

40

IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE -I
TEHSIL KALAYA, DISTRICT ORAKZAI

Case No.....76/2 of 2021.

Date of Institution.....13.11.2021.

Date of Decision.....29.11.2022.

State through:

SHO Muhammad Naseem Khan, PS Mishti Mela.

.....**Complainant**

VERSES

Sajid Ullah alias Hadi Gul S/O Gul Shir, R/O Qaum Mishti, Village
Shalzara, Tehsil Central, District Orakzai.

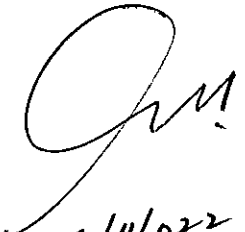
.....**Accused**

Case FIR No. 36, Dated 20.10.2021 U/S 212 PPC, PS Mishti Mela.

JUDGEMENT
29.11.2022

Through this judgement, I am going to dispose of the instant case registered against accused Sajid Ullah vide case FIR No. 36, Dated 20.10.2021 U/S 212 PPC, PS Mishti Mela.


1. Brief facts as per contents of FIR are that on 20.10.2021 at 12:00PM, SHO/complainant SI Muhammad Naseem, PS Mishti Mela, accompanied with by other police nafri was in search of accused Mumtaz Khan wanted in case FIR No. 35 Dated 17.10.2021 U/S 302 PPC, PS Mishti Mela. He received credible information that accused Mumtaz Khan wanted in the above cited case was harbored/taken


29/11/2022
ZAHIR KHAN
Civil Judge IM
Kalaya Orakzai

41

away by accused facing trial namely Sajid Ullah alias Hadi Gul in his motorcar bearing registration No. LV 257, Islamabad. Accused Sajid Ullah is uncle of wanted accused Mumtaz Khan. He was providing shelter etc to the wanted accused. Later on, on 20.10.2021 accused facing trial was arrested along with motorcar mentioned above. Murasila was sent through Constable Yaseen Ullah No. 41 to PS for registration of the case. On the strength of Murasila, the instant case was registered against the accused. Motorcar was taken into possession in presence of marginal witnesses. The accused, motorcar and relevant record was handed over to IO for investigation.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused appeared before the court and legal formalities under Section 241-A Cr. PC were complied with. Accused was formally indicted. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced four (04) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.
5. PW-01, is SHO/complainant. He stated that on the day of occurrence, i.e., 20.10.2022, he along with Constables Sami Ul Haq, Yaseen Ullah, Muhammad Saleem and Awal Muhammad along with



29/11/2022

ZAHIR KHAN 5.
Civil Judge JM
Kalaya Orakzai

42

other police nafri was in search of accused Mumtaz Khan wanted in case FIR No. 35 Dated 17.10.2021 U/S 302 PPC, PS Mishti Mela. He received credible information that accused Mumtaz Khan wanted in the above cited case was harbored/taken away by accused facing trial namely Sajid Ullah alias Hadi Gul in his motorcar bearing registration No. LV 257, Islamabad. Accused Sajid Ullah is uncle of wanted accused Mumtaz Khan. He was providing shelter etc to the wanted accused. Murasila was sent through Constable Yaseen Ullah No. 41 to PS for registration of the case. Murasila is Ex. PA. Later on, on 20.10.2021 accused facing trial was arrested along with motorcar mentioned above. Motorcar was taken into possession vide recovery memo Ex. PW-1/1 in presence of marginal witnesses. Accused was formally arrested vide card of arrest Ex. PW-1/2. The accused, motorcar and relevant record was handed over to IO for investigation. The IO prepared site plan on his pointation. After completion of investigation, complete challan was submitted against accused. The same is Ex. PW-1/3.

PW-02, is the statement of Constable Saleem Khan. He is one of the marginal witnesses to the recovery memo exhibited as Ex. PW-1/1 vide which SHO/complainant recovered and took into possession motorcar bearing No. LV 257, Islamabad, white colour from the



 29/11/022

ZAHIR KHAN
 Civil Judge (M)
 Kalaya Orakzai

43

possession of accused Sajid Ullah in his presence. His statement was recorded by IO U/S 161 Cr. PC.

- 7. PW-03**, is the statement of Muhammad Ayub MHC. He stated that on the relevant day, he was present in PS. He received Murasila through Constable Yaseen Ullah from SHO/complainant. On the strength of Murasila, he registered case FIR No. 36 dated 20.10.2021 U/S 212 PPC and handed over the copy of FIR to the IO for investigation. The SHO returned to the PS at about 03:00 PM and handed over to him recovery memo, card of arrest, vehicle bearing No. LV 257, Islamabad along with key and accused. He made entry in the register-19 Ex. PW-3/1 and accused was locked up. His statement was recorded by the IO U/S 161 Cr. PC.
- 8. PW-04**, is the statement of SI Abdul Manaf. He is IO of the case. He stated that he prepared site plan Ex. PB on pointation of Muhammad Naseem SHO. He recorded statements of marginal witnesses U/S 161 Cr. PC. Accused was present in the lock up of PS. Motorcar bearing No. LV-257, Islamabad was also parked in PS. He interrogated the accused. Accused was produced before Ilaqa Magistrate for obtaining his physical custody vide his application Ex. PW-4/1. Accused was released on bail. Statement of accused was recorded U/S 161 Cr. PC. Case property i.e., Motorcar bearing No. LV-257, Islamabad was handed over to petitioner Naveed Khan by the court



29/11/22

ZAHIR KHAN
Civil Judge JM
Kalaya Orakzai

44

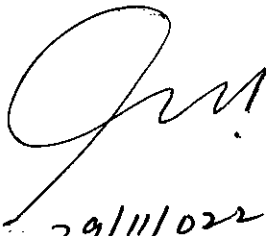
of Learned Senior Civil Judge, Orakzai vide order dated 27.10.2021. After completion of investigation, case file was handed over to SHO concerned for submission of complete challan against the accused.

9. PWs Sami Ul Haq and Yaseen Ullah were abandoned by prosecution and closed its evidence.
10. Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he pleaded not his guilt and did not wish to be examined on oath. He opted not to produce defence evidence.
11. Record transpires that the alleged occurrence took place on 20.10.2021 at 12:00PM at Hassan Zai, Shalzara, Central Orakzai. It was reported through Murasila at 12:10PM and FIR was registered at 12:50PM. As per contents of memo report Ex. PA and FIR Ex. PZ, there was credible information that accused of murder case namely Mumtaz Khan S/O Khaista Nawab was harboured and concealed by accused facing trial and he helped him in making his escape good. Source of information regarding involvement of accused has not been disclosed. Accused facing trial was not arrested in the motorcar allegedly driven by accused facing trial. PW-01, who is complainant of the case, stated in his cross examination that he has not seen accused facing trial taking away accused of the murder case in his motorcar from the spot. The motorcar is not ownership of accused facing trial. Per Ex. PZ, murder case was registered against accused


29/11/22
ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

45

Mumtaz on 17.10.2021 while the instant occurrence took place on 20.10.2021 which is three days after the registration of the murder case. It is alleged that accused Mumtaz Khan was taken away from the spot by accused facing trial in his motorcar on the day of occurrence of murder case but from 17.10.2021 till 20.10.2021 neither any raid was conducted at the house of accused facing trial nor any case was registered against him during these days. Constable Saleem Khan, one of the marginal witnesses to the recovery memo Ex. PW-1/1, stated in his cross examination that they reached the spot at 12:00PM. Murasila was drafted by SHO/complainant after 15/20 minutes of the occurrence. Per Ex. PA (Murasila) and PZ (copy of FIR), the occurrence took place at 12:00PM and it was reported at 12:10PM while PW-02, by stating that they reached the spot at 12:00PM and Murasila was drafted after 15/20 minutes of the occurrence, contradicted the record. PW-02, stated that accused facing trial and motorcar was present at the spot at the time of arrival of IO but PW-04, who investigated the case stated that accused and case property was not present at the spot at the time of spot inspection. SHO/complainant, who deposed as PW-01 stated that he has not seen accused facing trial taking away/harboursing accused of murder case. On the other hand, PW-04 (IO) stated that per his investigation, accused of murder case was seen with accused facing


29/11/2022
ZAHIR KHAN
Civil Judge JM
Kalaya Orakzai

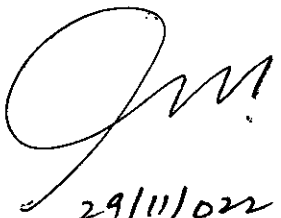
46

trial in the motorcar by SHO/complainant on the day of occurrence of murder case. Constable Yaseen Ullah FC No. 41, who was allegedly present with SHO complainant at the time of occurrence and he took murasila from the spot to PS, was not produced before the court as prosecution witness.

12. There are material contradictions in the statements of PWs. Accused facing trial was not arrested at the spot while taking away accused of murder case. Motorcar in question is not the ownership of accused. Source of information regarding involvement of accused in the commission of the offence has not been disclosed. No independent witness has been associated. Accused has not confessed his guilt before the court. The recovered motorcar is the ownership of one Naveed Khan S/O Riaz Khan but his statement has not been recorded by the IO U/S 161 Cr.PC.

13. Prosecution was bound to prove its case against the accused beyond any shadow of doubt but there are so many dents and doubts in the prosecution case benefit of which goes to the accused facing trial. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.

As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Sajid Ullah alias Hadi Gul is hereby acquitted from the charges leveled against him.


29/11/22
ZAHIR KHAN
Civil Judge
Kalaya Orakzai

14.

Accused was produced on Zamima Bay. Zamima Bay stands cancelled. He be released, if not required in any other case. Sureties of the accused are discharged from their liability. Case property i.e., motorcar bearing No. LV-257, Islamabad has already been handed over on Superdari to its owner namely Naveed Khan.

- 15.** Case file be consigned to record room after its completion and necessary compilation.

Announced
29.11.2022



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai

CERTIFICATE

It is certified that this judgment consists of 08 pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai