(XI) (44)

IN THE COURT OF IJAZ MAHSOOD, SCJ/JM,
ORAKZAI AT BABER MELA, HANGU

CASE NO. : 29/02 OF 2025

DATE OF INSTITUTION : 03.07.2025

DATE OF DECISION: 20.10.2026

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STATE THROUGH: Sakhi Marjan s/o Syed Hassan R/O Qoum Khadizai, District Orakzai.

----------*(Complainant)*

VS

1. Azeem Khan s/o Lal Akbar
2. Ziarat Shah s/o Wazir Badshah
3. Yar Badshah s/o Wazir Badshah
4. Khan Zaman s/o Sar Gul
5. Walayat Shah s/o Wazir Badshah
6. Fazal Khaliq s/o Ali Man Khan

Qoum Khadizai, District Orakzai.

----------*(Accused Facing Trial)*

JUDGMENT
20.10.2026.

This order is to decide instant criminal case filed against Mr. Azeem Khan, and 05 others, as the accused persons, upon complain of Mr. Sakhi Marjan, with State as the principal and lead prosecutor.

Reported Facts:

Orakzai ... 20 OCT 2026

The prosecution case as recounted in FIR No. 05 dated 26.03.2025 is that the complainant approached the local police

(18) (45)

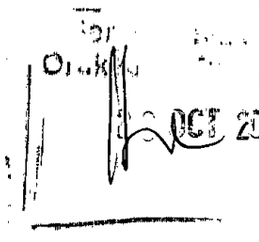
alleging that the accused had cut and stolen trees from the joint forest of the Khadizai caste on different occasions during the period from 01.01.2025 to 25.01.2025, causing an alleged loss of Rs. 2,000,000/- to the interests of the said caste. It is alleged that the police initially refused to register the FIR, whereupon the complainant filed a petition under Section 22-A Cr.P.C. before the learned District and Sessions Judge, Orakzai. The petition was accepted, and the FIR was registered accordingly. Complainant pointed out the place of occurrence to the Investigating Officer, who prepared the site plan at his instance.

Charge:

After compliance with section 241 Cr.PC, the accused persons were charged with the offence under section 379 read with section 149 of the Pakistan Penal Code. Thereafter, the court allowed/invited the prosecution to produce its evidence in proof of the charge.

Witnesses/Exhibits:

Prosecution produced and examined 04 witnesses, including Mr. Imtiaz Khan SHO, Mr. Shah Jehan ASI/IO, Mr. Sakhi Marjan Complainant, Mr. Khaista Akbar. They have exhibited the following documents;



i. FIR as Ex.PA.

ii. Site plan as Ex.PB.

iii. Card of arrest as Ex.PW-2/1.

After the prosecution had recorded and closed its evidence, the accused was confronted under Section 342 CrPC with incriminating evidence/material produced against them during trial. They denied the charge and rebutted the evidence as false.

The probative worth, consistency or otherwise of the testimonies of the witnesses is appraised as follows.

Reasoning:

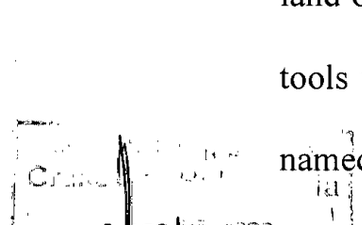
Being a criminal case, the onus to prove the charge naturally fell on the prosecution. It produced 04 witnesses to establish the essential elements of the charge. The merits and probative worth, or lack thereof shall be examined in the section below:

- Principal witnesses for the prosecution the Investigation officer, the complainant, and an eye witness who happened to see the accused persons commit the offence.
- The version of the offence concurrently held by the witnesses of the prosecution is that the offence periodically occurred between 01-01-25 to 25-01-25.
- Exact role in the commission of the offence has not been attributed to any accused. The witnesses from among the

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public who allegedly witnessed the incident were nowhere mentioned.

- The IO concedes that the Forest is jointly owned by the parties including the accused persons. Essentially, the accused persons equally owned the land and trees on it along with the complainant.
- No recovery of any kind was made. No details of the kind, number, or quantity of the wood chopped is available on file.
- Complainant alters the charge by stating that accused persons chopped fruit bearing trees instead of wood for domestic use as fuel. He states that all co-owners were bound by an agreement against such cutting.
- It is pertinent to mention that this stance of having cut fruit bearing trees, and of being bound by an agreement finds no mention in the FIR or case record.
- To summarize, a co-owner allegedly chopped trees from land of which he is a co-sharer. No recovery of wood, or tools used for chopping has been made. No eyewitness named or shown in the FIR. Complainant has changed his stance from stealing to violation of an agreement prohibiting cutting of fruit bearing trees.



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Ruling:

Prosecution was burdened with proof of the charge beyond reasonable doubt, which they, in presence of the dents and gaps highlighted above, have failed to discharge to the satisfaction of the court.

As prosecution failed to prove its case against the accused facing trial beyond reasonable doubt, therefore, accused namely Azeem Khan, Ziarat Shah, Yar Badshah, Khan Zaman and Walayat Shah are hereby acquitted from the charges leveled against them. They are on bail; their bail bonds stand cancelled. Sureties of said accused discharged from their liability. Case property, if any be dealt with in accordance with law.

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

Announced
20.10.2026

(Ijaz Mahsood)
SCJ/JM,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this order consists of 05 pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated:20.10.2026

(Ijaz Mahsood)
SCJ/JM,
Orakzai (at Baber Mela)