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IN THE COURT OF REHMAT ULLAH WAZIR,
JM-I/MTMC, ORAKZAI AT BABER MELA

SESSION CASE NO. : 07/2 OF 2020

DATE OF INSTITUTION : 17.06.2020

DATE OF DECISION : 13.01.2021

STATE THROUGH NAZRAT KHAN S/O NIAZBAT KHAN, R/O
SARHAKHWA, GHILJO, U/ORAKZAI

------(Complainant)

VS

1. MUHAMMAD SHAHEEN S/O GUL SAIF KHAN
2. MINHAIJ S/O SHAH WAZIR
3. MUHAMMAD SHERIN S/O KHAN WAZIR
4. ZAHIR KHAN S/O SAID WAZIR
5. ABDUL KHAN S/O MIR AFZAL

(All R/O Sarha Khwa, Ali Khel, Dabori, District Orakzai

------(Accused Facing Trial)


Present: Nisar Ahmad, Assistant Public Prosecutor and Mr. Abid
Ali advocate for complainant.

: Aurangzeb Khan Advocate, for accused facing trial.

ORDER

13.01.2021

1. Accused facing trial, Muhammad Shaheen,
Minhaj, Muhammad Sherin, Zahir Khan and Abdul Khan
present who are charged in case FIR no. 10 Dated
15.03.2020 U/S 379/427/447/147/149 PPC of PS Upper
Orakzai for theft of cutting and taking away roots of
1500-2000 walnut trees, mischief by cutting roots of the
walnut trees and criminal tress-pass into the land of the
complainant.


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2. Briefly stated factual background of the instant case is that the complainant Nazrat Khan S/O Niazbat Khan reported the matter of the cutting and taking away the roots of 1500-2000 walnut trees from his land situated at U/Orakzai and stealing the same and resultantly causing mischief to the complainant by the accused.

3. Initially, the complainant approached to the police officials for action as per law but police official did not pay him any heed and then after, the complainant approached to the Ex-Officio Justice of Peace for redressal of his grievance. Ex-Officio Justice of Peace vide order Dated: 13.03.2020 accepted the petition of the complainant and the police officials were directed to register the complaint of the present complainant and to proceed further strictly in accordance with the law. Upon which, the instant case was registered at PS: U/Orakzai on 15.03.2020 vide FIR. 10.

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4. After completion of the investigation, the complete challan was submitted on 17.06.2020 to this court. The accused on bail were summoned while the SW was summoned for recording his statement against the absconding accused. The accused on bail appeared and

the provisions of 241-A Cr.P.C were duly complied with. The formal charge against the accused on bail was framed on 12.10.2020, to which the accused persons pleaded not guilty and claimed trial.

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

- i. Mr. Jahanzeb Khan, the then SHO, PS: U/Orakzai, who submitted the challan against the arrested accused and challan u/s 512 Cr.P.C against the absconding accused, as PW-01.
- ii. Mr. Salim, ASHO, PS: U/Orakzai, who chalked out FIR in the instant case, as PW-02.
- iii. Mr. Abdul Malik, ASI, PS: U/Orakzai, as I.O in the instant case, as PW-03.
- iv. Mr. Nazrat Khan S/O Niazbat Khan, complainant, as PW-04.
- v. Mr. Alamzeb, DFC, PS: U/Orakzai, as SW.

6. In documentary evidence, prosecution has produced the following;

- i. Copy of FIR. **Ex.PA**
- ii. Application to DPP for legal opinion.

Ex.PW-2/1


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- iii. Site plan. **Ex.PB**
- iv. Search Memo. **Ex.PW-3/1**
- v. Card of arrest of the accused Muhammad Shaheen, Minhaj, Muhammad Sherin and Zahir Khan. **Ex.PW-3/2**
- vi. Application for police custody to the Judicial Magistrate. **Ex.PW-3/3**
- vii. Application to the Judicial Magistrate for further police custody. **Ex.PW-3/4**
- viii. Card of arrest of the accused Abdul Khan. **Ex.PW-3/5**
- ix. Application against the accused Munawar Khan u/s 204 Cr.P.C. **Ex.PW-3/6**
- x. Application for publication against the accused Munawar Khan u/s 87 Cr.P.C. **Ex.PW-3/7**
- xi. Application for police custody of the accused Abdul Khan to the Judicial Magistrate. **Ex.PW-3/8**
- xii. Application to the Judicial Magistrate for further police custody of the accused Abdul Khan. **Ex.PW-3/9**
- xiii. Application of the complainant to the Ex-


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Officio Justice of Peace, Orakzai.

Ex.PW-4/1

xiv. Warrant u/s 204 Cr.P.C against the accused

Munawar Khan. **Ex.SW-1/1**

xv. Report of the DFC upon the warrant u/s 204

Cr.P.C. **Ex.SW-1/2**

xvi. Publication against the accused Munawar

Khan u/s 87 Cr.P.C. **Ex.SW-1/3**

xvii. Report of the DFC upon the publication.


Ex.SW-1/4

7. Then after, on 11.01.2021, the learned APP for the state closed the evidence on behalf of the prosecution.

8. Statements of all the accused on bail u/s 342 Cr.P.C were recorded wherein they neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor they wanted to produce any defence evidence in their defence.

9. All of the accused in reply of the question that you people committed theft by stealing the roots of 1500-200 walnut trees and resultantly caused damage to the complainant worth Rs. 15 lacs To 25 lacs and committed criminal tress-pass by entering into the land of the complainant, submitted that;

"They are innocent and falsely charged"

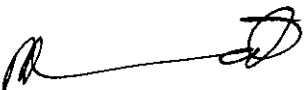

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10. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the APP and the other counsel for the complainant heard and record perused.

11. All of the accused are charged with the offence u/s 379,427,447,147,149 PPC. Sec. 379 PPC deals with punishment of theft while sec. 147 PPC deals with punishment for rioting and while sec. 149 PPC deals with joint and equal liability of each and every member of an unlawful assembly in case an offence is committed in furtherance of common object of an unlawful assembly. Where there was a common object or not is a question of fact to be determined in the circumstances of each case.

12. Keeping in view, the record on file and the depositions of PWs, it is observed the complainant has charged the accused persons for theft. The prosecution is required to prove its case against the accused beyond reasonable doubts.

13. PW-04, who is the complainant in the instant case, although charges all of the accused for theft of the roots of the walnut trees out of the complainant's land/possession without his consent but he failed to

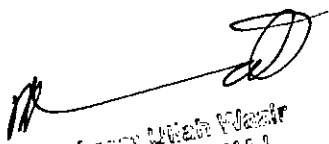

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produce any eye-witness of the occurrence. Even he himself admitted in his cross examination that at the time of occurrence, he was living in Kohat alongwith family and that someone informed me about the occurrence but he even failed to produce the informer.

14. PW-03, who is the I.O in the instant case, has admitted that he has not recovered the alleged stolen branches of the trees and the same were not available on the spot. And that nothing was recovered in the shape of branches/wood of the alleged cut trees during search of the houses of the accused. Further, that he has not recorded any statement of the elders of the locality w.r.t the occurrence.

15. Now coming to the other part of the charge i.e sec. 427 and sec. 447 PPC. The sec. 427 PPC deals with the mischief causing damage to the amount of fifty rupees or upwards and sec. 447 PPC provides for the punishment for criminal tress-pass.

The entire evidence produced by the prosecution does not bear any eye-witness of the alleged occurrence. The complainant himself is not the eye-witness to the occurrence rather admittedly, he is informed by a third person but that person has also not been produced as

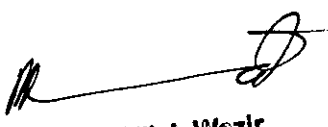

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witness. The I.O has neither recovered anything incriminating against the accused from the spot nor from the houses of the accused. No confession is available.

16. In the light of the above discussion, it is clear that the prosecution has failed to prove its case against the accused on the following grounds;

- i. There is no eye-witness to the occurrence.
- ii. There is no circumstantial evidence of the occurrence as per the prosecution version.
- iii. Prosecution failed to connect the accused with the commission of offence through unbroken chain of acts.

17. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, the accused namely Muhammad Shaheen, Minhaj, Muhammad Sherin, Zahir Khan and Abdul Khan are **acquitted** of the charges levelled against them. As they are on bail, their bail bonds stand cancelled and sureties are discharged from their liability of bail bonds.

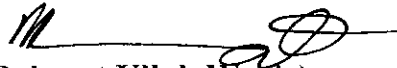

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18. It is pertinent to mention here that the one Munawar Khan S/O Said Wazir R/O Sarha Khwa, U/Orazkai is absconding. To this extent statement of DFC and statements of other prosecution witnesses are

recorded. On the basis of statements of DFC and other prosecution witnesses, prima facie case is made out against absconding accused Munawar Khan S/O Said Wazir R/O Sarha Khwa, U/Orakzai, therefore, he is declared as "*proclaimed offender*" and perpetual warrant of arrest be issued against him. His name may be entered in the relevant register of the PS.

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


Announced
13.01.2021


(Rehmat Ullah Wazir)
JM-I/MTMC,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this order consists of Nine (09) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 13.01.2021


(Rehmat Ullah Wazir)
JM-I/MTMC,
Orakzai (at Baber Mela)