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

Case No. 6/AA of 2023
Date of Institution: 02-10-2023
Date of Decision: 27-02-2024

State through:

Wasil Akbar HC, Incharge Teko Check-post, PS Kuriz Boya, District Orakzai.

..... **Complainant**

VERSES

Muhammad Sajid S/O Ghamin Shah.

Resident of Qoam Mishti, Chappar Mishti, District Orakzai. Presently residing in Bahadur Ghari, Hangu.

..... **Accused**

Case FIR No.26, Dated 14.07.2023 U/S 15-AA, PS Kuriz Boya District Orakzai.

Present: Javid Iqbal Senior Public Prosecutor for complainant.

Khursheed Alam Advocate for accused facing trial.

JUDGMENT:

27-02-2024

1. This judgment will dispose of the instant case registered vide FIR No. 26, Dated 14-07-2023 U/S 15-AA, registered at police station Kuriz Boya, District Orakzai.
2. Brief facts as per contents of FIR are that, on 14.07.2023 at 20:00 hours, Wasil Akbar HC i.e. Incharge of Teko Check Post who was accompanied by other police was present on barricade (Nakabandi) on Teko Check-post, Tehsil Lower, District Orakzai. That he got

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information that one person having Kalashnikov on his shoulder is coming toward their side by motorcycle. At the time of occurrence, the accused reached to the spot and was pointed to stop but he tried to escape. That in response police party fired two rounds in air and the accused stopped few yards away. The accused was overpowered and a Kalashnikov with folding butt bearing number 66 56-119012530 along with a fixed charger containing 15 rounds of 7.62 bore and one motorcycle Honda 125 Registration No. S1573, Kohat, red in color, engine No. 3798993, Chassis No. U481689 without any documents were recovered from his possession. That the said accused disclosed his name as Muhammad Sajid S/O Ghamin Shah R/o Qoam Mishti Chappar Mishti District Orakzai, presently residing in Bahadur Ghari District Hangu. The recovered arms and ammunition were packed and sealed into parcel No.01. Accused was formally arrested. Murasila was drafted. Recovery memo and card of arrest were prepared in presence of marginal witnesses. Murasila and other relevant documents along with accused were sent to PS for registration of the case through Constable Muhammad Jan.

3. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
4. 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.

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5. Prosecution produced total six (06) witnesses to prove its case against the accused.
6. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution produced the following evidence;

- I. Murasila report is Ex.PW-1/1.
- II. Recovery Memo is Ex.PW-1/2.
- III. Card of arrest is Ex.PW-1/3.
- IV. Kalashnikov alongwith charges and cartridges sealed into parcel No.1 (Case property) is Ex.PA.
- V. Complete Challan is Ex.PW-4/1.
- VI. Site plan is Ex.PW-5/1.
- VII. Application for recording statement u/s 164/364 is Ex.PW-5/2.
- VIII. Copy of FIR No.171 of PS Lachi is Ex.PW-5/3.
- IX. Application to the armorer for chemical examination is Ex.PW-5/4.
- X. Receipt regarding FSL, Peshawar is Ex.PW-5/5.
- XI. Letter to FSL, Peshawar is Ex.PW-5/6.
- XII. FSL Report is Ex.PA.
- XIII. Copy of FIR is Ex.PW-6/1.
- XIV. Copy of arrival and departure in the DD is Ex.PW-6/2.
- XV. Record of motorcycle and parcel in the entry register No.19 is Ex.PW-6/3.

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7. After then, on 30.01.2024 the learned Sr. PP for the state closed the evidence on behalf of the prosecution.

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8. Statement of accused u/s 342 Cr.P.C was recorded wherein they neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor he wants to produce any evidence in his defense.
 9. After conclusion of trial, arguments of the learned counsel for the accused facing trial and of the Sr. PP for the state heard and record perused.
 10. The accused was charged with offence U/S 15-AA.
 11. Keeping in view, the record on file and the deposition of PWs, the prosecution is required to prove its case against the accused beyond reasonable doubts. The essence of the prosecution evidence is given below.
 12. PW-01 is the statement of seizing officer namely Wasil Akbar, HC. He stated that on the day of occurrence i.e. 14.07.2023, he alongwith police officials was present on barricade of Teko Check post when he got information that one person having Kalashnikov on his shoulder is coming toward them. In the meanwhile, the accused reached to the spot and was pointed out to stop but he tried to escape and ran away. The accused was overpowered and a Kalashnikov with folding butt bearing number 66 56-119012530 along with a fixed charger containing 15 rounds of 7.62 bore and one motorcycle Honda 125 Registration No. S1573, Kohat, red in color, engine No. 3798993, Chassis No. U481689 without any documents were recovered from his possession. The recovered arms and ammunition were packed and sealed into parcel No.01 and recovery memo was prepared which is Ex.PW-1/2. Accused was formally arrested and

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card of arrest which is Ex.PW-1/3 was drafted. Murasila was drafted which is Ex.PW-1/1. Murasila and other relevant documents along with accused were sent to PS for registration of the case through Constable Muhammad Jan. The said PW recorded in his cross examination that no private witness was associated with recovery memo. He also admitted that the distance from the check-post as the accused runaway is not mentioned in the site plan. The PW also stated that he don't know as to whom the monogram AA belongs to, and the sharp thing through which he has signed recovered Kalashnikov was not handed over to the IO. It is pertinent to mention here that as per statement of PW-02, IO as PW-05 and according to site plan the monogram AA was marked on the recovered Kalashnikov by the PW-01 himself. He further stated that he handed over the Murasila alongwith other relevant document to constable Muhammad Jan at 19:40 hours, however, the occurrence as per FIR is 19:30 hours. It is pertinent to mention here that as per the above stated fact, all the proceedings on spot was concluded just within ten minutes.

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13. **PW-02** is the statement of Fazal Rehman, Constable, who was present with seizing officer alongwith other officials at the time of occurrence. He has prepared Murasila alongwith recovery memo and card of arrest of the accused and handed over the same to the constable Muhammad Jan for onward submission to Muharrir of the PS. He recorded in his cross examination that Constable Muhammad Jan went to the PS on his motorcycle, however, PW-1 in his

statement has recorded that the same went to the PS on official's vehicle. He further stated that the check-post is located on a busy road, however, no private witness was associated with in the recovery memo.

14. **PW-03** is the statement of Muhammad Jan, Constable, who had brought Murasila report, recovery memo and card of arrest to the PS and handed over the same to the Muharrir for registration of FIR. He recorded in his cross examination that Daily Dairy regarding his arrival and departure in the PS is not presented before the court.
15. **PW-04** is the statement of ASHO Altaf Ali. He had submitted challan against the accused. The challan form is Ex.PW-4/1.
16. **PW-05** is the statement of OII Hasham Khan who is investigation officer in the instant case. he recorded in his statement that he has prepared site plan on pointation of Wasil Akbar HC which is Ex.PW-5/1. He has sent the case property to the FSL for expert opinion through an application exhibited as Ex.PW-5/4. The FSL was received and is Ex.PA. He admitted in his cross examination that 05 rounds recovered is mentioned in the site plan. He further stated that he reached to the spot on private motorcar, however, PW-02 has recorded in his statement that the IO reached to the spot on official vehicle. He further stated that it is incorrect to suggest that Wasil Akbar opened fire on the accused, however, this statement goes against the story narrated in the FIR. Moreover, the said fact that upon escape of the accused from the barricade and stopping of the same few yards away, after aerial firing by the police party is not

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taken into consideration by the IO in his preparation of the site plan. He further admitted that the sharp thing through which Wasil Akbar signed the recovered Kalashnikov was not taken in possession for investigation.


17. Asmat Ali AMHC was examined as **PW-06**. He stated that he has registered the FIR against the accused in the light of contents of Murasila. That the seizing officer has handed over the case property in shape of the recovered Kalashnikov and motorcycle which were kept in Mallkhana after entry in Register No.19 which is Ex.PW-6/3.
18. Thereafter the prosecution closed their evidence on 30.01.2024.
19. Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he pleaded not his guilt and did not wish to be examined on oath. He opted not to produce defense evidence.
20. It is established principle of law that prosecution must prove its case against the accused beyond reasonable doubt. Insofar as the instant case is concerned, there are material contradictions in the case of prosecution and evidence recorded in this court. The contradictions are discussed above in detail in the evidence of the PWs.
21. Moreover, no disinterested witness has been produced before the court for recording of evidence. No source of information regarding the occurrence is disclosed in the case. From the time of occurrence till handing over of Murasila to the constable, all the proceedings were conducted within 10 minutes as per the statement of seizing officer (PW-01). Site plan was not prepared as per version narrated in the FIR. The PW-01 who is seizing officer and who marked the

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recovered Kalashnikov with monogram AA was in confusion regarding the same in his statement. While the IO recorded in his statement that the monogram AA belongs to the SHO. Furthermore, the site plan transpires entry of 05 rounds which were recovered from the accused, however, the FIR transpires recovery of 15 rounds. The site plan further transpires that the accused was arrested just beside Teko check-post, however, the FIR and statements of PWs transpires that the accused tried to escape and was overpowered by aerial firing at a considerable distance from the Teko Check-post barricade.

22. Prosecution were bound to prove its case against the accused beyond any shadow of doubt but there are so many dents and doubts in the prosecution case, benefit of which goes to the accused facing trial.
23. For what has been discussed above, the prosecution failed to prove its case against the accused beyond reasonable doubt. Resultantly, in case FIR No.26 dated 14.07.2023 U/S 15-AA registered in Police Station Kuriz Boya, accused namely Muhammad Sajid S/O Ghamin Shah is hereby acquitted from the charges leveled against him. His bail bonds stand cancelled and his sureties are absolved from the liabilities of bail bonds. Case property be dealt with as per law after expiry of period of appeal/revision.
24. Case file be consigned to Record room after its completion and necessary compilation.

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CERTIFICATE

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

Announced
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