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IN THE COURT OF MUHAMMAD IMTIAZ, JUDL:
MAGISTRATE-II/MTMC, ORAKZAI

Case FIR No.: 17
Dated: 24-06-2019
Offence: 379/427/34 PPC
P.S.: Kalaya, L./Orakzai

Case No. 31/2 of 2019
Date of original institution: 11.10.2019
Date of Decision: 30.10.2019

Mr. Amir Ali APP for the State
Mr. Abid Ali Advocate for the Complainant
Mr. Sana Ullah Advocate for all Accused


Muhammad Khattak
Civil Judge, JM-II
Orakzai at (Babar Mela)

The State through Taj Muhammad S/O Gul Akbar, Cast: Mishti, R/O
Jatta Kheil, Lower Orakzai.
(Complainant)

VERSUS

1. Qismat Khan S/O Noorab Khan, R/O Jatta Kheil, Lower Orakzai.
 2. Habib Ur Rehman S/O Abdul Qayum, Cast: Mishti, R/O Haider Kheil,
Mishti Mela, Tehsil Central, District L/Orakzai
 3. Muhammad Riaz S/O Niaz Khan R/O Jatta Kheil, Lower Orakzai.
 4. Muhammad Nawaz S/O Niaz Khan R/O Jatta Kheil, Lower Orakzai.
- (Accused)
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JUDGMENT

1. Briefly stated factual background of the instant case is that the complainant, Taj Muhammad S/O Gul Akbar reported the matter of the 27 pieces of trees belonging to him from his land situated in Mishti Area being stolen and cutted by the accused and now the accused by criminal intimidation also threatening him.

2. Initially Complainant approached to Police Officials for action as per law but Police Official did not pay him any heed and then after complainant approached to the Ex Officio Justice of Peace for redressal of his grievance. Ex Officio Justice of Peace vide Order Dated: 17/06/2019 accepted the petition of Complainant and Police Officials were directed to register the complaint of present complainant and to proceed further strictly in accordance with law. Upon which instant case was registered at PS Kalaya, L/Orakzai on 24-06-2019 Vide FIR No. 17.

3. After completion of the investigation the complete challan was Submitted on 11.10.2019 to this Court. Accused were summoned upon which they appeared and the provisions of section 241-A was duly complied with. The formal charge against the accused person was framed on 18.10.2019, to which the accused person pleaded not guilty and claim trail.

4. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence:

i. Mr. Shahadat Khan, HC, PS: Kalaya, L/Orakzai, as witness to the recovery memo. **PW-01**

ii. Mr. Mujahid Khan, SHO, PS Kalaya, L/Orakzai who submitted

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the Challan.

PW-02

iii. Mr. Shal M., I/O, PS Kalaya, L/Orakzai appeared as . **PW-03**

iv. Mr. Taj Muhammad S/O Gul Akbar complainant as **PW-04**

5. In documentary evidence, prosecution has produced followings:

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| i. Copy of FIR | Ex.PA |
| ii. Recovery memo | Ex.PW 1/1 |
| iii. Site Plan | Ex. PB |
| iv. Photo of the Spot | Ex. PB/1 |
| v. Card of arrest of the Accused Qismat Khan | Ex.PW 2/1 |
| vi. Photographs of the trees | Ex.PW 3/1 |
| vii. Photographs of the spot | Ex.PB/1 |
| viii. Application for the Judicial Remand Accused Qismat Khan | Ex.PW 3/2 |
| ix. Card of arrest of Accused M.Riaz and M.Nawaz | Ex.PW 3/3 |
| x. Application against Accused Habib U Rehman U/S 204 Cr.P.C Dated: 26.08.2019 | Ex.PW 3/4 |
| xi. Card of Arrest of Accused Habib U Rehman | Ex.PW 3/5 |
| xii. Application for the Police Custody of accused Habib U Rehman before Learned JM-01, Orakzai Dated:27.08.2019 | Ex.PW 3/6 |
| xiii. Application of the Complainant to DPO | Ex.PW 4/1 |
| xiv. Application of the Complainant U/S 22-A Cr.P.C | Ex.PW 4/2 |
| xv. Sketch of the Spot | Ex.PW 4/3 |
| xvi. Copy of CNIC of the Complainant | Ex.PA/1 |
| xvii. Compromise Deed submitted by the Complainant regarding patching up matter with all the accused | Ex.PA |

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Then after, on 25-10-2019, Learned APP for the state closed

evidence on behalf of the prosecution.

6. Statement of all the accused u/s 342 of Cr.P.C were recorded wherein they neither opted to be examined as defense witnesses on oath u/s 342 (2) of Cr.P.C nor they wanted to produce any evidence in their defense.

7. All of the accused in reply of the question that "*Why the PWs have deposed against you?*" submitted that:

"They are interested and inimical toward me (us).

They are falsely deposing against me."

8. After conclusion of Trial, Arguments of the learned counsel for the accused facing trial and APP, and for the parties heard attentively and the available record meticulously perused with their due assistance.

9. All of the accused are charged with the offence U/S379/427/34 PPC. S. 379 PPC deals with the Punishment for the "Theft". While S.34 PPC deals with the Acts done by several persons in furtherance of common intention. While S. 378 PPC defines Theft as following: -

S.378. Theft: - "*Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft*"

10. The essential ingredients for **S.378 PPC** are the "Taking any movable property out of the possession of any person without that person's consent" (*Actus reus*) and "Intending to take dishonestly" (*Men rea*). While **S.34 PPC** does not create any distinct offence but merely lays down principle of Joint Liability. Where there was a common intention or not is a question of fact to be determined in the circumstance of each case.

11. Keeping in view the record on the file and the depositions of PWs, it

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it is observed that the complainant has charged the accused person for Theft. The prosecution is required to prove its case against the accused beyond reasonable doubts.

12. Pw-04 who is the Complainant in the instant case although charges all of the accused for theft of trees out of the complainant possession without his consent. But he failed to produce any eye witness to the occurrence. Even he himself not mentioned anywhere that he seen the accused cutting and taking away the trees from his land.

13. PW-03 who is the IO recorded his statement. In his statement he narrated a brief of his investigation and mentioned the recovery of the trees Sangrah Bazar but failed to connected the accused facing trail with the cutting and taking away the trees from the complainant owned land.

14. PW-03 stated in his cross examination that” the place from where recovery of trees was affected is Adda of wood which is a public place. I do not know the owner of Adda of wood. Nothing incrementing were recovered from the accused at the time of arrest.” He just mentioned the recovery but it is doubtful that who transported the trees to the spot. It is highly doubtful. And it is the golden principle of criminal law that benefit of doubts always goes to accused.

15. As prosecution failed to connect the accused facing trail with the very act of the commission of offence so the other part (*Mes rea*) becomes out of question.

16. Now coming to the other part of the charge that is S.427 PPC, the offence U/S 427 PPC is compoundable when the only loss or damage caused is loss or damage to a private person. The compromise deed as Ex.PA submitted by the complaint and perusing the statement recorded by complainant as PW-04 it is evident that Complainant has patched the matter

with the accused. The compromise seems to be genuine and is in the best interest of the parties. Therefore, all the accused named above are hereby acquitted from the charges leveled against them on the basis of compromise u/s 345 Cr.P.C.

17. Taking stock of all the features of the instant case, it is observed that For what is discussed above it is clear that prosecution has failed to prove the case against the accused. The case of the prosecution is full of doubt. Prosecution failed to prove their case beyond the reasonable doubt on the following grounds: -

- i. *There is no eye-witness to the occurrence.*
- ii. *There is even no circumstantial or chance evidence of the occurrence as per prosecution version.*
- iii. *Prosecution failed to connect the accused with the commission of offence through un-broken chain of acts under S.378 PPC..*
- iv. *Recovery of Trees was affected from the public place and statement of neither owner of the land from where recovery was made was recorded nor any of the private or chance witness.*
- v. *No mode of transportation of the trees was established from the land owned by the Complainant to the place of recovery.*
- vi. *Complainant patched up the matter through compromise deed Ex.PA.*


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19. Resultantly for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, accused namely M.Riaz, M.Nawaz, Habib U Rehman and Qismat Khan are acquitted of the charges levelled against them. As they are on bail their bail bonds stand canceled and sureties are discharged from their liability of bail bonds. Case property be disposed of as per law after the expiry of the period of appeal/revision.

19. File be consigned to record room after its necessary completion.

ANNOUNCED
30.10.2019

Muhammad Intiaz,
Judl. Magistrate-II/MTMC,
Orakzai

Muhammad Intiaz,
Civil Judge/JM-II
Orakzai at (Babar Mela)

CERTIFICATE:

Certified that the instant order consists of Seven (07) pages; every page have been checked and signed by me.

Muhammad Intiaz,
Judl. Magistrate-II/MTMC,
Orakzai

Muhammad Intiaz,
Civil Judge/JM-II
Orakzai at (Babar Mela)