

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

Case FIR No.: 01
Dated: 30-05-2019
Offence: 506/341/34 PPC
P.S: Ghiljo, U/Orakzai

Case No. 41/2 of 2019
Date of institution: 01.11.2019
Date of Decision: 19.12.2019

The State through **Wahid Gul** S/O Sarwar Khan, Cast: Mulla Kheil,
R/O Paktanai, Dabori, District Orakzai.

(Complainant)

VERSUS

1. **Muhammad Yonus** S/O Syed Salam, Cast: Mulla Kheil, R/O Paktanai,
Dabori, District Orakzai.

(Accused)

Mr. Umar Niaz DPP for the State
Mr. Haseeb Ullah Khan Advocate for the Complainant
Mr. Sana Ullah Khan Advocate for all Accused

JUDGMENT

1. Briefly stated factual background of the instant case is that the complainant, Waheed Gul S/O Sarwar Khan reported the matter that on Dated: 27.05.2019 his son namely Rafi Ullah along with his other nephews were going to High School Dabori. When they reached Shan Krapa at 06:50 a.m accused along with his co-accused stopped them. Accused Syed Salam took his pistol and stopped them by threatening them that they could not go

(21) to school, due to which his son and nephews came back home and narrated the whole story. The **Motive** for the occurrence was shown as that some 03/04 years ago son of accused Syed Salam namely M. Daud Shah has committed murder of my Complainant brother with knife blow. Hence, the present case.

2. After completion of the investigation the complete challan was Submitted on 01.11.2019. 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 07.11.2019, to which the accused person pleaded not guilty and claim trial.

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

- i. Waheed Gul S/O Sarwar Khan Complainant appeared as **PW-01**
- ii. Rafi Ullah S/O Waheed Gul appeared as **PW-02**
- iii. Shahif Ullah S/O Maweez Gul appeared as **PW-03**
- iv. M.Naseem S.I/O appeared as **PW-04**
- v. Khalil-U-Rehman AMHC appeared as **PW-05**

4. In documentary evidence, prosecution has produced followings:

- i. Application to DPP Orakzai for legal opinion **Ex.PW 4/1**
- ii. Legal Opinion of DPP Orakzai **Ex.PW 4/2**
- iii. F.I.R **Ex.PA**
- iv. Site Plan **Ex.PB**
- v. Card of arrest of accused S. Salam and M. Younas **Ex.PW 4/3**
- vi. Application to Magistrate **Ex.PW 4/4**
- vii. Card of arrest of accused Muhammad Basit **Ex.PW 4/5**
- viii. Complete Challan **Ex.PW 4/6**
- ix. Entry of the report in the daily dairy **Ex.PW 5/1**

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Then after, on 25-10-2019, 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 oath u/s 342 (2) of Cr.P.C nor they wanted to produce any evidence in their defense.

6. 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.

7. All of the accused are charged with the offence U/S 506/341/34 PPC. The prosecution is required to prove its case against the accused beyond reasonable doubts.

8. It is on record that there is around 02 days delay in lodging of FIR. But is explanatory as it was the first ever FIR at PS Giljo, U/Orakzai in newly merged District of Orakzai. Lodging of FIR was not only alien to the people of Orakzai but also to the Police (formerly known as Levis and Khassadar). Police also sought opinion of District Public Prosecutor which also cause delay. So the delay in lodging of FIR is explainable to the satisfaction of this Court.

9. Pw-01 who is the Complainant in the instant case although charges all of the accused for Wrongfully restraining his son and nephews from going to school and Criminally Intimidating them by threatening them and showing and waving Pistol at them. The time of Occurrence shown is 06:50 a.m. As it is early morning, the only eye witnesses shown are PW-02 and 03. The minor who were going to school.

10. Both PW-02 and 03 are minor. Court while recording their statements put some questions on them to test their competency being a Witness. Both

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were found to of Sound mind and able to answer rationally to question put to them. Apart from the exact date of Occurrence, *which is exceptional being of their tender age*, there is no contradiction in their statements regarding facts.

11. It is the golden principle of Criminal law that for extending benefit of doubt, it was not necessary that there should be many circumstances creating doubt, if there was a circumstance which would create a *reasonable doubt* about the guilt of accused, then accused would be entitled to the same, not as a matter of grace and concession, but as a matter of right. But this Court sees no reasonable doubt in the statements of PW-02 and 03. It is evident from the evidence that Complainant, Victims and accused are known to each other. So there is no question of non or mis-identification.

12. PW-04 who is the I.O . His deposition on oath is supported by the documentary evidence. although it is admitted that nothing incriminating was recovered from accused Syed Salam.

13. Prosecution **Succeeded** to connect the accused facing trail with the very act of the commission of offence **U/S 341/34 PPC** but **failed** to connect the accused facing trial with the commission of offence **U/S 506 PPC**.

14. Taking stock of all the features of the instant case, it is observed that For what is discussed above it is clear that prosecution **Succeeded** to connect the accused facing trail with the very act of the commission of offence **U/S 341/34 PPC only** on the following grounds: -

i. *There are eye-witness to the occurrence.*

ii. *Motive exists as his elder brother namely Daud Shah*

committed murder of Complainant brother with knife blow.

iii. No marginal difference which would cater reasonable doubt about the guilt of accused in the Prosecution evidence.

iv. Prosecution Succeeded to connect the accused with the commission of offence through unbroken chain of acts under S.341 PPC.

v. Documentary evidence of Prosecution supports Oral evidence.

15. Resultantly, the accused facing trial, namely **Muhammad Yonus S/O Syed Salam** is found **guilty** for the commission of the offence U/S 341/34 PPC *only* for Wrongfully restraining Complainant son and nephews from going to school. Accused is convicted under section 341/34 PPC and sentenced to simple imprisonment till rising of the court and to pay a fine of Rs. 100/- in default whereof he will have to undergo 01-day simple imprisonment. The office is directed to provide copy of this Judgment free of cost to the accused.

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

ANNOUNCED
19.12.2019

Muhammad Imtiaz
Civil Judge/JM-II
Orakzai (Babar Mela)
Muhammad Imtiaz,
Judl. Magistrate-II/MTMC, Orakzai

CERTIFICATE:

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

Muhammad Imtiaz
Civil Judge/JM-II
Orakzai (Babar Mela)
Muhammad Imtiaz,
Judl. Magistrate-II/MTMC, Orakzai