

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

Case No45/2 of 2023.
Date of institution.....03.07.2023.
Date of decision.....27.11.2023.

Case FIR No. 47 Dated: 01.05.2023 U/S 506/148/149 PPC, PS Kalaya

Order. No. 11

27.11.2023

APP for the state present. Accused Asad Ullah and Pervez Alam on bail along with counsel present. Accused Imran Khan and Adil Nawaz are exempted. Complainant Shehzad Khan along with counsel present. SI Murtaza also present. Statements of SI Murtaza and complainant recorded as PW-02 and PW-03 respectively. Counsel for accused submitted application u/s 249-A Cr.PC. On the other hand, APP for the state submitted application u/s 494 Cr.PC. Arguments on applications heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that on 01.05.2023, complainant Shehzad Khan reported to the local police to the effect that he along with his brother Asfandiyar Khan were working in fields with a tractor when they were fired at by accused facing trial in order to criminally intimidate them. Motive behind the occurrence is land dispute.


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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, 03 PWs have been examined.

Muhammad Jameel MHC, deposed as PW-01. He stated that on receipt of murasila from SHO Aftab Ahmad through constable Muhammad Irshad No. 336. He correctly incorporated the contents of murasila into FIR. He verified his hand writing and signature. Copy of FIR Ex.PA was handed over to IO for investigation. His statement was recorded by the IO u/s 161 Cr.PC.

Sub-Inspector Murtaza was examined as PW-02. He is the IO of the case. He prepared site plan Ex.PB on the pointation of complainant. He produced the accused before the court for obtaining their physical custody vide his application Ex.PW-2/1. He prepared pointation memo Ex.PW-2/2. After expiry of the physical custody, he produced the accused for further custody which was turned down and accused were sent to judicial lock-up. Application is Ex.PW-2/3. He also recorded statements of PWs and accused u/s 161 Cr.PC.

PW-03 is the statement of complainant Shehzad Khan. He reproduced the story narrated in the FIR dated 01.05.2023. He charged the accused for the commission of the offence.


Perusal of record transpires that the alleged occurrence took place on **01.05.2023** at **15:30** hours in the fields situated near Kalaya headquarter, Orakzai and it was reported on **01.05.2023** at **16:00** hours and FIR was registered on **01.05.2023** at **16:20** hours. Record shows that no empty has been recovered from the spot despite the allegations of aerial firing made by the accused. No incriminating article has been



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recovered from the possession of the accused or on their pointation despite the fact that accused facing trial were arrested at the spot. Name of the driver of the tractor has not been mentioned in the report. IO did not bother to examine driver of the tractor. There is no documentary proof regarding the motive behind the occurrence. Weapon of offence used in the commission of the offence has not been specified/disclosed. There is civil litigation in civil courts regarding the disputed land, therefore, false implication of accused facing trial cannot be ruled out. Accused have not confessed their guilt before the court. There is no criminal history of accused facing trial. Furthermore, per record, the case in hand was registered vide FIR Ex.PA on the strength of murasila whereas, complainant Shehzad Khan, who deposed as PW-03, stated that he went to PS Kalaya for report and his report was recorded by SHO in the room/office of Muharrir which contradicts the record. He also deposed that he accompanied the IO to the spot which contradicts statement of IO, who deposed as PW-02.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused as of right. 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. Accused Asad Ullah, Pervez Alam, Imran Khan and Adil Nawaz are on bail. Their sureties stand discharged from their liability. As application u/s 249- A Cr.PC is accepted and accused are acquitted, therefore, application u/s 494



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Cr.PC is disposed of accordingly. Case property be dealt with in accordance with law.

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

Announced.
27.11.2023



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