

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

Case No29/2 of 2021.

Date of institution.....11.06.2021.

Date of decision.....18.09.2023.


Case FIR No. 02 Dated: 07.01.2021 U/S 337 F(v), 352, 148, 149 PPC, PS Kalaya

Order. No. 31

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Dy.PP for the state present. Accused Muhammad Shaheen on bail along with counsel present. Rest of the accused are exempted. Complainant absent. PW Khanat Khan and counsel for complainant present. Arguments on application u/s 249-A Cr.PC already heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that on 01.01.2021, complainant Faiz Ullah reported to the local police to the effect that on the day of occurrence i.e 18.12.2020, he along with his uncle Khanat Khan were present near the house of Ghulam Sarwar situated at Babara Laki, Orakzai, when accused Khana Gul, Muhammad Usman, Muhammad Shaheen, Muhammad Shahid and Muhammad Ilyas R/O Qaum Mishti, Lower Orakzai came to the spot, caught hold of him, attempted to abduct him to which he resisted. Accused named above beaten him with the butts of rifles which resulted into fracture of fingers of his left hand. Motive behind the occurrence is dispute over grazing cattle in the barren land. Report of the complainant was scribed in daily diary in shape of mad No. 05 dated 01.01.2021 and after obtaining legal opinion from office of DPP, Orakzai, 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.

Muharrir, Ain Ullah was examined as PW-01. He stated that complainant reported to him regarding the occurrence which he reduced into writing in daily diary in shape of mad No. 05 dated: 01.01.2021. Report was read over to the complainant who thumb impressed the same as token of its correctness. One Khanat Khan thumb impressed the report as verifier. Mad report is Ex.PW-1/1. He also prepared injury sheet of injured/complainant which is Ex.PW-1/2. After receiving legal opinion from the office of DPP, Orakzai, he chalked FIR Ex.PA.

Sub-inspector Muhammad Shafeeq was examined as PW-02. He stated that during the days of occurrence, he was posted as SHO PS Kalaya. After receiving mad report and injury sheet, he sought legal opinion from the office DPP vide his application as Ex.PW-2/1. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex.PW-2/2.

PW-03, is the statement of SI Shal Muhammad. He has investigated the case. He stated that after receiving copy of FIR along with relevant documents, he proceeded to the spot and prepared site plan Ex.PB on the pointation of complainant on 08.01.2021. He recorded statements of PWs u/s 161. Cr.PC. As accused were absconding, therefore, he vide his applications Ex.PW-3/1 and Ex.PW-3/2 applied for warrant u/s 204 and proclamation notices u/s 87 Cr.PC. He issued card of




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arrest of accused Muhammad Usman as Ex.PW-3/3. Application for physical custody of accused is Ex.PW-3/4. Card of arrest of accused Khana Gul is Ex.PW-3/5. Application for physical custody is Ex.PW-3/6. Card of arrest of accused Shahid Ullah is Ex.PW-3/7. Application for physical custody is Ex.PW-3/8. Application for further custody is Ex.PW-3/9. He also recorded statements of accused u/s 161 Cr.PC.

Complainant, Faiz Ullah was examined as PW-04. He stated that Khanat Khan is his uncle. Accused facing trial are also his cousins. In the year 2020, there was a dispute over a tree with the accused facing trial. On the day of occurrence, accused Muhammad Ilyas scuffled with him. Accused Khana Gul, Muhammad Usman, Muhammad Shaheen and Muhammad Shahid also came to the spot. They were duly armed with pistols and rifles. They attempted to abduct him. He resisted. In the occurrence, he was beaten by the accused named above, resultantly, his two fingers of left hand were broken. He went to Civil Hospital, Hangu for treatment. After treatment, he went to PS Kalaya and lodged report regarding the occurrence which was reduced into writing and he thumb impressed the report as token of its correctness. PW Khanat Khan thumb impressed the report as verifier. He pointed out the spot to the IO who prepared site plan on his pointation. He charged the accused for the commission of the offence.


Perusal of record transpires that the alleged occurrence took place on **18.12.2020** at **10:00** hours near the house of one Ghulam Sarwar situated at Babara Laki, Orakzai and it was reported on 01.01.2021 at 12:00 hours and FIR was registered on 07.01.2021. There is a delay of 13 days in reporting the occurrence to the local police. The explanation



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furnished for delay i.e ignorance of law does not appeal to prudent mind as complainant is an educated person and serving in Pak Army. No specific role has been attributed to any of the accused facing trial. IO who deposed as PW-03, stated in his cross examination that accused Khana Gul is 65 years old which fact was also affirmed by complainant who deposed as PW-04 by stating that accused Khana Gul is a septuagenarian person. It does not appeal to prudent mind that such an aged person beaten the complainant in presence of other young co-accused. PW-03 (IO) stated in his cross examination that site plan Ex.PB was prepared/drafted on his dictation but this fact is nowhere mentioned in Ex.PB. There is no independent witness to the occurrence. Per Ex.PA (FIR) and Ex.PW-1/1 (mad report), PW Khanat Khan was present at the spot at the time of occurrence but complainant stated in his cross examination that PW Khanat Khan was not present at the spot at the time of occurrence which contradicts the record. The medical documents placed on file do not support the version of prosecution. Medical documents were prepared after 13/14 days of the occurrence, therefore, chances of its manipulation cannot be ruled out. OPD chit issued by DHQ, Mishti Mela bears date as 29.12.2020 while the alleged occurrence took place on 18.12.2020, injury sheet was allegedly prepared on 01.01.2021. Initial Medico-legal report prepared by medical officer of DHQ, Mishti Mela bears date as **02.01.2020** while final report prepared by Dr. Irfan DHQ, Mishti Mela bears date as **23.05.2021**.


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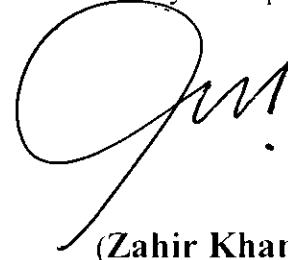
Nothing incriminating has been recovered from possession of accused facing trial or on their pointation. Accused have not confessed their guilt before the court. There are two different stances regarding the

motive, one is dispute over tree and the other is grazing of cattle in barren land. Case of prosecution is not supported by ocular, medical and circumstantial evidence. There are so many dents and doubts in case of prosecution benefit of which goes to the accused. 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 if any, be dealt with in accordance with law.

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

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