



**IN THE COURT OF MUHAMMAD IMTIAZ**  
**JUDL: MAGISTRATE-II/MTMC, ORAKZAI**


(28)

FIR No.: 19  
Dated: 02-07-2019  
Offence: 506/393/34/PPC/512 Cr.P.C  
P.S.: Kalaya, L/Orakzai

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Case No. 33/2 of 2019  
Date of institution: 09.11.2019  
Date of Decision: 28.11.2019

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The State through **Malik Muhammad Naeem** S/O Mardan Shah, R/O  
Bannu Road, District Jail Jarma, Muhalla Wazir Abad, District and  
Tehsil, Kohat.

**(Complainant)**

**VERSUS**

1. **Ali Akbar** S/O Noor Akbar, R/O Mishti, Bazid Khel, Lower Orakzai.
2. **Jalil Khan** S/O Ghani Akbar, R/O Bazid Khel, Lower Orakzai.

**(Accused)**

3. **Noor Haider** S/O Sandoo Malak, R/O Qom Sheikhan, Drand, Lower Orakzai.

**(Absconder Accused)**

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**Mr. Amir Ali APP for the State**  
**Mr. Sana Ullah Khan Advocate for Accused Jalil Khan**  
**Mr. Akbar Yousaf Khalil advocate for accused Ali Akbar present.**

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## JUDGMENT

29

1. Briefly stated factual background of the instant case is that the complainant, Malik Muhammad Naeem S/O Mardan Shah reported the matter of snatching his motor car and money from him at Wam Panrra, Sheikhan by accused Noor Haider S/O Sandoo Malak, Ali Akbar S/O Noor Asghar, and Jalil S/O Ghani Akbar. Complainant further reported that all the named accused also in furtherance of their common intention criminally intimidated and threatened him by putting him in the state of fear.

2. Complainant submitted an application to D.P.O Orakzai for legal action on 24-05-2019. That resulted in registration of instant case FIR No. 19, Dated: 02-07-2019 P.S: -Kalaya, L/Orakzai, u/s 506/393/34 PPC.

3. After completion of the investigation the complete challan was Submitted on 09.11.2019 to this Court. Accused were summoned upon which accused namely Jalil and Ali Akbar appeared before the Court and the provisions of section 241-A were duly complied with. Joint charge against the accused person was framed on 16.11.2019 to which the accused person pleaded not guilty and claim trial.

4. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence:

- i. Mr. Mujahid Khan, SHO, PS Kalaya, L/Orakzai who scribed the FIR and submitted complete challan against the arrested the accused and challan U/S 512 Cr.P.C against the un-arrested accused. **PW-01**
- ii. Mr. Shal M., I/O, PS Kalaya, L/Orakzai, as I.O who investigated the case. **PW-02**
- iii. Mr. Malik Naeem Khan, the complainant of the instant case **PW-03**

30  
iv. Mr. Shahid Ali DFC, L/Orakzai appeared as search witness who carried out the proceeding U/S 204 and 87 Cr.P.C. **PW-04**

5. In documentary evidence, prosecution has produced followings:

- i. Copy of FIR **Ex.PA**
- ii. Site Plan **Ex. PB**
- iii. Card of arrest of the Accused Ali Akbar **Ex.PW 2/1**
- iv. Application for Judicial Remand of Accused Ali Akbar **Ex.PW 2/2**
- v. Card of arrest of the Accused Jalil **Ex.PW 2/3**
- vi. Application for Judicial Remand of Accused Jalil **Ex.PW 2/4**
- vii. Proceedings against accused absconder U/2 204 and 87 Cr.P.C  
**Ex.PW 2/5 and Ex.PW 2/6**
- viii. Application of the Complainant to DPO **Ex.PW 3/1**
- ix. Another FIR registered against the accused in Dist. Kohat **Ex.PW 3/2**
- x. Warrant u/s 204 and report of S.W **Ex.SW 4/1 and Ex.SW 4/2**
- xi. Proclamation and report of S.W **Ex.SW 4/3 and Ex.SW 4/4**

Then after, on 21-11-2019, Learned APP for the state closed evidence on behalf of the prosecution.

6. Statement of all the accused u/s 342 of Cr.P.C were recorded wherein they neither opted to be examined as on oath u/s 342 (2) of Cr.P.C nor they wanted to produce any evidence in their defense.

7. All of the accused in reply of the question that "*Why the PWs have deposed against you?*" submitted that:

*"They are interested and inimical toward me (us). They are falsely deposing against me."*

8. After conclusion of Trial, Arguments of the learned counsel for the accused facing trial and APP, and for the parties heard attentively and the

31  
available record meticulously perused with their due assistance. All of the accused are charged with the offence U/S 506/393/34 PPC.

9. Pw-04 who is the Complainant in the instant case although charged all of the accused for But he failed to produce any eye witness to the occurrence. Even in his application to D.P.O he stated that he was accompanied with some other persons and he has video recording of the said accused but he never produced them before the court.

10. PW-03 who is the IO recorded his statement. In his statement he narrated a brief of his investigation. But site plan prepared by him is not supported by the place of occurrence as mentioned in the FIR. No militia check post is mentioned in the site plan. He has not recorded statement of any independent witness. Even statements of accused u/s 161 Cr.P.C was recorded after 04 months of registration of the case.

11. Going through the evidence recorded by prosecution apart from commission of the offence the very presence of the accused on spot is highly doubtful. And it is the golden principle of criminal law that benefit of doubts always goes to accused.

12. Taking stock of all the features of the instant case, it is observed that For what is discussed above it is clear that prosecution has failed to prove the case against the accused. Even Prosecution failed to connect the accused with both charges u/s 506 and 393 PPC. The case of the prosecution is full of doubt. Prosecution failed to prove their case beyond the reasonable doubt on the following grounds: -

- i. *There is no eye-witness to the occurrence.*
- ii. *In the application to D.P.O complainant mentioned that he was accompanied by other persons in his*

motor car but neither their names are mentioned nor their statements are recorded who could have happened to be the star witnesses of prosecution case.

- iii. There is even no circumstantial or chance evidence of the occurrence as per prosecution version.
- iv. At the end of para 03 of application by complainant to D.P.O stated that he has some videos of the accused but said videos was not produced before the court.
- v. Site plan is not supported by the contents of FIR regarding the place of occurrence and its surroundings.
- vi. There is no recovery of any incriminating material from the accused.
- vii. Prosecution failed to connect the accused with the commission of offence through un-broken chain of acts under S.393 and 506 PPC.

13. Resultantly for the above reasons it is clear that prosecution failed to bring home the guilt of the accused. Therefore, accused namely **Ali Akbar** and **Jalil Khan** are acquitted of the charges levelled against them. As they are on bail their bail bonds stand cancelled and sureties are discharged from their liability of bail bonds.

14. As far as Absconding accused **Noor Haider** is concerned In the light of statement of SW and PWs, said accused is avoiding his lawful arrest and is not possible in near future. Therefore, the accused is hereby declared **Proclaimed Offender**. His name be entered in the list of POs and Perpetual warrant of arrest be issued against him.

33

15. File be consigned to record room after its necessary completion.

**ANNOUNCED**

28.11.2019

Muhammad Imtiaz  
Civil Judge-II  
Orakzai (Ebar Mela)  
**Muhammad Imtiaz,**  
**Judl. Magistrate-II/MTMC,**  
**Orakzai**

**CERTIFICATE:**

Certified that the instant Judgment consists of six (06) pages; Each page has been checked and signed by me.

Muhammad Imtiaz  
Civil Judge-II  
Orakzai (Ebar Mela)  
**Muhammad Imtiaz,**  
**Judl. Magistrate-II/MTMC,**  
**Orakzai**

34

BEFORE THE COURT OF M. IMTIAZ CJ/JM-II,  
ORAKZAI

STATE

VS

Ali Akbar S/O Noor Akbar, R/O Bazid Khel, Lower Orakzai

FIR NO: - 19

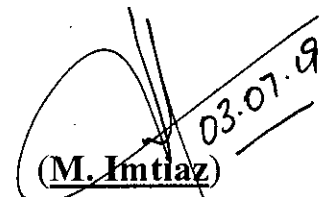
Dated: - 02-07-2019

U/S :- 506PPC

P.S :- Kalaya

**Order**  
**03/07/2019**

Above named accused produced by SI Shal Muhammad Of PS Kalaya, Orakzai and requested for judicial custody. Request of police seems genuine, hence accepted. Above named accused be sent to Judicial lock up Orakzai and be produced before the concerned court/MOD on 16/07/2019

  
(M. Imtiaz)  
03.07.19  
Civil Judge/Judicial Magistrate-II,  
Orakzai (Babar Mela)