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

CASE NO. : 36/2 OF 2020

DATE OF INSTITUTION : 03.09.2020

DATE OF DECISION : 11.03.2021

STATE THROUGH HIFAZAT ALI S/O SAJID ALI, QOUM SEPOY,
TAPA LAKHKARI KHEL, VILLAGE ZIRA, DISTRICT, ORAKZAI

------(Complainant)

VS

1. Uqab Ali S/O Nana Gul

(R/O Qoum Mani Khel, Tappa Terai, Village Zira, Tehsil Lower,
District Orakzai.

------(Accused Facing Trial)

2. Inran S/O Fateh Muhammad R/O Thana Janjara, PO Larrqala, village
Maidan, District, Lower Dir.

------(Absconding)

Present: Aamir Shah, Assistant Public Prosecutor for complainant.
: Sana Ullah Khan Advocate, for accused facing trial.

ORDER

11.03.2021

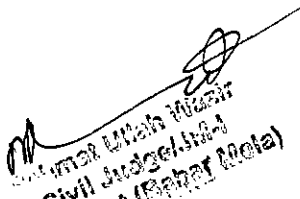
Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Babar Mela)

1. Accused facing trial, Uqab Ali S/O Nana Gul present who is charged in case FIR No. 28 Dated 07.04.2020 U/S 506/34 PPC & 15AA of PS Lower Orakzai for criminal intimidation and possession of Kalashnikov which is recovered from his possession.
2. Briefly stated factual background of the instant case is that

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the complainant Hifazat Ali, reported the matter of criminal intimidation. That the accused Uqab Ali and Imran exchanged harsh words with him and then opened fire upon his house for criminal intimidation.

3. Upon which, the instant case was registered at PS: L/Orakzai on 17.04.2020 vide FIR. 28.
4. After completion of the investigation, the complete challan was submitted on 03.09.2020 to this court. The accused on bail was 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 21.09.2020, to which the accused person pleaded not guilty and claimed trial. While the absconding accused was proceeded U/S 512 Cr.P.C.

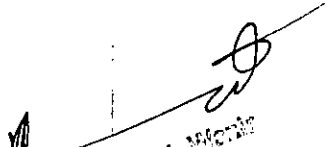

Civil Judge (Sd/-)
Orakzai at (Bahar Mata)

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

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|----------------------|-------------------------|
| i. Copy of FIR. | Ex.PA |
| ii. Complete Challan | Ex.PW-3/2 |
| iii. Murasila | Ex.PA/1 |
| iv. Recovery Memos | Ex.PW-2/1,
Ex.PW-5/2 |
| v. Card of arrest | Ex.PW- 3/1 |

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- vi. Recovery Sketch **Ex-PW-5/1**
- vii. Site Plan **Ex-PB**
- viii. Application for police custody **Ex.PW-5/3**
- ix. Application for recording confession
Ex.PW-5/4
- x. Application for opinion of arms expert
Ex.PW-5/7
- xi. FSL Report **Ex.PZ**
- xii. Application for 204 Warrant **Ex.PW-5/5**
- xiii. Application for publication U/S 87 Cr.P.C
Ex.PW-5/6


Rehmat Ullah Khan
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Court at (Mirpur Mathania)

6. Then after, on 10.03.2021, 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 was recorded wherein he neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor he wanted to produce any defence evidence in his defence.
8. After conclusion of trial, arguments of the learned counsel

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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, 34 PPC & 15AA. Sec.506 PPC deals with the criminal intimidation. Sec.34 PPC deals with acts done by several persons in furtherance of common intention. Sec. 15AA deals with possession of unlicensed weapon.
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 took the weapon of offence to FSL has admitted in his cross examination that it is correct that I have not mentioned in my statement U/S 161 Cr.P.C nor in my today's court statement that the parcel was in sealed condition.
12. PW-02, who received the Murasila and chalked the FIR has admitted that he has not specifically mentioned the time of received of Murasila and that he has not mentioned the entry in Register No.19.
13. PW-06, who is the complainant in the instant case has stated in his examination in chief that it was the accused Uqab Ali, who made firing to criminally intimidate and threaten me but in his cross examination, he admitted that he can not say the who made firing upon him amongst the accused. Further he

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admitted that it was the IO who reached first to the spot while the SHO namely Muhammad Shafiq arrived at the spot at 11:00 AM.

14. PW-07, who is the IO in the instant case has admitted in his cross examination that he received the copy of FIR at about 10:50 hours and he reached the spot by consuming 01 hour and 20 minutes. Further that it is correct that in the FSL report which is Ex.PZ, there is opinion that the weapon of offence and the recovered empties are not matching.

15. PW-08, the DFC of the concerned PS has stated that he exhausted the legal procedure in the search of the accused Imran S/O Fateh Muhammad but he could not find him in the locality.

16. Thus, there is a clear statement by complainant that he can not say that who amongst the accused made firing upon him. The FSL report is that the recovered weapon and the recovered empties are not matching. There is contradiction and difference of opinion amongst the witnesses about the sealing of the alleged weapon of offence. Admittedly the same is not entered in the relevant register after recovery. The statement of the seizing officer that he recovered the weapon of offence from the accused Uqab Ali is contradicted by the complainant by saying that it was the IO who arrived first to the spot. Thus, the recovery of the weapon of offence is very doubtful.


Rehmat Ullah Khan
Civil Judge/JM-4
Orakzai (Babar Meela)

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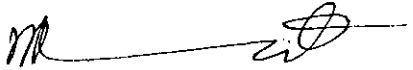
17. In the light of the above discussion, it is clear that the case of prosecution is full of contradictions. There are doubts in the evidence of prosecution and the accused is ultimately entitled to the benefits of doubts and are accordingly extended to the accused.
18. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, the accused namely Uqab Ali S/O Nana Gul is **acquitted** of the charges levelled against him. As he is on bail, his bail bonds stand cancelled and sureties are discharged from their liability of bail bonds.
19. It is pertinent to mention here that the one Imran S/O Fateh Muhammad R/O Thana Janjara, PO Larrqala, village Maidan, District, Lower Dir is absconding. To this extent statement of DFC and statements of other prosecution witnesses are recorded. On the basis of statements of DFC and other prosecution witnesses, prima facie accused Imran S/O Fateh Muhammad R/O Thana Janjara, PO Larrqala, village Maidan, District, Lower Dir is declared as "proclaimed offender" and perpetual warrant of arrest be issued against him. His name may be entered in the relevant register of the PS.

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Fateh Muhammad
Civil Judge (Sd)
Quetta (Balochistan)

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

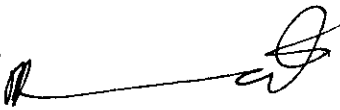
Announced
11.03.2021


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

CERTIFICATE

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

Dated: 11.03.2021


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