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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II, ORAKZAI AT
BABER MELA, HANGU**

Session Case No. 9 of 2020
Date of Institution: 04.09.2020
Date of Decision: 20.10.2020

**State through Aslam Khan s/o Jamal Khan R/o Tribe Bar Muhammad Khel
District Orakzai.....(Complainant)**

VERSUS

**Sajid Ali S/o Asad Ali r/o Tappa Saboora Khel, Mani Khel, District Lower
Orakzai(Accused Facing Trial)**

Represented by:

Mr. Syed Amir Shah, APP for State

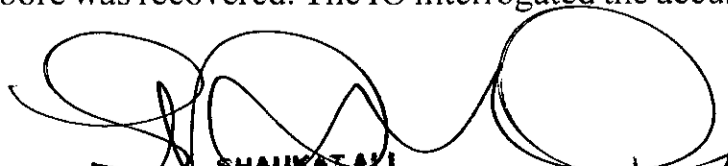
Mr. Jabir Hussain Advocate, counsel for accused

**CASE FIR NO.59 DATED 16.06.2020 U/S 324/427/34 PPC/15-AA OF
POLICE STATION LOWER ORAKZAI (KALAYA)**

JUDGMENT

The prosecution story is that Muhammad Shafiq Khan SHO came to emergency room Civil Hospital Kalaya where the complainant reported in injured condition that he runs the business of cement at Kalaya Bazar, that he had gone to Feroz Khel Mela on his motorcycle for the payment of amount of cement and on return when he reached to the place of occurrence there the accused Sajid Ali was present duly armed in official uniform started firing upon him as a result of which he got hit on his knee of left leg. The report of complainant was reduced in the shape of Murasila Ex.PA which was sent to the PS on the base of which FIR was registered against the accused. The injury sheet of the complainant was prepared and the complainant was referred to the doctor for medical treatment. The case file was handed over to the investigation branch for investigation.

In the course of investigation, the investigation officer inspected the spot and prepared the site plane Ex.PB in the light of torch. During spot inspection 05 empties of 7.62 bore was recovered. The IO interrogated the accused after his arrest


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Orakzai at Mangu

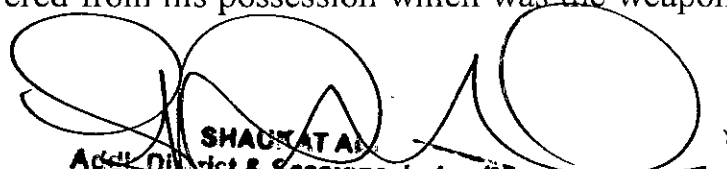
and was produced before the court for custody. The IO recorded the statement of accused and prosecution witnesses and also examined the Kalashnikov through FSL Peshawar and received the FSL report Ex.PZ. After completion of investigation the IO submitted the case file to the SHO for submission of challan.

Complete challan against the accused was submitted which was received by this court on 04.09.2020 for trial against the accused. The accused Sajid Ali who was bail was summoned who appeared before the court on 07-09-2020 along with the complainant. The complainant stated that he had affected compromise with the accused and pardoned the accused in the name of Almighty Allah therefore compromise statement of the complainant was recorded wherein he got no objection on the acquittal of accused therefore the accused was acquitted in the offence u/s 324/427/337 F(i) PPC as the offences being compoundable however the offence u/s 15-AA was not compoundable therefore to that extent provision of 265-C Cr.P.C was compiled and the case was fixed for charge. Charge was framed against accused on 09.09.2020 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 Aftab Hassan ASI who stated that "On the receipt of Murasila through constable Saeed Gul sent by Muhammad Shafiq SHO, I correctly incorporated the contents of Murasila into FIR Ex.PA which is correct and correctly bears my signature".

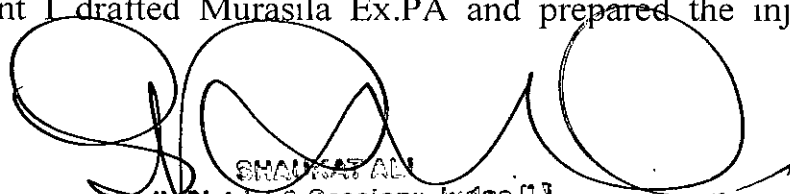
PW-2 is the statement of Khurshid Khan ASHO who stated that "The SHO Muhammad Shafiq Khan arrested accused facing trial on 16-06-2020 and one Kalashnikov bearing No. 712151 along with fixed charger containing 10 live rounds of 7.62 bore was recovered from his possession which was the weapon of offence.


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The SHO put his signature on the body Kalashnikov and sealed into parcel No. 2 by affixing 03 stamps of MS on the parcel. The SHO prepared recovery memo in my presence as well as in the presence of other marginal witness Najeeb Ullah and I signed the recovery memo. The IO recorded my statement u/s 161 Cr.PC. Today I have seen the recovery memo which correctly bear my signature.”

PW-3 is the statement of Shal Muhammad SI/IO who stated that “On the receipt of Murasila and copy of the FIR I proceeded to the spot for spot inspection. I prepared the site plan Ex.PB in the light of torch in the instance of complainant. I recovered 05 empties of 7.62 bore from the spot vide recovery memo Ex.PW-3/1. After spot inspection I returned to the PS. In the PS the accused who was arrested by Muhammad Shfiq SHO was handed over to me along with case property Kalashnikov, recovery memo and his arrest card. I recorded the statement of witnesses to the recovery memo prepared by me and also recorded the statement of other witnesses of the recovery memo. I produced the accused vide my application Ex.PW-3/2 for custody which was refused and the accused was sent to the judicial lockup. I recorded the statement of accused u/s 161 Cr.PC. I sent the Kalashnikov for FSL report vide my application Ex.PW-3/3 through Constable Khan Wada. I also sought the report regarding motorcycle. I received the FSL of Kalashnikov Ex.PZ. I examined the motorcycle through mechanic his report is available on file Ex.PW-3/4. I issued perwana ezadgi Ex.PW-3/5 and Ex.PW-3/6. I recorded the statement of mechanic u/s 161 Cr.PC. I also annexed photographs of motor cycle on file which are Ex.PW-3/7 and Ex.PW-3/8 respectively. Today the motorcycle is available before the court which is Ex.P-1. On completion of investigation I handed over the case file to the SHO for submission of complete challan. Today I have seen the above documents which correctly bears my signature.”

PW-4 is the statement of Muhammad Shafiq SHO who stated that “On the report of complainant I drafted Murasila Ex.PA and prepared the injury sheet

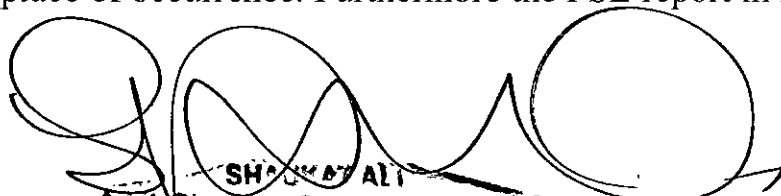

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Ex.PW-4/1. The Murasila was read over and explained to the complainant who thumb impressed the same and also verified by Zahid Ali. I referred the injured to the doctor for medical treatment. From the spot I took into possession vide recovery memo Ex.PW-4/2 10 empties of KK . I arrested accused along with KK ExP-1 and 05 live rounds Ex.P-2 and prepared his card of arrest Ex. PW-4/3 and recovery memo Ex.PW-4/4 in the presence of marginal witnesses. I took the accused to the PS and handed over to the IO. On completion of investigation I submitted complete challan against the accused which is Ex.PW-4/5. Today I have seen the above documents which correctly bears my signature.”

On 12.10.2020, the prosecution closed its evidence and the case was fixed for statement of accused. On 17-10-2020 the statement of accused was 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.

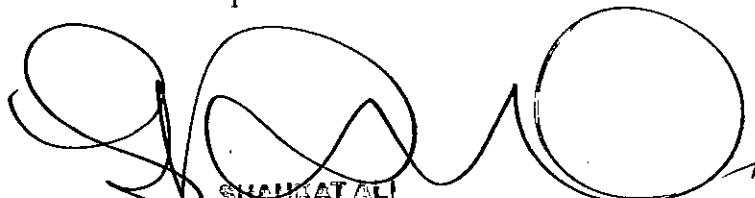
Arguments of learned APP for the state and learned counsel for the accused already heard and available record perused.

The accused is charge for recovery of one Kalashnikov bearing No. 712151 along with fixed charger containing ten live rounds of 7.62 bore form his possession which was allegedly the weapon of offence in the case against the accused u/s 324 PPC wherein he is acquitted on the basis of compromise. The case against the accused was initially registered u/s 324 PPC that the accused inflicted fire arm injury on the complainant however the medical report shows no bullet injury on the body of the complainant. The medical report dated 16-06-2020 further shows scratch marks on the medial aspect of left leg which was a simple injury with blunt object which shows that the accused had no fire of weapon in his possession as alleged by the complainant that he arrested the accused along with Kalashnikov on the place of occurrence. Furthermore the FSL report in respect of


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Kalashnikov Ex.PZ also does not support the firing of 05 empties recovered from the spot from the Kalashnikov for the possession of which the accused is charged by the SHO being weapon of offence recovered from the accused which makes the recovery of Kalashnikov from possession of accused doubtful.

Muhammad Shafiq SHO (PW-04) who allegedly recovered the Kalashnikov from possession of accused stated in his cross examination that he first visited the hospital where he drafted the report at 7:30 PM and then proceeded for the arrest of the accused and he arrested the accused at 8:00 PM however the statement of Muhammad Shafiq SHO regarding the arrest of the accused at 8:00 PM is negated by Khurshid Khan ASHO (PW-02) who stated in his cross examination that they reached to the spot at 18:45 hours after receiving information about the firing on the complainant and till 19:30 the proceedings were completed on the spot. PW-02 further stated that they reached to the hospital at about 18:00 hours and thereafter they reached to the spot at 18:20 hours. Khurshid Khan ASHO further stated in his cross examination that first recovery memo and card of arrest of the accused was prepared and then the Murasila was drafted on the basis of which FIR was registered against the accused which shows that the accused was arrested before the report of the complainant which also negates the statement of Muhammad Shafiq (PW-04) that he drafted the report at 7:30 PM and then proceedings for the arrest of the accused and arrested the accused at 8:00 PM. The statement of prosecution witnesses are contradictory in respect of mode and manner of arrest of the accused which makes the story of prosecution not believable. Furthermore the Kalashnikov was recovered vide recovery memo Ex.PW-4/2 on 16-06-2020 and was sent to the FSL on 02-07-2020 vide application Ex.PW-3/3 with an unexplained delay of 16 days which put serious doubts on the recovery of Kalashnikov from the possession of accused.

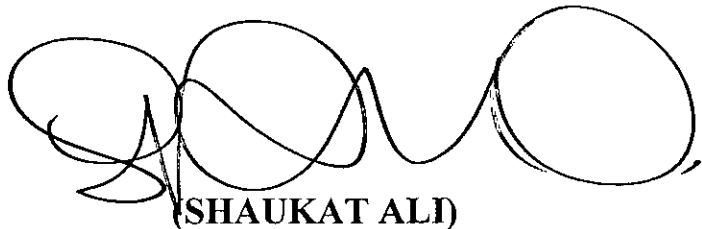

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It is not necessary that there shall be numerous doubts in the case of prosecution for the acquittal of accused even when there is a single doubt in the case of prosecution against the accused the benefit of such doubt shall be extended to the accused. The case of prosecution is full of doubts regarding the recovery of Kalashnikov from the possession of accused which made the story of prosecution not believable and unworthy of any credit, therefore the statement of prosecution witnesses could not be made basis for the conviction of accused.

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 Sajid Ali is acquitted from the charges leveled against him by extending him the benefit of doubt. The accused is on bail his sureties are discharged from the liabilities of bail bonds. 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.

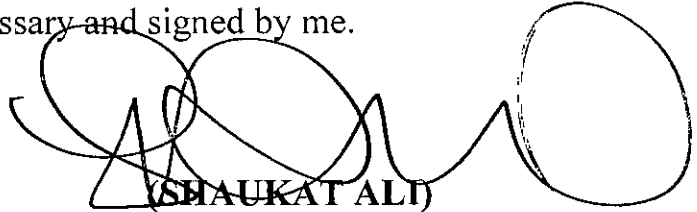
Announced
20/10/2020



(SHAUKAT ALI)
Additional Sessions Judge-II,
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CERTIFICATE

Certified that this judgment consists of (06) pages. Each page has been read, corrected wherever necessary and signed by me.



(SHAUKAT ALI)
Additional Sessions Judge-II,
Orakzai at Baber Mela