

79

**IN THE COURT OF REHMAT ULLAH WAZIR,**  
**JM-I/MTMC, CAMP COURT, KALAYA, ORAKZAI**

CASE NO. : 9/2 OF 2021

DATE OF INSTITUTION : 02.02.2021

DATE OF DECISION : 27.10.2021

STATE THROUGH SHEHZAD KHAN S/O HASHIM KHAN R/O  
MOHALLAH, STREET NASRULLAH KHAN, PESHAWAR.

------(Complainant)

VS

1. Habib Khan Khan S/O Nimat Khan,
2. Ajmir Khan S/O Aslam Khan
3. Sabir Khan S/O Fazal Khan
4. Fatha Khan S/O Lobat Khan

*(All R/O Qoum Feroz Khel, Tappa Jaisal Khel, District Lower Orakzai)*

------(Accused Facing Trial)

**Present:** Nisar Ahmad, Assistant Public Prosecutor and Abid Ali  
Advocate for complainant.

: Sana Ullah Khan advocate, for accused facing trial.

  
REHMAT ULLAH WAZIR  
CIVIL JUDGE/JM-1  
CAMP COURT  
KALAYA ORAKZAI

**ORDER**  
27.10.2021

1. Accused facing trial, Habib Khan, Ajmir Khan, Sabir Khan and Fatha Khan present who are charged in case FIR No. 127, Dated 21.12.2020, U/S 506/504/34 PPC of PS Kalaya, Lower Orakzai for criminal intimidation and insult intended to provoke a breach of the peace.
2. Briefly stated factual background of the instant case is that the complainant Shehzad Khan, reported the matter of criminal

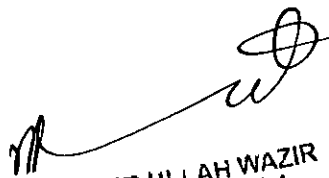
intimidation and insult intended to provoke a breach of the peace to the complainant.

3. Upon which, the instant case was registered at PS: Kalaya L/Orakzai on 21.12.2020 vide FIR. 127.

4. After completion of the investigation, the complete challan was submitted on 02.02.2021 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 19.04.2021, 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;

- |       |                                |                  |
|-------|--------------------------------|------------------|
| i.    | Copy of FIR.                   | <b>Ex.PA</b>     |
| ii.   | Application for legal opinion. | <b>Ex.PW 1/1</b> |
| iii.  | Site Plan                      | <b>Ex.PB</b>     |
| iv.   | Recovery Memo                  | <b>Ex.PW-2/1</b> |
| v.    | Cards of arrest                | <b>Ex.PW-3/1</b> |
| vi.   | Road Certificate               | <b>Ex.PW-3/2</b> |
| vii.  | FSL Application                | <b>Ex.PW-3/3</b> |
| viii. | FSL Report                     | <b>Ex.PW-PZ</b>  |

  
**REHMAT ULLAH WAZIR**  
**CIVIL JUDGE/JM-1**  
**CAMP COURT**  
**KALAYA ORAKZAI**

**Prosecution Witnesses**

1. Khursheed Anwar, ASI, CTD, PS Kalaya,  
L/Orakzai. **PW-01**
2. Nekzad Ali, Constable PS Kalaya, L/Orakzai.  
**PW-02**
3. Shal Muhammad, I.O, PS Kalaya, L/Orakzai.  
**PW-03**
4. Shehzad Khan S/O Hashim Khan,  
Complainant.  
**PW-04**
5. Talib Shah S/O Payo Shah, (Private-Witness)  
**PW-05**
6. Syed Ahmad Shah alias Bad Shah Gul S/O  
Zameen Gul, (Private-Witness)  
**PW-06**
7. Ain Ullah, HC, PS Kalaya, L/Orakzai  
**PW-07**
8. Muhammad Shafiq, SI, Incharge Narcotics  
L/Orakzai  
**PW-08**

REHMAT ULLAH WAZIR  
CIVIL JUDGE/JM-1  
CAMP COURT  
KALAYA ORAKZAI

6. Then after, on 17.09.2021, 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 506/504/34 PPC. Sec. 506 PPC deals with punishment for criminal intimidation, 504 PPC deals with punishment for insult intended to provoke a breach of the peace and section 34 PPC deals with acts done by several persons in furtherance 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-02, who is the witness of the recovery memo through which 04 empty shells of 30 bore pistol were recovered, he admitted that we left the PS at 16:00 hrs and reached the spot in 05 minutes but as per the report the occurrence took place at 17:45 hrs.

12. PW-03, who is the I.O in the instant case has admitted that he left the PS at 16:00 hrs and reached to the spot at 16:10 hrs, but as per the report the occurrence took place at 17:45 hrs.

REHMAT ULLAH WAZIR  
CIVIL JUDGE/JM-1  
CAMP COURT  
KALAYA ORAKZAI

Further admitted that he has not recorded the statement of any labourer working on the spot.

13. PW-04, who is the complainant in the instant case, stated that the occurrence took place at 17:45 hrs and that he reached the PS at 06:15 PM. But admitted in his cross examination that it is correct that I have not mentioned the name of the persons who fired at me in my report to the police.

14. PW-05, who is the private witness of the complainant, has admitted in his cross examination, that it is correct that it was darkness at the time of occurrence and it was night time and that the police came to the spot after 30 minutes of the occurrence and that the accused Ajmir was having pistol while he do not know that whether the other accused were having any type of weapons or not. Further that after spot proceedings, he never meet with the police.

REHMAT ULLAH MAZIR  
CIVIL JUDGE  
CAMP COURT  
KALAYA ORAKZAI

15. PW-06, who is also the private witness/labourer in the market of the complainant, has admitted in his cross examination, that it is correct that he has not mentioned the names of the persons who fired on the complainant in his statement because he does not know who fired on the complainant and further that he was not present on the spot at the time of arrival of the complainant.

16. PW-07, who is the Moharrir of the PS has stated in his examination in chief that on 17.12.2020 at about 15:00 hrs, the

complainant arrived at the PS and reported the occurrence which was reduced into naqal mad but in cross examination, he stated that the complainant came to the PS on 18:15 hrs while as per the record the occurrence took place at 17:45 hrs.

17. The evidence of the prosecution is full of contradictions regarding the time of occurrence as PW-02 & PW-03 have admitted that they left the PS at 16:00 hrs while the complainant as PW-04 stated that the occurrence took place at 17:45 hrs and he reached the PS at 06:15 PM while the Moharrir of the PS stated in his examination in chief that the complainant arrived at 15:00 hrs but in his cross examination he admitted that the complainant arrived at 18:15 hrs.

Further the date of occurrence is 17.12.2020 when the time of sunset is usually around and even before 05:00 PM while as per the report the occurrence took place at 05:45 PM, when there is usually complete darkness and it is very difficult to identify a person and there is no source of light disclosed by the complainant and the same is also seconded by the PW-05, who is the main eyewitness/driver of the complainant in his cross examination by admitting that it is correct that it was darkness at the time of occurrence as it was night time.

18. In the light of the above discussion, it is clear that the case of prosecution is full of contradictions. There are doubts in the

REHMAT ULLAH WAZIR  
CIVIL JUDGE/JM-1  
CAMP COURT  
KALAYA ORAKZAI



evidence of prosecution and the accused are ultimately entitled to the benefits of doubts and are accordingly extended to the accused.

19. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, the accused namely (1) Habib Khan S/O Nimat Khan, (2) Ajmir Khan S/O Aslam Khan, (3) Sabir Khan S/O Fazal Khan and (4) Fatha Khan S/O Lobat Khan are **acquitted** of the charges levelled against them. As they are on bail, their bail bonds stand cancelled and their sureties are discharged from their liability of bail bonds.

20. The case property if any be dealt in accordance with the law.

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

**Announced**  
27.10.2021

**(Rehmat Ullah Wazir)**  
JM-I/MTMC,  
Camp Court, Kalaya, Orakzai

**CERTIFICATE**

Certified that this order consists of Seven (07) pages. Each page has been read, corrected where-ever necessary and signed by me.

**Dated: 27.10.2021**

**(Rehmat Ullah Wazir)**  
JM-I/MTMC,  
Camp Court, Kalaya, Orakzai