

**IN THE COURT OF MUHADMMAD IMTIAZ JUDICIAL
MAGISTRATE-II /MTMC ORAKZAI**

FIR No.: 35
Dated: 10.10.2019
Offence: 447/147/149/ PPC R/W 512 Cr.P.C
P.S.: Kalaya, L/Orakzai

Case No. 44/2 of 2019
Date of institution: 07.12.2019
Date of Decision: 19.02.2020

The State through **Abid Nasim** S/O Murad Khan, R/O Stori Kheil, Sheraz Garhi, District Orakzai.

(Complainant)

VERSUS

1. **Meermat Khan** S/O Khalil Khan R/O Qom Stori Kheil, Tazi Kheil, Dist: Orakzai.
2. **Niaz Wali** S/O Sher Wali R/O Qom Kamar Kheil, Tehsil Bara, Dist: Khyber.
3. **Tamash Gul** S/O Zareen Gul R/O Qom Stori Kheil, Tazi Kheil, Dist: Orakzai.
4. **Muhammad Khan** S/O Muqarab Khan R/O Qom Stori Kheil, Tazi Kheil, Dist: Orakzai.
5. **Haji Akram Khan** S/O Adam Khel R/O Qom Ali Kheil, Tehsil Upper, Dist: Orakzai.
6. **Muhammad Shafiq** S/O Noor Wali R/O Qom Kamar Kheil, Tehsil Bara, Dist: Khyber.
7. **Saiqool** S/O Khalil Khan R/O Qom Stori Kheil, Tazi Kheil, Dist: Orakzai.
8. **Sher Afzal** S/O Utman Shah R/O Qom Stori Kheil, Tazi Kheil, Dist: Orakzai.
9. **Qimat Gul** S/O Hassan Khan R/O Qom Stori Kheil, Tazi Kheil, Dist: Orakzai.
10. **Ibrahim Khan** S/O Khalil Khan R/O Qom Stori Kheil, Tazi Kheil, Dist: Orakzai.
11. **Khalil Khan** S/O Akram Khan R/O Qom Stori Kheil, Tazi Kheil, Dist: Orakzai.

ABSCONDING ACCUSED

12. **Badil Khan** S/O Buner Khan R/O Stori Khel, Malang Kalay, District Orakzai
13. **Bahrain Khan** S/O Buner Khan R/O Stori Khel, Malang Kalay, District Orakzai
14. **Syed Rehman Sheeno** S/O Muqarab Khan R/O Stori Khel, Malang Kalay, District Orakzai

(Accused)

Muhammad Imtiaz
Civil Judge/JM-II
Orakzai (Babar Mehta)

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Mr. Amir Shah APP for the State
Complainant in person
Mr. Fawad Hassan and Mr. Shoib Nastrat Kheil advocate for
all **Accused.**

JUDGMENT

1. Briefly stated factual background of the instant case is that the complainant, Abid Naseem reported to the local police through an application Dated: 03.09.2019 to SHO concern that standing crops in his field were damaged by the above named accused by sprinkling some poisonous spray. Upon complainant application, legal opinion of DPP Orakzai was obtained and subsequently present case FIR No. 35 Dated: 10.10.2019 U/S 447/147/149 PPC was registered against the accused.

2. After completion of the investigation the complete challan was Submitted on 07.12.2019 to this Court. Accused were summoned upon which they appeared before the Court and the provisions of section 241-A was duly complied with. Charge was framed against the accused person on 03.01.2020 to which the accused person pleaded not guilty and claim trail.

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


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PW- NAME	DOCUMENT/S PRODUCED	EXHIBIT
<u>PW-01</u> Mr. Ishtiaq Hassan S.I	Submitted complete challan	
<u>PW-02</u> Ihsan Ullah S/O Muhammad Yonus	<i>Alleged</i> Eye-witness of the occurrence	
<u>PW-03</u> Abid Naseem (Complainant)	Application for registration of case	EX. PW 03/1
<u>PW-04</u> Shal Muhammad Investigation Officer	(a) Site plan (b) issued card of arrest Meeramat Khan, Tamash Gul and Qimat Gul. (c) Applications for Judicial Custody (d) Application for Judicial Remand (e) Card of Arrest (f) Application for proceeding U/S 87 Cr.P.C (g) Photographs of Area/ Crops	(a) Ex. PB (b) Ex. PW 04/1 (c) Ex. PW 04/2 and Ex. PW 04/5 (d) Ex. PW 04/3 (e) Ex. PW 04/4 (f) Ex. PW 04/6 (g) Ex. PW 04/7 and Ex. PW 04/8
<u>PW-05</u> Khursheed Anwar S.I	(a) Photographs of the spot (b) Application to DPP for opinion (c) FIR (d) Naqal Mad	(a) Ex. PW 5/1 (b) Ex. PW 5/2 (c) Ex. PA (d) Ex. PW 5/3
<u>SW-01</u> Muhammad Alim D.F.C	(a) Warrants of arrest for absconding accused (b) Reports of arrests warrants (c) Proclamation notices (d) Repots of proclamation notices	(a) EX. SW 1/1, EX. SW 1/2, EX. SW 1/3 (b) EX. SW 1/4, EX. SW 1/5, EX. SW 1/6 (c) EX. SW 1/7, EX. SW 1/8, EX. SW 1/9 (d) EX. SW 1/10, EX. SW 1/11, EX. SW 1/12

Then after, on 14-02-2020, Learned DPP for the state closed evidence on behalf of the prosecution.

4. Statement of all the accused u/s 342 of Cr.P.C were recorded wherein they neither opted to be examined as on oath

u/s 342 (2) of Cr.P.C nor they wanted to produce any evidence in their defense.

5. PW-3 who is the complainant in the instant case. Stated that in his evidence that he was informed by Muhammad Raheem and Ahsan Ullah about the occurrence but has not mentioned the same facts in the application which is Ex. PW-3/1 to the local Police. Which makes the complainant version doubtful.

6. PW-2 who is alleged to be the eye witness of the occurrence. He self-admitted that, apart from one accused namely Mirmat Khan, he did not identify the other accused. The identity of other 12 accused becomes doubtful. He stated that occurrence took place at 19:30 hours but complainant in Ex. PW-3/1 has not mentioned any timing of the occurrence. That makes the statement of PW-2 doubtful.

7. PW-4 who is investigation officer in the instant case in his cross examination, admitted that the crops grown in the fields are cannabises (جنت). Further admitted that he has not taken the samples of cannabises crops to ascertain whether any poisonous spray was sprinkled on the crops or not.

8. I.O further admitted that he has not investigated that above the ownership of fields/lands in question. Discussion in para No 07 and 08 further makes the occurrence itself doubtful. It is the golden principle of criminal law that benefit of doubt always goes to the accused.

Muhammad Raheem
Civil Judge/JM-II
Orakzai (Babar Mela)

9. SW Muhammad Alim appeared before the court and recorded his statement on oath and submitted that I was entrusted with the warrant U/S 204 Cr.P.C against the accused namely (1) Bawal Khan S/O Bunair Khan (2) Behrain Khan S/O Bunair Khan (3) Syed Rehman S/O Muqarab Khan all R/O Malang Kalay, Qoum Stori Kheil, L/Orakzai. I went to the vicinity/village of the accused in order to search out the accused but did not found them as they were avoiding their lawful arrest and hide somewhere else. In this respect the warrants are EX. SW 1/1, EX. SW 1/2 and EX. SW 1/3 respectively and my reports on the back are EX. SW 1/4, EX. SW 1/5 and EX. SW 1/6 respectively. I was also entrusted with the proclamation notices U/S 87 Cr.P.C in compliance of which I affixed one copy of each proclamation notice on the notice board of the issuing court, affixed second copy of each proclamation notice on the main gate of the house of accused and returned the third copy of each notice along with statement of elders of the locality. The proclamation notices are EX. SW 1/7, EX. SW 1/8 and EX. SW 1/9 respectively while my reports overleaf proclamation notices are EX. SW 1/10, EX. SW 1/11 and EX. SW 1/12 respectively. All the above mentioned Exhibits are correct and correctly bear my signatures. ~~Sub~~ subsequently proceeding U/S 512 Cr.P.C was initiated against absconding accused.

Muhammad Alim
Civil Judge/JM-II
Orakzai (Babar Mela)

10. 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. Even Prosecution failed to connect the accused with both charges u/s 447/147/149 PPC. The case of the prosecution is full of doubts. Prosecution failed to prove their case beyond the reasonable doubt on the following grounds: -

- i. *The statement of complainant is contrary to the Ex. PW-3/1.*
- ii. *As per statement of I.O the damaged crops were of cannabises.*
- iii. *I.O has not taken into possession samples of damaged crops to ascertain whether any poisonous spray was sprinkled on the crops or not.*
- iv. *Site plan is not supported by the contents of FIR regarding the place of occurrence and its surroundings.*
- v. *There is no recovery of any incriminating material from the accused.*
- vi. *Prosecution failed to connect the accused with the commission of offence through un-broken chain of acts under U/S 447/147/149 PPC.*

11. Resultantly for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, accused namely **Meermat Khan** S/O Khalil Khan, **Niaz Wali** S/O Sher Wali, **Tamash Gul** S/O Zareen, **Muhammad Khan** S/O Muqarab Khan, **Haji Akram Khan** S/O Adam Khel, **Muhammad Shafiq** S/O Noor Wali, **Saiqool** S/O Khalil Khan, **Sher Afzal** S/O Utman Shah, **Qimat Gul** S/O Hassan Khan, **Ibrahim Khan** S/O Khalil Khan and

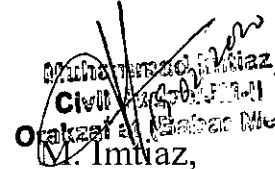
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Khalil Khan S/O Akram Khan are acquitted of the charges levelled against them. As they are on bail their bail bonds stand cancelled and sureties are discharged from their liability of bail bonds.

12. As far as Absconding accused **Badil Khan S/O Buner Khan, Bahrain Khan S/O Buner Khan, Syed Rehman Sheeno S/O Muqarab Khan** are concerned, in the light of statement of SW and PWs, said accused is avoiding his lawful arrest and is not possible in near future. Therefore, the accused are hereby declared Proclaimed Offender. Their names be entered in the list of POs and Perpetual warrant of arrest be issued against him.

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

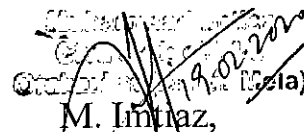
Announced
19/02/2020


Civil Judge (JM-II)
Orakzai (Balochistan)

JM-II/MTMC, Orakzai

CERTIFICATE:

Certified that the instant Judgment consists of seven (07) pages; Each page has been checked and signed by me.


Civil Judge (JM-II)
Orakzai (Balochistan)

JM-II/MTMC, Orakzai