

IN THE COURT OF SAMI ULLAH,
JUDICIAL MAGISTRATE-I, ORAKZAI AT BABER MELA

CASE NO. : 6/2 OF 2022
 DATE OF INSTITUTION : 13.05.2022
 DATE OF DECISION : 09.02.2023

THE STATE THROUGH MUHAMMAD ZUMAN S/O KOHAT KHAN, R/O QOUM RABIA KHEL, SAMANA GHOZ TANG, DISTRICT ORAKZAI.

------(Complainant)

VS

1. ZAHIR SHAH S/O MUSAFER GUL, R/O QOUM RABIA KHEL, LAKHTI BANDA, DISTRICT HANGU.
2. AZIZ UR REHMAN S/O KHIAL AJAB KHAN R/O QOUM RABIA KHEL DARWEZI KANDOW LAKHTI BANDA DISTRICT HANGU

------(Accused Facing Trial)

Case FIR. No 06 Date 21.03.2022 U/S 381A and 34 PPC Registered at Police Station Ghiljo.

Present: Nisar Ahmad, Assistant Public Prosecutor for complainant.
 : Mr. Khurshid Alam Advocate, for accused facing trial.

JUDGMENT:
09-02-2023

1. This judgment Will dispose of the instant case registered vide FIR No. 06, Dated 21.03.2022 U/S 381-A and 34 PPC, at police station Ghiljo, whereby the accused faced trial before this court.
2. Brief facts as per contents of FIR are that complainant Muhammad Zaman reported the matter to local police through Nakalmaid No.10 Roznamcha dated 17.03.2022 regarding the occurrence that on 16.03.2022, he went to check the supply of water for the purpose of irrigation which was powered by two transformers, as supply of water was interrupted. After inspection of transformers, it was revealed that

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some unknown person had taken away the coils of transformers. On the basis of report of complainant, inquiry in the instant case was initiated by local police. During inquiry the complainant recorded his statement u/s 161/164 Cr.P.C in which he charged the above stated accused for commission of offence. Resultantly FIR bearing No.06 dated: 21.03.2022 was registered u/s 381-A/ 34 PPC in police station Ghiljo,Orakzai. Both the accused were arrested and later on were released on bail.

3. After completion of investigation, complete challan was submitted by prosecution against the accused.
4. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused were formally indicted to which they pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
5. Prosecution produced total eight (8) witnesses to prove its case against the accused.
6. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;

- I. Naqalmad No.10 Roznamcha dated: 13.07.2022 is Ex.PW 1/1.
- II. Cash memo is Ex.PW-2/1
- III. Record Register Photocopies consist of two pages is Ex.PW-2/2.
- IV. Copy of CNIC of Muhammad Arif owner of ZXMC0 is Ex.PW-2/3.
- V. Application for custody is Ex.PW3/1.
- VI. First site Plan is Ex.PW-3/2.

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- VII. Second site Plan is Ex.PW-3/3
- VIII. Identification Memo is Ex.PW-3/4.
- IX. Parcel No.01 is Ex. P-1.
- X. Parcel No.02 is Ex. P-2.
- XI. Recovery Memo is Ex.PW-3/5.
- XII. Recovery Sketch is Ex.PW-3/6.
- XIII. Application for recording confession is Ex.PW-3/7.
- XIV. Addition of section 381-A PPC is Ex.PW-3/8.
- XV. Captured picture and recoveries of stolen property which are 6 in number are Ex.PW-3/9 to Ex.PW-3/14.
- XVI. Recovered Motorcycle is Ex. P-3.
- XVII. Possession of two Transformers 50/50 KV each in presence of marginal witnesses vide recovery memo and prepared site plan are Ex.PW-5/1 and Ex.PW-5/2.
- XVIII. Application for production of complainant before court of Judicial Magistrate Orakzai is Ex.PW-5/3.
- XIX. Registration of FIR against the accused is Ex.PW-5/4.
- XX. Joint card of arrest of both the accused namely Zahir Shah and Aziz Ur Rehman is Ex.PW-5/5.
- XXI. Complete challan is Ex.PW-5/6.
- XXII. Statement of Muhammad Zuman u/s 164 Cr.P.C is Ex.PW-7/1.

7. Then after, on 14.01.2023, the learned APP for the state closed the evidence on behalf of the prosecution.

8. Statement of accused on bail u/s 342 Cr.P.C was recorded wherein he neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor he wanted to produce any evidence in his defense.

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9. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the APP for the complainant heard and record perused.
10. The accused is charged with the offence u/s 381-A and 34 PPC. Sec.381-A PPC deals with theft of motor vehicle and the section also deals with theft of transformer etc. Sec 34 PPC deals with common intention.
11. Keeping in view, the record on file and the depositions of PWs, the prosecution is required to prove its case against the accused beyond reasonable doubts. The essence of the prosecutor evidence is given below: -
12. PW-1 is the statement of Abdul Manan who stated that during the relevant days he was posted as Muharrir at PS Ghiljo. He entered the report of complainant in Roznamcha as Naqalmad No.10 which is Ex.PW-1/1. On the basis of report the SHO concerned started investigation and recovered the case property which was handed over to him, and the same was entered in register No.19.
13. PW-2 is the statement of Muhammad Arif, owner of Zxmco bike center who stated that on 21.02.2022 I sold the motorcycle to the accused namely Zahir Shah while Aziz Ur Rehman was guarantor in the sale agreement. He further stated that on 14.03.2022 the accused informed me about the theft of the bike in question on and I advised them to lodge report in the concerned police station.
14. PW-3 is the statement of Abdul Malik, who is investigation officer in the instant case and stated that in the relevant days he

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was posted at PS Ghiljo as SI/OII. After obtaining police custody of both the accused, they showed willingness for pointation of place of occurrence and a place where they kept the stolen property. And stated that upon pointation, I recovered 24 bundle coils of wires, 4LT coils and a XIMCO made Motorcycle. It was revealed in investigation that the recovered motorcycle was used in the commission of offence. The recovered motorcycle is at present handed over to the accused on Supardari. And further stated that after completion of investigation, I submitted the case file to the SHO concerned for submission of complete challan. In cross examination PW-03 has admitted that he has not associated any WAPDA officials in overall proceedings of the instant case. He also admitted that he has not associated any private witness in pointation of place of occurrence and recovery of stolen property.

15. PW-4 is the statement of ASI Shah Jahan PS Ghiljo, District Orakzai who stated that in his presence the accused confessed their guilt and wished to point out the place of occurrence and the place where they kept the stolen property. Further stated that he accompanied the IO of the present case to the spot of recovery the recovery was made in his presence. In his cross examination, he also admitted the fact that no private witness was associated in the recovery of stolen property. He also stated that the single coil of transformer was shifted from the place where it was ditched to the road with the help of 5/6 persons.

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16. PW-5 is the statement of Muhammad Ibrahim SHO, at PS Ghiljo, who stated that on report of complainant Muhammad Zaman he started inquiry of the instant case and visited the place of occurrence, where he took into possession two transformers. Moreover, complainant in his statement Under Sections 161/164 Cr.P.C charged both the accused for commission of offence. However, PW 05 in his cross examination has stated that the complainant had not disclose the source of information due to which he charged the accused. Further stated that after completion of inquiry and taking in possession the skeleton of transformers, he had registered the FIR and entrusted investigation in the instant case to the IO concerned.

17. PW-6 is the statement of Ihsan Ullah, who was posted as constable at PS Ghiljo, in the relevant days. He stated that he was present at the time when skeleton of two transformers were taken into possession by the SHO concerned, who prepared recovery memo which is signed by me as a marginal witness. PW-06 in his cross examination stated that usually the transformer cannot be lifted by two persons to the ground.

18. PW-7 is the statement of Muhammad Zaman, who is complainant in the instant case. He stated that on 16.03.2022 while inquiry about interruption in supply of water, he found both the transformers laying on ground and some unknown accused had taken away coils from the same. That he reported the matter to the police through Naqalmad No.10 dated:

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17.03.2022 and on 21.03.2022, I recorded my statement u/s 164 Cr.P.C before the court and charged accused namely Zahir Shah and Aziz for commission of the offence. In his cross examination he stated he is not the eye witness of the occurrence and has reported the matter to police with delay of one day. He also stated that he has not informed WAPDA Officials. Moreover, he stated that he has entered into compromise with the accused and do not wish to further prosecute the accused in instant case.

19. PW-08 is statement of Abdul Rehman who is verifier of the report of the complainant. He stated that his statement was recorded by the IO concerned. He verified the thumb impression on report of the complainant.
20. On closure of statements of accused U/S 342 Cr. PC were recorded wherein they pleaded not guilty and did not wish to be examined on oath.
21. It is established principle of law that prosecution must prove its case against the accused beyond reasonable doubt. Insofar as the instant case is concerned, the alleged occurrence took place on 16.03.2022 and it was reported to the local police on 17.03.2022. Delay has not been explained. Moreover, Complainant, in his cross examination, stated that he has entered into compromise with the accused and do not want to further prosecute the accused. Furthermore, when the occurrence was reported to the local police through Naqalmaid No.10 dated: 17.03.2022, the

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complainant has charged unknown accused but in his statement Under Section 164 Cr.P.C which is Ex.PW 7/1, therein he has charged the present accused. PW-05 in his cross examination has admitted that the complainant has not disclosed the source of information on the basis of which he has charged the accused. And complainant in his statement as PW-07 has also not given any plausible reason for charging the accused in the instant case.

22. Coming to the recovery made by the IO concerned, no private witness was associated with the same recovery. The same fact has been admitted by the IO concerned in his statement as PW-03. It is also pertinent to mention here that the motorcycle recovered alongwith case property is not plausible to prudent mind, as to why the said motorcycle was laying in the Jungle unattended from the date of occurrence to the date of recovery. Moreover, PW-02 in his statement recorded that the accused namely Zahir Shah reported the theft of the motorcycle in question to him and he advised the same to lodge report to the local police of Hangu (as the accused reside in District Hangu). Both the accused in their statement Under Section 342 Cr.P.C has taken the plea that the motorcycle in question was stolen and to that effect they have also lodged FIR in PS city Hangu. They also stated in their statement that the FIR was produced before the IO concerned in investigation but the same was not placed on file. It is also pertinent to mentioned here that both the accused

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reside in District Hangu and the occurrence took place in District Orakzai.

23. PW-04 and PW-06 in their statement has recorded that the weight of transformer and coil is such that they needed more than two persons to lift and move it. PW-04 also stated that they lifted single coil of transformer with the help of 5/6 persons and moved it to the road. It is not appealing to prudent mind that such weight could be lifted by the two accused. Even the motorcycle in question could not have moved such weight.

24. Moreover, as the transformers in question was not private property and the complainant is private person but no WAPDA officials were associated in the instant case.

25. Prosecution was bound to prove its case against the accused beyond any shadow of doubt but there are so many dents and doubts in the prosecution case, benefit of which goes to the accused facing trial. Moreover, the whole prosecution case was based on circumstantial evidence which did not connect the accused to the commission of offence and the accused has also not confessed their guilt. Prosecution failed to prove its case against the accused facing trial.

26. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Zahir Shah S/O Musafar Gul and Aziz Ur Rehman S/O Khial Ajab Khan are hereby acquitted from the charges leveled against them. They are on bail. Sureties of accused are discharged from their liabilities.

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Case property be dealt with as per law after expiry of period of appeal/revision.

- 27. Case file be consigned to District Record Room, Orakzai after its completion and necessary compilation within the span allowed for.

Announced
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CERTIFICATE

Certified that this judgment of today consists of ten (10) pages, each page has been read, signed and corrected by me where necessary.

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