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FORM "A"
FORM OF ORDER SHEET

IN THE COURT OF SYED ABBAS BUKHARI, CIVIL JUDGE/JUDICIAL MAGISTRATE/CJ-II, KALAYA ORAKZAI
Case Title: _____ Vs _____

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order 27	13.02.2024  13.02.2024 SYED ABBAS BUKHARI Civil Judge/JM-II Tehsil Courts Kalaya	<p>APP for the state present. Accused facing trial present. Complainant present.</p> <p>Vide this order I intend to dispose of instant application filed u/s 249-A Cr.P.C.</p> <p>Arguments already heard and record perused.</p> <p>Now on perusal of the available record and valuable assistance of the learned counsels for the parties and learned APP for the stated, this court is of the humble view that accused petitioners through instant application allege that a series of contradiction exist in the statements of PWs and furthermore, there are serious dents in the evidence so for recorded by the prosecution, which make the case of prosecution one of further inquiry. Hence there is no probability of conviction of accused at later stage after recording of entire/remaining evidence of prosecution. Contrary to this learned counsel for the complainant and APP for the state vehemently opposed the instant application and argued that accused have been directly charged in the instant case. They further argued that there exist no dent in the prosecution evidence and furthermore, the application in hand is pre-mature, hence the prosecution may kindly be allowed to produce their remaining evidence in order to bring home the charge against accused facing trial.</p> <p>In given circumstances perusal of the available record would reveal that as per contents of the Mad no.12, the complainant narrated to the police in the PS that on 22.07.2022 he was grazing his cow at Zaridar and at 17:00 hours accused facing trial namely Junaid and Mastaj sons of Tanab Ali came duly armed with pistol and knife and attacked him with knife but he luckily escaped unhurt while his left side pocket and purse were torn. On further blows of knife he sustained injuries on his head and middle finger of right hand. Thereafter he succeeded to grab the accused and took the knife from him.</p> <p>In given circumstances, perusal of the evidence, so for recorded by the prosecution, in the instant case would</p>

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reveal that doctor in the instant case appeared as PW-01 in the witness box and had deposed in cross examination that *"it is correct that there is cutting on the time of report sent by the police and the timing has been re-written as 09:00PM. The small bruise on the top of head and abrasion on the left middle finger can be caused due to falling on earth. The alleged injury was in normal condition"*. It is also worth mentioning here that complainant has alleged in Mad no.12 that he sustained injuries through knife while in his medical report it has been mentioned by doctor that *"no weapon used. May be injured with finger nail"*.

As for as time of occurrence and time of handing over of Naqal Mad to ASHO is concerned, it is pertinent to mention here that the complainant has stated in Mad no.12 that on 22.07.2022 at 17:00 hours the accused came to the spot and attacked him while PW-02, Moharrir of PS Kuraiz, had deposed in his cross examination that he handed over the naqal mad to ASHO at about 04:00PM (16:00 hours) i.e. one hour prior to the occurrence. This major contradiction in the statement of complainant and PW-02 make the case of prosecution one of further inquiry and create serious dents in the prosecution case.

Furthermore, PW-04 has stated in his cross examination that he reached the hospital at 09:00PM while in medical report time of arrival of injured to the hospital has been mentioned as 08:50PM.

It is also worth mentioning here that as per medical report the nature of injury is simple while complainant had alleged in Mad no.12 that he got injured with knife, in circumstances the question arise that how a wound caused through knife may be declared as simple wound by the doctor.

Moreover, no independent witness has been cited as witness in the instant case and thus prosecution failed to comply with the mandatory provisions of section 103 Cr.P.C.

Hence, in the light of above discussion, I am of the opinion that case of prosecution is full of dents and is one of further inquiry. Furthermore, there exist vast contradiction in the statements of PWs. Hence there is no probability of the

SYED ABBAS BUKHARI
Civil Judge/JM-II
Tehsil Courts Kalaya

13.02.2024

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conviction of accused facing trial at later stage after recording of entire prosecution evidence rather it would be a futile exercise and would be wastage of precious time of this court. Accordingly the application filed u/s 249-A Cr.P.C. is hereby allowed and accused facing trial namely Junaid Ali and Mastaj Ali sons of Tanab Ali are hereby acquitted U/S 249-A Cr.P.C from the charges levelled against them. Their bail bonds stand cancelled and sureties are discharged from the liability of bail bonds. Case property, if any, be kept intact till period of appeal. File be consigned to the record room after its necessary completion and compilation.

Announced
13.02.2024


Syed Abbas Bukhari
Judicial Magistrate-II
Tehsil Courts, Kalaya, Orakzai