

IN THE COURT OF SAMI ULLAH,
JUDICIAL MAGISTRATE -I ORAKZAI AT BABER MELA

Case No: 1/3 of 2023
Date of Institution in this Court: 18-04-2023
Date of Decision: 15-01-2024

State through:

Hasham Khan SI CTD, District Orakzai.

..... **Complainant**

VERSES

Salman Khan S/O Saeed Anwar.

Resident of Qoam Mamozai, District Orakzai.

..... **Accused**

FIR No. 18, Dated 16.03.2022 U/S 5 Explosive Substances Act/ 7ATA,
PS CTD Kohat.

Present: Nisar Ahmad Senior Public Prosecutor for complainant/state.

Ihsan Ullah Advocate for accused facing trial.

JUDGMENT:
15.01.2024

1. Through this judgment I am going to dispose of the instant case registered against accused Salman Khan vide FIR No. 18, Dated 16.03.2022 U/S 5 Explosive Substances Act/ 7ATA, registered at PS CTD Kohat.
2. Brief facts as per contents of FIR are that, on 16.03.2022 at 11:00 hours, SI/complainant who was accompanied by other police officials nafri had set barricade/ Nakabandi on spy information on main Samana road near Ghakhay, Upper Orakzai. A person under

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suspicious circumstances was stopped and body searched and upon search a hand grenade was recovered from side pocket of his shirt. The person disclosed his name as Salman Khan. Bomb Disposal Unit, Orakzai was called to the spot who defused/made safe the recovered hand grenade. The recovered hand grenade was packed and sealed into parcel No. 1. Accused was formally arrested. Murasila was sent to PS for registration of the case through Sher Badshah, 1133 and on the strength of Murasila, the instant case was registered against accused facing trial.

3. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial in the court of honorable Judge Anti-Terrorism court, Kohat division for the reason that Section of the Anti-terrorism Act, 1997 was leveled against the accused. The honorable Judge Anti-Terrorism court, Kohat division deleted the aforementioned section of law being not applicable to the instant case and the case was sent to the honorable Sessions Judge, Hangu, where it was revealed that the place of occurrence was District Orakzai. Hence, the case was put before this court being criminal court of first instance.

4. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused was formally indicted and charge was framed. He pleaded not guilty and claimed trial. Afterwards prosecution was directed to produce its evidence.
5. Prosecution produced total eight (08) witnesses to prove its case against the accused.

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

- I. Entry in register No.19 is Ex.PW-1/1.
- II. Road Certificate is Ex.PW-1/2.
- III. Recovery Memo is Ex.PW-4/1
- IV. Sealed Parcel No.01 is Ex.P-1.
- V. Complete challan is Ex.PW-5/1.
- VI. FIR is Ex.PW-5/2.
- VII. BDU report is Ex.PW-6/1.
- VIII. Murasila Report is Ex.PW-7/1.
- IX. Card of arrest is Ex.PW-7/2.
- X. Case Property i.e. recovered hand grenade is Ex.PA.
- XI. Site plan is Ex.PW-8/1.
- XII. Application for custody for Salman Khan is Ex.PW-8/2.
- XIII. Application for financial information is Ex.-8/3.
- XIV. Letter of Bank of Khyber regarding account of the accused is Ex.PW-8/4.
- XV. Letter of United Bank Limited regarding account of the accused is Ex.PW-8/5.
- XVI. Information regarding family tree are Ex.PW-8/6 and Ex.PW-8/7.
- XVII. Application for chemical examination is Ex.PW-8/8.
- XVIII. Opinion given by the expert BDU Peshawar is Ex.PA.

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7. After then, on 15.11.2023 the learned APP for the state closed the evidence on behalf of the prosecution.
8. Prosecution produced eight (08) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.
9. PW-01 is the statement of Muhammad Yasin who was posted as MHC PS CTD, Kohat in the relevant days. He stated that the IO handed over to him one hand grenade in sealed condition and the same was kept in Mall Khana after necessary proceedings. The accused was also handed over to him and he was kept in the police lockup. He also handed over the hand grenade and an application to BDU Peshawar for examination and road permit (Ex.PW-1/2) to Jamshed Khan LHC.
10. PW-02 is the statement of Jamshid Khan who was posted as LHC PS CTD, Kohat in the relevant days. He stated that the Moharrir PS CTD, Kohat handed over to him parcel No.1 containing one hand grenade, an application to BDU Peshawar for examination and road permit. And upon handing over the same in the BDU, Peshawar he returned to the PS.
11. PW-03 is the statement of Amir Shahab who was posted as Computer Operator PS CTD, Kohat in the relevant days. He stated that he handed over family tree of the accused to the I.O.
12. PW-04 is the statement of Sher Badshah who was posted as DFU PS CTD, Kohat in the relevant days. He stated that he was present with SI and IO on the spot of occurrence and all proceedings on spot was conducted in his presence. The SI handed over Murasila to him and

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the same was taken to the PS by him. The said PW stated in his cross examination that he left PS on official vehicle and later in his cross-examination stated that he along with Murasila left for the PS from the spot of occurrence on his personal motorcycle. The said PW further stated that IO of the case recorded his statement under section 161 Cr.P.C in the PS CTD Kohat which is in contradiction with the statement of IO as PW-08.

13. PW-05 is the statement of Muhammad Ikhtiar Khan who was posted as SHO PS, CTD Kohat in the relevant days. He stated that constable Sher Badshah handed over Murasila to him at about 12.00 noon on strength of which he has registered FIR (Ex.PW-5/2). While Sher Badshah in his statement as PW-04 stated that he reached to the PS at about 2.40 PM. Moreover, the said PW stated that after registration of the FIR, he has handed over the Murasila and FIR to the IO of the case after one and the half hour after arrival of the PW-04 at 12:00 noon in the PS. However, the FIR was chalked out at 15:00 hours.

14. PW-06 is the statement of Usman Zada who was posted as Incharge BDU, Orakzai in the relevant days. He stated that he has received request form Hashim Khan SI CTD for defusing one hand grenade. He reached to the spot at Ghoz Ghari and defused the same. It is pertinent to mention here that the FIR and site plan disclose the place of occurrence as Ghaakhay kalay. He also stated that IO recorded his statement under section 161 Cr.P.C, however he recorded in his cross examination that IO was not present when he left the spot and the IO has not recorded his statement under section 161 Cr.PC. He also

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stated that his office is situated at Ghiljo while PW-08 stated that he has recorded his statement at BDS office Hangu.

15. PW-07 is the statement of SI CTD/complainant namely Muhammad Hashim. He stated that on the day of occurrence i.e., 16.03.2022, he upon spy information has set Barricade/ Nakabandi on main Samana road near Ghakahy Kalay. He was accompanied with by other police officials. A person under suspicious circumstances was stopped and body searched and upon search a hand grenade was recovered from side pocket of his shirt. The person disclosed his name as Salman Khan. Bomb Disposal Unit, Orakzai was called to the spot who defused/made safe the recovered hand grenade. The recovered hand grenade was packed and sealed into parcel No. 1. Accused was formally arrested. Murasila was sent to PS for registration of the case through Sher Badshah, 1133 and on the strength of Murasila, the instant case was registered against accused facing trial. The case property was exhibited. The said PW stated in his cross examination that the IO reached to the spot at about 16:30 hours while the IO in his statement has recorded that he reached to the Spot within about 1:30/ 2:00 hours. Similarly, the said PW stated in his statement that he has handed over Murasila to the PW-04 namely Sher Badshah at about 12:00 on the spot of occurrence and left the spot for PS CTD Kohat. However, SHO PS CTD has stated in his statement as PW-05 that the said PW-04 handed over Murasila at the PS at 12:00. It is not appealing to the prudent mind that a person be present at district Orakzai and district Kohat at the same time. The said PW also recorded in his cross examination that the BDU Incharge reached to


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the spot at about 11:33 while the BDU Incharge in his statement has recorded that he reached to the spot at 11:00. Similarly, the said PW stated that he informed the control room at 11:00 and then BDU was informed. However, the Incharge BDU stated in statement as PW-06 that he received information of the occurrence at 10:00 and left office at about 10:20 and has reached to the place of occurrence at 11:00. It is pertinent to mention here that the as per Murasila and FIR the time of occurrence is 11:00 and BDU Incharge as per his statement was already there, which is in contradiction with statement of the PW-07.

16. **PW-08** is the statement of SI Mehdi Hassan. He is IO of the case. He stated that after receiving the case for investigation he proceeded to the spot and prepared site plan (Ex.PW-8/1) at the instance of complainant/SI Hashim Khan. Accused was handed over to him for interrogation. He produced the accused before the court concerned for obtaining his physical custody which was refused and the accused was sent to judicial lockup. The recovered hand grenades were sent to BDU Peshawar vide his application (Ex.PW-8/8) which is exhibited in the course of evidence as mentioned above. Moreover, he has also received bank details (Ex.PW-8/4 and Ex.PW-8/5) and family tree of the accused (Ex.PW-8/6 and Ex.PW-8/7). He recorded statements of PWs U/S 161 Cr.P.C. and handed over the case file to the SHO for submission of Chalan. He stated in his cross examination that when he reached to the spot, Incharge BDU, seizing officer and other PWs were not present on spot. He called the PWs to the spot for recording statement of PWs of recovery memo under U/S 161 Cr.P.C and recorded statement of Ayaz and Sher Badshah on the

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spot. Further stated that PW namely Sher Badshah was also present there when he was conducting the proceedings. However, PW Sher Badshah in his statement has recorded that the IO has recorded his statement in the PS. The said PW stated that he reached to the spot within 1:30/2:00 hour and remained there for 50/55 minutes, and PW Sher Badshah stated in his statement that he was in PS CTD Kohat at 2:40. Moreover, the statement of Incharge BDU was recorded in BDU office Hangu.

- 17. Remaining PWs were abandoned by prosecution and evidence was closed.
- 18. In light of what is discussed above, it can safely be held that there is a structured contradiction and weakness in the case of the prosecution which make it doubtful and suspicious, the benefit of which should be given to the accused. Reliance in this regard is made on 2017 PCrLJ page 62 and 2016 MLD page 757.
- 19. The Hon'ble Supreme Court in the case of **Muhammad Manshah Vs the State 2018 SCMR 772** has laid down the following rule:


“needles to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubts in a prudent mind about the guilt of accused, the accused would be entitled with the benefit of such doubt, not is a matter of grace and concession but as a matter of right. It is based on the maxim, “it is better to acquit ten guilty persons rather than to convict one innocent person”.

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Reliance in this regard is also placed on Tariq Perwaz Vs the State SCMR 1995-page 1345”.


20. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely **Salman Khan** is hereby **Acquitted** from the charges leveled against him. He is on bail. Sureties of accused are discharged from their liability. Case property be dealt with in accordance with law.
21. Case file be consigned to Record room after its completion and necessary compilation.

Announced
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CERTIFICATE

Certified that my judgment of today consists of nine (09) pages, each page has been read, signed and corrected by me where necessary.


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