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IN THE COURT OF REHMAT ULLAH WAZIR,
SCJ/JM, ORAKZAI AT BABER MELA

CASE NO. : 01/15AA OF 2022
DATE OF INSTITUTION : 08.11.2022
DATE OF DECISION : 31.05.2023

STATE THROUGH: MUHAMMAD ULLAH S/O HAKEEM GUL,
R/O QOUM MULA KHEL, TAPPA CHAR KHELA, DABORI,
TEHSIL UPPER, DISTRICT ORAKZAI

-----**(Complainant)**

VS

SYED SALAM S/O MAULAI KHAN R/O QOUM MULA KHEL,
TAPPA CHAR KHELA, DABORI, TEHSIL UPPER, DISTRICT
ORAKZAI

-----**(Accused Facing Trial)**

Present: Mr. Umar Niaz Khan, District Public Prosecutor and
Noor Karim Orakzai advocate for complainant.
: Dr. Ameer Ajam advocate and Malak Shehzad advocate
for the accused facing trial.

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Senior Civil Judge/JM
Orakzai at Baber Mela

ORDER

31.05.2023

1. Accused facing trial, Syed Salam produced in custody who is charged in case FIR No. 12, Dated: 28.04.2022, U/S 15AA of PS: Dabori, U/Orakzai for possession of a pistol, 30 bore, bearing no. 31145972 with 05 rounds of the same bore which were recovered from the room of accused.
2. Briefly stated factual background of the instant case is that the complainant namely Muhammad Ullah reported the matter of possession of a pistol by the accused as a weapon of offence in the case FIR u/s 15AA.

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3. Upon which, the instant case was registered at PS: Dabori, U/Orakzai on 28.04.2022 vide FIR. 12.

4. After completion of the investigation, the complete challan was submitted on 08.11.2022 to this court. The accused in custody was summoned through Zamima "Bay". The accused in custody produced and the provisions of 241-A Cr.P.C were duly complied with. The formal charge against the accused was framed on 08.12.2022, to which the accused person pleaded not guilty and claimed trial.

5. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;

- i. Gul Asghar, SI the then Muharrir as PW-01.
- ii. Imtiaz Khan, SHO as PW-02
- iii. Kalim Ullah, constable as PW-03.
- iv. Ismail Khan, constable as PW-04.
- v. Muhammad Ishaq, OII as PW-05.

6. In documentary evidence, prosecution has produced the following;

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|-----------------------------------|------------|
| i. FIR | Ex. PW-1/1 |
| ii. Murasila | Ex. PW-2/1 |
| iii. Complete Challan | Ex. PW-2/2 |
| iv. Card of arrest of the accused | Ex. PW-5/1 |


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- v. Insertion memo **Ex. PW-5/2**
- vi. Site plan regarding house of the accused
Syed Salam **Ex. PW-5/3**
- vii. Recovery memo **Ex. PW-5/4**
- viii. Application for police custody of the
accused Syed Salam **Ex. PW-5/5**
- ix. Application for further police custody of the
accused Syed Salam **Ex. PW-5/6**
- x. FSL Report **Ex. PW-5/7**
- xi. Site plan regarding the place of occurrence
Ex. PB

7. Then after, on 11.04.2023, the learned APP and counsel for the complainant closed the evidence on behalf of the prosecution.

8. Statements of the accused u/s 342 Cr.P.C were recorded wherein they neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor did they want to produce any defence evidence in their defence.

9. The accused in reply of the question that what is your statement and why you are charged, submitted that; "as there is counter version of the case whereas he has been falsely attributed firing role so just to strengthen the counter version false and planted recovery have been shown to have been


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effected from him. Furthermore, he voluntarily surrendered himself when he came to know about the occurrence. In that counter version, he lodged a report which is part and parcel of the main FIR No. 12, Dated: 28.04.2022, u/s 324/148/149 PPC, PS Dabori where he charged the accused Muhammad Ullah for firing upon him and from the firing of said Muhammad Ullah (complainant in that case) his own brother sustained fire arm injury which was later on falsely attributed to him”

10. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the DPP & counsel for the state/complainant heard and record perused.

11. The accused is charged with the offence U/S 15AA. Sec. 15 AA deals with possession of unlicensed weapon.

12. Keeping in view, the record on file and the depositions of PWs, the prosecution is required to prove its case against the accused beyond reasonable doubts.

13. Keeping in view, the record on file and the depositions of PWs, the prosecution is required to prove its case against the accused beyond reasonable doubts.

14. PW-01, the Muharrir of the PS, has admitted in his cross-examination that his statement u/s 161 Cr.P.C was recorded by the I.O twice but his second statement is not available.


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Further that no extract of Register No. 19 is available on the file.

15. PW-03, the one Kalim Ullah, constable, the carrier of the parcels to FSL have admitted in his cross-examination that he does not remember that when he went to the FSL. That the pistol in question was sealed in parcel No. 05 but when he was confronted with his statement u/s 161 Cr.P.C, the said number given to the parcel was 07 not 05.

16. PW-04, the one Ismail Khan, constable, a witness to the recovery memo have admitted in his cross-examination that there were many people on the spot and the OII may have recorded their statements but he does not remember. That the

OII recovered 30 bore pistol from the accused Syed Salam in his house. That no lady constable accompanied them to the house of the accused Syed Salam but no one from the elders of the locality was in our company. That his statement was recorded by the OII in the PS and the recovered pistol was without licence.

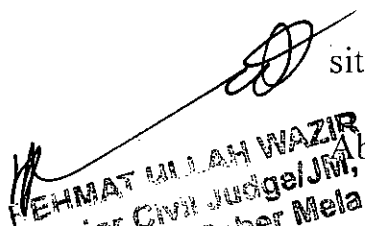
17. PW-05, Mr. Muhammad Ishaq, OII of the PS have admitted in his cross-examination that no injury of the complainant has been disclosed by him or other PWs in the FIR. Further that as per Madd No. 06 and MLC of the accused party, they were also injured and that this fact was

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disclosed to him by the complainant party that they had beaten the accused party with stick and axe but this is not mentioned in the FIR by the complainant. That he prepared the site plan on the pointation of the complainant who got no scratch. Further that as per record, the one Safi Ullah got injured from firing of the accused Abdul Salam and Syed Salam but according to point 06 of the site plan, the complainant have stated that he got hit from the firing of Syed Salam only while according to point 07 of the site plan, he stated that he escaped from the firing of the accused Abdul Salam. Further that there is sharp difference between the story narrated in the FIR and the occurrence illustrated in the site plan. Further that according to injury sheet, the one


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Abdul Samad s/o Hakeem Gul did sustained FAI but according to FIR and site plan, no one else sustained FAI.

Further that according to site plan, the point No. 12 & 13 were given to the accused Umar Gula and Rasheed Bibi with statement that they came with good will for separating the parties. That there is no recovery of any empty and the blood stains from the place of occurrence. That there was no recovery effected directly from anyone of the accused and they have not associated any private witness during the whole of the proceedings and there is no discovery made by anyone

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of the accused. Further that he has not recorded the statement of Muharrir of the PS for safe custody and he has not made any entry in Register No. 19 of the PS. That he has not sent the pistol to armorer to ascertain the fact that whether the pistol is in working condition or not. That according to report of FSL, it cannot be ascertained that when the said weapon was fired for the last time.

18. In the light of the above discussion, it is clear that the case of prosecution is full of contradictions. The pistol in question has neither been recovered directly from the possession of the accused facing trial nor on his pointation.

Also, admittedly the same is not licensed in the name of the accused facing trial from which it could be presumed that the pistol in question is the property of the accused facing trial.

19. Thus, there are doubts in the evidence of prosecution and the accused are ultimately entitled to the benefits of doubts and are accordingly extended to the accused.

20. Resultantly, for the above reasons it is clear that prosecution failed to bring home the guilt of the accused facing trial. Therefore, the accused namely Syed Salam s/o Maulai Khan is acquitted of the charges levelled against him. The accused Syed Salam is in Judicial lock-up, Orakzai at Baber Mela, therefore, he be released forthwith if not

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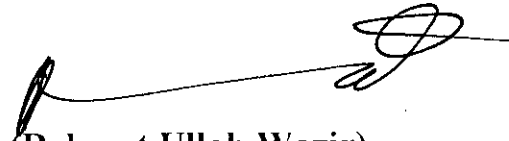
required in any other case.

21. The pistol in question being unlicensed is hereby forfeited to the state and be dealt in accordance with the law.

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

Announced


31.05.2023


(Rehmat Ullah Wazir)
SCJ/JM,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this order consists of eight (08) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 31.05.2023


(Rehmat Ullah Wazir)
SCJ/JM,
Orakzai (at Baber Mela)