

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

Case No.....81/2 of 2021.

Date of Institution.....11.12.2021.

Date of Decision.....07.02.2023.

State through:

Muhammad Younas S/O Muhammad Ali Khan, R/O Qaum Feroz Khel, Tappa
Qasim Khel, Tehsil Lower, District Orakzai.

.....**Complainant**

VERSES

Shah Muhammad Khan S/O Zari Bat Khan, R/O Qaum Feroz Khel,
Tappa Qasim Khel, Tehsil Lower, District Orakzai

.....**Accused**

Case FIR No. 126, Dated 26.10.2021 U/S 504, 506, 341, 186, 189 PPC, PS Kalaya.


JUDGEMENT

07.02.2023

Through this judgement, I am going to dispose of the instant case registered against accused Shah Muhammad Khan vide case FIR No.

* 126, Dated 26.10.2021 U/S, 504, 506, 341, 186, 189 PPC, PS Kalaya.

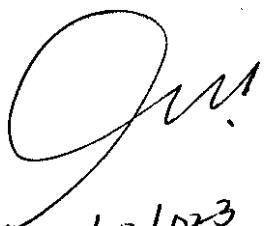
- I. Brief facts as per contents of FIR are that, complainant Muhammad Younas reported to the local police that on 11.10.2021 at 07:30AM, at Goin, Tappa Qasim Khel, Lower Orakzai, to the effect that his daughter namely Mst. Sadia Bibi being a Primary School Teacher at Government Primary School, Kach Mela was proceeding for her duty in the motorcar of Fareed Khan S/O Mehmood Khan. That his daughter, while on the way to school was stopped by accused Shah


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Muhammad Khan, advanced threats of dire consequences to her and the driver. He used abusive language and threatened his daughter. Motive behind the occurrence is a family suit against son of accused namely Hidayat Ullah pending in the Family Court at District Peshawar. FIR was registered on the strength of Mad No. 08 dated 22.10.2021. Accused was formally arrested and later on, released on bail.

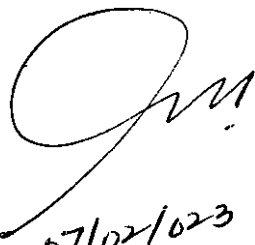
2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused was formally indicted. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced six (06) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.
5. SI Muhammad Shafique, deposed as PW-01. He stated that on 07.11.2021, he submitted interim challan against accused and after completion of investigation, complete challan was submitted against accused on 22.11.2021. Challan forms are Ex. PW-1/1 and Ex. PW-1/2.
6. PW-02, is the statement of ASHO Muqadar Khan. He recorded report of the complainant in daily diary vide mad No. 8 dated 22.10.2021. The report was read over to complainant who thumb


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impressed the same as token of its correctness. One Roman Khan verified contents of report as verifier. The same is Ex. PW-2/1. He conducted inquiry. During course of inquiry, he visited the spot and prepared site plan Ex. PB on pointation of PW/driver Farid Khan. He recorded statements of Farid Khan, Roman Khan and Ashiq Noor. On 25.10.2021, he sought legal opinion from the office of DPP, Orakzai. After obtaining legal opinion from prosecution, FIR Ex. PA was registered. Copy of FIR was handed over to the IO for investigation.

7. PW-03, is the statement of Roman Khan. He stated that complainant Muhammad Younas is his cousin. Accused Shah Muhammad Khan used to advance threats of dire consequences to the daughter of complainant namely Mst. Sadia Bibi. On the day of report, he accompanied complainant to PS Kalaya and thumb impressed the report as verifier.

8. Complainant Muhammad Younas was examined as PW-04. He stated that Mst. Sadia Bibi is his daughter. PW Roman Khan is his cousin. Nikah of his daughter Mst. Sadia Bibi was solemnized with son of accused. Accused family insulted his daughter in different places. Accused advanced threats of dire consequences. Before four days of the marriage, they asked the accused and his family not to come for bride but they told that they will take away his daughter forcibly according to local customs and traditions. Accused facing trial called him to Kalaya, Orakzai for jirga through DSP Mehboob


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Khan. There were six jirga members and all of the jirga members decided the matter in favour of his daughter. DSP Mehboob Khan failed to implement the jirga decision. He submitted 5/6 applications for implementation of the jirga decision. Thereafter, his daughter filed a family suit for dissolution of marriage on the basis of Khula at Peshawar. During pendency of the family suit, accused facing trial and his son teased his daughter by going behind her to her school situated at Kach Mela, Sheikhan. Accused facing trial had also advanced threats of dire consequences to the owner of the land on which the Government school is built. Driver namely Fareed Khan was also threatened by accused facing trial not to take his daughter to place for duty. Accused has also threatened PW Roman Khan. On the day of occurrence, driver Fareed Khan refused to take his daughter to the school in his motorcar for the reason that accused facing trial threatened him. On the next of the occurrence his daughter submitted written application to DSP Diswar Ali through her brothers. As the police were reluctant to register FIR, therefore, he was called to the PS by DSP. He reported to the local police on 22.10.2021. He narrated the entire story to the police and the instant case was registered against the accused.

9. Mst. Sadia Bibi, deposed as PW-05. She stated that complainant Muhammad Younas is her father. PW Roman Khan is her relative. PW Fareed Khan is the driver. On the day of occurrence i.e., 11.10.2021 she was proceeding to Government Girls Primary School

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Kach Mela, Sheikhan in motorcar where she was posted as Primary School Teacher. At the place of occurrence, accused facing trial came in front of the motorcar and stopped it. Accused facing trial advanced threats of dire consequences to her and her driver. The driver was asked not to take her in his motorcar to the school otherwise they will kill both of them. On 12.10.2021, she submitted a written application to the local Police through Roman Khan for registration of the case. Police was reluctant to register FIR but finally on 22.10.2021, the report regarding the occurrence was reduced into writing. Thereafter, she was transferred to another school and even now accused facing trial is threatening her. Motive behind the occurrence is that her nikah was solemnized with son of accused facing trial but now she has filed a family suit for dissolution of marriage through Khula in Family Court at Peshawar.

- 10.** Aftab Hassan, deposed as PW-06. He is IO of the case. He stated that copy of FIR along with relevant documents were handed over to him for investigation. He proceeded to the spot and got verified the prepared site plan already prepared by the inquiry officer from PW Fareed Khan. Search of the accused was made in the nearby vicinity. After spot inspection, he returned to PS where inquiry officer Muqadar Khan ASHO was present and he recorded his statement U/S 161 Cr. PC. Accused had applied for ad-interim pre-arrest bail and on 03.11.2021, accused came to PS along with order of the Sessions Court. He recorded statement of accused U/S 161 Cr. PC. After


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cancelation of BBA of the accused, card of arrest of accused was issued by SI Mehdi Hassan. He is acquainted with hand writing and signature of SI Mehdi Hassan. Card of arrest and application for physical custody of the accused correctly bears his signature. Card of arrest and application for physical custody is Ex. PW-6/1 and Ex. PW-6/2 respectively. On 06.11.2021, he recorded statement of victim PW Sadia Bibi U/S 161 Cr. PC. On 06.11.2021, case file was handed over to SHO concerned for submission of complete/interim challan against the accused.

11. PW Farid Khan was abandoned by prosecution being charged and absconding in a criminal case and closed its evidence.

12. Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he pleaded not his guilt and did not wish to be examined on oath. He opted not to produce defence evidence.

13. Record transpires that the alleged occurrence took place on 11.10.2021 at 07:30AM and it was reported to the local police vide Mad No. 08, dated 22.10.2021. FIR was registered on 26.10.2021.

There is unexplained delay of 11 days in lodging of report to the local police. Muhammad Younas, father of victim Mst. Sadia Bibi, is complainant of the case. He deposed as PW-04. He is not an eye witness to the occurrence. He stated that on the day of occurrence, he was on his duty at Peshawar. He has admitted that FIR was not lodged on report of his daughter. He has further stated that his daughter Mst. Sadia Bibi had submitted a written application to the



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local police for registration of the case but no such application is placed on file. Complainant while deposing as PW-04, narrated all together a different story. So many improvements were made in the statement.

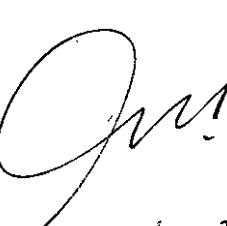
- 14.** After recording report of the complainant vide Mad No. 08, dated 22.10.2021, inquiry was conducted by ASHO Muqadar Khan who deposed as PW-02. He has stated that he visited the spot and prepared site plan Ex. PB on the pointation of driver Fareed Khan. Site plan was not prepared on the pointation of Mst. Sadia Bibi. Site plan was neither verified from Sadia Bibi during course of inquiry nor during course of investigation after registration of the case. The driver, Fareed Khan who is the sole independent eye witness was abandoned by prosecution as he is charged and absconding in a criminal case. PW-02, stated that he inspected the spot on 20.10.2021 while site plan Ex. PB was prepared on 22.10.2021. Statement of Sadia Bibi was not recorded by inquiry officer (PW-02) during course of inquiry. Allegedly, PW Mst. Sadia Bibi was proceeding to the school for duty in the motorcar of Fareed Khan but there is no specification/detail of the motorcar in the report of complainant and statements of PWs. Even the said Fareed Khan was not examined as witness during course of trial.

- 15.** Mst. Sadia Bibi who deposed as PW-04, stated that she did not report to the local police. She stated that a written application was submitted


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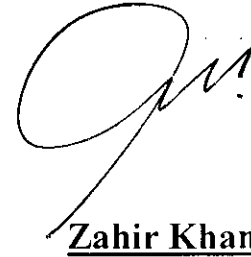
to the local police for registration of the FIR but no such application is placed on file.

- 16.** SI Aftab Hassan, who investigated the case, deposed as PW-06, stated that he verified the site plan Ex. PB prepared during course of inquiry from PW Fareed Khan but there is no such endorsement on Ex. PB. He also stated that the occurrence was not reported by PW Sadia Bibi. He further stated that he has not recorded statement of any private person in support of report of the complainant. Statements of police officials, who accompanied the IO during spot visit were not recorded U/S 161 Cr. PC by the IO.
- 17.** Accused has not confessed his guilt before the court. There is no previous criminal history of accused which could show his involvement or conviction in such like cases.
- 18.** There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.
- 19.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Shah Muhammad Khan is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds stand cancelled. Sureties are discharged from their liability.


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20. Case file be consigned to Record room after its completion and necessary compilation.

Announced
07.02.2023



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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.



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