

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


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Case No .....39/2 of 2023.

Date of institution.....13.06.2023.

Date of decision.....29.08.2023.

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Case FIR No. 42 Dated: 24.04.2023 U/S 506/34 PPC, PS Kalaya

**Order. No. 08**

29.08.2023


Dy.PP for the state present. Accused Rehmat Karim, Kalash Khan and Mustafa on bail along with Mr. Sana Ullah Advocate present. Accused Abdul Khanan produced in custody. Arguments on behalf of Dy.PP for the state on application u/s 249-A Cr.PC heard today. Arguments of counsel for accused/petitioners already heard. Record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that on 24.04.2023, complainant/SI Aftab Hassan, PS Kalaya received information regarding aerial firing at Sheraz Garhi, Kalaya. He proceeded to the spot and came to know that aerial firing was made by first party Rehmat Karim, Kalash Khan and Mustafa and second party Abdul Khanan with intention to criminally intimidate each other. Aerial firing caused alarm to the public at large. Motive behind the occurrence is land dispute. Murasila was drafted at the spot. On the strength of murasila, the instant case was registered against the accused/petitioners.

  
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 Civil Judge/JM  
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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.

Sub-inspector/Complainant Aftab Hassan was examined as PW-01. He stated that during the days of occurrence, he was posted as ASHO at PS Kalaya. On the day of occurrence, he along with constable Inayat Ali No. 540, Wajid Ullah No. 320, Rafi Ullah No. 325 was on area patrolling. He received information regarding aerial firing at Sheraz Garhi, Kalaya. He proceeded to the spot and came to know that aerial firing was made by first party Rehmat Karim, Kalash Khan and Mustafa and second party Abdul Khanan with intention to criminally intimidate each other. Motive behind the occurrence is land dispute. He drafted murasila at the spot. Murasila is Ex. PW-1/1. Murasila was sent to PS through constable Wajid Ullah No. 320 for registration of the case. After registration of the case, he pointed out the spot to the IO who prepared site plan on his pointation.

  
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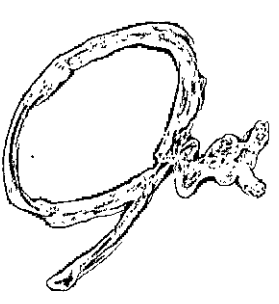
29/08/23

Perusal of record transpires that the alleged occurrence took place on **24.04.2023** at **19:00** hours at Sheraz Garhi and it was reported on **24.04.2023** at **20:50** hours and FIR was registered on **24.04.2023** at **22:10** hours.

There is no eye witness to the occurrence. Complainant, SI Aftab Hassan, who deposed as PW-01 is also not an eye witness to the occurrence. No incriminating article has been recovered from the

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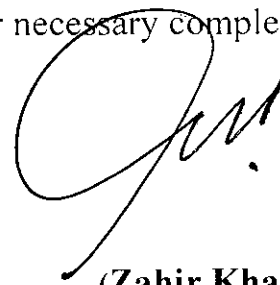
possession of the accused or on their pointation. No empty shell has been recovered from the spot. Source of information regarding involvement of accused/petitioners in commission of the offence has not been disclosed. Per statement of PW-01, firing was made from the inside of the houses of accused and no one has witnessed them while making firing. Copy/extract of DD is not placed on file which could show departure of complainant from PS to the spot. Accused have not confessed their guilt before the court. There is no criminal history of accused/petitioners. Accused have not been arrested at the spot. Parties/accused have not charged each other for the commission of the alleged offence. There is no documentary proof of the motive.



There are so many dents and doubts in case of prosecution benefit of which goes to the accused as of right. 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. Accused Rehmat Karim, Kalash Khan and Mustafa are on bail. Their sureties stand discharged from their liability while accused Abdul Khanan is in custody. He be released from custody, if not required in any other case.

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

**Announced.**  
29.08.2023



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