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IN THE COURT OF REHMAT ULLAH WAZIR,
SCJ/JM, ORAKZAI AT BABER MELA

CASE NO. : 9/2 OF 2022
DATE OF ORIGINAL INSTITUTION : 25.01.2020
DATE OF TRANSFER IN : 27.06.2022
DATE OF DECISION : 27.07.2022

STATE THROUGH: AFZAL MEENA W/O MUHAMMAD RASOOL, R/O QOUM RABIA KHEL, TAPPA BEHRAM KHEL, JIRAB SAMANA, DISTRICT ORAKZAI.

------(Complainant)

VS

1. NOOR MUHAMMAD S/O MUSAFIR GUL
 2. SHAKIR ULLAH S/O MUSAFIR GUL
 3. MUSAFIR GUL S/O MEHRAB GUL
 4. HABIB ULLAH S/O SHERIN GUL
- Both R/O Qoum Rabia Khel, Jirab Samana, District Orakzai*

------(Accused Facing Trial)

Present: Mr. Zubair Qureshi, Assistant Public Prosecutor for complainant.

: Abdul Qayum Khan advocate for the accused facing trial.

ORDER

27.07.2022

1. Accused facing trial, Noor Muhammad, Shakir Ullah,

Musafir Gul and Habib Ullah present who are charged in

case FIR No. 57, Dated: 10.12.2020, U/S

147,427,354,147,149 PPC of PS Ghiljo, U/Orakzai for

committing criminal trespass, mischief and thereby

causing damage to the amount of fifty rupees or upwards,


assault to women folk with intent to outrage their modesty

by entering into the house of the complainant in


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prosecution of common object of an unlawful assembly.


2. Briefly stated factual background of the instant case is that the complainant namely Mst. Afzal Meena reported the matter for committing criminal trespass, mischief and thereby causing damage to the amount of fifty rupees or upwards, assault to women folk with intent to outrage their modesty by entering into the house of the complainant, by the accused in prosecution of common object of an unlawful assembly.
 3. Upon which, the instant case was registered at PS: Ghiljo, Upper Orakzai on 10.12.2020 vide FIR. 57.
 4. After completion of the investigation, the complete challan was submitted on 25.01.2020 to the 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 namely Noor Muhammad, Shakir Ullah, Musafir Gul was framed on 08.03.2021 but later on, the supplementary challan against the absconding accused namely Habib Ullah was submitted and de-novo charge was framed against the accused Noor Muhammad, Shakir Ullah, Musafir Gul and Habib Ullah was framed on 06.07.2021, to which the accused persons pleaded not guilty and claimed trial while,


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the absconding accused namely Mumtaz Khan s/o Sherin Gul was proceeded U/S 512 Cr.P.C.

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

- i. Abdul Malik, ASI as PW-01
- ii. Muhammad Naseem, SHO as PW-02.
- iii. Gul Hassan, Constable as PW-03.
- iv. Saleem Khan, SI Police Line, as ASHO in the instant case as PW-04.
- v. Gul Asghar, ASI as PW-05.
- vi. Abdul Manan, HC Police Training HQ, MHC in the instant case as PW-06.
- vii. Mst. Afzal Meena, Complainant as PW-07.
- viii. Gul Hassan, Constable as SW-01.
- ix. Abdul Raziq, DFC as CW-01.

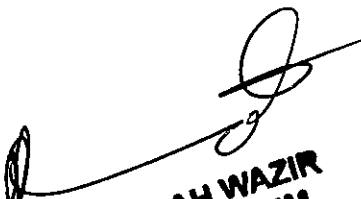

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6. In documentary evidence, prosecution has produced the following;

- i. Search memo **Ex. PW-1/1**
- ii. Application for issuance of warrant u/s 204 Cr.P.C **Ex. PW-1/2**
- iii. Application for issuance of proclamation us 87 Cr.P.C **Ex. PW-1/3**

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- iv. Card of arrest of the accused Noor Muhammad, Shakir Ullah and Musafir Gul
Ex. PW-1/4
- v. Card of arrest of the accused Habib Ullah
Ex. PW-1/5
- vi. Final Report Ex. PW-2/1
- vii. Application for legal opinion Ex. PW-2/2
- viii. Complete Challan Ex. PW-2/3
- ix. Pictures Ex. PW-4/1 to Ex. PW-4/8
- x. List of the damaged articles Ex. PW-4/9
- xi. Naqal mad No. 05 Ex. PW-5/1
- xii. Application by the complainant to SHO, PS Ghiljo, U/Orakzai Ex. PW-7/1
- xiii. Warrant u/s 204 Cr.P.C against the accused namely Mumtaz, Habib, Noor Muhammad, Shakir, and Musafir Gul.
Ex. SW-1/1 to Ex.SW-1/5
- xiv. Reports on the back of warrants u/s 204 Cr.P.C Ex.SW-1/6 & Ex.SW-1/7
- xv. Proclamation u/s 87 Cr.P.C against the accused namely Habib and Mumtaz
Ex. SW-1/8 & Ex.SW-1/9
- xvi. Reports on the back of Proclamation u/s 87


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Cr.P.C

Ex. SW-1/10 & Ex.SW-1/11

xvii. Copy of FIR

Ex.PA

xviii. Site Plan

Ex.PB

7. Then after, on 10.02.2022, the learned APP for the state closed the evidence on behalf of the prosecution.
8. Statements of the 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.
9. The accused in reply of the question that what are your statements and why you are charged, submitted that; "They are innocent and falsely charged with malafide intention"
10. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the APP for the state/complainant heard and record perused.
11. All the accused are charged with the offence U/S 447,427,354,147,149 PPC. Sec. 447 PPC deals with committing criminal trespass, Sec. 427 deals with mischief and thereby causing damage to the amount of fifty rupees or upwards, Sec. 354 deals with assault to women folk with intent to outrage their modesty, Sec. 147 deals with punishment for rioting and Sec. 149 PPC deals with joint and equal liability of each and every member of an


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unlawful assembly in prosecution of common object of an unlawful assembly.

12. 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.

13. PW-01, the concerned I.O has admitted in his cross-examination that he has not visited the spot of occurrence and he has not recorded the statement of any eye-witness.

14. PW-04, who is the Inquiry Officer of the present case, has admitted that he has not conducted the whole inquiry in the present case on 19.11.2020. Further, that there is mention

of attempt by the accused to damage the precious goods in

the house and taking away of the same in the final report

but the same is not mentioned in the Naqalmad. Further,

that the elders of the locality were present on the spot but

their statements were not recorded.


15. PW-05, the ASI concerned, who chalked the Naqalmad, has admitted that the complainant came to the PS on 19.11.2020 and her report was reduced into Naqalmad on the same date.

16. PW-07, the complainant has admitted in her cross examination that they left their own house for the last one year. Further, that she does not know whether the police

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came to the place of occurrence or not and that she does not remember the time of occurrence.

17. Thus, it is an admitted fact that the I.O has not visited the place of occurrence and have not recorded the statement of any eye-witness. Admittedly, during inquiry, the elders of the locality were present on the spot but their statements have not been recorded by the inquiry officer. Further, the occurrence took place on 16.11.2020 but the complainant has reported the same to the local police on 19.11.2020 with no explanation of the said unreasonable delay. Also, the complainant has admitted that at the time of occurrence, she was not residing in the said house rather she had left the same. Moreover, the time of occurrence is not known/mentioned and the complainant has not accompanied the local police to the spot as she does not know whether the police did come to the spot or not.


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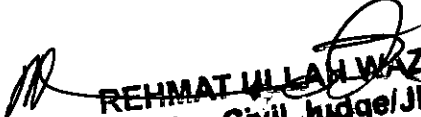
18. Thus, there are doubts in the evidence of prosecution and the accused are ultimately entitled to the benefits of doubts and are accordingly extended to the accused.

19. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused facing trial. Therefore, the accused namely Noor Muhammad, Shakir Ullah, Musafir Gul and Habib Ullah

are acquitted of the charges levelled against them. As they are on bail, their bail bonds stand cancelled and sureties are discharged from their liability of bail bonds.

20. It is pertinent to mention here that the accused Mumtaz s/o Sherin Gul is absconding. To this extent statement of DFC and statements of other prosecution witnesses are recorded. On the basis of statement of DFC and other prosecution witnesses, prima facie accused Mumtaz s/o Sherin Gul R/O Qoum Rabia Khel, Jirab Samana, District Orakai is declared as "proclaimed offender" and perpetual warrant of arrest be issued against him. His name may be entered in the relevant register of the PS.
21. File be consigned to record room after its necessary completion and compilation.

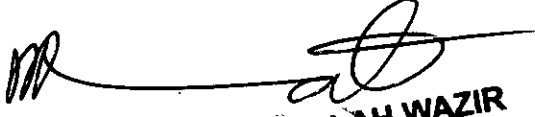
Announced
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CERTIFICATE

Certified that this order consists of eight (08) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 27.07.2022


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