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

Juvenile Case No. 1/2
Date of Institution: 24.08.2019
Date of Decision: 08.06.2020

**State through Shah Sawar Khan ASI Boya Check Post District
Orakzai**

VERSUS

Muharram Ali S/o Shams-u-Rehman r/o Shawa Mela Kuriz District
Lower Orakzai.....

Represented by:

Mr. Syed Amir Shah, APP for State
Mr. Sher Shah Advocate, counsel for accused

**CASE FIR NO.14 DATED 16.06.2019 U/S 15-AA PPC OF POLICE
STATION LOWER ORAKZAI (KALAYA)**

JUDGMENT

The prosecution story is that Shah Sawar Khan ASI along with constables Naveed Ali, Qareeb Ali , Faheem Ali and Tafseer Ali were on Gasht in the locality; that he received information that accused Muharram Ali s/o Shams-ur-Rehman r/o Shawa Mela Kuriz involved in case FIR No.13 Dated 15-06-2019 u/s 302/34 PPC is present in front of his house duly armed; that on that information he reached to the place of occurrence where a person who was duly armed tried to escape however he was over powered and one Kalashnikov without license was recovered from his possession. The accused disclosed his name Muharram Ali s/o Shams-ur-Rehman. The accused along with the Kalashnikov was brought to the police station and was handed over to Mujahid Khan SHO who prepared his card of arrest Ex.PW-1/2 and the in the instant case FIR was registered against the accused u/s 15-AA. The case file was handed over to the investigation branch for investigation.

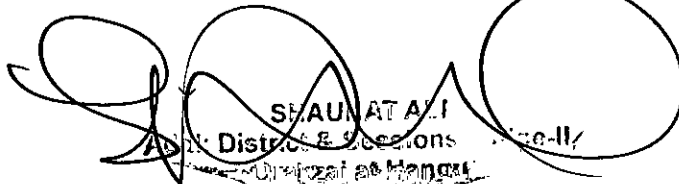

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In the course of investigation, the investigation officer inspected the spot and prepared the site plane Ex.PB on pointation of complainant Shah Sawar A.S.I. The IO submitted application Ex. PW-4/2 to the Armorer District Police Orakzai for examination of Kalashnikov along with twelve rounds of 7.62 bore and also submitted application Ex.PW-4/4 addressed to the incharge FSL for examination of the Kalashnikov (weapon of offence) along with fixed charger containing twelve rounds of 7.62 bore. 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 24.08.2019 for trial against the accused. The accused Muharram Ali who was in Judicial Lock-up was summoned through *Zamima Bay* and was produced before the court on 26-08-2019. After compliance of 265-C Cr.P.C, charge was framed against accused on 29.08.2019 to which the accused 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 04 PWs.

The statements of prosecution witnesses are as under:

PW-1 is the statement of Mujahid Khan SI who stated that "During relevant days I was posted as SHO PS Lower Orakzai. The instant case the ASI Shah Sawar Khan incharge PP Bowa handed over to me the accused Muharram Ali along with the Kalashnikov bearing No. 56-25-40352 along with fixed charger containing twelve live rounds of 7.62 bore. I token to possession the above Kalashnikov vide recovery memo Ex.PW-1/1 in the presence of margin witnesses namely Lebab Ali Muharrir and Ameer Nawaz constable. I also issued the card of arrest of accused which is Ex.PW-1/2. The


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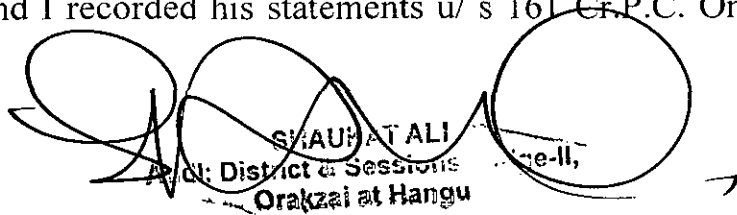
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Kalashnikov along with fixed charger containing twelve live rounds produced before the court today which is Ex.P-1. I have also submitted complete challan under the juvenile Justice System Act which is Ex.PW-1/3. Today I have seen the above document which is correct and correctly bears my signature”.

PW-2 is the statement of Libab Ali Muharrir who stated that “I am marginal witness to recovery memo already Ex.PW- 1/1 vide which SHO Mujahid Khan took into possession one Kalashnikov bearing no 56-25-40352 already Ex.PW-1 along with fixed charger containing twelve rounds of 7.62 bore which was recovered by ASI Shah Sawar khan ASI from accused Muharram Ali. To this effect SHO Mujahid Khan prepared recovery memo in my presence and I put my signature on said recovery memo later on my statement u/s 161 Cr.P.C was recorded by the IO. Today I have seen the recovery memo which is correct and correctly bears my signature”.

PW-3 is the statement of Shah Sawar ASI who stated that “I arrested the accused in the instant who was involved in a murder case and was absconding. I recovered one Kalashnikov from the possession of accused at the time of his arrest. I took the accused along with Kalashnikov to the PS where I handed over the accused along with Kalashnikov to Mujahid Khan SHO”.

PW-4 is the statement of Shal Muhammad S.I/incharge investigation who stated that “On receipt of copy of FIR, card of arrest and recovery memo. I visited to the spot and prepared site plan Ex. PB on pointation of complainant Shah Sawar A.S.I. Thereafter I returned to the PS and recorded statements of PWs u/s 161 Cr.P.C. Accused was handed over to me for the investigation and I recorded his statements u/ s 161 Cr.P.C. On 17/06/019 I


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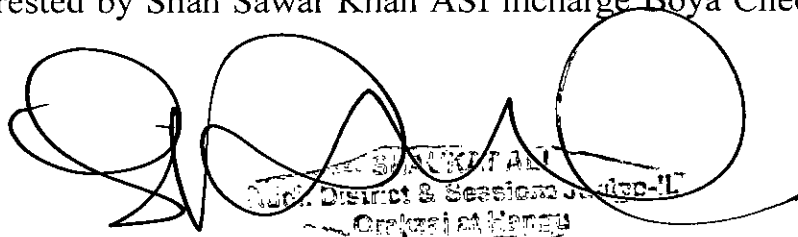
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produced Muharram Ali before the court of Judicial Magistrate on remand Judicial vide my application Ex.PW-4/1. I have also submitted one application Ex. PW-4/2 to the Armorer district police Orakzai for examination of Kalashnikov along with twelve rounds of 7.62 bore, the report of Armorer is placed on file which is Ex.PW-4/3. During course of investigation I prepared application Ex.PW-4/4 addressed to the in charge FSL for examination of the above mentioned Kalashnikov (weapon of offence) along with fixed charger containing twelve rounds of 7.62 bore and sent the same to FSL on 11/07/2019, the report which I received in positive which is Ex.PK. After completion of investigation I handed over the file to the SHO for submission of challan. The instant case FIR has been registered by SHO Mujahid Khan and I am well acquainted with his signature which is correctly available on the FIR which is Ex.PA. similarly I am also acquainted with the signature of Lebab Ali MHC who has prepared road permit certificate (Raseed Rahdari) which correctly bears his signature and the same is Ex PW-4/5. All the above mentioned documents are drafted by Anar Gul A.S.I on my dictation which are correct and correctly bear my signatures”.

On 05.12.2019, the prosecution closed its evidence and the case was fixed for statement of accused. On 20-12-2019 the statements of accused were recorded u/s 342 Cr.P.C wherein the accused denied the allegations leveled against him however he refused to be examined on oath or to produce defense evidence, therefore, the case was fixed for final arguments.

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

The contents of FIR reflects that the accused Muharram Ali was allegedly arrested by Shah Sawar Khan ASI incharge Boya Check Post PS


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Dist. District & Sessions Judge-II
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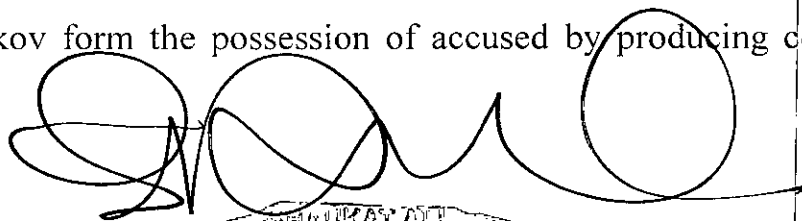
Lower Orakzai along with Kalashnikov and live rounds which is the alleged weapon of offence. The complainant was accompanied by Constable Naveed Ali, Qareeb Ali, Faheem Ali and Tafseer Ali during his gasht in the locality when he received information about the presence of accused in front of his house. The record shows that when the accused was arrested and the Kalashnikov along with live rounds was allegedly recovered from the possession of accused, the complainant did not prepare recovery memo as a proof of recovery of Kalashnikov from the possession of accused nor he prepared the card of arrest to establish the arrest of accused in the mode and manner alleged by the complainant. Furthermore, the police constables who accompanied the complainant during his gasht were not cited as witnesses to the recovery proceedings nor their statement were recorded under section 161 Cr.PC nor they were produced before the court to depose as witness to prove the recovery of Kalashnikov form the possession of accused as alleged by the complainant. Had the accused been arrested on the spot the complainant would have definitely prepared the recovery memo and card of arrest of accused in the presence of police constables accompanied him during his gasht, however the mode and manner in which the arrest of the accused is shown could not be believed nor the recovery of Kalashnikov could be connected with the accused.

The prosecution could not produce any of the police constables as witness who accompanied the complainant for the arrest of the accused to prove the recovery of Kalashnikov form the possession of accused. Mujahid Khan SI (PW-01) stated that Shah Sawar Khan ASI/complainant Incharge PP Boya handed over to him the accused Muharram Ali along with Kalashnikov with fixed charger containing 12 live rounds of 7.62 bore


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which he took into possession vide recovery memo Ex.PW-1/1 in the presence of marginal witnesses namely Libab Ali and Ameer Nawaz constables and further stated that he issued the card of arrest of the accused is Ex.PW-1/2. During cross examination PW-01 stated that he was not present on the spot when the accused was arrested by Shah Sawar ASI. Libab Ali (PW-02) who is the margin witness to recovery memo Ex.PW-1/1 stated in his cross examination that he signed the recovery memo in the PS and further stated that it is correct the Kalashnikov was not recovered from the accused in his presence. The complainant Shah Sawar ASI (PW-03) stated that the he took the accused along with Kalashnikov to the PS and handed over the accused along with Kalashnikov to Mujahid Khan SHO. Shah Sawar ASI/complainant during his cross examination confirmed that I did not preparer any recovery memo on the spot and further confirmed that he has not cited the police constables who accompanied him as witnesses to the recovery memo and have not prepared the card of arrest of the accused.

Shal Muhammad SI (PW-04) who is incharge of investigation conducted investigation in the case and during his cross examination he stated that the complainant Shah Sawar was present on the spot and he prepared the site plan on his instance, however this statement of PW-04 is fully negated by Shah Sawar Khan who stated in his cross examination that the IO did not come to the spot at the time of his presence on the spot and he has not pointed out the place of occurrence to the IO which negate the venue of arrest of accused and the recovery of Kalashnikov from the possession of accused. The prosecution badly failed to prove the recovery of Kalashnikov form the possession of accused by producing cogent and


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confidence inspiring evidence. Not a single witness was produced in whose presence the accused was allegedly arrested along with Kalashnikov and the witnesses who were examined by the prosecution could not connect the accused with recovery of Kalashnikov and their evidence is not sufficient to be made basis for the conviction of accused for the alleged offence.

In view of the above discussion the prosecution failed to bring home the guilt of the accused beyond reasonable shadow of doubt, therefore the accused Muharram Ali is acquitted form the charges leveled against him by extending him the benefit of doubt. The accused Muharram Ali is in custody, he be released forth with if not required in any other case.

The case property be kept intact till the expiry of period of appeal or revision and where after the same be dealt with in accordance with law.

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

Announced
08/06/2020

(Shaukat Ali)
Additional Sessions Judge-II/
Judge Juvenile Court
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment consists of (07) pages. Each page has been read, corrected and signed by me wherever, necessary.

(Shaukat Ali)
Additional Sessions Judge-II/
Judge Juvenile Court
Orakzai at Baber Mela