

(62)

**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL JUDGE/JM,
DISTRICT ORAKZAI**

Case No.....23/2 of 2022.

Date of Institution.....21.10.2022.

Date of Decision.....29.02.2024.

State through:

Asif Khan S/O Noor Habib, R/O Qaum Malakhel, Dabori, District Orakzai

.....**Complainant**

VERSES

1. Noorab Khan S/O Khiyal Bat Khan,
2. Siyal Muhammad S/O Ghulam Muhammad,
3. Zahir Muhammad S/O Shor Muhammad,
4. Faiz Muhammad S/O Khiyal Muhammad all residents of Qaum Mala Khel, Kaski Zar District Orakzai

.....**Accused Facing Trial**

Mad No.11, Dated 19.05.2022, U/S 324/34 PPC, PS Dabori

JUDGEMENT

29.02.2024

Through this judgement, I am going to dispose of the instant case registered against accused Noorab Khan and three others vide Mad No. 11, Dated 19.05.2022 U/S 324, 34 PPC, PS Dabori

1. Brief facts as per contents of Mad report are that, on 19.05.2022 at 19:20 hours, complainant Asif Khan S/O Noor Habib reported the matter in PS Dabori that on the eventful day at about 18:30 hours Zahir Muhammad S/O Shor Muhammad, Siyal Muhammad S/O Ghulam Muhammad and Faiz Muhammad S/O Siyal Muhammad were busy in ploughing the disputed property through their personal tractor. Meanwhile, he went near the tractor driver namely Faiz

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BAKHT ZADA
Senior Civil Judge/JM
Orakzai at Baber Mela

(53)

Muhammad and told him that the property is disputed and his brother Speen Gul has gone to the PS to meet SHO, therefore, wait till his arrival from the Police Station. Meanwhile, Zahir Muhammad came from the back side and pushed the complainant and started fighting with him and at the same time, Norab Khan S/O Khial Bat Khan, his co-villager started firing, due to which the tractor got hit and he escaped to save his life. Motive for the occurrence is dispute over the landed property. He charged accused Noorab Khan for beating and making firing at him. He also charged accused Siyal Muhammad and Faiz Muhammad for beating him and ploughing the disputed property. The report is endorsed by Speen Gul by putting his thumb impression and signature. The report is cross version of FIR No. 14, dated 19.05.2022, U/S 324/427/34 PPC. The site plan already was prepared on his pointation. Accused were arrested in the instant case and their cards of arrest were issued.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused were formally indicted on 14.11.2022. They pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced as many as five (05) witnesses to prove its case against the accused and prosecution closed its evidence.
5. PW-01, is the statement of **Gul Asghar SI**. He stated that on 19.05.2022, the complainant namely Asif Khan came to the PS and

Signature
BAHAT ZADA
 Senior Civil Judge/JM
 Orakzai at Baber Mela

64

reported the occurrence, he incorporated his report in shape of Naqal mad No. 11.

6. SHO, PS Dabori, **Imtiaz Khan** deposed as PW-01. He stated that on 23.05.2022, he sought legal opinion from the office of DPP, Orakzai after completion of inquiry in Naqal mad No. 11, dated 19.05.2022 vide his application Ex. PW-2/1. On 26.06.2022, he submitted the complete challan against the accused facing trial. Challan form is Ex. PW-2/2.

7. PW-03, is the statement of **Muhammad Ishaq Oll**. He is IO of the case. He has prepared site plan Ex. PB. The accused were avoiding their lawful arrest and in this connection a raid was conducted at the house of the accused. The house search memo is Ex. PW-3/1. Final report in the inquiry was issued which is Ex. PW-3/2. Accused Noorab, Siyal and Zahir Muhammad were arrested on 12.06.2022 and their card of arrest is Ex. PW-3/3. They were produced for getting their 05 days physical custody before the Magistrate vide application Ex. PW-3/4, but the same was turned down and the accused were sent to judicial lock-up. Warrant u/s 204 Cr.P.C was obtained vide application Ex. PW-3/5. Warrant u/s 204 Cr.P.C is Ex. PW-3/6. Formal card of arrest of accused Faiz Muhammad is Ex. PW-3/7. He was cross-examined at length by the counsel.

8. PW-04, is the statement of **Speen Gul**. He stated Asif Khan is his brother. On 19.05.2022, he reported the incident to the local police and his report was reduced into writing in shape of Naqal mad No.

Orakzai
BAKHT ZADAY
Senior Civil Judge/JM
Orakzai at Baber Mela

65

11, DD: 19.05.2022 in my presence. The report of his brother is correct and he also endorsed the same being verifier.

- 9. PW-05: Asif Khan S/O Noor Habib was examined as PW-05. He is complainant of the case. He has repeated the whole story as alleged in Naqal Madd No: 11, Dated: 19.05.2022. The IO prepared site plan Ex.PB at his pointation. His statement was subjected to cross-examination by the counsel for the accused.
- 10. Afterwards, statements of accused U/S 342 Cr. PC were recorded wherein they pleaded not their guilt and did not wish to be examined on oath. They opted not to produce defense evidence.
- 11. Prosecution closed its evidence. Arguments of the learned Sr. PP for the state, counsel for the complainant and counsel for the accused heard and available record perused.
- 12. It is the case of prosecution that complainant Asif Khan reported vide Madd No. 11; Dated: 19.05.2022 at 19:20 hrs in the PS that on the eventful day at about 18:30 hrs, accused Zahir Muhammad s/o Shor Muhammad, Siyal Muhammad s/o Ghulam Muhammad and Faiz Muhammad s/o Siyal Muhammad were busy in ploughing the disputed property through their personal tractor. That complainant went near the tractor driver Faiz Muhammad and asked him that the property is disputed and his brother Speen Gul has gone to PS to meet SHO in this regard. That the accused were asked not to plough the disputed property till arrival of police but in the meanwhile Zahir Muhammad came from the back side and pushed him and started fighting with them. At the same time, accused Noorab s/o Khyal Bat

Signature
BAKHT ZADAN
 Senior Civil Judge/JM
 Orakzai at Baber Melan

66

State Vs Noorab Khan etc

Mad.No.11, Dated 19.05.2022, U/S 324/34 PPC, PS Dabori

Khan started firing at him due to which the tractor got hit and he escaped to save his life. Motive for the occurrence is dispute over the landed property. He charged accused Zahir Muhammad, Siyal Muhammad and Faiz Muhammad for the commission of offence and hence the instant report which is the cross version of case FIR No.14, Dated: 19.05.2022, registered u/s 324/427/34 PPC. Naqalmad No. 11, Dated: 19.05.2022 and statement of complainant Asif Khan recorded as PW-05, clearly shows that complainant was allegedly present near the tractor and accused, Zahir Muhammad and Siyal Muhammad started beating him while coming from the back side. It is also stated that they were duly armed with weapons and they also stated firing at him. It is not appealing to prudent mind that when the complainant was alone in the middle of the field near tractor and the accused were armed with fire arms then how the complainant got escaped unhurt when he was totally at the mercy of the accused facing trial and, in such situation, charging the accused facing trial u/s 324 PPC is not justified. The perusal of record further shows that during the course of spot inspection, a single empty has not been recovered from the place of occurrence as evident from site plan Ex.PB. The investigation officer during his statement as PW-03 has categorically stated that he has prepared site plan Ex.PB at the instance and pointation of the complainant Asif Khan, but complainant Asif Khan during his cross-examination has stated that he was in jail when the police prepared the site plan and the same has not been prepared at his instance, which makes the proceedings of

Zahir
BAKHT ZADA
Senior Civil Judge/JM
Orakzai at Baber Mela

(67)

the case doubtful. This fact is further getting support from another instance which is that complainant Asif Khan has reported the matter at 19:20 hrs while prior to him FIR No. 14, Dated: 19.05.2022, u/s 324/427/34 PPC was already registered against him in the same PS at 19:00 hrs and when the complainant Asif Khan went to PS for registration of his report he was arrested in the said FIR and it is nowhere mentioned in the whole investigation proceedings that complainant Asif Khan was taken to the place of occurrence by the police for preparation/pointation of the site plan. No independent witness of the occurrence has verified that the alleged occurrence has taken place in the same mode and manner even PW-04 Speen Gul has not mentioned the details of occurrence in his statement. Neither any confession or admission has been made nor recovery of any fire arm/weapon of offence has been effected despite of the fact that police party have raided the house of the accused and have carried out search vide search memo Ex.PW-3/1. No empty has been recovered from the place of occurrence.

- 13.** The case of prosecution is full of doubts. I, therefore, acquit the accused Noorab Khan, Faiz Muhammad, Zahir Muhammad and Siyal Muhammad from the charges leveled against them. They are on bail. Their sureties are discharged from their liability. Case property, if any be kept intact till the expiry of period provided for revision/appeal.

BAKHT ZADA
Senior Civil Judge/JM
Orakzai Baber Malak

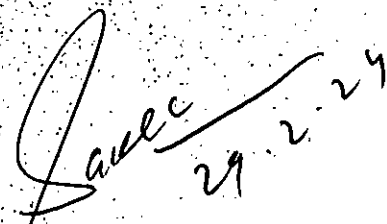
68

State Vs Noorab Khan etc

Mad No:11, Dated 19.05.2022, U/S 324/34 PPC, PS Dabori

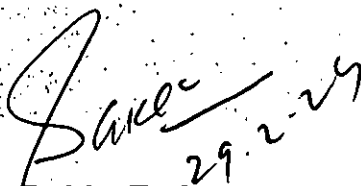
14. Case file be consigned to Record room after its completion and necessary compilation.

Announced
29.02.2024


Bakht Zada
Senior Civil Judge/JM
Orakzai

CERTIFICATE

It is certified that this judgment consists of 07 pages. Each page has been dictated, read, corrected and signed by me.


Bakht Zada
Senior Civil Judge/JM
Orakzai