

78

IN THE COURT OF REHMAT ULLAH WAZIR,
SCJ/JM, ORAKZAI AT BABER MELA

CASE NO. : 6/2 OF 2021
DATE OF INSTITUTION : 19.11.2021
DATE OF TRANSFER IN : 25.04.2022
DATE OF DECISION : 28.06.2022

STATE THROUGH: NAQIB ULLAH S/O FAZAL JANAN R/O
QOUM SHEIKHAN, TAPPA SAMOZAI, MASOOD PKHA,
DISTRICT ORAKZAI.

------(Complainant)

VS

1. FAZAL KARIM S/O FAZAL KHANAN
2. FAZAL RAFIQ S/O FAZAL KHANAN
Both R/O Qoum Sheikhan, Masood Khpa, District Orakzai

------(Accused Facing Trial)

Present: Mr. Zubair Qureshi, Assistant Public Prosecutor and
Khursheed Alam advocate for complainant.
: Noor Karim advocate for the accused facing trial.

REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Baber Mela

ORDER
28.06.2022

1. Accused facing trial, Fazal Rafiq present who is charged in case FIR No. 28, Dated: 06.09.2021, U/S 324,427,337F(v),34 PPC of PS Mishti Mela, C/Orakzai for attempt to commit Qatl-i-Amd, mischief, and thereby causing damage to the amount of 50 rupees or upwards, causing hashimah to the complainant in furtherance of common intention of both the accused.
2. Briefly stated factual background of the instant case is that the complainant namely Naqib Ullah reported the matter

(79)

for attempt to commit Qatl-i-Amd, mischief, and thereby causing damage to the amount of 50 rupees or upwards, and causing hashimah by the accused in furtherance of common intention.

3. Upon which, the instant case was registered at PS: Mishti Mela, C/Orakzai on 06.09.2021 vide FIR. 28.
4. After completion of the investigation, the complete challan was submitted on 19.11.2021 to this court. The accused on bail was 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 13.12.2021, to which the accused person pleaded not guilty and claimed trial while, the absconding accused was proceeded U/S 512 Cr.P.C.
5. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;

- i. Muhammad Ibrahim, DFC as SW-01
- ii. Mr. Nasim Khan, SI, HQ Orakzai as SHO in the instant case as PW-01.
- iii. Mr. Khan Muhammad, SI, PS Kalaya as ASHO in the instant case as PW-02..
- iv. Mr. Naqib Ullah, complainant as PW-03.

REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Baqer Mela

80

- v. Mr. Shams Ur Rehman, eye-witness as PW-04.
- vi. Mr. Jamshid Ullah, Constable as PW-05.
- vii. Mr. Yahya Khan, Constable as PW-06.
- viii. Dr. Muhammad Naseem, MO, DHQ Hospital, Mishti Mela, as PW-07.
- ix. Mr. Aman Ullah, acting inspector, SHO in the instant cases as PW-08.
- x. Fazal Janan, eye-witness as PW-09.
- xi. Mr. Asif Wazir, SI/OII as PW-10.

6. In documentary evidence, prosecution has produced the following;


REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Baber Mela

- i. Complete Challan. **Ex. PW 1/1**
- ii. Copy of FIR. **Ex.PA**
- iii. Site plan **Ex.PB**
- iv. Recovery memo **Ex.PW-10/1**
- v. Card of arrest of the accused namely Fazal Rafiq s/o Fazal Khanan **Ex.PW-8/4**
- vi. Injury Sheet with respect to the Injured namely Naqib Ullah **Ex.PW-8/2**
- vii. Report of Medical officer on the back of injury sheet **Ex.PW-7/2**
- viii. Investigation Request Form **Annexure-B**
- ix. Discharge Summary of HMC, Peshawar

Annexure-A

(81)

- x. Injury Sheet with respect to the Injured
namely Shams Ur Rehman **Ex.PW-8/3**
- xi. Report of Medical officer on the back of
injury sheet **Ex.PW-7/1**
- xii. Application for police custody of the
accused Fazal Rafiq **Ex.PW-10/2**
- xiii. Another application for police custody of the
accused Fazal Rafiq **Ex.PW-10/3**
- xiv. Recovery memo **Ex.PW-10/4**
- xv. Application for issuance of warrant u/s 204
Cr.P.C against the accused Fazal Karim s/o
Fazal Khanan **Ex.PW-10/5**
- xvi. Application to FSL **Ex.PW-5/1**
- xvii. Road Certificate **Ex.PW-5/2**
- xviii. Warrant u/s 204 Cr.P.C **Ex.SW-1/1**
- xix. Application for issuance of warrant u/s 87
Cr.P.C against the accused namely Fazal
Karim **Ex.PW-10/6**
- xx. Proclamation u/s 87 Cr.P.C **Ex.SW-1/3**
- xxi. Receipt of Bilal Autos Store at Mishti Mela,
Tirah **Ex.PW-10/7**
- xxii. Report of Chemical Examiner & Serologist,
FSL, Peshawar **Ex.PK**

REHMAT MLLAH WAZIR
Senior Civil Judge
Orakzai at Baber Mela

7. Then after, on 23.06.2022, the learned APP for the state closed the evidence on behalf of the prosecution.
8. Statement of the accused on bail u/s 342 Cr.P.C was recorded wherein he neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor he wanted to produce any defence evidence in his defence.
9. The accused in reply of the question that what is your statement and why you are charged, submitted that; "He is innocent and falsely charged"
10. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the APP and counsel for the complainant heard and record perused.
11. Both the accused are charged with the offence U/S 324,427,337F(v),34 PPC. Sec. 324 PPC deals with punishment of attempt to commit Qatl-i-Amd, Sec. 427 PPC deals with mischief, and thereby causing damage to the amount of 50 rupees or upwards, Sec. 337F(v) deals with causing hurt to any person which causes hashimah and section 34 PPC deals with acts done by several persons in furtherance of common intention, each of such person is liable for that act in the same manner as if it were done by him alone.
12. Keeping in view, the record on file and the depositions of

REHMAT ULLAH WATTS
Senior Civil Judge/JM,
Orakzai at Baber Mela

PWs, the prosecution is required to prove its case against the accused beyond reasonable doubts.

13. **PW-02**, the ASHO of the concerned PS has admitted in his cross-examination that he received the Murasila at 16:50 hrs and that he is uneducated and he cannot read and write. That he narrated the Murasila to the Muharrir who incorporated the same into FIR. That his statement was recorded by the I.O on the same day at 15:00 hrs.

14. **PW-03**, the complainant/injured has admitted in his cross examination that he knows the pistol as well as the Kalashnikov specifically. Further that he did not notice anyone while firing and that he has not mentioned his report that women thrown stones upon them and that he was not present at the time of the preparation of the site plan and that he has patched up the matter with the accused and that he will have no objection if the accused is acquitted by the court.

15. **PW-04**, who is the injured/eye-witness of the occurrence, has stated that the women folk came out of the house and thrown stones upon us and the vehicle and that he got injuries as a result of the stones of the women and his vehicle damaged because of those stones. Admitted in his cross examination that his statement was not recorded by


REHMAT MULLAH WAZIR
Senior Civil Judge J.M.,
Orakzai at Baber Meta

84

the I.O and he was not present at the time of the preparation of the site plan.

16. PW-05, who is the marginal witness of the recovery memo, has admitted in his cross examination that no place of standing has been assigned to the women folk in the site plan.

17. PW-06, who took the injury sheet to the doctor, has admitted in his cross examination that his statement u/s 161 Cr.P.C has not been recorded by the I.O.

18. PW-07, the concerned Medical Officer, has admitted in his cross examination that the prescription and the injury sheet do not bear his stamp and signatures.

19. PW-09, the father of the complainant Naqib Ullah/eye-witness to the occurrence, has stated in his examination in chief that the women folk thrown stones upon us. Admitted in his cross examination that he can differentiate between pistol and Kalashnikov and that he has stated in his statement u/s 161 Cr.P.C that the accused fired with Kalashnikov and that he has not mentioned the names of the women who thrown stones upon. Further that the local police have not recovered the empty from the spot in his presence and that the police has not recorded his statement u/s 161 Cr.P.C.

M
REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Baber Mela

88

20. PW-10, the concerned I.O, has admitted that he has not mentioned in the site plan that from where the empty was exactly recovered. Later on, he stated that the empty was recovered from point 05, which is the place of the absconding accused. Further that he has not obtained FRC from NADRA which could establish the relationship of the one Hazrat Ullah with the present accused. That the mechanic who reported about the damage of the vehicle is not a registered one and that the report of the mechanic is written on the receipt of an auto store situated at Mishti Mela, Orakzai but he was brought from Kohat and that nowhere it is mentioned in my findings that the battery, tyre rod etc of the said vehicle have been damaged. That the empty was not sent to the FSL and that the blood stained garments etc were sent to FSL on 20.09.2021 while the occurrence took place on 06.09.2021 and no entry in this respect has been made by the Muharrir in the Register No. 19 of the PS.

REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Baber Mela

21. In the light of the above discussion, it is clear that the case of prosecution is full of contradictions. As the main complainant namely Naqib Ullah s/o Fazal Janan has admitted that he has not noticed anyone while firing and that he has patched up the matter with the accused and he

186

will have no objection if they are acquitted by the court. The other complainant namely Shams-Ur-Rehman, allegedly who sustained injuries and his vehicle got damaged, has stated in his examination in chief that the women folk thrown stones upon him as a result of which he got injuries and his vehicle was damaged while the maternal uncle of Hazrat Ullah started firing, as a result of which the one Naqib Ullah sustained injuries.

22. The entire case file is silent about those women who thrown stones upon the active complainant namely Shams-Ur-Rehman as they have neither been mentioned with names nor charged at any stage. Further, this active complainant has stated that his statement was not recorded by the I.O. Allegedly, the firing was made through Kalashnikov but the recovered empty is that of 30 bore pistol. Further the prosecution has not collected any piece of evidence w.r.t the damage caused to the vehicle rather there is a baseless receipt of an auto store, which by no means can be considered as sufficient proof of damage.

23. Thus, there are doubts in the evidence of prosecution and the accused is ultimately entitled to the benefits of doubts and are accordingly extended to the accused.

24. Resultantly, for the above reasons it is clear that

REHMAT ULLAH WAZIR
Senior Civil Judge, Jm,
Orakzai at Baber Mela


87

prosecution failed to bring home the guilt of the accused facing trial. Therefore, the accused namely Fazal Rafiq s/o Fazal Khanan is acquitted of the charges levelled against him. As he is on bail, his bail bonds stand cancelled and sureties are discharged from their liability of bail bonds.

25. It is pertinent to mention here that the Fazal Karim s/o Fazal Khanan is absconding. To this extent statement of DFC and statements of other prosecution witnesses are recorded. On the basis of statements of DFC and other prosecution witnesses, prima facie accused Fazal Karim s/o Fazal Khanan R/O Qoum Sheikhan, Tappa Mamozai, Village Masood Khpa is declared as "proclaimed offender" and perpetual warrant of arrest be issued against him. His name may be entered in the relevant register of the PS.

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

Announced
28.06.2022


(Rehmatullah Wazir)
Senior Civil Judge (JM),
Orakzai (at Baber Mela)

78

CERTIFICATE

mad
Eleven
Certified that this order consists of ~~four~~ (11) pages.

Each page has been read, corrected where-ever necessary and signed by me.

Dated:28.06.2022

REHMAT ULLAH WAZIR
Senior Civil Judge JM,
Orakzai (at Baber Mela)
(Rehmat Ullah Wazir)
OSCJ/JM,
Orakzai (at Baber Mela)