

Pakistan Panel Code, 1860 police station Kalaya.

IN THE COURT OF MUHAMMAD JUNAID ALAM,
JUDICIAL MAGISTRATE-II TEHSIL COURTS KALAYA, ORAKZAI

Case No. **65/2 OF 2022**

Date of Original Institution: **13.04.2023**

Date of Transfer In: **07.10.2024**

Date of Decision: **25.11.2025**

STATE THROUGH:

SAHAR ALI SON OF NISAR ALI, RESIDENT OF QOM MANI
KHEL, TAPPA SABORA KHEL, DISTRICT ORAKZAI.

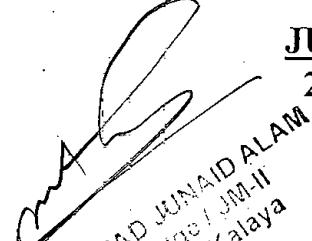
.....COMPLAINANT

VERSES

NIJAT FAQEER SON OF IMAM FAQEER, RESIDENT OF
QOM MANI KHEL, TAPPA TERAI DISTRICT ORAKZAI AND
03 OTHERS.

.....ACCUSED FACING TRIAL

Present: Muzahir Hussain Advocate, for accused facing trial.


MUHAMMAD JUNAID ALAM
Civil Judge / JM-II
Orakzai at Kalaya

JUDGMENT:

25.11.2025

Through this judgement, the Court intends to dispose
of the instant case registered against accused Nijat
Faqeer, Azmat Ali, Aqid Ali, Muqadar Hassan and
absconding accused Hassan Jan vide case FIR no. 118
dated 30.11.2022 under sections 324/427/148/149
Pakistan Panel Code, 1860 police station Kalaya.

1. Brief facts as per contents of FIR are that, on 30.11.2022 at about 13:00 hours, the local police acting on information regarding the occurrence, reached to the spot, where complainant namely Sahar Ali at 13:40 hours made a report to the police to the fact that on the day of occurrence, he was working on a public road with excavator no. 200, when the accused facing trial alongwith absconding accused duly armed with deadly weapon and came on the spot and started firing at him, he jumped away from the excavator and took shelter in the nearby fields and luckily escaped unhurt. Excavator was hit from fire shots of the accused facing trial. The eyewitness of the occurrence, Farhad Ali son of Tasleem Mehdi and Ajmeen Ali son of Maeen Ali. I charged the accused for the commission of offence. The local police drafted my report in the shape of Murasila, which is Ex. PW-2/1. Upon the strengthen of Murasila FIR was lodged against the accused facing trial which is Ex. PA. The local police read over the contents of my report, which he thumbs impressed. Farhad Ali verified my report and thumb impressed the same as verifier. Murasila was sent to PS for registration of the case.

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Civil Judge JM-II
Garakzai at Kalaya

Pakistan Penal Code, 1860 police station Kalaya.

2. After completion of investigation, complete and supplementary challans were submitted by prosecution against the accused facing trial.
3. Accused were summoned. Accused Nijat Faqeer, Aqid Ali, Azmat Ali and Muqdar Hassan, appeared before the court and all the legal formalities under Section 241-A Cr. PC were complied. Accused were formally indicted. They pleaded not guilty and claimed trial, while accused Hassan Jan is absconding. Accordingly, prosecution was directed to produce its evidence.
4. Prosecution produced eight (08) witnesses to prove its case against the accused while PWs Ajmeen and constable Abdul Wadood were abandoned by prosecution and thereafter, closed its evidence.
5. PW-01 is the statement of SI Murtaza Khan, which is reproduced as under.

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He stated on oath that after registration of the case, copy of FIR along with relevant documents were handed over to him for investigation. He proceeded to the spot and prepared site plan Ex. PB on pointation of complainant. During spot inspection, he recovered and took into possession excavator bearing registration No. 200 of

chain tyre which was damaged due to the bullets vide recovery memo Ex. PC in presence of marginal witnesses. He recorded statements of marginal witnesses and PWs u/s 161 Cr.PC. The accused was arrested by the SHO. On 03.11.2022, he produced the accused before the Illaqa Magistrate for obtaining his 05- days physical custody vide his application Ex.PW-1/1. 02-days custody was granted and he interrogated the accused in the PS. After the expiry of physical custody, he again produced the accused before the Illaqa magistrate for obtaining his further 03-days physical custody vide his application Ex.PW-1/2. Application was turned down and the accused was committed to the judicial lock-up.

He recorded statement of the accused u/s 161 Cr.PC.

Accused Muqadar Hussain, Aqid Ali, Hassan Jan and

Azmat Ali applied for BBA and he issued their formal

card of arrest Ex.PW-1/3. The BBA of the accused

Azmat Ali and Aqid Ali was dismissed while the

accused Muqadar Hussain and Hassan Jan did not attend

the court for BBA. On 10.01.2023, he produced the

accused before the Illaqa Magistrate for obtaining his

03- days physical custody vide his application Ex.PW-


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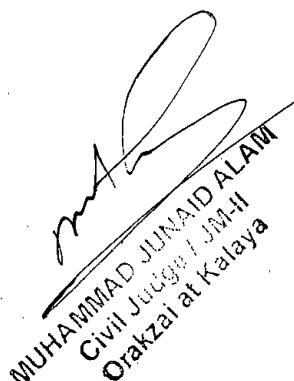
1/4. 01-day custody was granted and he interrogated the accused in the PS. After the expiry of physical custody, he again produced the accused before the Illaqa magistrate for obtaining his further 03-days physical custody vide his application Ex.PW-1/5. Application was turned down and the accused was committed to the judicial lock-up. He recorded statement of the accused u/s 161 Cr.PC. He applied for proceeding u/s 204 and 87 Cr.PC vide his application Ex.PW-1/6 and Ex.PW-1/7 respectively. The accused Muqadar was arrested by the SHO, who was handed over to him for investigation. On 14.02.2023, he produced the accused before the Illaqa Magistrate for obtaining his 03- days physical custody vide his application Ex.PW-1/8. Application was turned down and the accused was committed to the judicial lock-up. He recorded statement of the accused u/s 161 Cr.PC. He has recorded the statements of PWs u/s 161. Cr.PC. After completion of investigation, he handed over case file to SHO for submission of complete challan, challan u/s 512 Cr.PC and supplementary challan against accused. Today, he has seen the above

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referred documents which are correct and correctly bear my signatures.

6. **PW-02**, is the statement of SI Shal Muhammad, which is reproduced as under;

He stated on oath that during the days of occurrence, he was posted as SHO PS Kalaya. On the day of occurrence, i.e. 30.11.2022, he was on patrol area, when received information regarding firing at Sabora Khel, Mani Khel Orakzai. On this information, he along with other police nafri proceeded to the spot, where driver of the excavator namely Sahar Ali S/O Nisar Ali, reported to him regarding the occurrence which he reduced into writing in shape of Murasila. Report was read over to the complainant who thumb impressed the report as token of its correctness while PW Farhad Ali thumb impressed the report as verifier. Murasila Ex.PW-2/1 was sent to PS for registration of the case through constable Shamim Hussain HC No. 1618. After registration of the case, he arrested accused Nijat Faqeer and Muqadar Hassan and issued their cards of arrest Ex.PW-2/2 and Ex.PW-2/3 respectively. Accused were handed over to IO for completion of investigation. After completion of


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investigation, he submitted complete as well as supplementary challan against accused. Challan forms are Ex.PW-2/4 to Ex.PW-2/6.

7. **PW-03**, is the statement of complainant Sahar Ali, which is reproduced as under; He stated on oath that PWs Farhad Ali and Ajmeen Ali are his co-villagers. Accused facing trial are also his co-villagers. On 30.11.2022 at 13:00 hours, they were busy in road construction work at Saboora Khel with his excavator bearing Reg. No. 200, when accused Aqid Ali, Azmat Ali, Muqadar Ali, Nijat Faqeer and Hassan Jan came to the spot duly armed with Kalashnikovs. They made firing with intention to kill him. He jumped from my excavator and took shelter in the nearby fields. Excavator was hit with fire shots on the accused. Police came to the spot at 13:40 hours and he reported the occurrence, which was reduced into writing. The report was read over to him and he thumb impressed the same as token of its correctness. PW Farhad Ali also thumb impressed the report as verifier. PW Farhad Ali and Ajmeen were also present at the spot and they have witnessed the occurrence. He pointed out the spot to the

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police at 15:00 hours in presence of PW Farhad Ali. He charged the accused for the commission of the offence. This is my statement.

8. **PW-04**, is the statement of Farhad Ali son of Tasleem Mehdi, which is reproduced as under;

He stated on oath that complainant Sahar Ali and PW Ajmeen are his co-villagers. Accused facing trial are not his co-villagers. On the day of occurrence, he was present with complainant, who was busy in road construction work with his excavator, when the accused facing trial came to the spot and started firing at the complainant. Complainant escaped unhurt as he jumped from the excavator and took shelter. Excavator was hit with fire shots. Police came to the spot and recorded the report of the complainant. He thumbs impressed the report as verifier. Later on, investigation staff came to the spot and they pointed out the spot. This is his statement.



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9. **PW-05**, is the statement of Moharrir Asmat Ali, which is reproduced as under;

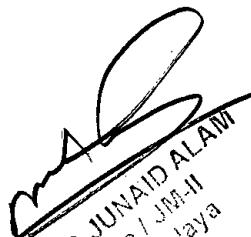
He stated on oath that that on the relevant day, he was present in the police station on duty, when HC Shamim

Hussain No. 1618, brought Murasila from SHO Shal Muhammad PS Kalaya. He incorporated the contents of Murasila into FIR Ex. PA. His statement was recorded U/S 161 Cr.PC.

10. PW-06, constable Syed Shamim Hussain, which is reproduced as under;

He stated on oath that on the relevant day, he was posted as constable PS Kalaya. He was present with SHO. He handed over to him Murasila. He took the same to PS and handed over Asmat Ali in his office. His statement was recorded under section 161 Cr.PC.

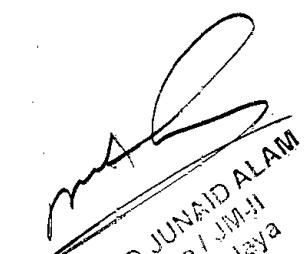
11. PW-07 Constable Gul Karim, which is reproduced as under. He stated on oath that on the relevant day, he was posted as constable PS Kalaya. He was present with IO on the spot that IO recovered and took into possession excavator bearing registration No. 200 of chain tyre which was damaged due to the bullets vide recovery memo already exhibited as Ex. PC in his presence. IO prepared recovery memo on the spot. His statement was recorded by IO under section 161 Cr. PC.


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12. PW-08, SI Muhammad Haneef, which is reproduced as under. He stated on oath that on the relevant day, he was

posted as IO PS Kalaya. On 13.02.2023, after the arrest of accused Muqadar Hassan by SHO Shal Muhammad, the investigation was entrusted to me. He cursory interrogated the accused in the PS. On 14.02.2023, I produced the accused before the Illaqa Magistrate for obtaining 03-days physical custody of accused, vide application is already exhibited as Ex. PW-1/8, which was turned down and accused was sent to Judicial Lock Up. He recorded statement of said accused u/s 161 Cr. PC. Similarly, he handed over the case file to SHO concerned for submission of supplementary challan against the said accused.

13. Afterwards, statements of accused under section 342 Cr. PC were recorded, wherein they pleaded not their guilt and did not wish to be examined on oath. They opted not to produce defense evidence.
14. Thereafter arguments were heard from both the sides.
15. Learned counsel for accused facing trial contended that the accused facing trial are innocent and had falsely been charged by the complainant and the charge against the accused is baseless/groundless. He further argued that the prosecution has totally failed to prove the case


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against the accused facing trial and a concocted case has been registered against them. He further argued that no specific role has not been attributed to the accused facing trial. He also adduced that no crime empties has been recovered from the spot. He also argued that there are material contradictions in the testimony of prosecution witnesses. He further argued that all the witnesses are prosecution witnesses and no independent witness has been brought into the witness box. Therefore, he requested that the accused facing trial be acquitted from the charges levelled against them.

16. Upon perusal of the available record and statements of PWs, it was revealed that as for as arrival of SHO Shal Muhammad is concerned, it is noted the PW-06 had stated in his cross examination that we reached to the spot at about 01:00 PM while SHO in the instant case had stated in his cross examination that he reached to the spot at about 13:20 hours. PW-04 stated in his cross examination that police came to the spot at about 13:50 hours.


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As for as time consumed by SHO on the spot, it is pertinent to mention here that SHO in the instant case

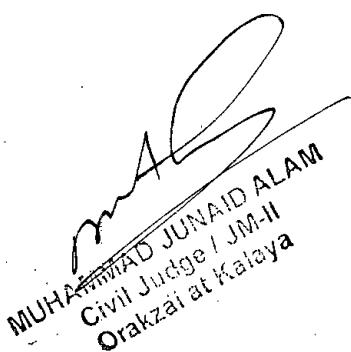
had deposed in his cross examination that he consumed about 01-hours while PW-06 that they remained on the spot for 40-minutes.

As for as IO is concerned, it is noted that when IO appeared before the court and had stated in his cross examination that he reached to the spot at about 15:00 hours, while PW-07 stated in his cross examination that we reached to the spot at about 02:30 PM.

As for as the presence of complainant, it is pertinent to mention here that PW-01 SI Murtaza had stated in his cross examination that when I reached to the spot, complainant was present. While PW-07 stated in his cross examination that co-villagers were present on the spot on else were present.

As for as the accused Nijat Faqeer is concerned, it is noted that IO in the instant case had deposed in his cross examination that it is correct that accused Nijat Faqeer was present at Kalaya Bazar, when the occurrence took place.

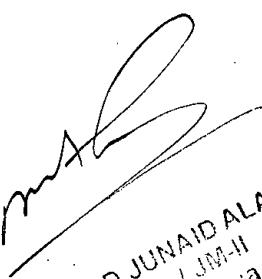
As for driving license of complainant is concerned, it is noted that IO in the instant case had stated in his cross examination that the driving license was available with


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the complainant, but when complainant is appeared before the court and stated in his cross examination that I have no driving license of the excavator.

As for as identification of accused is concerned, it is pertinent to mention here that PW-03 complainant in the instant case had deposed in his cross examination that the accused were present at a distance of 1000/1200 feet and the spot is a hilly area and there were so many trees/bushes around the spot. Accused were behind the trees/bushes. When PW-04, the eyewitness of the occurrence appeared before the court and stated in his cross examination that he was present with the complainant at a distance of 15-yards. Accused were at a distance of 50/60 yards.

In given circumstances the question arises that how it is possible that accused were correctly identified at the distance of 1000/1200 feet. Similarly, the spot is surrounded by huge trees/bushes.


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Record further transpire that no crime empties have not been recovered from the spot or pointation of accused.

17. In light of the evidence produced by the prosecution to establish its case against accused facing trial, it has been

noticed that there exists a vast contradiction in the statements of PWs and furthermore, the witnesses have contradicted in material particulars. Hence, the prosecution miserably failed to bring home the charge against the accused facing trial.

18. As prosecution failed to prove its case against the accused beyond the shadow of doubt, therefore, by extending the benefit of doubt to the accused facing trial namely Nijat Faqeer, Aqid Ali, Azmat Ali and Muqadar Hassan are hereby acquitted from the charges leveled against them. As they are on bail, their Sureties are discharged from the liability of bail bonds.
19. As accused Hassan Jan avoiding his lawful arrest. Prima facie case exist against the accused. Hence, perpetual warrant of arrest be issued against him and his name be entered in the list of proclaimed offender with red ink.
20. Case property be dealt with accordance with law.
21. Case file be consigned to District Record room, Orakzai after its completion and necessary compilation.

Announced

25.11.2025


Muhammad Junaid Alam,
Judicial Magistrate-II
Tehsil Courts, Kalaya, Orakzai

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State Vs Nijat Faqeer and others
Case FIR No. 118, Dated 30.11.2022 under sections 324/427/148/149

Pakistan Panel Code, 1860 police station Kalaya.

CERTIFICATE

Certified that this order consists of fifteen (15) pages, each page has been read, corrected wherever necessary and signed by me.

Dated: 25.11.2025.



Muhammad Junaid Alam,
Judicial Magistrate-II
Tehsil Courts, Kalaya, Orakzai