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IN THE COURT OF ABDUL BASIT  
ADDITIONAL SESSIONS JUDGE-II/JUDGE SPECIAL COURT/  
JUDGE JUVENILE COURT/JUDGE CHILD PROTECTION COURT,  
**ORAKZAI**

Case No. 06/23 JC of 2023

Date of institution: 07.12.2023

Date of decision: 02.04.2024

Date of consignment:

State through Shal Muhammad SHO of the Kalaya Police Station Orakzai  
(complainant)

Versus

Waseem Akram s/o Malak Jan, Qaum Sunni Stori Khel, Tarkho Sam,  
District Orakzai (accused facing trial)

**FIR No. 117 DATED 20.11.2022 U/S 336/337-A (ii)/279 PPC OF  
KALAYA POLICE STATION, ORAKZAI**

**Judgment**

1. Accused Waseem Akram is facing trial in the subject case registered under section 336/337-A (ii)/279 PPC of Kalaya Police Station, Orakzai.
2. Shal Muhammad SHO, the complainant, along with police officials on receiving spy information about smuggling of narcotics through motorcycle, arranged a barricade at place of occurrence, where at about 1800 hours, the above named rider approached on motorcycle, who with the help of torch was signaled to stop he accelerated the speed and hit the constable Muhammad Younas with intention to kill, who fell down and sustained severe injuries; that accused has also fallen down from the motorcycle and sustained injuries, who was overpowered; that injury sheet of the injured constable was prepared, who was shifted to the THQ Hospital Kalaya under the escort of constable Muhammad Ayaz; that complainant bodily searched the

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accused, who had worn two grey color waistcoats; that the first waistcoat had three pocket and the second consisted had two pockets; that complainant has recovered 4 packets of chars each from three pockets, three packets of chars from fourth pocket and two packets of chars from fifth pocket making total recovery of 17 packets each containing 1000 grams chars total weighing 17000 grams (17 kilogram); that 10 grams chars from each packet was separated for FSL which were sealed into parcels no. 1-17 and the remaining chars was sealed into parcels no. 18-34; that waistcoats weighing 415 grams were sealed into parcel no. 35; that case property along with motorcycle bearing engine no. US12541260 and chassis no. US125-41757 in damaged condition; that injury sheet of accused was also prepared and he was shifted to the THQ Hospital Kalaya under the escort of Muhammad Rasool; that the recovered articles were taken into possession by the local police and accused was arrested, hence, the FIR.

3. On completion of investigation, complete challan under section 336/337-A (ii)/279 PPC was put in court against the accused.
4. Accused was summoned through *zamima bay*. On his attendance, the copies of the case furnished to accused under section 265-C Cr.PC. The accused was then charge sheeted u/s 336/337-A (ii)/279 PPC to which he pleaded not his guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. PW-1 is statement of Aftab Ahmed SI, who has prepared juvenile challan, Exh.PW 1/1, on the direction of court. The statement of Shal Muhammad (complainant) was recorded as PW-2, who confirmed the initial report, Ex.PW 8/1; prepared the injury sheet of Muhammad

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Younas, Exh.PW 2/1, took into his possession the contraband and motorcycle vide recovery memo, Ex.PW 2/2; he arrested the accused and issued his card of arrest, Exh.PW 2/3, prepared injury sheet of accused, Exh.PW 2/4, and drafted the Murasila, Exh.PW 2/5. He produced remaining chars excluding samples for FSL in parcel no. 18-34, Exh.P-1-17, waistcoats in parcel no. 35, Exh.P-18, and motorcycle, Ex.P-19. After completion of investigation, he submitted complete challan, Exh.PW 2/6 and Exh.PW 2/7, against the accused in instant case. One of the marginal witnesses to the recovery memo was Taj Gul, who was examined as PW-3. He testified that the recovery was made from accused and was documented vide recovery memo in his presence. He took the murasila, recovery memo and card of arrest to police station for registration of FIR. Muhammad Haneef OII/SI was investigation officer of the case, who entered in the witness box as PW-4. He prepared site plan, Exh.PW 4/1, and confirmed the preparation of site plan and examination of witnesses. He produced blood stained pebbles in parcel no. 36, Ex.PW 4/1-A, which were recovered from the place of injured Muhammad Younas, and vide application, Exh.PW 4/2, produced the accused before Judicial Magistrate. He made applications to the SP Investigation Exh.PW 4/3 and Exh.PW 4/4. He produced FSL applications and road certificates, Exh.PW 4/5 to Exh.PW 4/8, respectively. He had submitted application, Exh.PW 4/9, before Judicial Magistrate for issuance of *zamima-B*, Exh.PW 4/9-A. Vide application, Exh.PW 4/10, two days custody was granted. He prepared pointation memo, Exh.PW 4/11. Vide application, Exh.PW 4/12, he produced accused for confessional statement before the Judicial Magistrate. He also

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produced daily diary reports, Exh.PD, and register no. 19, Exh.PR, FSL reports, Exh.PW 4/13 to Exh.PW 4/15. He prepared memo of addition of section of law, Exh.PW 4/16 and Exh.PW 4/17. PW-5 is the statement of Muhammad Raziq, who has taken the parcels to FSL Peshawar. PW-6 is the statement of Khalil ur Rehman constable who is marginal witness to the recovery memo, already Exh.PW 4/1. Dr. Farooq Azam was examined as PW-7, who has examined injured Muhammad Younas and accused. He produced the reports, Exh.PW 7/1-Exh.PW 7/3, respecting examination of injured Muhammad Younas and accused. Asmat Ali Muharrir was examined as PW-8, who on receipt of the murasila, recovery memo and card of arrest, registered the FIR, Exh.PW 8/1, and also kept the case property in *maalkhana* for safe custody vide register no. 19, already Exh.PWR. He produced the DD report, Exh.PB. Statement of Muhammad Younas constable was recorded as PW-9, who confirmed that accused Waseem Akram intentionally hit him with motorcycle due to which he got severe injuries. Statement of Gul Kareem constable was recorded as PW-10 who is the marginal witness to the recovery memo, already Exh.PW 4/11, vide which accused made pointation to the investigation officer.

Prosecution closed its evidence. The statement of accused was recorded under section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In his replies to questions, he neither wished to be examined under oath nor to produce evidence in defense.

8. Learned APP for State argued that the prosecution has proved the case against accused beyond shadow of reasonable doubt; that

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medico legal report supports the prosecution version; that the prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused; that there is no malafide on the part of the prosecution to falsely involve the accused in the case, therefore, requested to award him maximum punishment.

9. Counsel for the accused argued that prosecution has failed to prove its case against accused beyond reasonable shadow of doubt; that prosecution evidence contradicts & suffers major inconsistencies; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that accused has not confessed his guilt; that the case against the accused is not proved and request is made for the acquittal of accused.

10. Arguments heard and record perused.

11. Viewing the arguments advanced by learned counsel for parties and record available before the court, it is concluded that local police on spy information had arranged a barricade and intercepted a motorcycle rider approaching to them, however, the accused accelerated the speed, hit the constable Muhammad Younas, the injured, who fell down and received severe injuries, whereas, the accused has also fallen down from the motorcycle, received injuries. It is bounden duty of prosecution to prove its case against the accused beyond shadow of a reasonable doubt from the moment of receiving the spy information by local police to the interception of accused, hitting the constable Muhammad Younas, who fell down and received severe injuries, his shifting to hospital by Muhammad Ayaz, preparation of recovery memo, drafting murasila, witnessing of whole proceedings

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by marginal witnesses, registration of case, investigation of the case and laboratory reports etc.

12. The contents of report also provide the commission of two fold offences; first over speeding, hitting, causing injuries to constable and following the recovery of contraband. Although for both these offences separate challan have been received, however, witnesses to both the occurrence are one and the same. Complainant admitted that he did not mention in the murasila report that who was present with him at the barricade, however, stated that their names were given in the daily diary. Perusal of daily diary does not provide association of injured Muhammad Younas from police station to the spot rather evidence provides that the local police had arranged barricade near Shiraz Garhi Check Post, where the injured was serving and present at relevant time along with two other constables adjacent to barricade as evident from the point marked 4 in the site plan, Exh.PW 4/1. Taj Gul (PW-3), however, contradicted stating that Muhammad Younas had also accompanied them from the police station to the spot but the daily diaries are silent about this fact.

13. The statement of complainant (PW-2) provides that he took around 1½ hour in completing the whole proceedings on the spot, whereby, also handed over the murasila, recovery memo and card of arrest to Taj Gul at 1930 hours for taking to the police station for registration of the case and left the spot for police station along with constables including Muhammad Ayaz at about 2200 hours but it is on record that constable Muhammad Ayaz has escorted the injured to the hospital, therefore, he was supposed to be not with the complainant at the time of his return to the police station. Complainant, however,

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stated that by that time Muhammad Ayaz had returned from hospital to the spot, which cannot be believed to be true because Taj Gul (PW-3) not only deviated from his stance but also stated that he has returned to the spot around 2030 hours and constables Muhammad Rasool & Muhammad Ayaz did not return from hospital to the spot in his presence. On contrary, Khalil-ur-Rehman (PW-6) had accompanied investigation officer to the spot and told that when they had reached to the spot, constables Muhammad Rasool, Muhammad Ayaz etc. were already present there, which above statements of the three witnesses are fully contradictory to each other and leads to inference that these witnesses were not present on the spot at the same time and were deposing falsely to entangle the accused in the instant case.

14. Besides above, there is also conflict in the statements of prosecution witnesses because according to investigation officer (PW-4), Khalil-ur-Rehman (PW-6) and the injured (PW-9) told that the In-Charge of the check post was Abdul Qayum, however, Taj Gul (PW-3) negated them stating that that was Farooq, which clearly suggests that Taj Gul was not present on the spot and was introduced later on to strengthen prosecution case. Likewise, there are also contradictions noted in the statements of prosecution witnesses as Taj Gul (PW-3) deposed that he has received the murasila at 1900 hours & reached to the police station at 1930 hours, however, complainant (PW-2) deposed that he has completed the proceedings at 1930 hours, where after, handed over the murasila to Taj Gul for taking to the police station for registration of case. Likewise, complainant (PW-2) deposed that he has left the spot for police station at about 2200 hours, however, Taj Gul (PW-3) stated that they have left the spot at

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about 2100 hours, which provides a difference of one hour, which further creates doubt in the prosecution case and establishes that Taj Gul had not accompanied complainant but was later on introduced.

15. Although, the statement of driver Abid Gul was not recorded and his statement recorded u/section 161 CrPC has no relevancy, however, sometimes the facts not relevant to the case becomes relevant and change the whole scenario. In the instant case too, complainant though handed over the murasila etc. to Taj Gul for taking to the police station for lodging of an FIR, which Taj Gul has allegedly taken to the police station on motorcycle he took from the checkpost, however, the investigation officer (PW-4) endorsed that Abid Gul, driver of the police vehicle, in his 161 CrPC statement deposed that he along with Taj Gul had left for the police station for handing over the murasila to the Muharrir, which on one hand envisages that Taj Gul did not go to the police station alone and on the other hand provides that he had gone to the police station in official vehicle and not on motorcycle.
16. It is evident from statement of complainant (PW-2) that the injured Muhammad Younas was shifted to the hospital under the escort of Muhammad Ayaz, whereas, the accused being injured was shifted to the hospital under the escort of Muhammad Rasool but strange to note that he did not remember that through which means both the injured were shifted to hospital. Taj Muhammad, however, clarified that both the injured were shifted to the hospital through private vehicles. Contrary to this, investigation officer (PW-4) stated that Abid Gul, driver of official vehicle, in his statement recorded under section 161 CrPC mentioned that injured Muhammad Younas was

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shifted to hospital in Government ambulance along with Muhammad Ayaz and Muhammad Rasool, which facts are utterly in conflict with the statements of complainant and Taj Gul, which casts serious doubt in the prosecution case. Similarly, the investigation officer in reply to a question also stated that according to 161 CrPC statement of Muhammad Rasool, the accused was shifted by him to THQ hospital in Government ambulance. More so, complainant admitted that he has not witnessed In-Charge of the Shiraz Garhi Checkpost during the whole proceedings, whereas, investigation officer (PW-4) stated that during his visit to the spot, In-Charge of the checkpost was not present there because he was with injured in hospital, which speaks volume about the mode and manner of the commission of offence.

17. Since, the occurrence has allegedly taken place in front of Shiraz Garhi Checkpost and allegedly one of the constable Muhammad Younas of the checkpost has sustained injuries in the unfortunate incident, however, the investigation officer (PW-4) did not bother to record the statement of single police official present in the checkpost so as to strengthen the prosecution version or at least to establish the fact that on relevant day, Muhammad Younas was present there on duty.

This is also astonishing to note that the case was registered at 2030 hours, where after, the copy of FIR was handed over to investigation officer for investigation. The investigation officer accompanied with him two police officials and a driver and proceeded to the spot in police vehicle and conducted the investigation, however, Taj Gul (PW-3) deviated stating that the investigation officer along with two police officials came to the spot on motorcycle at 2000 hours, the

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time the case was not yet registered and was not handed over to investigation officer to investigate. Likewise, Taj Gul deposed that the investigation officer has recorded his statement at 2100, whereas, the investigation officer stated that he has recorded the statements of Taj Gul and Abdul Sattar at 2150 hours. Had Taj Gul been present there, he must have stated that complainant has first prepared the injury sheet of Muhammad Younas and then prepared the recovery memo etc. as told by the complainant; however, he stated that the complainant has first prepared the card of arrest of the accused. Even, he admitted that he has not stated anything about preparation of injury sheets in his 161 CrPC statement, which further confirms his absence on the spot.

19. Even, Taj Gul deposed that there was no other police official present on at the place of occurrence except him, complainant, Muhammad Younas, Muhammad Ayaz and Muhammad Rasool, whereas, statement of complainant and site plan also provides the presence of Abdul Sattar and Abid Gul on the spot as well.

20. Murasila report though provides that accused was shifted to the hospital in the escort of constable Muhammad Rasool, however, the statement of complainant is silent about this fact. In reply to a question, complainant (PW-2) initially admitted that after necessary investigation, he has returned to the police station along with the case property and accused, and locked the accused in police station, however, on recollection changed the stance stating that the accused was brought to the police station from hospital after his arrival there, which further doubts the prosecution story.

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21. In the prosecution case, there is no mentioning of the fact that the injured was also accompanied by his father while shifting to the hospital, however, the statement of doctor (PW-7) provides that when the injured was brought to the hospital, he was accompanied by police and his father. More so, the occurrence has taken place at 1800 hours (06.00 pm), whereas, in medical report of Muhammad Younas, Exh.PW 7/2, the time of his arrival to the hospital was 08.40 pm (2040 hours), whereas, the probable duration of injury is given as one hour, which all factors create serious doubt about the exact time of occurrence and shifting of the injured to the hospital and his medical examination by the doctor. Likewise, time of arrival of accused (who was also injured) to the hospital is also shown as 09.00 pm (2100 hours), however, the doctor has not given any time about probable duration of injury in his medical report, Exh.PW 7/1.

22. From above appreciation of evidence and lacunae noted above, it is held that admittedly constable Muhammad Younas and accused have received injuries, however, the accumulative effect of lacunae noted makes the commission of offence by the accused in the mode and manner extremely doubtful and this is the cardinal principle of law that benefit of the slightest doubt in criminal case would be extended to the accused being favorite child of law. It is, therefore, held that prosecution has failed to bring home the guilt against accused facing trial beyond shadow of doubt; hence, accused Waseem Akram is acquitted from the charge leveled against him. Since, accused is behind the bars; therefore, he be released forthwith, if not required in any other case. Zamima bay, if any, in this case is cancelled.

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23. Case property be disposed of in accordance with law after expiry of period provided for appeal/revision.
24. File consigned to record room after completion and compilation.



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**CERTIFICATE**

It is certified that this judgment consists of twelve (12) pages and each page is duly signed by me after necessary corrections.



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