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

CASE NO. : 65/2 OF 2020
DATE OF INSTITUTION : 02.12.2020
DATE OF DECISION : 21.01.2022

STATE THROUGH FAZAL WAR SHAH S/O GULA SHAH, R/O
QOUM RABIA KHEL, TAPPA AYAZ KHEL, DISTRICT ORAKZAI.

------(Complainant)

VS

1. NOOR KHLIQ S/O DILAWAR KHAN
2. DILAWAR KHAN S/O SYED REHMAN

***(BOTH R/O QOUM RABIA KHEL, TAPPA AFZAL KHEL, BANDYALI
GARHI, TEHSIL UPPER, DISTRICT ORAKZAI)***

------(Accused Facing Trial)

Present: Nisar Ahmad, Assistant Public Prosecutor and Noor Karim
Advocate for complainant.

: Ahmad Nadeem Advocate, for accused facing trial.

ORDER

21.01.2022

1. Accused facing trial, Noor Khaliq and Dilawar Khan present who are charged in case FIR No. 50, Dated: 09.10.2020, U/S 337F(v), 337A(i), 337F(i), 34 PPC of PS Ghiljo, U/Orakzai for causing hurt to the complainant and broken his left side rib.
2. Briefly stated factual background of the instant case is that the complainant Fazal War Shah, reported the matter for causing hurt to him and breaking of his rib by the accused.
3. Upon which, the instant case was registered at PS: Ghiljo,


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U/Orakzai on 09.10.2020 u/s 337 A(i), 337F(i), 337F(v) and 34 PPC vide FIR No. 50.

4. After completion of the investigation, the complete challan was submitted on 02.12.2020 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 accused on bail was framed on 19.01.2021, to which the accused persons pleaded not guilty and claimed trial.

5. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;

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| i. Copy of FIR | Ex.PA |
| ii. Site Plan | Ex.PB |
| iii. Naqalmaid No. 13 | Ex.PW-2/1 |
| iv. Out Door Patient Ticket | Ex.PW-3/1 |
| v. Injury sheet | Ex.PW-4/1 |
| vi. Roznamcha Report | Ex.PW-5/1 |
| vii. Card of arrest of the accused Noor Khaliq | Ex.PW-7/1 |
| viii. MLC Report | Ex.PW-3/2 |
| ix. Application for judicial custody along with the order of JM-I, Orakzai | Ex.PW-7/2 |
| x. Card of arrest of the accused Dilawar Khan | Ex.PW-7/3 |
| xi. Application for judicial custody | Ex.PW-7/4 |

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Prosecution Witnesses

1. Naseem Khan, RI, HQ, Orakzai.
PW-01
2. Gul Asghar, Muharrir, PP Mamozai, Orakzai.
PW-02
3. Dr. Muhammad Imran, MO, CH, Samana.
PW-03
4. Muhammad Imtiaz, ASI, Incharge Garhi
Check-post, Orakzai. **PW-04**
5. Muhammad Yaqoob, Constable Garhi
Check-post, Orakzai. **PW-05**
6. Fazal War Shah, Complainant.
PW-06
7. Nawaz Sharif, SI, Incharge of Samana PP,
Orakzai. **PW-07**


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6. Then after, on 29.10.2021, the learned APP for the state closed the evidence on behalf of the prosecution.

7. 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.

8. After conclusion of trial, arguments of the learned counsel

for the accused facing trial and of the APP for the complainant along with his private counsel heard and record perused.

9. The accused are charged with the offence U/S 337F(v), 337A(i), 337F(i), 34 PPC. Sec. 337F(v) PPC is Hashimah hurt, 337A(i) PPC is Shajjah-I-Khafifah hurt, Sec. 337F(i) PPC is Damiyah hurt, and Sec. 34 PPC fixes joint responsibility on every member of unlawful assembly, when that assembly commits an offence in prosecution of common intention.

10. 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.

11. PW-01, the then SHO, who submitted complete challan against the accused after completion of investigation.

12. PW-02, who is the Muharrir of the PS, who entered the report of the complainant in the Daily Diary and scribed the Naqalmad No. 13, Dated: 10.08.2020, which is Ex.PW-2/1 and then chalked out the FIR on the basis of the legal opinion received from the DPP Office, which is Ex.PA.

13. PW-03, the concerned Medical Officer, who examined the injured/complainant Fazal War Shah on the date of occurrence i.e 10.08.2020 at 07:25 PM, who reported that there was a lacerated wound at the left frontal above eye-brow to which one stitch has been given, there were bruise at nose and bruise at left

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side rib. That after receiving Orthopaedic Opinion, he observed that the left sided rib was fractured. That the nature of injury was grievous. The final report is Ex.PW-3/2.

14. PW-04, the ASI, Incharge Garhi Check-post, stated that on 10.08.2020 at 18:50 hrs, the complainant Fazal War Shah came to Garhi check-post and reported the occurrence, which he drafted, thumb impressed by the complainant and then the report was sent to the PS through constable Abdullah. That he prepared the injury sheet of the injured/complainant, which is Ex.PW-4/1 and then handed over the injured/complainant alongwith injury sheet to the constable Yaqoob for his treatment to the Ghiljo hospital.

15. PW-05, the one constable Muhammad Yaqoob, who stated that on 10.08.2020 at about 19:00 hrs, the in-charge of Garhi check-post namely Muhammad Imtiaz handed over the injured along with injury sheet to me for his treatment and he took both the injured and the injury sheet to the Ghiljo hospital and handed over the complainant/injured to the doctor on duty for treatment. That afterward, he came back to the PS and handed over the injury sheet along with other medical documents to MHC of the PS.

16. PW-06, the complainant namely Fazal War Shah s/o Gula Shah stated that on 10.08.2020 at about 19:00 hrs, he reported the

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occurrence to the local police at Garhi check-post to the extent that the accused Dilawar was using the water of stream through a pipe, as a result of which the water was continuously wasting. That I told to his father namely Syed Rehman not to waste the water of the stream. I took out the pipe from the stream at morning and due to which at about 18:00 hrs, the accused namely Dilawar Khan and Noor Khaliq asked him to come out of his house. That when he came out of his house, both the accused caught him and started beating him through kicks, fists and stones, due to which, he got injuries. That afterwards he promptly reported the matter to the local police at Garhi check-post. That the I.O prepared the site plan on his pointation.


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17. PW-07, the concerned I.O, stated that he received all the relevant documents on 09.10.2020 at about 10:40 hrs and the investigation was entrusted to him. That he prepared the site plan on the pointation of the complainant which is Ex.PB. That he arrested both the accused, their cards of arrest are Ex.PW-7/1 and Ex.PW-7/3. That he recorded the statements of all the PWs and the accused u/s 161 Cr.P.C.

18. Thereafter, prosecution closed its evidence. After that, statements of the accused were recorded U/S 342 Cr.P.C but the accused neither wished to be examined on oath nor produced evidence in defence. Accordingly, arguments of the learned APP

for the state and counsel for the accused facing trial heard and case file perused.

19. 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 50 minutes of the occurrence as confirmed in the cross examination of PW-04 and PW-05 in the shape of admissions. The concerned medical officer has stated the nature of injuries in his examination in chief and confirmed through admission in his cross examination that the fracture of bone did occurred. The PW-04, in-charge of the Garhi check-post has mentioned in his examination in chief that he prepared the injury sheet of the complainant and the same has been confirmed through cross examination that he has mentioned the injuries in the injury sheet. The complainant as PW-06 has categorically mentioned in his cross examination that the motive behind the occurrence was a pipe, which was installed by the accused in the pond and the wastage of water has been done by the accused in the house of the accused. Further, that the accused came to his house at 18:00 hrs and when he came out of his house, they started beating him with fists, kicks and stones and resultantly, he got injuries. That he lodged report at Garhi check-post.


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20. The witnesses of the prosecution proved the occurrence as

per the report and the motive behind the occurrence.

21. 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 complainant is in the absence of any malafide etc on his 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 time of occurrence and the occurrence itself. There exist no major contradictions in between the statements of the complainant and the witnesses and all the witnesses deposed in line with the story reported in the first report.

22. 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 offence charged for. ***Thus, the accused namely Noor Khaliq s/o Dilawar Khan and Dilawar Khan s/o Syed Rehman are convicted Firstly, for the commission of Hashimah u/s 337F(v) PPC read with sec. 34 PPC for Rs. 50,000/- as Daman, which***

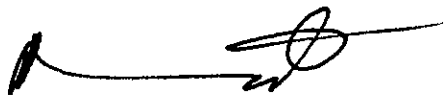
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shall be paid by each of the accused to the victim for causing hurt and imprisonment for a period of 03 years, in default of payment of Daman, each of the accused shall undergo further simple imprisonment for a period of 01 month, Secondly, for the commission of Damiyah u/s 337F(i) PPC read with sec. 34 PPC for Rs. 50,000/- as Daman, which shall be paid by each of the accused to the victim for causing hurt and imprisonment for a period of 01 year, in default of payment of Daman, each of the accused shall undergo further simple imprisonment for a period of 01 month, and Thirdly, for the commission of Shajjah-I-Khafifah u/s 337 A(i) PPC read with sec. 34 PPC for Rs. 50,000/- as Daman, which shall be paid by each of the accused to the victim for causing hurt and imprisonment for a period of 01 year, in default of payment of Daman, each of the accused shall undergo further simple imprisonment for a period of 01 month. All the sentences of the imprisonment shall run concurrently.

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

Announced

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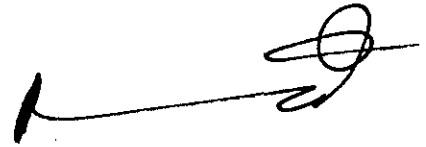

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CERTIFICATE

Certified that this judgment consists of Ten (10) pages.
Each page has been read, corrected where-ever necessary and
signed by me.

Dated: 21.01.2022



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