

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

Case FIR No.: 06
Dated: 03-07-2019
Offence: 337-A(iii), 337-A (i), 337-L (2), 147, 149, 109 PPC
P.S: Ghiljo, U/Orakzai

Case No. 36/2 of 2019
Date of institution: 19.08.2019
Date of Decision: 09-01-2020

The State through **Siyal Gul** S/O Nazeer Gul, R/O Rabia Kheil,
District Orakzai.

(Complainant)

VERSUS

1. **Abid** S/O Momin Khan, R/O Rabia Kheil, Village Baza, Tehsil Upper, District Orakzai.
2. **Ahmad Ullah** S/O Momin Khan, R/O Rabia Kheil, Village Baza, Tehsil Upper, District Orakzai.
3. **Muhammad Zubair** S/O Saidan, R/O Rabia Kheil, Village Baza, Tehsil Upper, District Orakzai.
4. **Niamat Ullah** S/O Bismillah, R/O Rabia Kheil, Village Baza, Tehsil Upper, District Orakzai.

(Accused)

Mr. Amir Shah APP for the State
Complainant in person
Mr. Sana Ullah Khan Advocate for all Accused

JUDGMENT

1. Briefly stated factual background of the instant case is that on 06-06-2019 at 10:35 hrs, the Complainant Siyal Gul reported to an ASI of

local police, that on that (day of occurrence) day, he (the Complainant) was going to stream for bringing water for home. When he got there accused stopped him. Accused started beating him with stones and sticks. As a result, complainant received injuries on his face, knee and back side of his body.

2. Minor accused Abid, Niamat, Ahmad Ullah and Sadique beat him while accused Momin and Ishrat were witnessing the occurrence and were inciting minor accused to beat him (Complainant). The Complainant Charges the Accused Momin Khan and Ishrat Khan for instigating the other accused.

3. The **Motive** for the occurrence was shown previous quarrel between the Complainant and boys of the accused party. The instant case was registered after receiving medical report and legal opinion from District Public Prosecutor, on 03-07-2019.

4. After completion of the investigation the complete challan was Submitted on 19.08.2019. 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 04.10.2019, to which the accused person pleaded not guilty and claim trial.

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

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| <u>i.</u> Abdul Janan S.I P.S Giljo U/Orakzai as | PW-01 |
| <u>ii.</u> M. Naseem, S.I P. S U/Orakzai as | PW-02 |
| <u>iii.</u> Dr. Sami Ullah Medical Officer as | PW-03 |
| <u>iv.</u> Complainant Siyal Gul as | PW-04 |
| <u>v.</u> ASI Imtiaz P.P Garhi P.S Giljo U/Orakzai as | PW-05 |
| <u>vi.</u> Khalil HC/Mohrar P.S Giljo U/Orakzai as | PW-06 |
| <u>vii.</u> Gul Asghar A.S.I P.S Giljo U/Orakzai as | PW-07 |

6. In documentary evidence, prosecution has produced followings:

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| <i>i.</i> | F.I.R | Ex.PA |
| <i>ii.</i> | Report roznamcha Dated 06/05/2019 | Ex.PA/1 |
| <i>iii.</i> | Site Plan | Ex.PB |
| <i>iv.</i> | Card of arrest of accused Abid, Naimat ullah, Ahmad ullah and one unknown as | Ex.PW 1/1 |
| <i>v.</i> | Card of arrest accused Momin and Ishrat Khan as | Ex.PW 1/2 |
| <i>vi.</i> | Application for the Judicial Remand Dated 06/07/2019 of accused Abid, Naimat, Ahmad, Zubair, Isharat and Momin Khan as | Ex.PW 1/3 |
| <i>vii.</i> | Recovery Memo Dated: 06-07-2019 | Ex.PW 1/4 |
| <i>viii.</i> | Three Colour Photos of complainant in Injured condition as | Ex.PW 1/5 Ex.PW 1/6 Ex.PW 1/7 |
| <i>ix.</i> | Application for recoding statement of complainant U/S 164 Cr.P.C Dated: 31.07.2019 | Ex.PW 1/8 |
| <i>x.</i> | Application to DPP for legal opinion | Ex.PW 2/1 |
| <i>xi.</i> | MLC report Dated:13-06-2019 | Ex.PW 3/1 |
| <i>xii.</i> | Naqasha Zarar Dated:06.06.2019 | Ex.PW 5/1 |
| <i>xiii.</i> | Roznamcha Report Dated:06-06-2019 | Ex.PW 6/1 |
| <i>xiv.</i> | Blood stained Qamees of the Complainant | Ex.P2 |
| <i>xv.</i> | Blood Stained Shalwar of the Complainant | Ex.P1 |

Then after, on 04-12-2019, Learned APP for the state closed evidence on behalf of the prosecution.

7. 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.

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. PW-01 is the Investigation Officer in the instant Case. Occurrence took place on 06-06-2019 but I.O recorded statement of the complainant on 04-07-2019. As admitted in his cross-examination that “...*I recorded statement of Sial Gul on 04/07/2019.....*). there is un-explained delay in recording statement of complainant of around 28 days which cast serious doubt on the prosecution version.

10. I.O admitted in his cross-examination that “.....*I have sent blood-stained garments to the laboratory for analysis.....*”. It also cast serious doubts on the report of the I.O. for the reason that there is neither Forensic Laboratory report of the blood stained garments of the Complainant nor even the road certificate available on the case file to show that whether they were sent to the Forensic Laboratory.

11. There are also time and again Un-Explained over writing on Ex.PA/1, Ex.PB. Even I.O has not only failed to recover any incriminating material from accused but he even did not tried at all. This situation is deplorable. Needs immediate attention. There seems to an element of deliberately unwillingness in carrying out investigation.

12. Pw-04 who is the Complainant in the instant case. His statements is also self-contradictory regarding charging the accused. On 04-07-2019, a supplementary statement of Complainant Siyal Gul was recorded by the I.O. In his Supplementary statement the complainant stated that he had not mentioned the proper names and parentage of some of accused in his first report. He stated that the actual name of the accused Siddique was Muhammad Zubair and that of Basharat was Ishrat. Hence it also cast doubt on the names of accused as mentioned in FIR and the identity of the accused despite the fact that Complainant admitted in his cross-examination that all accused are known to him.

13. It is the golden principle of Criminal law that benefit of doubt/s, in any form, goes to the accused. Although depending on the quantum of the doubt/s but, in the instant case the doubts are of serious nature and need consideration.

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 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. *There is un-explained delay in recording statement of complainant of around 28 days.*
- iv. *There is neither Forensic Laboratory report of the blood stained garments of the Complainant nor even the road certificate available on the case file to show that whether they were sent to the Forensic Laboratory.*
- v. *There are also time and again Un-Explained over writing on Ex.PA/1, Ex.PB.*
- vi. *Even I.O has not only failed to recover any incriminating material from accused but he even did not tried at all.*
- vii. *Statement of the Complainant is also Self-Contradictory.*
- viii. *Complainant stated that the actual name of the accused Siddique was Muhammad Zubair and that of Basharat was Ishrat. Hence it*

also cast doubt on the names of accused as mentioned in FIR and the identity of the accused despite the fact that Complainant admitted in his cross-examination that all accused are known to him.

ix. Prosecution failed to connect the accused with the commission of offence through un-broken chain of acts.

15. Resultantly for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, accused namely Abid S/O Momin Khan, Ahmad Ullah S/O Momin Khan, Muhammad Zubair S/O Saidan and Niamat Ullah S/O Bismillah 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.

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

ANNOUNCED
09-01-2020

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

Muhammad Imtiaz,
C.M.Judg/M.T.M.C.
Orakzai (Orakzai Mehat)
08-01-2020

CERTIFICATE:

Certified that the instant order consists of Six (06) pages; every page have been checked and signed by me.

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

Muhammad Imtiaz,
C.M.Judg/M.T.M.C.
Orakzai (Orakzai Mehat)
08-01-2020