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

FIR No.: 16  
Dated: 22.10.2019  
Offence: 379/147/149 PPC  
P.S.: Ghiljo, U/Orakzai

Case No. 42/2 of 2019  
Date of institution: 30.11.2019  
Date of Decision: 14.03.2020

**The State** through **Said Wazir** S/O Muhammad, R/O Rabia Kheil, Tapa Piyao Kheil, Village Ghozgarrh, District Orakzai.  
(Complainant)

**VERSUS**

1. **Inayat Ur Rehman** S/O Noor Jananb R/O Qom Rabia Khel, Ayaz Kheil, Dist: Orakzai.
2. **Jalabib Khan** S/O Abdul Kamal R/O Qom Rabia Khel, Babi Khel, Dist: Orakzai.
3. **Muhammad Ishtiaq** S/O Abdul Kamal R/O Qom Rabia Khel, Babi Khel, Dist: Orakzai.
4. **Abdul Jamal** S/O Noor Jamal R/O Qom Rabia Khel, Babi Khel, Dist: Orakzai.
5. **Akhtar Muneer** S/O Noor Jamal R/O Qom Rabia Khel, Babi Khel, Dist: Orakzai.

(Accused)

**Mr. Amir Shah APP** for the State  
Complainant **through Jamal Hussain Advocate.**  
**Mr. Abid Ali** Advocate for all **Accused.**

**JUDGMENT**

1. Briefly stated factual background of the instant case is that the complainant; Said Wazir, initially filed petition U/S 22-A Cr.P.C before the court of learned ASJ-I/Ex Officio Justice of Peace, Orakzai, praying that the directions be issued SHO of PS Ghiljo/Upper Orakzai for registration of Criminal Case (FIR) against the present accused.

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Orakzai at (Rabiar Mela)  
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2. The reasons mentioned in the application U/S 22-A Cr.P.C were that complainant filed an application dated: 22.04.2019 before the DPO, Orakzai wherein complainant alleged that on 20.01.2019 the present accused and other unknown persons stole 25 Girders, one water tank and other articles from his house and took away the same in tractor. Later on the accused were apprehended by the levies at Samana check post PS Upper Orakzai.

3. Complainant made a report to then Political Administration but no action was taken. Complainant also approached to DPO, Orakzai for registration of case against the accused but no action was taken by him. Then after complainant filed petition U/S 22-A Cr.P.C before the learned ASJ-I/Ex Officio Justice of Peace, Orakzai which was accepted and SHO PS Upper Orakzai was ordered for registration of case against the present accused.

4. Resultantly instance case was registered against present accused U/S 379/147/149 PPC vide case FIR no 16 dated 22.10.2019 at PS Ghiljo upper Orakzai.

5. After completion of the investigation the complete challan was Submitted on 06.12.2019 to this Court. Wherein prosecution prayed for cancelation of case FIR. Disagreeing with the prosecution, full trial was ordered with directions to the Police Officials to submit complete challan.

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 Civil Judge (J.P.)  
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6. Subsequently complete challan was Submitted on 07.02.2020 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 27.02.2020 to which the accused persons pleaded not guilty and claim trail.

7. Prosecution and complainant were given ample opportunity to adduce its evidence as it desired. Prosecution and complainant produced the following evidence:

PW- NAME	DOCUMENT/S PRODUCED	EXHIBIT
<u>PW-01</u> Zahid Ameen Inspector	Bail Bonds	Ex. PW-1 to PW-5
<u>PW-02</u> Said Wazir Complainant	(a) Application to DPO, Orakzai for legal action dated 22.04.2019 (b) Application U/S 22-A Cr.P.C before ASJ-I/Ex Officio Justice of Peace	(a)Ex. PW-2/1 (b)Ex. PW-2/2
<u>PW-03</u> Maveez Khan (S.I)	FIR	Ex. PA
<u>PW-04</u> Tariq Khan Investigation Officer	(a) Site plan (b) Photographs 12 in number (c) Joint Card of Arrest	(a) Ex. PB (b) Ex.PW-3/1 (c) Ex. PW-3/2

Then after, on 03.03.2020, Learned APP for the state closed evidence on behalf of the prosecution.

8. 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.

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9. PW-2 who is the complainant in the instant case. Stated that he has not seen the accused ~~at~~ the time of occurrence. His words are reproduced as under:

*“...I have not seen the accused at the time of carrying the above mentioned articles...”*

Which makes the complainant version doubtful. Even the household articles were not mentioned and the house from which the alleged theft was made is an abandoned house. His words are reproduced as under:

*“...it is correct that house was not inhabited by the humans but the household articles were in there...”*

10. PW-3 who is investigation officer in the instant case in his cross examination, admitted that no recovery was affected from the possession of accused. There is no eye witness of the occurrence. Even there is no independent evidence/witness of the occurrence.

11. I.O further admitted that statements of officials at the Samana Check Post were recorded but all of them negated the version of complainant. Discussion in para No 09, 10 and 11 further makes the occurrence itself doubtful. It is the golden principle of criminal law that benefit of doubt always goes to the accused.

*14/05/2022*  
*Orakzai*  
*Civil Judge/JM-II*  
*Imtiaz*

12. Taking stock of all the features of the instant case, it is observed that for what is discussed above it is clear that prosecution and complainant have failed to prove the case against all the present accused. Even Prosecution and complainant failed to connect the accused with charges u/s 379/147/149 PPC. The case of the prosecution and complainant is full of doubts. Prosecution and complainant failed to prove their case beyond the reasonable doubt on the following grounds: -

- i. *There is no eye witness to the occurrence.*
- ii. *Site plan is not supported by the contents of FIR regarding the place of occurrence and its surroundings.*
- iii. *There is no recovery of any incriminating material from the accused.*
- iv. *There is considerable delay of 9 months between the time of occurrence and registration of the case.*
- v. *Prosecution failed to connect the accused with the commission of offence through un-broken chain of acts under U/S 379/147/149 PPC.*

11. Resultantly for the above reasons it is clear that prosecution and complainant failed to bring home the guilt of the accused. Therefore, accused namely **Inayat Ur Rehman** S/O Noor Jananb, **Jalabib Khan** S/O Abdul Kamal, **Muhammad Ishtiaq** S/O Abdul Kamal, **Abdul Jamal** S/O Noor Jamal, **Akhtar Muneer** S/O Noor Jamal are acquitted of the charges levelled against them. As they are on bail their bail bonds stand cancelled and they are discharged from their liability of bail bonds.

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

**Announced**  
14/03/2020

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Civil Judge (JM-II)  
Orakzai (Khanpur Mela)  
M. Intiaz,  
JM-II/MTMC, Orakzai

**CERTIFICATE:**

Certified that the instant Judgment consists of six (06) pages;  
Each page has been checked and signed by me.

Muhammad Intiaz  
Civil Judge (JM-II)  
Orakzai at (Khanpur Mela)  
M. Intiaz,  
JM-II/MTMC, Orakzai