

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

Case No11/2 of 2023.

Date of institution.....02.03.2023.

Date of decision.....21.03.2024.

Case FIR No. 112 Dated: 03.11.2022 U/S 324,337 F(i), 148, 149 PPC, PS Kalaya

Order. No. 22

21.03.2024

Accused Shahid, Faisal, Najeeb, Ameen Baz, Riaz, Marwat, Shaneef, Tahir and Javid present. Rest of the accused are exempted. Accused Mahir is absconding. Complainant absent. 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 on 03.11.2022, complainant/SI Shah Muhammad, SHO PS Kalaya received information regarding cross firing at Lakhti Killay, Gul Darah, Orakzai. He proceeded to the spot and saw that accused Shah Faisal, Almar Khan, Mughal Baz, Nadeem Khan, Saeed Khan, Habib Khan, Shahid Khan, Ameen Baz and Dilawar Khan were making cross firing with intention to kill each other. Motive behind the occurrence is land dispute between the parties. Murasila was drafted at the spot by SHO/complainant and was sent to PS through constable Muhammad Rasool No. 1423 for registration of the case. On the strength of murasila, the instant case was registered against the accused/petitioners vide FIR Ex.PA.

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After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 03 PWs have been examined.

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Dr. Zahid Ullah was examined as PW-01. Sub-Inspector Murtaza (IO) and SI Shal Muhammad (complainant) deposed as PW-02 and PW-03 respectively. Medical report of injured accused Dilawar is Ex.PW-1/1, endorsement on the injury sheet is Ex.PW-1/2, site plan is Ex.PB. Recovery memo in respect of empties of 7.62 and 12 mm bore is Ex.PZ, applications for physical custody are Ex.PW-2/1 and Ex.PW-2/2, cards of arrest are Ex.PW-2/3 and Ex.PW-2/4, accused nomination memo is Ex.PW-2/5, recovery memo in respect of mobile phone is Ex.PW-2/6, card of arrest of accused Naseeb is Ex.PW-2/7, card of arrest of accused Naseeb Khan is Ex.PW-2/8, application for further custody is Ex.PW-2/9, card of arrest of accused Marwat, Shaneef, Muhammad Zahir and Javid is Ex.PW-2/10, application for their physical custody is Ex.PW-2/11, application for further custody is Ex.PW-2/12, applications for warrant u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC are Ex.PW-2/13 and Ex.PW-2/14, application for physical custody of accused Shah Faisal, Nadeem and Muhammad Saeed is Ex.PW-2/15, applicaiton for further custody is Ex.PW-2/16, card of arrest of accused Dilawar is Ex.PW-2/17, application for judicial remand of accused Dilawar is Ex.PW-2/18, card of arrest of accused Riaz, Zaitoon and Najeeb is Ex.PW-2/19, application for their physical custody is Ex.PW-2/20, application for FSL is Ex.PW-2/21, copy of road permit certificate is Ex.PW-2/22, extract of register 19 is Ex.PW-2/23, FSL report regarding crime empties is Ex.PW-2/24, injury sheet of accused Dilawar is Ex.PW-3/1, murasila is Ex.PW-3/2 and card of arrest of accused Habib, Ameen Baz, Shahid and Almar Khan is Ex.PW-3/3.


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Perusal of record transpires that the alleged occurrence took place on **03.11.2022** at **16:00** hours at Lakhti Killay situated at Gul Darah, Orakzai and it was reported on 03.11.2022 at 16:20 hours and FIR was registered on

03.11.2022. Shal Muhammad SI/SHO PS Kalaya is complainant of the case. As mentioned above, SHO/complainant (PW-03) received information regarding cross firing between the parties at Lakhti Killay fields of Gul Darah, Lower Orakzai. He proceeds to the spot and sees that cross firing was going on between the parties. He prepares memo report and sends it to PS for registration of the case against accused Faisal Khan, Almar Khan, Nadeem Khan, Saeed Khan (1st party), Habeeb Khan, Shehzad Khan, Ameen Baz and Dilawar Khan (2nd party). After registration of the case, IO visits the spot, prepares site plan Ex.PB on the pointation of PW-03, picks empties shells of 7.62 mm bore and 12 mm bore vide recovery memo Ex.PZ. It is a bizarre story developed by the prosecution. When SHO/complainant was present at the spot at the time of occurrence then why he does not recover any empty shell. He does not chase the accused at the spot. There is no house search memo. Source of information regarding involvement of accused in the commission of the offence has not been disclosed. Initially, only 08 persons were nominated as accused, rest of the 09 accused were nominated without collection of any material. None of the accused has been arrested at the spot. Nothing incriminating has been recovered from possession of the accused or on their pointation. Parties have not charged each other for the commission of the offence. No separate reports were made by the parties. No specific role has been attributed to any of the accused facing trial. There is no independent witness to the occurrence. The medical documents placed on file do not support the version of prosecution. PW-03, who is complainant of the case, has stated in his cross examination that he has not seen the accused making cross firing. He also deposed that he did not recover any thing incriminating from the spot and that accused were not known to him prior to the occurrence. When



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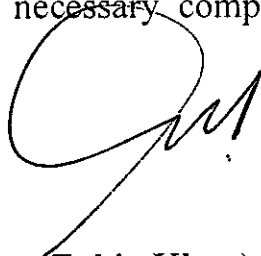
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accused were not known to him, then how he straight away nominated them in the memo report followed by registration of the case without any source of information. Accused have not confessed their guilt before the court. Case of prosecution is not supported by ocular, medical and circumstantial evidence. There are contradictions in the statements of PWs. Case of prosecution is full of dents and doubts 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 are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability. Accused Mahir Khan is absconding, hence, he is hereby declared as proclaimed offender. His name be entered in register/list of proclaimed offenders. Perpetual warrant of arrest be issued against him.

Case property be kept intact till arrest and trial of absconding accused name above.

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

Announced.
21.03.2024



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