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

Criminal Appeal No.02 of 2019

Date of institution 01-04-2019

Date of decision 14-05-2019

Appeal from judgment (Impugned Judgment):

Passed in Case No: 61/2018

Dated: 11-10-2018

Under Sections: 121/121-A of PPC r/w 13 of FIGR, 2018

Decided by: AC/ADM, Upper Orakzai

Mohammad Ishaq s/o Samar Gul; r/o Caste Alikhel, Orakzai
(Appellant)

Vs

Assistant Commissioner/ADM Upper Orakzai Agency
(Respondent)

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

- Asif Paracha Advocate for Appellant
 - APP Zohaib Ahmed Sher for State/respondent
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Judgment in Appeal:

1. Through the impugned judgment the above named appellant was convicted, under sections 121 & 121-A PPC; and he was sentenced to 03 years RI and a fine of Rs. 50,000 (in default of payment of fine a further imprisonment of 03 months SI). Benefit of section 382-B CrPC was extended to the accused.

2. This instant appeal, against the order of conviction and sentence, was initially filed before the Commissioner Kohat. However, after merger of erstwhile FATA territory into KP Province, the appeal was transferred to this court. Notice was given to State/respondent. Arguments of counsel for appellant

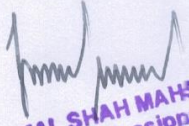
and the APP for State heard; and the record has been perused, in light of the arguments presented at the bar.

3. Facts of the case according to the record are; that, on 29-01-2018, an Information Report was sent by the then Assistant Political Agent of Upper Orakzai (Information Report No. 239/APA/U) to the PA of Orakzai. According to this report the present appellant Mohammad Ishaq, alongwith two other persons, was handed over by IB HQ Peshawar to the Political Administration Orakzai Agency for trial under FCR. Other documents available on record are copies of Interrogation Report dated 25/26-01-2018, an undated statement of accused, copies of JIT report, order of reference to Jirga members (Council of Elders) and the opinion of Jirga members.

4. The allegation against the accused/appellant is that in the year 2001 he joined the terrorist group of one Commander Gul Zaman; that during this time they used to patrol their area; that they forced people to offer prayers and to keep their women inside their houses. That people of his group used to pick up people, by alleging that those people spied upon and spread propaganda against Taliban, and got verdicts against them from Qazi, where after those people were slaughtered and shot and then thrown in Sampog, Mishti area. It was further alleged that the accused/appellant remained involved in actions against the security forces. A JIT declared the accused/appellant as BLACK.

5. As far as the trial is concerned; the order sheets of trial court show that, on 07-03-2018, a statement of accused was recorded in court; thereafter, his case was referred to JIT. On receipt of JIT report, a Council of Elders (CoE) was nominated and issues were framed (sic) for verdict of the CoE. After receipt of the verdict the accused was convicted and sentenced as above.

6. No substantial or direct evidence is available against the accused/appellant. The lower forum/trial court has based the conviction and sentence on the JIT Report and the award of CoE. These are the only pieces of evidence brought against the accused


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during his trial before the lower forum. It is to be seen that whether these are reliable pieces of evidence in the instant case.

7. The perusal of order JIT of Report would reveal that no investigation was conducted by the JIT and that its findings were solely based on the interrogation of accused/appellant; wherein he allegedly made certain admissions. These admissions/confessions are that the accused/appellant joined Tehreek e Taliban Orakzai Group in 2009; and that he used to patrol the area with his group and order people to offer prayers and not to let their women out of their houses. The rest of the alleged statement made to JIT is in nature of information about the group, and not admission/confession. However, in the signed statement of accused/appellant available on record – which may be the statement recorded in court, he has completely denied any involvement in terrorist activities. The alleged confession made before JIT cannot be proved against the accused and the same is also a doubtful piece of evidence. Thus it must be ruled out of consideration.

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8. The verdict of Jirga members (CoE) was given in the shape of replies to the queries made in the terms of reference/issues. The verdict of Jirga is based on their deliberations and queries made from the relatives of the accused/appellant. According to their verdict the accused had joined the Taliban Dabori Group in 2009, under coercion. The accused/appellant did not patrol the area with the Group; and he never abducted or killed anyone. He never took part in any activity against the security forces. The jirga concluded that the accused only bid people to offer prayers and not to allow their women come out their houses without *parda*. The Jirga's final verdict is that the accused/appellant belonged to a poor family who was compelled by Talibans to join their group but that he never harmed anyone nor committed any offence. The jirga recommended that he should be acquitted in the case.

9. The evidence brought on record does that prove the allegations that the accused/appellant committed, attempted/conspired to commit or abetted the offence of waging

war against the State. The allegation of joining of a local Taliban Group, under compulsion by threats of death, even if proved would fall under the general exemption provided under section 94 of PPC.

10. In light of the above discussed status of evidence against the accused/appellant, the allegation against the accused/appellant remains doubtful and suspicious, and in fact not proved. The verdict of Jirga/Council of Elders was based on sound reasoning; and, in absence of any other reliable piece of evidence, the lower forum was bound to accept the same. 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 accused/appellant through the impugned judgment is set aside. The appellant, namely Mohammad Ishaq is hereby acquitted of the charges leveled against him in the instant case. He 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
14-05-2019

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

JAMAL SHAH MAHSUD
Add: District & Sessions Judge,
Orakzai at Hangu

CERTIFICATE

This judgment consists of -04- pages. Each page has been signed by me, and corrected wherever found necessary.

ASJ-I, Orakzai (at Hangu)

JAMAL SHAH MAHSUD
Add: District & Sessions Judge,
Orakzai at Hangu