

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

Case No .....17/2 of 2023.

Date of institution.....30.03.2023.

Date of decision.....29.06.2024.

Case FIR No. 123 Dated: 16.12.2022 U/S 324/34 PPC, PS Kalaya**Order. No. 28**

29.06.2024

APP for the state present. Accused Wali Khan on bail along with counsel present. Rest of the accused are exempted. Accused Gul Raj is absconding. Complainant absent. Father of complainant present. Arguments on application u/s 249-A Cr.PC heard and record gone through.

**ZAHIR KHAN**  
Civil Judge/JM  
Kalaya Orakzai

Brief facts of the prosecution's case as unfolded in the FIR are that complainant, Hashim Khan reported the occurrence to the local police to the effect that on 14.12.2022, he along with his cousins Salman Ahmad, Abdullah, Ilyas and Muqarab Shah were busy in fixation of gate in their land. When in meanwhile his cousins Wali Khan, Abdul Qayoom, Ashraf and Gul Raj came to the spot, duly armed with fire arms. Accused Abdul Qayoom commanded us to stop gate fixation. He used abusive language, criminally intimidated us by advancing threats of dire consequences while accused Wali Khan commanded co-accused to kill us. On the command of accused Wali Khan, accused Gul Raj, Ashraf and Abdul Qayoom started firing with intention to kill us. We took shelter behind the boundary wall and escaped unhurt. Motive behind the occurrence is fixation of gate. Report of complainant Hashim Khan was scribed in DD vide mad No. 07 dated 14.12.2022. The Complainant signed the report as token of its correctness while PW Muqarab Shah signed the report as verifier.

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Thereafter, inquiry was initiated and after completion of inquiry, final report was prepared and case FIR No. 123 Dated: 16.12.2022 U/S 506/34 PPC, PS Kalaya was registered against the accused. Later on, section 506 PPC was substituted with section 324 PPC.

After completion of investigation, complete challan was put in court against accused. Provisions of section 241-A Cr. PC were complied with. Later on, accused Gul Raj absented himself and resultantly, proceedings u/s 512 Cr.PC were initiated against him. Formal charge was framed against accused Wali Khan, Ashraf and Abdul Qayoom. They pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 03 PWs have been examined.

Sub-Inspector Murtaza (IO) was examined as PW-01. Muqarab Shah (verifier of the report) was examined as PW-02 and Salman Ahmad (eye witness) deposed as PW-03. Addition by IO in the site plan with red ink per pointation of eye witness PW Abdullah is Ex.PZ. Applications for warrant u/s 204 Cr.PC and proclamation notices u/s 87 Cr.PC are Ex.PW-1/1 and Ex.PW-1/2. Card of arrest of accused is Ex. PW-1/3.

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 on 14.12.2022 at 14:40 hours and FIR was registered on 16.12.2022 at 16:15 hours. Motive behind the occurrence is fixation of gate. Statement of verifier of report Muqarab Shah was recorded as PW-02. Statement of Salman Ahmad, who is the eye witness, was recorded as PW-03. PW Ilyas and Abdullah were abandoned by prosecution being witnesses of the same facts as deposed by PW-03. He reiterated the story narrated in the FIR. Complainant Hashim Khan is

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abroad and absconding in cross case registered vide FIR No. 06 Dated: 19.01.2023 U/S 506, 148, 149 PPC, PS Kalaya. Record depicts that no empty shell has been recovered from the spot. Nothing incriminating has been recovered from possession of the accused or on their pointation. Accused have not confessed their guilt before the court. Case of prosecution is not supported by ocular and circumstantial evidence. There are serious contradicts in the statements of PWs. Per record, site plan was prepared on the pointation of complainant, however, SI Murtaza(IO), who deposed as PW-01, stated in his cross examination that no one else was present at the spot at the time of spot visit except the eye witness. When complainant was not present at the spot, then how site plan was prepared on his pointation? He further deposed that nothing was recovered from the spot. No one got injured in the occurrence. Similarly, Salman Ahmad (PW-03) who is one of the eye witnesses to the occurrence, stated in his cross examination that no one else except the complainant and accused party was present at the spot at the relevant time which contradicts the record. He also stated that he does not know about the spot visit by the police. Complainant, Hashim Khan is abroad and absconding in cross case cited above. Case of prosecution is full of dents 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 Wali Khan, Abdul Qayoom and Ashraf are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability. Accused Gul Raj is absconding, hence, he is hereby declared

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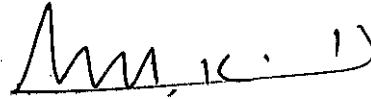
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as proclaimed offender. His name be entered in register/list of proclaimed offenders. Perpetual warrant of arrest be issued against him.

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