

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

Case No. **23** OF 2022
 Date of Institution: 23.02.2022.
 Date of Decision: 12.10.2022.

State through:

Muhammad Shafique SHO, PS Kalaya.

.....Complainant

VERSES

Raza Ali S/O Fariz Ali, R/O Qaum Bar Muhammad Khel, Tappa
 Khwaidad Khel,
 Village Panzaray, Tehsil Lower, District Orakzai


.....Accused

Case FIR No. 03, Dated 03.01.2022 U/S 5 Explosive Substances Act, 1908, PS
Kalaya.

JUDGMENT:
12.10.2022


Through this judgment I am going to dispose of the instant case registered against accused Raza Ali vide FIR No. 03, Dated 03.01.2022 U/S 5 Explosive Substances Act, 1908, registered at PS Kalaya.

1. Brief facts as per contents of FIR are that, on 03.01.2022 at 1600 hours, SHO/complainant who was accompanied by other police nafri was on routine patrol duty on main road near petrol pump, Feroz Khel. A person under suspicious circumstances, having a blue colour shopping bag in his right hand, was stopped and on checking the same, five hand grenades bearing number S+910, 01/99, A103, 02/02


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and 08/99 were found in the shopping bag. The person disclosed his name as Raza Ali. Bomb Disposal Unit, Orakzai was called to the spot who defused/made safe the recovered hand grenades. The recovered hand grenades were packed and sealed into parcel No. 1 along with shopping bag. Recovery memo was prepared in the presence of marginal witnesses. Accused was formally arrested. Murasila was sent to PS for registration of the case through Constable Najeeb Ullah and 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 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 its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.
5. PW-01 is the statement of SHO/complainant namely Muhammad Shafique. He stated that on the day of occurrence i.e., 03.01.2022, he was on routine patrol duty on main road near petrol pump, Feroz Khel. He was accompanied with by Constables Najeeb Ullah, Shakeel Khan, Saeed Gul, Shameem and Kareem Ali. A person, under suspicious circumstances, having a blue colour shopping bag



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in his right hand was stopped. Search was conducted which lead to the recovery of five hand grenades from possession of the said person who disclosed his name as Raza Ali. Bomb Disposal Unit, Orakzai was called to the spot who defused/made safe the recovered hand grenades. The recovered hand grenades were packed and sealed into parcel No. 1 along with shopping bag. Recovery memo was prepared in the presence of marginal witnesses. Accused was formally arrested. His card of arrest was issued. Signatures of marginal witnesses were obtained on the recovery memo. Recovery memo is Ex. PW-1/1. Card of arrest is Ex. PW-1/2. Murasila is Ex. PW-1/3. Parcel No. 1 containing five hand grenades is Ex. P1. Murasila was sent to the PS through Constable Najeeb Ullah for registration of the case. He pointed out the spot to the IO who prepared site plan on his pointation. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex. PW-1/4.

- 6. PW-02** is the statement of Constable Najeeb Ullah. He stated that he is one of the marginal witnesses to the recovery memo already exhibited as Ex. PW-1/1 vide which SHO/complainant recovered and took into possession five hand grenades from personal possession of the accused in his presence. The recovered hand grenades were packed and sealed into parcel. His statement was recorded by IO U/S 161 Cr. PC.

PW-03 is the statement of Head Constable Ishtiaq Ali. He stated that he was present in the office situated at Headquarter Lower Orakzai.


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He reached to the spot on receiving information from Muhammad Shafique SHO. He defused/made safe five hand grenades on the spot.

In this respect, he submitted his report Ex. PW-3/1. His statement was recorded by the IO U/S 161 Cr. PC.

8. Constable Ali Hussain was examined as PW-04. He stated that he was handed over case property in sealed condition by IO. He took the case property to BDU, Peshawar for examination along with application for examination and road certificate. He obtained signature and seal of BDU, Peshawar official in respect of receiving the parcels and handed over the same to IO. His statement was recorded by IO U/S 161 Cr. PC.

9. PW-05 is the statement of SI Mehdi Hassan. He is IO of the case. He stated that after receiving copy of FIR, Murasila, card of arrest and recovery memo, he proceeded to the spot and prepared site plan Ex. PB at the instance of complainant/SHO Muhammad Shafique. Accused was handed over to him for interrogation. He produced the accused before the Judicial Magistrate for obtaining his physical custody vide his application Ex. PW-5/1. One day physical custody was granted. Accused was interrogated. On 05.01.2022, he produced the accused before Judicial Magistrate for further physical custody of accused vide his application Ex. PW-5/2 which was turned down and accused was committed to Judicial lock-up. The recovered hand grenades were sent to FSL vide his application Ex. PW-5/3. Copy of receipt/road certificate is Ex. PW-5/4. The extract of register-19 was


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placed on file as Ex. PW-5/5. Similarly, extract of Mad No. 5 dated 03.01.2022 was placed on file which is Ex. PW-5/6. On 13.01.2022, Section 16AA was deleted in light of the opinion of DPP, Orakzai. Deletion memo is Ex. PW-5/7. He recorded statements of PWs and that of the accused U/S 161 Cr.PC.

10. Constable Wali Ullah was examined as PW-06. During the days of occurrence, he was posted as Moharrir at PS Kalaya. He stated that on receipt of Murasila, card of arrest and recovery memo from SHO/Complainant Muhammad Shafique through Constable Najeeb Ullah, he incorporated the contents of Murasila into FIR Ex. PA. Copy of FIR was handed over to IO for investigation. Case property and accused were handed over to him by SHO/complainant. Entry was made in register-19. Case property was kept in safe custody in Mall Khana of PS. Accused was locked up. Case property was handed over to IO for the purpose of sending it to FSL on 07.01.2022. His statement was recorded by IO U/S 161 Cr.PC.

11. Remaining PWs were abandoned by prosecution and closed its evidence.

12. 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 defence evidence.

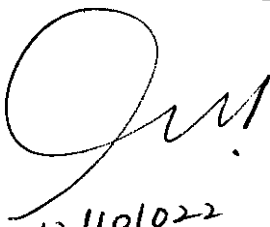
13. PW-01 (SHO/complainant) stated in his cross examination that accused facing trial is a police official and he remained posted with him for about two and half years in the PS. He knew the accused


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facing trial by face and name. The spot of occurrence is on main road and accused was visible to them from a long distance. The IO arrived to the spot at 17:10 hours and he took about half an hour at the spot. Similarly, PW-02 in his cross examination stated that in his presence BDU, Orakzai reached the spot within 10 minutes. BDU, Orakzai staff took about 6/7 minutes in defusing/making safe the hand grenades. He also stated that BDU, Orakzai staff was present with them when the recovered hand grenades were being packed and sealed. Accused was wearing a mask at the time of occurrence, therefore, he could not recognize him. He admitted that this fact has not been mentioned in his statement recorded U/S 161 Cr.PC. The IO reached to the spot at about 17:00 hours.

14. PW-03 HC, BDU, Orakzai Kalaya, in his cross examination stated that he received information from SHO/complainant at about 16:00 hours. The recovered hand grenades were brought to the PS by SHO in sealed condition. The hand grenades were not sealed in front of him at the spot. His statement was recorded by the IO in the PS. Similarly, PW-04, stated in his cross examination that case property was handed over to him by IO at 07:00AM.

15. Sub-Inspector Mehdi Hassan, who has investigated the case and deposed as PW-05, stated in his cross examination that accused did not confess his guilt before him. He has not clarified in his investigation that from where the accused had brought the hand grenades and where he was taking the same. He has not mentioned



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the point in the site plan where accused was first seen by complainant. When he reached the spot, Bomb Disposal Unit, Orakzai was not present there. He reached the spot at 04:15PM. When he reached the spot, the hand grenades were not sealed into parcel. It is correct that no private person was examined/associated at the spot. He admitted that FSL report is not placed on file.

16. Constable Wali Ullah, who was posted as Moharrir at PS Kalaya during the days of occurrence and deposed as PW-06, stated in his cross examination that he has not received any FSL report in his tenure at PS Kalaya. The SHO returned to PS at 18:20 hours.

17. Record transpires that the alleged occurrence took place on 03.01.2022 at 16:00 hours on main road near Feroz Khel petrol pump. It was reported through Murasila at 16:15 hours and FIR was registered at 16:40 hours. PW-01 in his cross examination stated that the IO arrived to the spot at 17:10 hours. PW-02 stated that IO arrived to the spot at 17:00 hours. PW-03, who is IO of the case, stated that he visited the spot at 04:15 hours. After registration of FIR, copy of FIR along with other relevant documents were handed over to IO for investigation. When FIR was chalked at 16:40 hours then how IO visited the spot at 04:15 hours?

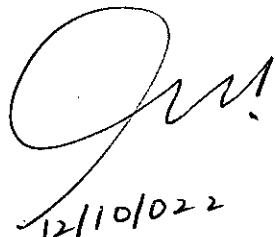
18. As per statement of SHO/complainant, who deposed as PW-01, he along with other police nafri was on patrol duty when a person under suspicious circumstances having a blue colour shopping bag in his right hand was stopped and the person disclosed his name as Raza


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Ali (accused facing trial). PW-01, in his cross examination stated that accused facing trial is a police official and he remained posted with him for about two and half years. He further admitted that he knew the accused facing trial by face and name. Accused facing trial was known to SHO/complainant, therefore, this fact should have been brought on record by SHO/complainant while drafting Murasila and other relevant documents. Similarly, PW-02 stated in his cross examination that accused was wearing a mask at the time of occurrence, therefore, he was unable to recognize the accused. This fact has not been mentioned in the Murasila and other relevant documents.

- 19.** As per available record, after the alleged recovery, Bomb Disposal Unit, Orakzai was called to the spot to diffuse/made safe the hand grenades. Per statement of PW-02, Bomb Disposal Unit, Orakzai reached the spot within 10 minutes after the occurrence. He also stated that Bomb Disposal Unit, Orakzai was present with them at the time of packing and sealing the recovered hand grenades. On the other hand, PW-03, who is one of the members of Bomb Disposal Unit, Orakzai, stated in his cross examination that he received call/information from SHO/complainant at 16:00 hours. The recovered hand grenades were brought to PS by SHO in sealed condition. The grenades were not sealed in front of him at the spot. FIR was chalked at 16:40 hours while SHO/complainant informed



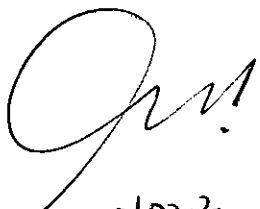
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Bomb Disposal Unit, Orakzai at 16:00 hours which is prior to report and registration of the FIR.

20. Per Ex. PW-1/1 (recovery memo) and Ex. PW-1/3 (memo report), the recovered hand grenades were packed and sealed at the spot. Before sealing the same into parcel Ex. P1, Bomb Disposal Unit, Orakzai was called to the spot and when grenades were diffused/made safe, the same were packed and sealed into parcel. However, PW-03, who is BDU, Orakzai member, stated that the recovered hand grenades were brought to the PS by SHO/complainant in sealed condition. Hand grenades were not sealed in front of him at the spot. His statement was recorded by IO U/S 161 Cr. PC in the PS. PW-02 stated that the BDU, Orakzai reached the spot within 10 minutes and they took above 6/7 minutes in diffusing/making safe these hand grenades. At the time of preparation of parcel Ex. P1, BDU, Orakzai was present with them. Similarly, PW-05 (IO) stated that when he reached the spot, the hand grenades were not sealed into parcel.

21. Report of Bomb Disposal Unit is Ex. PW-3/1 wherein it is mentioned that per information/call of SHO, PW-03 reached the spot and made the hand grenades safe and report was handed over to SHO/complainant.


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22. As per Ex. PW-5/1 (application for report of Bomb Disposal Unit, Peshawar), the recovered grenades were sent to BDU, Peshawar for examination with three questions/queries but there is no such report

placed on file. No FSL report is placed on file. The IO admitted that BDU, Peshawar and FSL report is not placed on file. This fact is also admitted by PW-06 (the then Moharrir). He stated that he has not received any FSL report during his tenure of posting at PS Kalaya. No explanation whatsoever to this effect was given by the IO and Moharrir.

23. PW-05 (IO), stated that no private person was associated/examined at the spot despite the fact that the place of occurrence is a main road, busy place and there is a petrol pump at the spot. Prosecution witnesses during cross examination deposed that accused was arrested on main road, Feroz Khel petrol pump which is a busy place and there were other persons available at the time on the road but no independent person was engaged as witness. Facts and circumstances of the case coupled with absence of any prior criminal record doubts as to the veracity of prosecution's case, benefit of which would go to accused facing trial.

24. The report/Murasila, chalking of FIR and arrival of IO to the spot are all contradictory. Recovery is doubtful. BDU, Peshawar report and FSL report are not placed on file. There are material contradictions in the statements of PWs.

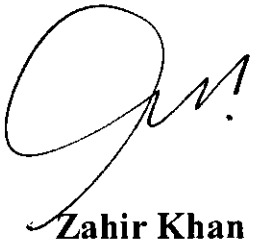
25. Accused facing trial is a police official. Per record there is no criminal record of accused facing trial. Accused has not confessed his guilt before the IO and the court.


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- 26.** 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 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.
- 27.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Raza Ali 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.
- 28.** Case file be consigned to Record room after its completion and necessary compilation.

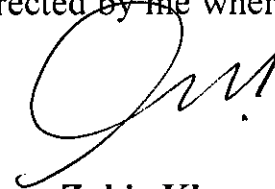
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CERTIFICATE

Certified that my judgment of today consists of eleven (11) pages, each page has been read, signed and corrected by me where necessary.



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