

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

**Case No:** 2/3 of 2023  
**Date of Institution in this Court:** 27-04-2023  
**Date of Decision:** 11-03-2024

State through:  
Hasham Khan SI CTD Kohat Region.

..... **Complainant**

VERSES

Muhammad Jamil S/O Khaista Ameen.  
Resident of Qoam Mamozai, Sepaye, Khawas Khel, District Orakzai.

..... **Accused**

FIR No. 12, Dated 01.03.2022 U/S 5 Explosive Substances Act/ 7ATA,  
PS CTD Kohat.

**Present:** Javid Iqbal Senior Public Prosecutor for complainant/state.  
Ihsan Ullah Advocate for accused facing trial.

**JUDGMENT:**  
**11.03.2024**

1. Through this judgment I am going to dispose of the instant case registered against accused Muhammad Jamil vide FIR No. 12, Dated 01.03.2022 U/S 5 Explosive Substances Act/ 7ATA, registered at PS CTD Kohat.
2. Brief facts as per contents of FIR are that, on 01.03.2022 at 14:00 hours, Hasham Khan SI CTD Kohat region, who was accompanied by other police officials nafri had set barricade/ Nakabandi on spy information at Ghoz Gharri, Ronda Samana road. A person under suspicious circumstances was stopped and body searched and upon

*Lamin Ullah*  
*11.03.2024*  
**Sami Ullah**  
Civil Judge/JM-I  
Orakzai at (Babar Mela)

72

search a hand grenade having lever No. 385-12-81 was recovered from side pocket of his shirt. The person disclosed his name as Muhammad Jamil S/O Khaista Ameen. 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. 01. Accused was formally arrested. Murasila was sent to PS for registration of the case through Adeel Baig, 1102 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.P.C 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 and one court witness to prove its case against the accused.

*Lamin*  
*Ullah*  
11.03.2023  
**Sami Ullah**  
Civil Judge/JM-I  
Orakzai (Babar Mela)

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

- I. Opinion report of BDU expert is Ex.PW-2/1.
- II. BDU report is Ex.PW-3/1.
- III. Challan is Ex.PW-4/1
- IV. FIR which is Ex.PW-4/2.
- V. Recovery Memo which is Ex.PW-PC.
- VI. Murasila Report is Ex.PW-7/1.
- VII. Card of arrest is Ex.PW-7/2.
- VIII. Case Property (Parcel No.01) is Ex.PA.
- IX. Site plan is Ex.PW-8/1.
- X. Application for custody for Muhammad Jamil is Ex.PW-8/2.
- XI. Application for family tree is Ex.PW-8/3.
- XII. Application for confessional statement of accused is Ex.PW-8/4.
- XIII. Application for ground checking is Ex.PW-8/5.
- XIV. Detail provided by DFU staff is Ex.PW-8/6.
- XV. Application for chemical examination is Ex.PW-8/7.
- XVI. Opinion given by the expert BDU Peshawar is Ex.PA.
- XVII. Arrival and departure report in DD is Ex.P-A/1.
- XVIII. Road permit certificate is Ex.P-A/2.
- XIX. Copy of register No.01 is Ex.P-A/3.
- XX. Naqalmad No.03 Roznamcha report is Ex.P-A/4.

*Laminated*  
*Ullah*  
 01.03.2024  
**Sani Ullah**  
 Civil Judge/JM-I  
 Okazai at (Babar Mela)

74  
XXI. Naqalmad No.17 Roznamcha report is Ex.P-A/5.

XXII. Statement of DFC on the back side of notice is Ex.P-B.

XXIII. Photographs consist of 05 pages is Ex.P-B/1.

7. After then, on 24.01.2024 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 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.

10. PW-02 is the statement of Rahat Hussain HC who was posted as Laboratory expert in BDU Peshawar. He stated that on 03.03.2022 one hand grenade in sealed condition was handed over to him by constable Jamshid. He further stated that he has examined the said hand grenade and has given to his expert opinion. His report is Ex.PW-2/1.

11. PW-03 is the statement of Gohar Khan SI who was posted as Incharge BDU, Orakzai in the relevant days. He stated that he has received information through control room about recovery of a hand grenade. He alongwith his squad rushed to the place of occurrence for defusing

*Lamin*  
*Ullah*  
03.03.2024  
Sahib Ullah  
Civil Judge/JM-I  
Orakzai at (Babar Mela)

of hand grenade and defused the same after reaching to the spot. His BDU report is exhibited as Ex.PW-3/1. The said PW recorded in his cross examination that he was present at Baber Mela Hangu at the time of receiving information while complainant in his statement as PW-07 stated that BDS squad was present at PS Ghiljo when he informed the same about recovered hand grenade. The said PW was clueless about his departure time from Baber Mela and arrival at spot of occurrence. The said PW also recorded that neither he knows the name of IO in the instant case nor he can recognize him by face.

12. PW-04 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 on strength of which he has registered FIR. The said PW has submitted complete challan against the present accused. PW-04 recorded in his cross examination that constable Sher Badshah handed over the Murasila to him at about 02:30 pm. However, constable Sher Badshah is not carrier of Murasila in the instant case, in fact its Constable Adeel Baig and he stated in his statement as PW-05 that he reached to the PS at about 04:15 pm. Moreover, there is distance of 80 to 85 KMs as admitted by PW-05 between the spot of occurrence and the PS. FIR reveals that occurrence at 14:00 Hours (02:00 pm), then it is not appealing to prudent mind that 80 Kms distance can be covered in 30 minutes.

13. PW-05 is the statement of Adeel Baig No.1102 who was posted as DFU PS CTD, Kohat in the relevant days. He stated in his statement that he took the Murasila to the PS and handed over the same to SHO

Lamy Ulla  
11.03.2024  
Sam Ullah  
Civil Judge/JM-I  
Orakzai (Babar Mela)

Ikhtiar Ali. The said PW recorded in his cross examination that he alongwith other police nafri in official vehicle reached to the spot at about 12:15 Hours.

14. PW-07 is the statement of SI CTD/complainant namely Muhammad Hashim. He stated that on the day of occurrence i.e., 01.03.2022, he was accompanied by other police officials nafri and had set barricade/ Nakabandi on spy information at Ghoz Gharri, Ronda Samana road. A person under suspicious circumstances was stopped and body searched and upon search a hand grenade having lever No. 385-12-81 was recovered from side pocket of his shirt. The person disclosed his name as Muhammad Jamil S/O Khaista Ameen. 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. 01. Accused was formally arrested. Murasila was sent to PS for registration of the case through Adeel Baig, 1102 and on the strength of Murasila, the instant case was registered against accused facing trial. The case property was exhibited as Ex.PA. The said PW stated in his cross examination that he has handed over the Murasila to the Constable Adil Baig at about 14:00 Hours while as per FIR time of occurrence is shown as 14:00 hours. He further stated he reached to the spot at about 12:00 hours and informed BDU squad at about 12:45 hours and BDS squad reached to the spot within 30 minutes making their arrival at about 01:45 hours. However, as per content of FIR, after recovery of hand grenade the BDS Orakzai was informed. But the complainant in his statement stated that he has already

*Jamil Ullah*  
11.03.2024  
**Sami Ullah**  
Civil Judge/JM-I  
Orakzai at (Babar Meta)

informed the BDS Orakzai well before the arrest and recovery of the accused and time of occurrence i.e. 14:00 hours. Moreover, PW-06 in his statement has also recorded that accused was arrested at 02:00 pm on spot. PW-07 further stated in his cross examination that the IO reached to the spot at about 17:30 hours. But the IO stated in his statement that he reached to the spot at about 19:00 hours.

15. PW-08 is the statement of DSP Muhammad Tariq who was posted as Inspector CTD office Orakzai in the relevant days. 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-8/7) which is exhibited in the course of evidence as mentioned above. 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 he reached to the spot at about 19:00 hours.

16. Remaining PWs were abandoned by prosecution and evidence was closed.

17. 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 that the occurrence ever took place, the benefit of which should be given to the accused. Reliance

*Lamiq*  
*Ullah*  
*11.03.2024*  
Sami Ullah  
Civil Judge/JM-I  
Orakzai at (Babar Mela)

in this regard is made on 2017 PCrLJ page 62 and 2016 MLD page 757.

- 18. 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”.*

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

- 19. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely **Muhammad Jamil** 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.
- 20. Case file be consigned to Record room after its completion and necessary compilation.

**Announced**  
11.03.2024

  
**Sami Ullah**  
Judicial Magistrate-I,  
Orakzai at Baber Mela



**CERTIFICATE**

Certified that my judgment of today consists of eight (08) pages, each page has been read, signed and corrected by me where necessary.



**Sami Ullah**  
Judicial Magistrate-I,  
Orakzai at Baber Mela