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State Vs Ismail

Case FIR No. 26, Dated 04.09.2021 U/S 324, 427, 337-F(i)/34 PPC PS Mishti Mela.

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

Case No.....72/2 of 2021.

Date of Institution.....13.11.2021.

Date of Decision.....18.04.2024.

State through:

Zahid Ullah S/O Meen Akbar R/O Qaum Mishti, Tappa Mamo Zai, Tehsil Central, District Orakzai**Complainant**

VERSES

Ismail S/O Arab Shah R/O Qaum Mishti, Tappa Mamo Zai, Tehsil Central, District Orakzai **Accused**

Case FIR No. 26, Dated 04.09.2021 U/S 324, 427, 337-F(i)/34 PPC PS Mishti Mela.

JUDGMENT

18.04.2024

Through this judgment, I am going to dispose of the instant case registered against accused Ismail vide case FIR No. 26 Dated 04.09.2021 U/S 324, 427, 337-F(i)/34 PPC PS Mishti Mela.

1. Brief facts of the prosecution's case as unfolded in the FIR Ex.PA are that, complainant namely Zahid Ullah reported to Aman Ullah SHO PS Mishti Mela in the emergency room of DHQ Hospital Mishti Mela to the effect that, on the day of occurrence at about 05:00 pm, he and eye witness Abdul Kareem were transporting stones in their tractor bearing registration No. 5518 to the house of one Ghafoor Khan, when they reached Nari Kada, Lower Orakzai, accused Ismail S/O Arab Shah R/O Mishti Mela, Orakzai along with other 03/04 unknown persons started firing on them with intention to kill them. As a result of the firing, his tractor got hit. He was also hit on left leg and



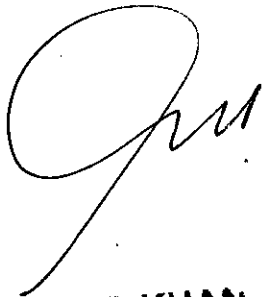
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sustained injury. PW Abdul Kareem also witnessed the occurrence. Complainant was shifted to the DHQ, Mishti Mela where he reported the occurrence to the police which was reduced into writing in shape of murasila and his thumb impression was obtained on it as token of its correctness. His brother Umar Hayaz also thumb impressed the report as verifier. He has got no personal enmity with accused facing trial. Complainant charged the accused facing trial for the commission of the offence. Accused facing trial was arrested and later on, released on bail.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused was formally indicted. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence. Prosecution produced eight (08) witnesses to prove its case against the accused.

3. PW-01, is the statement of Dr. Nabeel Sheharyar, MO DHQ Hospital Mishti Mela. He has examined the injured and prepared medico legal report of the injured. Medico legal report is Ex.PW-1/1. Sub-Inspector Aman Ullah was examined as PW-02. He has recorded the report of complainant in shape of murasila Ex.PW-2/1. He prepared injury sheet of injured/complainant and sent him to the medical officer for treatment under the escort of constable Shah Munawar No. 54. Injury sheet is Ex. PW-2/1. Murasila was sent to PS for registration of the case through constable Yahya Khan No. 90. He has also arrested the



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accused and issued card of arrest Ex.PW-2/3. Constable Fayaz, Elite force was examined as PW-03. He has incorporated the contents of murasila into FIR Ex.PA. PW-04 is the statement of constable Jamshid Ullah. He is one of the marginal witnesses to the recovery memo Ex.PW-4/1, vide which the IO took into possession blood through cotton from the damaged tractor bearing No. C-3928 Kohat. Similarly, one empty of 3x3 bore, freshly discharged, giving fresh smell of discharge was taken into possession from the place of accused. Parcel No. 1 is Ex.P-1 while parcel No. 2 is Ex.P-2. He has also taken parcel No.1 containing blood along with application for FSL and road permit certificate to FSL, Peshawar. PW-05 is the statement of SI/SHO Naseem Khan. He submitted complete challan against the accused. Challan form is Ex.PW-5/1. Sub-inspector Asif Wazeer, was examined as PW-06. He is IO of the case. He proceeded to the spot and prepared site plan Ex.PB on the pointation of complainant in presence of eye witness. He produced the accused before the court for obtaining his physical remand vide his applications Ex.PW-6/1 and Ex.PW-6/2. He sent recovered blood to FSL vide his application Ex.PW-6/3 along with road permit certificate Ex.PW-6/4. FSL report regarding blood is Ex.PW-6/5. Report of mechanic regarding the tractor is Ex.PW-6/6. He has also recorded statement of accused and PWs u/s 161 Cr.PC. After completion of investigation, he submitted complete challan against the accused. PW-07 is the statement of injured complainant. He reproduced the story narrated in the FIR. He verified his thumb impression on the report. Abdul Karim, the eye




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witness was examined as PW-08. He also reproduced the story narrated in the FIR.

4. On conclusion of prosecution evidence, statement of accused was recorded u/s 342 Cr.PC, in which he professed his innocence, however, he did not opt to record his statement on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in his favour.
5. Record shows that the alleged occurrence took place on 04.09.2021 at 17:00 hours near Nari Kada, Lower Orakzai. It was reported at 18:00 hours and FIR was registered at 18:10 hours. PW Zahid Ullah is the injured/complainant, PW Abdul Kareem is the eye witness while PW Umar Hayaz is the verifier of the report. No motive behind the occurrence is mentioned in the report of complainant. Although, it is a daylight occurrence and accused facing trial is directly and by name nominated in the FIR. Empty shell of 3x3 mm bore was recovered from the scene of occurrence. The occurrence was allegedly witnessed by PW Abdul Kareem, however, there are so many dents and doubts in the case of prosecution. The medical officer, Dr. Nabeel Sheharyar, who deposed as PW-01, stated in his cross examination that he has not mentioned in his report (Ex.PW-1/1) time of arrival of injured complainant to the hospital. He also stated that there is no mentioning of firearm injury in his report. It is possible that such kind of injury/wound is caused by colliding with a hard surface or stone etc. The version of complainant is not supported by medico-legal report as well as injury sheet. SI Aman Ullah, (PW-02) , who recorded report



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of the complainant in shape of murasila Ex.PW-2/1, stated in his cross examination that he received information regarding arrival of the injured complainant to the hospital at 05:00 pm and he reached to the hospital at about 05:40 pm. Per record, the occurrence took place at 05:00 pm, it was reported at 06:00 pm, then how is it possible that PW-02 received information regarding the occurrence at 05:00 pm? He also deposed that it is nowhere mentioned in the report that which part of the tractor was hit by bullets. He also stated that he has not mentioned date and firearm injury in the injury sheet. Similarly, PW-04, who is one of the marginal witnesses to the recovery memo Ex.PW-4/1, stated in his cross examination that they reached to the spot at 18:00 hours. Per record, the occurrence was reported at 18:00 hours and FIR Ex.PA was registered at 18:10 hours, then how is it possible that he and the IO visited the spot at 18:00 hours? PW-06, who is IO of the case, stated in his cross examination that he received copy of FIR and murasila for investigation at 18:10 hours. He also stated that it is correct that it is not mentioned in the injury sheet that which part of the body of the complainant was wounded. Same is the case of tractor allegedly damaged with fire shots in the occurrence. He also deposed that only one empty was recovered from the spot despite the fact that indiscriminate firing was made by 03/04 unknown persons. He has not recorded statement of Ghafoor Khan for whom complainant and eye witness were transporting stones/rocks. Complainant, Zahid Ullah, who deposed as PW-07, stated in his cross examination that he identified accused facing trial while accused was



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running from the spot. He cannot tell with the firing of whom he got hit. He cannot tell the exact time when he was hit and injured. Similarly, the alleged eye witness namely Abdul Kareem (PW-8), stated in his cross examination that in his presence, the IO took into possession blood stained earth and 03 empty shells from the spot which contradicts the record on file. No blood stained earth has been recovered by IO during spot inspection. Only one empty shell is shown to have been recovered by IO from the place of occurrence. The case of prosecution is not supported by ocular, medical and circumstantial evidence.

6. In the report of complainant, registration number of the tractor allegedly hit with fire shots is 5518 while site plan Ex.PB and recovery memo Ex.PW-4/1 show the same as C-3928 Kohat which is fatal to the case of prosecution. The tractor was released on superdari to the complainant but he failed to produce the same before the court during trial. Moreover, the tractor was examined through a private mechanic Muhammad Saeed. The report/receipt is Ex.PW-6/6. In the said report/receipt, registration number of the tractor is not mentioned. The said mechanic was neither examined by IO nor produced as witness during course of evidence. There are so many contradictions in the statements of PWs. Record further shows that no independent witness has been associated. Per contents of FIR Ex.PA, there is no motive behind the occurrence. Accused has not confessed his guilt before the court. Nothing incriminating has been recovered from possession of the accused or on his pointation.



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7. Prosecution was bound to prove its case against the accused beyond reasonable doubt but there are so many dents and doubts in the prosecution's case benefit of which goes to the accused facing trial as of right. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.
8. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Ismail is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds stand cancelled. Sureties are discharged from their liability. Case property i.e tractor has already been released on superdari to the complainant. Rest of the case property be dealt with in accordance with law.
9. Case file be consigned to record room after its completion and necessary compilation.

Announced

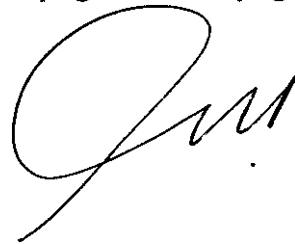
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CERTIFICATE

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
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