

140

1

IN THE COURT OF SHAUKAT ALI, ADDITIONAL SESSIONS JUDGE-
II, ORAKZAI

Session case No. 09/2
Date of Institution: 12.11.2019
Date of Decision: 12.04.2021

State through Mirmat Khan s/o Khaleel Khan r/o Tribe stori khel Tappa
Mula Khel Miangano kalay Tehsil Lower District Orakzai
.....(**complainant**)

VERSUS

1. Abeel s/o Malik Faqeer Khan
2. Shamroz s/o Lateef Khan
3. Javid Khan s/o Khoshal Khan
4. Jahanzeb s/o Faqeer Khan
5. Malik Noorshad Khan s/o Faqeer Khan
6. Ajmal Khan s/o Saeed Ullah Khan
7. Hayat Wali s/o Riyat Khan
8. Drasta Khan s/o Shareef Khan r/o Shiraz Garhi Stori Khel District
Orakzai..... (**Accused Facing Trial**)

Rooh Ullah s/o Nadar Khan r/o Tribe Stori Khel Shiraz Garhi
Tehsil Lower District Orakzai.....(**Absconding accused**)

Represented by:

Mr. Amir Shah, APP for State
Mr. Fawad Hussain Advocate counsel for complainant
Mr. Imad Azam Khan Advocate, counsel for accused

**CASE FIR NO.27 DATED 20.08.2019 U/S 436/452/427/148/149 PPC
OF POLICE STATION LOWER ORAKZAI (KALAYA)**

JUDGMENT

The prosecution story is that Khurshid Anwar ASHO on 20.08.2019 received information regarding the occurrence during his gusht of the locality and came to the spot where the complainant Mirmat Khan s/o Khalil Khan reported that he was present in his bargain situated at Anjanri Bazar and about 0800 hours received information from his home that some


SHAUKAT ALI
Addl. District & Sessions Judge-II,
Orakzai at Hangu

141

persons entered in his house and put fire to the rooms of his house by sprinkling petrol, that after receiving information he rushed to his house where he saw that accused facing trial along with absconding accused are busy in putting fire to the rooms of his house and other house hold articles, that the inmates of the house were confined in a room, that on his hue and cry the co-villagers came to the spot and the accused escaped from the place of occurrence, that the fire was extinguished with the help of co-villagers, that due to the fire huge damage was caused to him. The complainant disclosed the motive for the occurrence as land dispute. The report of the complainant was reduced in the shape of Murasila Ex.PA/1 which was read over and explain to the complainant who after admitting the contents of Murasila correct, thumb impressed the same. The Murasila was sent to the PS through constable Sadiq for registration of FIR and on the basis of Murasila FIR was registered against the accused.


Investigation was carried out in the case. In the course of investigation, the investigation officer inspected the spot and prepared the site plan Ex.PB at the instant of complainant. During spot inspection the I.O took into possession ashes of burnt articles and sealed the same in parcel No.1. The accused were also interrogated by the IO after their arrest in the instant case. The accused were produced before the Illaqa Magistrate for the custody. The IO also took the photographs of the spot and placed it on file. The IO recorded the statement of accused and prosecution witnesses and after completion of investigation submitted the case file to SHO for challan against the accused.

Complete challan against the accused was submitted which was received by this court on 12.11.2019 for trial against the accused. The accused Malik Noorshad Khan, Jahanzeb Khan, Javid Khan, Abeel Khan and Shamroz Khan on bail were summoned whereas against the accused Rooh Ullah, Drasta Khan, Hayat Wali and Ajmal challan u/s 512 Cr.PC was


SHAIKAT ALI
Addl District & Sessions Judge-II,
District of Hanau

submitted who were proceeded u/s 512 Cr.PC after recording statement of DFC on 26.11.2019. The charge was framed against the accused to which the accused pleaded not guilty and claimed trial. The prosecution was allowed to produce its evidence and during the trial the prosecution examined 09 PWs and on 17.09.2020 the prosecution closed its evidence. The statement of accused was recorded on 24.09.2020 where they denied the allegation of the prosecution however refused to be examined on oath or to produce defense evidence. After the statement of accused the case was fixed for final arguments. In the meanwhile absconding accused Ajmal was arrested and on 22.10.2020 supplementary challan was submitted against accused Ajmal therefore the charge was framed De-novo on 29.10.2020. During the course of De-novo trial the other absconding accused Drasta Khan and Hayat Wali were arrested and their supplementary challan was received on 03.12.2020, hence again a De-novo charge was framed on 17.12.2020 against all the accused and the trial was proceeded afresh. During the De-novo trial the prosecution examined 07 PWs. The gist of the prosecution witnesses is as under;

PW-1 is the statement of Riaz constable who stated that "I am marginal witness to the pointation memo Ex.PW-1/1 vide which accused Jahanzeb Khan and Malak Noushad Khan pointed out the place of occurrence to the IO. The accused were taken from the PS to the place of occurrence in an official pick-up reach to the place of occurrence the accused knocked at the back mirror to stop upon which the driver stopped the vehicle and the accused correctly pointed out the place of occurrence and respective points of the accused. Today I have seen the pointation memo which is correct and correctly bears my signature as well as the signature of other marginal witness Minhaj Ali and thumb impression of the accused".

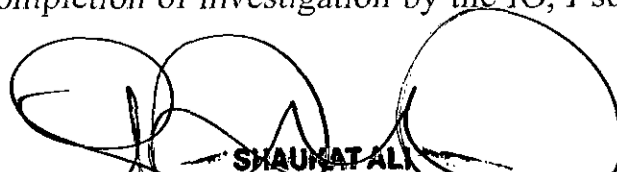

SHAIKAT ALI
Addl. District & Sessions Judge-II,
Orakzal at Hangu

PW-2 is the statement of Zahid Khan Constable who stated that "I am the marginal witness to recovery memo Ex.PW-2/1 vide which during spot inspection the IO took into possession some ashes EX.P-1 from the place of occurrence and sealed into parcel No. 01. The recovery memo was prepared on the spot and I signed the recovery memo. The other marginal witness Muhammad Zaman also signed the recovery memo. Today I have seen the recovery memo which is correct and correctly bears my signature".

PW-3 is the statement of Khurshid Khan SI/ASHO who stated that "on 20-08-2019 during gasht I received information regarding the occurrence and rushed to the spot along with other police officials where the complainant who was present on the spot reported the occurrence to me which I reduced into writing in the shape of Murasila Ex.P/1. I read over and explained the report to the complainant who after admitting the same correct thumb impressed the same. I sent the Murasila through Constable Sadiq for registration of FIR to the PS. After registration of the case I arrested accused Jahanzeb, Noshad and Javid and issued card of arrest Ex. P-3/1. Today I have seen the above exhibited documents which are correct and correctly bears my signature".

PW-4 is the statement of Sardar Gul s/o Akhtar Gul who stated that "I am mason by profession and working as a mason since last ten years. The house of the complainant Mirmat khan is consisting of 13 rooms and 02 barandas. After the occurrence I have examined his damaged house as per my opinion the total cost of the damage Rs.26 lacs rupees. My statement was recorded in this respect by the IO u/s 161 Cr.PC on 29-09-2019".


PW-5 is the statement of Mujahid Khan SI incharge squad DC Orakzai who stated that "during the relevant days I was posted as SHO PS Lower Orakzai. On the completion of investigation by the IO, I submitted complete


SHAUNAT ALI
Addl District & Sessions Judge-II,
Orakzai at Hangu

challan Ex. Pw-5/1 against the accused which is correct and correctly bears my signature”.

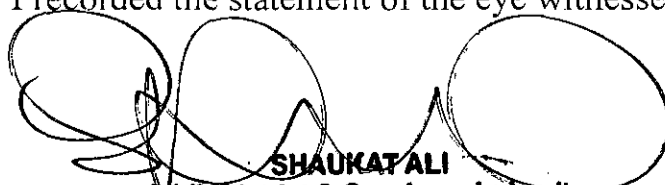
PW-6 is the statement of Mirmat Khan s/o Khalil Khan who stated that “I was present in Anjanri Bazar at my bargain which is at a distance that can be covered within 10 mints from the place of occurrence. I was informed from my home that someone attacked on home and on that information I came to the spot in my fielder vehicle. When I came to the spot I entered the house where the accused were putting fire to the house while the inmates of the including were confined in a room by the accused while some of the inmates were in the house and were crying. When the people of the village rushed to the spot and entered the house the accused on seeing them escaped from the spot. I informed the police and the ASHO Khurshid Khan along with other police officials came to the spot I reported the occurrence to him. My report was reduced into writing which was read over and explained to me and thereafter I thumb impressed the same. After that the IO came to the spot who prepared the site plan and draw pictures of the place of occurrence. The IO inspected the spot and remained on the spot for some time and left the place of occurrence. The IO also taken into possession ashes from the spot. Today I have seen the Murasila which correctly bears my thumb impression. I charged the accused for the commission of offence.”

PW-7 is the statement of Shal Muhammad I.O who stated that “after registration of the present case I was entrusted with its investigation. I prepared site plan on the pointation of the complainant Ex.PB. During spot inspection I took into possession ashes and sealed the same in parcel No. 1 already exhibited P-1 vide recovery memo already exhibited P-4/1 in the presence of the marginal witnesses. I came back to the PS. Accused namely


SHAUKAT ALI
Addl: District & Sessions Judge-II,
Orakzai at Hangu

145

Jahanzeb Khan , Malak Noushad Khan and Javid Khan were in police lock-up. The Muharrir of the PS handed over to me the card of arrest of all the accused. I cursory interrogated of accused namely Jahanzeb Khan, Malak Noushad Khan and Javid Khan. On 21-08-2019 I drafted the application to concern court with the request of five days police custody which is Ex.PW-7/1. One day custody was granted. I brought the accused namely Jahanzeb Khan, Malak Noushad Khan and Javid Khan to hospital for their medical examination. During the course of the investigation the accused namely Jahanzeb Khan, Malak Noushad Khan and Javid Khan admitted their guilt before me and let the police party to the spot and they pointed out their places/spots of their presence in this respect pointation memo was prepared by me in the presence of the marginal witnesses which is already Ex.PW-3/1. I also took the photographs of the spot and pointation proceeding which is available on file which is Ex.PW-7/2 consist of five photographs and also obtained thumb impression of the accused. I recorded the statement of the pointation memo witnesses. I recorded the statement of the accused u/s 161 Cr.PC. I produced the accused before the court for recording their confessional statement u/s 164/364 Cr.PC vide my application Ex.PW-7/3 but accused refuse to confess their guilt before the court and were sent to judicial lock-up. On 23-08-2019. The accused Shamroz Khan and Abeel Khan applied for bail before arrest from Hon'ble court and on 23-08-2019 appeared before me. I issued card of arrest which is Ex.PW-7/4. I interrogated the accused. I recorded the statement of the accused u/s 161 Cr.PC. After rejection of BBA I produced the accused before the Illaqa magistrate for obtaining five days police remands vide my application Ex.P/4. My application was turned down and the accused were sent to Judicial Lock-up. I recorded the statement of the eye witnesses namely Sher


SHAUKAT ALI
Addl: District & Sessions Judge-II,
Orakzai at Hangu

146

Afzal and Akram Khan produced by the complainant on 25-08-2019. I initiated proceeding u/s 204 and 87 against the absconding accused namely Rukhullah, Ajmal Khan, Hayat Wali and Dastar Khan vide my application Ex.PW-7/5 and Ex.PW-7/6 respectively. The complainant Mirmat Khan produced to me the list of the damage articles along with the total price/damage report Ex. PW-7/7 and also recorded the statement of PW Sadar Gul mason. On the direction of my high ups I added section 427 PPC in the instant case and issued perwana which is Ex.PW-7/8. On the arrest of accused Ajmal Khan, Drasta Khan and Hayat Wali vide their card of arrest Ex.PW-7/9 and 7/10. I produced them before the court vide application Ex.PW-7/11 and 7/12 for custody, however custody was refused and they were sent to judicial lockup. I recorded the statement of the PWs u/s 161 Cr.PC and after completion of my investigation I handed over the case file to the SHO for onward submission. Today I have seen the relevant documents which are correct and correctly bears my signature.”

On 11.03.2021, the prosecution closed its evidence and the case was fixed for statement of accused. On 18-03-2021 the statement of accused was recorded u/s 342 Cr.P.C wherein the accused denied the allegations leveled against them however they refused to be examined on oath or to produce defense evidence, therefore, the case was fixed for final arguments.

Arguments of learned APP for the state assisted by learned counsel for the complainant and arguments of learned counsel for the accused heard and available record perused.

The case against the accused was reported by complainant Mir Mat Khan (PW-6) after he received information of the occurrence while he was present in his bargain situated in Anjanri Bazar. In the case of prosecution


SHADKAT ALI
Addl: District & Sessions Judge-II,
Orakzai at Hanou

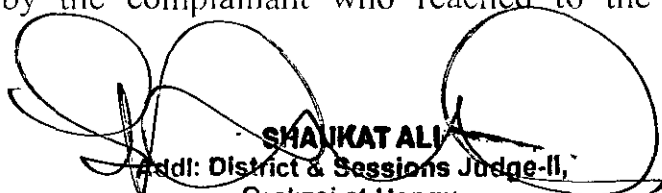
complainant is examined as PW-6 being the eye witness of the occurrence. The complainant stated in his examination in chief that he was present in Anjanri Bazar at his bargain which is at a distance that can be covered within 10 minutes from the place of occurrence and when he came to the spot he entered the house where the accused were putting fire to the house while the inmates of the house were confined in a room by the accused and some of the inmates were in the house and were crying. The time of occurrence is 8:00 hours and the complainant reached to the place of occurrence after 10 minutes as per his statement as the distance can be covered within 10 minutes which shows that the complainant was not present at the time of occurrence and he has not seen the occurrence. The cross examination of the complainant in this respect is also worth perusal wherein he stated that during the whole occurrence he has not at all resisted the putting of fire upon his house. It is not appealable to a prudent mind that a person present at his home and the accused are putting fire in his presence and there is no resistance from his side which further authenticate the fact that the complainant was not present at the place of occurrence and seeing the occurrence. The complainant further stated in his cross examination that during the whole occurrence he has never tried to overpower any of the accused and has never attributed any specific role to any of the accused. The complainant posed him to be the eye witness however his presence at the time of occurrence could not establish by the prosecution at the place of occurrence. The Investigation Officer (PW-7) also confirmed the fact during his cross examination by stating that the complainant was not the eye witness of the occurrence. Furthermore the time of occurrence shown in the Murasila Ex. PA/1 is 08:00 hours and Khurshid Khan SI (PW-3) stated in his cross examination that he reached to the place of occurrence within 05 minutes from the place where he received


SHAUKAT ALI
Addl: District & Sessions Judge-II,
Orakzai at Hangu

148

information at 07:50/7:55 AM regarding the occurrence which shows that Khurshid Khan SI was present at the place of occurrence at about 08:00 hours whereas the time of report is 09:30 hours which is lodged within unexplained delay of 1-1/2 hours. Had the complainant been present at the time of occurrence he would have reported the occurrence to Khurshid Khan SI (PW-3) immediately after Khurshid Khan SI reached to the place of occurrence at 7:50 AM but the complainant was not present therefore the report was lodged after due consultation and deliberation within unexplained delay of 1-1/2 hours when the complainant later on came to the spot which create doubts in the mode and manner of the occurrence and also regarding the presence of complainant on the spot, therefore the statement of complainant as eye witness could not be believe to connect the accused with the commission of offence.


The Murasila Ex.PA/1 was drafted by Khurshid Khan SI (PW-3) who stated that on 20-08-2019 he received information during gusht regarding the occurrence and rushed to the spot along with Police Official where the complaint who was presence on the spot reported the occurrence to him which he reduced into writing in the shape of Murasila. Khurshid Khan SI during his cross examination stated that he received information about the occurrence at 7:50/7:55 AM and reached to the place of occurrence within 05 minutes. The FIR shows the time of occurrence as 8:00 AM whereas Khurshid Khan SI has received information regarding the occurrence 10 minutes before the time of occurrence which makes the occurrence at 08:00 AM not believable and makes the case of prosecution highly doubtful. Furthermore Khurshid Khan SI stated that when he reached to the place of occurrence the complainant was present at the place of occurrence which fact is also contradicted by the complainant who reached to the place of


SHAIKAT ALI
Addl: District & Sessions Judge-II,
Cocktai at Hangu

149

occurrence after 10 minutes of the time of occurrence which makes the whole case of prosecution full of doubts and such statement of the prosecution witnesses could not be made basis for the conviction of accused.

The occurrence allegedly took place inside the house of complainant and as per prosecution version and statement of complainant the inmates of the house were confined in a room by the accused while some of the inmates were in the house and were crying whereas the people of the village also rushed to the spot and entered into the house and the accused on seeing them escaped from the house. None from the inmates of the house or from people of the village were examined during investigation nor were they produced as prosecution witness before the court to support the version of the complainant. The IO (PW-7) during his cross examination stated that he has not recorded the statement of private person and further stated that he has not recorded the statement of any witness showing the presence of accused at the time of occurrence. The IO further stated that he has not recorded the statement of inmates of nearby houses regarding the authenticity of the occurrence. Furthermore, the inmates of the house who were allegedly present inside the house at the time of occurrence and had seen the accused who were the material and best witnesses of the complainant were not produced as prosecution witnesses, therefore the court u/s 129 (g) of the Qanoon-e-Shahadat Order 1984 may presume that if those inmates of the house had appeared as prosecution witnesses before the court then they would have not supported the case of prosecution. Besides no burnt articles has been taken into possession from the place of occurrence in the whole investigation and thus that material piece of evidence has also not available against the accused to substantiate the case of prosecution. The prosecution case is totally not believable and full of doubts. The statement of the


SHAIKAT ALI
Addl. District & Sessions Judge II,
Orakzal at Hanqu

150

prosecution witnesses are also not confidence inspiring, therefore could not be relied upon nor the same can be made basis for the conviction of accused.

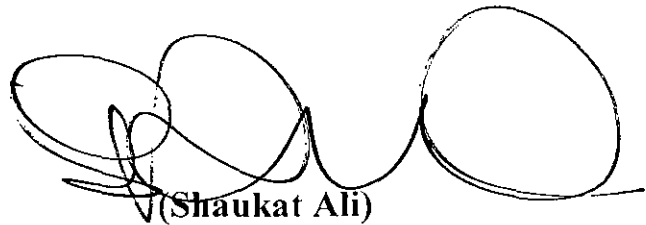
In view of the above discussion the prosecution failed to bring home guilt of the accused beyond any reasonable shadow of doubt; therefore, the accused facing trial are acquitted in the instant case from the charges leveled against them by extending them the benefit of doubt. The accused are on bail, their sureties are discharged from the liability of bail bonds.

The accused Rukh Ullah is still absconding and avoiding his lawful arrest therefore perpetual warrant of arrest be issued against him and his name be entered in the relevant register of proclaimed offenders kept in the PS. The accused Rukh Ullah be arrested when and where found and be produced before the court.

The case property be kept intact till the expiry of period of appeal or revision and where after the same be dealt with in accordance with law.

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

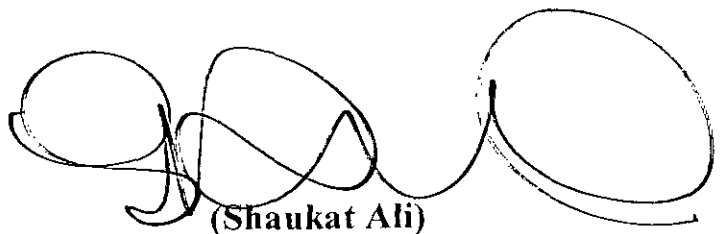
Announced
12/04/2021



(Shaukat Ali)
Additional Sessions Judge-II
Orakzai at Baber Mela

CERTIFICATE

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



(Shaukat Ali)
Additional Sessions Judge-II/
Orakzai at Baber Mela