

**IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI**

Case No .....58/2 of 2021.

Date of institution.....28.09.2021.

Date of decision.....21.02.2024.

Case FIR No. 08 Dated: 30.06.2021 U/S 337 A(i), 337 A (v) PPC, PS Kurez Boya

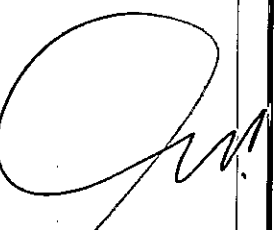
**Order. No. 48**

21.02.2024

Accused Iswan Ali on bail present. Complainant Niqab Ali present. Arguments on application u/s 249-A Cr.PC already heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that complainant Niqab Ali reported to ASHO Hassan Jan in KDA hospital, Kohat to the effect that on 17.06.2021 at about 08:30 am, his brother Shabeer Hussain was proceeding to the fields situated at Melo Rawoz, Orakzai for the purpose of irrigation /watering the fields, when accused Iswan Ali came to the spot, exchanged harsh words, used abusive language, scuffling took place between the accused and his brother. Accused Iswan Ali stoned Shabeer Hussain, resultantly, he sustained injury on his skull. Report of the complainant was reduced in shape of special report on the strength of which mad No. 08 dated 17.06.2021 was registered which was later on, converted into FIR after obtaining legal opinion from the office of DPP, Orakzai. Motive behind the occurrence is dispute over the irrigation of disputed fields.

After completion of investigation, complete challan was put in court against the accused. Provisions of Section 241-A Cr. PC were


  
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complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused, 06 PWs have been examined so far.

Zaman Ali, the then Muharrir PS Kurez Boya, was examined as PW-01. He stated that report of complainant Niqab Ali was recorded by ASHO Hassan Jan and he received special report for its incorporation in DD. He incorporated special report sent by ASHO Hassan Jan vide Mad No. 08, dated 17.06.2021. His statement was recorded by IO U/S 161 Cr. PC. Sub-inspector, Ishtiaq Hassan was examined as PW-02. He is IO of the case. He stated that during the days of occurrence, he was posted as SHO, PS Kurez Boya, Orakzai. Report of complainant Niqab Ali was recorded in KDA Hospital, Kohat in shape of special report which was scribed in DD in shape of mad No. 08 dated 17.06.2021. On 24.06.2021, he sought legal opinion from the office of DPP, Orakzai vide his application Ex.PW-2/1. FIR was registered by ASHO, PS Kurez Boya. After registration of the case, he was transferred to investigation branch of PS Kurez Boya. He inspected the spot and prepared site plan Ex.PB on the pointation of eye witness Shakir Ali. He recorded statement of eye witness Shakir Ali u/s 161 Cr.PC. During spot inspection, he took into possession blood stained garments of injured Shabeer Hussain consisting of one blood stained light green color shirt and one blood stained white color bunyan vide recovery memo Ex.PW-2/2 in presence of marginal witnesses. The same were packed and sealed into parcel No. 1. He recorded statements of PWs u/s 161 Cr.PC. On 05.07.2021, he sent blood stained garments to FSL. Copy of the application is Ex.PW-2/3. FSL

  
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report is Ex.PW-2/4. In light of the medico legal report, section 337-A(iii) was substituted with section 337-A(v) PPC. Accused Iswan Ali was on pre-arrest bail which was not confirmed and he arrested the accused vide card of arrest Ex.PW-2/5. He produced the accused before the Illaqa Magistrate for obtaining his physical custody. Request of physical custody of accused was turned down and accused was committed to judicial lock-up. Application for physical custody is Ex.PW-2/6. He recorded statement of accused u/s 161 Cr.PC. After completion of investigation, he handed over case file to SHO for submission of complete challan against accused. PW-03, is the statement of SI Niamat. He stated that during the days of occurrence, he was posted as SHO, PS Kurez Boya. He has submitted complete challan against the accused on 28.08.2021. Complainant, Niqab Ali, was examined as PW-04. He stated that injured/PW Shabeer Hussain is his brother. PW Shakir Ali is his son. Accused Iswan Ali is his co-villager. He reproduced the story narrated in his report. He also stated that the report was read over to him and he thumb impressed the same as token of its correctness. PW Shakir Ali also thumb impressed the report as verifier. Report is Ex.PW-4/1. He charged the accused for the commission of the offence. PW-05, is the statement of Injured Shabeer Hussain. He stated that on the day of occurrence, he was proceeding to the fields situated at Melo Rawoz, Orakzai for the purpose of irrigation/watering the fields. When he reached the spot, accused Iswan Ali appeared, used abusive language, scuffling took place. Accused Iswan Ali stoned him. PW Shakir Ali was also present with him. He was



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shifted to KDA, hospital Kohat by complainant Niqab Ali in injured condition where complainant reported the occurrence to the police. On 30.06.2021, he pointed out the spot to the IO. He charged the accused for the commission of the offence. Eye witness/ verifier of the report, Shakir Ali was examined as PW-06. He also reproduced the story of FIR in his statement. He verified his thumb impression on the report.

As per contents of FIR, the alleged occurrence took place on **17.06.2021 at 08:30 am** in the fields situated at Melo Rawoz, Orakzai and it was reported on 17.06.2021 at 09:25 am at KDA hospital, Kohat and FIR was registered on 30.06.2021. Niqab Ali (PW-04) is the complainant, Shabeer Hussain (PW-05) is the injured/victim and Shakir Ali (PW-06) is the eye witness. Motive behind the occurrence is watering the disputed fields.


As mentioned above, prosecution produced 06 PWs till now to prove the case against the accused facing trial. PW-01 (the then Muharrir of PS Kurez Boya), stated in his cross examination that he received special report at 09:25 am. Per Ex.PW-4/1 (extract of mad No. 08 dated 17.06.2021), complainant reported the occurrence to SI/ASHO Hassan Jan at KDA hospital, Kohat at 09:25 am. The distance between the spot and PS is 25/30 KMs. KDA hospital Kohat, per statements of PWs, is at a distance of about 40 KMs from PS Kurez Boya. The time of recording special report and its incorporation in shape of mad No. 08 dated 17.06.2021 is the same i.e 09:25 am which is not possible. PW-01 also stated in his cross examination that special report was sent by ASHO from the spot whereas, per record, the special report was sent from KDA



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hospital Kohat. It is nowhere mentioned in the special report that who took the report from KDA Hospital, Kohat to PS Kurez Boya. Sub-inspector Ishtiaq Hassan (PW-02), who investigated the case, stated in his cross examination that FIR was registered after 13 days of the occurrence. He also deposed that as per his investigation, the occurrence took place at **11:00 AM** while as per statements of complainant, injured, eye witness and Ex.PW-4/1 and FIR, the alleged occurrence took place at 08:30 AM. He also deposed that he took into possession blood stained garments of injured from the spot on 30.06.2021 which contradicts the statement of complainant (PW-04) as he stated that the last worn clothes of the injured were handed over to the local police in his house. Neither the blood stained garments are mentioned in the relevant column of challan form nor produced and exhibited during statements of witnesses concerned. IO also stated that he has not shown complainant on the spot in site plan. Site plan was prepared on the pointation of eye witness Shakir Ali (PW-06). The site plan Ex.PB was not verified from the injured/victim which is injurious to the case of prosecution. Investigation officer also stated that no police official of PS Kurez Boya was present in KDA hospital, Kohat at the time of report which contradicts the record. He further stated that he recorded statement of eye witness Shakir Ali u/s 161 Cr.PC on 30.06.2021, after 14 days of the occurrence. Similarly, complainant Niqab Ali, when deposed as PW-04, stated that he is not eye witness to the occurrence. He has mentioned PW Shakir Ali as eye witness but this fact is nowhere mentioned in the report of the complainant. Shabeer Hussain, who is the injured/victim, deposed as

  
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PW-05, stated in his cross examination that he cannot tell the distance between the spot and his house. He also stated that his statement u/s 161 Cr.PC was not recorded by the police. He also deposed that he was alone at the spot at the time of occurrence which contradicts statements of PW-04 (complainant) and PW-06 (eye witness). Injured/victim also stated that he was unconscious after receiving the injury. He came to senses after 02 days of the occurrence. This fact is neither mentioned in the report nor in the injury sheet and medical report. If the injured/victim was unconscious for two days after receiving head injury, then how complainant came to know about the harsh words, altercation and scuffle between the injured/victim and accused as he is not eye witness to the occurrence. PW-06 is the statement of alleged eye witness, Shakir Ali. He stated in his cross examination that he was present nearby the spot of occurrence. The distance between the spot and place of his presence could be covered in 08 minutes. After hue and cry, he rushed to the spot and when he reached there, accused had decamped from the spot which means that he has not witnessed the occurrence. As per site plan Ex.PB, the alleged eye witness, PW-06 Shakir Ali was present at point No. 2 while accused Iswan Ali is shown at point No.3. The distance in between point No. 2 and 3, per site plan, is 08 paces. PW-06 (eye witness) totally negated the site plan Ex.PB. As mentioned above, per record, time of occurrence is 08:30 am whereas IO stated that the occurrence took place at 11:00 am. On the other hand, eye witness (PW-06) has mentioned time of occurrence as 10:30 am in his statement recorded u/s 161 Cr.PC.

  
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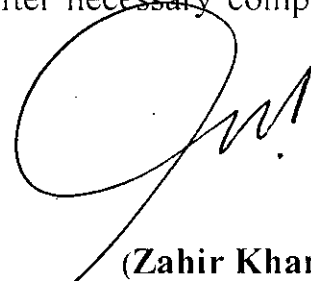
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No blood stained earth, blood stained pebbles, blood stained rocks were recovered from the spot. Nothing incriminating has been recovered from possession of accused facing trial or on his pointation. Spot has not been established by the prosecution. Statement of eye witness was recorded after 14 days of the occurrence. Site plan has not been verified from the injured/victim. Accused has not confessed his guilt before the court. Case of prosecution is not supported by ocular, medical and circumstantial evidence. There are so many dents and doubts in case of prosecution benefit of which goes to the accused. 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 facing trial is acquitted from the charges leveled against him. He is on bail. His sureties stand discharged from their liability.

Case property if any, be dealt with in accordance with law.

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

**Announced.**  
21.02.2024



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