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State Vs Asif Noor

Case FIR No. 08, Dated 06.05.2023 U/S 365/34 PPC, PS Dabori

**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL  
JUDGE/JM, DISTRICT ORAKZAI**

Case No.....17/02 of 2023.

Date of Institution.....10.07.2023.

Date of Decision.....22.01.2024.

**State through:**

Taj Muhammad S/O Gul Muhammad, R/O Qaum Biland Khel, District Orakzai

.....**Complainant**

**VERSES**

1. Asif Noor S/O Habib Rehman R/O Thall, Hangu.

.....***Accused Facing Trial***

1. Hazrat Ullah alias Khan S/O Hameed Khan both residents of Tehsil  
Thall, District Hangu,

2. Muhammad Suhail alias Muhammadeen S/O Gul Mir Khan,

3. Kasteer Khan Wazir S/O unknown,

4. Gul Said S/O Raheem Din

*All residents of Polisin, District Kurram.*

5. Imran alias Captain S/O Saeed Khan, R/O Rawalpindi, Punjab.

.....***Absconding Accused***

**JUDGEMENT**

**22.01.2024**

Through this judgement, I am going to dispose of the instant case registered against accused Asif Noor s/o Habib Ur Rehman, vide FIR No. 08, Dated 06.05.2023, U/S 365/34 PPC, PS Dabori, U/Orakzai.

1. Brief facts as per contents of FIR are that, on 30.03.2023 at about 11:AM, complainant namely Taj Muhammad reported the matter to the local police of police post, Biland Khel, regarding abduction of his brother namely Muhammad Shahid. According to complainant,

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his brother namely Muhammad Shahid, aged about 31/32 years was engaged in transport business with one Hazrat Ullah alias Khan s/o Hameed Khan for the last 6/7 years. That during business, an amount of about Rs. 4 crore was determined as outstanding against Hazrat Ullah. That on 26.02.2023, complainant tried to contact his brother Muhammad Shahid on his phone number 0333-0950555, but his cell phone was switched off. That complainant collected information from different sources and it came to know from the people of the area that his brother Muhammad Shahid has taken by Hazrat Ullah alias Khan with him to Peshawar for purchasing car. He tried to contact Hazrat Ullah alias Khan through his cell phone number 03368881217, but he did not respond. That the complainant made search but he could not trace his brother. That now he is fully satisfied that his brother Muhammad Shahid has been abducted by accused Hazrat Ullah alias Khan s/o Hameed Khan along with Suhail Khan alias Muhammadeen, Kasteer Khan Wazir s/o unknown and Gul said Wazir and they have kept him confined at some unknown place. He charged the above-named accused for the abduction of his brother.

2. That initially at the report of the complainant, Naqalmad No. 07, DD: 30.03.2023 was registered and inquiry u/s 156(ii) Cr.P.C was initiated and thereafter, the above FIR was registered.

After completion of investigation, complete challan was submitted by prosecution against the accused facing trial Asif Noor s/o Habib Ur Rehman, while challan u/s 512 Cr.P.C was submitted against

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accused Hazrat Ullah alias Khan, Muhammad Suhail alias Muhammadeen, Kasteer Khan Wazir s/o Saye Khan and Gul Said Wazir s/o Raheem Din.

4. Accused was summoned and legal formalities under Section 241-A Cr.P.C were complied with on 12.09.2023. Formal charge against the accused was framed on 30.09.2023; to which he pleaded not guilty and claimed trial, whereafter prosecution was directed to produce its evidence.
5. Prosecution produced as many as six (06) witnesses to prove its case against the accused, while rest of the PWs were given up by prosecution and closed its evidence. The gist of prosecution evidence is as follows;
6. **PW-01:** Muhammad Ishaq SI deposed as PW-01. He incorporated the report of the complainant in shape of Naqalmad No. 07, DD: 30.03.2023. Ex: PW-1/1. He recorded statement of Muhammad Ashraf U/S 161 Cr.P.C.
7. **PW-02:** is the statement of Muhammad Hanif. He handed over CDR data to the OII. Recovery memo in respect of CDR data is Ex. PW-2/1. CDR data consisting 07 pages is Ex. PW-2/2.
8. **PW-03:** is the statement of Abdul Malik OII. He exhibited the following documents.
  - i. Ex.PW-3/1: Application for issuance of requisition/English letter to DPO, Hangu and Kurram for arrest of the accused.
  - ii. Ex. PW-3/2: Application for issuance of CDR data.
  - iii. Ex. PW-3/3: CDR data

  
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- iv. Ex. PW-3/4: Application for obtaining physical custody of accused.
  - v. Ex. PW-3/5: Application for obtaining further physical custody of accused.
  - vi. Ex. PW-3/6 & 3/7: Application for issuance of warrant of arrest and proclamation notices.
  - vii. Ex. PW-3/8 & 3/9: Letters addressed to SP Investigation, Orakzai and Hon'ble Sessions Judge, Orakzai for blocking the CNIC of absconding accused.
  - viii. Ex. PW-3/10: Parwana regarding nomination of accused Muhammad Imran.
  - ix. Ex. PW-3/11: Application for recording the statement of abductee.
  - x. Ex. PW-3/12 & 3/13: Application for issuance of warrant of arrest and proclamation notices against accused Muhammad Imran.

**9. PW-04:** is the statement of Constable Muhammad Raziq. He is marginal witness to the recovery memo Ex. PW-4/1. His statement was recorded by the IO U/S 161 Cr.P.C.

**10. PW-05:** is the statement of Taj Muhammad. He is complainant of the present case. He reported the matter to the local police of police post Biland Khel.

**PW-06:** is the statement of Muhammad Shahid (Abductee). He recorded his statement before the Judicial Magistrate U/S 164 Cr.P.C.

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12. PW-07: is the statement of Muhammad Nasim SI. He sought legal opinion from the office of DPP, Orakzai Ex. PW-7/1. He registered FIR Ex. PA against accused. He also arrested accused and issued his card of arrest Ex. PW-7/2. He submitted complete challan Ex. PW-7/3 against accused. His statement was recorded by IO U/S 161 Cr. PC.
  13. PW-08: is the statement of Sial Muhammad. He is cousin of the abductee. His statement was recorded by the IO U/S 161 Cr. PC.
  14. PWs constable Zeeshan Ahmad and constable Ihsan Ullah were abandoned by prosecution and closed its evidence.
  15. Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he pleaded not guilty and also did not wish to be examined on oath. He opted not to produce defense evidence.
  16. Arguments heard and available record perused.
  17. It is the case of the prosecution that complainant Taj Muhammad s/o Gul Muhammad appeared in police post Biland Khel on 30.03.2023 and reported that his brother namely Muhammad Shahid, who was engaged in business of transport with one Hazrat Ullah and an amount of Rs. 04 crore was coming outstanding against said Hazrat Ullah. That mobile phone number 0333-9783449 of his brother Muhammad Shahid is switched off since 26.02.2023 and now after searching, it has come to his knowledge from the people of the locality that Muhammad Shahid has been taken by Hazrat Ullah with him for purchasing motorcar to Peshawar. That calls were made at the cell phone of Hazrat Ullah but he did not pick his phone. That

now he is fully satisfied that his brother Muhammad Shahid has been kidnapped by accused Hazrat Ullah alia Khan s/o Hameed Khan along with Suhail Khan s/o Muhammadeen, Kasteer Khan Wazir s/o unknow and Gul Said Wazir. He charged them for the offence. The report was initially incorporated into Naqalmad No. 7, dated 30.03.2022 and inquiry U/S 156(2) Cr. PC was initiated and later on the report was incorporated into the above-mentioned FIR.

- 18.** During the course of inquiry, CDR of the accused was received from the concerned which is Ex.PW-2/2 and the same was taken into possession vide recovery memo which is Ex.PW-2/1. The said CDR shows some conversation between the present accused facing trial and absconding accused Hazrat Ullah on 06.05.2023 and on the basis of such conversation between the two, the present accused facing trial was charged in the statement of the abductee Muhammad Shahid in his statement u/s 161 Cr.P.C recorded on 23.08.2023; wherein it is alleged that the present accused facing trial is providing assistance to the absconding accused and he has instigated them for the commission of offence. Astonishingly after 02 days of recording his statement u/s 161 Cr.P.C, abductee Muhammad Shahid recorded his statement u/s 164 Cr.P.C before this court on 25.08.2023; wherein he has neither mentioned the name of accused facing trial, nor he has charged him for commission of any offence. As far as the nomination of accused Facing trial in the statement of abductee recorded u/s 161 Cr.P.C is concerned, the same is not admissible in evidence and has no legal affect against the accused facing trial at all. As far as the

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evidence produced by the prosecution in respect of the involvement of accused facing trial in the commission of offence is concerned, there is no direct evidence. PW-03, OII Abdul Malik has stated during his examination in chief that he received CDR data consisted of 07 sheets from the office of SP Investigation which revealed contacts between the accused facing trial before and after the occurrence, but neither the investigation officer has clarified the role of the accused facing trial in the commission of offence, nor even the complainant has uttered anything against the accused facing trial in his statement u/s 164 Cr.P.C. recorded before the court on 25.08.2023. PW-03 admitted that he has not obtained and heard the audio conversation between the accused facing trial and the absconding accused. So, until the nature of conversation is not brought on record, or statement of any eye-witness regarding the involvement of the accused facing trial in the commission of offence is not recorded the allegations regarding involvement of the present accused facing trial Asif Noor, cannot be proved only on the basis of CDR. Complainant during his statement as PW-04 has stated that during his custody with the accused, one Rajab called the person on duty who gave him the cell phone to talk to him. He stated that he repeated the whole story and he was informed that the story is being heard on speaker of the said phone by accused Asif Noor, Parvez, Wali Bat Khan and Muhammad Suhail. During cross-examination, he admitted that he has not mentioned the fact relating to the telephonic conversation during his abduction. He admitted that it was

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not video call rather it was voice call. It is also astonishing that how the complainant came to know that his conversation is being heard by the accused facing trial Asif Noor at the other side on speaker of the phone. It has not been explained that who told him that Asif Noor is hearing him on the other side of the phone. Such statement of the complainant also falls under the category of hearsay evidence which cannot be taken into consideration under the law.

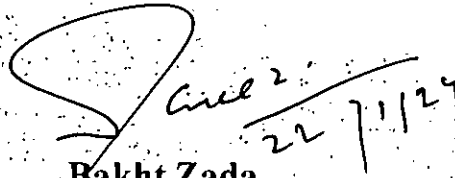
- 19.** Keeping in view the above detailed discussion, it has become crystal clear that the accused facing trial Asif Noor has neither been charged by the complainant in his report, nor in the FIR and thereafter the accused is facing trial is also not charged by the abductee Muhammad Shahid in his statement u/s 164 Cr.P.C recorded on 25.08.2023. There is no direct or circumstantial evidence regarding involvement of the accused facing trial Asif Noor in the commission of offence. Mere appearance of cell number of the accused facing trial in the CDR regarding conversation with the absconding accused is no proof of his involvement in the commission of offence until other corroborative evidence is not available and the nature of his conversation is not known. The case of prosecution is not based on direct evidence against the accused facing trial. The allegations are not proved on record and the case of prosecution is full of doubts; therefore, the prosecution badly failed to prove case against the accused facing trial. I therefore acquit the accused facing trial from the charges levelled against him. He is on bail. His sureties are discharged from the liability of their bail bonds. Case property if any



be kept intact till the expiry of period provided for appeal/revision etc.

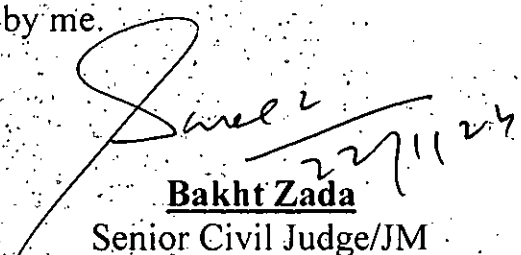
- 20.** As far as the absconding accused Hazrat Ullah alias Khan s/o Hameed Khan, Muhammad Suhail alias Muhammadeen s/o Gul Mir Khan and Kasteer Khan s/o Saye Khan and Gul Said s/o Raheem Din are concerned, prima facie case exists against them, therefore, they are hereby declared as *proclaimed offenders*. Perpetual warrant of arrest against them be issued and their names be entered in the register of proclaimed offenders.
- 21.** Case file be consigned to Record room after its completion and necessary compilation.

Announced  
22.01.2024

  
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CERTIFICATE

It is certified that this judgment consists of 09 pages. Each page has been dictated, read, corrected and signed by me.

  
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Senior Civil Judge/JM  
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