

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

Case No1/ Juvenile of 2023.

Date of institution.....09.08.2023.

Date of decision.....09.07.2024.

Case FIR No. 37 (Cross version recorded vide mad No. 10) Dated:11.04.2023 U/S 506 PPC, PS Kalaya**Order. No. 21**

09.07.2024

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

APP for the state present. Juvenile accused Muhammad Arif on bail along with counsel present. Complainant Fazal Ameen present. Arguments on application u/s 249-A Cr.PC on behalf of counsel for accused/petitioner already heard. Arguments on behalf of APP for the state heard today and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that, report of the injured complainant Fazal Ameen was recorded in THQ Hospital Kalaya as special report which was scribed in DD vide mad No. 10 dated 11.04.2023 wherein, it is alleged that he had purchased a gate for his house in Bara, District Khyber and on the day of occurrence, it was brought and when he came out of his house and was proceeding towards the vehicle when accused Muhammad Arif came there. He (Muhammad Arif) made aerial firing in order to intimidate him but he was overpowered, meanwhile accused Mast Ali came out of his house. He was duly armed with Kalashnikov. He made firing with intention to kill him and as a result of his firing, he and the present accused Muhammad Arif got hit and sustained injuries. Motive behind the occurrence is land dispute. Complainant charged

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accused facing trial and major co-accused Mast Ali for the commission of the offence.

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 against accused. He pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 07 PWs have been examined.

Constable, Asif and Hamayoon (Muharrir) were examined as PW-01 and PW-02 respectively. Sub-inspector Aftab Ahmad was examined as PW-03. Sub-Inspector Murtaza (IO) was examined as PW-04. Complainant Fazal Ameen deposed as PW-05. Muhammad Ali Khan (verifier of the report) was examined as PW-06 and Dr. Farooq Azam deposed as PW-07. Site plan is Ex.PB. Card of arrest of accused facing trial is E.PW-4/1. Application for judicial remand is Ex.PW-4/2. Medical report is Ex.PW-7/1 and endorsement on the injury sheet is Ex.PW-7/2.

Perusal of record transpires that the alleged occurrence took place on 11.04.2023 at 15:30 hours at Momin Garhi, Aba Khel, Orakzai near the house of one Miras Khan and it was reported on 11.04.2023 at 18:10 hours. Special report of the complainant was scribed in DD vide mad No. 10 dated 11.04.2023, PS Kalaya. Motive behind the occurrence is land dispute. In order to prove the case against the accused facing trial, prosecution has produced 07 witnesses so far. Although, accused facing trial is directly and by name charged in the report by complainant, however, there are serious contradictions in the statements of PWs. No empty has been recovered from the spot. No blood stained earth has been recovered during spot visit by IO.

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IO of the case, when deposed as PW-04, categorically stated that it is a concocted case. Accused facing trial is the injured victim and complainant of case FIR No. 37 dated 11.04.2023 u/s 324, 337-F(iv) PPC. Accused Sami Ullah was charged for causing fire arm injury to him. Major co-accused Mast Ali was eye witness to the occurrence. Accused Sami Ullah has already been acquitted by this court on the basis of compromise with the complainant party (present accused). Statements of PWs show serious contradictions. PW-01, stated in his cross examination that he was handed over special report at about 04:00 pm in THQ, hospital Kalaya whereas, per contents of mad No. 10 dated 11.04.2023, time of report is 18:10 hours. PW-03, stated in his cross examination that the occurrence was reported by complainant after 03 hours of the occurrence. Similarly, PW-04, SI Murtaza, who is IO of the case, stated in his cross examination that no empty or blood was recovered during spot inspection. Nothing incriminating was recovered during spot visit. He also deposed that according to his investigation, it is not a genuine case rather it is a concocted case registered against the accused facing trial. Fazal Ameen, complainant of the case, who deposed as PW-05, narrated altogether a different story in his statement. He stated that he was fired at by minor co-accused facing trial namely Muhammad Arif with intention to kill him which contradicts his previous report recorded vide mad No. 10 dated 11.04.2023. He also stated that his report was recorded by the police in PS Kalaya which further contradicts the record. He also negated the site plan prepared by the IO. Muhammad Ali, brother of complainant and verifier of the report, stated in his cross examination that the injured complainant

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reported the occurrence in PS Kalaya which also contradicts the record and statements of police officials who deposed as prosecution witnesses. Dr. Farooq Azam, who deposed as PW-07, stated in his cross examination that in the present case, the wound is most probably caused by a sharp object which further negates the version of the complainant.

Record further shows that no empty and blood has been recovered from the spot. The shirt and shalwar of the complainant were not taken into possession by the police/IO. There is un-explained delay in the report.

Statements of PWs are full of contradictions. Furthermore, per report of the complainant, his cousin namely Sami Ullah was also wounded with the firing of co-accused Mast Ali but neither the said Sami Ullah was examined as witness by IO nor produced by complainant as witness to support his stance. This is a serious blow to the case of prosecution. The accused facing trial is injured complainant of the above cited case registered u/s 324 PPC, therefore, his false implication in the present case cannot be ruled out. Case of prosecution is not supported by ocular, medical and circumstantial evidence. Nothing incriminating has been recovered from possession of the accused or on his pointation. Accused has not confessed his guilt before the court. IO has categorically stated that it is a concocted case.

Case of prosecution is full of dents and doubts benefit of which goes to the accused as of right. 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 Muhammad Arif is hereby acquitted from the charges leveled against him. He is on bail. His sureties

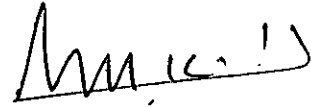
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stand discharged from their liability. Case property if any, be dealt with in accordance with the law.

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

Announced.
09.07.2024



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