

IN THE COURT OF REHMAT ULLAH WAZIR,
JM-I/MTMC, ORAKZAI AT BABER MELA

CASE NO. : 53/2 OF 2020

DATE OF INSTITUTION : 16.10.2020

DATE OF DECISION : 30.01.2021

STATE THROUGH (1) MUSADIQ HUSSAIN S/O SYED HABIB HUSSAIN, R/O QOUM BAR MUHAMMAD KHEL, TAPPA BABA NAWASI, SRAKHONA, KUREZ, DISTRICT, ORAKZAI AND (2) AMAL HASSAN S/O LAL HASSAN, R/O QOUM BAR MUHAMMAD KHEL, TAPPA MERAZI KHEL, KHARKAI, SRAKHONA, KUREZ, DISTRICT, ORAKZAI. (BOTH THE OCCURRENCES BEING REPORTED IN SINGLE FIR)

------(Complainants)

VS

1. ISWAR HUSSAIN S/O MIR ANWAR
2. SYED RAFIQ HUSSAIN S/O SYED GUL QASIM
3. SYED HABIB HASSAN S/O SYED IMAM
(All R/O QOUM BAR MUHAMMAD KHEL, TAPPA BABA NAWASI, SRAKHONA, KUREZ, DISTRICT, ORAKZAI.)
4. SINJAF ALI S/O MUHAMMAD SHER
5. ZAMIN HASSAN S/O LAL NABI
6. AMIN HUSSAIN S/O MUHAMMAD NABI
7. AMAL HASSAN S/O LAL HASSAN
(All R/O QOUM BAR MUHAMMAD KHEL, TAPPA MERAZI KHEL, KHARKAI, SRAKHONA, KUREZ, DISTRICT, ORAKZAI.)

------(Accused Facing Trial)

Present: Nisar Ahmad, Assistant Public Prosecutor for complainant.
: Sana Ullah Khan Advocate & Abid Ali Advocate, for both sets of accused facing trial.


ORDER
30.01.2021

First set of Accused facing trial, namely Iswar Hussain S/O Mir Anwar, Syed Rafiq Hussain S/O Syed Gul Qasim

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and Syed Habib Hassan S/O Syed Imam while the second set of Accused facing trial, namely Sinjaf Ali S/O Muhammad Sher, Zamin Hassan S/O Lal Nabi, Amin Hussain S/O Muhammad Nabi and Amal Hassan S/O Lal Hassan present who are charged in case FIR no. 94 Dated 10.08.2020 U/S 324/34 PPC of PS Lower Orakzai for attempt to commit Qatl-i-amd of each other.

1. Briefly stated factual background of the instant case is that both the opposite complainants reported that due to landed dispute both the parties fired upon each other by means of firearms with intention to commit Qatl-i-amd of each other and thereby caused injury to the one Musadiq Hussain S/O Syed Habib Hussain from one party and to the one Amal Hassan S/O Lal Hassan from the other party.
2. Thus, the instant case was registered at PS: L/Orakzai on 10.08.2020 vide FIR. 94.
3. After completion of the investigation, the complete challan was submitted on 16.10.2020 to this court. The accused on bail were summoned. The accused on bail appeared and the provisions of 241-A Cr.P.C were duly complied with. The formal charge against the accused on bail was framed on 22.12.2020, to which the accused persons pleaded not guilty and claimed trial.
4. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the


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 Civil Judge (M.A.)
 Orakzai (Dist. Swat)

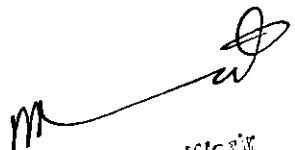
following evidence;

- i. Mr. Ainullah, MHC, Moharrir, PS Kalaya, as PW-1.
- ii. Mr. Wasim Ali Constable, PS Kalaya, as PW-02.
- iii. Mr. Naveed Ali Constable, PS Kalaya, as PW-03.
- iv. Mr. Shafiq Khan SHO, PS Kalaya, as PW-04.
- v. Dr. Arshid Suhail, PMO, DHQ hospital KDA Kohat, as PW-05.
- vi. Mr. Khanwada Constable, PS L/Orakzai, as PW-06.
- vii. Mr. Sadir Hussain S/O Nazir Hussain, as PW-07.
- viii. Mr. Zulfiqar S/O Gul Naqi, as PW-08.
- ix. Mr. Mehdi Hassan, SI, IO PS L/Orakzai, as PW-09.
- x. Mr. Syed Musadiq Hussain S/O Syed Habib, as PW-10.
- xi. Mr. Syed Amal Hassan S/O Lal Hussain, as PW-11.
- xii. Mr. Sinjaf Ali S/O Muhammad Shir, as PW-12.
- xiii. Mr. Auqat Ali, ASI police post Boya L/Orakzai, as PW-13.

5. In documentary evidence, prosecution has produced the following;

- i. Copy of FIR. **Ex.PA**
- ii. Complete Challan. **Ex. PW 4/1**

- iii. Murasila from the complainant Syed Musadiq Hussain. **Ex.PA/1**
- iv. Murasila from the complainant Amal Hassan. **Ex.PA/2**
- v. Injury Sheet of the injured Amal Hassan. **Ex.PW-5/1**
- vi. Injury Sheet of the injured Musadiq Hussain. **Ex.PW-5/2**
- vii. Card of Arrest of the accused Iswar Hussain etc. **Ex.PW-9/1**
- viii. Card of Arrest of the accused Sinjaf Ali etc. **Ex.PW-9/2**
- ix. Recovery memo of the accused Iswar Hussain etc. **Ex.PW-8/1**
- x. Recovery memo of the accused Sinjaf Ali etc. **Ex.PW-6/1**
- xi. Site Plan with respect to the injured Amal Hassan. **Ex.PB**
- xii. Site Plan with respect to the injured Musadiq Hussain. **Ex.PC**
- xiii. Application to the Magistrate for police custody. **Ex.PW-9/3**


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- xiv. Application to the Magistrate for further police custody. **Ex.PW-9/4**
- xv. Recovery memo. **Ex.PW-7/1**
- xvi. Application to the Chemical Examiner FSL Peshawar. **Ex.PW-9/5**
- xvii. Road certificate. **Ex.PW-6/2**
- xviii. FSL report. **Ex.P2**

6. Then after, on 29.01.2021, the learned APP for the state closed the evidence on behalf of the prosecution.

7. Statements of all the accused on bail u/s 342 Cr.P.C were recorded wherein they neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor they wanted to produce any defence evidence in their defence.

8. All of the accused in reply of the question that what is your statement and why you are charged, submitted that;
"They are innocent and falsely charged"

9. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the APP heard and record perused.

10. All of the accused are charged with the offence U/S 324/34 PPC Sec. 324 PPC deals with punishment of attempt to commit Qadl-i-amd, while sec. 34 PPC deals with the acts done by several persons in furtherance of

common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone.

Where there was a common intention or not is a question of fact to be determined in the circumstances of each case.

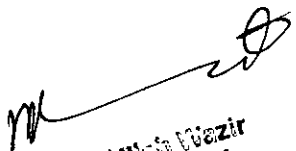
11. Firstly, I would take the case of the accused Sinjaf Ali, Zamin Hassan, Amin Hassan and Amal Hassan. The Dr.Arshad Suhail, when appeared as PW-05 has admitted that it is correct that there is no date mentioned on the radiologist opinion and that as per my report there is no entry and exit wounds. The Constable Khanwada as PW-06 has admitted that the blood-stained garments of the injured Musadiq Hussain were not in sealed condition when taken to FSL. The Mehdi Hassan, SI, IO as PW-09 has admitted that the case property was sent to FSL after delay of 07 days and further that as per his investigation, the firing is made by the accused facing trail without mentioning any one of the accused for specific role. Further that he has not recovered the weapon of offence and that he has not recorded the statement of any independent witness regarding the occurrence. The injured Musadiq Hussain as PW-10 has admitted that it is correct that he has not specifically mentioned in his report that who made firing upon them and that with whose firing he


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got hit. That he has not specifically mentioned the type of weapon used by the accused. That 50/60 persons were measuring the land, meaning there by that the complainant has not specifically witnessed the persons who fired on him rather there were many a people present in the land. Further the occurrence is off 10-08-2020 while the complainant has admitted that the IO visited the spot on 12-08-2020 at afternoon.

12. Secondly, I would take the case of the accused Iswar Hussain, Syed Rafiq Hussain and Syed Habib Hassan. The complainant as PW-11 has admitted that it is correct that I have not specifically mentioned the name of the accused by whose firing I got hit. Further that the firing was made on us from the houses of the accused. That I have not seen the type of weapons used by the accused. The eye witness of the complainant namely Sinjaf Ali as PW-12 has admitted that the accused party made firing on us from their houses and that they were hidden in their houses and were not visible during firing. Meaning there by that neither the complainant nor his eye witness has seen the accused making firing on them rather admittedly they were hidden in their houses at the time of firing.

13. The prosecution is required to prove its case against


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the accused beyond reasonable doubts.

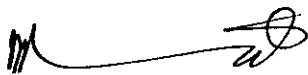
14. Thus, the entire evidence of prosecution is a jumble of broken pieces. No two witnesses second each other. The case of prosecution is full of doubts, to the benefits of which the accused are entitled and are accordingly extended to the accused.

15. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, the accused namely Iswar Hussain S/O Mir Anwar, Syed Rafiq Hussain S/O Syed Gul Qasim, Syed Habib Hassan S/O Syed Imam and Sinjaf Ali S/O Muhammad Sher, Zamin Hassan S/O Lal Nabi, Amin Hussain S/O Muhammad Nabi and Amal Hassan S/O Lal Hassan are **acquitted** of the charges levelled against them. As they are on bail, their bail bonds stand cancelled and sureties are discharged from their liability of bail bonds.

16. Case property if any be dealt in accordance with the law after expiry of the period of revision/Appeal.

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

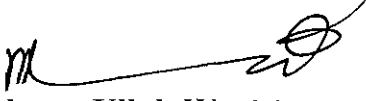
Announced
30.01.2021


(Rehmat Ullah Wazir)
JM-I/MTMC,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this order consists of four (09) pages.
Each page has been read, corrected where-ever necessary and signed
by me.

Dated: 30.01.2021.


(Rehmat Ullah Wazir)
JM-I/MTMC,
Orakzai (at Baber Mela)