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

CASE NO. : 26/2 OF 2020

DATE OF INSTITUTION : 07.08.2020

DATE OF DECISION : 26.01.2021

STATE THROUGH TARIQ ALI S/O GULBAR ALI, R/O STORI
KHEL, ANDKHEL, LOWER, ORAKZAI.

------(Complainant)

VS

1. RAZEEM ALI S/O HASSAN GHULAM
2. SAJAWAL HUSSAIN S/O GULAB ALI
3. TAJAMUL HUSSAIN S/O HUSSAIN GHULAM
(All R/O Quom Stori Khel, Andkhel, L/Orakzai.

------(Accused Facing Trial)

Present: Nisar Ahmad, Assistant Public Prosecutor and Mr. Jabir
Hussain advocate for complainant.

: Javid Iqbal Advocate, for accused facing trial.

ORDER
26.01.2021

1. Accused facing trial, Razeem Ali, Sajawal Hussain

and Tajamul Hussain present who are charged in case FIR
no. 17 Dated 19.03.2020 U/S 506/504 & 34 PPC of PS
Lower Orakzai for criminal intimidation and intentional
insult to the complainant within intent to provoke breach
of the peace.

2. Briefly stated factual background of the instant case
is that the complainant Tariq Ali S/O Gulbar Ali reported
the matter of criminal intimidation and intentional insult


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to the women folk of the complainant. That the accused abused the women folk of the complainant. That the complainant approached the one Nikab Ali, SHO of the PS, who conducted Jirga between the parties but in the meanwhile the accused stoned the house of the complainant and opened fire on the house of the complainant.

3. Thus, the instant case was registered at PS: L/Orakzai on 19.03.2020 vide FIR. 17.

4. After completion of the investigation, the complete challan was submitted on 07.08.2020 to this court. The accused on bail were summoned. 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 29.10.2020, 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. Asif Ali, constable PS L/Orakzai, the marginal witness of the recovery memo, appeared as PW-1.
- ii. Mr. Muhammad Shafiq, SHO, PS: L/Orakzai, who submitted final report, chalked out FIR in the instant

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case and submitted complete challan, as PW-02.

iii. Mr. Tariq Ali, the complainant in the instant case as PW-03.

iv. Mr. Shal Muhammad, SI PS L/Orakzai, the IO in the instant case as PW-04.

v. Mr. Khurshid Anwar, ASHO PS L/Orakzai, who conducted inquiry in the instant case as PW-05.

vi. Mr. Habib Raza, the eye witness of the occurrence as PW-06.

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

i. Copy of FIR. **Ex.PA**

ii. Application to DPP for legal opinion.

Ex.PW-2/2

iii. Site plan. **Ex.PB**

iv. Recovery memo. **Ex.PW-5/1**

v. Card of arrest of the accused.

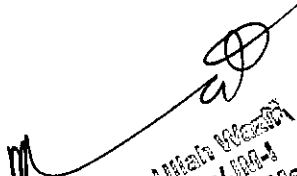
Ex.PW-4/1

vi. Application for police custody to the Judicial Magistrate.

Ex.PW-4/2

vii. The Naqalmaid No-05. **Ex.PW-5/2**

viii. Final report. **Ex.PW-2/2**


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ix. Application to the FSL Peshawar.

Ex.PW-4/3

x. FSL report.

Ex.PW-4/4

7. Then after, on 20.01.2021, 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 abused the women folk of the complainant and criminal intimidated the complainant, submitted that;

"They are innocent and falsely charged"

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Handwritten signature and stamp

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 506/504/34 PPC. Sec. 506 PPC deals with punishment of criminal intimidation while sec. 504 PPC deals with punishment of intentional insult with intent to provoke breach of peace and while sec. 34 PPC deals with the acts done by several persons in furtherance of common

intention of all, each of such person is liable for that act in the same manner as if it were done by him alone. Where there was a common intention 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 insult and criminal intimidation. The prosecution is required to prove its case against the accused beyond reasonable doubts.

13. PW-03, who is the complainant in the instant case, although charges all of the accused for insult and intimidation by firing, has admitted that he does not know the exact time of occurrence and also that he does not remember the exact date of occurrence. Further, that the local police arrived for spot inspection on the second day of the occurrence and that he reported the occurrence on the second day morning to the local police.

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Civil Judge (JM-4)
Guzrat (Dist. Mela)

14. PW-04, who is the I.O in the instant case, has admitted that the occurrence took place on 10-03-2020 while the FIR has been chalked on 19-03-2020 and that the complainant filed the application before the local police on 14-02-2020.

15. The PW-05, who conducted inquiry in the instant

case has admitted that he proceeded to the spot on 14-03-2020. That there was sign of one bullet in the stone wall of the complainant but I am not sure whether it was the sign of bullet or something else. Further, that it is correct that I did recovery of the empties after 04 days of the occurrence.

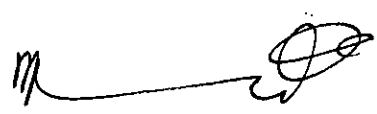
16. The entire evidence produced by the prosecution has not mentioned the exact time of occurrence. The prosecution has failed to explain some 05 days delay in the report of the matter to the local police and the lodging of FIR some 10 days after the occurrence. Admittedly there is no mark of bullet on the walls of the house of the complainant. The alleged recovery has no legal value as the same is effected some after 05 days of occurrence. No statement of any woman with respect to the alleged insult is recorded.

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17. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, the accused namely Razeem Ali, Sajawal Hussain and Tajamul Hussain 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.

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

Announced
26.01.2021



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

CERTIFICATE

Certified that this order consists of four (07) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 26.01.2021.