

**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL
JUDGE/JM, DISTRICT ORAKZAI**

Case No.....11/2 of 2023.
Date of Institution.....08.11.2023.
Date of Transfer In.....21.05.2024.
Date of Decision.....26.07.2024.

State through:

Asraf Ali s/o Muhammad Nabi, R/O Qoum Mani Khel, Tappa Bada
Khel, Tehsil Lower, District Orakzai
.....**Complainant**

VERSES

1. Nazim Ali s/o Sangin Ali
.....**Accused Facing Trial**
2. Salman Ali s/o Niazbat Khan
3. Jihad Ali s/o Noor Mat Khan
.....**Accused Facing Trial**
4. Awan Ali s/o Niazbat Khan
.....**Absconding Accused**

All R/O Qoum Ali Khel, Tappa Mirwas Khel, District Orakzai

JUDGEMENT

26.07.2024

Through this judgement, I am going to dispose of the instant case registered against accused facing trial Nazim Ali, Salman Ali, Jihad Ali and absconding accused Awan Ali, vide FIR No. 33, Dated: 01.09.2023, U/S: 324/34 PPC, PS Kurez Boya, L/Orakzai.

Brief facts as per contents of FIR are that complainant Ashraf Ali s/o Muhammad Nabi submitted application u/s 22-A Cr.P.C before the court of Hon'ble District and Sessions Judge, Orakzai who ordered for registration of FIR against the accused/respondents.

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2. According to the contents of application, the petitioner has alleged that he is permanent resident of District Orakzai, Caste Mani Khel, Tappa Bada Khel and is peaceful citizen. It is alleged that he submitted an application to DPO Orakzai on 18.07.2023 against the respondents on which no proceedings have been initiated against them. That against accused Nazim Ali, FIR No. 24, dated: 09.07.2023 was registered, in which he is on bail. That the complainant has entered into marriage with the daughter of one Ali Haider some 13 years back and upon her, respondent No. 02 to 05 raised "Ghag" but Ali Haider in consultation with her daughter married her to Ashraf Ali and now the complainant/petitioner has 05 children from the said wedlock. That since marriage with the daughter of Haider Ali, respondent No. 02 to 05, who are cousins of Haider Ali, are bant upon threatening the petitioner due to which he has left his paternal village and is residing at Dargai, but despite that the respondents are not letting the petitioner to live peacefully. That after release of respondent No. 02 in FIR No. 04, dated: 09.07.2023, respondent No. 02 to 05 on 16.07.2023 made areal ineffective firing upon the complainant, from which he luckily escaped unhurt. That there are eye-witnesses of the occurrence but the witnesses are hesitant to give evidence against the respondents. Motive for the occurrence is dispute of women folk. That on 16.07.2023 at 05:00 hrs, the complainant was on his way from Dargai, Ghakhai Bazar to his house along with a child. When he reached near graveyard, meanwhile respondent No. 02 to 05 started firing at him from the

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nearby bushes. The respondents loudly talked that this time you escaped unhurt but next time be ready for your death. The matter was reported in the local PS, but the SHO stated that already an FIR against respondent No. 02 is registered and that he cannot register 2nd FIR. On this, an application was submitted to DPO Orakzai on 18.07.2023, on which no proceedings were initiated and hence the instant application u/s 22-A Cr.P.C was submitted. After acceptance of the application, the same was incorporated into FIR No. 33, dated: 01.09.2023, u/s 324/34 PPC at PS Kurez Boya, District Orakzai.

3. Complete challan against the accused was submitted, but accused Awan Ali being abroad was proceeded u/s 512 Cr.P.C after issuance of warrant u/s 204 Cr.P.C and recording statement of Khalid Ali DFC as SW-01.
4. Accused were summoned and legal formalities under Section 241-A Cr.P.C were complied with on 11.11.2023. Formal charge against the accused was framed on 22.11.2023, to which they pleaded not guilty and claimed trial, whereafter prosecution was directed to produce its evidence.

Prosecution produced as many as eight (08) witnesses to prove its case against the accused. The gist of prosecution evidence is as follows;

6. **PW-01:** Altaf Ali SHO, PS Kurez Boya. The complainant submitted the order of the learned ASJ Orakzai u/s 22-A(6) Cr.P.C for registration of FIR. After obtaining legal opinion of the District

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Public Prosecutor. He registered the FIR against the accused facing trial u/s 324/34 PPC, the copy of which is Ex.PW-1/1.

7. **PW-02** is the statement of Murtaza Hassan constable, PS Kurez Boya. He is marginal witness to the recovery memo Ex.PW-2/1 vide which the IO took into possession 02 empties of 7.62 bore from the place of occurrence.

8. **PW-03** is the statement of Hashim Khan OII, PS Kurez Boya. He prepared site plan Ex.PW-3/1 at the pointation of the complainant. The recovered empties of 7.62 bore were sealed into parcel No. 01 Ex.P-1 in presence of the marginal witness and took the same vide recovery memo already Ex.PW-2/1. The photocopy of DD is Ex.PW-3/2. The statements of marginal witnesses and statement of Kazim Ali and Mudasir Ali were recorded. At PS, statement of ASHO Altaf Ali was recorded. On 09.09.2023, he drafted application for analysis of the recovered empties and sent the empties along with application Ex.PW-3/3. Attested copy of register No. 19 and DD are Ex.PW-3/4 and Ex.PW-3/5 respectively. He issued card of arrest of accused Nazim Ali, Salman Ali and Jehad Ali which is Ex.PW-3/6. Whereafter, he submitted the case for submission of challan to the SHO.

9. **PW-04** is the statement of Khyal Hassan FC, PS Kurez Boya. He is marginal witness of the recovery memo Ex.PW-2/7 vide which the IO recovered 02 empties of 7.62 bore and sealed the same into parcel No. 01. He sent the same to FSL along with road certificate No. 170/21KB for transmission to FSL.

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10. PW-05 Muhammad Yonus Khan SHO, PS Mishti, the then SHO PS Kurez Boya. He submitted interim challan in the present case which is Ex.PW-5/1. He also prepared complete challan and challan against accused Awan Ali u/s 512 Cr.P:C which is Ex.PW-5/2.

11. PW-06 is the statement of Kazim Ali. He is co-villager of the complainant. He stated that he was present at the Dargai graveyard on the spot. At about 17:00 hrs, Nazim Ali s/o Sangin Ali, Salman and Awan sons of Niazbat Khan and Jihad Ali s/o Noormat Khan duly armed with Kalashnikov appeared and opened firing at the complainant Ashraf Ali and his son Mudasir Ali but luckily, they escaped unhurt. The accused decamped after the occurrence.

12. PW-07 is the statement of Mudasir Ali. He also repeated the same story.

13. PW-08 is the statement of the complainant Ashraf Ali. He repeated the same story as alleged in the FIR and application u/s 22-A(6) Cr.P.C.

14. After closing of prosecution evidence, statements of accused U/S 342 Cr. PC were recorded wherein they pleaded not guilty and also did not wish to be examined on oath. They opted not to produce evidence in defense.

15. Arguments heard and available record perused.

16. It is the case of the prosecution that complainant Ashraf Ali submitted application to learned AD&SJ Orakzai u/s 22-A(6) Cr.PC, wherein he has alleged that on 16.07.2023 at 05:00 PM, he was on his way from Dargai Ghakhai Bazar to his house along with his son.

When he reached near grave yard, accused facing trial made firing at them from the nearby bushes but luckily, they escaped unhurt.

Above-mentioned FIR was registered at the order of the learned AD&SJ Orakzai.

17. The prosecution in order to prove their case produced as many as 08 PWs, but the perusal of record shows that prior to submission of application before the learned ASJ u/s 22-A(6) Cr.P.C on 27.07.2023, the complainant had already submitted application to DPO Orakzai on 18.07.2023 which is placed on file as Ex.PW-8/1, but in the said application he has not mentioned about the present occurrence despite of the fact that the date of occurrence mentioned in the application u/s 22-A(6) is 16.07.2023. The complainant has also mentioned about the submission of the application Ex.PW-8/1 to DPO Orakzai, in the application u/s 22-A Cr.P.C. It is creating doubts about the occurrence that the said application Ex.PW-8/1 was submitted only 02 days after the occurrence but the details of the said occurrence is not mentioned in the application while in the subsequent application u/s 22-A Cr.P.C, the same are mentioned in detail. The complainant has mentioned in his application about the areal firing at them and no where it is mentioned that the accused has attempted to commit Qatl-i-Amd of the complainant and his son, but still the instant FIR has been lodged u/s 324 PPC instead of 506 PPC which shows the malafide on the part of the police against the accused facing trial. There are a lot of contradictions in the statements of PWs. The FIR has been lodged with the delay of about

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one and half month and the application u/s 22-A Cr.P.C has been submitted with delay of about 11 days which has definitely provided space to complainant for consultation and deliberation and which is also clear from the applications submitted to DPO Orakzai on 18.07.2023 and application u/s 22-A submitted on 22.07.2023. PW-07, Mudasir Ali has stated that occurrence took place at about 04:00 PM, but complainant in his statement as PW-08 has stated that he was on his way to house at about 15:00 hrs. PW-08 stated during cross-examination that the accused made firing from 30/40 meters but the site plan which is prepared at the pointation of the complainant shows something else. One of the eye-witness Kazim Ali is brother-in-law of the complainant while the other one namely Mudasir Ali is his son and both are interested witnesses. There is no independent witness. PW Kazim Ali has stated that he has identified 02 accused Nazim Ali and Salman Ali at the spot and that the other 02 accused were muffled faces. PW-08 also stated that he does not know about the muffled faces accused being mentioned eye-witness Kazim Ali. The site plan has been prepared on 01.09.2023 and the spot inspection also made on the same date, during which recovery of 02 empties of 7.62 bore was made vide recovery memo Ex.PW-2/1, but astonishingly the effecting of recovery of 02 empties from the place of occurrence after one and half month of the occurrence is creating further doubts because according to statement of complainant, all the 04 accused duly armed with Kalashnikovs made indiscriminate firing at them. So, it cannot be determined that which

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02 of the 04 accused have made firing at the complainant and his son.

97 All the above facts and circumstance are creating doubts about the case of prosecution.

18. It is to assert that the rule of criminal jurisprudence to give benefit of doubt to accused is much more than a mere rule of law. It is a rule of prudence which cannot be ignored (PLD 1999 Lahore 56) (1999 SCMR 1220).

19. The prosecution has failed to substantiate its case against the accused beyond reasonable doubts. Failure of prosecution to comply the mandatory provision of law created doubts in prosecution version and it is settled principle of criminal law that benefit of doubt always goes in favor of accused.

20. A single dent having created in the case of prosecution makes the accused entitled to benefit of doubt. It is to assort that the rule of criminal jurisprudence to give benefit of doubt to accused much more than a mere rule of law. It is a rule of prudence which cannot be ignored (PLD 1999 Lahore 56) (1999 SCMR 1220)


21. Supreme Court in case of Tariq Parvez Vs the State (1995SCMR 1345) has observed that the concept of benefit of doubt to an accused person is deep rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is only circumstance which creates reasonable doubt in prudent mind about the occurrence of

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the accused, so the same be extended to him not as concession but
(98) as a matter of right.

- 22.** Keeping in view the above, I therefore, acquit the accused facing trail from the charges leveled against them by extending them benefits of doubts. They are on bail. Their sureties are discharged from the liability of the bail bonds. Case property if any be kept intact till the expiry of period provided for appeal/revision.
- 23.** It is pertinent to mention here that Accused **Awan Ali** has been declared absconder but there is no probability of his conviction in the instant case in view of the statements of present set of PWs, therefore, he is also **acquitted in absentia**. His name be deleted from the register of absconders by sending copy of this order to the SHO concerned.
- 24.** Case file be consigned to Record room after its completion and necessary compilation.

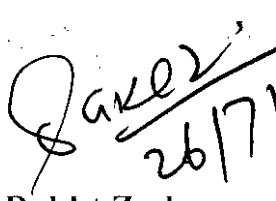
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CERTIFICATE

It is certified that this judgment consists of 09 pages. Each page has been dictated, read, corrected and signed by me.

Dated: 26.07.2024


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