

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

Case No. 04 /2 of 2022
Date of Institution: 08-03-2022
Date of Decision: 25-03-2023

State through:

Muhammad Abrar S/O Abdul Wahid Qoam Mishti Tappa Haider Khel
District Orakzai.

..... **Complainant**

VERSES

- (1). Muhammad Akbar S/O Ghulam Akbar.
- (2). Afzal Khan S/O Khan Baz.
- (3). Wali Ullah S/O Abdul Lakeer.
- (4) Bakhtiar Akbar S/O Khan Baz.
- (5) Zahid Ullah S/O Khial Akbar.
- (6) Muhammad Shakir S/O Midan Akbar.

All residents of Qoam Chappar Mishti, District Orakzai.

..... **Accused**

Case FIR No. 25, Dated 31-10-2021 U/S 380/148 and 149 PPC, PS
Kuriz Boya District Orakzai.

Present: Insaf Ali Senior Public Prosecutor for complainant.

Zahoor Ur Rehman Advocate for accused facing trial.

JUDGMENT:

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1. This judgment will dispose of the instant case registered vide FIR No. 25, Dated 31-10-2021 U/S 380/148 and 149 PPC, registered at police station Kuriz Boya, District Orakzai.
2. Brief facts as per contents of F.I.R. are that, complainant Muhammad Ibrar S/O Abdul Wahid reported the matter to local police of PS Kalaya through daily Diary bearing No.7 dated 6th march, 2021 regarding the

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occurrence that on 01.03.2021 we went to our house situated in Zor Chappar Mishti and found out that the doors and locks were broken and house hold items were missing, so much so that electric wires were also missing. We have informed the police posted in check post mishti, who also witnessed that theft has been committed. Inquiry was initiated on the complaint reported through Mad No.7 but FIR was not registered. Thereafter, the complainant moved petition U/S 22A Cr.P.C before the competent forum, whereby the police was directed to lodge FIR on the strength of daily diary bearing No.07 dated 6th march 2021. Resultantly, FIR bearing No.25 dated was registered U/S 380/148 and 149 PPC, in police station Kuriz Boya District Orakzai. All 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 seven (07) 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. FIR is Ex.PW-A.
- II. Submitted challan u/s 512 Cr.P.C against absconding accused Afzal Khan, Wali Ullah, Bakhtiar Akbar and Zahid Ullah Ex.PW-2/1.

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- III. Complete challan against namely Muhammad Akbar and Muhammad Shakir is Ex.PW-2/2.
- IV. Card of arrest is Ex.PW-2/3.
- V. Supplementary Challan is Ex.PW-2/4.
- VI. Recovery memo is Ex.PW-4/1.
- VII. Application for custody for Afzal Khan and Bakhtiar Akbar is Ex.PW-4/2.
- VIII. Search memo is Ex.PW-4/3.
- IX. Application for issuance of warrant is Ex.PW4-A/1.
- X. Application for issuance of proclamation notice u/s 87 Cr.P.C is Ex.PW-4-A/2.
- XI. Inquiry report is Ex.PW4A-1/3.
- XII. Copy of Mad report is Ex.PW-5/1.
- XIII. Warrants are Ex.SW-1/1 to EX.SW-1/4.
- XIV. Report on back of warrants are Ex.SW-1/5 to Ex.SW-1/8.
- XV. Proclamation u/s 87 Cr.P.C against accused namely Afzal Khan, Wali Ullah, Bakhtiar Akbar and Zahid Ullah are Ex.SW-1/9 to Ex.SW-1/12

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7. After then, on 09.02.2023 the learned APP for the state closed the evidence on behalf of the prosecution.
8. Statement of accused u/s 342 Cr.P.C were recorded wherein they neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor they want to produce any evidence in their defense.
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.



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10. The accused were charged with offence U/S 380/148 and 149 PPC
11. Keeping in view, the record on file and the deposition 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 Hassan Jan who stated that during relevant days he was posted as ASHO at PS Kuriz. That on 31.10.2021 he has chalked out FIR No.25 on the directions issued by Worthy District & Sessions Judge Orakzai, upon conclusion of petition for 22-A Cr.P.C
13. PW-2 is the statement of complainant Aftab Hassan who stated that he was posted as SHO PS Kuriz Boya in relevant days. That he had firstly submitted interim challan and after completion of investigation, he had submitted complete challan. After the arrest of accused namely Muhammad Afzal and Bakhtiar Akbar, he had submitted supplementary challan.
14. PW-03 is the statement of Akseer Ali, constable who was in PS Kuriz Boya. PW-03 stated that he alongwith IO of the case visited the spot of occurrence and recovered rusted locks which were taken in custody. He also stated that he is marginal witness of search memo. And the IO concerned took his statement U/S 161 Cr.P.C which correctly bears his signature.
15. PW-04 is the statement of investigation officer namely Ishtiaq Hassan. He stated that the instant case was marked to him for investigation. He had visited the spot and prepared site plan on the instance of complainant namely Muhammad Ibrar and taken into custody broken rusted locks of doors. After arrest of accused namely Afzal Khan and Bakhtiar Akbar, he has interrogated the accused and recorded their


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statement U/s 161 Cr.P.C. The said PW-04 in his cross examination recorded that neither complainant is eye witness of the occurrence nor any other person. Further stated that accused never confessed their guilt both in investigation and before the court. Further stated that no recovery has taken place from the house of accused or on pointation of accused. The statement of IO namely M. Ishtiaq Hassan was again recorded as PW-04-A after placing on file the inquiry report which was conducted before the registration of FIR. PW-04 stated the inquiry report which is Ex.PW-4-A correctly bears signature of official concerned.

16. PW-05 is the statement of Muhammad Ibrar who is complainant in the instant case. He reproduced the contents of FIR in his statement. Further stated that he had also filed an application to DPO for further inquiry of the case which were conducted and the inquiry report and relevant documents are Ex.PW-4A-1/3. PW-05 in his cross examination had recorded his statement that neither he is eye witness of the occurrence nor he has mentioned any person who has witnessed the offence. He also admitted that they have other disputes with the persons charged in FIR. He also admitted delay in lodging complaint.
17. PW-06 is the statement of Muhammad Bilal who is verifier of the complaint of Muhammad Ibrar and stated that the complaint chalked out through Daily Diary bearing No.07 dated 6th march 2021 correctly bears his thumb impression, in his cross-examination PW-06 stated that neither he nor complainant is eye witness of the occurrence.
18. SW-01 is the statement of Muhammad Ayaz who was DFC of PS Kuriz Boya in relevant days. He recording in his statement all the duties he has preferred relating to search warrant, application for declaring the

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accused proclaimed offender etc. He verified his signatures on the relevant documents.

19. Rest of the PWs were abandoned by prosecution and closed its evidence.
20. 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 01.03.2021 at 11:00 hours and complaint in shape of Daily Diary No.7 was registered on 06.03.2021. There is unexplained delay of six days in lodging complaint.
21. There is no eyewitnesses of the occurrence. PW-05 who is complainant in the instant case stated in his cross examination that he did not produced any eye witness of the occurrence to the investigation officer. However, self-stated in his statement that Esar Khan is the eyewitness but the same has not been produced in the present trial. It is also worth mentioning here that nowhere in the whole trial nor in the investigation, it is explained that why the complainant has charged all the accused with commission of the offence and upon whose information the complainant came to know that the theft was committed by the accused. This is a day light occurrence at about 11:00 hours and no eye witness of the occurrence came forward during investigation and in trial. Furthermore, complainant in his statement as PW-05 has admitted the fact that there is an existing dispute related to women between his family and accused. Moreover, PW-06 who is approver of the complaint of the complainant also stated in his cross examination that Muhammad Ibrar is not an eye witness of the occurrence.

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22. Coming to recovery made by the IO concerned, the IO has recovered some articles from a scrap shop (Kabbar farosh) which consists of a torn-out drill machine, a car radiator and two refrigerator grills. In the said recovery no private witness was associated with the same. Moreover, neither recovered articles were produced before the court nor were exhibited in the instant case. It is also pertinent to mention here, that there is no list of stolen articles available on file, which were allegedly stolen from the house of complainant. It can't also be determined that the article recovered from the scrap shop were among those which were stolen from the house.
23. To sum up the assessment, this is unseen incident seen by no one, the occurrence has been reported with considerable delay of six day, with no confession on part of any of the accused and with no disclosure of source of information for accusation. Neither stolen articles have not been specified any where nor any list of the same has been prepared.
24. Prosecution were 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 have also not confessed their guilt. Prosecution failed to prove its case against accused facing trial.
25. For what has been discussed above, the prosecution failed to prove its case against the accused beyond reasonable doubt. Resultantly, in case FIR No.25 dated 31.10.2021 U/S 380/148 and 149 PPC registered in Police Station Kuriz Boya, accused namely Muhammad Akbar S/O Ghulam Akbar, Afzal Khan S/O Khan Baz, Wali Ullah S/O Abdul

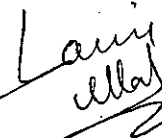
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Lakeer, Bakhtiar Akbar S/O Khan Baz, Zahid Ullah S/O Khial Akbar, and Muhammad Shakir S/O Midan Akbar are hereby acquitted from the charges leveled against them. All the accused except Afzal Khan are on bail. Their bail bonds stand cancelled and their sureties are absolved from the liabilities of bail bonds. One of the co-accused Afzal Khan S/O Khan Baz is in custody, he be released forthwith, if not required in any other case. Case property if any, be dealt with as per law after expiry of period of appeal/revision.

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

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CERTIFICATE

Certified that my judgment of today consists of eight pages, each page has been read, signed and corrected by me where necessary.

Announced
25/03/2023


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