

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

Case No.....22/2 of 2022.  
Date of Institution.....21.10.2022.  
Date of Decision.....29.02.2024.

**State through:**

Faiz Muhammad S/O Khiyal Muhammad, R/O Tamees Banda, Hangu  
.....**Complainant**

**VERSES**

1. Asif Khan S/O Noor Habib,
2. Asghar Khan S/O Umar Khan both residents of Qaum Mala Khel,  
District Orakzai

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

Case FIR No. 14, Dated 19.05.2022, U/S 324, 427/34 PPC, PS Dabori

**JUDGEMENT**  
**29.02.2024**

Through this judgement, I am going to dispose of the instant case registered against accused Asif Khan and one other vide case FIR No. 14, Dated 19.05.2022 U/S 324, 427/34 PPC, PS Dabori

- I. Brief facts as per contents of FIR are that, on 19.05.2022, at 18:30 hours complainant namely Faiz Muhammad was ploughing his personal property namely Shekh Kadda, Kaski Zar through tractor, while his uncle namely Siyal Muhammad S/O Ghulam Muhammad and cousin Zahir Muhammad S/O Shor Muhammad were sitting at one side of the property. After ploughing for sometime, one Asghar Khan S/O Umar Khan and Asif Khan S/O Noor Habib his co-villagers suddenly appeared and started firing at them with their

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weapons. Luckily, they escaped unhurt but their tractor got hit and damaged. Accused after committing the offence escaped from the place of occurrence. The occurrence is witnessed by his uncle Siyal Muhammad and cousin Zahir Muhammad beside him. Motive for the occurrence is dispute over the landed property. A civil suit regarding the disputed is pending in the court of Senior Civil Judge, Orakzai at Baber mela. Complainant along with his uncle Siyal Muhammad reported the matter to the local police of PS Dabori at police station at 19:00 hours. The report was endorsed by Siyal Muhammad, uncle of the complainant, by putting his thumb impression and hence, the instant FIR.

2. After completion of investigation, interim and complete challan were 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 eight (08) witnesses to prove its case against the accused, while rest of the PWs were given up by prosecution and closed its evidence.
5. SHO, PS Dabori, Imtiaz Khan deposed as PW-01. He stated that the complainant namely Faiz Muhammad came to the PS and reported the matter regarding the occurrence. He incorporated the report of the complainant in the shape of FIR No. 14, dated 19.05.2022, U/S 324, 427/34 PPC which is Ex. PA. After registration of FIR, he read

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over the contents of the same to the complainant and he signed the same as a token of its correctness. The Siyal Muhammad (uncle of complainant) verified the contents of the report of the complainant and he also thumb impressed the same. After registration of FIR, he handed over the copy of FIR to the IO for investigation. Similarly, he arrested the accused namely Asif Khan on the same day and issued his card of arrest which is Ex. PW-1/1, on 02.06.2022, he submitted interim challan in the instant case which is Ex. PW-1/2. On 26.06.2022, he submitted complete challan against the accused which is Ex. PW-1/3.

**6. PW-02,** is the statement of Constable Kaleem Ullah. He stated that I along with co-marginal witness Muhammad Ismail were present with IO on the spot. During spot inspection, IO recovered and took into possession through recovery memo one Tractor without number and registration along with plow which has bullet hitting marks on left side of tyre and body of tractor. Recovery memo is Ex. PW-2/1. The tractor handed over to complainant Faiz Muhammad on Superdari vide order dated 30.05.2022. The order is placed on file. Superdari order is Ex. PW-2/2. His statement was recorded by the IO U/S 161 Cr. PC.

**PW-03,** is the statement of Abdullah MHC. He stated that he was present in the PS. OII Muhammad Ishaq handed over to him tractor without registration number and documents. He made entry in register-19. Thereafter, he parked the said tractor in the side of the

  
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PS. His statement was recorded was recorded by the IO U/S 161 Cr. PC.

8. Muhammad Ishaq, SI, was examined as PW-04. He stated that after registration of FIR, investigation was handed over to me. He proceeded to the spot and prepared site plan Ex. PB at the instance of complainant Faiz Muhammad wherein the points of the parties have been correctly recorded. During spot inspection, he took into possession a Tractor red colour without number, upon inspection two bullet marks were observed right side of the body while one bullet mark on the tire. The Tractor was taken into possession vide recovery memo already exhibited as Ex. PW-2/1. The same was later on handed over to complainant Faiz Muhammad on Superdari vide order dated 30.05.2022 of this Hon'ble Court. He also took picture of the bullet marks of the Tractor and placed the same on Judicial file which are Ex. PW-4/1 to Ex. PW-4/3. He produced accused Asif Khan before the Judicial Magistrate for obtaining physical custody vide application Ex. PW-4/4 which was turned down and accused was sent to Judicial Lock-up. Since accused Asghar Khan was avoiding his lawful arrest, he applied for obtaining his warrant of arrest U/S 204 Cr. PC vide his application Ex. PW-4/5, which was accordingly issued. The report whereof is Ex. PW-4/6. On 21.06.2022, accused Asghar Khan produced his interim pre-arrest bail order. He formally arrested accused Asghar Khan and issued his card of arrest Ex. PW-4/7. Later on, his BBA was confirmed dated 25.06.2022. He has also investigated the cross version of instant case.

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He has placed on file Mechanic/expert report regarding the estimated amount of repair which is incurred upon the damaged Tractor. Such report is Ex. PW-4/8. He recorded statement of PWs U/S 161 Cr. PC.

9. Faiz Muhammad was examined as PW-05. He is complainant of the case. He stated that he on 19.05.2022, at 18:30 hours he was ploughing his personal property namely Shekh Kadda, Kaski Zar through tractor while his uncle namely Siyal Muhammad S/O Ghulam Muhammad and cousin Zahir Muhammad S/O Shor Muhammad were sitting at one side of the property. After ploughing for some time, one Asghar Khan S/O Umar Khan and Asif S/O Noor Habib his co-villages suddenly appeared and started firing at us with firearms. Luckily, they escaped unhurt from their firing while the tractor got hit with their firing and damaged. Accused after committing the offence escaped from the place of occurrence. The occurrence is witnessed by his uncle Siyal Muhammad and cousin Zahir Muhammad beside me. Motive for the occurrence is disputed over the landed property. A civil suit regarding the disputed is pending in the court of Senior Civil Judge, Orakzai at Baber mela. He along with his uncle Siyal Muhammad reported the matter to the local police of PS Dabori at police station at 19:00 hours which is endorsed by his uncle Siyal Muhammad by putting his thumb impression. Uncle of complainant namely Siyal Muhammad verified the contents of FIR. On the same day the investigation officer prepared site plan on his pointation.

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**10.** Siyal Muhammad S/O Ghulam Muhammad was examined as PW-06. He stated that he was present at the place of occurrence. Accused Asif Khan S/O Noor Habib and Asghar Khan S/O Umar Khan their co-villagers came there and started firing at them due to which their tractor got hit and damaged while luckily, they escaped unhurt. The occurrence is witnessed by him and thereafter Faiz Muhammad reported the matter to the police and he endorsed the report of the complainant by putting his thumb impression on the same.

**11.** Zahir Muhammad S/O Shor Muhammad was examined as PW-07. He stated that he was present at the place of occurrence. Accused Asif Khan S/O Noor Habib and Asghar Khan S/O Umar Khan their co-villagers came there and started firing at them due to which their tractor got hit and damaged while luckily, they escaped unhurt. The occurrence is witnessed by him and thereafter Faiz Muhammad reported the matter to the police.

**12.** Amin Ullah was examined as PW-08. He stated that he is mechanic at Hangu. He has examined the tractor being No. PK-9138, chassis No. 00990-78, Engine No. 565786-F in the instant FIR prepared a receipt Ex. PW-4/8 by mentioning all the expenses. The total expenses mentioned are Rs. 75000/-.

**13.** PWs Saif Ur Rehman OII and Constable Muhammad Ismail weres abandoned by prosecution and closed its evidence.

**14.** 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.

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15. Arguments of the learned Sr. PP for the state, counsel for the complainant and counsel for the accused heard and available record perused:

16. It is the case of the prosecution that complainant Faiz Muhammad along with his uncle Siyal Muhammad on 19.05.2022 at 19:00 hours reported to the local police of PS Dabori in the police station that he was busy in ploughing his field situated at Shekh Kadda, Kaski Zar while his uncle Siyal Muhammad S/O Ghulam Muhammad, his cousin Zahir Muhammad S/O Shor Muhammad were sitting at the side of the field. Meanwhile, at 18:30 hours accused Asghar Khan S/O Umar Khan and Asif Khan S/O Noor Habib appeared duly armed with firearms and started firing at them. They escaped unhurt while the tractor hit with the bullets and got damaged. The accused decamped from the spot after the occurrence. The occurrence is witnessed by the complainant Faiz Muhammad, his uncle Siyal Muhammad and cousin Zahir Muhammad. Motive for the occurrence is stated to be disputed over the landed property.

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17. In order to prove their stance, the prosecution produced and recorded the statements of as many as eight PWs while the statements of rest of the PWs were abandoned being unnecessary. Statement of the complainant Faiz Muhammad was recorded as PW-05 who stated during his cross examination that "*when I went to PS for the first time after the occurrence, I took the damaged tractor with me to the PS, self stated that my uncle Siyal Muhammad reached to the PS prior to my arrival there*" but the recovery memo dated 19.05.2022 prepared

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by the IO Ex. PW-2/1 clearly shows that the investigation officer has examined the tractor in question at the spot. This fact is contradictory to the statement of complainant on the score that when he reached to the PS for first time for lodging the report, he took the damaged tractor with him to the PS with him, then how it is possible for the IO to examine the damaged tractor at the spot after lodging the report as evident from recovery memo Ex. PW-2/1. The complainant has also stated that his uncle Siyal Muhammad reached prior to his arrival to the PS, then why the police have not mentioned his name as complainant of the case. Complainant in his statement as PW-05 has also stated that he submitted the registration documents of the damaged tractor to the police, but the recovery memo Ex. PW-2/1 clearly shows that no documents have been submitted by him to the police. The investigation report is silent about the recovery of any empties from the spot. The statement of PW-06 is also contradictory to the record because PW-06, during cross examination has also stated that he reached to the PS on motorcycle while complainant Faiz Muhammad and Zahir Muhammad reached to the PS in the tractor in question. This statement of PW-06 is also contradictory to the recovery memo Ex. PW-2/1 according to which, the IO has found the tractor in question in the place of occurrence and the same fact is further confirmed by the IO while preparing the site plan Ex. PW-4/1 wherein, the tractor has been shown on point A. If the tractor was already taken by the complainant to the PS while going for lodging report, then how the IO has shown the same at the spot on point A at

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the time of preparation of site plan. Astonishingly, the IO has written in the site plan Ex. PW-4/1 that the same was prepared by him at the pointation of the complainant, but PW-06 during cross examination, has categorically stated that neither he, nor the complainant Faiz Muhammad has visited the place of occurrence with the police on the day of occurrence. Complainant Faiz Muhammad during his statement as PW-05 has stated during cross examination that he has already ploughed three fields when the accused made firing but PW-07, Zahir Muhammad during cross examination has stated that he was present at the distance of about 20 paces from the tractor at the time of firing and the tractor was ploughing the first field when the accused started firing at them. All these contradictions are incurable and fatal to the case of the prosecution and also create doubts about the presence of the complainant and eye-witnesses at the time of occurrence. The prosecution failed to bring home the charges against the accused facing trial without any reasonable shadow of doubt. I, therefore, acquit the accused Asif Khan and Asghar Khan 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.

- 18.** Case file be consigned to Record room after its completion and necessary compilation.

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**CERTIFICATE**

It is certified that this judgment consists of **10** pages. Each page has been dictated, read, corrected and signed by me.

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