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

CASE NO. : 10/2 OF 2022  
DATE OF ORIGINAL INSTITUTION : 14.04.2021  
DATE OF TRANSFER IN : 27.06.2022  
DATE OF DECISION : 27.10.2022

STATE THROUGH: SAID HAKIM S/O SHER AKBAR, R/O  
KHADIZAI, GHILJO, DISTRICT ORAKZAI.

------(Complainant)

VS

1. KARAM DIN AND 19 OTHERS  
*ALL R/O TEHSIL UPPER, DISTRICT ORAKZAI.*

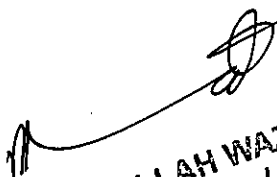
------(Accused Facing Trial)

**Present:** Mr. Zubair Qureshi, Assistant Public Prosecutor and  
Malik Farooq Khattak advocate for complainant.  
: Farid Ullah Shah advocate for the accused facing trial.

**ORDER**

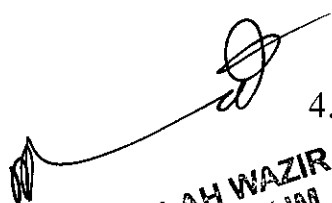
27.10.2022

1. Accused facing trial, Karam Din and 19 others present who are charged in case FIR No. 51, Dated: 16.10.2020, U/S 342/447/427/506/148/149 PPC of PS Ghiljo, U/Orakzai for committing wrongful confinement, criminal trespass, mischief and thereby causing damage to the amount of fifty rupees or upwards, criminal intimidation, rioting armed with deadly weapons and assault to nephews of the complainant namely Mushtaq, Abdul Majeed and other labourers by entering into the crush plant and block factory of the complainant in prosecution of common object of an

  
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unlawful assembly.

2. Briefly stated factual background of the instant case is that the complainant namely Said Hakim reported the matter for committing wrongful confinement, criminal trespass, mischief and thereby causing damage to the amount of fifty rupees or upwards, criminal intimidation, rioting armed with deadly weapons and assault to nephews of the complainant namely Mushtaq, Abdul Majeed and other labourers by entering into the crush plant and block factory of the complainant in prosecution of common object of an unlawful assembly.
3. Upon which, the instant case was registered at PS: Ghiljo, Upper Orakzai on vide FIR. 51.
4. After completion of the investigation, the complete challan was submitted on 14.04.2021 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 Karam Dina and 19 others was framed on 22.06.2022 to which the accused persons pleaded not guilty and claimed trial.
5. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following

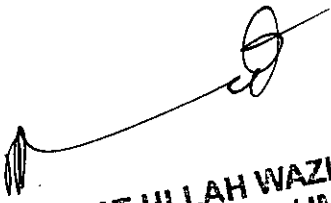
  
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evidence;

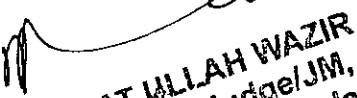
- i. Muhammad Umar, DFC as PW-01
- ii. Muhammad Naseem, Line Officer, HQ Orakzai, SHO in the instant case as PW-02.
- iii. Said Hakim, Complainant as PW-03.
- iv. Mushtaq Khan, Eye-witness as PW-04
- v. Muhammad Arif, Private witness as PW-05
- vi. Muhammad Ishaq, OII PS Dabori, I.O the instant case as PW-06.

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

- |   |                  |
|---|------------------|
| i. Copy of FIR  | <b>Ex. PA</b>    |
| ii. Site Plan   | <b>Ex.PB</b>     |
| iii. Application for legal opinion  | <b>Ex/PW-2/1</b> |
| iv. Complete Challan  | <b>Ex/PW-2/2</b> |
| v. Supplementary Challan  | <b>Ex/PW-2/3</b> |
| vi. Warrant u/s 204 Cr.P.C against the accused Aseel Khan along with report of DFC, PS Ghiljo | <b>Ex/PW-1/1</b> |
| vii. Warrant u/s 87 Cr.P.C along with report of DFC, PS Ghiljo                                | <b>Ex/PW-1/2</b> |
| viii. Application u/s 22-A Cr.P.C   | <b>Ex/PW-3/1</b> |
| ix. Receipt of repaired generator   | <b>Ex/PW-5/1</b> |

  
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- x. Card of arrest of the accused Karam Din,  
Sher Muhammad, Jan Muhammad,  
Muhammad Sadeeq, Gul Saif Khan and  
Wahid Mir **Ex. PW-6/1**
- xi. Application for police custody of the  
aforesaid accused **Ex. PW-6/2**
- xii. Card of arrest of the accused Majeed Khan,  
Gul Hassan Shah and Abdul Wahab  
**Ex. PW-6/3**
- xiii. Application for police custody of the  
aforesaid accused **Ex. PW-6/4**
- xiv. Application for obtaining warrant u/s 204  
Cr.P.C against the accused namely Hassan  
Khan **Ex. PW-6/5**
- xv. Application for obtaining warrant u/s 204  
Cr.P.C against the accused namely Aseel  
Khan **Ex. PW-6/6**
- xvi. Application for recording statement of  
complainant u/s 164 Cr.P.C **Ex. PW-6/7**
- xvii. Card of arrest of the accused Yardan Shah,  
Itbar Khan, Muhammad Shah and Khyal  
Muhammad **Ex. PW-6/8**
- xviii. Card of arrest of the accused Eid Asghar,

  
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Usman Badshah, Janat Shah Ex. PW-6/9

- xix. Application for police custody of the accused Yardan Shah, Itbar Khan, Muhammad Shah, Khyal Muhammad, Janat Shah, Usman Badshah and Eid Asghar

Ex. PW-6/10

- xx. Card of arrest of the accused Yar Rehman

Ex. PW-6/11


- xxi. Card of arrest of the accused Waseel Khan, Aseel Gul and Nazir Rehman Ex. PW-6/12

7. Then after, on 16.02.2022, 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".

10. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the APP for the complainant along with his private counsel heard and record perused.

  
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11. All the accused are charged with the offence U/S 342/447/427/506/148/149 PPC. Sec. 342 PPC deals with committing wrongful confinement, Sec. 447 PPC deals with committing criminal trespass, Sec. 427 PPC deals with mischief and thereby causing damage to the amount of fifty rupees or upwards, Sec. 506 PPC deals with criminal intimidation, Sec. 148 deals with rioting armed with deadly weapons and Sec. 149 PPC deals with joint and equal liability of each and every member of an 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-02, the SHO concerned has admitted in his cross examination that the time of occurrence as per the heading of FIR is 13:40 hrs while as per the body of FIR, it is mentioned as 12:40 hrs. Further that the date of occurrence is 09.09.2020 while that of report is 24.09.2020.

14. PW-03, the complainant has admitted in his cross examination that he was not present on the spot rather he was present at the distance of 13 kms at Ghiljo Bazar from the place of occurrence. That the report was already lodged

by the people of the village before my arrival to the PS. That he accompanied the I.O to the spot for preparation of site plan on 16.10.2020. That the accused party comprised in 21/22 persons, in whom 11 were identified on the spot and information about the rest of the accused were taken from other co-villagers.

15. PW-04, the one Mushtaq, who is the eye-witness to the occurrence has stated in his examination in chief that the accused were some 30/35 persons. Further admitted in his cross examination that the complainant Said Hakim was present at Peshawar at the time of occurrence and that no one from the village arrived in the crush plant after the occurrence. That after release of us by the one Abdul Hadi, we went to our houses. That we have not handed over the rope to the local police with which we were tied up. That he did not meet the local police rather his co-villagers lodged a report in the PS. That the villagers, who lodged the report were not present at the time of occurrence on the spot.

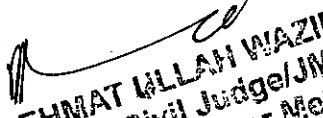
  
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16. PW-06, who is the I.O in the present case has admitted in his cross examination that he neither took into possession the alleged Hi-Ace vehicle during investigation nor identified its owner. That he didn't take into possession the

rope with which the labourers were tied and also nothing have been recovered from the possession of the accused facing trial. That he prepared site plan on 16.10.2020.

17. Thus, there is contradiction in the time of occurrence as it is mentioned in the heading of FIR that the occurrence took place on 13:40 hrs while in its body it is mentioned as 12:40 hrs. Further, the complainant admitted in his cross examination that he was not present on the spot rather at a distance of 13 kms from the occurrence while the eye-witness admitted that the complainant was at Peshawar at the time of occurrence. The complainant alleges that the accused party comprised in 21/22 persons while the eye-witness alleges that there were 30/35 persons. One thing which is astonishing is that the report is lodged neither by the complainant nor by the eye-witness rather by the co-villagers who were not present at the time of occurrence and those too did not arrive to the spot after the occurrence as admitted by the eye-witness. Further, there are numerous persons who allegedly attacked the crush plant but they have not been properly identified and also the vehicles in which they allegedly arrived have also not been properly identified.

18. Thus, there are doubts in the evidence of prosecution and

  
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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 Karam Din and all others 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. File be consigned to record room after its necessary completion and compilation.

**Announced**  
27.10.2022

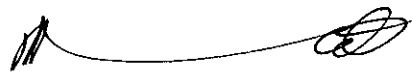


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**CERTIFICATE**

Certified that this order consists of nine (09) pages. Each page has been read, corrected where-ever necessary and signed by me.

**Dated: 27.10.2022**



(Rehmat Ullah Wazir)  
SCJ/JM,  
Orakzai (at Baber Mela)