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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE- I**  
**ORAKZAI (AT HANGU)**

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**Criminal Appeal No.03 of 2019**

**Date of institution** 16-04-2019

**Date of decision** 10-05-2019

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**Appeal from judgment:**

Passed in Case No: 39/2018

Dated: 30-06-2018

Under Sections: 171 & 419 of PPC r/w 13 of FIGR, 2018

Decided by: AC/SDM, Lower Orakzai

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1. **Majeed Khan** s/o Ashna Gul; r/o Village Dalay, Ferozkhel, Orakzai
2. **Mohammad Taib** s/o Fazal Jalal; r/o Village Dalay, Ferozkhel, Orakzai
3. **Mohammad Harris** s/o Gul Faqir; r/o Malikdinkhel, Maidan, Khyber
4. **Jamshid Khan** s/o Laiq Shah; r/o Qamberkhel, Maidan, Khyber

(Appellants)

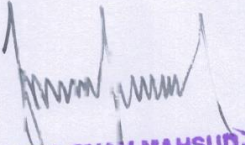
Vs

1. State
2. Assistant Commissioner Lower Orakzai (Respondents)

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- Sanaullah Khan Advocate for Appellants
  - DPP Umer Niaz for State/respondent no.1
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**Judgment in Appeal:**

1. Through the impugned judgment the above named four appellants were convicted, under sections 171, 419 PPC r/w 13 FIGR, 2018 (FATA Interim Governance Regulation); and they were each sentenced to 03 years RI and a fine of Rs. 50,000. In default of payment of fine they were

  
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sentenced to undergo a further imprisonment of 03 months  
SI. Benefit of section 382-B CrPC was extended to the  
accused.

2. These four accused, being aggrieved of conviction and sentence passed against them, have filed the instant appeal. Notice was given to State/respondents. Arguments of counsel for appellants and the DPP for State heard; and the record has been perused in light of the arguments presented at the bar.
3. Facts of the case according to the record are; that, on 08-04-2018, a report was registered by the then Assistant Political Agent of Lower Orakzai (Information Report No. 737/APA/L). According to this report the 04 appellants, after having been apprehended by Orakzai Scouts 232 Wing from Zera, were handed over to the Political Administration, without case property, for trial under FCR. The allegation against them was that they were involved in snatching hash (sic) in disguise of personnel of Orakzai Scouts wearing camouflage and further involvement in other criminal activities.
4. According to order sheets of the lower forum, the trial of accused, before the court of APA/AC/SDM, started on the same day i.e. 08-04-2018. That on 10-04-2018, their statements were recorded in court; and on next date a jirga (Council of Elders), consisting of 04 elders, was nominated. That, thereafter, through an un-dated order, issues were framed for the jirga to probe and give findings upon. The next order sheet, which is again not dated, states that the 04 accused confessed their guilt; however, that the jirga members were directed to converse about these statements with each other as well as with the accused. The next order sheet, again undated, states that the jirga members gave a unanimous verdict and declared all 04 accused guilty of the offence. Thereafter, through the impugned order dated 30-06-2018, all the 04 accused/appellants were sentenced to the above mentioned terms of imprisonment and fine.

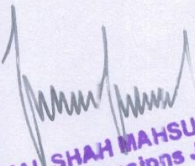
  
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5. Being aggrieved of the order of their conviction and sentence the instant appeal has been filed before this court through counsel. The delay in filing of appeal was condoned by this court through order no. 5 dated 03-05-2019.
  
6. It is pertinent to mention at the outset that the trial and conviction of the appellants took place in a different era. The judicial authority has been withdrawn from the executive officers of the erstwhile FATA territory; and therefore the instant appeal is being heard by a regular court. Although the proceedings in trial/jirga were conducted in a different legal setup; however, no matter what the legal system is, the principles of natural justice are the same in any setup. Thus it is to be seen that whether the lower forum undertook a legal exercise in order to arrive at its findings; and that whether the right of fair trial and due process was adopted, in the process whereby the appellants were convicted. Even though the Constitutional Jurisdiction of Superior Courts was barred in relation to a Tribal Area, however, that did not mean that Fundamental Rights, as enshrined in the Constitution, were not extended to people of Tribal Areas.
  
7. In the present case there is not a single piece of official document or statement which could show the date and time of the alleged offence or the date of arrest of the accused. A letter, dated 08-04-2018, directed from Wing Commander of 232 Wing Orakzai Scouts to the APA, states that the 04 accused were found in possession of 03 uniforms of Frontier Corps (in Information Report mentioned above it was stated that the accused used Orakzai Scouts uniforms), 01 SMG with 90 rounds, one 30 bore pistol with 04 rounds, and one magazine each of SMG and 30 bore. It is further mentioned in this letter that the 04 accused were involved in snatching hash and other criminal activities. The articles (case property) allegedly recovered from the accused was not handed over to the political administration at the time of handing over of the accused. A document available on file (at page no. 23) states that only 03 FC CCD uniforms were

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handed over to political administration; and that too after 02 months of occurrence, on 07-06-2018. Thus, all the circumstances in respect of the alleged occurrence and the mode and manner of arrest of appellants are doubtful.

8. The lower forum has mainly based its finding on the alleged confessions made by the accused before that court and jirga members, as mentioned in the penultimate order sheet of trial court. However, no such confessional statement signed by the presiding officer/SDM is available on record. The alleged statements available on record are signed by a Tehsildar and do not bear any date. It cannot be determined that under what circumstances and by whom these statements were recorded. Thus, these alleged confessional statements must be excluded from consideration altogether.
9. Finally, I would advert to the findings of jirga (CoE). According to order of lower forum, dated 24-04-2018, four persons, namely Abdul Mat Khan, Habibullah Khan, Khan Zaman and Badshah Mir, were constituted as jirga members. In the terms of reference the names of only 03 jirga members are mentioned. Whereas, the verdict of jirga, dated 30-06-2018, has been given by 04 persons namely, Habibullah Khan, Lajbar Khan, Khan Zaman and Abdulmat Khan. It is beyond comprehension as to how the constitution of jirga was changed twice, without the consent of the accused. This verdict states that the member of jirga conducted due deliberations and investigation in arriving at the jirga. However, there is no trace on record of any investigation conducted. No statement of any witness has been recorded; neither has the jirga member been able to provide any detail about the alleged offence with which the accused were charged.
10. In light of these circumstances I don't see admissible piece of evidence against the appellants on record. The allegation against them is doubtful and suspicious. Conviction cannot be awarded on such flimsy evidence and proceedings.

  
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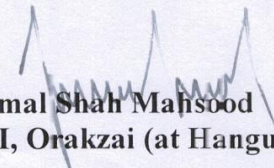
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Therefore, it is held that the lower forum has erred in passing the impugned judgment of conviction and sentence.

11. Resultantly, the instant appeal is **accepted** and the conviction and sentence passed against the appellants through the impugned judgment are set aside. The appellants, namely Majeed Khan, Muhammad Taib, Muhammad Harris and Jamshed Khan are hereby acquitted of the charges leveled against them in the instant case. They shall be released from custody forthwith, if not required to be detained in any other case.

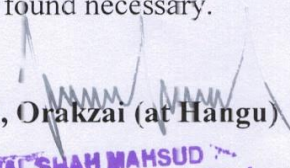
12. Let a copy of this order be placed on record and the same be returned to the quarter concerned; and let this file be consigned to record room, after necessary completion and compilation.

**Announced**  
**10-05-2019**

  
**Jamal Shah Mahsood**  
**ASJ-I, Orakzai (at Hangu)**

**CERTIFICATE**

This judgment consists of -05- pages. Each page has been signed by me, and corrected wherever found necessary.

  
**ASJ-I, Orakzai (at Hangu)**

**JAMAL SHAH MAHSUD**  
**Addl: District & Sessions Judge-I,**  
**Orakzai at Hangu**