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

Case No.....10/2 of 2023.

Date of Institution.....16.03.2023.

Date of Decision.....18.09.2023.

State through:

Muhammad Ishfaq S/O Fazal Malik R/O Qaum Mishti, Tagha Saam, District Orakzai.....**Complainant**

VERSES

1. Ameen Badshah S/O Awal Badshah
2. Ahmad Hussain S/O Shendi Gul both R/O Qaum Mishti, Tagha Saam, District Orakzai.....**Accused**

Case FIR No. 05, Dated 31.01.2023 U/S 381-A, 411/34 PPC, PS Mishti Mela.

JUDGEMENT

18.09.2023

Through this judgement, I am going to dispose of the instant case registered against accused Ameen Badshah etc vide FIR No. 05, Dated 31.01.2023 U/S 381-A, 411/34 PPC, PS Mishti Mela.

1. Brief facts of the prosecution's case as unfolded in the FIR Ex.PA are that on 02.11.2022, complainant Muhammad Ishfaq reported to the local police to the effect that on 02.11.2022 at night time, his motorcycle bearing registration No. 8242, Hangu was parked in his hujra which was stolen by unknown accused, regarding which he satisfied himself that his motorcycle was stolen by accused Ameen Badshah and Ahmad Hussain. He made report on 31.01.2023 and



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charged accused named above for the commission of the offence. On the same day i.e 31.01.2023, the stolen motorcycle was recovered from possession of accused facing trial vide recovery memo Ex.PW-2/1. Accused were formally arrested vide card of arrest Ex.PW-3/2 who were later on, released on bail by the court of Sessions.

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 six (06) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.
5. Sub-inspector Abdul Manaf, deposed as PW-01. He stated that after registration of the case, copy of FIR was handed over to him for investigation. He along with complainant visited the spot and prepared site plan Ex.PB. SHO informed him regarding the arrest of the accused. He returned to PS. SHO brought the accused along with recovered motorcycle and handed over the same to Muharrir. He recorded the statements of PWs u/s 161 Cr.PC. The recovered motorcycle was identified through complainant vide identification memo Ex.PW-1/1. He produced the accused before the court for obtaining their physical custody vide his application Ex.PW-1/2.



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One day custody was granted. He interrogated the accused and recorded their statements u/s 161 Cr.PC. Accused confessed their guilt before him. Accused Ahmad Hussain led him to the spot and pointed out the spot. He prepared pointation memo Ex.PW-1/3. Addition in the site plan was made with red ink accordingly. The same is Ex.PB/1. After expiry of physical custody, he produced the accused before the court for recording their confessional statements vide his application Ex.PW-1/4. Accused refused to confess their guilt before the court and were committed to judicial lock-up. Copy of FIR No. 8 dated 11.03.2021 u/s 11-A CNSA, 05 EXP.SUB.ACT and 15-AA PS Dabori, wherein, accused Ahmad Hussain is nominated as accused, is Ex.PW-1/5. After completion of investigation, case file was handed over to SHO for submission of complete challan against the accused.

6. PW-02, is the statement of SI Muhammad Younas. He stated that during the days of occurrence, he was posted as SHO PS Mishti Mela. On 31.01.2023, complainant Muhammad Ishfaq reported to him regarding the occurrence and he registered the instant case vide FIR Ex.PA. Report was read over to the complainant who thumb impressed the same as token of its correctness. Copy of FIR was handed over to IO for investigation. He left PS for arrest of the accused. On the same day i.e. 31.01.2023, he recovered and took into possession the stolen motorcycle from possession of accused facing trial vide recovery memo Ex.PW-2/1 in presence of marginal



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witnesses. He prepared recovery sketch Ex.PW-2/2 accordingly. Card of arrest of the accused is Ex.PW-2/3. Accused were locked in lock-up of PS and motorcycle was handed over to Muharrir. The above referred documents were handed over to IO. After completion of investigation, he submitted complete challan against the accused.

7. PW-03, is the statement of constable Muhammad Umar. He stated that he was present with SHO on 31.01.2023 when SHO recovered and took into possession the stolen motorcycle from possession of accused facing trial vide recovery memo exhibited as Ex.PW-2/1 in his presence. His statement was recorded by the IO u/s 161 Cr.PC.
8. Constable Ihsan Ullah, was examined as PW-04. He stated that he has made entries in DD of PS regarding departure from and arrival of SHO to PS. He has also made entry in register 19 regarding the safe custody of case property. Copies of the DD reports and register 19 are Ex.PW-4/1 to Ex.PW-4/3. His statement was recorded U/S 161 Cr.PC.
9. Muhammad Ishfaq (complainant) was examined as PW-05. He stated that on 02.11.2022, his motorcycle bearing registration No. 8242, Hangu was stolen by unknown accused. He reported the occurrence to the police and he did not charge anyone for the commission of the offence in his initial report. He was searching for real culprits. He paid Rs. 90,000/- to a person of Zakha Khel Miadan District Khyber. He told him that his motorcycle was stolen by accused Ameen. He asked his co-villager namely Sami Ullah to



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negotiate with accused Ameen. He paid Rs. 80,000/- to Sami Ullah who paid Rs. 50,000/- to accused Ameen and Rs. 30,000/- was taken by him. He recovered/took the motorcycle from Dabori Bazar and brought it to PS Mishti Mela. Accused Ameen was called to PS by the police. Accused Ameen nominated accused Ahmad Hussain. He thumb impressed the report as token of its correctness on 31.01.2023. He pointed out the spot to the police. He charged the accused for the commission of the offence.

10. Anwar Khan was examined as PW-06. He stated that on 31.01.2023, he identified the motorcycle bearing No. F-8242, Hangu which was parked in the premises of PS which was the ownership of complainant Muhammad Ishfaq. He along with other witness namely Zahid Ullah thumb impressed the identification memo. His statement was recorded by the IO u/s 161 Cr.PC.

11. 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.




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12. Record transpires that the alleged occurrence took place on 02.11.2022 at night time at the hujra of complainant situated at Tagha Saam, Mishti, Orakzai and it was reported to the local police on 31.01.2023. Per Ex.PA (FIR), complainant (PW-05) charged accused facing trial for the commission of the offence after probe

and satisfaction and on 31.01.2023, the day on which FIR was registered, SHO Muhammad Younas (PW-02) recovered and took into possession the stolen motorcycle from possession of the accused in presence of marginal witnesses vide recovery memo Ex.PW-2/1. Recovery sketch Ex.PW-2/2 and pointation memo Ex.PW-1/3 were prepared. There is unexplained delay of about 03 months in registration of the FIR. There is no eye witness to the occurrence. Source of information regarding the involvement of accused in the commission of the offence has not been disclosed. No private person has been associated during recovery proceedings. Accused facing trial have not confessed their guilt before the court. Per statement of complainant (PW-05), the stolen motorcycle was not recovered from possession of the accused facing trial rather he himself recovered and took into possession the stolen motorcycle from Dabori bazar, Orakzai and he himself brought it to PS Mishti Mela, whereafter, accused Ameen was called to PS by the police. Accused Ameen himself appeared before the police in PS and on his statement, accused Ahmad Hussain was arrayed as accused in the case. Recovery of the stolen motorcycle is doubtful. Recovery of the stolen motorcycle from possession of the accused facing trial has not been established by prosecution. Complainant (PW-05) also stated in his cross examination, that he reported the occurrence to the police soon after the occurrence but there is no such report placed on file. The only report on record is in the shape of FIR



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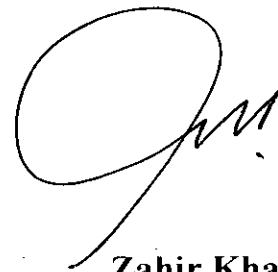
Ex.PA which was made on 31.01.2023. Original DD and register 19 were not produced before the court at the time of prosecution evidence. Case property i.e the recovered stolen motorcycle was not produced and exhibited during course of trial.

13. There is no criminal history of the accused facing trial which could show that accused are previously involved in such like cases. No independent witness was associated during course of investigation to support the version of prosecution. There are so many contradictions in the statements of PWs. There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.

14. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused Ahmad Hussain and Ameen Badshah are hereby acquitted from the charges leveled against them. They are on bail. Their bail bonds stand cancelled. Sureties are discharged from their liability. Case property, if any be dealt in accordance with law.

15. Case file be consigned to record room after its completion and necessary compilation.

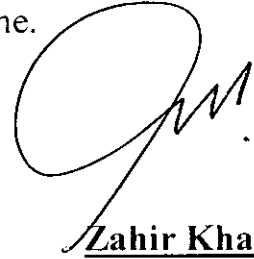
Announced
18.09.2023



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CERTIFICATE

It is certified that this judgment consists of **08** pages. Each page has been dictated, read, corrected and signed by me.



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