

**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL JUDGE/JM,
DISTRICT ORAKZAI**

Case No.....28/02 OF 2023.

Date of Institution.....04.12.2023.

Date of Decision.....24.04.2024.

State through:

Naseem Khan, SHO, PS Ghiljo

.....**Complainant**

VERSES

1. *Waqas Ahmad S/O Haji Batak Khan,*
2. *Fida Muhammad S/O Gul Nawaz,*
3. *Sayed Umer S/O Razman Khan,*
4. *Muhammad Kausar S/O Gul Muhammad,*
5. *Shah Nawaz Khan S/O Batak Khan,*
6. *Shah Waz Khan S/O Mani Khan,*
7. *Fazal Rahim S/O Nasrullah Khan,*
8. *Sial Muhammad S/O Noor Muhammad,*
9. *Muhammad Ijaz S/O Muhammad Saleem,*
10. *Junaid Khan S/O Kamal Khan,*
11. *Adil Muhammad S/O Noor Muhammad,*
12. *Khalil Ur Rehman S/O Mani Khan all residents of Qaum Biland
Khel, Tehsil Upper, District Orakzai.*

.....**Accused facing trial**

13. *Sohail Khan S/O Eida Jan R/O Qaum Biland Khel, Tehsil Upper,
District Orakzai.*

.....**Absconding accused**

Case FIR No. 09, Dated 23.05.2023, U/S 506, 353, 186, 189, 147, 149, 216 PPC, PS
Ghiljo

JUDGEMENT

24.04.2024

Through this judgement, I am going to dispose of the instant case registered against accused named above vide case FIR No. 09, Dated 23.05.2023, U/S 506, 353, 186, 189, 147, 149, 216 PPC, PS Ghiljo.

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Senior Civil Judge/JM
Orakzai at Biland Khel

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1. Brief facts of the case as alleged in the FIR are that complainant/SHO Naseem Khan sent a Murasila to PS Ghiljo Orakzai for registration of FIR against the accused named above wherein he alleged that on 23.05.2023 at 04:00 AM, he along with other police officials under the command of DSP, Upper Orakzai raided the house of the accused Arman Ullah who was required to the Punjab Police in case FIR No. 609, dated 21.09.2022, U/S 302/34 PPC, PS Fateh Jhang. In the meanwhile, the people of the locality started noise and attacked the police party with sticks and stones and with the help of this, the Proclaimed Offender Arman Ullah flee away from the said house. Accused facing trial along with absconding accused threatened the police party. Murasila was drafted at the spot and the Murasila report along with relevant documents were sent to the Muharrir of the PS for registration of FIR. Complainant/SHO arrested accused namely Junaid Khan, Khalil Ur Rehman, Adil Muhammad, Sohail Khan, Shah Waz Khan, Fazal Raheem, Siyal Muhammad, Muhammad Ijaz and Shah Nawaz Khan and issued their cards of arrest. Site plan was prepared at the pointation of complainant/SHO.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.


3. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Formal charge was framed. Accused facing trial pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.

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4. Prosecution produced as many as five (05) witnesses to prove its case against the accused facing trial while rest of the PWs were given up by prosecution and closed its evidence.

5. **SHO/Complainant, PS Ghiljo, Naseem Khan deposed as PW-01.**

He stated that 23.05.2023 at 04:00 AM, he along with other police officials under the command of DSP, Upper Orakzai raided the house of the accused Arman Ullah who was required to the Punjab Police in case FIR No. 609, dated 21.09.2022, U/S 302/34 PPC, PS Fateh Jhang (Punjab). In the meanwhile, the people of the locality started noise and attacked the police party with sticks and stones where after, the PO Arman Ullah flee away from the said house. The people of locality (the accused facing trial) along with absconding accused threatened the police party. Murasila Ex. PW-1/1 was drafted at the spot and sent the same along with relevant documents to the Muharrir of the PS for registration of FIR. Complainant/SHO arrested accused namely Junaid Khan, Khalil Ur Rehman, Adil Muhammad, Sohail Khan, Shah Waz Khan, Fazal Raheem, Siyal Muhammad, Muhammad Ijaz and Shah Nawaz Khan and issued their cards of arrest which are Ex. PW-1/2 & Ex. PW-1/3 respectively. After completion of investigation, he submitted challan Ex. PW-1/4 against the accused. Site plan was prepared on his pointation. All the above-mentioned documents bear his signatures. He was cross examined by the counsel for accused at length.

6. **PW-02, is the statement of Constable Said Jalil:** He is eye witness of the occurrence. He repeated the same story as alleged by the


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complainant in his statement as PW-01. He was cross examined by the counsel for the accused.

7. *PW-03, is the statement of Constables, Asad Ullah.* He is also eye witness of the occurrence. He repeated the same story as alleged by PW-01 and PW-02 in their statements. His statement was recorded U/S 161 Cr.P.C by the I.O.

8. *PW-04, is the statement of Moharrir Abdul Manan.* He incorporated the contents of Murasila into FIR which is Ex. PW-4/1 and correctly bears his signature. His statement was recorded by IO U/S 161 Cr. PC.

9. *PW-05, is the statement of ASI Shah Jehan.* He is IO of the case. He stated that copy of FIR along with relevant documents were handed over to him by the Moharrir on 23.05.2023. He proceeded to the spot and prepared the site plan at the pointation of complainant Naseem Khan SHO which is Ex. PW-5/1. After preparation of the site plan, he issued parwana for including Section 216 PPC on 25.05.2023. He submitted an application for obtaining warrants U/S 204 Cr. PC which was issued by the court on 01.06.2023. The application is duly signed by him and is Ex. PW-5/2. He submitted another application for obtaining proclamation notices U/S 87 Cr. PC which were issued by the court on 01.06.2023. The application which is duly signed by him is Ex. PW-5/3. He produced the accused Shahnawaz, Shahwaz Khan, Sohail Khan, Fazal Raheem, Siyal Muhammad, Muhammad Ijaz, Junaid Khan, Khalil Ur Rehman and Adil Muhammad before the Judicial Magistrate on 06.06.2023 vide

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his application Ex. PW-5/4. The application was turned down and the accused were sent to the Judicial Lock-up. He arrested accused Fida Muhammad, Syed Muhammad and Waqas Ahmad and issued their card of arrest Ex. PW-5/5 of accused on 23.08.2023. He produced Fida Muhammad, Syed Muhammad and Waqas Ahmad before the Judicial Magistrate on 24.08.2023 vide his application Ex. PW-5/6. They were also sent to the Judicial Lock-up. He also produced the accused Muhammad Kausar before the Judicial Magistrate for obtaining his 14 days Judicial remand vide his application Ex. PW-5/7. Card of arrest of the said accused was also prepared by him on 24.08.2023 and is Ex. PW-5/8. After completion of investigation he handed over the case file to the SHO for submission of complete challan. He had recorded the statements of all the PWs U/S 161 Cr. PC.

- 10.** PWs Constable Mehboob Ur Rehman, Abdur Rauf, Wazir Badshah and remaining PWs were abandoned by prosecution and closed its evidence.

Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he pleaded not his guilt and did not wish to be examined on oath. He opted not to produce defence evidence.

- 12.** Arguments of the learned Sr. PP for the state and counsel for accused facing trial heard and available record perused.

- 13.** It is the case of prosecution that complainant Naseem Khan SHO along with police contingent on 28.05.2023 at 04:00 hours raided the house of one Proclaimed Offender namely Arman Ullah S/O Gul

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Badshah who was required in case FIR No. 609, dated 21.09.2022, U/S 302/34 PPC, PS Fateh Jhang (Punjab) to Punjab police. It is alleged that when they reached near the house of PO Arman Ullah, one Junaid Khan S/O Kamal Khan, Shah Nawaz Khan S/O Haji Batak Khan, Fazal Rahim S/O Noor Salah Khan, Sayed Umer S/O Barak Khan, Khalil Ur Rehman S/O Mani Khan, Ijaz Muhammad S/O Saleem, Siyal Khan S/O Noor Muhammad, Adil S/O Noor Muhammad, Sohail Khan S/O Eida Khan, Kausar Khan S/O Eida Khan, Shah Waz Khan S/O Mani Khan, Fida Khan S/O Gul Nawaz and Waqas Ahmed S/O Haji Batak Khan came there duly armed with sticks and started noise. They attacked them with sticks and stones and due to the said reason, the PO Arman Ullah decamped. The above named accused threatened the police.

14. In order to prove their stance, the complainant appeared as PW-01, who failed to produce the alleged FIR pertaining to police station Fateh Jhang. Furthermore, the said FIR is also not available on the case file. He also admitted in his cross examination that some correspondence has taken between PS Fateh Jhang and PS Ghiljo, but the same is not available before the court in the case file. He further admitted that the local police of PS Fateh Jhang were not accompanied with them at the time of raiding the house of the PO Arman Ullah. There is no evidence regarding presence of the said PO Arman Ullah in the house at the time of raid. He also admitted that no lady constable was accompanied with them at the time of raid. Complainant stated during cross examination that distance between

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the place of occurrence and PS Ghiljo might be about 85kms which is situated in hilly area. As per FIR, the occurrence has taken place at 04:00AM and the report has been made at 04:30AM while the FIR has been lodged at 09:10AM. Keeping in view the distance and nature of area between the place of occurrence and PS, it is not possible for the police at any stretch of imagination to cover such a hard distance within 30 minutes. Furthermore, it is not mentioned in the FIR that after reporting the matter, why delay of 05 hours was consumed in chalking out the FIR. The FIR shows that about 13 persons have been charged by the police, but no specific role has been attributed to anyone of them. No injury has been caused to any person. No eye witness regarding presence of the PO Arman Ullah at the place of occurrence in the relevant time has been cited in the challan. Neither any stick or stone has been recovered from the possession of the accused despite of the fact that that they were arrested at the spot by the police. The site plan is silent about the presence of the houses of accused facing trial in the vicinity of the house of PO Arman Ullah. PW-02, Said Jalil has also mentioned in his cross examination that PO Arman Ullah and Waqas Ahmed are known to him and they also attacked the police party, but astonishingly despite of alleged presence of PO Arman Ullah at the spot, the police did not arrest him rather they arrested other neighbours, furthermore, this there is nothing in the FIR and statement of the complainant recorded as PW-01 regarding attack of PO Arman Ullah at the police party. PW-04 who is Moharrir of the

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PS categorically stated in his cross examination that why the police raided the house of the accused. He also admitted that whenever any correspondence or FIR has been received from any other PS, the same is kept in custody of the Moharrir meaning thereby that how it come possible that Moharrir was unaware of the reason behind the raid at the house of PO Arman Ullah. The whole story alleged by the prosecution seems to be concocted and full of doubts. PW-05 also added that the house of the PO is situated at 03 minutes walking distance from the house of the accused facing trial Waqas Ahmed, meaning thereby that the police party has not reached near the house of the proclaimed offender Arman Ullah. IO Shah Jehan in his statement as PW-05 stated that he reached the place of occurrence at 09:20AM after receiving the copies of FIR and other relevant documents and the perusal of FIR Ex. PW-4/1 shows that the same has been chalked out at 09:10 AM then how the IO covered the distance more than 80kms in 10 minutes.

15. The prosecution badly failed to prove its case beyond reasonable shadow of doubts against the accused facing trial. I, therefore, acquit the accused facing trial from the charges levelled against them. They are on bail. Their sureties are discharged from their liability.

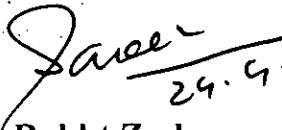
16. Prima facie case exists against absconding co-accused Sohail Khan, who has gone abroad and intentionally avoiding his lawful arrest, hence, accused is hereby declared as proclaimed offender. His name be entered in register/list of proclaimed offenders. Perpetual warrant

of arrest be issued against him. Case property, if any be kept intact till arrest and trial of the accused.

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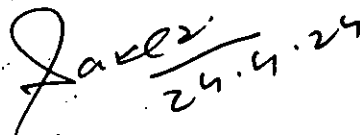
17. Case file be consigned to Record room after its completion and necessary compilation.

Announced
24.04.2024


24.4.24.
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Orakzai

CERTIFICATE

It is certified that this judgment consists of 09 pages. Each page has been dictated, read, corrected and signed by me.


24.4.24.
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