

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

Session Case No. 12 of 2020
 Date of original Institution: 11.12.2019
 Date of present Institution: 19.12.2020
 Date of Decision: 10.02.2021

**State through Haseeb Nawaz s/o Mehraban Khan r/o Caste:
 Mishti District Orakzai.....(Complainant)**

VERSUS

1. Hashmat Ullah s/o Ali Majan, aged about 42 years, caste: Mishti, sub-section Mamizai, presently r/o Bahadur Banda, Hangu
2. Muhammad Daud s/o Sultan Akbar, aged about 21 years,
3. Abdul Salam s/o Gulmat Khan aged about 30 years,
4. Sultan Akbar s/o Mirjan aged about 55 years,
5. Irfan Ullah s/o Abdur Rehman, aged about 37 years,
6. Qalat Khan s/o Gul Muhammad, aged about 45 years,
7. Abdul Jalal s/o Laiq Shah, aged about 38 years, R/o caste: Mishti and r/o Tappa, Mamizai, Lower Orakzai
8. Misri Khan s/o Ali Asghar, aged about 52 years, caste Malla Khel, tappa Aziz Khel, village Koll, Dabori, Upper Orakzai.....(Accused facing trial)

Represented by:

Mr. Nisar Ahmad, APP and Mr. Javid Iqbal Anwar Sr.PP for State.
 Mr. Zahoor Rehman Advocate counsel for accused facing trial.

CASE FIR NO.47 DATED 11.11.2019 U/S 387/365/511/148/149 PPC OF POLICE STATION LOWER ORAKZAI (KALAYA)**JUDGMENT**

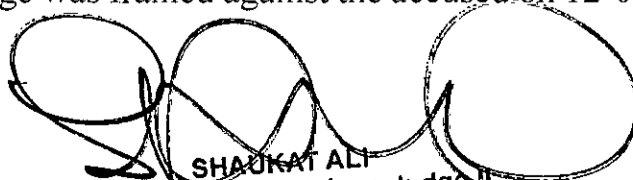
The prosecution story is that the complainant submitted an application to SHO PS Lower Orakzai against the accused that the complainant is the resident of Mishti and a govt contractor working at Anjghari road, that on 07-12-2019 at 9:30 hours the laborers were working on the road and the complainant was also present there when in the meanwhile


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the accused facing trial came there with duly armed Kalashnikov and attempted to abduct the complainant, that the complainant ran away from the spot and took refuge in the house of one Khana Dan, that the accused entered into the house and tortured the complainant however he was escaped by the inmates of the house, that the accused came out form the house and broken the wind screen of pick-up No. B-3427 and took the same along with the article present in the said pick-up, that tractor-640 of driver Munir Khan, tractor Messi-240 of driver Sajid Ullah and one tar-coal plant of Gul Rehman was also taken by the accused with them, that the laborers were dispersed and the work on the road was stopped. The application of complainant was reduced in DD No. 8 dated 08-12-2019 and after seeking the legal opinion of District Public Prosecutor, Orakzai the case FIR Ex.PA was registered against the accused facing trail. The case file was handed over to the investigation branch for investigation.

In the course of investigation, the investigation officer on 12-12-2019 inspected the spot and prepared the site plane Ex.PB on instance of complainant. During the course of investigation the IO also recorded statement of accused and prosecution witnesses. The tractors and mixture were also recovered by the IO and taken into possession vide recovery memos. After completion of investigation the IO submitted the case file to the SHO for submission of challan.

Complete challan against the accused was submitted which was received on 06.03.2020 for trial against the accused. The accused facing trail who were on bail, were summoned and in compliance of summon the accused facing trial appeared before the court and after compliance of 265-C Cr.PC the charge was framed against the accused on 12-06-2020 to which

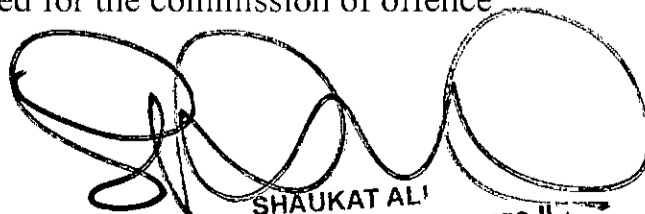

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the accused facing trial pleaded not guilty and claimed trial. The prosecution was allowed to produce its evidence and during the trial of the case, the prosecution produced and examined 06 PWs.

The gist of the statements of prosecution witnesses are as under:

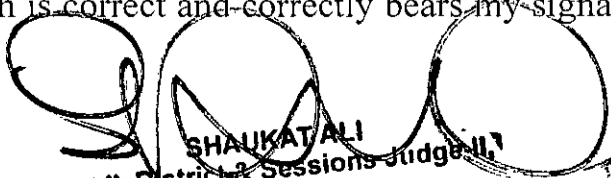
PW-1 is the statement of Khayal Ajab who stated that "On 07-12-2019, early in the morning I had gone to Sanghrra at about 11:30 hrs. When I returned to my home, my wife was present. She told me that in morning time after my departure from home one person entered into our home for taking shelters and that meanwhile some other persons also entered our home and started beating him. After that some co-villagers entered our home and saved him; and that thereafter, all persons left our home. After 02 or 03 days my statement was recorded by the local police".

PW-2 is the statement of Sajid Ullah who stated that "I am the owner of tractor registration no. 3294 Kohat, and I was working, with contractor Habib Nawaz, on construction of Anjghalay road. On 07-12-2019, at 09:30 hrs. when we were busy at work, accused Hashmat Ullah, Daud, Salam, Sultan Akbar, Irfan, Qalat Khan and Jalal duly armed with weapons came to the spot and started beating the contractor Habib Nawaz. Habib Nawaz took shelter in the house of one Khanan, the accused also went to the same house. After sometime all the accused came out of the said house and broke the wind screen of a pick-up belonging to contractor Habib Nawaz. The accused forcibly took from me the key of my tractor and drove my tractor away with them. The accused also snatched the tractor of Muneer Rehman and char coal plant of one Gul Rehman. My statement was recorded by the police. I charge the above-named accused for the commission of offence"


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PW-3 is the statement of Muhammad Shafiq SI who stated that “During the days of occurrence, I was posted as SHO of PS Lower Orakzai. On 11-12-2019, I received legal opinion DPP Orakzai in respect of mad no. 08 daily dairy 08-12-2019. In light of legal opinion, I drafted the FIR in present case u/s 387/365/511/148/149 PPC. Copy of FIR is Mark-A. The case file was submitted to me by the IO after completion of investigation. On 05-01-2020, I submitted interim challan against the accused namely Muhammad Daud, Abdul Salam, Sultan Akbar, Irfan Ullah, Qalat Khan and Abdul Jalil which is Ex. PW-3/1. On 07-02-2020, I submitted complete challan against all the accused which is Ex. PW-3/2. Today I have seen all the relevant documents which are correct and correctly bears my signature”.

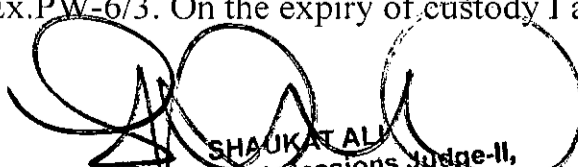
PW-4 is the statement of Habib Nawaz who stated that “I am a government contractor. On 07-12-2019, I was present on Anjghaley Sampog road with laborers, who were working on the road. At about 09:30 hrs., accused Hashmat Khan, Daud Khan, Salam, Sultan Akbar, Irfan, Qalat Khan and Jalal came there armed with Kalashnikovs. They attempted to abduct me and I ran into the house of one Khandan for shelter; the accused followed me into that house and beat me violently. However, their attempt to abduct me failed due to intervention of inmates of house of Khanadan. The accused went out of the house and shattered a glass of my pick-up no. B3427 and took the said pick-up with them. They also took one Fiat 640 tractor belonging to driver Muneer Khan and one Messy 240 tractor, with tar-coal plant, belonging to driver Sajid Ullah. The owner of tar-coal plant was one Gul Rehman. The accused made all the laborers leave the place and stopped the construction work. I made a telephone call to the XEN and police came to the spot. Thereafter, I went to PS where I submitted a written complaint. The complaint is Ex. PW-4/1, which is correct and correctly bears my signature. On 15-12-


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2019, I went to the spot where the IO was present. The IO prepared site-plan on my pointation and recorded my statement u/s 161 Cr.PC”.

PW-5 is the statement of Constable Muhammad Riaz who stated that “during relevant days I was posted in investigation staff of the PS Lower Orakzai. I am the marginal witness to the recovery memo Ex.pW-5/1 vide which the Io took into possession one tractor Massy Chases A418920912 along with trolley, Charcoal mixture which was recovered on the pointation of the accused Hashmat Ullah. I along with other marginal witness Minhaz Hussain signed the recovery memo on the spot. My statement was recorded by the IO u/s 161 Cr.PC. similarly I am also the marginal witness to the recovery memo Ex.PW-5/2 vide which the IO took into possession one tractor P.8 registration APL chases No. 640AZL656804DB of red color along with ploughing machine. The IO recovered the above tractor on the pointation of complainant from the front of house of one Misri Khan. My statement was also recorded in this respect. Today I have seen both of the recovery memo which are correct and correctly bears my signature”.

PW-6 is the statement of Shal Muhammad SI/IO who stated that “on 11-12-2019 the copy of FIR, naqal mad No. 8 and application submitted by the complainant was handed over to me for investigation. On 12-12-2019 I inspected the spot and prepared the site plan Ex.PB on the instance of complainant. I recorded the statement of complainant. On n13-12-2019 I arrested accused Hashmat Ullah vide his card of arrest Ex.PW-6/1. I produced accused Hashmat Ullah before the magistrate for custody vide my application Ex.PW-6/2 which was accepted and 03 days custody was granted. I interrogated accused during custody. I recovered tractor and mixture and took into possession the same vide recovery memo already Ex.PW-5/1. I prepared sketch of recovery Ex.PW-6/3. On the expiry of custody I again produced the

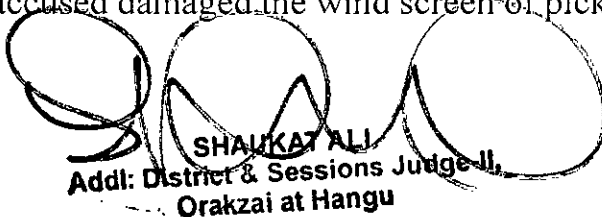

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accused Hashmat Ullah for further custody vide my application Ex.PW-6/4 however further custody was refused and accused was sent to the judicial lock-up. I recorded the statement of accused. The accused Muhammad Dawood, Abdul Salam, Sultan Akbar, Irfan Ullah, Kilot Khan and Abdul Jabar got BBA and produced the order before me. I issued their formal card of arrest Ex.PW-6/5. The BBA was confirmed and I recorded their statement u/s 161 Cr.PC. I arrested accused Misri Khan vide his card of arrest Ex.PW-6/6. I recovered tractor B-8 on the pointation of accused Misri Khan vide pointation sketch Ex.PW-6/7. I produced accused Misri Khan for recording confession statement vide my application is Ex.PW-6/8. The accused refused to confess and was sent to the judicial lock-up. On completion of investigation I handed over the case file to the SHO for submission of complete challan. Today I have seen the above documents which are correct and correctly bears my signature”.

On 27.01.2021, the prosecution closed its evidence and the case was fixed for statement of accused. On 03-02-2021 the statements of accused were recorded u/s 342 Cr.P.C wherein the accused denied the allegations leveled against them however they refused to be examined on oath or to produce defense evidence, therefore, the case was fixed for final arguments.

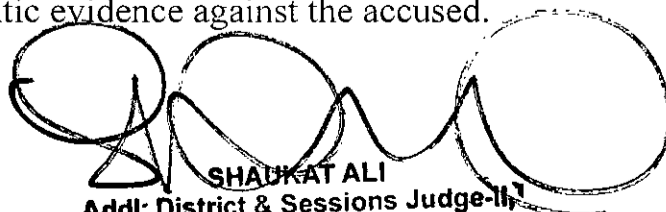
Arguments of learned APP for the state and learned counsel for the accused already been heard and available record perused.

The case FIR Ex.PA was registered against the accused facing trial on application Ex.PW-4/1 submitted by the complainant Habib Nawaz (PW-04) wherein the accused facing trial were charged for attempt to abduct the complainant and making torture on the complainant along with the allegation that the accused damaged the wind screen of pick-up No. B-3427


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and took away tractors of one Munir Khan, Sajid Ullah (PW-02) and a mixture of one Gul Rehman. The complainant recorded his statement as prosecution witness wherein during the course of his cross examination the complainant stated that he had some dispute regarding the payment of money with the accused and his money dispute with the accused party is settled now and further stated that it is correct that he does not want to prosecute the accused any more. The complainant is the material witness of prosecution case and is not interested in the case against the accused which creates dents in the persecution case.

The complainant alleged in the application Ex.PW-4/1 that the accused attempted to abduct him however he escaped from the spot and took refuge in house of one Khanadan where the accused entered in the said house and tortured him however he was protected by the inmates of the house from being abducted. None from the inmates of the house of Khanadan was produced as a prosecution witness to support the version of the complainant. Khial Ajab (PW-01) was produced who stated in his cross examination that he is not the eye witness of the occurrence and his wife did not disclosed the specific names of the accused and other person who entered his house on the day of occurrence. The complainant alleged torture at the hands of accused however no medical report is available on file to support such allegation. The complainant stated in his cross examination that he had not gone to doctor for medical examination. The occurrence of attempt to abduct and torture allegedly took place inside the house of Khanadan but that is neither supported by the inmates of the house as prosecution witness nor by any medical evidence therefore the case of prosecution is not supported by cogent and authentic evidence against the accused.

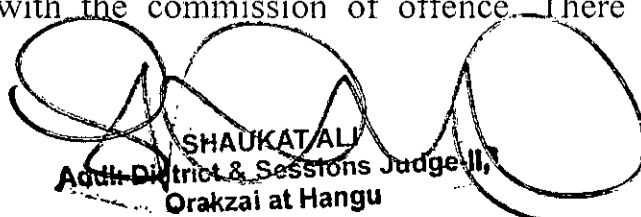

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The complainant stated in his cross examination that they started work at 8:00 a.m. and there were about 09 people working with him at that time including driver. Sajid Ullah (PW-02) who is the alleged eye witness stated in his cross examination that they started working at 9:30 a.m. on the day of occurrence and they were 03 persons working on road at that time with the contractor. The complainant and eye witness Sajid Ullah also made inconsistent statement regarding the time of starting work and the number of laborers present at the alleged time of occurrence which created doubt in the prosecution case. Furthermore the complainant stated that the accused came with duly arms with Kalashnikov however the IO recorded the statement of Gul Rehman who was not produced by the prosecution as witness who has not stated before the IO that the accused were armed with fire arm weapons. The IO stated in his cross examination that he recorded the statement of Gul Rehman who had not stated in his statement u/s 161 Cr.PC that the accused were armed with fire arm weapons. No recovery of Kalashnikov has been affected from the accused therefore the version of the complainant that the accused were armed with fire arm weapon could not be believed.

The complainant submitted in his application Ex.PW-41/ that when the accused came out from the house they damaged the wind screen of pick-up own by the contractor and also took the said pick-up along with the articles and FIAT and Messi Tractors with them however during cross examination the complainant stated that he left the house of Khanadan after the accused had left the spot and further stated that he has not seen the accused breaking the glass and taking away the vehicle which negates the contents of application.


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The occurrence took place on 07-12-2019 at 9:30 hours. The complainant stated in his examination in chief that he made telephonic call to the XEN and police came to the spot but no report was made by the complainant to the police on that day and time. The complainant stated that I went to the PS and submitted a written complaint which was submitted on 08-12-2019 after an explain delay of one day. The IO stated in his cross examination that the complainant has not given the reason of his delay in his report which shows that the report was lodged after due deliberation and consultation which makes the case of prosecution doubtful. The occurrence allegedly took place on 07-12-2019 and the investigation was handed over to the IO on 11-12-2019. The IO stated that he visited the spot on 12-12-2019 and inspected the spot and prepared the site plan Ex.PB on the instance of complainant however the complainant stated in his examination in chief that on 15-12-2019 he went to the spot where the IO was present who prepared site plan on his pointation which shows that on 12-12-2019 on which the IO visited the spot and prepared the site plan, the complainant was not present with the IO which negates the spot proceeding by the IO at the instance of complainant. Furthermore no broken pieces of the glasses were recovered from the spot by the IO to confirm the venue of occurrence. The tractor and mixture was also not recovered on the pointation or from the possession of accused. The IO stated in his cross examination that he has not recovered the broken pieces of glasses from the place of occurrence and further stated that the recovery of tractor and mixture was not effected from inside the house of accused. Besides there is nothing on record that the place from where the tractor and mixture was recovered is either the ownership or possession of the accused, therefore the alleged recovery does not connect the accused with the commission of offence. There are doubts in the



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prosecution case due to which the prosecution story could not be believed. The benefit of single doubt shall be extended to the accused as the accused is entitle to the benefit of doubt not as a matter of grace of concession but as a matter of right.

The prosecution could not bring home the guilt of the accused beyond any reasonable shadow of doubt; therefore, the accused facing trial are hereby acquitted from the charges leveled against them in the instant case by extending them the benefit of doubt. The accused are on bail, their sureties are discharged from the liability of bail bonds. Case property be dealt with in accordance with law.

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

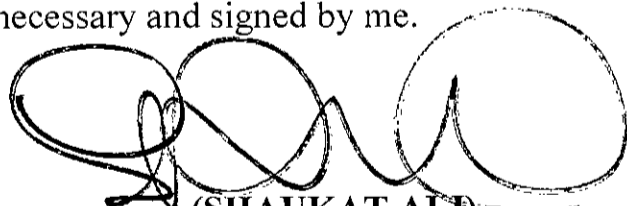
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10/02/2021



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CERTIFICATE

Certified that this judgment consists of (10) pages. Each page has been read, corrected wherever necessary and signed by me.



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Orakzai at Baber Mela