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IN THE COURT OF ASGHAR SHAH
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 4/3 OF 2019
DATE OF INSTITUTION : 23.08.2019
DATE OF DECISION : 30.10.2019

STATE THROUGH MALAK NAJMUL HASSAN S/O KHIAL HASSAN
TRIBE MANI KHEL R/O, LOWER ORAKZAI KALAYA
.....(COMPLAINANT)

-VERSUS-

1. NAJEEB KHAN S/O MIRZA GUL AGED ABOUT 25 YEARS
R/O JALAKA MELA, TRIBE UTHMAN KHEL, KALAYA
LOWER ORAKZAI.
2. SYED ABBAS ALI SHAH S/O SYED GUL QASIM AGED
ABOUT 22/23 YEARS R/O BABA NAWASI, TRIBE BAR
MUHAMMAD KHEL, KALAYA LOWER ORAKZAI.
..... (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for state.
: Abid Ali Advocate, for accused facing trial.

FIR No. 6 Dated: 02.06.2019 **U/S:** 5 Explosive Substances
Act, 1908 **Police Station:** Lower Orakzai

JUDGEMENT
30.10.2019

The story of the prosecution as per contents of Murasila Ex. PW-1/1 converted into FIR Ex. PA are that; on 02.06.2019 complainant, Malak Najmul Hassan submitted a written application Ex. PW-1/1 to the local Police to the effect that he along with Malak Haji Noorjaf and Malak Ikhtyar Ali elders and members of the Aman Committee were present on duty in village Charkhel. That meanwhile a motorcycle bearing number F-4119/Kohat came to the spot from the Kalaya side having boarded two persons. That they signalled the motorcycle to stop but they refused, however at some

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distance they were overpowered. The persons disclosed their names as Najeeb Khan and Syed Abbas Ali Shah. The personal search of the side pocket and trouser fold of the accused Najeeb Khan lead to the recovery of two hand grenades. Accordingly, the accused along with hand grenades and motorcycle were produced to the local Police and accordingly FIR in question was registered against the accused facing trial.

- (2). Upon the receipt of case file, notices were issued to the accused facing trial as they were on bail and upon their appearance the proceedings were initiated and they were charge sheeted to which they pleaded not guilty and claimed trial and accordingly the witnesses were summoned who deposed in the following manner.

Complainant, Najmul Hassan as PW-1

deposed;

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“that on the night of occurrence, i.e. 02.06.2019, I along with Haji Noorjaf, Ikhtyar Ali, Nisar Ali and Muhammad Qambar along with other members of the Aman Committee were present on duty at village Charkhel. At about 09:30PM one motorcycle came from Kalaya side which was signaled by me to stop but the motorcycle did not stop and I ran behind the motorcycle and over powered

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both the persons on the motorcycle and thereafter, one person deboarded from the motorcycle and I conducted body search and recovered one hand grenade from the side pocket and one hand grenade from the Badda Shalwar of the said person who disclosed his name as Najeeb Khan s/o Mirza Gul tribe uthman khel while the other person was also searched who disclosed his name as Syed Abbas Ali Shah s/o Syed Qasim tribe Bar Muhammad Khel, Baba Nawasi, Kalaya. Nothing was recovered from the possession of Syed Abbas Ali Shah. As it was a month of Ramadan so, there is possibility that both these persons might came to the area for the purpose of commission of some offence. Thereafter, we informed the police, who came to the spot and I handed over the hand grenades, motorcycle and accused to the police on the spot in presence of witnesses. Later on, we came to the PS and one official of the PS drafter an application to SHO for registration of FIR against the culprits on my dictation and I then correctly signed and thumb impressed the same which is Ex. PW-1/1. On the basis of the said


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application, FIR was registered. Later on, I accompanied the IO who prepared site plan on my pointation on the spot. I charged the accused for commission of offence.”

Eye witness, Haji Noorjaf Ali as PW-2 deposed;

“that on the night of occurrence i.e. 02.06.2019. I along with complainant, Najmul Hassan, Ikhtyar Ali and other members of the Aman Committee were present on duty at village Charkhel. At about 09:30PM, one motorcycle on which two persons were boarded came and Najmul Hassan signaled them to stop but the driver of motorcycle did not stop and after covering some distance both of the persons were over powered by the complainant, Najmul Hassan. One person namely Najeeb Khan was deboarded and he conducted his personal search and recovered one hand grenade from his Badda Shalwar and other hand grenade from his front pocket. The other person namely Syed Abbas Ali Shah was also searched by him but recovered nothing from his possession. Thereafter, we informed the

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police and the police came to the spot and in my presence, complainant handed over two grenades along with motorcycle to the SHO along with accused. Thereafter, complainant submitted an application to the SHO already exhibited as Ex. PW-1/1. The SHO took into possession two hand grenades along with motorcycle bearing number F-4119- Kohat, in my presence. The SHO packed and sealed the hand grenades in parcel. Today both the hand grenades were produced before the court which are Ex. P1 and Ex. P2. The motorcycle today produced before the court is Ex. P3. The SHO prepared recovery memo and I correctly signed and thumb impressed the same. My statement was recorded by the IO.”

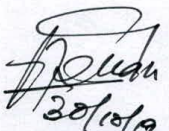
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Mujahid Khan SHO Police Station Lower Orakzai Kalaya as PW-3 deposed;

“that during the relevant days I was posted as SHO of PS Kalaya. On 02.06.2019 at night I was informed by the elder of the locality namely Najmul Hassan about the occurrence and on that information I along with SDPO, Mehboob Khan and Police Nafri of

the Police Station had gone to the place of occurrence i.e. village Charkhel and there the complainant, Najmul Hassan along with Haji Noorjaf, Malak Ikhtyar Ali and other members of the committee informed us about the occurrence. Thereafter, all the members of the Aman Committee accompanied us to the Police Station and in the Police Station complainant, Najmul Hassan submitted one application to me for legal proceedings against the accused. The complainant also handed over two hand grenades which he recovered from the possession of accused, Najeeb Khan. The Motorcycle bearing number F-4199 Kohat was also handed over to me and I took the same into my possession in presence of marginal witnesses, Malak Haji Noorjaf and Malak Ikhtyar Ali. Both the hand grenades were packed and sealed into parcels. To this effect I prepared recovery memo Ex. PC. After that I registered FIR against the accused from contents of an application of Malak Najmul Hassan. The FIR is Ex. PA. After registration of the case the copy of FIR was handed over to IO for investigation. I have also arrested accused


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and issued their joint card of arrest Ex. PW-3/1. I have also drafted an application addressed to the incharge bomb disposal squad for examination of hand grenades Ex. PW-3/2. I have handed over the case property to the Muharrir of Police Station on the same day. After completion of investigation by the investigation officer, I have submitted complete challan Ex. PW-3/3 against the accused. All the documents prepared by me are correct and correctly bear my signatures.”

Lubab Ali Muharrir, Police Station Lower Orakzai PW-4 deposed;

“that during the relevant days I was posted as Muharrir in the PS Kalaya. On 02.06.2019 SI, Shal Muhammad Khan handed over two hand grenades to me which I kept in Maal Khana of the PS in safe custody. The motorcycle was also handed over to me. I accordingly entered these facts in register 19 of PS. On 11.07.2019 I have also drafted road permit certificate of the hand grenade and handed over the same to SI, Shal Muhammad Khan. The said application is Ex. PW-4/1 which is correct and correctly bears my signature. My

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statement was recorded by the IO U/S 161 Cr.P.C.”

Shal Muhammad, SI Investigation Police Station Lower Orakzai PW-5 deposed;

“that on receipt of copy of FIR, I visited the spot and prepared site plan Ex. PB on pointation of complainant, Malak Najmul Hassan. I recorded statements of PW’s. I then returned to PS and handed over the case property to the Muharrir of PS namely Lubab Ali. I interrogated the accused and recorded their statements U/S 161 Cr.P.C. On 03.06.2019, I produced both the accused before the court of Judicial Magistrate on remand Judicial vide my application Ex. PW-5/1 and accused were sent to Judicial lockup. On 11.07.2019, I took both the hand grenades to bomb disposal unit for examination and on 05.08.2019 I received the report of bomb disposal unit which is Ex. PK. During course of investigation, I have recorded statement of Lubab Ali U/S 161 Cr.P.C. After completion of investigation, I handed over the case file to SHO for submission of Challan. All the

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documents prepared by me are correct and correctly bears my signature."

- (3)- Thereafter, prosecution closed their evidence where after statement of all the two accused was recorded U/S 342 Cr.P.C. The accused facing trial not only deposed on oath but also produced one defence witness.

Accused Najeeb Khan s/o Mirza Gul deposed on oath;

"that on the day of visit to Nanawar Ghar i.e. prior one day of the alleged occurrence I had telephonically contacted with Syed Abbas Ali Shah and informed him about my visit to Nanawar Ghar. I had crossed 5 check posts from Bezote to Kalaya and met with Syed Abbas Ali Shah at Kalaya Bazar. I was properly searched by the officials of Frontier Corps and Police. Thereafter, we both proceeded to Nanawar Ghar. On the way before reaching to Nanawar Ghar our motorcycle was stopped by one person namely Ibniaz Ali and demanded cash amount and mobile phones from us but we refused. Two other persons were also present at that place at some distance. The said person tried to overpower us but we ran away and took

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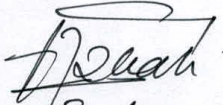
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shelter in one house situated near that place. People of the locality attracted to that house and elders of the locality namely Najmul Hassan and Noorjaf Ali demanded 3 lac rupees from us but we refused. We spent that day and night in the said house and on the next day both of us were handed over to the Police by the complainant party and registered a false case against us. Neither any recovery of hand grenades have been effected from my possession nor the investigation was conducted at our presence. I had not seen grenade in my life and we were falsely charged by the complainant party in a bogus case."

Accused Syed Abbas Ali Shah s/o Syed Gul Qasim on oath deposed;

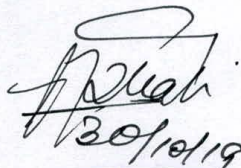
"that on the day of our visit to Nanawar Ghar i.e. prior one day to the alleged occurrence Najeeb Khan contacted me through his cellular phone and asked me about his visit to Nanawar Ghar. I met him at Kalaya Bazar and thereafter we proceeded to the Nanawar Ghar. On the way one person namely Ibniaz Ali stopped our motorcycle and demanded mobile phones and cash amount from us but we


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refused. Two other persons were also present at some distance. We then ran away and took shelter in one house situated near to that place. Thereafter, people of the locality came there and elders of the locality including complainant party came and demanded cash amount of 3 lac rupees from us but we refused. Both of us spent that day and night at that house as they have illegally confined us and on the next day I along with Najeeb Khan were booked in a false case.”

Amir Khan s/o Mirza Gul as DW-1 deposed;

“that accused Najeeb Khan is my brother while accused Syed Abbas Ali Shah is friend of my brother. As per my information my brother was visiting to Nanawar Ghar on his motorcycle and at Kalaya Bazar met with his friend, Syed Abbas Ali Shah and made program of visit of Nanawar Ghar. As per my information my brother was searched on various check posts but nothing has been recovered from his possession. On the same day I was telephonically informed by complainant party and demanded 3 lac rupees from me for release of my brother but I refused. One the next day the complainant party also intimidated me


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and told that if he failed to pay, he would register a false case of hand grenades against Najeeb Khan. On my refusal, a false case was registered against my brother Najeeb Khan and his friend Syed Abbas Ali Shah”

(4)- Thereafter, the defence closed their evidence where after arguments of the DPP for the state and counsel for the accused facing trial heard and case file perused.

(5)- From the arguments and record available on file it reveals that the prosecution story is that the two private persons being members of the Aman Committee searched the accused facing trial and recovered two hand grenades from the possession of accused Najeeb Khan whereas nothing was recovered from the possession of co-accused Syed Abbas Ali Shah. It was also the claim of the prosecution that the hand grenades were sealed at the spot and recovery memo followed by written application of the complainant were also drafted at the same place. However, when the situation is confronted with the record and evidence available on the case file, it reveals that the initial application Ex. PW-1/1 submitted by the complainant to the local Police is having no date, timing and exact place of occurrence. The version of the prosecution that the proceedings were taken place at the spot have been denied by the Mujahid Khan, SHO PW-3 by alleging that upon receipt of information regarding the occurrence he along

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with SDPO and other Police officials went to the spot where he was informed regarding the occurrence and thereafter all the members of the Aman Committee accompanied them to the Police Station where the complainant, Najmul Hassan submitted an application for the registration of the case. Besides the said SHO in his cross examination admitted that the application of the complainant was drafted by the Muharrir of the Police Station, Lubab Ali. However, the Muharrir, Lubab Ali while deposing as PW-4 did not utter a single word regarding the drafting of application for the complainant. It is also not appealing to a prudent mind that when the local Police reached to the spot then why an application of the complainant was obtained and why the matter was not reported either by the SHO or by the SDPO to the Police Station through Murasila.

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Regarding the sealing of the case property, the SHO, Mujahid Khan PW-3 deposed that he had sealed the parcels of the hand grenades and affixed the seals on the same. But however, the report of the Bomb Disposal Unit Ex. PK would reveal that the parcels were having the seal of **SH**, which denote that the same seal was of IO, Shal Muhammad, which IO as per statement of PW-3 reached to the spot at about 10:00PM whereas the report was lodged at 2210 hours. Thus, how it was possible that the IO reached to the spot even before the registration of the case. With regard to the sealing of the

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case property, it was alleged by the complainant that the same was sealed at the spot but however the eye witness, Noorjaf Ali PW-2 on page 7 of his cross examination contradicted the complainant by alleging that the same were packed and sealed in the Police Station. It is also necessary to mention here that the recovery memo Ex. PC is having no mentioning of any seal being affixed on the same and the same fact is neither mentioned in the initial application of the complainant nor in the FIR. So, when the particular seals are not mentioned in the recovery memo, initial application and FIR, then how it would be determined that the case property received to the Bomb Disposal Unit is the same as was allegedly recovered from the possession of the accused facing trial. Moreover, the recovery of the hand grenades was alleged on 02.06.2019 whereas the case property as per report of the BDU Ex. PK was received to them on 11.07.2019 i.e. after one month and 9 days of the occurrence. No reason at all was cited as to why the hand grenades were sent to the BDU with so much delay.

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(7)- With regard to the recovery of hand grenades, it is mentioned in the application Ex. PW-1/1 that the complainant recovered one hand grenade from the side pocket while other from the trouser fold of accused Najeeb Khan. But however, the eye witness, Malak Noorjaf Ali PW-2 contradicted the said stance by alleging that one hand grenade was recovered from the trouser fold while the other from the front pocket of

the accused Najeeb Khan. As such there is clear cut contradiction between the version of prosecution taken in the initial report and the one deposed by the witnesses in their evidence.

(8)- The mode and manner of the occurrence was not established in the manner it was alleged to have had been committed. The material contradiction between the statements of the witnesses regarding the recovery, proceedings at the spot, packing and sealing of the case property, late sending of case property to the BDU and the other contradictions briefly detailed above would denote that either the witnesses were not present at the relevant time at the place of occurrence or have not deposed in the mode and manner in which the occurrence was alleged to have been committed. The local Police despite taking in to their possession the motorcycle U/S 523/550 Cr.P.C had made no investigation at all with regard to the same. Thus, serious dents and doubts are thus attracted to the case of prosecution regarding the involvement of the accused facing trial in the commission of offence charged for, the benefit of which must be extended in favour of accused facing trial.

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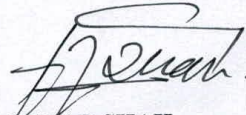
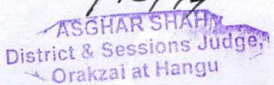
(9)- A part from the above, it is necessary to mention here that accused facing trial are neither previous convict nor involved in any such case in the past besides neither they have confessed their guilt nor any further recovery was

effected at their pointation despite they being in police custody for one night. Also, no evidence was brought on record to prove their connection with the recovered hand grenades rather the evidence led by the prosecution is full of doubts and contradictions which have denied the very presence of the witnesses and their proceedings at the spot at the relevant time. Therefore, there is no need to discuss the defence evidence as well as the deposition of the accused facing trial on oath as the primary responsibility of the prosecution to prove their case on the strength of their own evidence failed to establish.

(10)- Accordingly, in the light of above, all the two above named accused are acquitted of the charges levelled against them through the FIR in question. Accused are on bail, their sureties stand discharged from the liabilities of the bail bonds. The case property be disposed of in accordance with law. The motorcycle be returned by the SHO to its lawful owner upon production of original documents and attested copy of this judgement but after the expiry of period provided for appeal/revision.

(11)- File be consigned to Sessions Record Room after its necessary completion and compilation.

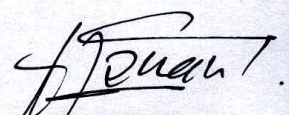
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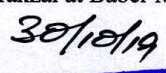
CERTIFICATE

Certified that this judgment consists of seventeen (17) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 30.10.2019.



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela



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