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State Vs Itbar Gul etc
Case FIR No. 12, Dated 05.02.2022 U/S 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.....52/2 of 2022.

Date of Institution.....14.09.2022.

Date of Decision.....27.11.2023.

State through:

Khanzeb Khan S/O Ghalib Khan R/O Qaum Beezot, Tehsil Lower, District
Orakzai.....**Complainant**

VERSES

1. Jasrat Khan S/O Mast Ali Khel
2. Itbar Gul S/O Hussain Gul
3. Hukam Khan S/O Wrikhmeen Gul
4. Imtiaz S/O Qamber Khan
5. Jangriz Khan S/O Khani Khel all R/O Qaum Beezot, Tehsil
Lower Orakzai.....**Accused**


Case FIR No. 12, Dated 05.02.2022 U/S 506/148/149 PPC, PS Kalaya.

JUDGEMENT

27.11.2023

Through this judgement, I am going to dispose of the instant case registered against accused Itbar Gul and four others vide case FIR No. 12, Dated 05.02.2022 U/S 506/148/149 PPC, PS Kalaya.


Brief facts of the prosecution's case as unfolded in the FIR Ex.PA are that on 21.01.2022, complainant reported the occurrence to the local police alleging that he is watchman of the coal mine of Mutasim Khan which is situated at Tangi Ublan and at the relevant time he along with other mine workers were present in the room of


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the said coal mine when, at 01:45 am (night), accused Jasrat Khan, Jangrez, Hukam, Itbar Gul and Imtiaz all R/O Qaum Beezot, Lower Orakzai opened fire from nearby hill and continued indiscriminate firing for half an hour. The workers and complainant being watchmen followed the accused who entered into the hujra of Itbar Gul. The accused had already extended life threats and consequently attacked him and 18 other workers with indiscriminate firing at night. Motive behind the occurrence is dispute over the coal mine. Report of the complainant was scribed in DD vide mad No. 08 dated 21.01.2022. Inquiry u/s 157 (1) Cr.PC was initiated and on 05.02.2022, the instant case was registered against accused facing trial vide FIR Ex.PA.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused were summoned and 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. Prosecution produced eight (08) 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 during the days of occurrence, he was posted as SHO, PS Kalaya. On 22.09.2022 he arrested the accused Jasrat Khan, Hukam Khan



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and Jangrez Khan and issued their card of arrest Ex.PW-1/1. Accused were handed over to IO for further interrogation/completion of investigation. After completion of investigation, he submitted complete as well supplementary challan against the accused.

6. PW-02, is the statement of SI Khan Muhammad (retired). He conducted inquiry u/s 157 (1) Cr.PC. He stated that during the days of occurrence, he was posted in the operation branch of PS Kalaya. He was asked by DPO, Orakzai to register FIR and he chalked FIR Ex.PA accordingly. Copy of FIR along with relevant documents was handed over to IO for investigation.

7. Complainant/Khan Zeb deposed as PW-03. He reproduced the story narrated in the FIR. He charged the accused for the commission of the offence.

8. Eye witnesses namely Ijaz-ul-Haq, Wahid Ullah, Rehmat Ullah and Liaqat Ali were examined as PW-04, PW-06 to PW-08 respectively. PW Ijaz Haq is also verifier of the report.

Sub-Inspector, Minhaz Hussain was examined as PW-05. He is the IO of the case. He prepared site plan Ex.PB on the pointation of complainant. On 07.02.2022, he arrested accused Imtiaz vide card of arrest Ex.PW-5/1. He produced the accused before the court for obtaining his physical custody vide his application Ex.PW-5/2 which was turned down and accused was sent to judicial lock-up. He recorded statements of PWs and accused u/s 161 Cr.PC.


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Accused Jahangir and Hukam were avoiding their lawful arrest, therefore, he applied for warrant u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC vide his applications Ex.PW-5/3 and Ex.PW-5/4. After completion of investigation, case file was handed over to SHO for submission of complete/supplementary challan against the accused.

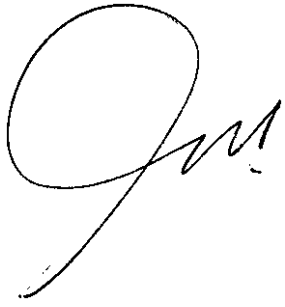
10. Rest of the PWs were abandoned by the prosecution and closed its evidence.
11. On conclusion of prosecution evidence, statements of accused were recorded u/s 342 Cr.PC, wherein, they professed their innocence, however, they did not opt to record their statements on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in their favour.
12. Record transpires that the alleged occurrence took place on 20.01.2022 at 01:45 am at coal mine, Tangi Ublan, lower Orakzai, and it was reported on 21.01.2022 at 10:35 hours. FIR was registered on 05.02.2022 at 13:00 hours. Per record, inquiry u/s 157 (1) Cr.PC was conducted before registration of the case. PW-02, SI Khan Muhammad (retired) conducted inquiry. He stated in his cross examination that he was entrusted with inquiry of the case on 20.05.2022. He also deposed that during course of inquiry no one came forward to support the allegations of complainant party and that he registered the case under compulsion of DPO, Orakzai. He further deposed that no one appeared before him for statement that


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accused facing trial have committed the offence. Similarly, PW-03 stated that empties were handed over to the local police and he pointed out the points of bullet hitting places. Per record, no empty has been recovered from the spot or produced to the IO by any of the PWs. PW-03 also deposed that he identified the accused from window of the room which contradicts the record. He further deposed that the IO visited the spot on 21.01.2022 whereas, record shows that site plan was prepared on 05.02.2022 on the pointation of complainant. He categorically stated that he has not pointed out the spot to the police on 05.02.2022. Eye witness, Ijaz-ul-Haq, stated that 02 of the accused were arrested at the spot which also contradicts the record. He further deposed that he did not identify the accused at the spot rather accused were identified in the hujra of one Itbar Gul. PW-05, who is IO of the case stated that no empty was recovered from the spot. Statements of PW-06 to PW-08 also do not support the case of prosecution.



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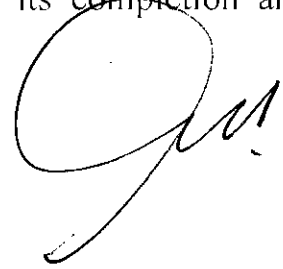
13. Source of information regarding involvement of accused in the commission of the offence is not disclosed by complainant. Accused facing trial did not confess their guilt before the court. There is no criminal history of the accused. No independent witness was associated during course of investigation to support the version of prosecution. No empty has been recovered from the spot. Nothing incriminating has been recovered from possession of the

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accused or on their pointation. There are material contradictions in the statements of PWs.

- 14.** 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.
- 15.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Jasrat Khan, Hukam Khan, Itbar Gul, Imtiaz and Jangrez Khan 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 with in accordance with law.
- 16.** Case file be consigned to record room after its completion and necessary compilation.

Announced
27.11.2023



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Judicial Magistrate-I
Kalaya, Orakzai

CERTIFICATE

It is certified that this judgment consists of **06** pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
Judicial Magistrate-I
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