

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

Case No.....67/2 of 2022.

Date of Institution.....01.11.2022.

Date of Decision.....11.04.2023.

State through:

Javid Khan S/O Piyao Shah R/O Qaum Mishti, Tappa Darwi Khel, Village
Zwan, Central Orakzai.....**Complainant**

VERSES

(1) Samandar Shah S/O Khan Wazir (2) Piyao Wali Khan S/O Khan
Afzal (3) Sajid Ullah S/O Deedan Gul (4). Abdul Wahab S/O Mir (5)
Muhammad Farid S/O Muhammad Shafiq (6) Muhammad Shakeel
S/O Shah Wali Khan (7) Minazar Khan S/O Piyam Shah (8) Qutab
Khan S/O Nizab Khan (9) Alam Sher S/O Muhammad Janan (10)
Muslim Khan S/O Noor Afzal (11) Fazal Shah S/O Khi Badshah (12)
Asad Ullah S/O Minat Khan all R/O Qoam Mishti, Village Sangra,
Tehsil Central, District Orakzai..... **Accused**


Case FIR No. 35, Dated 18.09.2022, U/S 341,342,147,149 PPC, PS Mishti Mela.

JUDGEMENT

11.04.2023


Through this judgement, I am going to dispose of the instant case
registered against accused named above vide case FIR No. 35, Dated
18.09.2022, U/S 341,342,147,149 PPC, PS Mishti Mela.

The prosecution's case as unfolded in the First Information Report
(FIR Ex.PA), is that complainant Javid Khan reported to the local


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police to the effect that on the day of occurrence, there was a Jirga for resolution of dispute over mountain called Shahbozar mountain when he was called by Muhammad Ali and Faiz Ullah that they have been confined/made hostages by accused while proceeding to their homes. He informed the local police of PS Mishti Mela accordingly. Report of the complainant was recorded vide mad No. 9 dated 19.08.2022 (Ex.PW-5/1).

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Formal charge was framed. They 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 and after that prosecution closed its evidence.
5. PW-01 is the statement of complainant namely Javid Khan. He stated that PW Muhammad Ali and Faiz Ullah are his cousins. Accused facing trial are also his cousins. On the day of occurrence, there was a Jirga for resolution of dispute over mountain. He was called by PW Muhammad Ali that he and Faiz Ullah have been confined by accused facing trial. He informed local police of PS Mishti Mela. The local police recovered/released the hostages. He reported the matter to the local police which was reduced into writing. It was read over to him and he signed and thumb impressed the same as token of its



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correctness. Motive behind the occurrence is dispute over mountain.

He charged the accused for commission of the offence.


6. SI Abdul Manaf, deposed as PW-02. He stated that after receiving copy of FIR along with other relevant documents, he proceeded to the spot and prepared site plan on pointation of complainant Javid Khan, eye-witnesses Muhammad Ali and Faiz Ullah. Site plan is Ex. PB. He recorded statements of eye-witnesses u/s 161 Cr. PC. Accused facing trial surrendered before him and he issued their card of arrest as Ex. PW-2/1. He produced the accused before the Judicial Magistrate for physical custody of accused vide his application Ex. PW-2/2. Accused were released on bail as offences were bailable. He recorded statements of accused u/s 161 Cr. PC. After completion of investigation, he handed over the case file to SHO for submission of challan against accused.
7. PW-03, is the statement of SI Muhammad Younas. He stated that report of the complainant was recorded in DD by Muharrir of PS vide Mad No. 9 dated 19.08.2022. He was informed that some persons are made hostages by the accused facing trial. After receiving information, he rushed to the spot where PW Muhammad Ali and PW Faiz Ullah were kept hostages in the Hujra of accused. He rescued both of them and prepared recovery sketch (Khaka Baramdgi) in presence and on pointation of PWs named above. The same is Ex.PW-3/1. After rescuing Muhammad Ali and Faiz Ullah, they were brought to PS. Entry was made in DD accordingly. On


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05.09.2022, he sought legal opinion from the office of DPP, Orakzai and after receiving legal opinion, he registered the instant case against the accused vide case FIR No. 35 dated 18.09.2022. Application for legal opinion is Ex.PW-3/2. Copy of FIR is Ex.PA. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex.PW-3/3.

8. Faiz Ullah S/O Muhammad Saeed was examined as PW-04. He stated that complainant Javid Khan and PW Muhammad Ali are his co-villagers. On the day of occurrence, they were taking meal for chowkidar at Shabozar mountain. When they were returning back from the mountain, they were caught by accused Samandar Shah and others on main road. The accused were duly armed. They were taken to the hujra of accused Samandar Shah. They called complainant Javid Khan on mobile phone. SHO came to the spot and they were rescued. He charged the accused for commission of the offence.
9. PW-05, is the statement of Muharrir Saeed. He stated that on 19.08.2022, complainant Javid Khan reported to him regarding the occurrence. Report of the complainant was recorded vide Mad No. 9 dated 19.08.2022. Report was read over to the complainant and he thumb impressed the same as token of its correctness. Mad report is Ex.PW-5/1. He informed SHO accordingly. Entry in DD regarding the departure of SHO from PS and arrival to PS was made vide Mad No. 3 and 10 dated 19.08.2022. The same are Ex.PW-5/2 and Ex.PW-5/3.


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- 10.** Muhammad Ali was examined as PW-06. He stated that complainant Javid Khan and PW Faiz Ullah are his co-villagers. On the day of occurrence, they were taking meal for chowkidar at Shabozar mountain. When they were returning back from the mountain and reached Serai Mor, they were caught by accused Samandar Shah, Pio Wali and others. In the meanwhile, he called complainant Javid on his mobile phone number. His mobile was snatched by accused and they were taken to hujra. They were made hostages in the hujra. Thereafter, SHO came to the spot hujra and they were rescued. They were taken to the PS where they registered case against the accused. Motive behind the occurrence is dispute over the mountain. He charged the accused for the commission of the offence.
- 11.** After the completion of evidence, prosecution closed its evidence. Afterwards, statements of accused U/S 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.
- 12.** Record transpires that the alleged occurrence took place on 19.08.2022 at 20:40 hours on main road, Serai Mor, Sangra, Lower Orakzai. It was reported on 19.08.2022 and FIR was registered at 18.09.2022. Per contents of FIR Ex.PA, inquiry was conducted u/s 157 (1) Cr.PC before registration of the case but there is nothing on record which could show that any permission whatsoever for such inquiry was obtained from the court. Per Ex.PW-3/1, the hostages were rescued/recovered on 19.08.2022 and FIR was registered on



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18.09.2022 without giving any reason for such delay. PW-01, who is complainant of the case, is not the eye witness of the occurrence. In his cross examination, he admitted that he has not mentioned in his report or his statement, mobile number of PW Muhammad Ali via which call regarding the occurrence was made. He further stated that Haji Qutab Haji, who is one of the accused, was present in PS as a jirga member from the opposite side. If the said accused was present in the PS, then how it is possible that he was also present at the spot at the time of occurrence. PW-02, who is IO of the case, deposed that he has not collected CDR data of the complainant and eye witnesses.

- 13.** Similarly, PW-03, who allegedly rescued the hostages, deposed that he was on mobile gasht when received information from PS regarding the occurrence and he straight away went to the spot. He was not in possession of mad report. Accused were not present at the spot hujra at the relevant time. He has not recorded statement of any independent witness during course of inquiry. Muharrir of PS Mishti Mela namely Saeed who deposed as PW-05, stated that report of the complainant, recorded vide mad No. 9 was sent to SHO through constable Moez Ali and he handed over the report to SHO and returned back to PS. There are contradictions in the statements of PW-03 and PW-05.

- 14.** Faiz Ullah, who is one of the hostages, deposed that he has not mentioned any mobile number in his report and statement. When SHO came to the spot hujra, all the accused duly armed were present


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in the spot hujra. He had told the SHO that all the accused duly armed were present in the spot hujra at the relevant time but this fact is not recorded in his statement recorded u/s 161 Cr.PC. Even otherwise, if accused, duly armed were present at the spot hujra, then how it is possible that they were not arrested by the SHO (PW-03). There are contradictions in the statements of PW-03 and PW-04. Muhammad Ali, who is the 2nd hostage, deposed as PW-06, he also stated that accused facing trial were present at the spot hujra when the SHO arrived there. He also admitted that he has not mentioned in his statement mobile number via which call was made to the complainant regarding the occurrence. He also deposed that his mobile phone was snatched by accused which was recovered by SHO when he was rescued but neither this fact is mentioned in the report nor in the statements of PWs nor any mobile was recovered and taken into possession by the SHO. He also stated that accused and SHO talked to each other and thereafter, they were released. Accused were present in the spot hujra having pistols and Kalashnikovs but neither any accused was arrested at the spot nor any thing incriminating was recovered from the possession of the accused or on their pointation.


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15. Per contents of FIR Ex.PA, complainant was called by PW Muhammad Ali and Faiz Ullah regarding the occurrence on mobile phone but it does not appeal to prudent mind that PW Muhammad Ali and Faiz Ullah, despite being in custody of accused, made call to

the complainant and disclosed names and parentage of the accused, who are 12 in number.

- 16.** 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.
- 17.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Samandar Shah, Piyao Wali Khan, Sajid Ullah, Abdul Wahab, Muhammad Farid, Muhammad Shakeel, Minazar Khan, Qutab Khan, Alam Sher, Muslim Khan, Fazal Shah, Asad Ullah are hereby acquitted from the charges leveled against them. They are on bail. Their bail bonds stand cancelled. Sureties are discharged from their liability.
- 18.** Case file be consigned to Record room after its completion and necessary compilation.

Announced
11.04.2023



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CERTIFICATE

It is certified that this judgment consists of 08 pages. Each page has been dictated, read, corrected and signed by me.



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