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**IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI**

Case No .....24/2 of 2023.

Date of institution.....29.04.2023.


Date of decision.....31.07.2023.

Case FIR No. 04 Dated: 14.01.2023 U/S 379/34 PPC, PS Kalaya**Order. No. 11**

31.07.2023

Dy.PP for the state present. Accused Saidan, Qareeb Khan and Malak on bail along with counsel present. Complainant absent. Arguments on application u/s 249-A Cr.PC on behalf of counsel for accused already heard. Arguments on behalf of Dy.PP for the state heard today and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that complainant SI, Shal Muhammad along with constable Muhammad Rasool No. 1423, constable Ameer Ullah No. 443 and driver Muhammad Ayaz No. 1348 were on area patrol when received information that at Tanda, Sultan Zai, at night time some unknown persons have stolen coils and 3/3 LT from the Transformer installed in the said area. He collected information and it was found that theft of the parts of the Transformer was committed by accused Saidan S/O Muhammad Nazeer, Qareeb S/O Khewa Gul and Malik S/O Yar Afzal R/O Qaum Afridi, Tanda, Sultan Zai, Orakzai. He took into possession 50V Transformer in presence of marginal witnesses. He drafted murasila at the spot and sent it to PS for registration of the case through constable Muhammad Rasool No. 1423. On the strength of


  
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murasila, the instant case was registered against the accused facing trial.

After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 02 PWs have been examined.

Complainant/Sub Inspector, Shal Muhammad was examined as PW-01. He stated that during the days of occurrence, he was posted as SHO, PS Kalaya. On the day of occurrence i.e 14.01.2023, he along with constable Muhammad Rasool No. 1423, constable Ameer Ullah No. 443 and driver Muhammad Ayaz No. 1348 were on area patrol when received information that at Tanda, Sultan Zai, at night time some unknown persons have stolen coils and 3/3 LT from the Transformer installed in the said area. He collected information and it was found that theft of the parts of the Transformer was committed by accused Saidan S/O Muhammad Nazeer, Qareeb S/O Khewa Gul and Malik S/O Yar Afzal R/O Qaum Afridi, Tanda, Sultan Zai, Orakzai. He took into possession 50V Transformer in presence of marginal witnesses vide recovery memo Ex.PW-1/1. Murasila Ex.PW-1/2 was drafted at the spot and sent to PS through constable Muhammad Rasool No. 1423. After registration of the case, he pointed out the spot to IO who prepared site plan on his pointation. On 15.01.2023, he arrested accused Haji Malik and Saidan Shah vide card of arrest Ex.PW-1/3. Accused were handed over to IO for further investigation.

  
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After completion of investigation; he submitted complete challan against the accused.

Investigation officer, SI Murtaza was examined as PW-02. He stated that after registration of the case, he was entrusted with the investigation of the instant case. He inspected the spot and prepared site plan Ex.PB on the pointation of complainant/SHO Shal Muhammad. Accused Haji Malik and Saidan Shah were arrested by SHO Shal Muhammad and were handed over to him. He produced the accused before the court for obtaining their physical custody vide his application Ex.PW-2/1. 02 days physical custody of accused was granted. He interrogated the accused and recorded their statements u/s 161 Cr.PC. On 18.01.2023, he produced the accused before the court with request for further 02/02 days police custody of the accused vide his application Ex.PW-2/2 which was turned down and accused were sent to judicial lock-up. As accused Qareeb Khan was avoiding his lawful arrest, therefore, he applied for warrant u/s 204 Cr.PC and proclamation notice u/s 87 Cr.PC vide his applications Ex.PW-2/3 and Ex.PW-2/4 against the accused. On 24.05.2023, accused Qareeb Khan was arrested by SHO Aftab Ahmad and was handed over to him for interrogation/completion of investigation. He produced the accused before the court for physical custody vide his application Ex.PW-2/5. 01 day custody was granted. He interrogated the accused and recorded his statement u/s 161 Cr.PC. On 26.05.2023, he produced the accused with request for further physical custody of the accused vide application Ex.PW-2/6 which was turned down and accused was

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committed to judicial lock-up. After completion of investigation, case file was handed over to SHO for submission of complete/supplementary challan against the accused.

Perusal of record transpires that the alleged occurrence took place on **14.01.2023** at unknown night time at Tanda, Sultan Zai, Orakzai and it was allegedly reported on 14.01.2023 at 11:00 hours and FIR was registered on **14.01.2023** at 12:30 hours.

PW-01, stated in his cross examination that it is correct that he has not disclosed source of information regarding involvement of accused in the commission of the offence. It is also correct that it is a night and un-witnessed occurrence. It is also correct that nothing incriminating was recovered from possession of accused. It is also correct that he did not contact WAPDA officials. The stolen parts of the Transformer were not recovered from possession of the accused or on their pointation. Per record, there is no criminal history of accused. He did not contact the persons who had installed the Transformer. Similarly, PW-02 stated in his cross examination that it is correct that he has not recorded statements of the persons who owned and installed the Transformer. It is also correct that he has not recorded statements of WAPDA officials. Self-stated that WAPDA officials were not ready to give statements. It is correct that he has not given them any notice. Accused did not confess their guilt before him and before the court. It is correct that it is a night un-witnessed occurrence. It is also correct that there is no criminal history of accused facing trial.



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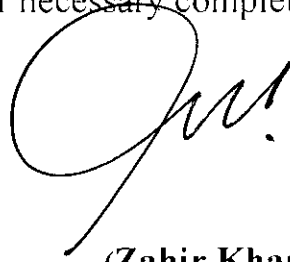
Record shows that source of information regarding involvement of accused in commission of the offence has not been disclosed by the complainant. There is no eye witness to the occurrence. The occurrence is a night and un-witnessed one. Accused facing trial have not confessed their guilt before the court. No incriminating article has been recovered from possession of accused or on their pointation despite physical custody of the accused facing trial. There is no criminal history of accused facing trial. WAPDA officials have not been associated.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability.

Case property be dealt with in accordance with the law.

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

**Announced.**  
31.07.2023



(Zahir Khan)  
Judicial Magistrate-I,  
Tehsil Kalaya, Orakzai