

(43)

IN THE COURT OF REHMAT ULLAH WAZIR,
JM-I/MTMC, ORAKZAI AT BABER MELA

CASE NO. : 30/2 OF 2020

DATE OF INSTITUTION : 13.08.2020

DATE OF DECISION : 01.06.2021

STATE THROUGH TARIQ ALI S/O ITBAR ALI. R/O QOUM BAR
MUHAMMAD KHEL. TAPPA KHWAIDAD KHEL, VILLAGE
PANZARHAI, DISTRICT L/ORAKZAI.

------(Complainant)

VS

1. Inshad Ali s/o Gul Bahar Ali
2. Gul Bahar Ali s/o Itbar Ali
3. Sehat Ali s/o Gul Bahar Ali
4. Bakhtmeer Ali s/o Gul Bahar Ali.

*(All R/O QOUM BAR MUHAMMAD KHEL, TAPPA KHWAIDAD KHEL,
VILLAGE PANZARHAI, DISTRICT L/ORAKZAI)*

------(Accused Facing Trial)


Present: Nisar Ahmad, Assistant Public Prosecutor and Jabbar
Hussain Advocate for complainant.
: Sana Ullah Advocate, for accused facing trial.

ORDER

01.06.2021

1. Accused facing trial, Inshad Ali, Gul Bahar Ali, Sehat Ali
and Bakhtmeer Ali present who are charged in case FIR No. 78,
Dated: 08.07.2020, U/S 337A(i), 337F(i), 148, 149 PPC of PS
Kalaya, L/Orakzai for causing hurt to the complainant and rioting
armed with deadly weapons.

2. Briefly stated factual background of the instant case is that


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the complainant Tariq Ali, reported the matter for causing hurt to him and rioting armed with deadly weapons by the accused.

3. Upon which, the instant case was registered at PS: Kalaya, L/Orakzai on 08.07.2020 vide FIR. 78.

4. After completion of the investigation, the complete challan was submitted on 13.08.2020 to this court. The accused on bail were summoned. The accused on bail appeared and the provisions of 241-A Cr.P.C were duly complied with. The formal charge against the accused on bail was framed on 12.10.2020, to which the accused persons pleaded not guilty and claimed trial.

5. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;

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|--|-----------|
| i. Copy of FIR. | Ex.PA |
| ii. Challan Form. | Ex.PW 4/2 |
| iii. Application for legal opinion. | Ex.PW 4/1 |
| iv. Naqal mad. | Ex.PW-2/1 |
| v. Site Plan. | Ex.PB |
| vi. Cards of arrest of the accused Gul Bahar Ali, Sehat Ali and Bakhtmeer Ali. | Ex.PW-7/1 |
| vii. Inquest Report. | Ex.PW-2/2 |
| viii. Injury Sheet. | Ex.MR |

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ix. Application of warrant u/s 204 Cr.P.C.

Ex.PW-7/5

x. Application for police custody of the accused^d

Gul Bahar Ali, Sehat Ali and Bakhtmeer Ali.

Ex.PW-7/2

xi. Card of arrest of the accused Inshad Ali

Ex.PW-7/3

xii. Application for police custody of the accused

Inshad Ali.

Ex.PW-7/4

Prosecution Witnesses

1. Dr. Rehman Shah, MO, THQ, Takhtbai,

Mardan.

PW-01

2. Ain Ullah, Muharrir, PS Kalaya.

PW-02

3. Khursheed Anwar, ASI, CTD, PS Kalaya.

PW-03

4. Muhammad Shafique, SHO, PS Kalaya.

PW-04

5. Shams Ul Ghani, constable, PS Kalaya.

PW-05

6. Tariq Ali, Complainant.

PW-06


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7. Shal Muhammad, I.O, PS Kalaya.

PW-07

6. Then after, on 27.05.2021, the learned APP for the state closed the evidence on behalf of the prosecution.

7. Statements of accused on bail u/s 342 Cr.P.C were recorded wherein they neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor they wanted to produce any defence evidence in their defence.

8. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the APP for the complainant along with his private counsel heard and record perused.

9. The accused are charged with the offence U/S 337A(i), 337F(i), 148, 149 PPC. Sec. 337A(i) PPC is Shajjah-I- Khafifah hurt, Sec. 337F(i) PPC is Damiyah hurt, Sec. 148 PPC deals with rioting armed with deadly weapon and Sec. 149 PPC fixes joint responsibility on every member of unlawful assembly, when that assembly commits an offence in prosecution of a common object.

10. Keeping in view, the record on file and the depositions of PWs, the prosecution is required to prove its case against the accused beyond reasonable doubts.

11. PW-01, the concerned doctor has admitted in his cross examination that he has not referred the complainant for X.Ray findings and that expert opinion of the radiologist is not available

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on file.

12. PW-02, who is the Muharrir of the PS has stated in his examination in chief that the complainant came to the PS on 15.06.2020 at about 09:00 hrs and reported the occurrence. He has also admitted the fact that at the time of occurrence, he didn't go to the hospital for his treatment and that no documents of treatment/examination by a physician were produced to me by the complainant and that he was sent to the hospital on 15.06.2020.

13. PW-05, the constable, has stated in his examination in chief that on 08.07.2020, he took the complainant to the hospital for treatment. But erroneously, he has stated in his cross that the complainant was in injured condition and his body was bleeding i.e after the lapse of almost 23 days.

14. PW-06, who is the complainant, has stated in his examination in chief that the occurrence took place on 14.06.2020 at about 12:00 hrs while he reported the matter to PS on 15.06.2020 at about 09:00 hrs. He admitted in his cross examination that the I.O prepared the site plan on his pointation on 08.07.2020 at about 12:00 hrs i.e after almost 23 days of the occurrence.

15. PW-07, who is the I.O in the instant case has admitted that he reached the spot at about 09:30 hrs and spent 40 minutes there on the spot. Further, that he has not recovered any incriminating

Handwritten signature and stamp of the District Judge, District Court, Bangalore.

articles from the spot and that the complainant did not produce any X-Ray report, prescription slip of doctor and any other treatment documents. Further, that he has not recorded the statement of any eye-witness of the occurrence.

16. Thus, there is unexplained delay of approximately 21 hours in the report of the occurrence. Erroneously, as per the statement of PW-05, the body of the complainant was bleeding even after 23 days of the occurrence but there are no solid and supportive medical documents and even X-Ray report on the file to corroborate the version of the prosecution. Admittedly, no eye-witness of the occurrence is on record. The spot inspection has been done on 08.07.2020, after delay of 23 days of the occurrence for which the complainant alleges that it was done at about 12:00 Hours while the I.O alleges that it was done at 10:00 hrs around. Also, there is no motive behind the occurrence.


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17. Thus, In the light of the above discussion, it is clear that the case of prosecution is full of contradictions. There are doubts in the evidence of prosecution and the accused are ultimately entitled to the benefits of doubts and are accordingly extended to the accused.

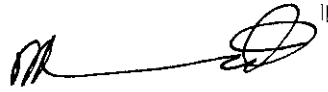
18. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, the accused namely Inshad Ali, Gul Bahar Ali, Sehat Ali and

Bakhtmeer Ali are acquitted from the charges levelled against them. As they are on bail, their bail bonds stand cancelled and sureties are discharged from their liability of bail bonds.

19. The case property if any shall be dealt in accordance with the law.

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

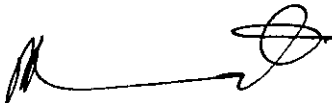
Announced
01.06.2021


(Rehmat Ullah Wazir)
JM-I/MTMC,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this order consists of Seven (07) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 01.06.2021


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Orakzai (at Baber Mela)