

IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI

Case No18/2 of 2022.

Date of institution.....09.05.2022.

Date of decision.....22.07.2023.

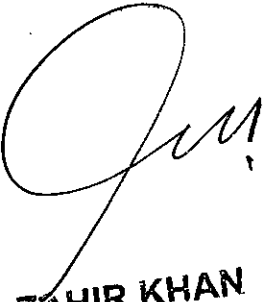
Case FIR No. 23 Dated: 15.03.2022 U/S 506/34 PPC, PS Kalaya

Order. No. 26

22.07.2023

Dy.PP for the state present. Accused Rafil and Shafeeq on bail along with counsel present. Accused Aqal Shah has died and proceedings in his respect have already been abated. Complainant absent. PW SI Muhammad Hanif present and his statement recorded as PW-04. Arguments on application u/s 249-A Cr.PC already heard. Further arguments on behalf of Dy.PP for the state and counsel for the accused heard today and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that report of the complainant Muhammad Wali was recorded vide mad No. 08 dated 26.02.2022 wherein, it is alleged that complainant received information regarding plantation of trees by accused facing trial in his fields. He went to the spot and asked them not to do so. Accused facing trial rushed to their houses and started firing in order to intimidate him. He ran away from the spot and went to PS for report. Motive behind the occurrence is land dispute. On the strength of report, the instant case was registered against the accused facing trial.



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After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 04 PWs have been examined.

Sub Inspector, Shal Muhammad was examined as PW-01. He stated that during the days of occurrence, he was posted as SHO PS Kalaya. He prepared final report as per which the occurrence had taken place. Final report is Ex.PW-1/1. On 22.08.2022, accused Rafeel surrendered before him and he issued his card of arrest as Ex.PW-1/2. After completion of investigation, he submitted complete challan and supplementary challan against accused Muhammad Shafeeq and Rafeel.

Muhammad Wali (Complainant) was examined as PW-02. He stated that he is complainant of the present case. He reproduced the story narrated in the FIR. He has also pointed out the spot to ASHO PS Kalaya.

PW-03 is the statement of SI Muqadar Khan. He stated that during the days of occurrence, he was posted as ASHO at PS Kalaya. On 26.02.2022, complainant Muhammad Wali came to PS and reported to him regarding the occurrence which he entered in DD vide mad No. 08 dated 26.02.2022. The report was read over to the complainant who thumb impressed the report as token of its correctness. PW Khalid thumb impressed the report as verifier. Extract of mad No. 08 dated 26.02.2022 is Ex.PW-3/1. Inquiry was initiated in


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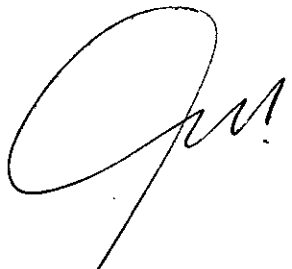
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order to dig out the real facts. During course of inquiry, he inspected the spot and prepared site plan Ex.PB on the pointation of complainant. On 04.03.2022, he sought legal opinion from the office of DPP vide his application Ex.PW-3/2. After completion of inquiry, case file was handed over to SHO who prepared final report on the basis of which the instant case was registered vide FIR No. 23 dated 15.03.2022 u/s 506/34 PPC, PS Kalaya.


SI Muhammad Hanif, who investigated the case was examined as PW-04. Applications for warrants u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC are Ex.PW-4/1 and Ex.PW-4/2 respectively. He recorded statement of search witness u/s 161 Cr.PC. He produced accused Aqal Shah before the court with request for judicial remand vide his application Ex.PW-4/3. Application for physical custody of the accused is Ex.PW-4/4. He recorded statements of accused u/s 161 Cr.PC. Application for further custody is Ex.PW-4/5.

Perusal of record transpires that the alleged occurrence took place on **26.02.2022** at **13:30** hours at Shadaly Utman Khel, Kalaya Orakzai and it was allegedly reported on 26.02.2022 at 14:30 hours and FIR was registered on **15.03.2022** at 15:20 hours.

PW-01, stated in his cross examination that Inquiry was conducted u/s 157(1) Cr.PC. He has not issued any written directions to ASHO to conduct inquiry. No permission whatsoever, was obtained from the court for initiating the inquiry. Similarly, PW-02 stated in his cross examination that he has not given description of fields/land in his report. Her has not mentioned kind of weapon used in the commission


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of the offence in his report. The local police visited the spot on the following day of the occurrence, however, he does not remember the date. He reported the occurrence to the police at evening time on mobile and he was asked to come to PS on the next day of the occurrence. It is correct that he has not gone to PS on the day of occurrence as it was evening time. He went to PS at 10:00 a.m on the following day of the occurrence. On the next day of the occurrence, the local police visited the spot. he does not remember the date of report and date of spot inspection. SHO Shal Muhammad prepared site plan on his pointation. The local police visited the spot at 10:00 a.m. The local police visited the spot once. No body informed him regarding plantation by the accused. SHO Shal Muhammad was accompanied with by 03 other officials. The distance between spot and house of accused would be 300 paces. No empty was recovered from the spot. It is correct that there was civil litigation with accused facing trial. Accused Rafil and Shafeeq were outside from the house at the time of occurrence. The distance between his house and house of accused would be 03 KMs. Accused were at a distance of 300 paces. It is correct that per site plan, the distance between point No. 1 and 2 is about 50 paces.


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Per contents of Ex.PW-3/1 (Extract of mad No. 08 dated 26.02.2022) and contents of FIR, the alleged occurrence took place on 26.02.2022 and it was reported to the police on the same day but complainant (PW-02), stated that he reported the occurrence to the police on the next day of the occurrence. Site Plan was also prepared

on the next day of the occurrence. This contradicts Ex.PW-3/1, FIR and site plan. Moreso, complainant, in his cross examination stated that site plan was prepared by SHO Shal Muhammad on his pointation but record shows that site plan Ex.PB was prepared by inquiry officer SI Muqadar Khan (PW-03). Per record site plan was prepared on 26.02.2022 whereas complainant stated in his cross examination that he pointed out the spot to SHO Shal Muhammad on the next day of the occurrence i.e. 27.02.2022.

PW-03 stated in his cross examination that report was handed over to him by Muharrir for inquiry. It is correct that there were no written directions of SHO for inquiry. The occurrence took place on 26.02.2022. He inspected the spot and prepared site plan on 26.02.2022. No empty was recovered from the spot. He has not recorded statement of any independent witness during inquiry. DD reports are not placed on file. There are material contradictions in the statements of PW-02 and PW-03. PW-04, who is IO of the case, stated in his cross examination that he has not verified the site plan during his investigation from the complainant party. He visited the spot. He has not prepared site plan. The distance between the spot and house of accused would be 50 paces. It is correct that there is no written permission from SHO to ASHO to conduct inquiry. Accused did not confess their guilt before the court. Nothing incriminating was recovered from possession or on pointation of the accused.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Nothing incriminating has been

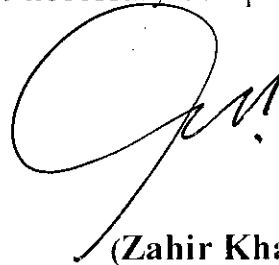

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recovered from possession of accused or on their pointation. Accused have not confessed their guilt before the court. There is no documentary proof of the motive. No empty has been recovered from the spot. Statements of PWs are full of contradictions. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability.

Case property be dealt with in accordance with the law.

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

Announced.
22.07.2023



(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai