

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

Case No.....08/02 OF 2023.

Date of Institution.....14.04.2023.

Date of Transfer In21.05.2024.

Date of Decision.....25.07.2024.

State through:*Wajid Ullah s/o Khan Saeed, R/O Chappar Mishti, Tappa Haider
Khel, District Orakzai*.....*Complainant***VERSES**

1. *Bakhtiar Akbar s/o Khan Baz*
 2. *Zahid Ullah s/o Khyal Akbar*
- Both R/O of Qoum Mishti, Tappa Haider Khel, Tehsil Central,
District Orakzai*

.....*Accused facing trial***JUDGEMENT****25.07.2024**

Through this judgement, I am going to dispose of the instant case registered against accused named above vide case FIR No. 22, Dated 16.11.2022, U/S 436/506/34 PPC, PS: Kurez Boya, District Orakzai.

- I. Brief facts of the case as alleged in the report vide Madd No. 04 are that complainant Wajid Ullah s/o Khan Saeed R/O Chappar Mishti, Haider Khel along with Noor Ullah s/o Raheem Khan on 16.10.2022 at 17:00 hrs appeared in the police station and reported that their house situated at Zorh Chappar which is lying vacant due to enmity and the Western side wall of which has fallen due to rain water and now they are residing at KDA, Kohat. He alleged that he along with

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his cousins Noor Ullah, Mujahid sons of Raheem Khan and Nasir s/o Abdul Wahid went to repair the wall of the above-mentioned house and were busy in constructing the wall, meanwhile at 14:00 hrs, Zahid Ullah, Altaf Khan sons of Khyal Akbar, Bakhtiar s/o Khan Baz and Asad Ullah s/o Afzal Khan came there due armed with weapons. Bakhtiar s/o Khan Baz pointed his gun at them and threatened them to leave that place and to stop the construction. On his threats, they left the place and went towards their house situated at KDA, Kohat. When they reached near Chappar Mishti at 14:30 hrs, they were informed by a friend telephonically that their house has been set on fire by the above-named accused. On this, the complainant along with Noor Ullah went towards the house and found that half of the roof of the veranda has been burnt along with half roof of the room. Motive for the occurrence is previous enmity. He charged the accused Bakhtiar Akbar, Zahid Ullah, Altaf and Asad Ullah for criminal intimidation and pointing gun at them and for damage due to setting the house on fire. Inquiry u/s 157(i) Cr.P.C was initiated and on receiving the inquiry report, the instant FIR No. 22, dated: 16.11.2022, u/s 436/506/34 PPC was registered at PS Kurez Boya, Lower Orakzai.

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

3. Accused were summoned and formalities under Section 241-A Cr. PC were complied with on 18.04.2023. Formal charge against the

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accused was framed on 09.05.2023. Later on, supplementary challan against the accused Zahid Ullah was also submitted and denovo formal charge was framed on 05.10.2023 to which they pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.

4. Prosecution produced as many as eight (08) witnesses to prove its case against the accused facing trial. The gist of their evidence is as follows;

5. **PW-01** is the statement of Muhammad Yonus SHO, PS Kurez Boya. He was posted as SHO PS Kurez Boya in the relevant time. He arrested the accused Zahid Ullah during Naqabandi at Teko Check-post, Chappar Mishti. He issued card of arrest of the accused which is Ex.PW-1/1 and correctly bears his signature. He also submitted supplementary challan against the accused Zahid Ullah which is Ex.PW-1/2.

6. **PW-02** is the statement of Nousher Ali, ASI, PS Kurez Boya. He has constructed inquiry u/s 157(i) Cr.P.C. He proceeded to the spot and prepared site plan at the pointation of the complainant which is Ex.PW-2/1. Recovery memo is Ex.PW-2/2 vide which he took into possession the ashes of the burnt house sealed into parcel No. 01 and duly stamped with monogram MS. He also took photographs of the place of occurrence and all the 03 photographs of the burnt house are Ex.PW-2/3. He submitted his final report which is Ex.PW-2/4.

7. **PW-03** is the statement of Yonus Khan, FC, Chappar Mishti Orakzai. He is marginal witness to the recovery memo Ex.PW-3/2 vide which

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the IO took into possession the ashes of burnt house from the place of occurrence. The same is correctly signed by him and is already Ex.PW-2/2.

8. **PW-04** is the statement of Intikhab Ali, AMHC, PS Kurez Boya. He incorporated the report of the complainant into Madd No. 04 on 16.10.2022 and is placed on file as Ex.PW-4/1. SI Nousher Ali handed over him parcel No. 01 which he entered into register No.19.
9. **PW-05** is the statement of Muhammad Shafique, Girage check-post PS Kalaya. He was posted as SHO PS Kurez Boya in the relevant days and he has submitted interim challan against the accused Bakhtiar Akbar on 28.11.2022 which is Ex.PW-5/1 and correctly bears his signatures.
10. **PW-06** is the statement of Mohsin Ali, IO, PS Kurez Boya. He has conducted investigation against accused Bakhtiar Akbar. He produced him before the court on 24.11.2022 vide his application Ex.PW-6/1 and his one-day physical custody was granted in favour of the police. He recorded statement of the accused u/s 161-Cr.P.C. Later on, vide his application Ex.PW-6/2, the accused was sent to judicial lock-up and after completion of investigation, he handed over the case file to the SHO against accused Bakhtiar Akbar. He submitted application on 03.12.2022 for obtaining warrant u/s 204 Cr.P.C against accused Zahid Ullah, Asad Ullah and Altaf vide his application Ex.PW-6/3. He prepared house search memo in presence of the witnesses which is Ex.PW-6/4. He submitted an application for issuance of proclamation notices against accused vide his

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application Ex.PW-6/5. On 16.01.2023, formal card of arrest of accused Asad Ullah was issued after cancellation of his BBA which is Ex.PW-6/6. He produced the accused before the Illaqa Judicial Magistrate for obtaining his physical custody vide his application Ex.PW-6/7. The accused was sent to judicial lock-up on 08.02.2023. Accused Abu Dard alia Altaf Khan was arrested by HC Waseel Akbar. On 09.02.2023, parwana for correction of name of the accused Abu Dard was issued which is placed on file and is Ex.PW-6/8. He produced the accused before Illaqa Judicial Magistrate for obtaining his physical custody on 09.02.2023 vide his application Ex.PW-6/9. Accused Zahid Ullah was arrested on the next day. He was also produced for obtaining his physical custody vide application Ex.PW-6/10. He was sent to judicial lock-up.

11. PW-07 is the statement of Wajid Ullah s/o Khan Saeed, R/O Chappar Mishti. He repeated the whole story as alleged in the FIR. All the PWs were cross-examined by the counsel for the accused at length.

12. PW-08 is the statement of alleged eye-witness Noor Ullah. He stated that he was present with the complainant at the place of occurrence.

Accused Zahid Ullah, Bakhtiar Akbar, Altaf Khan and Asad Ullah came there at 14:00 hrs duly armed with weapon. They threatened them and asked for stopping the construction work. On the threats of the accused, they left the spot and went toward their house situated at KDA, Kohat. On the way near Chappar Mishti at 14:30 hrs, they were informed that the above-named accused have destroyed their house by setting the same on fire. On the said information, they

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rushed to the spot and found that half portion of the roof of room and veranda was destroyed by setting the same on fire. Thereafter, they went to PS for lodging report.

- 13.** Learned Sr.PP for the state closed his evidence. Statement of the accused u/s 342 Cr.P.C were recorded on 24.07.2024 to which the accused neither wished to be examined on oath nor they opted for producing any evidence in defense.

14. ARGUMENTS

Learned Sr.PP for the state argued that the accused facing trial have been charged directly in the report by the complainant. The accused have threatened the complainant and his companions by pointing guns at them. That soon after the occurrence the complainant was informed that his house has been set on fire by the accused and when he returned to the place of occurrence, he found that half of the veranda and half roof of the room of the house were already burnt.

There is a strong motive of previous enmity behind the occurrence and the circumstantial evidence as well as the ocular evidence produced by the prosecution fully support the version of the prosecution. Therefore, the accused facing trial be convicted as the prosecution have proved their case beyond any shadow of doubt against the accused facing trial.

On the other hand, counsel for the accused argued that neither any firing has been made nor there is any independent eye-witness of the occurrence. The complainant has not disclosed his source of information and has avoid to produce the authentic evidence

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allegedly available with him in shape of his phone call history and oral evidence of the said informer and thus, his case is hit by article 129(g) of the Qanoon-i-Shahadat Order 1984. He further argued that nothing incriminating has been recovered from the possession of the accused facing trial. He further argued that some of the accused charged in the FIR are minors while on the other hand, the number of persons present with the complainant were more than the number of the accused, then how the accused succeeded to oust them out from their house while they were busy in the construction work. He prayed that all these makes the case of prosecution doubtful and thus, by extending benefit of doubt the accused facing trial may please be acquitted.

15. FINDINGS

It is the case of prosecution that complainant Wajid Ullah along with his cousins Noor Ullah, Mujahid sons of Raheem and Nasir s/o Abdul Wahid were present at Chappar Mishti on 16.10.2022 at 17:00 hrs in connection with construction of the Western wall of their vacant house and at 14:00 hrs accused namely Zahid Ullah, Altaf sons of Khyal Akbar, Bakhtiar Akbar s/o Khan Baz and Asad Ullah s/o Afzal Khan came there duly armed with weapons. They aimed their weapons at them and asked for stopping the work and to leave the place. At this, the complainant along with his companions left the place for their house situated at KDA, Kohat. On their way back, the complainant was informed by one of his friends telephonically that the accused has put his house on fire. They rushed to the spot and

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found that half of the veranda roof and half roof of the room have been burnt by the accused facing trial. They reported the matter into police station. In order to prove their stance, the complainant was duty bound to have produced the mobile data of the informer and the informer in person as PW being eye-witness of the occurrence but no such attempt for producing him as witness before the court is brought on the case file and thus the most important witness of the case has been left without any strong reason and thus the case of prosecution comes under the ambit of Article 129(g) of the Qanoon-i-Shahadat Order 1984. Except the informer, there is no eye-witness of the occurrence that who seen the accused facing trial while setting the house on fire. As far as the statement of the witnesses i.e complainant Wajid Ullah is concerned he himself is not eye-witness of the occurrence of setting the house on fire. He stated that it is correct that he has not seen the accused facing trial while setting the house on fire. Similarly, PW-08 Noor Ullah has also stated categorically that he has not seen the accused facing trial while committing the offence. No weapon has been recovered from the possession of the accused facing trial despite of their house search and arrest by the police. There is nothing incriminating in shape of direct or circumstantial evidence to connect the accused facing trial with the commission of the offence. The case of prosecution is full of doubts and the benefit of doubt always goes in favour of the accused.

16. It is to assert that the rule of criminal jurisprudence to give benefit of doubt to accused is much more than a mere rule of law. It is a

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rule of prudence which cannot be ignored (PLD 1999 Lahore 56) (1999 SCMR 1220).

17. The prosecution has failed to substantiate its case against the accused beyond reasonable doubts. Failure of prosecution to comply the mandatory provision of law created doubts in prosecution version and it is settled principle of criminal law that benefit of doubt always goes in favor of accused.

18. A single dent having created in the case of prosecution makes the accused entitled to benefit of doubt. It is to assort that the rule of criminal jurisprudence to give benefit of doubt to accused much more than a mere rule of law. It is a rule of prudence which cannot be ignored (PLD 1999 Lahore 56) (1999 SCMR 1220)

19. Supreme Court in case of Tariq Parvez Vs the State (1995SCMR 1345) has observed that the concept of benefit of doubt to an accused person is deep routed in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is only circumstance which creates reasonable doubt in prudent mind about the occurrence of the accused, so the same be extended to him not as concession but as a matter of right.

In view of the above I hereby acquit the accused facing trial from the charges levelled against them by extending benefit of doubt. They are on bail. Their sureties are discharged from the liability of their

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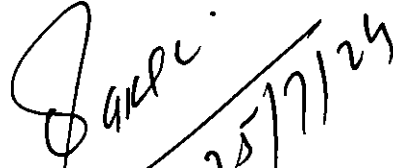
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bail bonds. Case property if any, be kept intact till the expiry of period provided for the revision/appeal.

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

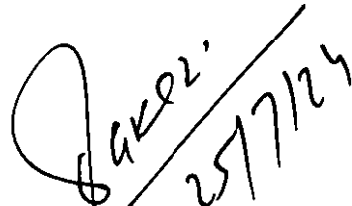
Announced
25.07.2024


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CERTIFICATE

It is certified that this judgment consists of 10 pages. Each page has been dictated, read, corrected and signed by me.

Dated: 25.07.2024


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