

(15)

COURT OF SENIOR CIVIL JUDGE/JM, ORAKZAI AT BABER MELA

Case Title: State vs Mawwarshah etc

Order No. 017 continued	16.09.2023	<p>they made announcement and directed the women folk of the village to come out and make stoning at them which amounts to criminal conspiracy. The women folk 20/30 in numbers came out and started stoning at them. They postponed the measurement proceedings. That due to stoning, one Raees Khan SI and Irfan Ullah constable got injured and they were sent to hospital for medical examination and treatment.</p> <p>Later about 100/120 people duly armed came to the HQ square and closed the road and later on after medical examination, the instant FIR was chalked out on 23.08.2022 and hence, the instant case.</p> <p>Supplementary challan of the accused facing trial was submitted and the case was put in court for trial on 09.12.2022. Accused appeared before the court and provisions u/s 241-A Cr.P.C was complied with. Formal charge against the accused was framed on 18.01.2023, to which they pleaded not guilty and claimed trial. Thereafter, the PWs were summoned but till date statement of a single PW couldn't be recorded.</p> <p>On previous date notice u/s 249-A Cr.P.C was given to the prosecution. Arguments heard and record perused.</p> <p>The perusal of record shows that as per report lodged by the complainant vide Naqalmaid No. 06, Dated: 29.06.2022, the occurrence has taken place at 13:10 hrs but the time of examination is not mentioned in the medical report while the date of sending the report is mentioned in the medicolegal report of SI Raees Khan as 25.07.2022, meaning thereby that there is a delay of about 01-month between the report and preparation of medicolegal report. After sending the medicolegal report on 25.07.2022, the</p>
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BAKHTEZADA
Senior Civil Judge/JM
Orakzai at Baber Mela
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Case Title: State vs Maxwar Shah etc

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present FIR was lodged on 23.08.2022 and there is another 01-month unexplained delay in lodging the FIR after receiving the medicolegal report. This delay in the preparation of medico legal report and later on in chalking out the FIR is creating serious doubts about the prosecution case. The number of accused shown in the FIR is about 69 along with 30/35 women but neither any specific role has been assigned to any of the present accused facing trial; nor any kind of incriminating recovery has been made from the possession of the accused. The allegation regarding attempting murder of the complainant and his companions are ruled out on the ground that if there was any such intention of the accused, none of the person including complainant could have escape unhurt. Despite of leveling serious allegations in the report regarding the presence of sticks, stones and firearms in the possession of the accused only one police SI has sustained minor/negligible injury as evident from the medicolegal report, Dated: 25.07.2022 wherein, the nature of injuries is mentioned as "**Almost Normal Findings**". The most important aspect of the case is that the alleged agitation has been made against the Assistant Commissioner and Judicial Magistrate but neither they himself, nor any of their representatives are complainant in the instant case. Even the perusal of challan form is not reflecting the names of any of those officials who were allegedly present at the spot.

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Keeping in view the above facts including absence of the alleged present officials as prosecution witnesses in the challan form, the medicolegal report submitted with delay of almost one month and after reception of the medicolegal report, the lodging of FIR with further one month delay

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without any explanation are holding no ground and in such like eventuality the probability of conviction of the accused more than 100 in numbers is ruled out, even if statements of all the PWs, the names of whom are cited in the challan form, are recorded. I therefore, acquit the accused facing trial namely Ashore Khan, Yousaf Khan, Aman Ullah, Ameer Khan, Iqrar Khan, Hadeef Khan and Luqman Amin from the charges levelled against them. They are on bail. Their sureties are discharged from the liability of bail bonds. Case property if any be kept intact till expiry of the period provided for the appeal/revision/writ etc. Zamima "Bay" of the accused Ashore Khan in the instant case stands cancelled.

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

Announced
16.09.2023

Jacer
16.9.23
(Bakht Zada)
SCJ/JM,
Orakzai (at Baber Mela)