

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

Case No. 57/2 of 2021

Case FIR No. 81 Dated: 23.06.2021 324, 353, 186, 189, 337-F(v) PPC,
PS Kalaya


Order. No. 13

24.10.2022

APP for the state present. Accused Abdul Manan and Irfan Ullah on bail present. Arguments on application U/S 249-A Cr. PC already heard and record gone through.

Brief facts of the case are that on the day of occurrence, ASI, Aziz Ur Rehman, incharge Mandra Khel Chek post, Orakzai along with other police nafri was present on barricade at Madra Khel check post, Lower Orakzai. He received spy information that someone is transporting Chars from Tirah to an unknown place via Kalaya road. In meanwhile, a Motorcycle coming from Kalaya, was signaled to stop, person on back seat of the Motorcycle opened fire with his pistol with intention of killing the police personnel for getting success in escape. Resultantly, Constable Asal Khan belt No. 343 sustained injuries on his person while the remaining personnel escaped unhurt. The incident was reduced into Murasila which was later on, converted to FIR No. 81, dated 23.06.2021 registered U/S 324, 353, 186, 189/34 PPC, PS Kalaya. FIR was registered against unknown accused. Later on, on 09.07.2021, statement of complainant ASI Aziz Ur Rehman was recorded U/S 164 Cr. PC wherein he charged accused facing trial for commission of the offence.

Accused were arrested and later on, released on bail. Complete challan was put in court against the accused. Accused were summoned. They appeared before the court. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and


ZAHIR KHAN
Civil Judge/Jr.
Orakzai
24/10/22

claimed trial. Prosecution was allowed to produce evidence against accused. Prosecution produced three witnesses.

Injured Constable Asal Khan was examined as PW-01. He stated that on the eventful day, he was present with ASI Aziz Ur Rehman, Incharge Mandra Khel check post, Lower Orakzai. They had improvised barricade when a motorcycle was signaled to stop. There were two persons on the motorcycle. The person sitting on the back seat of the motorcycle opened fire, resultantly, he got hit and sustained injuries on his person. He was shifted to the KDA, hospital Kohat for treatment. As he was injured, therefore, he had not recognized/identified any accused. Even today, he does not know who are the actual culprits.

Constable Nikzad Ali, appeared and deposed as PW-02. He stated that he is one of the marginal witnesses to the recovery memo Ex. PW-2/1 vide which the IO/SI Aftab Hassan took into possession blood-stained earth from the place of injured Constable Asal Khan No. 343 and sealed the same into parcel No. 1. Similarly, the IO recovered and took into possession two empties of 30 bore from the place of unknown accused in his presence and the same was sealed into parcel No. 2. He has seen the recovery memo which is correct and correctly bears his signature. He has also taken blood-stained earth, two empties of 30 bore and blood-stained clothes of injured to FSL for examination.

ASI/Complainant Aziz Ur Rehman was examined as PW-03. He stated that during the days of occurrence, he was posted as ASI in operation

branch of PS Kalaya. On the day of occurrence, information was received regarding smuggling of narcotics from Tirah to Kalaya through motorcycle. Barricade was improvised at Mandra Khel check post. A

24/10/2022

ZAHIR KHAN
Civil Judge JM
Kalaya Orakzai

motorcycle was coming which was signaled to stop. There were two persons on the motorcycle. The person sitting on the seat of motorcycle opened fire with his pistol in order to kill them, resultantly, constable Asal Khan No. 343 got hit and sustained injuries while they remained unhurt. The accused were unknown. Injury sheet of injured was prepared and sent to KDA Hospital, Kohat under the escort of constable Jawad. Murasila was drafted at the spot and sent to PS through constable Libas Khan. Murasila is Ex. PA. On arrival of the IO to the spot, he pointed out the spot to IO who prepared site plan on his pointation. On 09.07.2021, his statement was recorded U/S 164 Cr. PC wherein he has stated that initially the accused were unknown and after due probe and satisfaction, he came to know that accused Abdul Manan and accused Irfan Ullah had committed the offence.

PW-01, stated in his cross examination that his statement was recorded by IO U/S 161 Cr. PC. As he remained hospitalized in KDA, Kohat and LRH, therefore, he does not remember the exact date when his statement was recorded by IO. It is correct that there is no source of light at the top of check post Mandra Khel. Similarly, there is no source of light on the main road where barricade was improvised. He has not mentioned in his statement that complainant ASI Aziz Ur Rehman had a torch with him. He has not seen any torch/source of light with complainant at the time of barricade. His statement was recorded by IO at his house. It is correct that no identification parade of the accused was conducted. As it was dark, therefore, they have not mentioned face description of the culprits in the FIR. Even today, he does not know who are the actual culprits. He does not charge accused facing trial for commission of the offence.



24/10/2022

ZAHIR KHAN
Civil Judge JM
Kalaya Orakzai

PW-02, stated in his cross examination that they visited the spot on 23.06.2021 at about 11:00AM. They were four officials including driver. They returned to the PS at about 12:30 PM. Site plan was not prepared in his presence. The parcels containing blood-stained earth and two empties of 30 bore were taken to the FSL on 28.06.2021. He signed the recovery memo at the spot on 23.06.2021 at about 12:00 PM.

PW-03, stated in his cross examination that it is correct that no identification parade was conducted. It is also correct that he has not mentioned source of information regarding the involvement of accused in the commission of the offence in his 161 and 164 Cr. PC statements. It is correct that there was no light at the spot at the time of occurrence. It was a night occurrence. He is illiterate. He cannot read and write. Murasila was drafted by Moharrir on his dictation. It is correct that he has not mentioned this fact in the Murasila.

Perusal of record reveals that initially the case was registered against the unknown accused and later on, the present accused facing trial were nominated in the case. It was a night occurrence. PW-01 and PW-03 in their cross examination admitted that there was no light at spot at the time of occurrence. They also stated that no identification parade of the accused was conducted. Source of information regarding involvement of accused in the commission of offence has not been disclosed by complainant/ASI (PW-03) as well as injured/PW namely Asal Khan (PW-01). PW-03 in his cross examination stated that he is illiterate. He cannot read and write.

Murasila was drafted by Moharrir on his dictation. He also stated that it is correct that he has not mentioned this fact in the Murasila. Murasila Ex.

PA bears signature of complainant ASI. Statement of complainant ASI was

24/10/2022

ZAHIR KHAN
Civil Judge JM
Kalaya Orakzai

recorded U/S 164 Cr. PC on 09.07.2021. He has thumb impressed the statement Ex, PW-3/1. Furthermore, per contents of Murasila and FIR, Moharrir of PS Kalaya has not been shown present with the complainant party at the time of occurrence.

More so, no forensic evidence is available on file to connect the accused with commission of offence. Accused have not confessed their guilt before the court. No recovery has been affected despite two days physical custody of accused facing trial. Per record, there is no criminal history of accused facing trial.

Keeping in view the above facts and circumstances, it is held that 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 are acquitted from the charges levelled against them. They are on bail. Their sureties stand discharged from their liability.

Case property be dealt in accordance with the law.

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

Announced.
24.10.2022



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