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

SPECIAL CASE NO. : 62/2 OF 2020
DATE OF INSTITUTION : 24.10.2020
DATE OF DECISION : 27.05.2021

STATE THROUGH MUHAMMAD IKHLAQ S/O YARBAD SHER R/O
QOUM MISHTI, TAPPA DARWI KHEL, L/ORAKZAI. " "
.....(COMPLAINANT)

-VERSUS-

1. Ihsan Ullah s/o Miras Khan.
2. Adil Khan s/o Sardar Gul.
3. Khan Zaman s/o Ghulam Rasool.
4. Habib Khan s/o Noor Mast Khan.
5. Mehboob Shah s/o Ali Badshah.
6. Nawab Khan s/o Muhammad Akbar Khan.
7. Ameer Janan s/o Haji Itbar Shah.
8. Meer Badshah s/o Meer Hassan Shah.
9. Shaheed Ullah s/o Peer Gul.
10. Rehman Shah s/o Ghulam Hassan.
11. Amjad Khan s/o Habib Khan. "
12. Said Habib s/o Khyal Badshah.
13. Abdul Halim s/o Ajab Noor Khan.
14. Muhammad Shafique s/o Ajab Noor Khan.
15. Rehmat Ullah s/o Muhammad Ameen Jan.
16. Khanat Khan s/o Abdul Shah
17. Sajid Ullah s/o Said Janan.
18. Rehmat Ullah s/o Muhammad Yousaf.
19. Muhammad Akbar alias Madho S/O Ghulam Akbar
(All R/O QOUM MISHTI, DISTRICT ORAKZAI)
..... (ACCUSED FACING TRIAL)


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Present: Syed Amir Shah, Assistant Public Prosecutor for state.
:Zahoor Rehman Advocate for complainant.
: Hafiz Muhammad Sadiq and Zakir Khan Advocates for
accused facing trial. "

FIR No. 25 Dated: 10.04.2020 **U/S:** 436,427,452,148,149 PPC
Police Station: Kalaya, L/Orakzai

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JUDGEMENT
27.05.2021

1. Accused facing trial, Ihsan Ullah and 18 others present who are charged in case FIR No. 25, Dated 10.04.2021, U/S 436,427,452,148,149 PPC of PS Kalaya, L/Orakzai for mischief by fire or explosive substance with intent to destroy house etc, mischief causing damage to the amount of Rs. 50 or upwards, house tres-pass after preparation for hurt, assault or wrongful restraint, rioting armed with deadly weapons and on assembling unlawfully for a common object, by entering into the house of the complainant, duly armed and putting the house of the complainant on fire and damaging it.
2. Briefly stated factual background of the instant case is that the complainant Muhammad Ikhlāq, reported that he along with other family members were present in the house, that on 16:00 hrs, the one Haji Muhammad Ayaz and 20 others, duly armed, entered his house and got them out of the house and put on fire the entire house. That the house was turned into ashes as a result of the fire. The eye-witnesses of the occurrence are the one Habib Ur Rehman, the brother of the complainant and the father of the complainant. That the motive behind the occurrence was that the nephew of the complainant was charged in the

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 Muhammad Ikhlāq
 Complainant
 PS Kalaya

murder of the one Faiz Ur Rehman s/o Ajab Noor.

3. Upon which, the instant case was registered at PS¹ L/Orakzai on 10.04.2020 vide FIR. 25.
4. Upon the receipt of case file for the purpose of trial, notice was issued to the accused facing trial and upon the appearance of 20 accused, proceedings were initiated and they were charge sheeted to which they pleaded not guilty and claimed trial and accordingly the witnesses were summoned. "
5. After completion of the investigation, the complete challan was submitted on 24.10.2020 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 19 accused on bail was framed on 05.01.2021 while against the accused Muhammad Akbar₁₁ S/O Ghulam Akbar was framed on 26.02.2021, to which all the accused pleaded not guilty and claimed trial.
6. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;

- | | |
|-----------------|-----------|
| i. Copy of FIR. | Ex.PA |
| ii. Murasila | Ex.PA/1 " |
| iii. Site Plan. | Ex.PB |


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iv. Recovery Memo **Ex.PW-7/1**

v. Cards of arrest of the accused Rehman Shah,
Shams Ur Rehman and Amjad Khan.

Ex.PW-6/1

vi. Application for police custody of the accused
Rehman Shah and Amjad Khan.

Ex.PW-9/1

vii. Application for 164 Cr.P.C statement of the
complainant against the accused Ameer Janan,
Muhammad Akbar and Nawab Khan.

Ex.PW-9/2

viii. Recovery Memo of the USB **Ex.PW-7/2**
Recovery Memo of the Memory Card

Ex.PW-7/3

ix. List of damaged articles **Ex.PW-9/31**
Card of arrest of the accused Khanat Khan

Ex.PW- 6/2

x. Application for issuance of warrant u/s 204
Cr.P.C **Ex.PW-9/8**

xi. Card of arrest of the accused Rehmat Ullah s/o
Muhammad Yousaf and Sajid Ullah s/o Said
Janan **Ex.PW-9/9**

xii. Card of arrest of the accused Said Habib s/o


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Khyal Badshah

Ex.PW-9/11

- xiii. Card of arrest of the accused Muhammad Shafique and Abdul Halim sons of Ajab Noor Khan and Rehmat Ullah s/o Muhammad Ameen

Jan

Ex.PW-9/13

- xiv. Application for issuance of publication u/s 87

Cr.P.C

Ex.PW-9/15

- xv. Card of arrest of the accused Ihsan Ullah s/o Miras Khan Adil, Khan s/o Sardar Gul, Khan Zaman s/o Ghulam Rasool, Habib Khan s/o Noor Mast Khan, Mehboob Shah s/o Ali Badshah, Nawab Khan s/o Muhammad Akbar Khan, Ameer Janan s/o Haji Itbar Shah, Meer Badshah s/o Meer Hassan Shah, Shaheed Ullah s/o Peer Gul,

Ex.PW-6/3

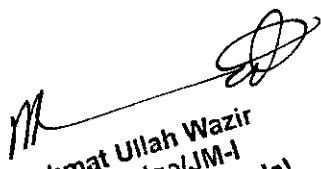
- xvi. Application to the FSL about the USB

Ex.PW-9/17

- xvii. Supplementary Challan against the accused Muhammad Akbar s/o Ghulam Akbar

Ex.PW-6/5

- xviii. Card of arrest of the accused Muhammad Akbar

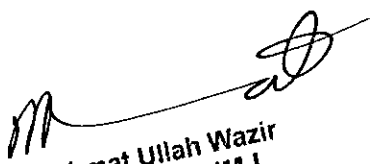

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- s/o Ghulam Akbar Ex.PW-9/24
- xix. The USB and memory card Ex.P-2
- xx. FSL report Ex.PW-9/19
- xxi. Pictures of the occurrence made by FSL
Ex.PW-9/20 to Ex.PW-9/23
- xxii. Pictures of the damaged house
Ex.PW-9/26 to Ex.PW-9/30

Prosecution Witnesses

- a) Khan Wada, Constable, PS Kalaya,
L/Orakzai. PW-01
- b) Asif Nawaz, Constable, PS Kalaya,
L/Orakzai. PW-02
- c) Libab Ali, Muharrir, PS Kalaya, L/Orakzai. PW-03
- d) Muhammad Ikhtlaq, Complainant. PW-04
- e) Habib Rehman, eye-witness PW-05
- f) Muhammad Shafique, SHO, PS Kalaya,
L/Orakzai PW-06
- g) Ameer Nawaz, Constable, PS Kalaya,
L/Orakzai. PW-07
- h) Ghameen Gul, Mason. PW-08


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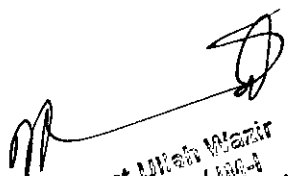
i) Shal Muhammad, I.O, PS Kalaya, L/Orakzai

PW-09 ||

7. Then after, on 15.04.2021, the learned APP for the state closed the evidence on behalf of the prosecution.

8. Statements 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. ||

9. After conclusion of trial, arguments of both the learned counsel for the accused facing trial and of the APP for the complainant along with the private counsel for the complainant heard and record perused.


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10. The accused are charged with the offence U/S 436,427,452,148,149 PPC. Sec.436 PPC deals with the mischief by fire or explosive substance with intent to destroy house etc, Sec. 427 PPC deals with mischief causing damage to the amount of Rs. 50 or upwards, Sec. 452 PPC deals with house tres-pass after preparation for hurt, assault or wrongful restraint, Sec. 148 PPC deals with rioting armed with deadly weapons and Sec. 149 PPC deals with assembling unlawfully for a common object. ||

11. 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.

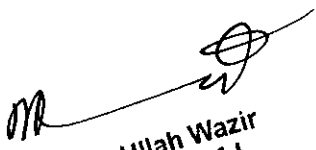
12. **PW-04**, who is the complainant in the instant case has narrated the story exactly what he deposed in the Murasila/FIR. He has well explained the reason of delay in charging the remaining 03 accused. Nothing contradictory has been extracted out of him during cross examination.

13. **PW-05**, who is the eye witness of the occurrence has seconded the story of prosecution. Nothing contradictory has been extracted out of him during cross examination.

14. **PW-06**, the concerned SHO, who got knowledge of the occurrence while he was on gusht and who rushed to the spot and reached there presumably while the fire was going on. He has supported the story of prosecution and Nothing contradictory has been extracted out of him during cross examination.

15. **PW-09**, who is the I.O in the instant case, has investigated the instant case properly in line with the story of prosecution. No loopholes are there in the investigation of the instant case. Also, no contradiction has been extracted by the defence during his cross examination.


16. The recovery memo through which the ashes of the burnt house were recovered has been established by prosecution


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by producing its marginal witnesses and the concerned I.O.

17. Also, the story of prosecution is corroborated by the videos/pictures, duly examined and confirmed by the FSL to be genuine.

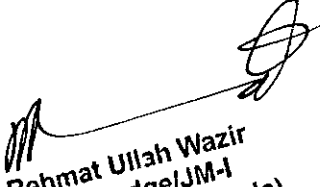
18. From the arguments and record available on file, it reveals that the accused facing trial are directly, by name charged for the daylight occurrence reported within 01 hour and 10 minutes of the occurrence. 18 of the accused are directly charged while 03 of the accused are charged after delay of 05-days but the same delay is well explained. Motive behind the occurrence is that the nephew of the complainant was charged in the murder of the one Faiz Ur Rehman s/o Ajab Noor, who was the brother of the present accused Abdul Halim s/o Ajab Noor Khan, Muhammad Shafique s/o Ajab Noor Khan. Thus, there is strong motive and something customary reaction behind the occurrence, which still persists in the Erst-while FATA and the same is practised as a punishment for murder/honour issues etc.


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19. The witnesses of the prosecution proved the armed entry of the accused to the house of the complainant and setting the same on fire. They have established the aforesaid fact to the extent of what is humanly possible for establishing a fact. There is no missing link between the accused and the

commission of offence.

20. Nothing was alleged by the defence that either the accused were charged for certain ill-will, ulterior motives or malafide. The story deposed by the ocular account in the absence of any malafide etc on their part is thus confidence inspiring, trustworthy and reliable. No doubt certain minor omissions do exist in the evidence of the prosecution but these are not of such nature either to deny the presence of the accused at the relevant time on the spot and their common motive for the commission of offence. There exist no major contradictions in between the statements of the ocular account or the formal witnesses and all the witnesses deposed in line with the story reported in the first information report.


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20. The detailed discussion of the case would lead to the conclusion that the prosecution has successfully established the guilt of the accused facing trial and have concluded the same in their favour. There exist no major contradictions in the evidence of the prosecution leading towards doubts in favour of accused facing trial. Therefore, this Court safely held that the accused facing trial on the basis of evidence produced are guilty of the offences charged for. Thus, the accused namely Ihsan Ullah s/o Miras Khan, Adil Khan s/o

Sardar Gul, Khan Zaman s/o Ghulam Rasool, Habib Khan s/o Noor Mast Khan, Mehboob Shah s/o Ali Badshah, Nawab Khan s/o Muhammad Akbar Khan, Ameer Janan s/o Haji Itbar Shah, Meer Badshah s/o Meer Hassan Shah, Shaheed Ullah s/o Peer Gul, Rehman Shah s/o Ghulam Hassan, Amjad Khan s/o Habib Khan, Said Habib s/o Khyal Badshah, Abdul Halim s/o Ajab Noor Khan, Muhammad Shafique s/o Ajab Noor Khan, Rehmat Ullah s/o Muhammad Ameen Jan, Khanat Khan s/o Abdul Shah, Sajid Ullah s/o Said Janan, Rehmat Ullah s/o Muhammad Yousaf and Muhammad Akbar alias Madho S/O Ghulam Akbar are held members of unlawful assembly having common object u/s 149 PPC and therefore, all are convicted for mischief causing damage to the amount of fifty rupees u/s 427 PPC and sentenced to suffer **02 years of simple imprisonment**. They are also convicted for mischief by fire with intent to destroy the house of the complainant u/s 436 PPC and sentenced to suffer **07 years of simple imprisonment** and also to pay fine of **Rs. 50,000/- (Fifty Thousand)** by each of the accused. In case of default, each of the accused shall further suffer simple imprisonment for **06 months**. They are also convicted for house-tres-pass after preparation for hurt and assault u/s 452, PPC and sentenced to suffer **05 years of simple**


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imprisonment and also to pay fine of **Rs. 10,000 (Ten Thousand)** by each of the accused. In case of default, each of the accused shall further suffer simple imprisonment for **01 month**. They are also convicted for rioting armed with deadly weapons u/s 148 PPC and sentenced to suffer **01 year of simple imprisonment**. All the sentences shall run concurrently and benefit of sec. 382-B Cr.P.C is extended to the accused.

21. The accused Muhammad Ayaz s/o Lajbar Khan is intentionally absent despite the fact that his statement as an accused u/s 342 Cr.P.C was recorded on 20.04.2021 and despite the fact that he was present in the court at the time of arguments of his counsel. The NBWA was issued against him yesterday i.e 26.05.2021, which returned unexecuted by the SHO concerned and to this extent, he recorded his statement in the court today as search witness whereby, he stated that the accused Muhammad Ayaz s/o Lajbar Khan is intentionally avoiding his lawful arrest. Thus, sufficient material is available against the accused Muhammad Ayaz and thus, he is declared "**proclaimed offender**" and **perpetual warrant of arrest** be issued against him and his name be entered the relevant register of the PS.

22. Both the sureties of accused namely Muhammad Dawood s/o

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Kashmir and Khadi Khan s/o Jamadar Khan absent despite notice, thus, proceedings u/s 514 Cr.P.C be initiated against both the sureties and Muharrir of this court is directed to open a separate file for proceedings u/s 514 Cr.P.C and then issue notices to both the sureties within 03 days positively.

23. The case property if any be destroyed after the expiry of period provided for appeal/revision.

24. File be consigned to the Record Room after its necessary completion and compilation.


Announced
27.05.2021


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

CERTIFICATE

Certified that this order consists of thirteen (13) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 27.05.2021.


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