

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

Case No .....28/2 of 2023.

Date of institution.....08.05.2023.

Date of decision.....29.06.2024.


Case FIR No. 06 Dated: 19.01.2023 U/S 506, 148, 149 PPC, PS Kalaya

**Order. No. 27**

29.06.2024

APP for the state present. Accused Ayub Khan and Muqarab Shah on bail along with counsel present. Accused Hashim Khan is absconding. Rest of the accused are exempted. Complainant along with counsel present. Arguments on application u/s 249-A Cr.PC heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that complainant Biland Khan reported to the local police to the effect that on 14.12.2022, accused Ayub Khan, Hashim Khan, Muqarab Khan, Ismail Khan and Abdullah were busy in installation of a gate on their land. He asked them not to install gate in his land. On this accused made firing with intention to kill him. Inquiry was initiated u/s 157(1) Cr.PC, After completion of inquiry, final report Ex.PW-2/1 was prepared and on the strength of the final report, the instant case was registered against the accused facing trial vide FIR No. 06 dated 19.01.2023 u/s 506, 148, 149 PPC PS Kalaya.

  
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Civil Judge, JM  
Kalaya Orakzai

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, 04 PWs have been examined.

Sub-Inspector Murtaza (IO) was examined as PW-01. Sub-Inspector Shal Muhammad (SHO) and Sub-inspector Muqarab Khan were examined as PW-02 & PW-03 and Biland Khan (complainant) deposed as PW-04. Site plan is Ex.PW-1/1. Applications for warrants u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC are Ex.PW-1/2 and Ex.PW-1/3. Section 34 PPC was replaced with sections 148, 149 PPC to this effect memo was prepared which is Ex.PW-1/4. Card of arrest of accused is Ex.PW-1/5. Final report of inquiry conducted u/s 157(1) Cr.PC is Ex.PW-2/1. Challan forms are Ex.PW-2/2 and Ex.PW-2/3. Extract of mad No. 08 dated 22.12.2022 is Ex.PW-3/1.

Perusal of record transpires that the alleged occurrence took place on 14.12.2022 at 13:45 hours at the house of complainant situated at Utman Khel Lower, Orakzai and it was reported by complainant through a written application on 22.12.2022 and FIR was registered on 19.01.2023 at 14:00 hours, after lapse of more than a month time. The delay has not been explained by the complainant, which is fatal to the case of prosecution. No empty was recovered from the spot. Application of complainant is not placed on file. Prior to the registration of the case in hand, case FIR No. 123 dated 16.12.2022 u/s 324/34 PPC was registered against the present complainant party, therefore, false implication in the instant case of accused facing trial cannot be ruled out. SI Murtaza, who is IO of the case, stated in his cross examination that the instant case was registered after one month of the occurrence without any explanation for delay. Nothing has been recovered during spot inspection. Nothing incriminating has been recovered from possession of the accused or on their pointation. Biland Khan (PW-04), who is complainant of the case, stated in his cross examination that he reported the occurrence after 08 days of the occurrence giving no

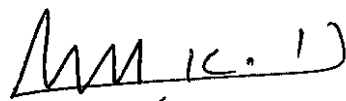
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CIVIL JUDGE JM  
Kalaya Orakzai  
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29-08-2024

explanation for the delay. There is no independent witness to the occurrence. Accused have not confessed their guilt before the court. Case of prosecution is not supported by ocular and circumstantial evidence. There are contradictions in the statements of PWs. Case of prosecution is full of doubts 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 namely Ayub Khan, Muqarab Khan, Ismail Khan and Abdullah are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability. Accused Hashim 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, if any be kept intact till arrest and trial of absconding accused name above.

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

**Announced.**  
29.06.2024



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