

IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE -I
TEHSIL KALAYA, DISTRICT ORAKZAI

Case No.....48/2 of 2022.

Date of Institution.....08.09.2022.

Date of Decision.....29.02.2024.

State through:

Asif Nawaz S/O Zareen Badshah R/O Qaum Chappar Mishti Nari Kada, Orakzai

.....**Complainant**

VERSES

1. Muhammad Ismail S/O Pir Gul
2. Muhammad Ibrar S/O Abdul Wahid both R/O Qaum Chappar
Mishti, Nari Kada, District Orakzai.....**Accused**


Case FIR No. 10, Dated 18.04.2022 U/S 342, 355, 506/34 PPC PS Kurez Boya.

JUDGEMENT

29.02.2024

Through this judgement, I am going to dispose of the instant case registered against accused Muhammad Ismail and Muhammad Ibrar vide case FIR No. 10, Dated 18.04.2022 U/S 342, 355, 506/34 PPC PS Kurez Boya.

1. Brief facts of the prosecution's case as unfolded in the FIR Ex.PA are that, complainant Asif Nawaz made a report to the local police on 16.03.2022 to the effect that, he is a student of class 06 in Government High School Chappar Mishti and as per his daily routine, he goes to the school at 08:00 am and returns to home at 14:20 hours. That on the day of occurrence i.e 15.03.2022, he was on the way to school on


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his motorcycle, when he reached near Chappar Mishti Eid Gah, accused Muhammad Ibrar and Muhammad Ismail, both R/O Qaum Mishti, Chappar, Nari Kada, Kurez Orakzai, duly armed, stopped him and took him inside the Eid Gah where they illegally confined him till 13:00 hours. Accused forcibly snatched his motorcycle. He was assaulted with intention to disgrace him. They were inquiring about his cousin Shafi Ullah. He was threatened not to disclose the occurrence to the school teachers and police but on his return to home, he narrated the story to his brother Shahid Ullah and thereafter, they proceeded to nearby police check post for report but due to absence of incharge police check post, they lodged report in PS Kurez Boya on the following day of the occurrence i.e.16.03.2022. Report of the complainant was scribed in daily diary in shape of mad No. 06 dated 16.03.2022 and after obtaining legal opinion from the office of DPP, Orakzai, the instant case was registered against the accused facing trial.



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After completion of investigation, complete challan was submitted by prosecution against the accused facing trial. Accused were summoned, who appeared before the court and legal formalities under Section 241-A Cr. PC were complied with. Formal charge was framed to which accused pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.

3. Prosecution produced six (06) witnesses to prove its case against the accused.

4. Sub-Inspector, SI Hassan Jan the then SHO PS Kurez Boya, deposed as PW-01. He stated that report of the complainant namely Asif Nawaz was recorded vide Mad No. 06, dated 16.03.2022. Mad report was handed over to him by Moharrir of PS. On 17.03.2022, he submitted application for permission of inquiry U/S 156 (3) Cr. PC. On 08.04.2022, he sought legal opinion from the office of DPP, Orakzai vide his application Ex. PW-1/1. After seeking legal opinion, he registered the instant case vide FIR Ex. PA. After completion of investigation, he submitted complete challan U/S 512 Cr. PC and supplementary challan after arrest of accused Muhammad Ismail. Challan forms are Ex. PW-1/2 and Ex. PW-1/3.

5. PW-02, is the statement of SI Ishtiaq Hassan. He stated that during the days of occurrence, he was posted as incharge investigation officer, PS Kurez Boya. After receiving, copy of FIR along with inquiry papers, he proceeded to the spot and prepared site plan on pointation of complainant Asif Nawaz. Site plan is Ex. PB. He recorded statements of PWs U/S 161 Cr. PC. On his transfer to Headquarter Baber Mela, at Hangu, case file was handed over to SI Hasham Khan for onward investigation.


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29/02/024 6. Sub-Inspector, Hasham Khan was examined as PW-03. He is IO of the case. He stated that on 19.05.2022, he formally arrested accused Muhammad Ibrar after rejection of his BBA by the court of Sessions. Card of arrest is Ex. PW-3/1. On 20.05.2022, he produced the accused before the court for obtaining his physical custody vide his application

Ex. PW-3/2 which was turned down and accused was committed to judicial lock-up. He recorded statement of accused Muhammad Ibrar U/S 161 Cr. PC. Accused Ismail was absconding, therefore, he vide his applications Ex. PW-3/3 and Ex. PW-3/4 applied for warrant U/S 204 and proclamation notices U/S 87 Cr. PC. He recorded statement of search witness. On 16.06.2022, he arrested accused Muhammad Ismail vide card of arrest Ex. PW-3/5. Accused disappeared during BBA, therefore his BBA was turned down. Later on, accused surrendered. He vide his application Ex. PW-3/6 produced the accused before the court for obtaining his physical custody. One day custody was granted. He interrogated the accused. Accused was produced before the court for further custody which was turned down and accused was sent to Judicial lock-up. Application is Ex. PW-3/7. He recorded statement of accused U/S 161 Cr. PC. CDR was provided by SHO and he placed the same on file. After completion of investigation, he handed over the case file to SHO concerned for submission of complete challan.



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7. Head Constable Intikhab Ali was examined as PW-04. He stated that on 16.03.2022, complainant Asif Nawaz came to PS and reported to him regarding the occurrence which was reduced into writing in shape of Mad No. 6 dated 16.03.2022. Report was read over to the complainant who thumb impressed the same as token of its correctness. Shahid Ullah, brother of complainant thumb impressed

the report as verifier. Mad report was given to SHO. Extract of Mad No. 6 dated 16.03.2022 is Ex.PW-4/1.

- 8.** PW-05 is the statement of complainant Asif Nawaz. He stated that PW Shahid Ullah is his brother. Accused facing trial are his co-villagers. On the day of occurrence, he was proceeding to school at Chappar Mishti on his motorcycle. It was 08:00 am, when he reached Chappar Mishti Eid Gah, accused Muhammad Ismail and Muhammad Ibrar stopped him. They were duly armed. They were having binocular (دوربین). They were having hand grenade in their possession. He was taken inside the Eid Gah. Then he was asked about his cousin Shafi Ullah. He told them that he was in the school. Then they searched for Shafi Ullah. They were talking about some money on their mobile phones. He was threatened not to disclose the occurrence to the school teachers and police. Thereafter, he was released. When he reached his house, he narrated the story to his brother. He and his brother went to nearby police check post but they were told that incharge of PP is not present. Thereafter, he disclosed the occurrence to his teachers. On 16.03.2022 at 09 :20 am, he and his brother went to PS Kurez Boya where he reported the occurrence. Report was read over him and he thumb impressed the same as token of its correctness. His brother PW Shahid Ullah also signed the report as verifier. On 18.04.2022, he pointed out the spot to the police. He charged the accused for the commission of the offence.



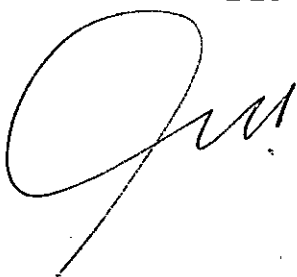
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9. PW-06 is the statement of Shahid Ullah. He stated that complainant Asif Nawaz is his brother. On 15.03.2022, his brother came to home and narrated the occurrence to him. He along with his brother/complainant went to Chappar police post for report but due to absence of incharge police post, the report was not recorded. On 16.03.2022, he accompanied his brother to PS Kurez Boya for report where he reported the occurrence to the local police of PS Kurez Boya which was read over to the complainant who thumb impressed the same as token of its correctness while he thumb impressed the report as verifier. His statement was recorded u/s 161 Cr.PC. He charged the accused for the commission of the offence.

10. Afterwards, statements of accused U/S 342 Cr. PC were recorded wherein they professed their innocence, however, they did not wish to be examined on oath. They also opted not to produce defense evidence.

11. Record transpires that the occurrence took place on 15.03.2022 at 08:00 am at Chappar Mishti Eid Gah, Orakzai. It was reported on 16.03.2022 at 09:20 am and FIR Ex.PA was registered on 18.04.2022. Asif Nawaz is the complainant while his brother PW Shahid Ullah is verifier of the report. No motive behind the occurrence is advanced by the complainant party. Although, the alleged occurrence is a day light occurrence and accused are directly and by name nominated in the FIR for assaulting, disgracing, intimidating and wrongfully confining the victim complainant, however, per Ex.PW-4/1 (extract of mad No.



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06 dated 16.03.2022) and FIR Ex.PA, inquiry u/s 156 (iii) Cr.PC was initiated to dig out the real facts and to conclude whether the occurrence took place or not. Application dated: 17.03.2022, drafted by SHO PS Kurez Boya for inquiry u/s 156 (iii) Cr.PC, is placed on file but there is no order of the court regarding permission for inquiry. Neither the spot was visited by the inquiry officer nor statements of witnesses concerned were recorded during course of inquiry. There is no final report placed on file which could show findings of the inquiry officer regarding the occurrence and involvement of accused in the commission of the offence. As mentioned above, the occurrence took place on 15.03.2022, it was reported on 16.03.2022, application for inquiry was drafted on 17.03.2022, application Ex.PW-1/1 for legal opinion was submitted on 08.04.2022 and FIR was registered on 18.04.2022. Even after obtaining legal opinion from the office of DPP, Orakzai, FIR was registered after 09/10 days of the opinion. No explanation is advanced for delay in the registration of the case which is fatal to the case of prosecution. Similarly, site plan Ex.PB was prepared on 18.04.2022 after 33 days of the occurrence. Furthermore,


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in the application for inquiry and application for legal opinion, torture of complainant, snatching of motorcycle on gun point is mentioned but neither any medical report to this effect is placed on file nor the motorcycle was recovered from possession of accused or produced to the police by complainant party. The registration, chassis, engine

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numbers and color of the motorcycle, allegedly snatched by accused from complainant, are not mentioned in the report of complainant.

12. As per Ex.PW-4/1 and Ex.PA, accused, at the time of commission of the offence, were asking about his cousin namely Shafi Ullah but neither the said Shafi Ullah was associated during inquiry nor during investigation. He is not cited as witness. Similarly, per statements of complainant (PW-05) and verifier of the report (PW-06), complainant visited the BHU, Chappar Mishti at early morning time and the IO examined the school teacher, watchman and medical staff of the BHU but none of them was produced as witness during course of trial which is also injurious to the case of prosecution.

13. As per statement of SI Ishtiaq Hassan (IO), he recorded statements of medical officer, watchman and teacher of the school but neither their names are mentioned in the relevant column of challan form nor produced as witnesses. School record/extract of attendance register is not placed on file. He also stated that spot Eid Gah is situated on the main road and there is government school and hospital near it. Complainant remained confined from 09:00 am to 01:00 pm in the said Eid Gah without being noticed/seen by any one. This creates a serious doubt. There are contradictions in the statements of PWs. Complainant, when deposed as PW-05, stated in his cross examination that, on the day of occurrence, he went to the hospital at 07:45 am and was examined by the doctor at 07:45 am. On the other hand, PW-06 (brother of complainant), stated in his cross examination



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that complainant returned from hospital to home at about 07:00 am, changed his clothes and left for the school. Similarly, in the report of the complainant, it is mentioned that accused were armed but when complainant deposed as PW-05, stated that accused were armed with Kalashnikovs. Accused Muhammad Ismail was in possession of hand grenades which facts are nowhere mentioned in the report. No motive is mentioned behind the occurrence but complainant (PW-05) admitted in his cross examination that one of his relatives, Afzal has got enmity with accused facing trial, therefore, false implication of accused facing trial cannot be ruled out.

- 14.** Per record, no motive has been assigned for the alleged commission of the offence. No independent witness has been associated with the occurrence. There is no recovery or discovery or any other supporting evidence except the CDR but neither the CDR was exhibited nor there is any specification of the purpose of calls mentioned in the data. The contents of CDR are unknown. There is unexplained delay of more than a month in registration of the case. Accused have not confessed their guilt before the court. There are material contradictions in the statements of PWs. No independent witness was associated during course of investigation to support the version of prosecution. There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.



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- 15.** As prosecution failed to prove its case against the accused namely Muhammad Ibrar and Muhammad Ismail beyond reasonable doubt, therefore, they are acquitted from the charges leveled against them. They are on bail. Their bail bonds stand cancelled. Sureties are discharged from their liability. Case property, if any be dealt in accordance with law.
- 16.** Case file be consigned to record room after its completion and necessary compilation.

Announced
29.02.2024



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CERTIFICATE

It is certified that this judgment consists of **10** pages. Each page has been dictated, read, corrected and signed by me.



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