

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

Case No55/2 of 2021.

Date of institution.....23.08.2021.

Date of decision.....29.04.2024.

Case FIR No. 18 Dated: 06.07.2021 U/S 337-A(i), 337-L(ii), 352, 447, 427/34PPC, PS Mishti Mela**Order. No. 44**

29.04.2024

APP for the state present. Accused Imran on bail present. Accused Abdul Rehman and Abid Ullah are exempted. Accused Sadeeq Ullah is absconding. Complainant Riaz Mehmood absent.

Brief facts of the prosecution's case as unfolded in the FIR are that on 01.06.2021, complainant Riaz Mehmood reported to the local police in the emergency room of the DHQ, hospital Mishti Mela to the effect that on the day of occurrence i.e 01.06.2021, he was present at his medical store, when accused Sadeeq, Abid Ullah, Muhammad Imran and Abdul Rehman all R/O Qaum Sheikhan Tappa Mamo Zai, Orakzai, armed with iron rods came to the spot, beaten him, resultantly, he sustained injuries on different parts of his body. Motive behind the occurrence is land dispute. Report of the complainant was scribed in daily diary in shape of mad No. 06 dated 01.06.2021 and after obtaining legal opinion from office of DPP, Orakzai, the instant case was registered against the accused.

After completion of investigation, complete challan was put in court against accused on bail. They were summoned and they appeared




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before the court, provisions of Section 241-A Cr. PC were complied with. Statement of search witness was recorded as accused Sadiq Ullah is absconding. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 07 PWs have been examined.

Aman Ullah was examined as PW-01. He has registered the instant case vide FIR No. 18 dated: 06.07.2021 u/s 337-A-(i), 337-L-(ii), 352, 447/34 PPC against the accused. Copy of FIR is Ex.PA. After completion of investigation, he submitted interim challan on 01.08.2021. Challan form is Ex.PW-1/1. Similarly, on 09.08.2021, he submitted complete challan against the arrested accused while submitted challan u/s 512 Cr.PC against the absconding accused. Challan form is Ex.PW-1/2. Head Constable Janat Gul was examined as PW-02. He took special report from ASHO Muhammad Raees and handed over the same to the Muharrir of PS. PW-03, is the statement of SI Abdul Manaf. He has investigated the case. He proceeded to the spot and prepared site plan Ex.PB on pointation of complainant Riaz Mehmood. During spot inspection, he recovered and took into possession some pieces of plastic table vide recovery memo Ex.PW-3/1 in presence of marginal witnesses. He added section 427 PPC in the record accordingly vide insertion memo Ex.PW-3/2. As accused were avoiding their lawful arrest, therefore he vide his applications Ex.PW-3/3 and Ex.PW-3/4 applied for warrant u/s 204 and proclamations notices u/s 87 Cr.PC. Accused procured interim pre-arrest bail from the court of sessions which was recalled on 07.08.2021 and he formally arrested the accused and issued their card of


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arrest Ex.PW-3/5. On 08.08.2021, he produced the accused before the Illaqa Magistrate with request for 05/05 days physical custody of the accused vide his application Ex.PW-3/6 which was turned down and accused were committed to judicial lock-up. After completion of investigation, he handed over case file to SHO for submission of interim/complete challan against accused. Khalil Rehman was examined as PW-04. He is verifier of the report. PW-05, is the statement of Pir Muhammad. He has shifted the injured/complainant to DHQ, hospital Mishti Mela. Sub-Inspector, Raees Khan was examined as PW-06. He reduced the report of complainant into writing in shape of special report. He prepared injury sheet of injured/complainant Ex.PW-6/1. The injured was sent to the medical officer under the escort of constable Muhammad Raheem while report was handed over to constable Jannat Gul for incorporation of the same in DD. The special report was incorporated in DD vide mad No. 06 dated: 01.06.2021, extract thereof is Ex.PW-6/2. PW-07, is the statement of constable Sahib Nawaz. He is one of the marginal witnesses to the recovery memo exhibited as Ex.PW-3/1 vide which the IO took into possession some pieces of plastic table.


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Perusal of record transpires that the alleged occurrence took place on **01.06.2021** at **11:30** hours at Mishti Mela bazar, Orakzai and FIR was registered on 06.07.2021. Riaz Mehmood is the injured/complainant while PW Khalil Rehman is the verifier of the report. Motive behind the occurrence is land dispute. After commencement of trial, accused on bail were summoned, they appeared before the court, formal charge was framed to which accused facing trial pleaded not guilty and claimed trial.

Complainant appeared before the court on a few occasions but later on, he disappeared. Prosecution has produced 07 witnesses so far. Per reports of DFC and SHO concerned, complainant has gone to Afghanistan and he is no more interested in prosecution of the case. Warrants of arrest issued against complainant also returned unexecuted along with reports. Accused are facing agony of trial since 23.08.2021 and complainant did not bother to appear before the court to pursue his case which shows his lack of interest in prosecution of the accused facing trial. As on merits, the alleged occurrence took place on 01.06.2021 and FIR was registered on 06.07.2021. No specific role has been attributed to accused. PW-04 (Khalil Rehman), who is verifier of the report as per record, deposed that he is also eye witness to the occurrence which contradicts the record. He also deposed that he was called on mobile phone at about 11:00 am/12:00 pm by complainant and he came to the spot. This also contradicts the record. Similarly, Pir Muhammad, who deposed as PW-05, also disclosed himself to be the eye witness but none of the above named PWs have been shown present in the site plan at the time of occurrence. No specific points are allotted to them. In his cross examination, PW-05 stated that he has not seen accused Sadeeq and Abid Ullah at the spot which creates doubt in case of prosecution. SI, Raees Khan (PW-06), stated in his cross examination that report was made on 06.07.2021 at about 11:00 am which totally contradicts the record.



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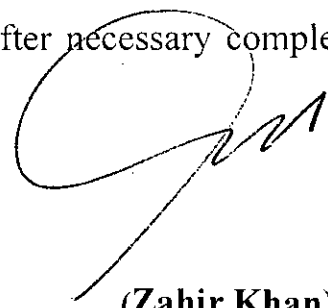
Nothing incriminating has been recovered from possession of accused facing trial or on their pointation. Accused have not confessed their guilt before the court. There are so many dents and doubts in case of

prosecution benefit of which goes to the accused. Complainant is not interested in prosecution of the accused. Prosecution has also shown inability to produce complainant before the court. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, accused facing trial namely Abid Ullah, Muhammad Imran and Abdul Rehman are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability. Accused Sadeeq Ullah 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 dealt with in accordance with law.

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

Announced.
29.04.2024



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