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

CASE NO. : 11/2 OF 2020

DATE OF INSTITUTION : 17.06.2020

DATE OF DECISION : 24.03.2021

STATE THROUGH KHURSHEED ANWAR, ASHO, PS: KALAYA, L/ORAKZAI.

------(Complainant)

VS

1. Syed Ibrar Hussain S/O Syed Moeen Hussain
2. Ikhlaq Ali S/O Razmin Ali,

(Both R/O Kalaya, L/Orakzai)

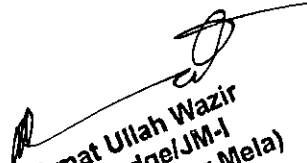
------(Accused Facing Trial)

Present: Amir Shah, Assistant Public Prosecutor for complainant.
: Jabbir Hussain Advocate, for accused facing trial.

ORDER

24.03.2021


1. Accused facing trial, Syed Ibrar Hussain S/O Syed Moeen Hussain and Ikhlaq Ali S/O Razmin Ali present who are charged in case FIR No. 30 Dated 22.04.2020 U/S 506/34 PPC & 15AA of PS: Kalaya, Lower Orakzai for criminal intimidation and possession of Kalashnikovs which are recovered from their possession.
2. Briefly stated factual background of the instant case is that the complainant Khursheed Anwar, ASHO, PS: Kalaya,


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reported the matter of criminal intimidation and recovery of Kalashnikovs. That the complainant heard heavy firing. That he alongwith other personnel moved to the spot. That after inquiring, it was learnt that the accused Syed Ibrar Hussain S/O Syed Moeen Hussain Ikhlaiq Ali S/O Razmin Ali exchanged harsh words with each other and then opened aerial firing upon each other house for criminal intimidation.

3. Upon which, the instant case was registered at PS: L/Orakzai on 22.04.2020 vide FIR. 30.
4. After completion of the investigation, the complete challan was submitted on 17.06.2020 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 21.09.2020, to which the accused person pleaded not guilty and claimed trial.
5. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;


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|----------------------|--------------------------------------|
| i. Copy of FIR. | Ex.PA |
| ii. Complete Challan | Ex.PW-4/1 |
| iii. Murasila | Ex.PA/1 |
| iv. Recovery Memos | Ex.PW-5/X-1,
Ex.PW-5/3, Ex.PW-5/4 |

v. Card of arrest of accused Ikhlaq Ali

Ex.PW- 3/1

vi. Card of arrest of accused Syed Ibrar Hussain

Ex.PW- 3/4

vii. Recovery Sketches

Ex-PW-5/6,

Ex.PW-5/7

viii. Site Plan

Ex-PB

ix. Application for police custody **Ex.PW-5/1**

x. Application for recording confession

Ex.PW-5/8

xi. Application for opinion of arms expert

Ex.PW-5/9

xii. FSL Report

Ex.PZ

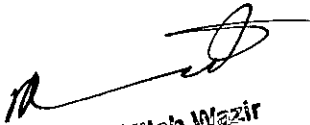
xiii. Road Certificate

Ex.PW-5/10

6. Then after, on 20.03.2021, the learned APP for the state closed the evidence on behalf of the prosecution.

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


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Civil Judge (M-1)
Quetta et (Babar Mata)

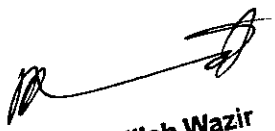
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9. The accused are charged with the offence U/S 506, 34 PPC & 15AA. Sec.506 PPC deals with the criminal intimidation. Sec.34 PPC deals with acts done by several persons in furtherance of common intention. Sec. 15AA deals with possession of unlicensed weapon.
10. Keeping in view, the record on file and the depositions of PWs, the prosecution is required to prove its case against the accused beyond reasonable doubts.
11. PW-03, the complainant has admitted in his cross examination that no one of the accused reported the occurrence to me and that I have not seen the accused facing trial making fire at each other. That I have not recovered any incriminating thing from the accused facing trial at the time of their arrest.
12. PW-05, who is the I.O in the instant case has admitted in his cross examination that he prepared the site plan on the pointation of the complainant i.e the ASHO, who was present on the spot and that the accused were not arrested at the time of spot inspection and they were also not present on the spot. That the occurrence took place in a populated area but no private person was there on the spot and no statement of any private witness was recorded in this respect. That as per my investigation, both the accused don't charge each other.

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13. PW-06, who is the marginal witness of the recovery memos has admitted in his cross examination that both the accused were not present on the spot and that he does not know that on whose pointation, the site plan was prepared by the I.O and that he does not know that on whose pointation the recovery memo was prepared by the I.O. That the I.O prepared the recovery memo on 23.04.2020. That the Kalashnikovs in question were recovered from beneath the beds of the residing rooms of both the accused

14. Thus, there is a clear statement by complainant that he has not seen the accused facing trial firing upon each other for criminal intimidation. The accused facing trial don't charge each other for the allegations levelled by the complainant. It is also an established fact that the accused facing trial were not arrested on the spot. Further, it is also an admitted fact that the alleged Kalashnikovs were recovered from beneath the beds of the accused facing trial and not on the spot but the prosecution failed to establish the fact that these Kalashnikovs belong to the complainant. There is no eye-witness of the alleged firing rather the story of the prosecution seems to be a hearsay.


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15. In the light of the above discussion, it is clear that the case of prosecution is full of contradictions and the prosecution

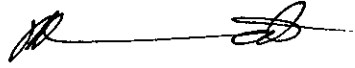
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failed to connect the accused with the commission of offence.

There are doubts in the evidence of prosecution and the accused is ultimately entitled to the benefits of doubts and are accordingly extended to the accused.

16. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, the accused namely Syed Ibrar Hussain S/O Syed Moeen Hussain Ikhlq Ali S/O Razmin Ali 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.
17. File be consigned to record room after its necessary completion and compilation.

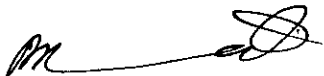
Announced
24.03.2021


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

CERTIFICATE

Certified that this order consists of Six (06) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 24.03.2021


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