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

Case no. 28/03 of 2023

Date of institution: 11.10.2023

Date of decision: 05.06.2024

Date of consignment:

The State through Ashraf Ali son of Muhammad Nabi aged about 37 years, caste Mani Khel, Tappa Badha Khel, resident of Dargai, District Orakzai (complainant)

Versus

Nazim Ali son of Sangeen Ali caste Ali Khel, Tappa Mirwas Khel, resident of Janoobi Tropi Ghiljo of Tehsil upper, District Orakzai (accused facing trial)

**FIR No. 24 DATED 09.07.2023 U/S 3/4 EXPLOSIVE ACT & 427 PPC KUREZ BOYA POLICE STATION, ORAKZAI**

**JUDGMENT**

1. Accused named above is facing trial in the subject FIR No. 24 dated 09.07.2023 u/ss 3/4 of The Explosive Act and 427 PPC registered at Kurez Boya Police Station, Orakzai.
2. Concise facts of the case are that Ashraf Ali, complainant, reported the matter to police that on 08.07.2023 at about 2045 hours, he along with family members was having dinner, when in the meanwhile, there was explosion in the courtyard of their house; that they rushed to the room to secure themselves; that after a while, he came out of the room and found a hand grenade was exploded and second hand grenade was lying on the ground; that he and his family members luckily remained unhurt but wall and gate of the house got damaged; that he instantly reported the matter to the police; that local police along with Bomb Disposal Unit (BDU) staff came to the spot and

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defused the live hand grenade; that he did not lodge the report due to dark night and fear of accused; that after due inquiry, information and on being satisfied, complainant has charged Nazim Ali for the commission of offense because there was a previous enmity between them over women folks issue, hence, the FIR.

3. Accused was arrested on 09.07.2023. On completion of investigation, prosecution submitted complete challan against accused for trial.
4. As accused was on bail; therefore, he was summoned. He attended the court and copies of the case were furnished to him under section 265-C Cr.PC. The accused was charge sheeted u/s 3/4 Explosive Act and 427 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 the statement of Ishtiaq Ali, Incharge BDU Kalaya, who has defused the hand grenade. Altaf Ali ASHO was examined as PW-2, who reduced the report of complainant in shape of FIR, Exh.PA. He has also arrested the accused and issued his card of arrest, Exh.PW 2/1. He has also submitted complete challan, Exh.PW 2/2, against the accused in the instant case. PW-3 is Khayal Hussain FC, who is the marginal witnesses to the recovery memo, Exh.PW 3/1. He has taken parcel no. 1 along with application to the FSL Peshawar for chemical analysis and exhibited transit/receipt report, Exh.PW 3/2. Sardar Khan SI was examined as PW-04, who stated that on the day of occurrence, he on receiving information rushed to the spot and informed BDS, who arrived to the spot, defused the hand grenade in his presence and In-charge BDS handed over him the report, Exh.PW 4/1, to him. PW-5 is the statement of Hashim Khan SI/OII who has

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conducted the investigation in the instant case. He has prepared the site plans, Exh.PW 5/1 and Exh.PW 5/2, on pointation of In-charge BDS and complainant respectively. He has taken into possession the destroyed pieces of hand grenade and sealed into parcel no. 1, Exh.P-1. He has also prepared the recovery memo already, Exh.PW 3/1, and drafted the application, Exh.PW 5/3, addressed to Judicial Magistrate for obtaining physical remand of accused. He produced daily diaries regarding arrival and departure, Exh.PW 5/4, and vides application, Exh.PW 5/5, again produced accused before Judicial Magistrate, who remanded the accused to judicial lockup. He also placed on file daily diary, Exh.PW 5/6, regarding departure of sending parcel for FSL, drafted an application, Exh.PW 5/7, for FSL and issued a road permit certificate, Exh.PW 3/2. He produced copy of register no. 19 Exh.PW 5/9, and placed on record the opinion given by BDU Special Branch Peshawar, Exh.PK. After completion of investigation, he handed over the case file to SHO for onward submission of challan. Statement of complainant Ashraf Ali was recorded as PW-6, who has charged the accused for the commission of offence and verified the contents of his report. Statement of Wajid Ali was recorded as PW-7, who stated that complainant Ashraf Ali is his brother, who made the report to local police and he has verified it to be true.

7. The prosecution closed its evidence.
8. Statement of accused was recorded u/section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In reply to a question, he neither wished to be examined under oath nor to produce evidence in defense.

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9. Arguments heard and record perused.
10. Learned DyPP for State assisted by learned counsel for complainant argued that prosecution has proved the case against accused beyond shadow of doubt; that prosecution witnesses are consistent in their statements; that FSL result is in positive; that there is no malafide on part of prosecution to falsely involve the accused in the case, thus, requested to award the accused the maximum punishment.
11. Counsel for accused argued that prosecution has failed to prove its case against accused beyond shadow of doubt; that complainant is not an eye-witness of the occurrence; that the prosecution evidence contradicts & suffers major inconsistencies; that prosecution case is full of doubts because prosecution witnesses contradicted each other; that the accused facing trial has not confessed his guilt; that case against accused is not proved so the request is made for his acquittal.
12. In view of arguments advanced by learned counsel for parties, the evidence and record before the court, it is held that cases are decided on the basis of evidence led by parties. In criminal cases, prosecution is mostly burdened to prove the case against accused by producing undented evidence on file. The Qanun-e-Shahadat Order, 1984 provides that evidence is either oral or documentary. In criminal cases, most of times, the nature of evidence is oral. Article 71 of The Qanun-e-Shahadat Order, 1984 provides that when evidence is oral, it must in all cases, whatever, be direct that is to say; if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; if it refers to a fact

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which could be perceived by any other sense or in any other manner; it must be the evidence of a witness who says he perceived it by that sense or in that manner; if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds. It is an admitted position from the record that neither complainant nor any independent person has witnessed the occurrence or accused throwing the hand grenades in the courtyard of complainant' house because when the explosion has taken place, complainant and his family members were engaged in taking food inside the house, where after, they went inside the room to secure themselves. There is also no one came forward from the locality to state that he has heard the blast nor investigation officer bothered to record the statements of family members of the house, who were allegedly present and taking food at the time of occurrence and thus makes the case of prosecution quite dubious.

- 13. This is a routine matter that when a cognizable offence is committed and it is brought into the notice of local police, the local police has no other option but to register the case irrespective of the fact that whether the accused is known or not, however, perusal of daily diary dated 09.07.2023, Exh.PW 5/4 (2 sheets), provides that Sardar Khan (PW-4) despite receiving the information about occurrence around 0140 hours, just visited the spot, informed the BDU staff for defusing the live hand grenade, however, he did not register the case on sole ground that complainant refused to lodge the report due to dark night and fear of the accused, which is out of mind because if the local police when went to the spot, then, the question of darkness or fear

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of accused becomes irrelevant and speaks volume about the false implication of accused. Importantly, the very daily diary report and statement of complainant also clarifies that complainant has charged the accused after deliberation and afterthought and that too without disclosing any source of information and satisfaction, which infers that he has falsely implicated the accused in the case on pretext of women folk issue for his personal vengeance.

14. Besides above, the occurrence has admittedly taken place within the local limits of Police Station Kurez Boya and in order to grab the accused, the investigation officer (PW-5) has collected his Call Data Record, Exh.PW 5/9 (03 sheets), however, the CDR provides that when the alleged occurrence has taken place, accused was present at hospital at Kalaya. Even, the investigation officer has also recorded the statements of Dr. Hadi Hussain and Syed Khalid Syed, who have also confirmed the presence of accused there, which infers that at the relevant time of occurrence, accused was not present on the spot but in the hospital at Kalaya.

15. Khiyal Hussain (PW-3) is marginal witness to the recovery memo, Exh.PW 3/1, through which the pieces of exploded hand grenade were recovered by investigation officer from the spot, however, he being witness of this fact did not remember the numbers of pieces, investigation officer has recovered from the spot, which creates doubt about his presence on the spot. His presence on the spot becomes further doubtful; when he conceded that he has signed in Urdu in his CNIC, whereas, in the recovery memo, he has signed in English, which infers that someone else might have signed it on his place.

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16. This is worth noting that Sardar Khan (PW-4) on receiving the information visited the spot but did not collect any pieces of exploded hand grenade, which were later on collected by investigation officer. On the other side, Ishtiaq Ali (PW-1) on his visit to the spot, not only recovered the live hand grenade but also exploded that at some distance from the place of occurrence after gaining prior permission from his high ups and in this respect submitted the report, Exh.PW 4/1, however, there is no formal permission brought on record. Even, there is no separate recovery memo prepared about collecting the live hand grenade by him nor there is any witness to said recovery, which further makes the prosecution story doubtful. On same footings, the investigation officer admittedly did not bother to mention the pieces of hand grenade in the site plan with specific positions.

17. So far motive part of the case is related, complainant though stated this to be previous enmity over women folk but he has taken this plea as a routine and did produce a single person from village as witness before the court to prove this; therefore, it is held that prosecution has also failed to prove the motive behind the commission of offence.

18. It is a golden principle of criminal law justice that let all the accused be acquitted than to punish an innocent soul unless the prosecution has succeeded to prove the guilt against him beyond the shadow of reasonable doubt. In the instant case, there are many lacunae noted above, which does not attract the conscious of a prudent mind that the accused has committed the offence, hence, while extending him the benefit of doubt, the accused Nazim Ali is acquitted from the charge leveled against him. As, the accused is on bail; therefore, his sureties are relieved from the burden of surety bonds.

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19. Case property be disposed of in accordance with law after expiry of period of appeal etc.
20. File consigned to record room after completion and compilation.



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**CERTIFICATE**

It is certified that this judgment consists of eight (08) pages and each page is duly signed by me after necessary correction.



**Announced**  
05.06.2024

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