

83

**IN THE COURT OF BAKHT ZADA, SCJ/JM,**  
**ORAKZAI AT BABER MELA**

CASE NO. 06/2 OF 2023

DATE OF INSTITUTION 11.01.2023

DATE OF DECISION: 23.05.2024

STATE THROUGH: Ibrahim Khan, SHO, PS Ghiljo,  
District Upper Orakzai.

------(Complainant)

VS

Noor Janan s/o Nazeem Shah, R/O Qoum Rabia Khel,  
Bandhyali Garhi, District Orakzai

------(Accused Facing Trial)

**JUDGEMENT**

23.05.2024

Accused Noor Janan s/o Nazeem Shah is facing trial in  
case FIR No. 23, Dated: 10.11.2022, u/s  
328/328(A)/337F(i)/34/37 KP Child Protection Act, 2010 of  
PS Ghiljo, Tehsil Upper, District Orakzai.

Brief facts of the case as alleged in the FIR are that  
complainant Ibrahim Khan SHO reported the matter vide  
Naqalmad No. 12, DD 04.11.2022 for registration of FIR  
against the accused facing trial Noor Janan, R/O Qoum Rabia  
Khel, Bandhyali Garhi, District Orakzai, wherein he has  
alleged that on 04.11.2022, he along with other police officials  
were on routine gasht, when he received information that father

*Bakht Zada*  
Senior Civil Judge/JM  
Orakzai at Baber Mela  
23.5.24

159

of minor Mst. Laiba is not providing food her and use to beat her. Upon the said information, he along with other police officials attracted to the spot and examined minor/victim Mst. Laiba, who disclosed that her father namely Noor Janan is not providing her with food stuffs etc most of the times and when she asked for food from neighbours, her father used to beat/torture her. She also disclosed that her father forced her to sleep in cattle shed in a broken cot without quilt etc. She further alleged that due beating of her father, she does not want to live in the house of her father and requested for legal action against him. The body of the minor was examined and signs of violence were found. Injury Sheet of the minor was prepared and the minor was sent to THQ Ghiljo for medical examination. The medical examination was received, according to which the injuries at the person of minor are simple in nature, hence, the above-mentioned FIR was registered:

After completion of the investigation, complete challan was submitted by the SHO of PS Ghiljo, Orakzai and the case was put in court on 11.01.2023.

The accused was summoned who appeared before the court on 13.02.2023. Provision of section 241-A Cr.P.C was complied with on the same date. Formal charge against the

BAKHT ZADA  
 Senior Civil Judge/JM  
 Orakzai District Mela  
 23.5.24

85

accused was framed on 22.02.2023 to which he pleaded not guilty and claimed trial, where after the prosecution was asked to produce evidence.

The prosecution produced and recorded statements as many as 07 PWs. The gist of statements of prosecution witnesses are as follows;

**PW-01: Tajmin Khan, ASHO of PS Ghiljo** appeared as PW-01. He conducted inquiry and produced minor Laiba before Special Court, Child Protection vide application Ex.PW-1/1 for handing over the custody of minor Laiba to her relative or any government institution established for the welfare of minor. Later on the custody of minor was handed over to her mother at her request. He sought legal opinion of DPP Orakzai vide application Ex.PW-1/2. The opinion of DPP Orakzai is Ex.PW-1/3. He stated that both Ex.PW-1/1 and Ex.PW-1/2 are in his hand writing.

**PW-02: Haq Nawaz, AMHC of PS Ghiljo** appeared as PW-02 and he has incorporated DD No. 06 into Naqalmd No. 12, dated: 04.11.2022 which is Ex.PW-2/1. He admitted during cross-examination that Ex.PW-2/1 do not disclose the identity of the person from whom the information was received.

**PW-03** is the statement of Muhammad Ibrahim, complainant, ASI, PP Sama Mamozai, then posted as SHO PS

BAKHT ZADA  
Senior Judge  
Orakzai District Court  
23.5.24

06

Ghiljo. He stated that on 04.11.2022, he received information that accused Noor Janan has denied to provide sustenance/food etc to her minor daughter Mst. Laiba and also used to beat her. He attracted to the spot along with police and examined minor Mst. Laiba who disclosed that her father is not providing her sustenance/food and when she asked neighbour for some food, on that her father used to beat her. He also forced her to sleep in the cattle shed in a broken cot without quilt. That she is not willing to live with her father. She charged her father for the above-mentioned offences. Injury sheet Ex.PW-3/1 of the minor was prepared and she was sent to THQ Ghiljo for medical examination under the escort of constable Samin Ullah. After receiving medical report, FIR Ex.PA was lodged. Complete challan was submitted after completion of investigation. Challan form is Ex.PW-3/2. The site plan was prepared by the IO in his presence. He was cross examined by the counsel for the accused. He admitted in his cross-examination that the accused facing trial has dispute with his elder son namely Inayat-Ur-Rehman.

**PW-04: Constable Samin Ullah, PS Ghiljo.** He stated that IO Abdul Malik prepared the injury sheet of Mst. Laiba which was handed over to him and he handed over the same to the doctor at THQ Hospital Ghiljo.

*Jalil*  
23/11/2024  
Samin Ullah

57

PW-05 is the statement of Abdul Malik, SI, PS Ghiljo.

He is IO of the case. He stated that he proceeded to the spot and prepared site plan at the pointation of minor Mst. Laiba. The site plan is Ex.PB. He vide his application Ex.PW-5/1 on 11.11.2022 applied for issuance of Zamima "Bay" which was accepted and Zamima "Bay" was issued on 12.11.2022. Accused Noor Janan was arrested and his card of arrest Ex.PW-5/2 was issued. He vide his application Ex.PW-5/3 produced the accused before Judicial Magistrate for physical custody of 02 days which was granted vide his application Ex.PW-5/4 and later on after expiry of the said period, application for further custody of the accused was turned down by the court and the accused was remanded to the judicial lock-up. He handed over the case file to SHO after completion of investigation. He stated during cross-examination that he has not recorded statement of any independent witness regarding the occurrence. He further stated that he has not recorded statement of any neighbour of the minor regarding the providing of food to her. Suggestion is given by the counsel for the accused that it is incorrect to suggest that elder son of the accused facing trial being chairman of village council has planted this case against the accused facing trial.

BAKHT ZADA  
Senior Civil Judge/JM  
Orakzai  
23.5.24

58

**PW-06: Dr. Ijaz Ahmad, THQ Hospital Ghiljo** appeared as PW-06 who stated that Dr. Naqib Ullah was posted at THQ Ghiljo in the relevant day and he has examined minor Mst. Laiba on 04.11.2022 at 02:41 PM. He further stated that Dr. Naqib Ullah has gone abroad and he being acquainted with his signatures is deputed by the Medical Superintendent of THQ Ghiljo. He seen the report Ex:PW-6/1 which correctly bears the signatures of Dr. Naqib Ullah. The minor was referred by him to PEADS Department where she was examined by Dr. Bakht Muhammad, PEADS consultant. His prescription is available on the case file. He stated in cross-examination that only scratch marks were notices at the person of the minor which were old in nature and not freshly inflicted.

**PW-07** is the statement of minor Mst. Laiba Bibi who being minor failed to give proper answers to the questions put to her by the court and counsel for the accused as well.

After closing of the prosecution evidence, statement of the accused was recorded u/s 342 Cr.P.C. He neither wished to produce any evidence in defence nor wished to be examine on oath.

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

*Signature*  
 BAKHT MUHAMMAD  
 Sr. PP  
 Criminal Justice Deptt  
 District Court  
 Ghiljo  
 23.5.2024

39

It is the case of the prosecution that on 04.11.2022 while on routine gasht, complainant Muhammad Ibrahim SHO received information that one Noor Janan is not providing food and sustenance to his minor daughter namely Laiba and also use to beat her. The complainant along with other police staff attracted to the spot and examined minor Laiba who disclosed that her father is not providing her food and when she asked neighbours for food, her father use to beat her and force her to sleep in the cattle shed/room in a cot without bed. She also disclosed that she is not willing to live with her father. She charged her father for the above-mentioned offence. On examination of her body, some violence marks were observed. Her injury sheet was prepared and was medically examined.

In order to prove the factum of beating and not providing food to the minor by her father/accused facing trial namely Noor Janan, prosecution recorded the statement of complainant Ibrahim Khan SHO as PW-03 who categorically stated during his cross-examination that he has not disclosed the name of the person who has informed him about the occurrence. He also admitted that there is a dispute between the accused facing trial and his elder son namely Inayat Ur Rehman. It is necessary to mention here that Inayat Ur Rehman is brother of minor Laiba and is residing in the vicinity of the house of accused facing

BAKHIT ZADA  
Senior Civil Judge/JM  
Orakzai at Baber Mela  
23.5.24

(60)

trial Noor Janan. As admittedly, Noor Janan and his son Inayat Ur Rehman are having strained relations with each other and it was suggested to PW-03 during cross-examination that "it is incorrect to suggest that the video of the minor/victim Laiba was uploaded on Facebook by his brother namely Inayat Ur Rehman". Non disclosing the name of informer by the complainant and strained relations between the accused Noor Janan and his son Inayat Ur Rehman leads to the conclusion that in fact the complaint was made by Inayat Ur Rehman, son of the accused facing trial, because it is strange that being living in the vicinity of the house of his father, he was unaware of the treatment of accused with the minor Laiba who is sister of Inayat Ur Rehman. The IO has not probe into the matter to the effect that who has uploaded the video of the minor on Facebook. In this connection, no complaint has been made to the Cyber Crime Wing of FIA to conduct inquiry. PW-05, IO has neither recorded statement of any neighbour of the accused facing trial to bring the real fact about the accused facing trial and minor Laiba, nor he has recorded statement of any independent witness. The IO even did not bother to record the statement of Inayat Ur Rehman who is brother of the minor and is residing in the vicinity of the house of the accused facing trial. The statement of PW-06, Dr. Ijaz Ahmad is also

*Ijaz*  
23.5.22

**BAKHT ZADA**  
Senior Civil Judge/JM  
Orakzai at Baber, Mela



61

self-explanatory who categorically stated that only scratch marks were noticed on the body of the patient which were old and not freshly inflicted. The medicolegal report is silent about any fresh injury at the person of the minor despite of the fact that she has been examined by the medicolegal officer on the same day on which the matter was reported to the police i.e 04.11.2022. There is no statement of any eye-witness or neighbour and even brother of the minor on the case file who could state that the minor was beaten by the accused facing trial. The only evidence available on the case file worthy to prove the allegation against the accused was the statement of minor Laiba which is recorded as PW-07 but the same also did not prove fruitful because her statement to the extent of allegation seems to be tuted by someone because she failed to give rational answer to any other ordinary question put to her by the court and the counsel for the accused facing trial. In such like situation, when there is no eye-witness of the occurrence and brother of the minor being residing in the vicinity of the house of the accused has not bothered to record his statement regarding the occurrence and there is admitted strained relations between the accused facing trial and his son Inayat Ur Rehman, who is also chairman council, it seems that the complaint against the accused facing trial is not based on

*Javed*  
*5.24*

**BAKHT ZADA**  
 Senior Civil Judge/JM  
 Orakzai Labor Mela

62

facts. The medicolegal report also does not support the stance of the prosecution; therefore, the prosecution badly failed to bring home charges against the accused facing trial through confidence inspiring evidence, I therefore acquit the accused facing trial from the charges levelled against him. He is on bail. His sureties are discharged from the liability of his bail bonds. Case property if any, be kept intact till the expiry of period provided for the revision/appeal.

Case file be consigned to the record room after its completion and compilation.

**Announced**  
23.05.2024

*Bakht Zada*  
23-5-24  
(Bakht Zada)  
SCJ/JM,  
Orakzai (at Baber Mela)

**CERTIFICATE**

Certified that this judgment consists of ten (10) pages. Each page has been read, corrected where-ever necessary and signed by me.

**Dated: 23.05.2024**

*Bakht Zada*  
23-5-24  
(Bakht Zada)  
SCJ/JM,  
Orakzai (at Baber Mela)