

IN THE COURT OF SAMI ULLAH,
JUDICIAL MAGISTRATE -I ORAKZAI AT BABER MELA

Case No. 9/2 of 2023
Date of Institution: 13-09-2023
Date of Decision: 20-02-2024

State through:

Iltaf Ali SHO, PS Kuriz Boya, District Orakzai.

..... **Complainant**

VERSES

- (1). Aqid Ali S/O Noor Muhammad.
- (2). Syed Muntazir Hussain S/O Ajmal Shah.

Both residents of Qoam Bar Muhammad Khel, Tehsil Lower District
Orakzai. **Accused**

Case FIR No. 28, Dated 18-07-2023 U/S 297/34 PPC, PS Kuriz Boya
District Orakzai.

Present: Javid Iqbal Senior Public Prosecutor for complainant.

Sana Ullah Khan Advocate for accused facing trial.

JUDGMENT:

20-02-2024

1. This judgment will dispose of the instant case registered vide FIR No. 28, Dated 18-07-2023 U/S 297/34 PPC, registered at police station Kuriz Boya, District Orakzai.
2. Brief facts as per contents of F.I.R. are that, on 17.07.2023 at 23:30 hours complainant/ SHO were on routine patrol/gusht, when they received information that some persons are digging and destroying graves in graveyard of Bibi Zayarat. When the police reached to the

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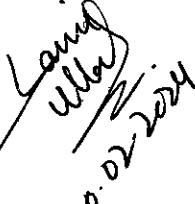
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spot, they found the accused facing trial committing the offence and were formally arrested then and there. Case property in shape of spades, axe, hammer, iron rod, knives etc were recovered on the spot and Murasila was sent to the PS for registration of FIR against the arrested accused. Resultantly, FIR bearing No.28 dated 18.07.2023 was registered U/S 297/34 PPC, in police station Kuriz Boya, District Orakzai. Both the accused were produced before the court and later on were released on bail.

3. After completion of investigation, complete challan was submitted by prosecution against the accused.
4. Accused were summoned and legal formalities under section 241(A) Cr. PC were complied with. Accused were formally indicted to which they pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
5. Prosecution produced total three (03) witnesses to prove its case against the accused.
6. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;

- I. Murasila report is Ex.PW-1/1.
- II. Recovery Memo is Ex.PW-1/2.
- III. Card of arrest is Ex.PW-1/3.
- IV. Photographs are Ex.PW-1/4 & Ex.PW-1/5.
- V. Site plan is Ex.PW-1/6.
- VI. Application for Judicial Lockup is Ex.PW-1/7.


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VII. Entry regarding recovered article in Register No.19 is Ex.PW-1/8.

VIII. Two Spades/ Balchay, one Gandakay, one Axe, one Hammer/ Palk, one iron rod/ Jabbar and three Charnii are Ex.P1 to Ex.P6.

IX. FIR is Ex.PA.

X. Roznamcha report is Ex.PW-3/1.

7. After then, on 16.01.2024 the learned APP for the state closed the evidence on behalf of the prosecution.

8. Statement of accused 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 want to produce any evidence in their defense.

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

10. The accused were charged with offence U/S 297/34 PPC.

11. Keeping in view, the record on file and the deposition of PWs, the prosecution is required to prove its case against the accused beyond reasonable doubts. The essence of the prosecution evidence is given below.

12. PW-1 is the statement of Iltaf Ali who stated that during relevant days he was posted as SHO at PS Kuriz. That on 17.07.2023 while he was on routine patrol, received an information that the accused were busy in digging and destruction of graves. The accused were arrested on

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spot, case property was taken into possession and Murasila report was sent to the PS for registration of FIR. The Murasila report, recovery memo and card of arrest are Ex.PW-1/1, Ex.PW-1/2 and Ex.PW-1/3 respectively. The said PW recorded in his statement that the IO prepared site plan on his pointation and recorded his statement u/s 161 Cr.P.C, however, the said PW himself is IO in the instant case. It is pertinent to mention here that in re-examination of the said PW, he has admitted that he has prepared the site plan himself. The said PW recorded in his cross examination that the IO reached to the spot on 23:50 hours dated 17.07.2023, however, the said PW himself has conducted investigation as IO in the instant case. He further recorded that he left the PS at about 9:00 am on 17.07.2023 for ordinary gasht/patrol, however, the daily dairy concerned marked departure of the said PW at 17:00 hours. He also admitted that names of constables accompanied him during the patrol were not mentioned in Murasila report. Further recorded that they were five police officials on gasht. The said PW stated that he took photographs of the site of occurrence on 09:00 am dated 18.07.2023. It is pertinent to mention here that the perusal of photographs don't reveals digging in any grave. Moreover, no grave can be seen in the photographs not even in the surrounding where the digging has been made. The said PW was allowed to be re-examined on application from prosecution. He recorded in his re-examination that the site plan was prepared on his pointation which is Ex.PW-1/6. He further stated that the entry regarding recovered article

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has been made out by the moharrir of the PS in register No.19, which is Ex.PW-1/8. The said PW admitted in his cross examination that names of marginal witnesses are not mentioned in site plan.

13. PW-2 is the statement of Muhammad Waseem who stated that he was posted as Constable PS Kuriz Boya in relevant days. He recorded in his statement that on the day of occurrence he accompanied the SHO on patrol and upon information they reached to the spot and arrested both the accused who were busy in committing the offence. They recovered the tools and articles which was used by the accused for commission of the offence. He further stated that the SHO handed over Murasila report, recovery memo and card of arrest to him which he brought to the PS and handed over to the Muharrir of the PS for registration of FIR. He further stated that recovery memo correctly bears his signatures. The said PW recorded in his cross examination that they left the PS for routine patrol at 23:00 hours on 17.07.2023, which contradict the entries in Daily Dairy and with the statement of SHO as PW-01. Moreover, the time of occurrence is 23:00 hours in the instant FIR. He also recorded that it is correctly mentioned in the Murasila that photographs of place where occurrence took place were taken on the spot, which contradict with the statement of PW-01 who said that the photographs were taken on next day at about 09:00 hours. The perusal of photographs also reveals that it was taken during day time. Moreover, the photographs don't reveal presence of the accused on the spot. The said PW further stated that they reached to the PS after

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completion of proceedings on 22:30 hours, which contradict with his own statement as stated above and also with the time of occurrence shown as 23:00 hours in the instant FIR. He further stated that IO reached to the spot on 22:00 hours on 17.07.2023, however, the SHO himself is IO in the instant case, and no proceedings as per record has been made by any other investigating officer.

14. PW-03 is the statement of Asmat Ali, additional Muharrir in PS Kuriz Boya. He recorded in his statement that constable Muhammad Waseem handed over Murasila to him which was converted into FIR, the same is exhibited as Ex.PA. Moreover, the SHO concerned handed over recovered article to him on the same day and kept the same in Mallkhana of the PS. The said PW recorded in his cross examination that the recovered article was handed over to him without sealing and without any monogram,
15. One of the PW namely Saif Ullah was abandoned by prosecution and thereafter the prosecution closed their evidence on 16.01.2024.
16. It is established principle of law that prosecution must prove its case against the accused beyond reasonable doubt. Insofar as the instant case is concerned, there are material contradictions in the case of prosecution and evidence recorded in this court. The contradictions are discussed above in detail in the evidence of the PWs.
17. Moreover, no disinterested witness has been produced before the court for recording of evidence. No source of information regarding the occurrence is disclosed in the case. The SHO himself is IO in the instant


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case, however, he recorded ignorance to this fact in his evidence, so much so that the SHO recorded in his statement that the IO recorded his statement in investigation u/s 161 Cr.P.C. Even the witnesses had confusing regarding the SHO/complainant conducting investigation.


18. Furthermore, the prosecution has failed to prove that the alleged digging had taken place in a grave. The site plan which is exhibited as Ex.PW-1/6 shows the site of digging near graves, however, the photographs exhibited as Ex.PW-1/4 and Ex.PW-1/5, neither show digging in any grave nor any other grave is evident nearby. The place of digging as evident from the photographs is in the ground near the trees and only roots of the trees are visible in the photographs. Besides, the recovered article was neither sealed nor marked by the SHO. Furthermore, the recovered articles were not associated specifically with any particular accused. Besides the complainant, only one marginal witness was produced by the prosecution.
19. Prosecution were bound to prove its case against the accused beyond any shadow of doubt but there are so many dents and doubts in the prosecution case, benefit of which goes to the accused facing trial.
20. For what has been discussed above, the prosecution failed to prove its case against the accused beyond reasonable doubt. Resultantly, in case FIR No.28 dated 18.07.2023 U/S 297/34 PPC registered in Police Station Kuriz Boya, accused namely Aqid Ali S/O Noor Muhammad and Syed Muntazir Hussain S/O Ajmal Shah are hereby acquitted from the charges leveled against them. Their bail bonds stand cancelled and

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their sureties are absolved from the liabilities of bail bonds. Case property if any, be dealt with as per law after expiry of period of appeal/revision.

21. Case file be consigned to Record room after its completion and necessary compilation.


Announced
20.02.2024


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CERTIFICATE

Certified that my judgment of today consists of eight pages, each page has been read, signed and corrected by me where necessary.

Announced
20.02.2024


Sami Ullah
Judicial Magistrate-I,
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