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

Case No.....27/02 OF 2023.
Date of Institution.....04.12.2023.
Date of Decision.....30.05.2024.

State through:

*Zubair Ahmad S/O Ayub Khan, R/O Ali Khel, Village Ghonday,
Upper Orakzai*

.....**Complainant**

VERSES

1. *Mehboob Shah S/O Saidan Shah,*
2. *Syed Zaman S/O Shandi Gul,*
3. *Hanif Ur Rehman S/O Nawab Khan,*
4. *Shehzada S/O Sultan Asghar,*
5. *Ghani Badshah S/O Saidan Shah,*
6. *Abdul Wali Khan S/O Jannat Khan,*
7. *Barkat Khan S/O Razmeen,*
8. *Usman Gul S/O Khial Zareen,*
9. *Wreshmin Gul S/O Noor Badshah,*
10. *Wazir Muhammad S/O Sher Muhammad all residents of Qaum Ali
Khel; Tehsil Upper, District Orakzai.*

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

Case FIR No. 19, Dated 11.09.2023, U/S 379, 427, 430, 147, 149 PPC, PS Ghiljo

JUDGEMENT

30.05.2024

Through this judgement, I am going to dispose of the instant case registered against accused named above vide case FIR No. 19, Dated 11.09.2023, U/S 379, 427, 430, 147, 149 PPC, PS Ghiljo.

1. Brief facts of the case as alleged in the FIR are that complainant namely Zubair Ahmad S/O Ayub Khan reported the matter vide

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naqalmad No. 05 for registration of FIR. That on 29.08.2023 at 12:00 hours complainant along with Sher Badshah S/O Wazir Badshah & Habib Khan S/O Baland Khan near village Ghonday situated at Upper Orakzai were busy in grazing cattles in their nearby fields. Meanwhile, they saw one 1. Mehboob Shah S/O Saidan Shah, 2. Syed Zaman S/O Shandi Gul, 3. Hanif Ur Rehman S/O Nawab Khan, 4. Shehzada S/O Sultan Asghar, 5. Ghani Badshah S/O Saidan Shah, 6. Abdul Wali Khan S/O Jannat Khan, 7. Barkat Khan S/O Razmeen, 8. Usman Gul S/O Khial Zareen, 9. Wreshmin Gul S/O Noor Badshah, 10. Wazir Muhammad S/O Sher Muhammad on their way towards spring/chashma Sara Chan and after a while they again appeared on the side of the mountain having pieces of plastic pipes. Complainant doubted that the accused facing trial are taking away their water supply pipes by committing theft. Complainant and eye witnesses called them to stop, but they along with the pieces of said pipes flee away towards the mountains. They proceeded to see their water supply pipes at Chashma Sara Chan and observed that the water tank was also freshly demolished and the water supply pipes were not present. The said pipes were source of water supply from Chashma to the village of complainant. He charged the accused for theft of water supply pipes and demolishing cement water tank. Later on, inquiry U/S 156 (ii) Cr. PC was conducted and after final report and legal opinion from the office of DPP, Orakzai, the local police registered the above mentioned FIR against the accused facing trial.


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Accused were arrested and their card of arrest was issued. Site plan was prepared at the pointation of complainant.

2. After completion of investigation, interim challan followed by complete challan was submitted by prosecution against the accused facing trial.
3. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Formal charge against the accused facing trial was framed on _____ to which they pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced as many as six (06) 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. *Naseem Khan, SI CP Samana, the then SHO PS Ghiljo deposed as PW-01.* He stated pursuance to naqalmaid No. 5, DD: 29.08.2023 registered by complainant Zubair Ahmad along with Sher Badshah S/O Amin Badshah, Habib Khan S/O Biland Khan. Inquiry U/S 156 (2) took place, wherein he has written final report on 06.09.2023 which is Ex. PW-1/1. According to the report the cognizable offence has been committed. In this respect, he has submitted application for getting legal opinion of the District Public Prosecutor vide his application dated 06.09.2023 and is Ex. PW-1/2. At the foot of the application, legal opinion of the learned DPP, Orakzai has been written. After getting the legal opinion, he incorporated naqalmaid No. 5, DD: 29.08.2023 into FIR No. 19, dated 11.09.2023, U/S 379,

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427, 430, 147, 149 PPC of PS Ghiljo which is correct and is Ex. PW-1/3. After completion of investigation, he has submitted interim challan Ex. PW-1/5 on 24.09.2023 and later on, he has also prepared complete challan on 05.10.2023 and is Ex. PW-1/4. His statement was recorded by IO U/S 161 Cr. PC.

6. PW-02, is the statement of Abdul Manan MHC: He stated that the complainant along with other co-relatives reported the matter before him in the PS and he incorporated their report in the form of naqalmaid No. 05. His statement was recorded by the I.O U/S 161 Cr.P.C.

7. PW-03, is the statement of Tajmin, ASHO. He is IO of the case. He stated that naqalmaid No. 05 was handed over to him for conducting inquiry in the instant case. On 31.08.2023, he issued notices to the concerned persons for appearance before me for investigation. Notice U/S 160 Cr. PC is placed on file which is Ex. PW-3/1. The complainant party was summoned and visited the spot for collection of evidence. In this respect, he prepared site plan on the pointation of complainant which is Ex. PW-3/2. I also took the photographs from the spot of occurrence Ex. PW-3/3. He recorded the statements of complainant and other witnesses U/S 161 Cr. PC.

8. PW-04, is the statement of Abdul Malik. He stated that after cancellation of BBA of accused, he issued their formal card of arrest Ex. PW-4/1 and produced the accused before Judicial Magistrate for obtaining their physical custody vide his application Ex. PW-4/2. His application was turned down and accused facing trial were.

committed to Judicial Lock-up. He recorded the statements of accused U/S 161 Cr. PC. After completion of investigation, he handed over the case file to SHO for submission of challan.

9. *PW-05*, is the statement of complainant Zubair Ahmad. He stated that hours along with Sher Badshah S/O Wazir Badshah & Habib Khan S/O Baland Khan reported the matter at PS Ghiljo that on the eventful day at 08:30 hours he along with the above-mentioned persons were busy in grazing cattles in our nearby fields. Meanwhile, they saw one Mahboob Khan S/O Saidan Shah, Abdul Wali S/O Janat Gul, Barkat Khan S/O Zarmateen Khan, Wrekhmeen S/O Noor Badshah, Hanif S/O Sawab Khan, Sher Zaman S/O Shandi Gul, Wazir Muhammad S/O Sher Muhammad, Shehzad S/O Asghar Khan, Usman S/O Gul Khayal and Abdul Ghani S/O Saidan Shah residents of Ali Khel, Gonjseri were on their way towards spring/chashma Sara Chan and after a while they again appeared on the side of the mountain having pieces of plastic pipes. They doubted that accused facing trial are taking away their water supply pipes by committing theft. They called accused facing trial to stop, but they along with the pieces of said pipes flee away towards the mountains. They proceeded to see their water supply pipes near Chashma Sara Chan and observed that the water tank was freshly demolished and the water supply pipes were not present. On measuring it is found that 2500 feet pipe has been taken away. The said pipe was installed by them along with their co-villagers for water supply to their houses jointly. He charge the above mentioned accused for demolishing the cement water tank

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and stealing the water supply pipes. The occurrence is witnessed by Sher Badshah and Habib Khan. Later on, during conducting inquiry U/S 156 (ii) Cr. PC, site plan already Ex. PW-3/2 was prepared by the inquiry officer at the pointation of complainant on 30.08.2023. His statement was recorded by the IO U/S 161 Cr. PC.

- 10.** *PW-06, is the statement of Sher Badshah eye witness.* He repeated the same story as deposed by PW-05/complainant in his statement.
- 11.** All the PWs were cross examined by the counsel for the accused facing trial.
- 12.** Private PW namely Habib Khan was abandoned by prosecution and closed its evidence.
- 13.** 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. They opted not to produce defense evidence.
- 14.** Arguments of the learned Sr. PP for the state and counsel for accused facing trial heard and available record perused.
- 15.** It is the case of prosecution that complainant along with Sher Badshah and Habib Khan were grazing their cattle near their village. In meanwhile they noticed that the above mentioned accused facing trial were heading towards the Chashma Sara chan and after a while they again appeared on the side of the mountain having plastic pipes in their hands. The complainant along with co-relatives doubted that the pipes belongs to their water supply source. They proceeded towards the chashma and found that the cement water tank was

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demolished and the plastic water supply pipes measuring 2500 feet was missing.

- 16.** During evidence of the prosecution PW-01 in his statement in chief stated that he has conducted the inquiry while in cross examination he stated that he has not conducted inquiry U/S 156 (ii) Cr. PC rather he has only submitted final report. He also admitted that no one has been cited in the FIR as eye-witness of the occurrence. On the other hand, PW-05 complainant Zubair Ahmad S/O Ayub Khan stated in his cross examination that he has seen the accused facing trial with his own eyes while they were busy in stealing the water supply pipe and demolishing the cement water tank and at the same time he diverted himself from his stance by stating that he has not seen the accused while demolishing the cement water tank. On the other hand, the complainant in his cross examination stated that they have not seen the accused facing trial after demolishing the water tank and while taking away the plastic pipes. During his examination in chief he stated that they have seen the accused facing trial having pieces of pipes in their hands. PW-06, Sher Badshah S/O Wazir Badshah who was accompanied with complainant Zubair Ahmad in his cross examination stated that he has not seen the accused facing trial while demolishing the cement water tank. He also stated that he does not know that how many police officials visited the place of occurrence. Furthermore, no recovery of any pipe has been effected from possession of accused facing trial.

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- 17.** They failed to point out that what kind of tools were in possession of accused facing trial at the time of occurrence. Neither the alleged stolen pipe has been recovered from the possession of any of the accused, nor the same has been exhibited during the course of trial. No one have seen the accused facing trial while demolishing the cement water tank and stealing the water supply pipes. It is not explained by the complainant in his report that on the day of occurrence before the alleged visit of accused facing trial towards the chashma Sara Chan, the water supply pipe was present at its place. All the facts and circumstances are creating doubts about the case of prosecution.
- 18.** There is no criminal history of accused facing trial. No independent witness of occurrence has produced by the prosecution. Accused have not confessed their guilt before the court. There are material contradictions in the statement of PWs and record before the court. Thus, prosecution badly failed to prove its case beyond reasonable shadow of doubts against the accused facing trial. I, therefore, acquit the accused facing trial named above from the charges levelled against them. They are on bail. Their sureties are discharged from their liability.
- 19.** Case file be consigned to Record room after its completion and necessary compilation.

Announced
30.05.2024

Javed
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CERTIFICATE

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

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