

63

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

Case No.....30/2 of 2022.

Date of Institution.....04.07.2022.

Date of Decision.....25.10.2023.

State through:

Qadar Gul S/O Abdul Qadir R/O Qaum Utman Khel, Aba Khel, Tehsil
Lower, District Orakzai**Complainant**

VERSES

Wali Khan S/O Muhammad Hussain R/O Qaum Utman Khel, Tehsil
Lower, District Orakzai**Accused**


Case FIR No. 34, Dated 02.04.2022 U/S 324, 337 F(ii) PPC PS Kalaya.

JUDGEMENT

25.10.2023

Through this judgement, I am going to dispose of the instant case registered against accused Wali Khan vide Case FIR No. 34, Dated 02.04.2022 U/S 324, 337 F(ii) PPC, PS Kalaya.

1. Brief facts of the prosecution's case as unfolded in the FIR are that on 02.04.2022, complainant namely Qadar Gul reported the occurrence to Shal Muhammad, SHO PS Kalaya in THQ, Hospital Kalaya to the effect that on the day of occurrence at 13:00 hours, he was present in his fields situated at Momeen Garhi, along with his son namely Muhammad Gul. He was ploughing the land, when accused Wali Khan came out of his house. He was duly armed. He made firing at them with intention to kill them. As a result of which he got hit and sustained injury on his left thigh. The occurrence was


ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

25/10/023

witnessed by his son Muhammad Gul. Motive behind the occurrence is land dispute. Report of the complainant was reduced into writing in shape of murasila Ex.PW-4/1 which was incorporated into FIR Ex.PA. Eye witness Muhammad Gul thumb impressed the report as verifier. Complainant charged the accused facing trial for the commission of the offence.

2. Accused facing trial was arrested and later on, released on bail. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused was formally indicted. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence. Prosecution produced eight (08) witnesses to prove its case against the accused.
4. PW-01, is Constable Muhammad Raziq. He stated that he is one of the marginal witnesses to the recovery memo Ex. PW-1/1 vide which the IO took into possession blood-stained garments of injured Qadir Gul consisting of yellow colour Qamees and Shilwar and packed and sealed the same into parcel No. 1 by affixing 3/3 seals in the mark of MH. Blood stained garments were produced by Khalid Mehmood in the PS. His statement was recorded U/S 161 Cr. PC.
5. Qadar Gul (complainant) was examined as PW-02. He stated that he is complainant of the instant case. PW Muhammad Gul is his



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

25/10/023

son. Accused Wali Khan is his co-villager. On 02.04.2022 at 1300 hours, he was present in his fields situated at Momeen Garhi, along with his son namely Muhammad Gul. He was ploughing the land, when in meanwhile, accused Wali Khan came out of his house. He was duly armed. He made firing at him with intention to kill him. As a result of which he got hit and sustained injury on his left thigh. He was shifted to Tehsil Headquarter Hospital Kalaya where he reported the occurrence to the local police. The report was read over to him and he thumb impressed the report as token of its correctness. His son PW Muhammad Gul thumb impressed the report as verifier. He charged the accused for the commission of the offence.

6. Muhammad Gul, son of complainant and eye witness, deposed as PW-03. He stated that injured/complainant Qadar Gul is his father. On 02.04.2022 at 1300 hours, he was present with his father in their fields who was ploughing the land when accused Wali Khan S/O Muhammad Hussain came out of his house duly armed and started firing at them with intention to kill them. As a result of the firing, his father got hit and sustained injury on his left thigh and he luckily escaped unhurt. Thereafter, his father was shifted to THQ hospital Kalaya where he lodged the report regarding the occurrence to the SHO and he thumb impressed the report as verifier. Thereafter, he accompanied the police to the spot for spot




ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

25/10/23

pointation. He charged the accused for the commission of the offence.

7. Sub-Inspector, Shal Muhammad was examined as PW-04. He stated that during the days of occurrence, he was posted as SHO, PS Kalaya. On 02.04.2022, he received information that an injured was brought to THQ, hospital Kalaya. He proceeded to the hospital where, in the emergency room of the hospital, injured/complainant Qadar Gul S/O Abdul Qadar R/O Utman Khel Tappa Fateh Khan Khel, Lower Orakzai, in proper senses, reported to him regarding the occurrence which he reduced into writing in shape of murasila. The report was read over to the complainant who thumb impressed the same as token of its correctness. Muhammad Gul, son of injured/ complainant thumb impressed the report as verifier. Injury sheet of the injured was prepared and the injured was sent to the medical officer under the escort of constable Yousaf Ali No. 544. Murasila was sent to PS through constable Muhammad Rasool No. 1423. Murasila is Ex.PW-4/1. Injury sheet is Ex.PW-4/2. On 03.04.2022, he arrested accused facing trial and issued his card of arrest which is Ex.PW-4/3. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex.PK.


ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

25/10/023

8. PW-05, is the statement of SI Mehdi Hassan. He is IO of the case. 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 pointation of eye witness Muhammad Gul. Accused Wali Khan was arrested by SHO PS Kalaya and was handed over to him for interrogation/completion of investigation. On 04.04.2022, he produced the accused before the court for obtaining his physical custody vide his application Ex.PW-5/1, one day custody was granted. He interrogated the accused and recorded his statement u/s 161 Cr.PC. On 05.04.2022, he produced the accused before the court for obtaining his further remand vide his application Ex.PW-5/2 which was turned down and accused was committed to judicial lock-up. On 08.05.2022, PW Khalid Mehmood produced blood-stained garments of injured Qadar Gul which he took into possession vide recovery memo already exhibited as Ex.PW-1/1 in presence of marginal witnesses. Parcel containing blood-stained garments of the injured is Ex.P-1. He recorded statements of PWs u/s 161 Cr.PC. Blood-stained garments were sent to FSL vide application Ex.PW-5/4. Receipt is Ex.PW-5/5 and FSL report is Ex.PW-5/6. After completion of investigation, he handed over case file to SHO for submission of complete challan against accused.

Constable Shams-ul-Ghani was examined as PW-06. He stated that parcel containing case property in shape of blood stained garments of injured were handed over to him which he took to FSL Peshawar. Parcel was handed over to incharge FSL. His signature



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

25/10/23 9.

was obtained accordingly. Receipt thereof was handed over to IO.
His statement was recorded U/S 161 Cr.PC.

10. Dr. Farooq Azam was examined as PW-07. He stated that on 02.04.2022, injured Qadir Gul S/O Abdul Qadar, aged about 56 years R/O Qaum Utman Khel, Tappa Fateh Khan Khel, Orakzai was brought to the THQ, hospital Kalaya under the escort of constable Gul Hussain. He examined the injured and the following injuries were found on his person;

There was injury on the left thigh region possibly due to some kind of metal or iron foreign body.

Entry wound postero lateral (1.5x1.5 cm)

Exit wound.....Anterior region of thigh (6x3 cm)

Depth.....1-2 cm

Bleeding was stopped with pressure dressing. The injured was then referred to tertiary care for surgical intervention. Report on the back of injury sheet is Ex.PW-7/1. Proper medico-legal report is Ex.PW-7/2.


As per final report:

(a) Kind of weapon used..... fire arm

(b). Nature of the injury..... dangerous

Medical documents were handed over to local police.

11. Asmat Ali was examined as PW-08. He stated that during the days of occurrence, he was posted as Muharrir at PS Kalaya. On receipt of murasila from SHO Shal Muhammad through constable



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai
25/10/023

69

State Vs Wali Khan

Case FIR No. 34, Dated 02.04.2022 U/S 324, 337 F(ii) PPC PS Kalaya.


Page 7 of 12

Muhammad Rasool No. 1423, he correctly incorporated the contents of Murasila into FIR Ex.PA which is in his hand writing and correctly bears his signature. Copy of FIR was handed over to IO for investigation. Case property was handed over to him which he kept in safe custody. Entry was made in register 19. Case property was thereafter, handed over to IO for the purpose of sending it to FSL. His statement was recorded u/s 161 Cr.PC.

12. On conclusion of prosecution evidence, statement of accused was recorded u/s 342 Cr.PC, in which he professed his innocence, however, he did not opt to record his statement on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in his favour.


13. As per record, the alleged occurrence took place on 02.04.2022 at 13:00 hours in the fields of complainant situated at Aba Khel, Momeen Garhi, Lower Orakzai. It was reported at 13:30 hours and FIR Ex.PA was registered at 13:45 hours. Qadar Gul is the injured/complainant while his son Muhammad Gul is the eye witness and verifier of the report. Murasila was sent to PS through constable Muhammad Rasool No. 1423 while the injured/complainant was escorted to doctor by constable Yousaf Ali No. 544. Motive behind the occurrence is land dispute. Accused Wali Khan was arrested by SHO, PS Kalaya on 03.04.2022.

14. Prosecution was duty bound to prove the case against the accused beyond any shadow of doubt. Although, accused is directly and by


ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

25/10/023

name charged in the FIR for the commission of the offence and per MLC reports Ex.PW-7/1 and Ex.PW-7/2, the injured/complainant received fire arm injury and FSL report Ex.PW-5/6 regarding blood stained garments is positive, however, no empty was recovered from the spot. No blood stained earth was recovered during spot inspection by the IO. As per murasila Ex.PW-4/1, the injured was sent to the medical officer under the escort of constable Yousaf Ali No. 544 and murasila was sent to the PS for registration of the case through constable Muhammad Rasool No. 1423 while as per injury sheet Ex.PW-4/2, the injured along with injury sheet was sent to the medical officer under the escort of constable Gul Hussain which contradicts the contents of murasila Ex.PW-4/1. Site Plan Ex.PB was prepared on the pointation of eye witness PW Muhammad Gul but it was never verified from injured/complainant Qadar Gul which is fatal to the case of prosecution. Per Ex.PW-4/1 (Murasila), complainant was ploughing his fields but there is no mentioning of any tractor etc in his report. Per statement of injured/complainant (PW-02), his brother-in-law namely Bahadar was driving the tractor at the relevant time but neither this fact is narrated in the FIR nor statement of the said Bahadar was recorded by the IO u/s 161 Cr.PC. He was not produced as witness during course of trial. The tractor was not taken into possession by the IO. Furthermore, the kind of weapon used in the commission of the offence and number of fire shots made by the accused have not been mentioned in the



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

25/10/23

report. Accused is 63/64 years old person. He was arrested on the following day of the occurrence i.e 03.04.2022 from his house and at the time of arrest or subsequently, nothing incriminating was recovered from his possession or on his pointation. Accused has not confessed his guilt before the court. There is no criminal history of the accused facing trial.

- 15.** There are so many contradictions in the statements of PWs. Constable Muhammad Raziq who deposed as PW-01, stated that he is one of the marginal witnesses to the recovery memo Ex.PW-1/1 vide which the IO took into possession blood stained garments of the injured. He stated in his cross examination that he has not checked any bullet marks on the garments of the injured. The blood stained garments were produced to the IO by one Khalid Mehmood in PS but he was not produced as witness during trial. Similarly, PW-02 (injured/complainant) and eye witness (PW-03) did not mention any motive behind the occurrence in their examination in chief. Complainant stated in his cross examination that he cannot recollect whether he thumb impressed the report in the ambulance or elsewhere. He also deposed that the tractor was driven by his brother-in-law namely Bahadar at the relevant time but neither statement of the said Bahadar was recorded by the IO nor he was produced as witness during trial. Muhammad Gul, son of complainant, who is eye witness to the occurrence, deposed as PW-03 and stated in his cross examination that he has not mentioned in



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

25/10/023

his 161 Cr.PC statement that his father received injury on left thigh. He also deposed that his father was wearing white yellow clothes at the time of occurrence which contradicts recovery memo Ex.PW-1/1 and FSL report Ex.PW-5/6.

- 16.** Sub-Inspector, Shal Muhammad, who recorded report of the complainant in shape of murasila Ex.PW-4/1 and arrested the accused vide card of arrest Ex.PW-4/3, stated in his cross examination that he received information regarding shifting of injured/complainant to THQ, Kalaya at about 12:30/12:40 pm. Per record, the occurrence took place at 13:00 hours. How it is possible that he received information at about 12:30/12:40 pm. At 12:30/12:40 pm the alleged occurrence has not taken place. He also deposed that he reached to the hospital at about 13:10 hours whereas, the occurrence was reported at 13:30 hours and FIR was registered at 13:45 hours. He also deposed that it is correct that the injury sheet does not bear his signature rather the injury sheet was prepared by the police official at reporting center of the hospital which contradicts the record and even if so, statement of the said official has not been recorded u/s 161 Cr.PC. Similarly, SI Mehdi Hassan, who is IO of the case, deposed as PW-05, stated in his cross examination that no empty and blood stained earth was recovered from the spot during spot inspection. No explanation whatsoever was furnished as to why there was no empty and blood stained earth at the spot. Site plan Ex.PB was prepared on the



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

25/10/023

pointation of eye witness PW Muhammad Gul but it was not verified from injured/complainant after his discharge from the hospital. The spot of occurrence has not been established by the prosecution. Dr. Farooq Azam, who has examined the injured/complainant, deposed as PW-07, stated that there was injury on the left thigh region possibly due to some kind of metal or iron/foreign body. There was fresh bleeding oozing from the wound of the injured but he has not mentioned this fact in his report. Similarly, probable duration of injury has not been mentioned in the MLC reports Ex.PW-7/1 and Ex.PW-7/2. Per statement of PW-07, the injured was referred to tertiary care for surgical intervention but no original medical document/report to this effect is placed on file. No medical officer of the tertiary care hospital was produced as witness by prosecution during trial. Asmat Ali, who was posted as Muharrir during the days of occurrence, deposed as PW-08, stated that he registered FIR Ex.PA and made entry in register 19 regarding safe custody of case property i.e blood stained garments, however, neither register 19 was produced nor extract thereof was produced and exhibited during trial which could establish safe custody of the case property.



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

25/10/23

17. Prosecution was bound to prove its case against the accused beyond any shadow of doubt but there are so many dents and doubts in the prosecution case benefit of which goes to the accused facing trial.

74

State Vs Wali Khan

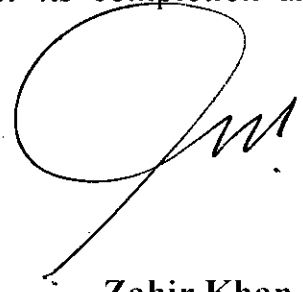
Case FIR No. 34, Dated 02.04.2022 U/S 324, 337 F(ii) PPC PS Kalaya.

Page 12 of 12

Prosecution badly failed to prove the case against the accused facing trial through ocular, circumstantial and medical evidence.

- 18.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Wali Khan is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds stand cancelled. Sureties are discharged from their liability. Case property be dealt with in accordance with law.
- 19.** Case file be consigned to record room after its completion and necessary compilation.

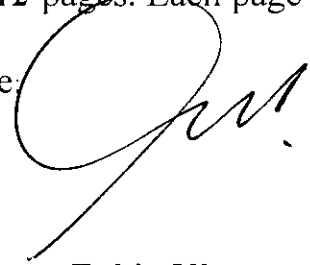
Announced
25.10.2023



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai

CERTIFICATE

It is certified that this judgment consists of 12 pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai