

69

State Vs Ajmir etc
Case FIR No. 120, Dated 05.12.2022. U/S 324/353/186/189/15AA/34 PPC.

PS Kalaya.

**IN THE COURT OF SYED ABBAS BUKHARI, JUDICIAL
MAGISTRATE-II TEHSIL COURTS KALAYA, DISTRICT
ORAKZAI**

Case No. 10/2 OF 2023
Date of Original Institution: 07.02.2023
Date of Transfer In: 08.03.2023
Date of Decision: 26.04.2024

STATE THROUGH: MUJAHID KHAN SI NET LOWER PS
KALAYA.

.....**COMPLAINANT**

VERSES

AJMIR S/O SAID UR REHMAN AND
ARSHAD S/O ROSMIN KHAN, BOTH RESIDENTS OF
QOM UTMAN KHEL, DISTRICT ORAKZAI.

.....**ACCUSED FACING TRIAL**

Present: Nisar Ahmad, Assistant Public Prosecutor for
complainant.

: Sana Ullah Khan Advocate, for accused facing trial.

JUDGMENT:

26.04.2024

Through this judgement, I am going to dispose of the
instant case registered against accused Ajmir and Arshad
vide Case FIR No. 120, Dated 05.12.2022 U/S
324/353/186/189/15AA/34 PPC, PS Kalaya.

PS Kalaya.

70

1. Brief facts as per contents of FIR are that, on 05.12.2022 at about 12:45 hours, SI/complainant Mujahid Khan, who was accompanied by other police officials, was present on barricade, when two persons riding on motorcycle came from Yarli Khel Bazar, who were stopped for the purpose of checking. The person sitting on the rear seat was deboarded while the other person managed to escape from the spot. Upon body search of the person, engaged by the police, an unlicensed 30 bore pistol alongwith fixed charger, containing 05 rounds of 30 bore, was recovered from his possession, which was taken into possession through recovery memo. The accused disclosed his name as Arshad s/o Rosmeen Khan. The arrested accused disclosed the name of escaped person as Ajmeer s/o Said Rahman. After a short while the escaped person came out of his house, armed with pistol, and fired at the police party in order to release the arrested accused from police custody. After firing the accused managed to escape towards the nearby locality. Accused Arshad was accordingly arrested vide card of arrest, which is Ex.PW-7/2. Murasila was drafted on the spot which is Ex. PW-7/1

26.04.2023
SAYED ABU BAKR
Civil Court II
Kalaya
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PS Kalaya.

71

and sent to the PS, which was converted into FIR which is Ex.PA. On 22.12.2022, IO arrested the absconding accused Muhammad Ajmir after recalling his BBA from the court and issued his card of arrest which is Ex. PW-1/10. The local police took into possession the recovered case property through recovery memos which is Ex. PC & Ex. PC/1. Hence, the case in hand.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused were summoned. They appeared before the court and all the legal formalities under Section 241-A Cr. PC were complied. Accused were formally indicted. They pleaded not guilty and claimed trial, hence prosecution was directed to produce its evidence.
4. Prosecution produced eight (08) witnesses to prove its case against the accused while PWs constables Khalil Ur Rehman and Manzoor Ali were abandoned by prosecution and thereafter closed its evidence.
5. **PW-01** is the statement of SI Murtaza Khan, which is reproduced as under;

26.04.2023
S. M. BUKHARI
Civil Judge, Kalaya
Sahil Courts Kalaya

PS Kalaya.

72

Stated that during the days of occurrence, I was posted as IO PS Kalaya L/Orakzai. After registration of instant case I was entrusted investigation in the instant case. I prepared site plan on the pointation of complainant which is Ex. PB. During spot inspection I took into possession 05 empties of 30-bore which are lying in scattered condition and I put initial on the same through short object and sealed into parcel no. 2 by affixing 3/3 monogram with the name of SH on the parcels while I put one monogram inside the parcel and I took the above vide recovery memo Ex. PC in the presence of marginal witnesses. I recorded statement of PWs u/s 161 Cr. PC. On 06.12.2022, I produced the accused before the Ilaqa Magistrate for recording of his confessional statement u/s 164 Cr. PC vide my application is Ex. PW-1/1 as he admitted his guilt before me during investigation after recording statement of accused u/s 161 Cr. PC. Accused Ajmir was avoiding his lawful arrest hence I initiated proceedings u/s 204 and 87 Cr. PC vide my application is Ex. PW-1/2 & Ex. PW-1/3 respectively. I sent the case property to the FSL through the hand of constable Abdul Wadood vide application is Ex. PW-1/4 and road

ABAS B. M. II
Civil Judge I, Kalaya
Tensil Courts Kalaya
06.12.2022

PS Kalaya.

73

certificate is Ex. PW-1/5 and also received the FSL result which is Ex. PW-1/5. I also placed on file extract of register no. 19 which is Ex. PW-1/6. I also placed on file DD consist of three pages, regarding departure and arrival which is Ex. PW-1/7, Ex. PW-1/8 and Ex. PW-1/9 respectively. On 22.12.2022 I arrested the accused Muhammad Ajmir after recalling his BBA from the court and issue his card of arrest which is Ex. PW-1/10. I produced the accused before the Illaqa Magistrate for 03 days physical custody vide my application is Ex. PW-1/11 and one day custody was granted. During investigation accused admit his guilt before me and he pointed out the spot of occurrence and in this respect I prepared the pointation memo in the presence of marginal witnesses which is Ex. PW-1/12. On 14.01.2023 I produced the accused before the Illaqa Magistrate for further 03 days custody however my application was turned down and accused sent to judicial lock up. I recorded statement of PWs u/s 161 Cr. PC. After completion of my investigation I handed over the case file to SHO for onward submission..

26.01.2023
Sayed M. S. Kalaya
Judeg. Magistrate
Illaqa Kalaya
Muzaffargarh
Dist. Muzaffargarh
Punjab
26.01.2023
Sayed M. S. Kalaya
Judeg. Magistrate
Illaqa Kalaya
Muzaffargarh
Dist. Muzaffargarh
Punjab

PS Kalaya.

75

registration of FIR I handed over the copy of FIR along with the relevant documents to the investigation staff for further proceedings. When complainant return back to The PS he handed over to me accused along with the parcel No.1 containing 30 bore pistol along with fixed magazine containing 05 rounds in seal condition. I kept the case property in mal-khana for safe custody and after the body search of the accused, I locked him in the lock-up of the PS. The IO also handed over to me the parcel No.2 containing 05 empties of 30 bore in seal condition. I also kept the same in Mal-Khana for safe custody in the PS. I have also entered the detail of the case property in register No.19. On 13.12.2022 I handed over the above parcels to the IO for onward transmission to the FSL. My statement was recorded by the IO u/s 161 Cr.PC.

8. **PW-04**, is the statement of SHO Shal Muhammad, which is reproduced as under;

Stated that during the days of occurrence, I was posted as SHO PS Kalaya L/Orakzai. After completion of investigation I have submitted complete challan against the accused U/S 512 Cr.P.C on 21.12.2022 which Ex.

28.04.2022
SYEDZAMAS BUKHARI
Civil Judge (M-II)
Tehsil Courts Kalaya

PS Kalaya.


76
PK. Similarly after the arrest of the accused, investigation conducted by the IO against the accused, the same was handed over to me and I have submitted supplementary challan against the accused Ajmir Khan which is Ex.PK1/1.

9. **PW-05**, is the statement of Constable Abdul Wadood, which is reproduced as under;

Stated that on 13.12.2022 the OII handed over to me the parcels to the FSL in sealed condition along with the relevant documents. I took the parcels to FSL Peshawar where I deposited the same with official and I also obtained receiving on the route certificate. When I returned to the PS, I handover the receipt to the IO who recorded my statement U/S 161 Cr.P.C. Similarly during the course of investigation the accused pointed out spot to the IO and in this respect pointation memo was prepared in my presence as well as in the presence of Constable Khalil Ur Rehman, which is correct and correctly bear my signature.

10. **PW-06** Constable Amir Abbas, which is reproduced as under;


Stated that on the day of occurrence I was posted as


SYED ABBAS BUKHARI
Tehsil Gussakus Kalaya
76

PS Kalaya.

77

constable PS Kalaya. I alongwith other police officials were present with Mujahid Khan ASI at village Aba Khel and he laid barricade at main road. A motorcycle coming from Bazid Khel Bazar side two person were sitting on the said motorcycle. The Mujahid Khan ASI stopped the said motorcycle for the purpose of checking. A person sitting on the rear seat was deboarded while the other person escaped from the place of occurrence. The complainant ASI Mujahid Khan arrested the accused and he disclosed his name as Arshad. The complainant recovered 30 bore pistol alongwith fixed charger containing 05 live rounds of same bore from the badda shalwar of accused Arshad. The recovered case property took into possession through recovery memo which is packed and sealed into separate parcel no. 01 which is Ex. P-2 vide recovery memo Ex. PC/1 in my presence by the complainant ASI Mujahid Khan. The complainant ASI Mujahid Khan signed the same through pointed object. By affixing 3/3 seals of monogram with the name of SH. Accused Arshad disclosed the name of absconding accused as Ajmir during interrogation. Later on the absconding accused


ABAS BUKHARI
ABAS BUKHARI-II
Sub-Inspector
Police Station Kalaya
District Council Kalaya

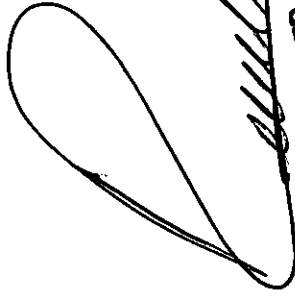
PS Kalaya.

78

namely Ajmir Khan having pistol came out from his house and started firing upon the complainant party intention to commit their lives for the purpose of releasing the arrested accused. We luckily saved. After the firing the absconder accused run away from the spot. I am the eyewitness of the occurrence.

11. PW-07 SI/complainant Mujahid Khan, which is reproduced as under;


Stated that on the day of occurrence I was posted as NET In-charge PS Kalaya. On 05.12.2022 I alongwith Constable Manzoor Ali, Rafi Ulah, Amir Abbas and driver Abdul Haq in official vehicle were present on barricade that two persons sitting on motorcycle coming from Yarali Khel Bazar were stopped for the purpose of checking. The person who sit on the rear seat was deboarded while the other person fled away from the spot. 30 bore pistol without number alongwith fix charger containing 05 live rounds of the same bore was recovered from the badda shalwar of accused during his body search which was packed and sealed into parcel no. 01 which is already Ex. P-2. I also took into possession the recovered case property through recovery memo in


M. D. SYED ABAAS
Judge/JM-II
Tehsil Courts Kalaya

PS Kalaya.

79

the presence of marginal witnesses which is already exhibited as Ex. PC/1. By affixing 3/3 seals monogram with the name of SH and put 01 seal inside the parcel. I also signed on the pistol through pointed object. He disclosed his name as Arshad S/O Rosmin Khan. The arrested accused also disclosed the name of other accused as Ajmir. Later on the accused namely Ajmir duly armed with pistol came out of his house and opened fire upon the police party with attempt to commit lives for the purpose of releasing the arrested accused Arshad. After firing he was run away near village. I arrested the accused Arshad and issued his card of arrest. I drafted the Murasila on the spot and sent the same through Constable Manzoor Ali to the PS for registration of instant case. Murasila is Ex. PW-7/1. I alongwith other police officials went to the area for arrest of absconding accused Ajmir. Card of arrest is Ex. PW-7/2. The IO prepared the site plan on my pointation. I returned to the PS and handed over the case property to Moharrir in sealed condition and accused Arshad was locked in the lockup of the PS.

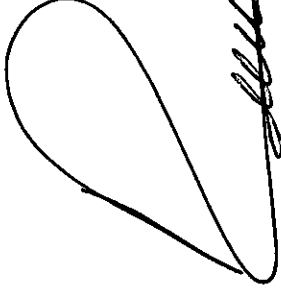

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Tehsil Courts Kalaya

PS Kalaya.

12. PW-08 Constable Rafi Ullah, which is reproduced as under;

80

Stated that on the day of occurrence I was posted as Constable NET Kalaya. I alongwith SI Mujahid Khan were present on barricade at village Aba Khel metal road. That two persons sitting on motorcycle coming from Yarali Khel Bazar. Complainant SI Mujahid Khan stopped them for the purpose of checking. The person who sit on the rear seat was deboarded while the other person fled away from the spot. Complainant SI Mujahid Khan recovered pistol of 30 bore without number alongwith fix charger containing 05 live rounds of the same bore from the badda shalwar of accused during his body search which was packed and sealed into parcel no. 01 which is already Ex. P-2. SI Mujahid Khan also took into possession the recovered case property through recovery memo in my presence which is already exhibited as Ex. PC/1. Complainant SI Mujahid Khan affixing 3/3 seals monogram with the name of SH and put 01 seal inside the parcel. He also signed on the pistol through pointed object. He disclosed his name as Arshad S/O Roşmın Khan. The arrested accused also


26.04.2023
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Telsli Comnts Kalaya


PS Kalaya.

81
disclosed the name of other accused as Ajmir. Later on the accused namely Ajmir duly armed with pistol came out of his house and opened fire upon the police party with attempt to commit their lives for the purpose of releasing the arrested accused Arshad. After firing the accused Ajmir run away near village. I am the eyewitness of the occurrence.

13. Afterwards, statements of accused U/S 342 Cr. PC was recorded, wherein they pleaded not their guilt and did not wish to be examined on oath. They opted not to produce defense evidence.

14. Thereafter arguments were heard from both the sides.

15. Now on perusal of the record, the evidence produced by prosecution and valuable assistance of learned APP for the state and learned counsel for the accused, this court is of the humble view that as for as departure of complainant from the PS is concerned, it is pertinent to mention here that complainant in the instant case when appeared as PW-07 had deposed in his cross examination that police party left the PS at about 10:00am while on the other hand one of the eye/marginal witnesses namely Amir Abbas when appeared as PW-06


26.04.2022
SYED ABBAS BUKHARI
Civil Judge/JM-II
Tehsil Courts Kalaya


PS Kalaya.

had deposed in his cross examination that they left the PS at about 12:PM on 05.02.2022.

As for as name of the IO in the instant case is concerned, one Murtaza Khan (PW-01) had deposed in his examination in chief that during the days of occurrence he was posted as IO at PS Kalaya and after registration of the FIR, case in hand was entrusted to him for investigation and accordingly he conducted investigation in the instant case while on the other hand when complainant in the instant case when appeared as PW-07 in the witness box, had deposed in his cross examination that "IO is Muhammad Hanif".

Furthermore, as for as arrival and departure of IO to the spot is concerned, IO (PW-01) in the instant case had deposed in his cross examination that he visited the spot at about 13:45hours and returned back to the PS at 17:00hours while complainant (PW-07) in the instant case had deposed in his cross examination that IO came to the spot at 01:30PM and left the spot at about 02:00PM. Similarly (PW-06) had deposed in his cross examination that IO came to the spot at about 01:15PM while the other marginal witness (PW-08) has stated in

82


MURTAZA KHAN
Civil Judge/JM-II
Tehsil Courts Kalaya

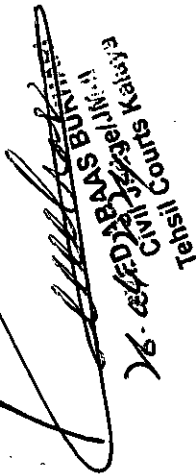
PS Kalaya.

his cross examination that IO reached the spot at about 01:15PM and he returned to the PS at 04:30PM. Similarly, PW-02 marginal witness had deposed in his cross examination that they left the PS at about 03:00PM

As for as the police officials, accompanying IO to the spot, are concerned, IO in the instant case had deposed in his cross examination as PW-01 that constables Khalil and Raziq accompanied him to the spot while PW-06 had deposed in his cross examination that IO came alone to the spot. Similarly PW-08 had stated in his cross examination that IO came to the spot alongwith 03 police officials.

As for as time of occurrence and sending of murasila to the PS from the spot is concerned, it is pertinent to mention here that as per contents of Murasila and FIR the time of occurrence has been mentioned as 12:45PM while on the other hand complainant in the instant case has deposed in his cross examination as PW-07 that bearer of murasila left the spot at 12:45PM. In given circumstances the question arise that how it is possible that the time of occurrence and sending of murasila to the PS from the spot is one and the same.

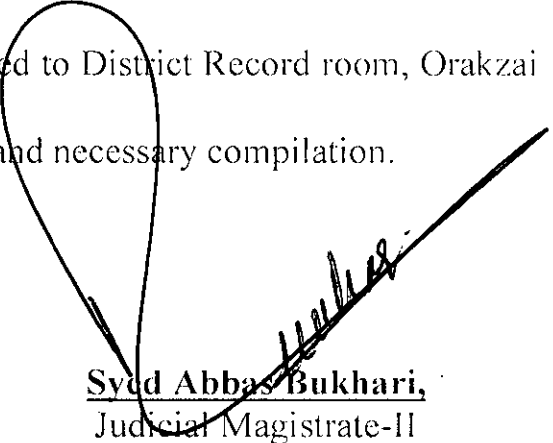
63


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Tehsil Courts Kalaya

PS Kalaya.

- 84
16. In light of the evidence produced by the prosecution to establish its case against accused facing trial, it has been noticed that there exist a vast contradiction in the statements of PWs and furthermore, the witnesses were contradicted in material particulars. Hence the prosecution miserably failed to bring home the charge against the accused facing trial.
17. As prosecution failed to prove its case against the accused beyond the shadow of doubt, therefore, by extending the benefit of doubt to the accused facing trial namely Arshad and Ajmir, they are hereby acquitted from the charges leveled against them. As they are on bail, their Sureties are discharged from the liability of bail bonds.
18. Case property be dealt with accordance with law.
19. Case file be consigned to District Record room, Orakzai after its completion and necessary compilation.

Announced
26.04.2024

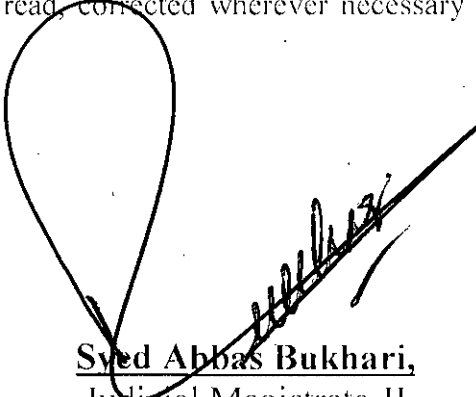

Syed Abbas Bukhari,
Judicial Magistrate-II
Tehsil Courts, Kalaya, Orakzai

PS Kalaya.

CERTIFICATE

85
Certified that this order consists of seventeen (17) pages, each page has been read, corrected wherever necessary and signed by me.

Dated: 26.04.2024.



Syed Abbas Bukhari,
Judicial Magistrate-II
Tehsil Courts, Kalaya, Orakzai