

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

Case FIR No.: 23
Dated: 08-08-2019
Offence: 379 PPC
P.S.: Kalaya, L/Orakzai

Case No. 37/2 of 2019
Date of Institution: 26.11.2019
Date of Decision: 04.12.2019

The State through **Hadi Khan** S/O Lajbar Khan, Cast: Mishti, R/O
Tappa Mnizai, Oat Mela, Lower, District Orakzai.

(Complainant)

VERSUS

1. **Hazrat Ullah** S/O Ali Akbar, R/O Haider Kheil, Mishti, District Orakzai.
2. **Syed Qaim Ali Shah** S/O Syed Badshah, R/O Mani Kheil, Mishti, District Orakzai

(Accused)

MR. Amir Ali for the State
Complainant in person
Mr. Altaf Advocate for the Accused

JUDGMENT

1. Briefly stated factual background of the instant case is that the complainant, Hadi Khan reported the matter that Cattles belonging to him were stolen from land situated in Mishti Area of District Orakzai by the accused. Upon hue and cry of the people in the vicinity, *who are termed as chagha party*, the accused left the Cattles and run away. They were chased by the *Chagha Party* upon which accused Hazrat Ullah was caught while

other escaped successfully. Accused Qaim Ali Shah; *during investigation*, was later on identified and Charged in the instant Case as co-accused.

2. After completion of the investigation the complete challan was Submitted on 26.11.2019 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 30.11.2019, to which the accused person pleaded not guilty and claim trail.

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

- i. Mr. Shal M., I/O, PS Kalaya, L/Orakzai appeared as **PW-01**
- ii. Mr. Hadi Khan Complainant him self appeared as **PW-02**
- iii. Mr. Mujahid Khan, SI/SHO, PS Kalaya, L/Orakzai who submitted the Challan appeared as **PW-03**
- iv. Mr. Libab Ali Moharrar of PS L/Orakzai appeared as **PW-04**
- v. Mr. Amir Nawaz Constable of PS L/Orakzai as **PW-05**

4. In documentary evidence, prosecution has produced followings:

- i. Copy of FIR **Ex.PA**
- ii. Murasilla **Ex.PA/1**
- iii. Recovery of one Plastic rough of sky blue colour **Ex.P1**
- iv. Recovery of empty dew bottle **Ex.P2**
- v. Recovery Memo **Ex.PW1/1**
- vi. Site Plan **Ex. PB**
- vii. Application for the Police Custody of Accused Hazrat Ullah **Ex.PW1/2**
- viii. Application for the Police Custody of Accused Qaim Ali Shah **Ex.PW1/3**

Mirza Asad Imtiaz
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Orakzai (Babar Mela)

ix. Card of Arrest of both accused Ex.PW3/1 and Ex.PW3/2

x. Complete Challan Ex.PW3/3

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Then after, on 03-12-2019, Learned APP for the state closed evidence on behalf of the prosecution.

5. 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.

6. 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."

7. 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.

8. All of the accused are charged with the offence U/S379 PPC.

9. Keeping in view the record on the file and the depositions of PWs, it is observed that the complainant has charged the accused person for Theft. The prosecution is requiring to prove its case against the accused beyond Reasonable Doubts.

10. Pw-03 who is the Complainant in the instant case although charged all of the accused for theft but stated in his statement that initially he has not seen any of the accused. One of the accused was caught by Chagha Party while other was identified and charges later on. Even he (PW-03) himself not mentioned anywhere that he seen the accused stealing his Cattel's. Even no body of the Chagha Party was produced as witness.

11. PW-01 who is the IO recorded his statement. In his statement he narrated a brief of his investigation and stated in his cross examination that
②7 “.....No recovery was affected from the possession of the accused during my entire investigation. There is no impartial and independent witness available on Case file.....”. That’s make Prosecution version is highly doubtful. And it is the golden principle of criminal law that benefit of doubts always goes to accused.

12. 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 produced.*
- iii. *Prosecution failed to connect the accused with the commission of offence through un-broken chain for acts punishable with S.379 PPC.*
- iv. *Nothing recovered from direct or indirect possession of both the accused.*
- v. *None of the person from Chagha Party was produced.*

13. Resultantly for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, accused namely **Hazrat Ullah S/O Ali Akbar and Syed Qaim Ali Shah S/O Syed Badshah**, 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.

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

ANNOUNCED

04.12.2019

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

CERTIFICATE:

Certified that the instant order consists of 05 pages; every page have been checked and signed by me.

Muhammad Imtiaz,
Civil Judge/JM-II
Orakzai
04.12.19
Muhammad Imtiaz,
Judl. Magistrate-II/MTMC,
Orakzai