

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

Case No47/2 of 2022.

Date of institution.....31.08.2022.

Date of decision.....31.07.2023.

Case FIR No. 14 Dated: 19.04.2022 U/S 342 PPC, PS Mishti Mela

Order. No. 23

31.07.2023

Dy.PP for the state present. Accused Jannat Noor on bail along with counsel present. Complainant namely Mirza Ali along with counsel present. Remaining PWs absent. Arguments on application u/s 249-A Cr.PC heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that complainant Mirza Ali made a report on 26.03.2022 to the police to the effect that on the day of occurrence at 10:10 hours, he was telephonically informed by his brother Hidayat Ali that the accused has illegally confined him in his hujra situated at Kach Mela, Qaum Sheikhan Kalaya Orakzai. On this information, he proceeded to Mishti bazar and found that his brother Hidayat Ali was made to set by the accused in his house. The report of the complainant was scribed in DD vide mad No. 10 dated 26.03.2022. After obtaining legal opinion from the office of DPP, Orakzai, the instant case was registered against the accused facing trial.



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

31/07/2023

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, 05 PWs have been examined.

Constable Yahya Khan was examined as PW-01. He accompanied ASHO Akhtar Munir to the spot hujra and the detainee was recovered from the hujra of accused facing trial. His statement was recorded by the IO U/S 161 Cr. PC.


Sub Inspector ASHO Akhtar Munir was examined as PW-02. On receipt of information regarding the occurrence, he proceeded to the spot hujra and recovered the detainee and arrested the accused at the spot. He brought both of them to PS. He released accused on personal bond for the purpose of compromise. As compromise failed, therefore, he registered the instant case vide FIR Ex.PA. Copy of FIR was handed over to the IO for investigation.

PW-03 is the statement of Muhammad Ayub Muharrir. He stated that on 26.03.2022, complainant Mirza Ali reported to him regarding the occurrence which he incorporated in mad No. 10 dated 26.03.2022. He read over the report to complainant who thumb impressed the same as token of its correctness. Extract of mad No. 10 is placed on file which is Ex.PW-3/1. Mad report was sent to ASHO through constable Maez Ullah. ASHO was also telephonically informed.

Complainant Mirza Ali was examined as PW-04. He stated that he is complainant of the instant case. PW Hidayat Ali is his brother. On the day of occurrence, at 10:00 am, his brother PW Hidayat Ali called him on mobile phone and told that he has been


ZAHIR KHAN
Civil Judge/JM
Kaiaya Orakzai
31/07/023

made hostage by accused Jannat Noor in his petrol pump situated at Mishti Mela. First, he went to nearby police post at Kada Bazar who asked him to go to the PS, hence, he went to PS Mishti Mela. He was asked to wait by Muharrir till arrival of SHO. When SHO came to PS, he told that he has no official vehicle. He along with SHO proceeded to the spot petrol pump. SHO along with other police nafri entered the petrol pump. SHO told that the hostage has been taken to his house by the accused. They went to the village of the accused. Accused Jannat Noor came out of his house. After negotiation with accused by the SHO, PW Hidayat Ali was released. Accused Jannat Noor remained at the spot and they came to PS. Accused Jannat Noor came to PS along with jirga member after 03 hours. Both the accused and PW Hidayat Ali were locked up in the lock-up of PS. Police was reluctant to register FIR, resultantly, they approached the court of sessions u/s 22-A Cr.PC. They met Mehboob DSP Kalaya who directed the police of PS Mishti Mela to enter report. Muharrir told that they have already left blank space for entry in DD. Thereafter, his report was registered. Report was read over to him and he signed the same as token of its correctness. Accused and PW Hidayat Ali quarreled in the lock-up. IO came to PS. He charged the accused for the commission of the offence.


ZAHIR KHAN
 Civil Judge/JM
 Kalaya Orakzai

31/07/023

PW-05 is the statement of Hidayat Ali. He stated that complainant/ PW Mirza Ali is his brother. On the day of occurrence, at about 09:00 am, he was proceeding from Kada Bazar to Mishti Mela. Hayat Khan Afridi was also present with him. They reached Mishti Mela and parked motorcycle in front of the shop of one Javid. In order

to buy "Dandasa", he was going with one Abdullah Jan, who was to sell him Dandasa and when he reached near petrol pump of accused Jannat Noor. Accused Jannat Noor asked him to have a cup of tea in the petrol pump. He was detained and made hostage. Accused stated that he has a dispute of Rs. 10,000,000/- with his cousins. He called his brother PW Mirza Ali and thereafter, his mobile phone was snatched. After making call to his brother, he was shifted from the petrol pump to the house of accused. Two other persons appeared in the way to the house of accused. These two persons snatched Rs. 500,000/- from him. He was taken inside the house. He was blind folded. When the local police came to the spot house, he was released. He was inquired by the local police and he told them about snatching of Rs. 500,000/-. He was brought to PS. Later on, accused Jannat Noor came to PS along with jirga. Police was reluctant to enter their report. They both were locked up in the lock-up of PS. On the directions of DSP, Kalaya, their report was entered in DD. Later on, they filed petition u/s 22-A Cr.PC which was rejected. He charged the accused for the commission of the offence.



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai


31/07/23

Perusal of record transpires that the alleged occurrence took place on **26.03.2022** at 10:10 hours in the house of accused situated at Kach Mela, Qaum Sheikhan, Orakzai and it was allegedly reported on 26.03.2022 at 11:30 hours and FIR was registered on **19.04.2022**.

PW-01, stated in his cross examination that accused was arrested at the spot and he was taken to the PS. It was 26.03.2022 when detainee was recovered and accused was arrested. No other

person was present in the spot hujra. In his presence, no report was brought/produced to ASHO at the time of receiving information. Similarly, PW-02 stated in his cross examination that it is correct that detainee was not recovered from the spot hujra by him. He does not enter the spot hujra. He has not seen the spot hujra from inside. Copy of DD is not placed on file. No written report was brought/produced before him. Self-stated that he was telephonically informed. No inquiry was conducted before registration of the case. Accused and detainee were made to set in the rear seat of the vehicle. PW-03 deposed that accused and detainee were brought to the PS. Entry regarding the departure of ASHO was made in DD. Original DD is not before the court.

PW-04 stated in his cross examination that it is correct that he has not mentioned mobile number of his brother on which he was called. His report was registered after 03 days of the occurrence. The local police did not register the FIR according to his version/statement. Certain relevant facts have not been mentioned by the police in the FIR. They approached the court of Sessions u/s 22-A Cr. PC against the local police. It is correct that he has not mentioned the patrol pump in his report. Similarly, PW-05 stated in his cross examination that his statement was never recorded by police. He has not mentioned his mobile phone number in his court statement. On the 3rd day of the occurrence, their report was entered. His report was not recorded on 26.03.2022. The persons who accompanied him, were not


ZAHIR KHAN
Civil Judge (M)
Kalaya Orakzai
31/07/2023

inquired/associated by the police. Self-stated that these persons were threatened by the accused. His statement was not recorded in the court.

Per record, the alleged occurrence took place on 26.03.2022 at 10:10 am and it was reported on the same day at 11:30 am. FIR was registered on 19.04.2022. Report of the complainant was scribed in DD vide mad No. 10 dated 26.03.2022 and the same was marked to ASHO, PS Mishti Mela for inquiry u/s 157 (1) Cr.PC. After obtaining legal opinion from the office of DPP Orakzai, the case in hand was registered against accused facing trial. Record shows that accused was arrested on **24.04.2022**, however, PW-01 stated in his cross examination that accused was arrested at the spot on 26.03.2022 and the detainee was recovered on the same day. On the other hand, PW-02 stated in his cross examination that the detainee was not recovered from the spot hujra. He did not enter the spot hujra. He has not seen the spot hujra from the inside. Although, the report of the complainant was marked to ASHO (PW-02) for inquiry u/s 157 (1) Cr.PC but he stated in his cross examination that no inquiry was conducted before registration of the case which contradicts the record.


ZAHIR KHAN
Civil Judge, JM
Kalaya Orakza.

31/07/23

Mirza Ali, the complainant, who deposed as PW-04 narrated a different story in his statement before the court. He stated that police was reluctant to register FIR on the day of the report, therefore, they approached the court of sessions within the meaning of section 22-A Cr.PC which was dismissed, however, on the directions of DSP, Kalaya, report of the complainant was recorded after 03 days of the occurrence. He also deposed that Muharrir of PS told him that he has

already left blank space for entry of report in DD. In his cross examination, he stated that he has not mentioned mobile phone number on which he was contacted by his brother/detainee. The local police did not register FIR according to his version/report. Certain facts were not mentioned by the police in the FIR. On the other hand, he stated that report was read over to him and he signed the same as token of its correctness. His signature was obtained on the report.

Hidayat Ali, the detainee who deposed as PW-05 also narrated entirely a different story in his statement. He stated that he was made to set in petrol pump of accused, thereafter, taken to the house of accused. Two other persons were also present with the accused who snatched Rs.500,000/- from him. Police was reluctant to enter his report and on the directions of DSP, Kalaya, FIR was registered on the 3rd day of the occurrence which totally contradicts the record. As per record, report of the complainant was scribed in DD vide mad No. 10 dated 26.03.2022 (the day of occurrence). He stated in his cross examination that his statement was never recorded by the police. He has not mentioned mobile phone number on which he contacted his brother/complainant. He also deposed that his report was not recorded on 26.03.2022. The other persons namely Hayat Khan and Javid who accompanied him at the relevant time were not associated during investigation. His statement was not recorded in court (u/s 164 Cr.PC).

There are so many dents and doubts in case of prosecution benefit of which goes to the accused. There are serious contradictions in the statements of PWs. Statement of complainant (PW-03) and

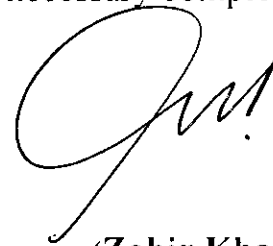

ZAHIR KHAN
Civil Judge (JM)
Kalaya Orakzai

31/07/23

statement of detainee (PW-04) contradicts the record. Accused has not confessed his guilt before the court. 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 is acquitted from the charges leveled against him. He is on bail. His sureties stand discharged from their liability.

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

Announced.
31.07.2023



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