

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

CASE NO. : 15/2 OF 2021
DATE OF INSTITUTION : 12.03.2021
DATE OF DECISION : 24.02.2022

STATE THROUGH MST: SHAH IRAN BIBI D/O LAL WAS KHAN,
R/O AQA KHEL, TAPPA DALAK NAWASI, TEHSIL ISMAIL ZAI,
DISTRICT ORAKZAI.

------(Complainant)

VS

1. Qasim Badshah S/O Noor Hassan R/O Zargari Hangu.

------(Accused Facing Trial)

Present: Nisar Ahmad, Assistant Public Prosecutor and Insaf Ali
advocate for complainant.
: Farid Ullah Shah Advocate, for accused facing trial.

ORDER
24.02.2022

1. Accused facing trial, Qasim Badshah present who is charged in case FIR No. 58 Dated: 11.12.2020 U/S 363/511/147/149 PPC of PS: Ghiljo, Upper Orakzai for attempt to kidnap the daughter of the complainant namely Shah Iran Bibi from her lawful guardianship, in prosecution of common object of all.

2. Briefly stated factual background of the instant case is that the complainant, Shah Iran Bibi reported the matter of attempt to kidnap her daughter in prosecution of common object of all.

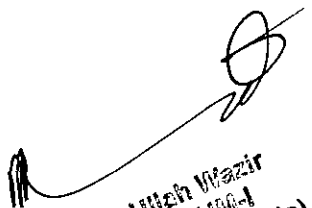
Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Babar Mela)

3. Initially, the complainant approached to the police officials for action as per law but police official did not pay him any heed and then after, the complainant approached to the Ex-Officio Justice of Peace for redressal of her grievance. Ex-Officio Justice of Peace vide order No. 04, Dated: 23.11.2020, accepted the petition of the complainant and the SHO, PS: Upper Orakzai was directed to register the complaint of the present complainant and to proceed further strictly in accordance with the law. Upon which, the instant case was registered at PS: Ghiljo, U/Orakzai on 11.12.2020 vide FIR. 58.

4. After completion of the investigation, the complete challan was submitted on 12.03.2021 to this court. The accused on bail was 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 09.09.2021, to which the accused person 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. Yonus Khan, ASI, PS: Ghiljo, U/Orakzai who conducted the inquiry against the arrested accused as


 Rehmat Ullah Wazir
 Civil Judge/JR-1
 Orakzai (Sohag Mela)

- PW-01.
- ii. Muhammad Hanif, Constable, PS: Ghiljo, U/Orakzai, who marginal witness, as PW-02.
 - iii. Nasim Khan, SI, PS: Ghiljo, U/Orakzai, as SHO in the instant case appeared as PW-03.
 - iv. Muhammad Umar, Constable, PS: Ghiljo, U/Orakzai as PW-04.
 - v. Salim Khan, SI, PS: Ghiljo, U/Orakzai, as ASHO in the instant case appeared as PW-05.
 - vi. Mst: Shah Iran Bibi, Complainant as PW-06.
 - vii. Muhammad Ishaq, OII, who is the investigation officer in the instant case appeared as PW-07.
 - viii. Ihsan Ullah, Reader to SDPO, as MM in the instant case appeared as PW-08.
 - ix. Abdul Manan, HC, HQ Orakzai, as MHC in the instant case appeared as PW-09.
6. In documentary evidence, prosecution has produced the following;
- i. Copy of FIR. **Ex.PA**
 - ii. Site plan. **Ex.PB**
 - iii. Application u/s 156(iii) Cr.P.C **Ex.PW-1/1**
 - iv. Recovery Memo **Ex.PW-2/1**
 - v. Final Report **Ex.PW-3/1**

Rehmat Ullah Wazir
Civil Judge/MI-I
Orakzai at (Bahar, Mela)

- vi. Warrant u/s 204 Cr.P.C Ex.PW-4/1
- vii. Report of DFC Ex.PW-4/2
- viii. Application to DPP for legal opinion.
Ex.PW-5/1
- ix. Application of complainant to SHO
Ex.PW-6/1
- x. Search Memo Ex.PW-7/1
- xi. Naqalmd No. 05 Ex.PW-8/1
- xii. Card of arrest of the accused Qasim Badshah
Ex.PW-7/2
- xiii. Application for police custody Ex.PW-7/3
- xiv. Application for recording statement u/s 164/364
Cr.P.C Ex.PW-7/4
- xv. Application for issuance of warrant u/s 204
Cr.P.C Ex.PW-7/5
- xvi. Application for proclamation u/s 87 Cr.P.C
against the accused Samin Badshah.
Ex.PW-7/6
- xvii. Proclamation u/s 87 Cr.P.C Ex.PW-4/3
- xviii. Report of DFC Ex.PW-4/4

7. Then after, on 16.02.2022, the learned APP for the state closed the evidence on behalf of the prosecution.

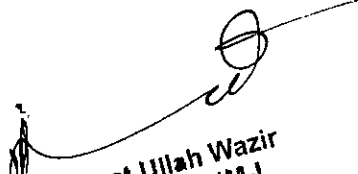
8. Statement of the accused u/s 342 Cr.P.C was recorded

Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Sahar Nela)

wherein he neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor he wanted to produce any defence evidence in his defence.

9. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the APP and the other counsel for the complainant heard and record perused.

10. The accused is charged with the offence u/s 363/511/147/149 PPC. Sec. 363 PPC deals with punishment of kidnapping, Sec. 511 PPC deals with punishment for attempting to commit an offence, Sec. 147 PPC deals with punishment for rioting while sec. 149 PPC deals with joint and equal liability of each and every member of an unlawful assembly in case, an offence is committed in furtherance of common object of an unlawful assembly. Where there was a common object or not is a question of fact to be determined in the circumstances of each case.


Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Babar Mela)

11. Keeping in view, the record on file and the depositions of PWs, it is observed, that the complainant has charged the accused person for attempt to kidnap her daughter. The prosecution is required to prove its case against the accused beyond reasonable doubts.

12. **PW-01**, who conducted the inquiry in the present case has admitted in his cross examination that he does not know

the distance between the school and the place of occurrence and further admitted that the brother of the complainant stated in his 161 Cr.P.C statement that the allegation of the complainant on accused is wrong. Further, that the complainant came to the PS on 09.11.2020 for lodging the report.

13. PW-03, the then SHO, who prepared the final report has admitted that 05 muffled faced accused were mentioned in the FIR, in whom 03 were not traced out. Further, that it is correct that there is no eye-witness to the occurrence and that there is no mention of the motive behind the occurrence. At the end he admitted that according to his final report, the allegations of the complainant are not true.

14. PW-06, who is the complainant in the instant case has admitted in her cross examination that the distance between my residence and the school where I perform duty is approximately 5/6 kms which I cover in 30 minutes. That she left her residence on the day of occurrence at about 08:30 hrs for her duty. But after the occurrence, she returned back to her residence and she drafted application to the local police at her residence and then left to the PS for report which was at a distance of 20/25 kms in the public transport in the company of her sister. But as per the Naqalmaid, she has

Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Baber Mela)

reported the matter to the local police at 09:00 hrs.

15. **PW-07**, the OII has admitted in his cross examination that at the time of occurrence, the complainant was present in her school. That the child mentioned in the case is not the daughter of the complainant rather her niece.

16. **PW-08**, the then Madh Muharrir of the PS Ghiljo, who drafted the Naqalmad has stated that the complainant submitted application to the SHO, PS Ghiljo on 09.11.2020 at 09:00 hrs.

17. The entire evidence produced by the prosecution does not bear any eye-witness of the alleged occurrence. There is contradiction w.r.t the time of report because allegedly the occurrence took place at 08:30 hrs on 09.10.2020 at a distance of 20/25 kms from the PS, then the complainant returned back from the midway to her house where she prepared the application to the SHO and then travelled through public transport and reached the PS at 09:00 hr, which does not seem plausible and appealing to the prudent mind. The PW-08, who drafted Naqalmad has stated that the complainant reported the matter on 09.11.2020 at 09:00 hrs. On the other hand, the occurrence took place on 09.10.2020. There is no motive mentioned behind the occurrence. The I.O has not recovered anything incriminating against the accused

Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Babar Mela)

from the spot nor from the house of the accused. No confession is available.

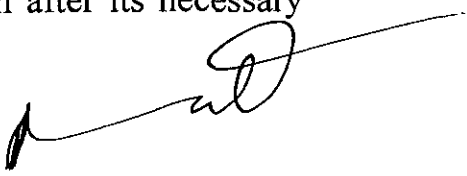
18. In the light of the above discussion, it is clear that the prosecution has failed to prove its case against the accused on the following grounds;

- i. There is no eye-witness to the occurrence.
- ii. There is contradiction w.r.t the date of occurrence and the time of report.
- iii. There is no motive mentioned behind the occurrence.
- iv. There is no circumstantial evidence of the occurrence as per the prosecution version.
- v. Prosecution failed to connect the accused with the commission of offence through unbroken chain of acts.

19. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, the accused namely Qasim Badshah S/O Noor Hassan is acquitted of the charges levelled against him. As he is on bail, his bail bonds stand cancelled and sureties are discharged from their liability of bail bonds.

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

Announced
24.02.2022


(Rehmat Ullah Wazir)
JM-I/MTMC,
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