

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

Case No9/2 of 2024.

Date of institution.....30.03.2024.

Date of decision.....22.08.2024.

Case FIR No. 87 (Mad No. 11) Dated: 07.09.2022 U/S 506/504/34 PPC, PSKalaya**Order. No. 11**

22.08.2024

None present for the state. Accused Aziz Khan, Ameen Khan and Zalay Khan on bail present. Complainant Gul Raib and PW Lajbar Khan present. Arguments on application u/s 249-A Cr.PC already heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that, complainant namely Gul Raib Khan reported the occurrence to the local police of PS Kalaya which was scribed in DD vide mad No. 11 dated 07.09.2022, wherein, it is alleged that he along with PW Lajbar Khan were busy in cutting plants in their fields situated at Mandra Khel, Orakzai when accused Aziz Khan, Zalay Khan and Amin Khan came there, started abusive language, advanced threats of dire consequences. Accused were duly armed with sticks, clubs and axes. Soon after the occurrence, he went to the nearby police check post for report where he was asked to go to the PS Kalaya. They went to PS Kalaya and reported the occurrence to the police which was reduced into writing and read over to them. Complainant thumb impressed the report as token of its correctness while PW Lajbar thumb impressed the report as verifier. Motive behind the occurrence is land dispute.

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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 Muqadar Khan was examined as PW-01. He is the inquiry officer of the case. He visited the spot and prepared site plan Ex.PB on the pointation of complainant. During spot inspection, he took into possession 08 cut trees vide recovery memo Ex.PW-1/1 in presence of marginal witnesses. He recorded statements of some of the witnesses during inquiry. After completion of inquiry, he prepared final report Ex.PW-1/2. On 13.09.2022, he sought legal opinion from the office of DPP, Orakzai vide application Ex.PW-1/3. Thereafter, he handed over the case file to SHO for registration of the case.

PW-02 is the statement of ASI Murtaza. He is IO of the case. He made addition in the site plan Ex.PB/1. He issued card of arrest of accused Ex.PW-2/1. He produced the accused before the court for obtaining their physical remand; vide application Ex.PW-2/2. He also recorded statements of accused u/s 161 Cr.PC. After completion of investigation, case file was handed over to SHO for submission of complete challan against the accused facing trial.

Gul Raib (complainant) was examined as PW-03. He reiterated the story narrated in the report recorded vide mad No.11 dated 07.09.2024. PW-04 is the statement of Lajbar Khan. He is the alleged eye witness to the occurrence and also verifier of the report.

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Perusal of record transpires that the alleged occurrence took place on **07.09.2022** at **12:30** hours in the fields situated at Mandra Khel, Orakzai and it was reported on **07.09.2022** at **13:30** hours and FIR was registered on **13.09.2022**. Gul Raib is the complainant while Lajbar Khan is the eye witness to the occurrence. Motive behind the occurrence advanced by the complainant is land dispute. Per record, there is cross version of the occurrence reported by Aziz Khan (one of the accused facing trial). The report of the complainant named above was scribed in DD vide mad No. 11 dated 07.09.2022 while cross version of the occurrence was recorded vide mad No. 10 dated 07.09.2022. Accused of the cross version (mad No. 10) have already been acquitted by the court vide order dated 06.03.2024. As per mad No. 10, the alleged occurrence took place at 11:00 am while as per mad No. 11; the occurrence took place at 12:30 pm while the PWs deposed that both the occurrences took place at the same time. PW-01, who is the inquiry officer, deposed that he took into possession 08 cut trees vide recovery memo Ex.PW-1/1 while PW-03 and PW-04 (complainant and eye witness) stated that only 03/04 trees were cut till the time of occurrence. In Ex.PW-1/1, it is not mentioned that who was the owner of the cut trees. Similarly, there is nothing in Ex.PW-1/1 that from possession of whom, the cut trees were recovered. PW-04 stated in his cross examination that they shifted the cut trees to their houses and the same were not taken into possession by the police which totally negates Ex.PW-1/1 and makes the recovery doubtful. PW-01 also prepared site plan Ex.PB on the pointation of complainant. The site plan was not verified from the eye witness (PW-04). Addition

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AAA IC. 1

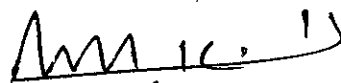
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in the site plan Ex.PB/1 was made by the investigation officer on 23.11.2022 without associating inquiry officer, complainant and eye witness. The site plan was not verified from the complainant by the investigation officer. Per record, there is civil litigation between the parties, therefore, false implication of accused facing trial cannot be ruled out. There are serious contradictions in the statements of PWs. The recovery of cut trees is very much doubtful. Accused have not confessed their guilt before the court. Nothing incriminating has been recovered from possession of accused facing trial or on their pointation. Case of prosecution is full of dents and doubts and there is no probability of conviction of accused facing trial.

Statements of material witnesses of prosecution have been recorded and 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 are acquitted from the charges leveled against them. Accused Aziz Khan, Zalay Khan and Amin Khan are on bail. Their sureties 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.
22.08.2024



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