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IN THE COURT OF BAKHT ZADA,
SCJ/JM, ORAKZAI AT BABER MELA

CASE NO. : 1/2 OF 2023
DATE OF INSTITUTION : 03.01.2023
DATE OF DECISION : 13.07.2023

STATE THROUGH: ROOH-UL-AMIN, ASI, INCHARGE CHECK-
POST BULAND KHEL OF PS: GHILJO

------(Complainant)

VS

1. Jan Sher s/o Umar Daraz
2. Alam Sher s/o Umar Daraz
3. Umar Daraz s/o Khana Din

All R/O Qoum Qoum Buland Khel, Tapp Masti Khel, District Orakzai.

------(Accused Facing Trial)

ORDER

13.07.2023

Accused Jan Sher and Alam Sher both sons of Umar Daraz and Umar Daraz s/o Mula Khana Din are facing trial in case FIR No. 19, Dated: 25.09.2022, u/s 506/186/189/34 PPC of PS Ghiljo, U/Orakzai.

Facts of the case as alleged in the FIR are that complainant Rooh-UI-Amin, ASI on 25.09.2022 at 12:50 hrs sent Murasila in the name of SHO, PS Ghiljo to the effect that on the eventful day, he along with constable Ghani Ur Rehman 1771, Asad 120, Mati Ullah 2046 and Abdul Hameed 276 were present in connection of gasht of the area and when they reached to the place of occurrence meanwhile accused facing trial duly armed with Kalashnikov came out and they aimed

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their weapons at them. They threatened them for dire consequences and warned the police party not to conduct gasht in the muhallah in future. The police restrained themselves from any kind of action meanwhile the inhabitants of muhallah also came out and the accused returned to their homes. The Murasila was sent by the complainant to the PS through constable Ghani Ur Rehman 1771, which was incorporated into FIR No. 19, Dated: 25.09.2022, u/s 506/186/189/34 PPC, PS Ghiljo.

After completion of the investigation, complete challan was submitted against the accused on 03.01.2023. The accused were summoned who appeared before the court on 21.01.2023 and formalities U/S 241-A Cr. PC were complied with. Formal charge against the accused were framed on 06.03.2023, whereafter the prosecution was asked to produce PWs.

The prosecution produced and recorded statements as many as 04 PWs. The gist of statements of prosecution witnesses are as follows;

PW-01- Rooh Ul Ameen, Complainant ASI PS Ghiljo.

He is complainant in the present case. According to him, he along with other police nafri consisted of Constable Ghani Rehman, Asad, Mati Ullah and Abdul Hameed were on routine gasht and when they reached the place of occurrence near the

Rooh Ul Ameen
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Senior Constable
Orakzai at Waber Mela

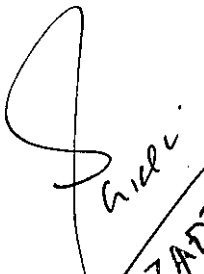
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house of accused. Accused Umar Daraz, Jan Sher and Alam Sher came there duly armed with Kalashnikovs and aimed their weapons at the police party. They warned the police not to conduct gasht in the area, otherwise to face dire consequences. Later on, the people/residents of Mohala came out and the accused went back to their homes. He drafted Murasila which is Ex. PW-1/1 and sent the same to PS for registration of FIR through Constable Ghani Rehman. He seen the Murasila which is correct and correctly bears his signature.

His statement was cross examined by the counsel for accused.

PW-02- is the statement of Asad Ullah Constable PS Ghiljo. He was accompanied with the complainant at the time of occurrence. He also repeated the same story being alleged eye-witness of the occurrence. His statement was cross examined by the counsel for the accused.

PW-03- is the statement of Ibrahim Khan Incharge PP Mamozai. Then posted as SHO PS Ghiljo. He has incorporated the contents of Murasila into FIR which correctly bears his signatures as Ex. PW-3/1. He issued card of arrest of accused Jan Sher and Alam Sher which is Ex. PW-3/2 and correctly bears his signatures. He has submitted complete challan against


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all accused which is Ex. PW-3/3. He was also cross examined by the counsel for the accused.

PW-04- Abdul Malik, OII PS Ghiljo recorded his statement. Soon after receiving copy of FIR, he prepared site plan at the pointation of complainant Rooh Ul Ameen which is Ex. PW-4/1. He has conducted raid at the house of accused for their arrest but the accused was not found at home. He has issued insertion memo in respect of the section of law which is Ex. PW-4/2. He applied for obtaining physical custody of accused vide application Ex. PW-4/3 and on 30.09.2022, he again applied for further 01-day physical custody of accused vide his application Ex. PW-4/4. The accused was sent to Judicial Lock-up and after completion of investigation, the case was submitted to SHO for submission of challan against the accused. All the above-mentioned documents are correct and correctly bear his signatures.

Learned DPP for the state abandoned the statement of PW Ghani Rehman being unnecessary. He was subjected to cross examination by the counsel for the accused at length. On 15.05.2023, learned DPP for the state also abandoned the statement of PW Abdul Hameed being unnecessary and closed the prosecution evidence.

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Statement of accused U/S 342 Cr. PC were recorded on 29.05.2023. They neither wished to produce any evidence in defense nor wished to be examine on oath.

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

The allegation against the accused facing trial are that complainant Rooh-Ul-Ameen, ASI has alleged that on the relevant day and time mentioned in the FIR, he was on gasht along with other police officials at the place of occurrence, meanwhile accused Umar Daraz s/o Khana Din, Jan Sher and Alam Sher both sons of Umar Daraz stopped their way duly armed with Kalashnikovs. They aimed their Kalashnikovs at the police party and asked why they are patrolling in their muhallah. They threatened the police party of dire consequences if they were found in the muhallah again. All the accused left the place of occurrence after arrival of the other residents of the muhallah and hence, the instant FIR.

In order to prove their stance, the prosecution have recorded the statements of as many as 04 PWs. Complainant Rooh-Ul-Ameen recorded his statement as PW-01 wherein it is categorically mentioned that after arrival of the residents of the muhallah to the place of occurrence, the accused decamped from the spot but contrary to the statement none of the

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inhabitants of the muhallah have been associated as witnesses of the occurrence and the column of witnesses of complete challan Ex.PW-3/3 is silent about the name of the any private witness.

PW-01 during cross-examination has disclosed that the accused were wanted in other cases before the occurrence and in this regard, he referred to FIR No. 01, Dated: 14.01.2022, U/S 21(J), 5-ESA, 7-ATA, PS CTD, Kohat region, but he failed to state that whether the accused facing trial were on bail or not in the said FIR, which means that the police were not there for arrest of the accused facing trial, then why they were present in front of the house of the accused facing trial. This question creates doubts about presence of the police in front of the house of the accused facing trial, that whether they were on routine patrolling at the place of occurrence or they particularly visited the place of occurrence in order to tease the accused facing trial in absence of any legal justification. PW-02 being eye-witness of the occurrence has stated during his cross-examination that the accused were handed over to the local police by the elders (jirga) of the locality but contrary to his statement, PW-03 Ibrahim Khan has stated that on 27.09.2022, he went to the place of occurrence for arrest of the accused at morning and it is incorrect to suggest that the accused Jan Sher

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Khan and Alam Sher were handed over to him by jirga. He admitted that he has not recovered any pistol from the possession of the accused. PW-04 also stated that the accused were not handed over to him by jirga members.

From above it is held that despite presence of other inhabitants of muhallah at the time of occurrence, none of them have been associated by the I.O as witnesses of the occurrence which is violation of the mandatory provision of 103 Cr.P.C. Furthermore, it also creates doubts about the stance of prosecution as well as about the mode and manners of the occurrence. It is categorically mentioned by the complainant in his report as well as in his statement as PW-01 that all the 03 accused facing trial aimed their Kalashnikovs at them but despite of legal custody of the accused for 24 hours, neither any Kalashnikov nor any other incriminating recovery has been affected. The statements of the PWs regarding the mode of arrest of the accused are contradictory and full of doubts.

In these circumstances, the prosecution badly failed to bring home charges levelled against the accused facing trial through truthful independent witnesses and thus, the case of prosecution is not proved on record beyond any shadow of doubt. I therefore, acquit the accused facing trial by extending benefit of doubt in their favour. They are on bail. Their sureties


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are discharged from the liability of their bail bonds. Case property if any be kept intact till the expiry of period provided for filing revision/appeal.

Case file be consigned to the record room after its completion and compilation.

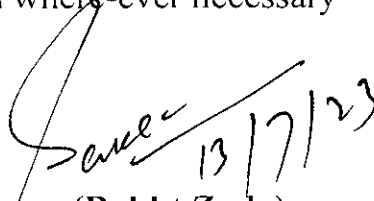
Announced
13.07.2023


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(Bakht Zada)
SCJ/JM,
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CERTIFICATE

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

Dated:13.07.2023


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Orakzai (at Baber Mela)