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State Vs Nasar Khan etc  
Case FIR No. 14, Dated 08.06.2021 U/S 447, 427, 379/34 PPC, PS Mishti Mela.

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**IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE -I**  
**TEHSIL KALAYA, DISTRICT ORAKZAI**

Case No.....45/2 of 2021.

Date of Institution.....17.08.2021.

Date of Decision.....21.07.2023.

**State through:**

Khameen Gul S/O Miran Gul, R/O Qaum Mishti, Tari Bandha, District  
Orakzai.....**Complainant**

**VERSES**

1. Nasar Khan S/O Yaqoob Khan
2. Habib-ur-Rehman S/O Nasar Khan
3. Mehmood S/O Muhabat Khan all R/O Qaum Mishti, village  
Kasha, District Orakzai..... **Accused**


Case FIR No. 14, Dated 08.06.2021 U/S 447, 427, 379/34 PPC, PS Mishti Mela.

**JUDGEMENT**

**21.07.2023**

Through this judgement, I am going to dispose of the instant case registered against accused Nasar Khan and two others vide Case FIR No. 14, Dated 08.06.2021 U/S 447, 427, 379/34 PPC, PS Mishti Mela.

1. Brief facts of the prosecution's case as unfolded in the FIR are that report in shape of written application was lodged by complainant alleging cutting of trees, causing damage to vegetables and fruit plants in the garden of complainant and stealing the some of the plants. Accused Nasar Khan, Habib-ur-Rehman and Mehmood were charged for causing damage to the vegetable and fruit plants in the garden of complainant and


  
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stealing the same. FIR was registered against the accused facing trial on 08.06.2021.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused were formally indicted. They pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced eight (08) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.
5. ASI, Aman Ullah Khan deposed as PW-01. He stated that during the days of occurrence, he was posted as SHO, PS Mishti Mela. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex. PW-1/1.
6. PW-02, is the statement of SI Asif Wazir. He stated that bail before arrest of accused Habib Ur Rehman was dismissed by the court of Sessions. Accused was formally arrested by ASI, Abdul Manaf. Accused was handed over to him. He recorded statement of accused U/S 161 Cr. PC. He produced the accused before the Illaqa Magistrate for obtaining physical custody of the accused which was turned down and accused was committed to judicial lock-up by the court. Application for physical custody of accused was drafted by ASI Abdul Manaf.

  
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7. PW-03, is the statement of SI Abdul Manaf. He stated that the instant case was initially investigated by Muhammad Riaz SI and after his transfer, the case file was handed over to him for onward investigation. On 31.07.2021, ad-interim pre-arrest bail of accused Habib-ur-Rehman was turned down and he formally arrested him vide card of arrest Ex.PW-3/1. On 01.08.2021, he produced the accused before the Illaqa Magistrate with request for 03 days physical custody vide his application Ex.PW-3/2 which was turned down and accused was committed to Judicial lock-up. He recorded statement of accused u/s 161 Cr.PC.
8. SI Muhammad Riaz, was examined as PW-04. He stated that during the days of occurrence, he was posted as OII at PS Mishti Mela. Accused Nasar Khan and Fazal Mehmood were arrested by SHO Younas on 12.06.2021. The accused were handed over to him for interrogation/completion of investigation. On 13.06.2021, he produced the above named accused before the Illaqa Magistrate for obtaining their physical custody vide his application Ex.PW-4/1. Request for physical custody was turned down and accused were committed to judicial lock-up. Statements of accused were recorded u/s 161 Cr.PC. After completion of investigation, case file was handed over to SHO for submission of complete challan against the accused.
9. Complainant, Khameen Gul was examined as PW-05. He stated that on 28.04.2021, accused facing trial cut trees planted at Tari


  
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Bandha. Accused facing trial also caused damage the vegetable and other plants in the garden. Some of the trees were taken away by the accused. On 02.05.2021, he submitted a written application to SHO concerned regarding the occurrence. Application for legal action is Ex.PW-5/1. He pointed out the spot to the inquiry officer. Accused facing trial advanced threats by stating that they would take his land by force. He charged the accused for the commission of the offence.

**10.** Constable Waseem Khan was examined as PW-06. He stated that on 02.05.2021, he was present with SHO SI Muhammad Younas at the spot and in his presence, SHO took into possession different types of fruit and vegetable plants (91 in number) vide recovery memo Ex.PW-6/1. His statement was recorded u/s 161 Cr.PC.

**11.** ASI Shabeer Khan, was examined as PW-07. He stated that complainant Khameen Gul submitted written application to SHO which was incorporated in mad No. 11 dated 02.05.2021. Inquiry was conducted and after obtaining legal opinion from the office of DPP, Orakzai, he registered the instant case vide FIR Ex.PA. His statement was recorded u/s 161 Cr.PC.

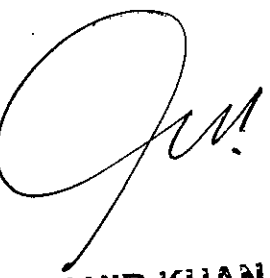
  
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**12.** SI Muhammad Younas was examined as PW-08. He stated that during the days of occurrence, he was posted as SHO, PS Mishti Mela. Complainant Khameen Gul submitted a written application before him regarding the occurrence. He conducted inquiry into the matter. During course of inquiry, he inspected the spot and prepared

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site plan Ex.PB at the instance of complainant. He recorded statements of PWs u/s 161 Cr.PC. During course of inquiry/spot inspection, he took into possession different kinds of fruit and vegetables plants (91) vide recovery memo already exhibited as Ex.PW-6/1 in presence of marginal witnesses. He prepared the final report Ex.PW-8/1 and thereafter, on 03.06.2021, he vide his application Ex.PW-8/2, sought legal opinion from the office of DPP and on the strength of legal opinion, case in hand was registered against accused facing trial. On 12.06.2021, he arrested accused Nasar Khan and Fazal Mehmood, vide card of arrest. Ex.PW-8/3. Accused was locked in the lock-up of PS. Thereafter, he was transferred from PS Mishti Mela and challan was submitted against accused by SHO Aman Ullah.


13. Dy. PP for the state abandoned Umar Zaman being witness of the same fact as deposed by PW-06 and closed the prosecution evidence.
14. On conclusion of prosecution evidence, statements of accused were recorded u/s 342 Cr.PC, in which they professed their innocence, however, they did not opt to record their statements on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in their favour.
15. PW-02, stated in his cross examination that it is correct that accused Habib-ur-Rehman did not confess his guilt before him. PW-03 deposed that the stolen property was not recovered from possession

  
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of accused Habib Rehman. It was a night occurrence. There is no eye witness to the occurrence. The distance between the spot and house of accused would be 2/3 KMs. The occurrence took place in the month of Ramazan. Accused stated to him that he was not present at the relevant time and that he was in coal mine at the time of occurrence. There is a civil case between the parties in respect of disputed land. He has not recorded statement of any independent witness. Similarly, PW-04 stated in his cross examination that, it is correct that nothing incriminating was recovered from personal possession of accused or on their pointation.

- 16.** PW-05 (Complainant) deposed that he reported the occurrence to the local police and it was reduced into writing. He thumb impressed the report. It is correct that a civil case is pending before the court wherein, he is arrayed as defendant. He has mentioned the number of vegetable plants as 28 and other 150 plants in his application. The village of accused facing trial is at distance of 30 minutes in vehicle from the spot. He has not witnessed the occurrence as it was a night occurrence. PW-06 stated in his cross examination that he does not remember the time of recovery of plants. He cannot specifically stated the type and kind of plants. PW-08, stated in his cross examination that application regarding the occurrence was submitted by the complainant on 28.04.2021. Application was written by complainant himself not by him. It is correct that there is cutting/overwriting on the date in the

  
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application Ex.PW-5/1. There is no eye witness to the occurrence as it was a night occurrence. None of the accused confessed his guilt before him or before the court.

**17.** Record transpires that the alleged occurrence took place on 28.04.2021 at unknown night time and it was reported to the local police through submission of written application dated 28.04.2021 (Ex.PW-5/1) and FIR Ex.PA was registered on 08.06.2021. There is unexplained delay of about 40 days in registration of the FIR. Per contents of FIR Ex.PA, inquiry u/s 157 (1) Cr.PC was conducted and after completion of inquiry, final report Ex.PW-8/1 was prepared. After seeking legal opinion from DPP, Orakzai, vide application Ex.PW-8/2, the case in hand was registered against accused facing trial. There is nothing on record which could show that any permission whatsoever was obtained by the police from the court for the inquiry. There is cutting and overwriting in Ex.PW-5/1 which was admitted by inquiry officer SI Muhammad Younas (PW-08) but it was not explained that why there is cutting and overwriting in Ex.PW-5/1.



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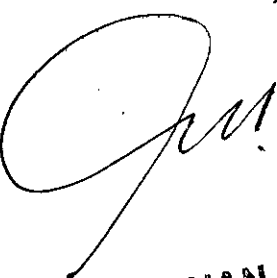
**18.** Per Ex.PW-5/1 and Ex.PA, the occurrence took place at unknown night time. There is no eye witness to the occurrence. Source of information regarding involvement of accused in the commission of the offence has not been disclosed by the complainant. Nothing incriminating has been recovered from possession of accused facing trial or on their pointation. Accused have not confessed their guilt

before the court. Per contents of FIR, complainant party has got no dispute with anyone but PWs admitted in their cross examination that there is civil litigation between the parties in respect of the spot land/fields. Complainant admitted that he is defendant in civil suit pending before the court. This fact was suppressed by the complainant at the time of submission of application for legal action.

**19.** The inquiry officer, who deposed as PW-08 prepared final report as Ex.PW-8/1 as per which, the occurrence had taken place but it is nowhere mentioned in Ex.PW-8/1, that the accused facing trial have committed the offence. There are so many dents and doubts in the case of prosecution benefit of which goes to the accused facing trial as matter of right.

**20.** There is no criminal history of the accused facing trial. No independent witness was associated during course of inquiry and investigation to support the version of complainant party. Source of information is not disclosed by complainant. Prosecution badly failed to prove its case against the accused facing trial beyond shadow of doubt.

**21.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Nasar Khan, Habib-ur-Rehman and Mehmood are hereby acquitted from the charges leveled against them. They are on bail. Their bail bonds stand

  
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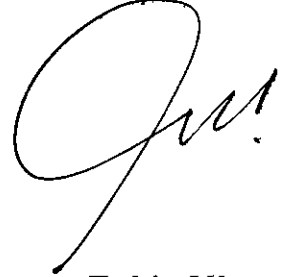
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cancelled. Sureties are discharged from their liability. Case property  
be dealt in accordance with law.

- 22.** Case file be consigned to record room after its completion and  
necessary compilation.

**Announced**

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**CERTIFICATE**

It is certified that this judgment consists of **09** pages. Each page  
has been dictated, read, corrected and signed by me.



**Zahir Khan**  
Judicial Magistrate-I  
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