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IN THE COURT OF MUHAMMAD JUNAID ALAM,

JUDICIAL MAGISTRATE -II TEHSIL KALAYA, DISTRICT ORAKZAI

Case No. 77/2 of 2023
Date of Institution: 03.08.2023
Date of transfer in: 07.10.2024
Date of Decision: 31.07.2025

State through:

MST. ZIARAT KHELA WIFE OF MALA KHEL, RESIDENT OF
SULTANZAI, PRESENTLY WACHA DARA, DISTRICT ORAKZAI.

.....Complainant

VERSES

QAREEB KHAN SON OF KHEWA GUL, RESIDENT OF QOM
AFRIDI, PRESENTLY SULTANZAI, WACHA DARA DISTRICT
ORAKZAI

.....Accused Facing Trial

Present: ABID ALI ADVOCATE FOR THE COMPLAINANT.

: SANA ULLAH KHAN ADVOCATE FOR ACCUSED
FACING TRIAL.


MUHAMMAD JUNAID ALAM
Civil Judge / JM-II
Orakzai at Kalaya

Case FIR No. 62, Dated 14.06.2023 under section 354/506/509

Pakistan Panel Code, 1860 police station Kalaya

JUDGMENT:

31.07.2025

Through this judgment the court intends to dispose
of the instant case registered against accused Qareeb Khan


vide FIR No. 62, dated 14.06.2023 under section 354/506/509 Pakistan Panel Code, 1860 registered at Police Station Kalaya.

1. Brief facts as per contents of FIR are that complainant Mst. Ziarat Khela wife of Mala Khel alongwith her husband came to the PS on 26.05.2023 at about 09:10 hours and reported to the local police. That on 24.05.2023, at morning time she went to nearby mountain situated at Sultan Zai for fetching fire wood when accused Qareeb Khan S/O Mewa Gul at 1500 hours came to her. He insulted her and torn her clothes. She made hue and cry. Due to her hue and cry the accused left her. There is no motive behind the occurrence. Complainant charged the accused for outraging her modesty and torning of her shirt. One Mala Khel is thumb impressed her report as verifier. The local police read over her report in native language and she also thumb impressed the same as token of its correctness. Complainant report was converted in the shape of Naqal Mad no. 05 dated 26.05.2023. The accused was formally arrested. After registration of the case the complainant pointed out the spot to the ASI Aziz Ur Rehman, who prepared site plan on her pointation. After completion of investigation, SHO submitted complete challan against the accused which is Ex. PW-2/1.


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2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused was formally charge sheeted. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced Ten (10) witnesses to prove its case against the accused while PW Bakht Jamal had died, so could not presented and thereafter closed its evidence.
5. **PW-01** is the statement of SI Murtaza. Stated on oath that report of the complainant Mst. Zairat Khela was scribed in DD vide mad No. 05 dated 26.05.2023. Inquiry was conducted by ASI Aziz. On the strength of final report, the instant case was registered against the accused facing trial. He also verified the already prepared site plan from the complainant. Accused was arrested by ASHO PS Kalaya and was handed over to PW-01 for interrogation/completion of investigation. On 27.06.2023, he produced the accused before the court for obtaining his physical custody vide his application is Ex.PW-1/1. Accused was released on bail by the court considering the sections of law as bailable. He recorded statement of accused u/s 161 Cr.PC. After completion of investigation, he handed over case


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file to SHO for submission of complete challan against accused.

6. **PW-02** is the statement of SI Aftab Ahmad. PW-02 said in his statement that After completion of investigation, I submitted complete challan against the accused. Today, I have seen the challan form which correctly bears my signature. Challan form is Ex. PW-2/1.

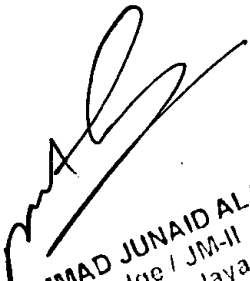
7. **PW-03** is the statement of ASI Aziz Ur Rehman. Naqal mad No. 05 dated: 26.05.2023 was handed over to him for inquiry. He proceeded to the spot and prepared site plan at the instance of complainant. Site plan is Ex. PB. Similarly, he also prepared recovery memo vide which he took into possession torn shirt (pink & blue in color) of complainant. Recovery memo was Ex.PW-3/1. The same was packed and sealed into parcel No. 1 by affixing 03/03 seals in the name of AA and one seal was put inside the parcel. He also recorded statements of PWs u/s 161 Cr.PC. On 27.05.2023, he prepared final inquiry report which is Ex.PW-3/2. On 28.05.2023, he applied for legal opinion from the office of DPP, Orakzai vide his application Ex.PW-3/3. On 14.06.2023, he received legal opinion from the office of DPP Orakzai along with other relevant documents and there upon and he registered the instant case against the accused vide FIR Ex.PA. After registration of the case, he


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handed over the copy of FIR along with other relevant documents to IO for investigation. PW-03 said, today, I have seen the above referred documents which are correct and correctly bear my signatures.

8. **PW-04** is the statement of complainant Mst. Ziarat Khela. PW Mala Khel is her husband while PW Bakht Jamal is her uncle and PW Said Marjan is her brother-in-law. PW-04 said that accused Qareeb Khan is my co-villager. On the day of occurrence, at 09:00 am, I went to nearby mountain situated at Sultan Zai for fetching fire wood when accused Qareeb Khan S/O Mewa Gul at 03:00 pm came to me. He insulted me. Torn my clothes. I made hue and cry due to which he/accused fled away. Thereafter, I returned back to my house and after 02 days, I reported the occurrence to the local police and charged the accused for the commission of the offence. PW- 04 thumb impressed her report as token of its correctness. Her husband also thumb impressed the report as verifier. Later on, she recorded her statement before the court which she has seen today. The same correctly bears her thumb impression. The same is Ex.PW-4/1. She has also handed over her torn Kameez to the police. This was her statement.

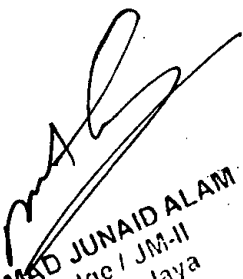

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9. **PW-05** is the statement of Mala Khel who is the husband of the complainant. He said PW Said Marjan is my cousin.

Accused facing trial is our co-villager. On the day of occurrence, my wife named above narrated the occurrence to me. I accompanied my wife to PS Kalaya where report of my wife was recorded and I also thumb impressed the report as verifier. My statement was duly recorded by the police.

10.PW-06 is the statement of Said Marjan. Who stated on oath that PW Mala Khel is his cousin and complainant Mst. Zairat Khela is the wife of Mala Khel. Accused facing trial is his co-villager. Nikmar Khan, son of complainant, came to his house and narrated the story to him, where after, he inquired the matter from complainant. The complainant narrated to him the entire episode of occurrence. On 26.05.2023, the local police visited the spot and inspected it. They prepared their report and returned back. His statement was recorded at the spot.

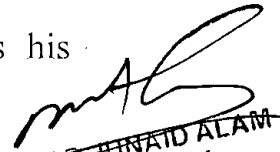
11.PW-07 is the statement of Constable Hamayoun. On the day of occurrence, he was present with ASI Aziz Ur Rehman on the spot. He recovered and took into possession torn shirt (pink & blue in color) of complainant Mst. Ziarat Khela. Recovery memo was already exhibited as Ex.PW-3/1. ASI packed and sealed the same into parcel No. 1 which is Ex. P-1 in his presence. By affixing 03/03 seals in the name of AA and one seal was put inside the parcel in his presence. PW-07 said that


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today, he has seen the recovery memo which was correct and correctly bears his signature.

12.PW-08 is the statement of constable Muhammad Arif. On the day of occurrence, he was present with ASI Aziz Ur Rehman on the spot. That he recovered and took into possession torn shirt (pink & blue in color) of complainant Mst. Ziarat Khela. Recovery memo is already exhibited as Ex.PW-3/1. ASI packed and sealed the same into parcel No. 1 which was already exhibited as Ex. P-1 in his presence. By affixing 03/03 seals in the name of AA and one seal was put inside the parcel in his presence. PW-08 said that today, he has seen the recovery memo which is correct and correctly bears his signature.


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13.PW-09 is the statement of Moharrir Asmat Ali. He was present in the office when the complainant namely Mst. Ziarat Khela wife of Malla Khel came to the police station and reported about the occurrence. He reduced the contents of her report in the shape of Naqal Mad no. 05 which was Ex. PW-9/1 and it was handed over to ASI Aziz Ur Rehman for inquiry. On 26.05.2023, Aziz Ur Rehman ASI handed over to him parcel no. 01, which he kept in the safe custody of PS Maal Khana.

14.PW-10 is the statement of ASHO Delbar Ali. On 27.06.2023, he arrested the accused and issued his card of arrest which is

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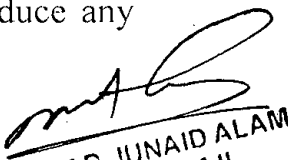
Ex. PW-10/1. Today he has seen the relevant document which is correct and correctly bears his signature.

15. PW Bakht Jamal has died, therefore, not produced before the court and thereafter prosecution closed its evidence.

16. Afterwards, statement of accused was recorded under section 342 Cr. PC wherein he pleaded not guilty and also did not wish to be examined on oath. He even opted not to produce any defense evidence.

17. Thereafter, arguments of the parties heard.

18. Learned counsel for accused contended that the accused facing trial is innocent and had falsely been charged by the local police and the charge against the accused is baseless/groundless. He further argued that the prosecution has totally failed to prove the case against the accused facing trial and a concocted case has been registered against him. He also argued that the inquiry under section 157 Cr. PC held by the inquiry officer without proper permission of Magistrate. He further argued that the FIR lodged after delay of about 20 days, therefore, it is full of suspicious. He also argued that there are material contradictions in the testimony of prosecution witnesses. He further argued that all the witnesses are police officials and no independent witness has been


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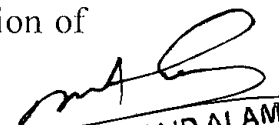
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brought into the witness box. Therefore, he requested that the accused be acquitted from the charges levelled against him.

19. On the other hand, learned APP for the state and counsel for complainant vehemently refuted arguments advanced by the learned counsel for accused by arguing that the occurrence took place on 24.05.2023 at about 15:00 hours and FIR was lodged on 14.06.2023, due to reason that local police held inquiry under section 157 Cr. PC while complainant came to the PS and reported the occurrence at 26.05.2023 and reported the occurrence in the shape of Naqal Mad no. 05. Furthermore, argued that the delay in FIR was due to the fact that the complainant was old aged female and was feeling a triable social embarrassment. Furthermore, argued that retaliation to the occurrence, the son of complainant fired upon the accused facing trial and whereby, the police registered counter FIR. He further argued that prosecution witnesses have fully supported the prosecution case and as such he prayed for conviction of accused facing trial.

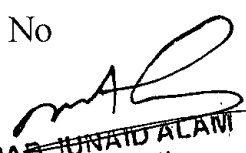
20. Upon perusal of the available record and statements of PW-03

was revealed that as for as visit of the ASI Aziz Ur Rehman to the spot is concerned, it is pertinent to mention here that PW-03 Aziz Ur Rehman had stated in his cross examination that he came to the spot on 24.05.2023 at 10:00 AM while


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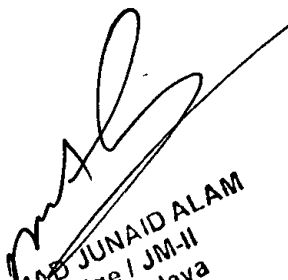
constable Muhammad Arif in the instant case appeared as PW-08, had also deposed in his cross examination that he alongwith ASI Aziz Ur Rehman reached to the spot on 24.05.2023. Furthermore, PW-03 ASI Aziz Rehman appeared before the court and deposed in his cross examination that he was accompanied by the constables Hamayoun and Arif. PW-07 constable Hamayoun appeared as witness and stated that he was with the ASI Aziz Rahman and alongwith constable Arif. Furthermore, complainant in the instant case deposed in her cross examination that she handed over the torn shirt to the police after two days of the occurrence. Record reveals that recovery the torn shirt of the complainant has been made and has properly been exhibited. Moreover, prosecution witnesses are consistent and confidence-inspiring and fully supported the version of prosecution regarding the recovery and site plan. No material contradictions exist in the statement of PWs.

21. Record transpires that complainant has produced her torn shirt before the police vide recovery memo Ex. PW-3/1, which shows the occurrence took place. Furthermore, site plan would reveal that the accused was shown at point-1, which shows the presence of accused facing trial and came near to complainant, which further strengthen the case of prosecution. It is pertinent to mention here that accused facing trial lodged


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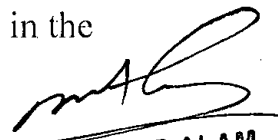
a counter FIR against the son of complainant, who is retaliation to the instant case FIR, opened firing at the accused. The counter FIR shows that there is dispute of female relations between the parties, which shows the involvement of the accused in the commission of offence and reiterate the version of instant FIR. It is also revealed that the accused Qareeb Khan was ordered to be exiled by the elders of the locality in a jirga, which clearly shows that the occurrence has taken place. Moreover, the delay in FIR also well-reasoned that the complainant was a women and was not aware of the law and also felt immense embarrassment due to tribal social cultural norms. It is also worth mentioning here that the available record supports the version of complainant. It is worth mention that the accused was directly and by name charged by the complainant. It is a daylight occurrence and hence no issue of identification of accused. Son of complainant fired upon the accused after the cited occurrence to which the accused lodged a counter FIR against him and the identification is also proved from the retaliatory act of the son of complainant. Moreover, it also establishes the presence of the accused on the spot, and the motive behind the instant case FIR. Which further support the version of complainant.


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22. The Court is of the firm view that the story deposed by the prosecution on ocular account is in the absence of any malafidy etc. on their part and is thus confidence inspiring, trustworthy and reliable. No doubt certain minor omissions do exist in the evidence of the prosecution but these are not of such nature either to deny the presence or proceedings of the witnesses carried out at the spot at the relevant time of the occurrence. There exist no major contradictions in between the statements of the ocular account or the formal witnesses and all the witnesses deposed in line with the story reported in the first information report.

23. The detailed discussion of the case would lead to the conclusion that the prosecution has successfully marshalled their troops against the accused facing trial and have concluded the same in its favour. There exist no major contradictions in the evidence of the prosecution leading towards doubts in favour of accused facing trial. Therefore, this Court safely holds that the accused facing trial is guilty of the offence charged for on the basis of solid evidence produced by the prosecution. However, being first offenders, a lenient view is taken and **he is convicted and sentenced under section 354 Pakistan Panel Code, 1860 for 02-years imprisonment and fine of Rs. 30,000/-**. In default of


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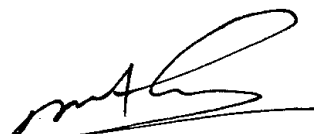
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payment of fine, he shall undergo for 06-months simple imprisonment. He is also convicted for criminal intimidation with intent to dire consequences to complainant under section 506 Pakistan Panel Code, 1860 and sentenced to suffer 02 years of imprisonment and also to pay fine of Rs. 30,000/- (Fifty Thousand) by him. In case of default, the accused shall further suffer simple imprisonment for 06-months. He is also convicted under section 509 of Pakistan Panel Code, 1860 for 02-years imprisonment and fine of Rs. 30,000/-. In default of the payment of fine he shall undergo for 06- months. All the sentences shall run concurrently. The benefit of section 382 Cr. PC is extended to the convict.

24. Case property, if any, stands confiscated in favor of State.

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

Announced
31.07.2025


Muhammad Junaid Alam,
Judicial Magistrate -II,
Tehsil Court Kalaya, Orakzai

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CERTIFICATE

Certified that my judgment of today consists of fourteen
(14) pages, each page has been read, signed and corrected by
me where necessary.



Muhammad Junaid Alam,
Judicial Magistrate -II,
Tehsil Court Kalaya, Orakzai