

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

SESSION CASE NO. : 19/2 OF 2020
DATE OF INSTITUTION : 04.09.2020
DATE OF DECISION : 16.04.2021

STATE THROUGH MUQTADIR ALI S/O HUSSAIN
GHULAM, AGED ABOUT 17 YEARS, R/O ANDKHEL
TANDA, DISTRICT LOWER ORAKZAI

------(Complainant)

VS

1. SHAMSHIR ABBAS S/O NIKMAT ALI SHAH, AGED ABOUT 20 YEARS, R/O ANDKHEL, LOWER ORAKZAI
2. SHAH NAWAZ S/O NOBAT ALI, AGED ABOUT 25 YEARS, R/O ANDKHEL, LOWER ORAKZAI

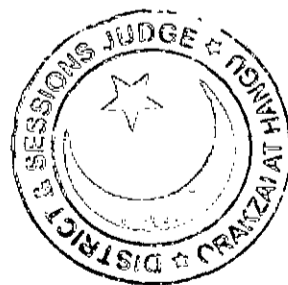
------(Accused Facing Trial on Bail)

Present: Umar Niaz, District Public Prosecutor for the state.
: Javid Iqbal and Muhammad Saeed Advocates for complainant
: Javid Muhammad and Jabir Hussain Advocates, for accused facing trial.

JUDGEMENT
16.04.2021

As per contents of the Murasila Ex. PA/1, SHO Muhammad Shafiq on 10.03.2020 received information about the occurrence and upon the information when reached KDA Hospital, he found the injured/complainant, Muqtadir Ali in injured condition in the emergency room of the hospital. The complainant

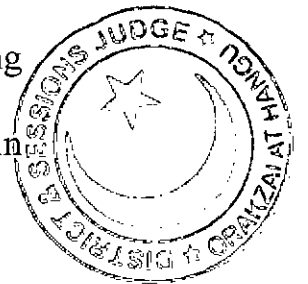
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reported to him to the effect that he was coming back to his home from the cricket ground, and at about 18:30 hours, when he reached to the place known as Andkhel Bala Lower Orakzai near the house of accused, Shamshir Abbas and Shah Nawaz who on seeing the complainant started firing at him due to which he got injured on his right ankle. The motive for the occurrence was disclosed as the land dispute between the parties. The report of the complainant was reduced into writing in shape of Murasila Ex. PA/1 which was read over to the complainant who signed the same besides the same was verified by his brother, Tajamal Hussain who also signed the Murasila Ex. PA/1 as token of its correctness. 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 were implicated in the instant case.



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- (2). After completion of investigation, complete challan was submitted and accordingly 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. Khursheed Khan ASHO as PW-1 deposed to have had registered FIR Ex. PA from the contents of Murasila Ex. PA/1 besides deposed in respect of handing over copy of FIR to IO.
- II. Dr. Shaheer CMO, DHQ Kohat as PW-2 deposed in respect of examination of injured/complainant, Muqtadir Ali through medico legal report Ex. PW 2/1 besides the discharge slip which is exhibited as Ex. PW 2/2.
- III. Muhammad Shafiq SHO as PW-3 deposed in respect of recording initial report of the complainant through Murasila Ex. PA/1, preparation of injury sheet Ex. PW 3/1 besides deposed that after completion of investigation, he had submitted complete challan Ex. PW 3/2 in the instant case against the accused facing trial.
- IV. Constable, Minhaz Hussain as PW-4 being marginal witness deposed in respect of the 02 empty shells of 7.62 bore taken by the IO from

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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 taken into possession one black colour blood-stained boot and a blood-stained sock of the injured/complainant, Muqtadir Ali sent by the doctor through constable, Shafaat Ali.

- V. Constable, Shafaat Ali as PW-5 deposed that on 10.03.2020, the SHO handed over to him the injury sheet of injured/complainant, Muqtadir Ali and accordingly he handed over the same to the doctor inside the hospital. He further deposed that after the medico legal examination of the injured, the doctor handed over to him the blood-stained garments of the injured which he handed over to the IO on 11.03.2020 in the PS.

- VI. Injured/complainant, Muqtadir Ali as PW-6 in his evidence repeated the story of Murasila Ex. PA/1.
- VII. Shal Muhammad Khan SI as PW-7 deposed in respect of the investigation carried out by him




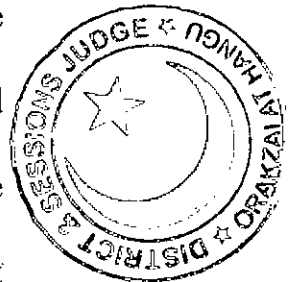
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(3). Thereafter, learned DPP for the state assisted by counsel for the complainant closed the prosecution evidence but the accused neither wished to be examined on oath nor produced evidence in defence. Accordingly, arguments of the learned DPP for 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 as per statement of the complainant PW-6 that on the same day besides the instant occurrence another occurrence took place wherein case FIR no. 17 u/s 506 PPC was registered against his brothers Tajamal Hussain and Razim Ali besides one, Sajawal Hussain was also nominated as an accused. The perusal of said case FIR no. 17 reveals that the place of occurrence and timing of the said case and that of the instant case is one and the same. However, the complainant of the instant case while registering the present case concealed the said facts. The evidence when further scanned, provides that Tajamal Hussain, the brother of complainant and accused in the cross case is a police official who as per statement of the complainant took the injured complainant from the spot alongwith one constable, Shafaat Ali initially to a


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nearby clinic of Dr. Zia who administered first aid to the complainant and thereafter referred to the KDA hospital at Kohat. Which means that they are eyewitnesses of the occurrence as is reflected in the cross case besides the said Tajamal Hussain also verified the report of the complainant but however they were not produced for evidence nor the Dr. Zia who administered the initial first aid was produced for evidence. As such the best evidence has been withheld. The adverse inference under Article 129 of the Qanon e Shahadat, 1984 would thus be drawn against the complainant that had such witnesses have been produced, their version would have gone against the version of the complainant. Moreover, in the initial report both the accused facing trial have been attributed the active role of firing but the IO recovered only two empties of 7.62 bore from the spot and when the said empties were sent to the FSL for analysis, then it was opined through their report Ex. PK/1 that the same were fired from one and same weapon which denies the firing being made by the two assailants. No blood of the complainant was recovered from the spot to determine the place of occurrence being the same as alleged by the complainant. The accused of the cross case have been



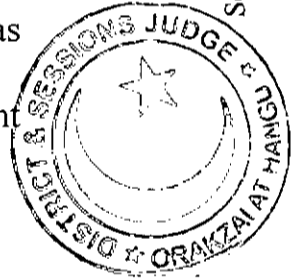
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acquitted by the court of JM-I, Orakzai on 26.01.2021. It is also necessary to mention here that the complainant in the initial report has not mentioned the calibre of weapon used as such the presence of complainant, eyewitness and mode and manner of the occurrence seems doubtful. It reveals that when the accused party booked the brothers of the complainant in the cross case, the complainant registered the present case as counterblast. The report of the complainant is also lodged with unexplained delay of 4 ½ hours which means that there was pre-consultation and deliberation in lodging the report in order to implicate the accused facing trial to counter the cross case. Moreover, dispute over the landed property was cited as motive for the occurrence but the complainant failed to prove the same.

- (5). 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 eyewitnesses, absence of pointation, confession or recovery of crime weapon from the possession of accused facing trial, no past criminal history of accused facing trial, concealment of facts of

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cross case by the complainant, 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 doubts and doubts are attracted to the case of complainant, thereby creating doubts and providing safe exists to 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, Shamsheer Abbas and Shah Nawaz, they are acquitted of the charges levelled against them through the FIR in question. Accused are on bail. Their bail bonds stand cancelled and their sureties 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.


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

Announced
16.04.2021

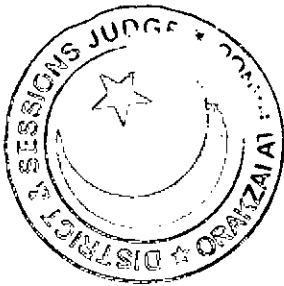


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CERTIFICATE

Certified that this judgment consists of ten (10) pages. Each page has been read, corrected wherever necessary and signed by me.

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