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

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Case No .....46/2 of 2023.

Date of institution.....03.07.2023.

Date of decision.....27.11.2023.

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

Cross version recorded vide mad No. 8 dated 01.05.2023, PS Kalaya

**Order. No. 11**

27.11.2023

APP for the state present. Accused Shehzad Khan on bail along with counsel present. Accused Asfandyar and Jamal Khan are exempted. Complainant Asad Ullah 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 Asad Ullah reported to the local police to the effect that accused facing trial came to the land situated at Kalaya, Headquarter and started ploughing the land with tractor. They requested accused facing trial to stop ploughing the land but accused started firing in order to criminal intimidated them. Motive behind the occurrence is land dispute. Report of the complainant was recorded in

  
**ZAHIR KHAN**  
**Civil Judge/JM**  
**Kalaya Orakzai**


shape of mad No. 8 dated 01.05.2023 as cross version of the report made by accused Shehzad Khan.

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 report of the complainant Asad Ullah was reduced into writing as special report by SHO Aftab Ahmad. Special report was sent to PS which he incorporated in DD in shape of mad No. 08 dated 01.05.2023. Extract of mad No. 8 dated 01.05.2023 is Ex.PW-1/1. Mad report was handed over to constable Wajid Ullah who took the same to the 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 arrested accused Shehzad vide card of arrest Ex.PW-2/1. Accused Isfandyar and Jamal Khan procured BBA from the court of sessions. They appeared before him and issued their card of arrest Ex.PW-2/2. He also recorded statements of PWs and accused u/s 161 Cr.PC.


PW-03 is the statement of complainant Asad Ullah. He reproduced the story narrated in the report recorded vide mad No. 08



**ZAHIR KHAN**  
Civil Judge  
Kalaya Orakzai

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 recovered from the possession of the accused or on their pointation despite the fact that one of the accused facing trial namely Shehzad Khan was 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.

  
**ZAHIR KHAN**  
Civil Judge, FM  
Kalaya Orakzai

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 Shehzad

Khan, Asfandyar Khan and Jamal Khan 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 Cr.PC is disposed of accordingly. Case property be dealt in accordance with law. *with* z-

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

**Announced.**  
27.11.2023



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