including preparation of site plan Ex. PB, recovery of 01 empty shell of 7.62 bore from the spot vide recovery memo Ex. PC, taking into possession the blood-stained shalwar of the injured through recovery memo Ex. PC/1, recording statements of PWs, arresting accused facing trial through card arrest Ex. PW 7/1, obtaining physical custody of accused through application Ex. PW 7/2, obtaining further physical custody of accused through application Ex. PW 7/3, drafting of applications Ex. PW 7/4 alongwith road permit certificate Ex. PW 7/5 to the FSL Peshawar regarding the blood-stained kamees and

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receiving FSL report of the same Ex. PK, recording statement of private witness and submission of case file to SHO for onward proceedings.

(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 complainant PW-4 in his cross examination deposed that the distance between the spot where the occurrence took place and the Kalaya hospital where he reported the matter is coverable within 30 minutes. Yet the matter was reported with the delay of 1 hour and 20 minutes and the reason of delay is obviously consultation and deliberation for charging the accused for malafidy purpose. It was also deposed by the complainant that soon after the occurrence, his cousins namely, Gulab Khel and Marwat taken him to the hospital in a motorcar being driven by one, Ghuncha Gul. It means that by the time of occurrence the above-named cousins of the complainant alongwith other people of the locality were present at the spot as it was

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admitted in the very examination in chief of the complainant that at the spot some other people were also present. That was the reason that the complainant mentioned the presence of the said witnesses with him from spot to the hospital and even in the hospital where one of his cousins namely, Gulab Khel thumb impressed his report as verifier. But however, none of the said witnesses were produced for evidence either to narrate the real facts of the spot or even to verify the report of the complainant. The presence of the said witnesses on the spot is established but even then, they were not produced and thus the best evidence has been withheld for the unknown reasons and as such adverse inference under Article 129 of the Qanon e Shahadat Order, 1984 would be drawn that had such witnesses were produced, their evidence would have gone against the version of the complainant.

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- (5). It is necessary to mention here that no blood was recovered from the spot despite the blood-stained shalwar of the complainant being taken into possession by the local police from the doctor after examination of the injured/complainant. As such the FSL report Ex. PK regarding the availability of the human blood on the blood-stained shalwar of the complainant in the absence of recovery of blood from the spot is having no legal value to determine the spot of the occurrence. Moreover, the single empty of 7.62 bore from the spot is also having no legal value as no

weapon of offence was recovered from the possession of the accused facing trial nor any FSL report, to this effect, is available.

(6). The report of the complainant is allegedly recorded by SHO Muhammad Shafiq PW-6 who in his evidence alleged to have had recorded the report of the injured/complainant through Murasila Ex. PA/1 as well as prepared his injury sheet and the injured/complainant in his cross examination also alleged his report to have been recorded by the SHO Muhammad Shafiq. But in cross examination the SHO Muhammad Shafiq changed his stance by alleging that the said documents were prepared by constable, Shakeel upon his dictation. But neither any daily diary nor the said constable, Shakeel was produced to determine their presence at the hospital as well as their proceedings with regard to the report and injury sheet of the complainant in the hospital at the relevant time.

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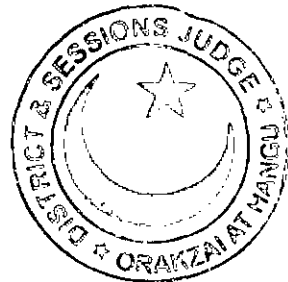
(7). With regard to the motive, it is mentioned in the initial report that the restraining of the accused from cutting the tree by the complainant resulted in the present occurrence but, however, the complainant in his evidence evenly admitted that the tree and land beneath the tree are jointly owned by him, people of the locality as well as accused facing trial. As such the motive being double edged weapon, it could injure either of the parties as if it was claimed that for the joint land

and tree the accused allegedly fired at the complainant then it was also alleged on behalf of the accused facing trial that for the said joint property, he was malafidly involved in the case in hand. Moreover, with regard to the motive when question was put to the investigating officer, then it was replied that with regard to the cutting of tree it was not investigated as to whether the same was cut or not besides no tool of cutting the tree was recovered either from the spot or from the possession of the accused facing trial. With regard to the motive, no independent witness supported the version of the complainant. As such the motive alleged for the offence is failed to established.

(8). The deliberate and unexplained delay in nominating the accused facing trial for the occurrence, the delay proved to be the consequence of consultation and deliberation, absence of independent witnesses, withholding of evidence of the spot witnesses, absence of pointation, confession or recovery of crime weapon from the possession of accused facing trial, no past criminal history of accused facing trial, failure to prove the motive would denote that the occurrence has not taken place in the mode and manner as alleged by the complainant in the initial report and evidence. Thus, sufficient dents and doubts are attracted to the case of complainant thereby providing safe exists to the accused facing trial. The evidence led in the case is neither sufficient

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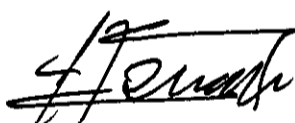
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nor confidence inspiring and have failed to prove the case against the accused facing trial beyond any shadow of doubts. Hence, benefit of doubt so cropped up must be extended in the favour of accused facing trial. Accordingly, while extending the benefit of doubt, accused facing trial, Aqal Jaffar, he is acquitted of the charges levelled against him through the FIR in question. Accused is on bail, his bail bond 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.

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

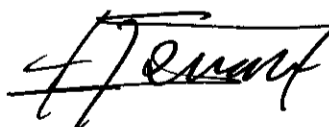
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CERTIFICATE

Certified that this judgment consists of nine (9) pages. Each page has been read, corrected wherever necessary and signed by me.

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