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

Case No.....45/2 of 2022.

Date of Institution.....31.08.2022.

Date of Decision.....28.03.2024.

State through:

Liaqat Ali S/O Yar Zali R/O Qaum Beezot, Tappa Yar Kali Khel, Tehsil
Lower, District Orakzai

.....**Complainant**

VERSES

1. Shams-ur-Rehman S/O Rehman Gul
2. Mast Ali S/O Lal Man Shah
3. Nabi Rehman S/O Khani Khel
4. Ayaz Khan S/O Khani Khel
5. Inayat Khan S/O Mina Gul all R/O Qaum Beezot, Tappa Yar
Kali Khel, Jalaka Mela, Tehsil Lower, District Orakzai

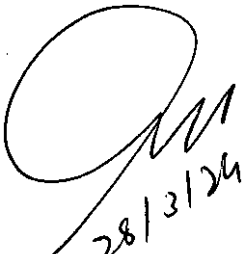
.....**Accused**

JUDGMENT

28.03.2024

Through this judgment, I am going to dispose of the instant
case registered against accused Shams-u-Rehman etc vide Case
FIR No. 52, Dated 20.05.2022 U/S 506, 148, 149 PPC, PS Kalaya.

Brief facts of the prosecution's case as unfolded in the FIR Ex.PW-
2/3 are that, complainant Liaqat Ali reported the occurrence to the
local police to the effect that, on the day of occurrence i.e

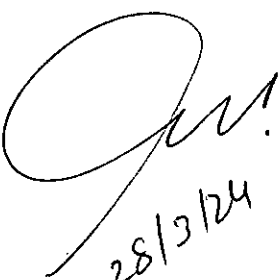

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13.05.2022, he was present in the office of coal mine situated at Dana Khwala, Ublan Orakzai when accused Shams-ur-Rehman, Mast Ali, Nabi Rehman and Inayat Khan along with three unknown persons came in their vehicle. They wanted to reach coal mine. Watchmen namely Ijaz and Rehmat Khan stopped them from proceedings towards the coal mine. Accused started abusive language and made aerial firing in order to criminally intimidate the watchmen. Report of the complainant was scribed in daily diary in shape of mad No. 05 dated 14.05.2022 (Ex.PW-5/1), inquiry u/s 157 (1) Cr.PC was initiated and after obtaining legal opinion from the office of DPP, Orakzai on the final report, the instant case was registered against the accused facing trial vide FIR Ex.PW-2/3. Motive behind the occurrence is dispute over coal mine.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial. Accused were summoned, who appeared before the court and legal formalities under Section 241-A Cr. PC were complied with. Formal charge was framed to which accused pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
3. Prosecution produced six (06) witnesses to prove its case against the accused.


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4. Liaqat Ali (complainant), deposed as PW-01. He reproduced the story narrated in the FIR. He charged the accused for the commission of the offence. PW-02, is the statement of inquiry officer, SI Shal Muhammad (SHO). He stated that during the days of occurrence, he was posted as SHO, PS Kalaya. Report of the complainant was scribed in DD vide mad No. 5 dated 14.05.2022. Inquiry was initiated. During course of inquiry, he visited the spot and prepared site plan Ex.PB on the pointation of complainant. He prepared final report which is Ex.PW-2/1. Application for legal opinion from the office of DPP is Ex.PW-2/2. Copy of FIR is Ex.PW-2/3. Card of arrest of accused is Ex.PW-2/4. Rehmat Ullah, was examined as PW-03. He is eye witness to the occurrence. He supported the prosecution story.


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5. Sub-Inspector, Muhammad Hanif was examined as PW-04. He is IO of the case. Applications for warrant u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC were exhibited as Ex.PW-4/1 and Ex.PW-4/2. Application for physical remand of the accused is Ex.PW-4/3. PW-05 is the statement of Hamayoon Muharrir. He stated that on the day of occurrence, he was present in PS on duty when Liaqat Ali reported the occurrence to him. He incorporated the contents of report into mad No. 5 dated: 14.05.2022. Extract of the same is Ex.PW-5/1. His statement was recorded U/S 161 Cr.PC.

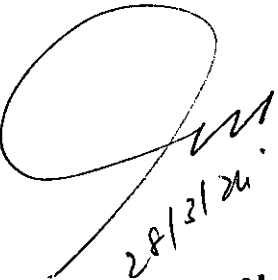
PW-06 is the statement of Mutasim Khan. He is verifier of the report. He verified his thumb impression on the report already exhibited as Ex.PW-5/1. His statement was recorded U/S 161 Cr.PC.

6. Afterwards, statements of accused U/S 342 Cr. PC were recorded wherein they professed their innocence, however, they did not wish to be examined on oath. They also opted not to produce defense evidence.

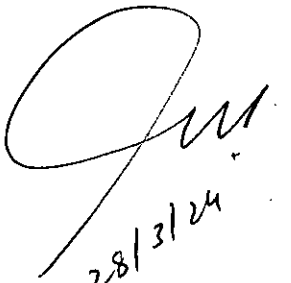
7. Record transpires that the alleged occurrence took place on 13.05.2022 at 17:30 hours at Dana Khola, Ublan, Orakzai. It was reported on 14.03.2022 at 09:10 am and FIR Ex.PW-2/3 was registered on 20.05.2022. Liaqat Ali (PW-01) is the complainant, SI Shal Muhammad, the then SHO, PS Kalaya, is inquiry officer, Rehmat Ullah (PW-03) is eye witness to the occurrence, SI Muhammad Hanif (PW-04) is IO of the case, Hamayoon (PW-05), the then Muharrir who recorded report of the complainant in DD and Mutasim Khan (PW-06), is verifier of the report. Motive behind the occurrence is dispute over coal mine. Although, accused facing trial are directly and by name charged for a day light occurrence and there are eye witnesses to the occurrence. Motive of dispute over coal mine is assigned by the complainant, however, as per Ex.PW-5/1 (extract of mad report) and Ex.PW-2/3 (copy of


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FIR), inquiry u/s 157 (1) Cr.PC was initiated by PW-02. During course of inquiry, site plan Ex.PB was prepared on the pointation of complainant (PW-01). The site plan was never verified from the eye witnesses. Complainant, in his report and his court statement has stated that he was not present at the spot at the time of occurrence. When complainant was not present at the spot at the time of occurrence, then how the inquiry officer prepared site plan on his pointation in the absence of eye witnesses. In the site plan (Ex.PB), point No. 1, 2 and 3 are assigned to complainant and eye witnesses respectively. The distance in between point No. 1, 2 and 3 is about 07 paces which totally negates the story narrated by the complainant and eye witness Rehmat Ullah who deposed as PW-03. PW-01, who is complainant, stated in his cross examination that he has not identified accused at the spot as he was not present there. The occurrence was narrated to him at 06:30 pm in his office. He also stated that he was not present at the time of spot visit by inquiry officer. PW Ijaz and Rehmat were present at that time. When complainant was not present at the spot at the time of spot inspection, then who pointed out the spot to the IO? Eye witnesses are not shown present at the time of spot inspection. The site plan was neither prepared in presence of eye witnesses nor verified through them which is injurious to the case of prosecution.


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8. The inquiry officer, who deposed as PW-02, stated in his cross examination that at the time of spot visit, complainant, eye witnesses and verifier of the report were present which totally contradicts rest of the PWs and Ex.PB. He also stated that no empty was recovered during spot inspection. Similarly, PW-03, who is the alleged eye witness to the occurrence, stated that the distance in between the spot and office/room of complainant could be covered in 30 minutes which further contradicts the site plan Ex.PB. He also deposed that the local police visited the spot on 20.05.2022 whereas, per record, site plan was prepared on 14.05.2022. Investigation officer (PW-04), stated that nothing incriminating was recovered from possession of the accused or on their pointation. Accused did not confess their guilt before him. Lastly, the watchman Ijaz, who allegedly informed the complainant and narrated the occurrence to him was abandoned by prosecution. Per Ex.PW-2/3, the said witness also made firing in defense but neither the weapon of firing was produced to the IO nor any empty was recovered from the point (point No. 2 allotted to him in Ex.PB). There are serious contradictions in the statements of PWs. Case of prosecution is full of dents and doubts benefit of which goes to the accused as of right. Prosecution badly failed to prove the case against the accused facing trial beyond reasonable doubt.


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9. As prosecution failed to prove its case against the accused namely Shams-ur-Rehman, Mast Ali, Nabi Rehman, Ayaz Khan and Inayat Khan beyond reasonable doubt, therefore, they are acquitted from the charges leveled against them. They are on bail. Their bail bonds stand cancelled. Sureties are discharged from their liability.
10. Case file be consigned to record room after its completion and necessary compilation.

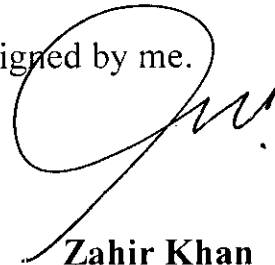
Announced
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CERTIFICATE

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



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai