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**IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE-I
TEHSIL KALAYA, DISTRICT ORAKZAI**

Case No.....18/2 of 2021.

Date of Institution.....12.03.2021.

Date of Decision.....30.07.2024.

State through:

Muhammad Dauran S/O Mian Khel R/O Qaum Feroz Khel, Tehsil Lower,
District Orakzai**Complainant**

VERSES

1. Ziarat Gul S/O Nadar Khan
2. Khan Zada S/O Shehzad Khan both R/O Qaum Mandra Khel, Tappa Darway Khel, Laghonai, District Orakzai **Accused**

Case FIR No. 120, Dated 26.11.2020 U/S 324, 337- A(i), 337-F(i)/34 PPC & 15-AA PS
Kalaya.

JUDGMENT
30.07.2024

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

MM 16.17
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Through this judgment, I am going to dispose of the instant case registered against accused Ziarat Gul etc vide case FIR No. 120, Dated 26.11.2020 U/S 324, 337-A(i), 337-F(i)/34 PPC & 15-AA, PS Kalaya. Brief facts of the prosecution's case as unfolded in the FIR Ex.PA are that, on 26.11.2020 at 15:00 hours, complainant namely Muhammad Dauran reported the occurrence to ASI Aziz Rehman of PS Kalaya in the emergency room of KDA hospital, Kohat to the effect that, on the day of occurrence, he along with Tehseel Khan proceeded to Laghoni, Mandra Khel, where accused were busy in raising construction in the disputed land. They asked the accused not to raise construction as the land was a disputed one. On this, the accused got infuriated and started

firing with intention to kill them, resultantly, he got hit and sustained injury while PW Tehseel escaped unhurt. In the hospital, his report was recorded by the police which was read over to him and he thumb impressed the same as token of its correctness. PW Tehseel signed the report as verifier. Complainant charged the accused facing trial for the commission of the offence. Motive behind the occurrence is land dispute. Accused facing trial were arrested on the say day and were later on, released on bail.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial. Accused were summoned, they appeared before the court and legal formalities under Section 241-A Cr. PC were complied with. Accused were formally indicted. They pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence. Prosecution produced eight (08) witnesses to prove its case against the accused.

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PW-01, is the statement of constable Azmat Khan, He was present with SI Anwar Khan at KDA, hospital Kohat at the time of recording report of the complainant. The injured Muhammad Dauran along with injury sheet was handed over to him and he handed over the injured and injury sheet to the doctor in KDA, Hospital Kohat. PW-02 is the statement of SI/SHO Muhammad Shafeeq. He submitted complete challan against the accused. Challan form is Ex.PW-2/1. PW-03, is the statement of DRC Muharrir namely Ain Ullah. He incorporated the contents of murasila into FIR Ex.PA. He has handed over parcels containing case property to IO for the purpose of sending the same to

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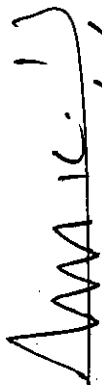
FSL. Sub-Inspector Mehdi Hassan was examined as PW-04. He is IO of the case. He proceeded to the spot and prepared site plan Ex.PB. On 26.11.2020, he arrested accused Ziarat Gul and Khan Zada vide card of arrest Ex.PW-4/1. On 27.11.2020, he produced the accused before the Illaqa Magistrate for obtaining their physical remand vide his application Ex.PW-4/2. He made addition in the site plan with red ink on the pointation of accused Ziarat Gul. The same is Ex.PB/1. Recovery Sketch Ex.PW-4/3 was prepared. He took into possession the pistol as weapon of offence vide recovery memo Ex.PW-4/4. He collected 02 empties of 30 bore from the place of accused in presence of marginal witnesses vide recovery memo Ex.PW-4/5. Pointation memo is Ex.PW-4/6. On 27.11.2020, section 337-A(i), 337-F(i) PPC and section 15-AA were added in the record vide insertion memo Ex.PW-4/7. On 28.11.2020, he took into possession blood stained garment of injured vide recovery memo Ex.PW-4/8 in the presence of marginal witnesses. On 28.11.2020, he produced accused Ziarat Gul before the court for recording his confessional statement vide his application Ex.PW-4/9 while further custody of accused Khan Zada was sought vide application Ex.PW-4/10. On 01.12.2020, he sent blood stained garments and 02 empties of 30 bore along with 30 bore pistol to FSL vide his applications Ex.PW-4/11 and Ex.PW-4/12 respectively. FSL reports thereof are Ex.PW-4/13 and Ex.PW-4/14. PW-05, is the statement of Sub-Inspector Anwar Khan. He has recorded the report of complainant in shape of murasila Ex.PZ. He prepared injury sheet of injured/complainant and sent him to the

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medical officer for treatment under the escort of constable Azmat Khan. Injury sheet is Ex. PW-5/1. Murasila was sent to PS for registration of the case through constable Taj Gul. PW-06 is the statement of Constable Khan Wada. He is one of the marginal witnesses to the recovery memo Ex.PW-4/5, vide which the IO took into possession 02 empties of 30 bore. The same were packed and sealed into parcel No. 1 Ex.P-1. The IO took into possession one 30 bore pistol and blood stained garments of the injured vide recovery memos already exhibited as Ex.PW-4/4 & Ex.PW-4/8. The same were packed and sealed into parcel No. 2 Ex.P-2 and 3 Ex.P-3. He has also taken parcel No.1, 2 & 3 containing case property along with application for FSL and road permit certificate to FSL, Peshawar. PW-07 is the statement of injured complainant. He reproduced the story narrated in the FIR. He verified his thumb impression on the report.

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Tehseel Khan, the eye witness was examined as PW-08. He is verifier of the report. He also reproduced the story narrated in the FIR. He verified his thumb impression on the report as verifier. PW-09, is the statement of Dr. Tofail. He stated that he has examined the injured Muhammad Dauran and prepared medico legal report of the injured. Medico legal report is Ex.PW-9/1. Per Ex.PW-9/1, the kind of weapon used is "blunt object".

4. On conclusion of prosecution evidence, statements of accused were recorded u/s 342 Cr.PC, in which they professed their innocence, however, they did not opt to record their statements on oath as

envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in their favour.

5. Record shows that the alleged occurrence took place on 26.11.2020 at 10:30 hours at Laghoni, Mandra Khel, Lower Orakzai. It was reported on the same day at 15:00 hours and FIR was registered at 18:15 hours. Murasila is Ex.PZ and FIR is Ex.PA. Muhammad Dauran is the injured/complainant, PW Tehseel Khan is the eye witness and verifier of the report. Motive behind the occurrence is land dispute. Accused were arrested on the same day i.e 26.11.2020. Site plan Ex.PB was prepared by IO on 27.11.2020 at his own instance. Addition in the site plan Ex.PB/1, on the pointation of accused Ziarat Gul was also made on 27.11.2020. Injury sheet is Ex.PW-5/1 and medical report is Ex.PW-9/1. During spot inspection, the IO recovered and took into possession 02 empties of 30 bore Ex.P-1 from the places of accused vide recovery memo Ex.PW-4/5. On the pointation of accused Zairat Gul, one pistol 30 bore along with a fixed charger Ex.P-2 was recovered and took into possession by IO as weapon of offence from the room of the Biatak of the said accused vide recovery memo Ex.PW-4/4. Pointation memo is Ex.PW-4/6 and recovery sketch is Ex.PW-4/3. Blood stained garments were taken into possession on 28.11.2020 vide recovery memo Ex.PW-4/8. FSL reports regarding blood stained garments and 02 crime empties and one 30 bore pistol are Ex.PW-4/13 and Ex.PW-4/14 respectively. Although, accused facing trial are directly and by name charged in the FIR, however, there is un-explained delay of about 05 hours in lodging the report.

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This un-explained delay in report creates a reasonable doubt which goes to the accused facing trial. Site plan Ex.PB was prepared by IO in the absence of complainant and eye witness. The site plan was never verified from complainant and eye witness despite the fact that injured/complainant was discharged from the hospital on the next day of the occurrence while PW-08 was not injured in the occurrence. Addition in the site plan Ex.PB/1 was made on the pointation of accused Ziarat Gul who has not confessed his guilt before the court; hence, the same has no value in the eye of law. During spot inspection, no blood stained earth was recovered by the IO. There is nothing on record which could show that the blood was absorbed. The investigation officer stated in his cross examination that he visited the spot on 26.11.2020 but differed preparation of site plan as it was evening time. He visited the spot again on 27.11.2020 and allegedly recovered and took into possession 02 empties of 30 bore. If the empties were lying on the spot then why he did not collect the same on 26.11.2020?. This also creates a serious doubt in case of prosecution. Recovery of the empties on 27.11.2020 in the absence of complainant, eye witness and accused is very much doubtful.

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6. Forensic Science Laboratory reports regarding blood stained garments, crime empties and one 30 bore pistol are Ex.PW-4/13 and Ex.PW-4/14 respectively. As per Ex.PW-4/14, the 02 crime empties are that of 9MM bore and cannot be fired from 30 bore pistol being weapon of different bore. The 30 bore pistol was taken into possession as weapon of offence but FSL report Ex.PW-4/14 totally negates the same. The

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injured/complainant was examined by medical officer (PW-09). He stated that the kind of weapon used is a "blunt object". There is nothing in the medical report Ex.PW-9/1 that the alleged injury was caused by firearm weapon. The medico legal report shows laceration on the forehead and abrasion on the dorsal of left hand caused by means of blunt object. The medical report totally negates the version of prosecution. Similarly, there is nothing in the injury sheet which could show that which part of the body of the complainant received fire shots. Motive behind the occurrence has not been proved by prosecution.

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There are serious contradictions in the statements of PWs. PW-01, stated in his cross examination that injury sheet and the injured was handed over to him by SI Anwar Khan at about 02:57 pm and he handed over the same to the doctor at 03:00 pm which contradicts Ex.PZ (murasila). Per Ex.PA, murasila was received from ASI Aziz Rehman through constable Taj Gul whereas, PW -05, SI Anwar Khan stated that he recorded report of the complainant. The name of the said ASI Aziz Rehman is neither mentioned in the calendar of witnesses of challan form nor produced as witness by prosecution. PW-01 also stated that the police accompanied the injured complainant from Sheraz Garhi check post to KDA, hospital Kohat which further contradicts the record. PW-04, who is IO of the case, stated in his cross examination that no private person was present at the spot at the time of spot inspection. He has not recorded statement of any independent witness which could support the version of complainant.

No specific point was given to the complainant, PWs and accused in the site plan. He also stated that accused voluntarily surrendered before him. He never visited the hospital where the injured was admitted. PW-05, who recorded the report of the complainant in shape of murasila Ex.PZ stated in his cross examination that his statement was not recorded by IO u/s 161 Cr.PC and that he has not prepared any other document except the murasila which means that neither he has examined the injured/complainant nor has prepared injury sheet. Complainant Muhammad Dauran deposed as PW-07. He stated in his cross examination that the local police of PS Kalaya were informed about the occurrence from the spot and they reached to KDA hospital Kohat at 03:00 pm whereas, PW-01 stated that the police accompanied the injured/complainant from Sheraz Garhi check post to KDA hospital Kohat. He also admitted that he has not pointed out the spot to the police. He never visited PS Kalaya. He also deposed that the spot is situated in an open area and there are many houses near the spot. He cannot explain the site plan. He further deposed that he was discharged from the hospital on the following day of the occurrence. When he was discharged from the hospital a day after the occurrence then why he and the eye witness did not bother to point out the spot to the IO or verify the same. Statement of PW-08 (eye witness) is also full of contradictions.

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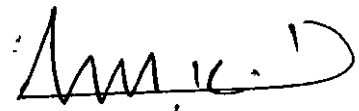
- 8.** The prosecution failed to produce trustworthy, confidence inspiring and coherent evidence to prove the case against the accused facing trial. There are so many contradictions in the statements of PWs.

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Accused have not confessed their guilt before the court. The ocular, medical and circumstantial evidence produced by prosecution is not worth reliance and not sufficient to convict the accused facing trial.

- 9.** Prosecution was bound to prove its case against the accused beyond reasonable shadow of doubt but there are so many dents and doubts in the prosecution's case benefit of which goes to the accused facing trial as of right. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.
- 10.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Ziarat Gul and Khan Zada are hereby acquitted from the charges leveled against them. They are on bail. Their bail bonds stand cancelled. Sureties are discharged from their liability. Case property be dealt with in accordance with law.
- 11.** Case file be consigned to record room after its completion and necessary compilation.

Announced
30.07.2024



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Judicial Magistrate-I
Kalaya, Orakzai

CERTIFICATE

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



Zahir Khan
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