

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

Case No. 20/2 of 2021
Date of Institution: 12-06-2021
Date of Decision: 27-07-2022

State through:

Makbira Khan S/O Khanan Khan R/O Qoum Feroz Khel, Tappa
Qasim Khel, Tehsil Lower, District Orakzai.

..... **Complainant**

VERSES

- (1). Danish Khan S/O Nouroz Khan,
- (2). Jumma Khan S/O Khan Mast both residents of Qoum Feroz
Khel Tappa Qasim Khel, Tehsil Lower, District Orakzai

..... **Accused**


Case FIR No. 39, Dated 24-03-2021 U/S 457,380,506,34 PPC, PS Kalaya.

JUDGMENT:

27.07.2022

Through this judgment I am going to dispose of the
instant case registered vide FIR No. 39, Dated 24-03-2021 U/S
457,380,506, 34 PPC, at police station Kalaya.


1. Brief facts as per contents of FIR are that complainant Makbira
Khan reported to local police on 11.02.2021 regarding the
occurrence alleging that on 05.08.2020 at 12:00 hours, 3 tola
gold and 5 lac cash amount was stolen from his dwelling house
by unknown persons and to save his honor, he did not report
the occurrence to the local police and continued search of the
actual culprits. That after searching and due satisfaction, he


27/07/2022

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

came to know that theft from his house was committed by accused Danish and Jumma Khan. Jirga was held to resolve the issue and accused named above admitted their guilt before the Jirga members but later on, they refused to abide by Jirga decision. Report of complainant was incorporated vide Mad No. 5 dated: 11.02.2021 but SHO concerned was reluctant to register FIR, resultantly, complainant approached the Court of Sessions and per directions of the Learned Additional District and Sessions Judge, Orakzai issued vide order dated: 20.03.2021, case in hand was registered against accused Danish Khan and Jumma Khan. Accused were arrested and later on, released on bail.

2. After completion of investigation, complete challan was submitted by prosecution against the accused along with application for discharge of accused U/S 4 C(ii), 5-B of KP Prosecution Act, 2005 read with section 494 Cr. PC but the learned predecessor, vide order dated: 06.09.2021, turned down the application and case was fixed for formal charge and evidence of prosecution.



27/07/2022

ZAHIR KHAN.
Civil Judge/JM
Kalaya Orakzai

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.

4. Prosecution produced total three (03) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.

PW-01 is the statement of complainant. He stated that due to demise of his father in law, he was not present at his home on the day of occurrence. When he returned back after 3 days, he saw boxes in broken condition and on checking the boxes, 3 tola Gold and 8 lacs cash amount was stolen by unknown persons. He had handed over keys of his dwelling house to the accused facing trial before leaving for the house of his father-in-law as accused were his neighbours. Accused Jumma Khan admitted his guilt and asked for Jirga. Accused Jumma Khan disclosed that the stolen cash amount and gold is lying with accused Danish. He went to the house of accused Danish. Accused Danish was ready to hand over Rs 2 lac and 1 tola gold to him but he (complainant) refused to accept the same. Thereafter, Jirga members namely Mir Kalam Khan, Morcha Khan and Wajid held guilty the accused and accused were asked to return the stolen property i.e., Rs 5 lac and 3 tola gold accordingly. Accused are reluctant to return the stolen cash amount and gold. He reported the matter to the local police. After registration of the case, IO visited the spot and prepared site plan on his pointation. IO took into possession the broken boxes from which cash amount and



27/07/2022

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

gold was stolen. He charged the accused for commission of the offence.

PW-02 is the statement of SI Shal Muhammad Khan who investigated the case. He stated that, during the days of occurrence, he was posted at PS Kalaya in the investigation wing of the Police Station. After registration of the case, copy of FIR along with relevant documents was handed over to him for investigation. On 25.03.2021, he visited the spot and prepared site plan at the instance of complainant. Site plan is Ex. PB. He took into possession two boxes from which accused had stolen cash amount and gold. Recovery memo is Ex. PW-2/1. Accused Danish Khan was arrested on 24.03.2021 while accused Jumma Khan was arrested on 25.03.2021. Cards of arrest are Ex. PW-2/2 and Ex. PW-2/3 respectively. Accused were produced before Judicial Magistrate for obtaining their physical custody. Physical custody of accused was granted. Applications are Ex. PW-2/4 and Ex. PW-2/5. He interrogated the accused and recorded their statements U/S 161 Cr. PC. Further custody of accused was sought vide application Ex. PW-2/6 which was turned down and accused were committed to Judicial Lock-up. He recorded statements of PWs U/S 161 Cr. PC. After completion of investigation, case file was handed over to SHO concerned for submission of challan against accused. He is acquainted with hand



27/07/2022

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

writing and signature of SHO Malak Janan, who has submitted challan against the accused. Similarly, he is acquainted with hand writing and signature of ASI Aftab. FIR was chalked by him (ASI Aftab). He verified signature of ASI Aftab. FIR is Ex. PA. Report of complainant was reduced into writing by MM Ain Ullah. Mad No 05 dated 11.02.2021 is Ex. PZ.

PW-03 is the statement of Constable Raza Ali who is one of the marginal witnesses to the recovery memo. He stated that, he is one of the marginal witnesses to the recovery memo already exhibited as Ex. PW-2/1 vide which the IO took into possession two boxes in broken condition during spot inspection. He verified his signature on the recovery memo. Case property i.e., two boxes are Ex. P1 and Ex. P2. His statement was recorded by the IO U/S 161 Cr. PC.

5. Rest of the PWs were abandoned by prosecution and closed its evidence.
6. Afterwards, statements of accused U/S 342 Cr. PC were recorded wherein they pleaded not their guilt and did not wish to be examined on oath.



27/07/2022

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

7. 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, the alleged occurrence took place on 05.08.2020 and it was reported to the local police on

11.02.2021. The reason for delay in lodging of report i.e., to save honor and search actual culprits is not plausible and not sufficient. Complainant, who deposed as PW-01 did not explain this delay in his statement. There is no eye-witness to the occurrence. Source of information regarding involvement of accused in the commission of the offence has not been disclosed by the complainant. Per statement of complainant, accused admitted their guilt before the Jirga members namely Mir Kalam Khan, Morcha Khan and Wajid but none of the Jirga members deposed as witness in favour of prosecution. Accused have not confessed their guilt before the court. No recovery whatsoever has been effected either from possession of the accused facing trial or on their pointation. There is no criminal history of the accused which fact has also been admitted by IO in his statement who deposed as PW-02.

8. PW-01 (complainant) stated in his statement that before leaving the house, he handed over keys of the house to accused facing trial being his neighbours but this fact has not been mentioned in the FIR. This version of complainant is not supported by record. More so, per contents of FIR, accused committed theft of Rs. 5 lacs and 03 tola gold but when complainant deposed as PW-01, he stated that Rs. 8 lacs were stolen from his dwelling house. There is contradiction in



27/07/2022

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

contents of FIR and statement of complainant recorded as PW-01.

9. Complainant, who deposed as PW-01 stated that due to demise of his father-in-law, he was not present in his dwelling house on the eventful day. There is nothing on record which could show that his entire family members had gone to the house of deceased for offering Fatiha/prayer. None from the family members of the complainant appeared before the IO to support the version of complainant.
10. As per Ex. PW-2/1 (recovery memo), two boxes were taken into possession by IO during spot inspection but it has not been explained/clarified that whether the two boxes in broken condition were produced by complainant to the IO or his family members or otherwise.
11. Prosecution was 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. Prosecution failed to prove its case against the accused facing trial. Pertinent to mention that prosecution had requested through a written application for discharge of the case U/S 4 C(ii), 5-B of KP Prosecution Act, 2005 read with Section 494 Cr. PC. Prosecution was of the opinion that evidence against the accused is deficient but when this application of prosecution was turned down by learned



27/07/2022

ZAHIR KHAN
Civil Judge JM
Kalaya Orakzai

42

predecessor of the court vide order dated 06.09.2021, this order was not challenged by prosecution before any forum. Complainant was given full opportunity to prove his case against the accused facing trial but he failed to discharge this duty.

12. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Danish Khan and Juma Khan are hereby acquitted from the charges leveled against them. They are on bail. Sureties of accused discharged from their liabilities. Case property be dealt with in accordance with law.

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

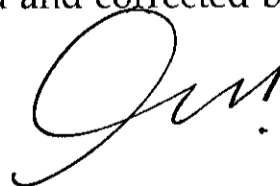
Announced
27.07.2022



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai

CERTIFICATE

Certified that my judgment of today consists of eight (08) pages, each page has been read, signed and corrected by me where necessary.



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai