

State Vs Zulqarnain and others

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25.10.2023

Present:

Sr. PP for the state present.

Accused namely Amir Abbas who is exempted, through his pleader and co-accused namely Tariq Ali.

Accused namely Zulqarnain who is exempted, through his pleader and co-accused namely Musadiq Ali.

Accused namely Tariq Ali and Musadiq Ali on bail in person.

Today the case was fixed for order on an application u/s 249-A Cr.P.C. Arguments from the learned counsels for accused and for state already heard.

1. This order is intended to dispose of an application u/s 249-A Cr.P.C filed by counsel for the accused.
2. Brief facts of the case are that on 10.07.2023, Altaf Ali SHO/complainant alongwith other police nafri were on routine patrol. He received information that two parties were firing at each other. SHO alongwith other police nafri proceeded to the spot where accused facing trial were present where they take hold on them and on their body search, nothing was recovered from them, however, 04 empties of 30 bore were recovered from the spot/place of occurrence. The two parties/accused facing trial on the spot disclosed their name as Zulqarnain, Mehran Ali, Musadiq Ali, Tariq Ali and Amir Abbas. The accused namely Mehran Ali was injured and was complaining of severe pain, therefore, he was taken to RHC under the escort of constable Shakeel Khan for medical examination. He drafted Murasila at the spot and handed over to Constable Asad Ali Shah and on the strength of Murasila, FIR was registered against the accused.
3. Accused were arrested and later on, released on bail. Complete challan was put in court against the accused. Accused were summoned. They appeared before the court. Provisions of Section 241-A Cr. PC were

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Civil Judge/JM-I
Orakzai at (Babar Mela)

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4. complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused.
5. The prosecution has produced four witnesses and their statement were recorded. Thereafter, counsel for accused filed application U/S 249-A Cr. PC for acquittal of the accused.
6. Arguments from both the counsel for accused and learned Sr. PP already heard and record perused.
7. Perusal of record reveals that no specific role has been attributed to any of the five accused. There is no adverse report from either party which might show as to who were aggressor and who were aggressed upon. There is no eye witness of the occurrence. No source of information has been disclosed.
8. Contents of FIR reveals that only Murasila was chalked out at the spot, however, during cross examination of PW-01, the said PW stated that he received Murasila, card of arrest and recovery memo at the PS. Moreover, there is no mentioned of recovery memo or card of arrest in the Murasila. PW-03 in his cross examination has admitted that he has not mentioned card of arrest and recovery memo in the Murasila.
9. No weapon of offence has been recovered and the recovery made in shape of four bullet shells can't be associated to any of the accused in light of the available record. PW-03 in his cross examination has admitted that he can't say as to who among the accused has fired the bullets whose shells has been recovered.
10. The injured accused has been also charged in the FIR and no medical report has been placed on file which might show gravity of the hurt.
11. Thus, keeping in view, the above discussion, there are so many dents and doubts in the case of prosecution. There is no criminal history of

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accused. Accused has not confessed his guilt before the court. There is no probability of accused being convicted.

12. The trial court can acquit accused U/S 249-A Cr. PC at any stage of the proceedings. Keeping in view the available record, if it is held that there is no probability of conviction of accused. Recording of full prosecution evidence would be a futile exercise and wastage of precious time of the court.
13. Resultantly, applications are **Allowed**. Accused facing trial are acquitted in terms of Section 249-A Cr.P.C from the charge levelled against them in case FIR No. 25 Dated: 10.07.2023 U/S 506/337 A(i)/148 and 149 PPC registered at PS Kuriz Boya, District Orakzai. Accused are on bail. Bail bonds stand cancelled and sureties are discharged from their liability.
14. Case property if any be dealt in accordance with the law.
15. File be consigned to record room after necessary completion and compilation.

Announced.

25.10.2023


(Sami Ullah)
Judicial Magistrate-I,
Orakzai at Baber Mela