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State Vs Almas Khan etc
Case FIR No. 24, Dated 15.03.2022 U/S 341,352,447,427,504,506,148,149 PPC, PS

Kalaya.

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IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE -I
TEHSIL KALAYA, DISTRICT ORAKZAI

Case No.....22/2 of 2022.

Date of Institution.....02.06.2022.

Date of Decision.....25.09.2023.

State through:

Abdul Samad Afridi S/O Din Muhammad R/O Quam Hassan Khel, Dora Shera
Khel, Peshawar**Complainant**

VERSES

Almas Khan S/O Sultan Akbar and 19 others all R/O Qaum Feroz Khel,
Tehsil Lower, District Orakzai.....**Accused**

Case FIR No. 24, Dated 15.03.2022 U/S 341,352,447,427,504,506,148,149 PPC, PS


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JUDGEMENT

25.09.2023

Through this judgement, I am going to dispose of the instant case registered against accused Almas Khan etc vide FIR No. 24, Dated 15.03.2022 U/S 341,352,447,427,504,506,148,149 PPC, PS Kalaya.

- Brief facts of the prosecution's case as unfolded in the FIR Ex.PA are that on 11.03.2022, complainant Abdul Samad reported to the local police to the effect that on 11.03.2022 at 14:00 hours, he was present in the coal mine at Chappri Feroz Khel, Margho Chaan, Lower Orakzai when members of Qaum Feroz Khel came there in shape of a mob. They were armed with sticks and stones. They were led by accused Almas, Haji Malook, Muhammad Saeed, Haji Niaz


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Buhadar and Noor Zaman. There were 15 to 20 other unknown persons with them. They obstructed and stopped mining work, caused damage to the coal mine and machinery. The occurrence was witnessed by coal mine officials and labor. Report of the complainant was scribed in DD vide mad No. 10 dated 11.03.2022. Inquiry was initiated and after legal opinion from the office of DPP, Orakzai, the case in hand was registered against the above named accused and other unknown persons.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.

3. Accused were summoned, they appeared before the court, legal formalities under Section 241-A Cr. PC were complied with. Accused were formally indicted. They pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.

4. Prosecution produced four (04) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.

5. Sub-inspector Shal Muhammad, deposed as PW-01. He stated that report of the complainant namely Abdul Samad Afridi was recorded vide mad No. 10 dated 11.03.2022. Inquiry was conducted to dig out the real facts. He recorded statements of labor working in the coal mine and it was found that the occurrence had taken place. He vide his application Ex.PW-1/1, sought legal opinion from the

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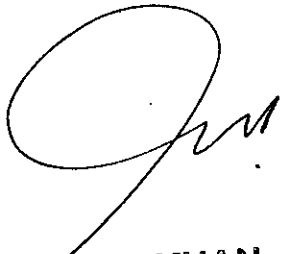
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office of DPP, Orakzai and after receiving legal opinion, he registered the instant case vide FIR Ex.PA. After completion of investigation, he submitted complete as well as supplementary challan against the accused. Challan forms are Ex.PW-1/2 to Ex.PW-1/4.

6. PW-02, is the statement of SI Mehdi Hassan. He stated that after registration of the case, copy of FIR along with relevant documents were handed over to him for investigation. He proceeded to the spot and prepared site plan Ex.PB on the pointation of complainant. He arrested accused Niaz Bahadar Khan on 16.03.2022. He interrogated the accused and recorded his statement u/s 161 Cr.PC. On 17.03.2022, he produced the accused before the court for obtaining his physical custody vide his application Ex.PW-2/1. Request for physical custody of accused was turned down and he was sent to judicial lock-up. Rest of the accused applied for BBA in the court of sessions. BBA of the accused was dismissed and he arrested them vide card of arrest Ex.PW-2/2. He recorded their statements. On 11.05.2022, he produced the accused before the court for obtaining their physical custody vide his application Ex.PW-2/3. Request for physical custody of accused was turned down and they were sent to judicial lock-up. After completion of investigation, he handed over case file to SHO for submission of complete/supplementary challan against accused.


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7. PW-03, is the statement of complainant Abdul Samad. He stated that PW Malak Munsif is elder of Qaum Feroz Khel, PW Shams is matt at coal mine Chappri Feroz Khel while PW Nizam Uddin is manager of coal mine. On the day of occurrence, they were busy in routine work at coal mine when members of Qaum Feroz Khel came there in shape of a mob. They were armed with sticks and stones. They obstructed and stopped mining work. One of the accused person started delivering speech urging rest of the accused/members not to allow mining. They sat on the way leading to the coal mine and stopped mining work. They remained sat there for about 7-10 days. The occurrence was witnessed by Shams and Nizam Uddin. He went to PS Kalaya and reported the occurrence to the local police. His report was reduced into writing and he thumb impressed the same as token of its correctness. Malak Munsif thumb impressed the report as verifier. After registration of the case, he pointed out the spot to IO. He charged the accused for the commission of the offence.



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8. Nizam Uddin was examined as PW-04. He stated that during the days of occurrence, he was serving as Matt with the complainant at coal mine situated at Margho Channa. On 11.03.2021, Friday, they were present in the coal mine in connection with measurement. Complainant and manager Fazal Khaliq were also present at the spot. In meanwhile, 15/20 persons came to the spot and stopped mining work. They caused damage to the machinery. Mining was

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stopped. He is the eye witness to the occurrence. His statement was recorded u/s 161 Cr.PC.

9. On conclusion of prosecution evidence, statements of accused were recorded u/s 342 Cr.PC, in which they professed their innocence, however, they did not opt to record their statements on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in their favour.
10. Record transpires that the alleged occurrence took place on 11.03.2022 at 14:00 hours at coal mine situated at Chappri Feroz Khel Margho Chaana, Orakzai and it was reported to the local police on 11.03.2022 at 16:30 hours and FIR was registered on 15.03.2022 at 15:50 hours.
11. PW-01, stated in his cross examination that it is correct that preliminary inquiry was conducted before registration of the case. Similarly, PW-02 stated in his cross examination that he has not recovered anything incriminating from the spot and from the accused. There is no written directions from the incharge/SHO, PS Kalaya for inquiry. He has not recorded statement of PWs. It is correct that no identification parade was conducted. PW-03 (complainant), stated in his cross examination that he is lease holder of the coal mine situated at Margho Chaana. It is correct that he is not in possession of any legal documents regarding the lease. It is correct that no specific role has been attributed to the accused facing trial. He is residing at Peshawar. It is correct that no



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identification parade was conducted during investigation. He cannot tell the names of all the nominated accused. It is correct that he has neither produced the register with the entries of labors to the IO. He himself stopped work on the coal mine. He has not specified the machines and damage caused to the machinery. PW-04, stated in his cross examination that his statement was recorded on 15.03.2021 by the IO at the spot. He has not mentioned names of the accused facing trial in his court statement. Record shows that initially, accused Almas Khan, Haji Malook, Muhammad Saeed, Niaz Buhadar and Malak Noor Zaman were named in the report by complainant and 15 to 20 unknown persons were charged for the commission of the offence. Complainant is residing at Peshawar, therefore, it is not possible that he recognized/identified 20 persons with names and parentage. He admitted in his cross examination that he cannot tell names of the accused facing trial. No identification parade was conducted.



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12. Accused facing trial were not arrested at the spot. There is no criminal history of the accused facing trial which could show that accused are previously convicted in such like cases. Accused have not confessed their guilt before the court. Source of information regarding the involvement of accused in the commission of the offence has not been disclosed. No identification parade was conducted. There are material contradictions in the statements of PWs. No independent witness was associated during course of

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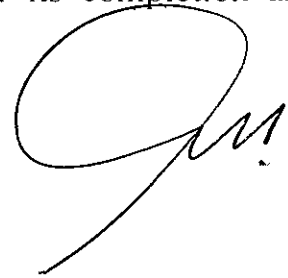
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investigation to support the version of prosecution. There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt. Furthermore, complainant Abdul Samad submitted compromise deed Ex.PA showing no objection on the acquittal of the accused facing trial. Compromise deed was duly signed by complainant and his brother Sair Muhammad.

- 13.** As prosecution failed to prove its case against the accused beyond reasonable doubt and complainant has patched up the matter with the accused facing trial, therefore, accused nominated in the FIR are hereby acquitted from the charges leveled against them. They are on bail. Their bail bonds stand cancelled. Sureties are discharged from their liability. Case property, if any be dealt in accordance with law.
- 14.** Case file be consigned to record room after its completion and necessary compilation.

Announced
25.09.2023



Zahir Khan
Judicial Magistrate-I
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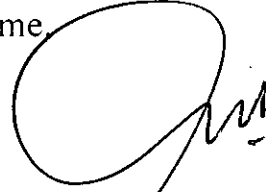
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CERTIFICATE

It is certified that this judgment consists of **08** pages. Each page has been dictated, read, corrected and signed by me,



Zahir Khan
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