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IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE -I

TEHSIL KALAYA, DISTRICT ORAKZAI

Case No. 1/3 of 2022.

Date of Institution:.....27.01.2022.

Date of Decision..... 21.11.2023.

State through:

Sub-Inspector Khan Muhammad ASHO, PS Mishti Mela, Orakzai

.....Complainant

VERSES

Sajid Ullah S/O Shehzada R/O Qaum Sheikhan, Tappa Umar Zai, village

Masood Pakha, District OrakzaiAccused

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JUDGMENT:

21.11.2023

Through this judgment I am going to dispose of the instant case registered against accused Sajid Ullah vide case FIR No. 30 dated 08.09.2021 U/S 15-AA & 05 Explosive Substances Act, 2013, PS Mishti Mela.

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1. Brief facts of the prosecution's case as per FIR Ex.PA are that, on 08.09.2021 at 11:00 am, complainant SI/ASHO Khan Muhammad, along with other police nafri were on search and strike operation at Masood Pakha, Lower Orakzai. Information was received that accused Sajid Ullah S/O Shehzada is present in his house with heavy arms and ammunitions. On this information, he proceeded to the spot and during house search of the accused, 03 hand grenades (No. 69,84 and one without number) and 05 magazines of 7.62 bore, 60

cartridges of 7.62 bore, 02 machine gun barrels and 02 pistols of 30 bore bearing No. 2401657 and A8566 along with 02 fixed chargers were recovered from the residential room of accused Sajid Ullah vide recovery memo Ex.PW-4/1. He packed and sealed the hand grenades into parcel No. 1, 60 cartridges and 05 magazines of 7.62 bore into parcel No. 2, 02 machine gun barrels into parcel No. 3 and 02 recovered pistols along with 02 fixed chargers into parcel No. 4 (Ex.P-1 to Ex.P-4). Accused was formally arrested. Murasila Ex.PZ was drafted at the spot and sent to PS for registration of the case through constable Muhammad Waseem No. 1243. On the strength of Murasila, the instant case was registered against accused facing trial vide FIR Ex.PA.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused was summoned 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 five (05) witnesses to prove its case against the accused while PW constable Umar Zaman No. 1266 was given up by the prosecution and evidence was closed.
5. PW-01 is the statement of Muhammad Naseem SHO. He stated that during the days of occurrence, he was posted as SHO at PS Mishti Mela. On completion of investigation, he submitted complete



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challan against the accused Sajid Ullah. Challan forms are Ex.PW-1/1 and Ex.PW-1/2.

6. Assistant Sub-Inspector Shabeer, deposed as PW-02. He stated that on receipt of murasila from SI Khan Muhammad ASHO, PS Mishit Mela through constable Muhammad Waseem, he correctly incorporated contents of murasila into FIR. Copy of FIR is Ex.PA. His statement was recorded by IO U/S 161 Cr. PC.
7. SI Asif Wazir, who investigated the case, deposed as PW-03. He stated that during the days of occurrence, he was posted as OII at PS Mishti Mela. After registration of the case, he was entrusted with the investigation. He has partially investigated the present case. On the same day, he visited the spot and prepared site plan Ex.PB on the pointation of the complainant. On 09.09.2021, he produced the accused before the Illaqa Magistrate for obtaining 05 days police custody vide his application Ex.PW-3/1. 01-day custody was granted. He interrogated the accused. During investigation, the accused admitted his guilt before him and he recorded his statement u/s 161 Cr.PC. On 10.09.2021, he produced the accused before the Illaqa Magistrate for recording his confessional statement u/s 164 Cr.PC vide his application Ex.PW-3/2. Accused refused to confess his guilt and was committed to Judicial lock-up. Extract of mad No. 4 & 16 dated 08.09.2021 regarding departure and arrival of seizing officer is Ex.PW-3/3. He has also placed on file, the extract of register 19 as Ex.PW-3/4. He



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recorded statements of PWs u/s 161 Cr.PC. After his transfer, the investigation was entrusted to another IO, Riaz Khan for further investigation.

8. Sub-Inspector, Khan Muhammad ASHO/complainant was examined as PW-04. He stated that during the days of occurrence, he was posted as ASHO at PS Mishti Mela. On the day of occurrence, he along with other police nafri was on search and strike operation at Masood Pakha, Lower Orakzai. Information was received that accused Sajid Ullah S/O Shehzada is present in his house with heavy arms and ammunitions. On this information, they proceeded to the spot and during house search of the accused, 03 hand grenades, 05 magazines of 7.62 bore, 60 cartridges of 7.62 bore, 02 machine gun barrels and 02 pistols of 30 bore along with 02 fixed chargers were recovered from the residential room of accused Sajid Ullah for which he could not produce any valid license or permit. He packed and sealed the hand grenades into parcel No. 1, 60 cartridges and 05 magazines of 7.62 bore into parcel No. 2, 02 machine gun barrels into parcel No. 3 and 02 pistols of 30 bore along with 02 fixed chargers into parcel No. 4 by affixing 3/3 seals with mark of NA. The accused disclosed his name as Sajid Ullah S/O Shehzada R/O Sheikhan, tappa Umar Zai. He took the above mentioned arms and ammunitions vide recovery memo Ex.PW-4/1 and issued card of arrest of accused which is Ex.PW-4/2. He drafted the murasila Ex.PZ and handed over the

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same to constable Muhammad Waseem for taking the same to PS for registration of the case. After registration of the case, he pointed out the spot to the IO who prepared site plan on his pointation.

9. Constable Ilyas No. 1266 was examined as PW-05. He is one of the marginal witnesses to the recovery memo Ex.PW-4/1 vide which ASHO/complainant took into possession 03 hand grenades, 05 magazines of 7.62 bore, 60 cartridges of 7.62 bore, 02 machine gun barrels and 02 pistols of 30 bore along with 02 fixed chargers, recovered from the residential room of accused Sajid Ullah. Murasila, recovery memo and card of arrest were handed over to him which he onward handed over to Muharrir of PS. His statement was recorded by IO U/S 161 Cr. PC.

10. Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he professed his innocence, pleaded not his guilt and did not wish to be examined on oath. He opted not to produce defense evidence. Arguments of APP for the state and counsel for accused facing trial were heard.

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11. Record transpires that the alleged occurrence took place on 08.09.2021 at 11:00 am in the house of accused situated at Qaum Sheikhan, Masood Pakha, Orakzai. The occurrence was reported at 11:30 am and FIR was registered at 11:40 am. Prosecution witnesses were cross examined by the defense counsel. PW-02, stated in his cross examination that on the day of registration of FIR, he was on duty at PS. Murasila was brought to PS at 11:30 am.

He has not made entry in DD regarding arrival of constable Muhammad Waseem to PS. Constable Muhammad Waseem remained with him in PS and when FIR was chalked, copy was handed over to him. Accused was brought to PS without case property by Constable Muhammad Waseem. PW-03, stated in his cross examination that he left PS for spot at about 11:45 am. He reached the spot at about 12:05 pm and there were 04/05 police officials present at the spot. He returned from the spot to PS at about 03:30 pm. He left the spot at about 01:30 pm. He was accompanied with by 03/04 police officials. It is correct that per his investigation, there is no criminal history of accused facing trial. He has not recorded statement of any independent/private person regarding ownership of accused of the spot house. It is correct that he has not issued any notice u/s 160 Cr.PC to any private person to become witness. He has not recorded statement of Tehsildar etc regarding ownership of the spot house. It is correct that name of constable Muhammad Ilyas, to whom point No. 3 is allotted in site plan, is not mentioned in the murasila. When he reached the spot, Muharrir Saeed was present with ASHO/complainant. Copy of FIR and other relevant documents were handed over to him by Muharrir Ayub. PW-04, who is complainant of the case, stated in his cross examination that he is illiterate. He cannot read and write. They left the PS at 11:45 am. He was accompanied with by 07/08 officials. Murasila was reduced into writing by Saeed Muharrir. It is correct



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that there was no lady constable during house search. IO Shabir Khan reached the spot at about 02:00 pm. Constable Waseem left the spot for PS for taking murasila to PS at about 02:30 pm. He returned to the PS at about 03:30 pm.

12. PW-05, stated in his cross examination that IO reached to the spot at about 11:00 am. They left the spot for PS at about 11:30 am. They were 04/05 police officials. Lady constable Sonia No. 903 was also present with them. Murasila was taken to PS by constable Muhammad Waseem. He left the spot at about 11:30 am. SI Asif Wazir (IO) was in private vehicle (Ghawagye). They returned to PS within 20 minutes after arrest of the accused.

13. Cross examination of PWs shows that there are serious contradictions in their statements. PW-04, stated in his cross examination that he left the PS for search and strike operation at 11:45 am whereas, per record, the occurrence took place at 11:00 am and FIR was registered at 11:40 am. PW-04 also stated that murasila was reduced into writing by Muharrir Saeed but this fact is nowhere mentioned in the murasila. It is not mentioned in the murasila, recovery memo and card of arrest, that the complainant (PW-04) dictated the said documents and Muharrir Saeed reduced the same into writing. Complainant (PW-04), is an illiterate person. If he cannot read and write, then how it is possible that the murasila, recovery memo and card of arrest were prepared by him. Even if murasila, recovery memo and card of arrest were prepared



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by Saeed Muharrir, name of the said Saeed is neither mentioned in calendar of witnesses nor produced as witness to verify this fact. This shows that entire proceedings were carried out while setting in the PS. PW-04 also stated in his cross examination that murasila bearer constable Muhammad Waseem left the spot for PS at 02:30 pm whereas, record shows that the alleged occurrence took place at 11:00 am, it was reported at 11:30 am and FIR was registered at 11:40 am. Statement of PW-04 contradicts the record. Similarly, PW-05 stated in his cross examination, that IO reached to the spot at 11:00 am. At 11:00 am, the alleged recovery was made and FIR was yet to be registered then how it is possible that IO reached the spot at 11:00 am before registration of the case. On the other hand, PW-03 stated in his cross examination, that he reached the spot at about 12:05 pm. Similarly, PW-04 stated in his cross examination, that there was no lady constable at the time of house search of the accused whereas, PW-05 stated in his cross examination, that lady constable Sonia was present at the time of house search. Even if the said lady constable was present with complainant at the relevant time, neither the said lady constable was examined by IO nor produced as witness by prosecution during course of recording evidence. There are serious contradictions in the statements of PWs which is injurious to the case of prosecution. The recovery of arms and ammunitions from the residential room of the house of the accused facing trial is very much doubtful.



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14. Per statement of SI Asif Wazeer, who deposed as PW-03, he partially investigated the case and after his transfer, investigation of the case was entrusted to Riaz Khan. Name of the said Riaz Khan is not mentioned in the calendar of witnesses. He was not produced as witness during course of trial. Neither the road permit certificate nor application for FSL was exhibited. FSL report was not exhibited as the said Riaz Khan, who completed the investigation, was not produced as witness by prosecution. Prosecution closed its evidence without filing any application for summoning the said Riaz Khan as witness.

15. Per record, there is no criminal history of accused facing trial which could show his involvement or conviction in such like cases. No independent witness was associated during recovery proceedings. No effort whatsoever, was made to associate private person as witness during house search of the accused. Mandatory provisions of section 103 Cr.PC have not been complied with. Recovery of the arms and ammunitions from the residential room of the house of the accused is very much doubtful. Prosecution failed to establish that the spot house is the ownership of the accused facing trial. None from the Bomb Disposal Unit (BDU) was associated at the relevant time. Case of prosecution is not supported by forensic evidence. Accused has not confessed his guilt before the court.



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16. Prosecution was bound to prove its case against the accused beyond any shadow of doubt but there are so many dents and doubts in the

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prosecution case benefit of which goes to the accused facing trial.

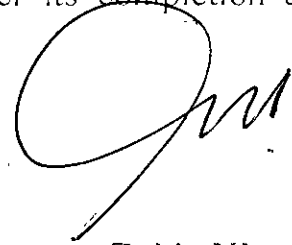
Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.

17. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Sajid Ullah is hereby acquitted from the charges leveled against him. He is on bail. Sureties of accused discharged from their liability. Case property be dealt with in accordance with law.

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

Announced

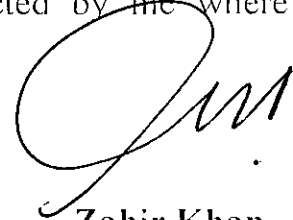
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CERTIFICATE

Certified that my judgment of today consists of ten (10) pages, each page has been read, signed and corrected by me where necessary.



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