

IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE -I
TEHSIL KALAYA, DISTRICT ORAKZAI

Case No.....10/3 of 2021.

Date of Original Institution..... 21.04.2021.

Date of Present Institution..... 09.05.2023.

Date of Decision.....15.12.2023.

State through:

Sub-Inspector Hakeem Ali Shah, Incharge Zera Check Post, Lower
Orakzai

.....**Complainant**

VERSES

Allah Noor S/O Hayat Shah R/O Qaum Bar Qamber Khel,
Woondgaray, Saam Baba, Maidan, District Khyber.

.....**Accused**

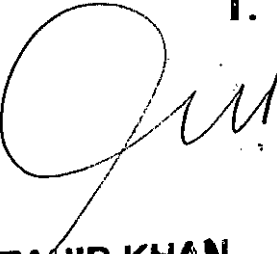
Case FIR No. 15, Dated 09.02.2021 U/S 15-AA, PS Kalaya.

JUDGEMENT

15.12.2023

Through this judgement, I am going to dispose of the instant case registered against accused facing trial Allah Noor vide case FIR No. 15 dated 09.02.2021 U/S 15-AA, PS Kalaya.

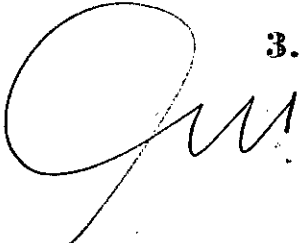
1. Brief facts of the prosecution's case as unfolded in the First Information Report (FIR) are that, on 09.02.2021 at about 13:00 hours at Godar Cheshma, Lower Orakzai, SI/complainant Hakeem Ali Shah, who was accompanied with by HC Ajmir Ali and Sadar Ali, was on area patrol duty when a person duly armed with Kalashnikov made an unsuccessful attempt to flee the spot on


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seeing the police party but he was overpowered and unarmed. A Kalashnikov with folding butt along with fixed charger containing 12 cartridges of 7.62 bore were recovered from the personal possession of the said person in presence of marginal witnesses. The recovered arm and cartridges were packed and sealed into parcel No. 1 Ex.P-1 by affixing 03 seals of MS while 01 seal was put inside the parcel. The person disclosed his name as Allah Noor s/o Hayat Shah r/o Qoam Bar Qamber Khel, District Khyber. Murasila was drafted at the spot and was sent to PS through HC Sadar Ali for registration of the case. Accused was formally arrested. On the strength of murasila, the instant case was registered against accused facing trial.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused was summoned. He appeared before the court and legal formalities under section 241-A Cr. PC were complied with. Accused was formally indicted. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced six (06) witnesses to prove the case against accused while rest of the PWs were given up by prosecution and closed its evidence.
5. PW-01, is the statement of Muharrir Ain Ullah. He stated that on 09.02.2021, he was present in the PS on duty when HC Sadar Ali


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brought Murasila from complainant SI Hakeem Ali Shah. He incorporated the contents of Murasila into FIR Ex. PZ. Case property was also brought to PS along with accused and it was handed over to him. Case property was kept in safe custody. Accused was locked up. Case property was handed over to IO for the purpose of sending the same to FSL. His statement was recorded U/S 161 Cr.PC.


6. PW-02, is the statement of SI Shal Muhammad. He is IO of the case. He stated that during the days of occurrence, he was posted as OII at PS Kalaya. After registration of the case, copy of FIR along with relevant documents were handed over to him for investigation. He proceeded to the spot and prepared site plan on pointation of complainant SI Hakeem Ali Shah. Site plan is Ex.PB. He recorded statements of marginal witnesses u/s 161 Cr.PC. Accused was also handed over to him. On 10.02.2021, he produced the accused before the court for judicial remand vide application Ex.PW-2/1. He recorded statement of accused u/s 161 Cr.PC. Accused was committed to judicial lock-up. He sent the case property i.e. one (SMG) rifle No. NC-6279 along with 12 cartridges to FSL vide his application Ex.PW-2/2. FSL report was received and placed on file. The same is Ex.PW-2/3. He also placed on file copies of register 19 and receipt No. 27/21/LO dated 22.02.2021. The same are Ex.PW-2/4 and Ex.PW-2/5. After the completion of investigation, case file


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was handed over to SHO Raees Khan for submission of complete challan against the accused.

7. Complainant, SI Hakeem Ali Shah deposed as PW-03. He stated that during the days of occurrence, he was posted as incharge Zera Check Post, L/Orakzai. On the day of occurrence, he along with HC Ajmir Ali and Sadar Ali was on patrol duty when at Gudar Cheshma, Kalaya, Orakzai, a person duly armed with rifle No. NC-6279 along with 12 cartridges tried to flee on seeing the police party. He was overpowered and unarmed. Rifle No. NC-6279 along with 12 cartridges with folding butt was recovered from possession of the accused. The recovered arm and live cartridges were packed and sealed into parcel No. 1 Ex.P-1 by affixing 03 seals with mark of MS while 01 seal was put inside the parcel. The person disclosed his name as Allah Noor s/o Hayat Shah r/o Qoam Bar Qamber Khel, District Khyber. He took into possession the recovered rifle No. NC-6279 along with 12 cartridges vide recovery memo Ex.PW-3/1. Murasila Ex.PW-3/2 was drafted at the spot and was sent to PS through HC Sadar Ali for registration of the case. Accused was formally arrested vide card of arrest Ex.PW-3/3. He handed over the accused and case property to Muharrir of PS. The IO prepared site plan on his pointation.


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8. Marginal witness and murasila bearer, HC Sadar Ali was examined as PW-04. He stated that during the days of occurrence, he was


posted at Zera check post PS Kalaya. On the day of occurrence, he was present with complainant SI Hakeem Ali Shah. In his presence, SI/complainant recovered and took into possession one rifle No. NC-6279 along with 12 cartridges with folding butt in his presence vide recovery memo exhibited as Ex.PW-3/I. Murasila along with recovery memo and card of arrest were handed over to him which he took to PS for registration of the case.

9. PW-05, is the statement of SI Raees Khan. He stated that during the days of occurrence, he was posted as SHO PS Kalaya. He has submitted complete challan against the accused. Challan form is Ex.PW-5/1.

10. PW-06, is the statement of Ex-constable Raza Ali. He stated that during the days of occurrence, he was posted at PS Kalaya. Parcel No. 1 containing case property along with application for FSL and road permit certificate was handed over to him for FSL examination. He took the case property to FSL Peshawar and handed over the same to incharge FSL. Receipt thereof was given to him which he handed over to IO. His statement was recorded u/s 161 Cr.PC

11. PW, HC Ajmeer was abandoned and evidence was closed by prosecution.

12. On conclusion of prosecution evidence, statement of accused was recorded u/s 342 Cr.PC, in which he professed his innocence,


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however, he did not opt to record his statement on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in his favour. Thereafter, arguments of APP for the state and counsel for accused facing trial were heard.

- 13.** Record transpires that the alleged occurrence took place on 09.02.2021 at 13:00 hours at Godar Cheshma, Lower Orakzai. It was reported on 09.02.2021 at 13:30 hours and FIR was registered on 09.02.2021 at 14:40 hours. As mentioned above, prosecution produced six (06) witnesses to prove the case against accused facing trial. Prosecution witnesses were cross examined by the defense counsel. While going through the record available on file, it is noticed that prosecution version qua the recovery of (SMG) rifle No. NC-6279 along with 12 cartridges from possession of the accused facing trial has not been substantiated through cogent, convincing and confidence inspiring evidence. PWs are not consistent on salient aspect of the prosecution version. The chain of custody of the recovered (SMG) rifle No. NC-6279 along with 12 cartridges has not been established. Parcel containing case property was sent to FSL on 22.02.2021 while the alleged occurrence took place on 09.02.2021. Complainant, who deposed as PW-03, stated in his cross examination that he does not know about monogram. The seal with mark of MS is in the name of Muhammad Shafeeq, who was posted as SHO PS Kalaya during the relevant days. PW-



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03 stated that the same was handed over to him by SHO in the check post which fact is nowhere mentioned in the record. It is nowhere mentioned in the murasila that 3/3 seals with mark of MS were affixed on the parcel. It seems that the entire proceedings were carried out while sitting in the PS. Furthermore, complainant (PW-03), stated in his cross examination that there is a police check post near the spot. Accused facing trial belongs to District Khyber and it does not appeal to prudent mind that a person from District Khyber with a Kalashnikov in possession would dare to cross the police check post. Marginal witness to the recovery memo and murasila bearer, who deposed as PW-04, stated in his cross examination that he left the spot for PS on a motorcycle taken from a friend namely Ghoncha Gul who is a shop keeper. On the other hand, complainant, who deposed as PW-03, stated in his cross examination that motorcycle was arranged and PW HC Sadar Ali left the spot for PS on the said motorcycle. The motorcycle was taken from a friend namely Irshad Ali who was proceeding from Andkhel to Zera. There are serious contradictions in the statements of PWs. Case of prosecution is full of dents and doubts benefit of which goes to the accused facing trial as of right. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.



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14. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Allah Noor is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds stand cancelled. Sureties are discharged from their liability. Case property confiscated to the state.
15. Case file be consigned to record room after its completion and necessary compilation.

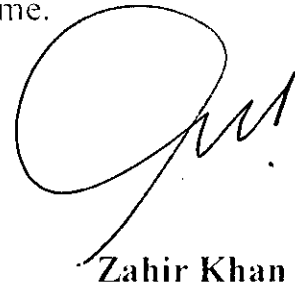
Announced
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CERTIFICATE

It is certified that this judgment consists of 08 pages. Each page has been dictated, read, corrected and signed by me.



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