

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II, ORAKZAI**

Session Case No. 3 of 2020  
 Date of Institution: 13.02.2020  
 Date of Decision: 29.09.2020

**State through Sarteef Khan s/o Zarman Shah r/o Shaheeda  
 Bandha District Kohat.....(Complainant)**

**VERSUS**

- 1: Atta-ur-Rehman S/o Muhammad Aslam r/o Tribe Rabia Khel  
 presently Ajgharo Bandha District Hangu
- 2: Muhamamd Shoaib sd/o Gul Jamal r/o Tappa Umar Zai Ghaz Dara  
 Central Orakzai District Orakzai
- 3: Abdul Majeed s/o Seyed Jaffar r/o Tappa Umar Zai Ghaz Dara  
 Central Orakzai District Orakzai .....(Accused facing trial)
- 4: Noor Haidar s/o Noor Akbar r/o Wam Parha Distrcit Orakzai  
 .....(Absconding accused)

**Represented by:**

Mr. Syed Amir Shah, APP for State  
 Mr. Abid Ali Advocate counsel for complainant  
 Mr. Noor Karim Orakzai Advocate, counsel for accused

**CASE FIR NO.48 DATED 11.12.2019 U/S 341/387/506/34 PPC/512  
 Cr.PC OF POLICE STATION LOWER ORAKZAI (KALAYA)**

**JUDGMENT**

The prosecution story is that the complainant submitted an application to DPO Orakzai against accused facing trial and absconding accused that the complainant runs the business of coal mine since long after due approval form the government and take coal from Wam Parha Bashi Patay through vehicles, that on Wednesday, 27-11-2019 at 03:50 hours the accused duly armed stopped truck rocket bearing registration No. K-7440 on gun point and threatened the driver, that the coal was unloaded from the truck and the driver was kept in unlawful confinement, the coal was snatched and the driver

  
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was asked while aiming Kalashnikov on him to remove the truck from the place of occurrence, that when two other persons namely Bakhtamir and Razaq Seth when reached to the spot they were also threatened and the driver had to remove the vehicle from the spot and the driver spent night at FC check post. The application of the complainant was reduced into writing vide mad No. 9 dated 08-12-2019 and after seeking the opinion of DPP then instant case FIR was chalked out against the accused. The case file was handed over to the investigation branch for investigation.

In the course of investigation, the investigation officer inspected the spot and prepared the site plane Ex.PB on pointation of complainant Sarteef Khan. During spot inspection the IO took into possession the coal laying on the spot vide recovery memo Ex.PC. The accused facing trail were arrested vide their card of arrest Ex.PW-5/1 and Ex.PW-5/4 and were produced before the Judicial Magistrate for custody which was granted and during custody they were interrogated. The IO recorded the statement of PWs and accused u/s 161 Cr.PC. The accused Noor Haider who was absconding proceedings u/s 204 and 87 Cr.PC were completed against him. After completion of investigation the IO submitted the case file to the SHO for submission of challan.

Complete challan against the accused was submitted which was received by this court on 13.02.2020 for trial against the accused. The accused facing trail who were on bail, were summoned and in compliance of summon the accused facing trial appeared before the court on 18-02-2020 and by complying the provision of 265-C Cr.P.C documents were supplied to the accused facing trail whereas proceeding u/s 512 Cr.PC were initiated against the absconding accused Noor Haider after recording the statement of

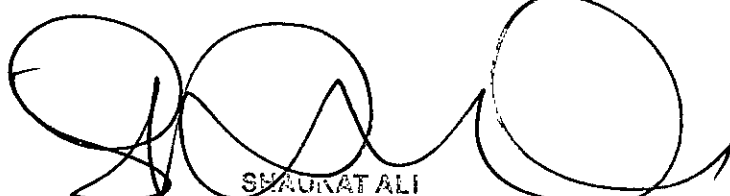
  
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DFC as SW-01. Charge was framed against accused on 25.02.2020 to which the accused facing trial pleaded not guilty and claimed trial. The prosecution was allowed to produce its evidence and during the trial of the case, the prosecution produced and examined 06 PWs.

The gist of the statements of prosecution witnesses are as under:

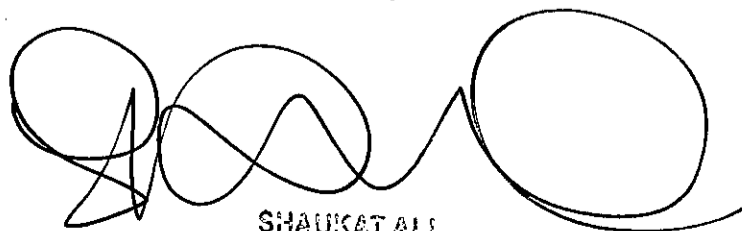
**PW-1** is the statement of Anwar Khan who stated that "I am the driver of the truck registration No. K-7440. I loaded the truck from coal mine of Sartef Khan on 27-11-2019 at about 03:50 PM. When we reached to Bashi Patay there some persons appeared duly arm and stopped the truck. They took me to the Dera and confined and threaten me. The persons unloaded the truck from coal. After 30/40 minutes I was released. They also snatched Rs. 1000/- from me and gave the money to the labors who unloaded the truck. I took the truck at about 70/80 paces from the place of coal and I stopped there. I could not identified the persons who stopped the truck. In the meanwhile Bakhtmir and Raziq were passing from the place where I stopped the truck. When they saw the truck they came near to me and asked me that why the truck is stopped there upon which I narrated the whole story to them. Bakhtmir and Raziq contacted the complainant and informed him about the occurrence. Bakhtmir and Raziq told me to report the occurrence to the police however I did not report and told him that the complainant may report to the police. Bakhtmir and Raziq then inquired about the persons and identified them. On 20-12-2019 I went to the PS where my statement was recorded u/s 161 Cr.PC".

**PW-2** is the statement of Muhammad Raziq who stated that "When the truck was loaded on 27-11-2019 it left the coal mine and we came to nearby shops at Bashi Pati on foot to purchase house hold articles. After covering some distance to the bazar we noticed the truck bearing No. K-

  
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7440 which was parked nearby and the coal was also laying on the earth. We inquired about the matter from the people present there however they shown their ignorance and thereafter the driver of the truck appeared who was asked about the matter and then he narrated the whole story. The accused facing trial along with accused Noor Haider were present there duly arms. We informed the complainant through phone about the occurrence who told us that he will proceed against the accused. On 20-12-2019 we went to PS Lower Orakzai where my statement was recorded”.

**PW-3** is the statement of Sarteef Khan who stated that “The accused facing trial along with absconding accused came duly arm with fire of weapons and stopped the truck loaded with coal. They beaten the driver and confined the driver in the nearby Dera. It was 27-11-2019 when the occurrence took place. The accused unloaded the truck and thereafter released the driver and asked to go from the place of occurrence. Bakhtamir and Raziq informed me about the occurrence. I reported the occurrence to the police in the nearby check post however they failed to take action. On 28-11-2019 I submitted application to DPO Orakzai which is Ex.PW-3/1. (STO the application is a photo state copy which is not admissible in evidence). The police registered FIR on my application, wherein I charged accused facing trial along with absconding accused. After registration of the FIR Shal Muhammad IO along with other police officials inspected the spot. I was already present on the spot before the arrival of the IO. The IO recorded my statement on the spot, took into possession the coal and recorded the statement of persons there. The IO also prepared the site plan on my instance. On 20-12-2019 I took the PWs Raziq, Bakhtamir and Anwar to the PS Lower Orakzai for recording their statement. I charged the accused for commission of



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offence. Today I have seen the application Ex.Pw-3/1 which correctly bears my thumb impression”.

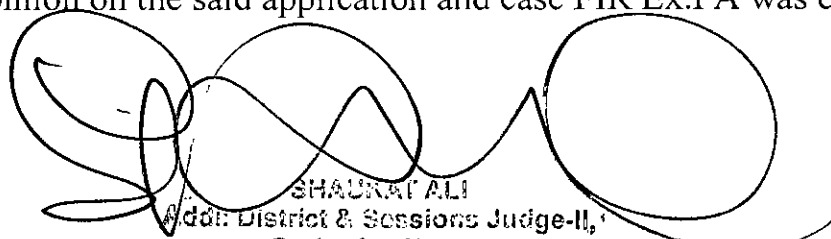
**PW-4** is the statement of Muhammad Riaz Constable who stated that “On 12-12-2019 I was present with investigation officer Shal Muhammad at the time of spot inspection and in my presence Shal Muhammad took into possession one truck coal which was laying on the spot. To this effect the IO prepared recovery memo Ex.PC which is correct and correctly bears my signature. My statement was recorded by the IO u/s 161 Cr.PC”.

**PW-5** is the statement of Shal Muhammad IO who stated that “The instant case was registered on 11-12-2019 and the copy of FIR was handed over to me for investigation along with entire record and on 12-12-2019 I visited the spot along with my investigation staff and on the spot I prepared site plan Ex.PB on pointation of complainant Sarteef Khan. As per my investigation accused on trial have unloaded one truck coal forcefully and I took the same into my possession at Bashi Patay vide recovery memo already exhibited as Ex.PC in presence of marginal witnesses namely Muhammad Zahid and Muhammad Riaz Constables. I recorded statements of the above mentioned witnesses along with statement of complainant u/s 161 CR.PC. on the same day I arrested accused Muhammad Shoaib and Abdul Majeed and issued their joint card of arrest Ex.PW-5/1 and on 13-12-2019 I produced them before the court of Judicial Magistrate vide my application Ex.PW-5/2 for obtaining their police custody, as a result of which one day physical custody was granted. I recorded their statements u/s 161 Cr.PC and on 14-12-2019 I produced both of them before the Judicial Magistrate vide my application Ex.PW-5/3 on remand judicial and they were sent to judicial lock-up. On 14-12-2019 accused Atta-u-Rehman applied for bail before arrest, therefore I formally arrested him and issued his card of arrest Ex.PW-5/4. I recorded

  
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statement of accused Atta-u-Rehman during course of investigation. On 18-12-2019 BBA of accused Atta-u-Rehman was recalled and I arrested him and on 19-12-2019 I produced him before the court of judicial magistrate vide my application Ex.PW-5/5 for obtaining his physical custody, as a result of which two days physical custody was granted. During course of investigation I interrogated him and placed on file the relevant documents on file. On 21-12-2019 I produced accused Atta-u-Rehman on remand judicial vide my application Ex.PW-5/6 and he was sent to judicial lock-up. During course of investigation I have also submitted an application before the court of Judicial Magistrate for issuing warrant u/s 204 Cr.PC against accused Noor Haider Ex.PW-5/7 which was handed over to the DFC for execution and the same returned unexecuted along with report of DFC on the back of warrant. I have also submitted an application Ex.PW-5/8 for issuance of proclamation notices u/s 87 Cr.PC but the accused was still avoiding his lawful arrest and after fulfillment of proceeding of 87 Cr.PC. I recorded statement of DFC Muhammad Shahid u/s 161 Cr.PC. During course of investigation on 22-12-2019 I recorded statements of eye witnesses of the occurrence namely Bakhtamir, Muhammad Raziq and Anwar Khan. After completion of investigation I handed over the case file to the SHO for submission of complete challan against the accused. All the documents prepared by me are correct and correctly bear my signatures”.

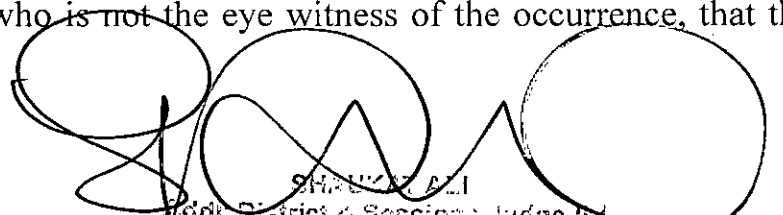
**PW-6** is the statement of Muhammad Shafiq SHO who stated that “The application Ex.PW-3/1 submitted by the complainant to the DPO Orakzai for necessary action against the accused was marked to PS Lower Orakzai for necessary action. I incorporated the contents of application in DD No. 9 Dated 08-12-2019. I submitted application to the DPP Orakzai for opinion who renderer his opinion on the said application and case FIR Ex.PA was chalked

  
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out by me on the basis of opinion of DPP. The application for opinion is Ex.PW-6/1. The copy of the DD is Ex.PW-6/2. On completion of investigation I also submitted complete challan Ex.PW-6/3 against the accused in the instant case. Today I have seen the above documents which are correct and correctly bears my signature”.

On 28.07.2020, the prosecution closed its evidence and the case was fixed for statement of accused. On 10-08-2020 the statements of accused were recorded u/s 342 Cr.P.C wherein the accused denied the allegations leveled against them however they refused to be examined on oath. The accused Abdul Majeed and Muhammad Shoaib refused to produce defense evidence however accused Atta-ur-Rehman opted to produce defense. During defense the accused examined 02 DWs and thereafter the counsel for accused closed his evidence, therefore, the case was fixed for final arguments.

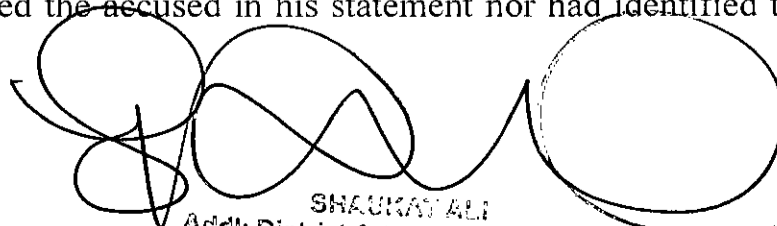
Learned APP for the state argued that the complainant promptly reported the occurrence to the police by submitting application to the DPO, that the prosecution produced cogent and reliable evidence against the accused who made consistent statement before the court which support the version of the complainant narrated in the FIR, that the recovery of coal from the spot connect the accused with the commission of offence, that the prosecution proved the case against the accused and the accused may be convicted and sentenced. On the contrary learned counsel for the accused strongly opposed the arguments of APP for the state and argue that there are material contradiction in the statement of prosecution witnesses which creates doubts in the case of prosecution, that the driver of the vehicle not reported the occurrence and the accused were also not identified nor any identification test had been conducted, the site plan was prepared at the instance of complainant who is not the eye witness of the occurrence, that the accused

  
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Atta-ur-Rehman was on his duty who is serving in police department and the CDR shows his presence at Hangu which shows that the report of complainant is false and fabricated. Learned counsel for accused argue that the prosecution failed to prove the case against the accused and the accused may be acquitted from the charges leveled against them.

Arguments of learned APP for the state and learned counsel for the accused already been heard and available record perused.

The complainant (PW-03) is not the eyewitness of the occurrence who confirmed in his cross examination that the occurrence has not witnessed by him. PW-01 Anwar Khan also stated in his cross examination that the complainant is not the eye witness of the occurrence. The FIR was registered on application of complainant wherein neither the name of the driver was mentioned nor the application is endorsed by the said driver to support the allegation of complainant. The driver of the truck namely Anwar Khan (PW-01) the star witness of the prosecution had not reported the occurrence to the police who stated in the course of his evidence that he was all alone present in the truck at the time of occurrence when the accused stopped the truck. PW-01 stated in examination in chief that when they reached to Bashi Paty; the place of occurrence there some persons appeared duly armed and stopped the truck who further stated that he could not identify the persons who stopped the truck. PW-01 in his cross examination without mentioning the names of the persons stated that he saw only one person by contradicting his statement wherein he stated that some persons appeared duly armed and further stated that he has not seen other persons whereas the complainant has charged more than one person by throwing wide net. The driver of the truck neither named the accused in his statement nor had identified them which

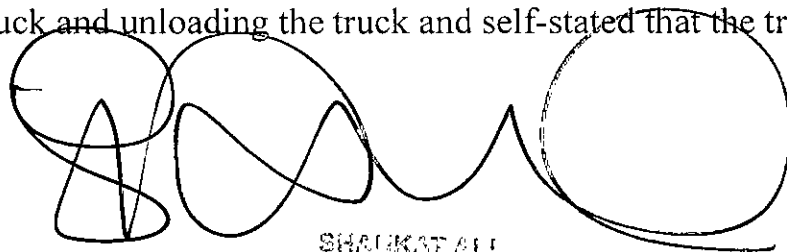


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makes the involvement of accused doubtful. Furthermore, no identification test has been conducted through PW-01 for the identification of the accused; therefore the statement of PW-01 does not connect the accused with commission of offence and create suspicion about the involvement of the accused in the commission of the offence. Besides it is also doubtful that whether PW-01 Anwar Khan was the driver of the vehicle as his name is nowhere mentioned by the complainant in his application nor the said application as mentioned earlier was verified by the said driver. PW-01 stated in his cross examination that the distance between coal mine and Bashi Paty which is the place of occurrence is 17 KM which he consumed in two hours who was negated by the IO who stated in his cross examination that the distance between coal mine and Bashi Pati might be 01 KM, which further shows that PW-01 was not the driver of the truck as he is unaware of the distance between the coal mine and place of occurrence and his statement is thus not reliable. PW-01 further stated in his cross examination that Bakhta Mir and PW-02 were passing through the place of occurrence at about 04:00 PM and they were on motorcycle of red color whereas PW-02 negated this statement of PW-01 by stating that they came to nearby shops at Bashi Paty by foot to purchase house hold articles. Furthermore, PW-01 has no driving license as stated by him in his cross examination, therefore his statement that he was the driver of the truck is not supported from the evidence on file is thus not trustworthy and his statement on this score are also not worth reliable.

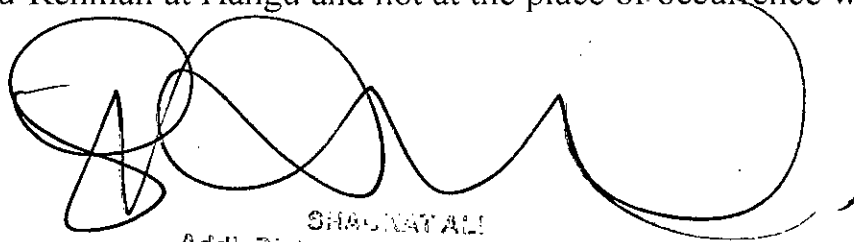
Similarly Mohammad Raziq (PW-02) also stated in his cross examination that it is correct that he has not seen himself the accused stopping the truck and unloading the truck and self-stated that the truck was



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not unloaded by the accused rather it was unloaded by the laborers to whom the accused had paid, however the statement of those laborers are not recorded by the IO nor their names are mentioned in the investigation to authenticate the statement of PW-02. Similarly the tools that were used in unloading the truck were also not taken into possession. Anwar Khan driver (PW-01) had not accompanied the IO during spot inspection neither he was called by the IO to the spot for pointation of the spot and the site plan was prepared by the IO at the instance of complainant (PW-03) who is not the eye witness of the occurrence. The IO stated in his cross examination that when he was preparing the site plan only complainant was present, therefore the preparation of site plane Ex.PB at the instance of complainant who is not the eye witness is not appealable to mind, therefore the commission of offence in the mode and manner at the alleged place of occurrence is doubtful.

Accused Atta-u-Rehman is serving in police department and the complainant in his cross examination has also admitted accused Atta-ur-Rehman is serving in police department. The investigation officer during the course of investigation found accused Atta-ur-Rehman innocent and was place in column No.2 of the Challan. The IO placed on file the Call Data Record (CDR) of the SIM number of the accused Atta-u-Rehman during the investigation which shows his location and presence at Navay Kalay and Lakhti Bandha Hangu at the time of occurrence and was not present at the place of occurrence. The IO also stated in his cross examination that according to CDR the location of accused Atta-ur-Rehman is SP Office Hangu. The documentary evidence placed on file shows the presence of accused Atta-u-Rehman at Hangu and not at the place of occurrence which



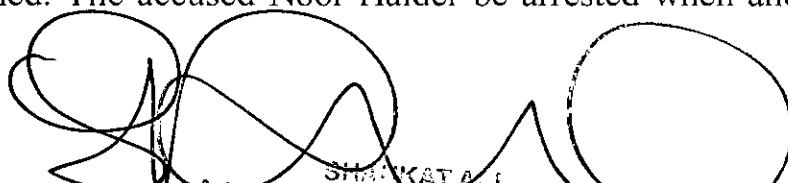
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shows that the accused Atta-ur-Rehman has been falsely charged by the complainant in the case and his presence was shown by the complainant at the place of occurrence. The defense witnesses namely Muhammad Fayaz constable (DW-01) and Khalid Rehman Constable (DW-02) stated that the accused Atta-ur-Rehman was gunner at the SP office Hangu and on 27-11-2019 he was present in SP investigation office Hangu on his duty from 8:30 AM to the 5:00 PM and this statement of the defense witnesses could not shatter by the prosecution which proved that the accused Atta-ur-Rehman was on his duty at SP Office Hangu on the date and time of occurrence.

The evidence so far produced by the prosecution available on file is weak, dilapidated and not reliable which do not connect the accused with the commission of offence. It is well settled principle of the criminal administration of justice that many doubts are not needed in the prosecution case; even when there is a single fact in the prosecution case which creates reasonable doubt in the mind of a prudent person regarding the guilt of the accused the benefit of such doubt shall be extended to the accused.

The prosecution failed to bring home the guilt of the accused beyond any reasonable shadow of doubt; therefore, the accused facing trial Muhammad Shoaib, Abdul Majeed and Atta-ur-Rehman are hereby acquitted from the charges leveled against them in the instant case by extending them the benefit of doubt. The accused are on bail, their sureties are discharged from the liability of bail bonds.

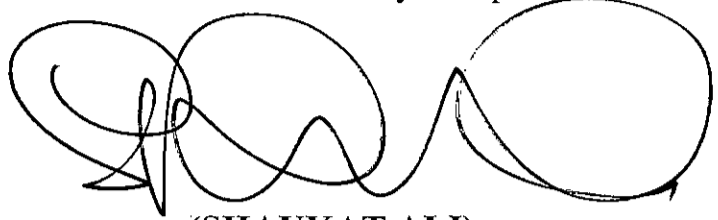
The accused Noor Haider is still absconding and avoiding his lawful arrest, therefore perpetual warrant of arrest be issued against him and his name be entered in the register of proclaimed offenders kept in the police station concerned. The accused Noor Haider be arrested when and where

  
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found and be produced before the court. Case property be dealt with in accordance with law.

File be consigned to the record room after necessary completion and compilation.

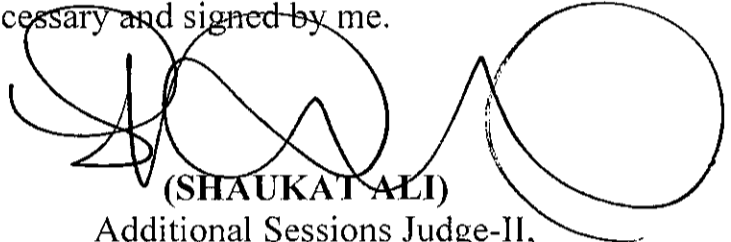
**Announced**  
29/09/2020



(SHAUKAT ALI)  
Additional Sessions Judge-II,  
Orakzai at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of (12) pages. Each page has been read, corrected wherever necessary and signed by me.



(SHAUKAT ALI)  
Additional Sessions Judge-II,  
Orakzai at Baber Mela