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

CASE NO. : 8/2 OF 2020

DATE OF INSTITUTION : 07.08.2020

DATE OF DECISION : 24.02.2021

STATE THROUGH SUNAB GUL, QOUM SHEIKHAN, TAPA UMARZAI, DISTRICT, ORAKZAI

------(Complainant)

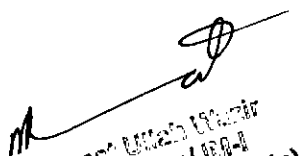
VS

1. Shah Kausal
2. Muhammad Rauf
3. Muhammad Dawood
Sons of Muhammad Farooq
4. Muhammad Riaz s/o Din Akbar
(All R/O Qoum Sheikhan, Tehsil Central, District Orakzai)

------(Accused Facing Trial)

Present: Aamir Shah, Assistant Public Prosecutor for complainant.
: Abid Ali Advocate, for accused facing trial.

ORDER
24.02.2021


Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Baber Mela)

1. Accused facing trial, Shah Kausal, Muhammad Rauf, Muhammad Dawood and Muhammad Riaz present who are charged in case FIR no. 08 Dated 10.02.2020 U/S 506/504/427/427/34 PPC of PS Lower Orakzai for criminal intimidation, insult intended to provoke a breach of the peace, mischief, and thereby causing damage to the amount of 50 rupees or upwards and criminal trespass.

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2. Briefly stated factual background of the instant case is that the complainant Sunab Gul, reported the matter of criminal intimidation, insult intended to provoke a breach of the peace, mischief, and thereby causing damage to the amount of 50 rupees or upwards and criminal trespass. That the accused beaten up the labourers of the complainant at the mine No. 12 and caused mischief there. That they took forcible possession of the mine.
3. Upon which, the instant case was registered at PS: L/Orakzai on 10.02.2020 vide FIR. 08.
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 08.10.2020, to which the accused person 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. Copy of FIR. **Ex.PA/1**
 - ii. Application for legal opinion.

M
M. A. Rauf
M. A. Rauf
M. A. Rauf
M. A. Rauf


Ex.PW 5/1

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- iii. Site Plan. **Ex.PB**
- iv. Cards of arrest. **Ex.PW-1/1,**
Ex-PW-1/2
- v. Recovery Memo **Ex.PW-1/3**
- vi. Application of the complainant to the DPO
Orakzai **Ex-PW- 3/1**
- vii. Iqrar Namas between the parties

Ex-PW-3/2, Ex-PW-3/3

6. Then after, on 22.02.2021, the learned APP for the state closed the evidence on behalf of the prosecution.
7. Statement of 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.
8. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the APP for the complainant heard and record perused.
9. The accused is charged with the offence u/s 506,504,427,447,34 PPC. Sec.506 PPC deals with the criminal intimidation, Sec.504 PPC deals with insult intended to provoke a breach of the peace, Sec. 427 PPC deals with the mischief, and thereby causing damage to the


Rajwani Ullah Khan
Civil Judge/JM-1
Orakzai (Bahar Mata)

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amount of 50 rupees or upwards and Sec. 447 PPC deal with the criminal trespass.

10. Keeping in view, the record on file and the depositions of PWs, the prosecution is required to prove its case against the accused beyond reasonable doubts.
11. PW-01, who is the IO in the instant case has admitted that he received all the relevant documents on 01.02.2020 and he proceeded to the spot on next day at 09:00 am and that the complainant was not present on the spot.
12. PW-02, who is the witness to the recover memo has admitted that the case property was not sealed the same was produced before the court today without seal.
13. PW-03, who is the complainant in the instant case has admitted that he has not mentioned the year, date and time of occurrence in his application. Further that he has not mentioned specifically the names of labourers who were attacked by the accused. That no body was severely injured in the attack that is why no one was taken to the hospital.
14. PW-04, who is the labourer and eye witness of the occurrence has stated in his examination in chief that the complainant was informed by him through a telephonic call. He further admitted that it is correct that we were not beaten up by the accused.


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Further that the complainant Sunab Gul was not present at the time of occurrence.

15. Thus, there is unexplained delay in the chalking of FIR. The eye witnesses are not mentioned in the FIR. The recovery is effected after delay of 12 days and that the same was not in sealed condition, which is fatal for the case of prosecution. Further the eye witness has admitted that the complainant was not present on the spot. That they were not beaten up by the accused.

16. In the light of the above discussion, it is clear that the case of prosecution is full of contradictions. There are doubts in the evidence of prosecution and the accused is ultimately entitled to the benefits of doubts and are accordingly extended to the accused.

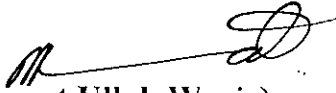
17. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, the accused namely Shah Kausal, Muhammad Rauf, Muhammad Dawood Sons of Muhammad Farooq and Muhammad Riaz s/o Din Akbar are **acquitted** of the charges levelled against them. As they are on bail, their bail bonds stand cancelled and sureties are discharged from their liability of bail bonds.


Retired Justice
Chief Justice (Retd.)
Orizal at (Babar Mele)

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

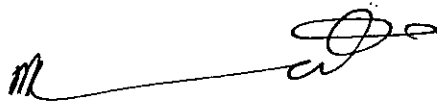
Announced
24.02.2021


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

CERTIFICATE

Certified that this order consists of Six (06) pages.
Each page has been read, corrected where-ever necessary and signed
by me.

Dated: 24.02.2021.


Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai (at Baber Mela)