

**IN THE COURT OF SYED ABBAS BUKHARI, JUDICIAL
MAGISTRATE-II TEHSIL COURTS KALAYA, DISTRICT
ORAKZAI**

Case No. 1/3 OF 2022
Date of Original Institution: 17.12.2022
Date of Transfer In: 08.03.2022
Date of Decision: 25.04.2024

State through: Umar Khan ASI/NET PS Kalaya.

.....**Complainant**

VERSES

ASHOR KHAN S/O MUHAMMAD DIN SHAH,
RESIDENT OF QOM FERAZ KHEL, TAPA JAISAL
KHEL, KARRI TAAL, TEHSIL LOWER DISTRICT
ORAKZAI.

....**ACCUSED FACING TRIAL**

Present: Mr. Nisar Ahmad, Assistant Public Prosecutor for
complainant.
Asad Ijaz Advocate, for accused facing trial.

JUDGMENT

25.04.2024

Through this judgement, I am going to dispose of the instant case registered against accused facing trial namely Ashor Khan vide Case FIR No. 90, Dated: 27.09.2022 U/S 11 A CNSA, PS Kalaya.

1. Brief facts as per contents of FIR are that, on 27.09.2022 at about 09:00 hours, the complainant alongwith other

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police officials were present on the spot, when a person in suspicious condition came and he was engaged. Upon his body search, an unlicensed 30-bore pistol along with a fixed charger and 07 live rounds was recovered from his Badah Shalwar. Upon further search a white plastic shopper was recovered from his side pocket containing 25 grams of ice. The police officials separated 01 gm ice from the packet and sealed the same in parcel no. 01 for chemical analysis of FSL, whereas, remaining 24 gram ice was packed and sealed in a separate parcel no. 02. The local police took into possession the recovered case property through recovery memo. Accused disclosed his name as Ashor Khan S/O Muhammad Din Shah. Accused was accordingly arrested vide card of arrest, which is Ex.PW-1/2. Murasila Ex. PA/1 was drafted and sent to the PS, which was converted into FIR which is Ex.PA. Hence, the case in hand:

2. After completion of investigation, complete challan was submitted by prosecution against the accused Ashor Khan facing trial.
3. Accused was summoned. He appeared before the court and all the legal formalities under Section 241-A Cr. PC


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DUII Kalaya
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were complied with. Accused was formally charge sheeted. Accordingly he pleaded not guilty and claimed trial, hence prosecution was directed to produce its evidence.

4. Prosecution produced seven (08) witnesses to prove its case against the accused and thereafter closed its evidence.

5. PW-01 is the statement of Umar Khan, which is reproduced as under;

Stated on oath that during the days of occurrence, I was posted as ASI at PS Kalaya. On the day of occurrence, I alongwith 06 other police officials were present on Nakkabandi, when a suspicious person came from HQ Chowk. On search I recovered one pistol 30 bore alongwith kash and 07 cartridges of same bore from the Badda Shalwar of the accused. On further body search I recovered 25 gram ice from the possession of accused through vide recovery memo Ex. PW-1/1 in the presence of marginal witnesses Syed Amir Abbas and Abdul Haq. The accused disclosed his name as Ashor Khan and I issued his card of arrest which is Ex. PW-1/2. My statement was recorded by the IO U/S 161 Cr. PC.


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Civil Judge (JM-II)
Tehsil Courts Kalaya

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6. **PW-02**, is the statement of Constable Muhammad Raizq, which reproduced as under;

Stated on oath that parcels containing case property were handed over to me 02 parcels in sealed condition by OII Muhammad Hanif of PS which I took to FSL Peshawar. Parcels were handed over to incharge FSL Peshawar. The authority of FSL Peshawar was returned to me parcel no.3 due to cartridges was not available in the said parcel. Receipt thereof, was given to me which I handed over to OII. My statement was recorded by IO u/s 161 Cr.PC.


SAJJAD BUKHARI
Civil Judge, Jhal
Tehsil Courts Kalaya

7. **PW-03**, is the statement of Muhammad Hanif, OII, PS Kalaya which is reproduced as under;

Stated on oath that during the days of occurrence, I was posted as IO at PS Kalaya. Copy of FIR and other relevant documents were handed over to me for investigation in the instant case. I proceeded to the spot and prepared site plan on the pointation of ASI/complainant. Site plan is Ex. PB. On 28.09.2022, I vide my application Ex. PW-3/1 applied for physical custody of the accused. 01-day custody was granted. On 29.09.2022, I vide my application Ex. PW-3/2 applied

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for confession statement of accused to which accused refused to confess his guilt. I handed over the case property along with applications for FSL and road certificate to Muhammad Raziq who took the same to FSL Peshawar. Application for FSL is Ex. PW-3/3 & Ex. PW-3/4 and road certificate is Ex. PW-3/4. FSL reports are Ex. PW-PZ and Ex. PZ/1. I recorded statements of PWs and that of accused U/S 161 Cr. PC.

PW-04, is the statement of Constable Amir Abbas, which is reproduced as under;

Stated on oath that during the days of occurrence, I was posted as constable at PS Kalaya. I was present with the ASI NET Umar Khan that he recovered and took into possession one pistol alongwith kash of 30-bore containing 07 cartridges from the badda shalwar of the accused in the presence of marginal witnesses. On further search ASI NET Umar Khan also recovered and took into possession one plastic bag in white color containing 25 grams ICE from the side pocket of accused. 01-gram separated for FSL and sealed in parcel no. 1 and remaining 24 grams were sealed in parcel no. 2. Pistol alongwith Kash sealed in parcel no. 3. 01/01


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seal with the name of SH put inside the parcels while 3/3 seals by affixing with the monogram SH. ASI Umar Khan handed over to me Murasila, recovery memo and card of arrest and I handed over to Moharrir Asmat Ali. ASI Net Umar Khan recorded my statement u/s 161 Cr. PC.

8. **PW-05**, is the statement of Constable Abdul Haq, which is reproduced as under;

Stated on oath that during the days of occurrence, I was posted as constable at PS Kalaya. I was present with the ASI NET Umar Khan that he recovered and took into possession one pistol alongwith kash of 30-bore containing 07 cartridges from the badda shalwar of the accused in the presence of marginal witnesses. On further search ASI NET Umar Khan also recovered and took into possession one plastic bag in white color containing 25 grams ICE from the side pocket of accused. 01-gram separated for FSL and sealed in parcel no. 1 and remaining 24 grams were sealed in parcel no. 2. Pistol alongwith Kash sealed in parcel no. 3. 01/01 seal with the name of SH put inside the parcels while 3/3


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Sub Divisional Officer
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seals by affixing with the monogram SH. ASI Net Umar Khan recorded my statement u/s 161 Cr. PC.

9. PW-06, is the statement of SI Shal Muhammad, which is reproduced as under;

Stated that on the day of occurrence, I was posted as SHO of PS Kalaya, L/Orakzai. After completion of investigation, I submitted complete challan against the accused.

- PW-07, is the statement of Constable Gul Karim, which is reproduced as under;

Stated on oath that during the days of occurrence, I was posted as Constable at PS Kalaya. On 10.10.2022 IO handed over to me case property (one 30-bore pistol without number alongwith fix charger and 07 live rounds) alongwith application addressed to FSL Peshawar and road permit certificate for chemical examination, which I took to FSL Peshawar. Parcel was handed over to concerned official of FSL Peshawar. I obtained his receiving signature and seal on road permit certificate. I handed over road permit certificate to IO on my return to PS.


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11. **PW-08**, is the statement of AMHC Asmat Ali, which is reproduced as under;

Stated that during relevant days I was posted as Moharrir of PS Kalaya. I was present in the PS on duty when Constable Syed Amir Abbas brought the Murasila, recovery memo and card of arrest from complainant Umar Khan ASI PS Kalaya. I converted the contents of Murasila into FIR Ex. PA. The complainant Umar Khan ASI return to the PS and he handed over to me case property in sealed condition alongwith accused. I made entry in register no. 19 and kept the same in the PS for safe custody. Accused was kept in lockup. Extract of register no. 19 is Ex. PW-8/1. To this extent my statement was recorded by IO. On 29.09.2022 I handed over parcels no. 01 & 03 to the IO for FSL examination. Parcel no. 01 handed over to FSL authority while parcel no. 03 returned and handed over to me by Constable Muhammad Raziq. To this extent my statement was recorded by IO. On 10.10.2022 I handed over the parcel no. 03 to IO for chemical examination in sealed condition. My statement was recorded by IO u/s 161 Cr. PC. Today I have seen copy of FIR and extract of


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Civil Judge (Jr) Kalaya
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register no. 19 which are correct and correctly bear my signatures.

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 did not opted to produce defense evidence.

13. Thereafter arguments were heard from both the sides.


14. Now on perusal of the available record, valuable assistance of learned APP for the state and learned counsel for the accused facing trial, this court is of the humble view that as for as departure of police party from the PS is concerned, complainant when appeared as PW-01 had deposed in his cross examination that they left the PS at 08:00AM while on the other hand one Amir Abbas, PW-04, had deposed in his cross examination that they left the PS at about 11:00AM and reached the spot at 11:20AM. Similarly the other eye witness of the occurrence namely Abdul Haq, PW-05, had deposed in his cross examination that they reached the spot at about 09:00AM. In given circumstances the contradictory statements of complainant and eye witnesses make the occurrence doubtful and concocted one. Furthermore, as


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Civil Judge, JM-II
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per statement of PW-04 they left the PS at about 11:00AM and reached the spot at 11:20AM while as per Murasila the occurrence took place at 09:00AM. Similarly as per statement of PW-05 they left the PS at 09:00AM while on the other hand occurrence also took place at 09:00AM. It is also pertinent to mention here that as per FIR the distance between PS and place of occurrence is half KM. Hence in given circumstances, how it is possible that at 09:00AM police party left the PS and on the same time they reached the spot after traveling half KM distance.


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Civil Judge Jir-11
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As for as the number of police officials present on the spot is concerned, complainant (PW-01) had deposed in his examination in chief that he alongwith 06 police officials was present on the spot while on the other hand IO in the instant case when appeared as PW-03 had deposed in his cross examination that when he reached the spot 03 ANF officials were present on the spot. Similarly PW-04, the eye witness of the occurrence, had stated in his cross examination that he alongwith 04 officials was present on the spot. Furthermore, PW-05, the other eye witness of the occurrence also deposed in

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his cross examination that he was present alongwith 04 police officials on the spot. Furthermore, perusal of site plan Ex-PB would reveal that point 1, 2 and 3 has been given to three police officials and no other police official has been shown on the spot in the site plan. In given circumstances these contradictory statements of the prosecution witnesses regarding the number of police party present on the spot at the time of occurrence creates serious dents in the prosecution case and furthermore, make the occurrence doubtful.

As for as body search of the accused facing trial is concerned, complainant (PW-01) and eye witness (PW-05) have deposed in their respective examination in chiefs that the accused was searched by complainant while the other eye witness of the occurrence (PW-04) had deposed in his cross examination that he searched the accused and recovered case property from him. These contradictory statements of the police officials, in whose presence the alleged occurrence took place and the alleged recovery was effected, make the occurrence doubtful.


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Civil Judge, JM-4
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As for as the vehicle in which the police party visited the spot is concerned, complainant (PW-01) had deposed in his examination in chief that he was patrolling in civil car while on the other hand the eye witnesses (PW-04 & PW-05) have deposed in their respective cross examinations that they were in police pick up. Similarly Moharrir of PS Kalaya (PW-08) had also deposed in his cross examination that complainant Omer Khan alongwith Amir Abbas and Abdul Haq returned to the PS in official pickup. Furthermore, perusal of site plan Ex-PB would reveal that point A has been allotted to official vehicle.


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Svrit JUDGE
Tehsil Courts Kalaya

Furthermore, PW-04 has stated in his cross examination that they consumed 20 minutes in weighing of ice and sealing of parcels while PW-05, the other marginal witness, had deposed in his cross examination that they consumed 40 minutes in weighing of ice and sealing of parcels. These contradictory statements of marginal witnesses create further doubts in the prosecution case.

Furthermore, no private witness was involved in the instant case while the alleged occurrence took place in bazar and a lot of people were present on the spot and

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thus the local police failed to comply with the mandatory provisions of section 103 Cr.P.C.

However, it is also pertinent to mention here that although there exist serious dents in the prosecution case yet on the other hand during cross examination of PW-01 a question was put to the witness to which he replied that *"I recovered ice from the accused from badda shalwar which is enclosed in white plastic bag"*. This question amount to admission on the part of accused that he was in possession of ice and same was recovered from his immediate possession. In circumstances after such admission on the part of accused facing trial, the dents in prosecution case are immaterial, as the recovery of ice and commission of offence has been admitted by the accused facing trial.


SYED ANEES BUKHARA
Civil Judge (J) 2024
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15. In light of the above discussion, as prosecution succeeded to establish its case against accused facing trial.
16. As prosecution succeeded to prove its case against the accused facing trial beyond the shadow of doubt, therefore, accused Aashor khan is hereby convicted and sentenced for offence u/s 11-A CNSA with simple

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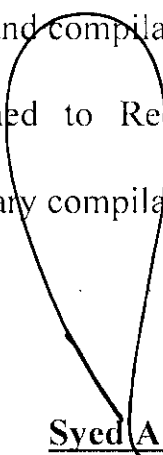
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imprisonment of three months and fine of Rs-3,00,000/.
In default of payment of the fine, he shall undergo one month simple imprisonment. Benefit of section 382-B is extended to the accused. The accused convicted, present before the court, is sent to judicial lockup alongwith conviction warrant to undergo the above awarded sentence in accordance with law. Attested copies of judgment is given to the convict named above free of cost and in this regard his thumb impression was obtained on the margin of order sheet and he was made aware of his right to appeal against the awarded conviction. Case property be dealt in accordance with law. File be consigned to the record room after its necessary completion and compilation.

17. Case file be consigned to Record room after its completion and necessary compilation.

Announced
25.04.2024


Syed Abbas Bukhari
Judicial Magistrate-II
Tehsil Courts, Kalaya, Orakzai

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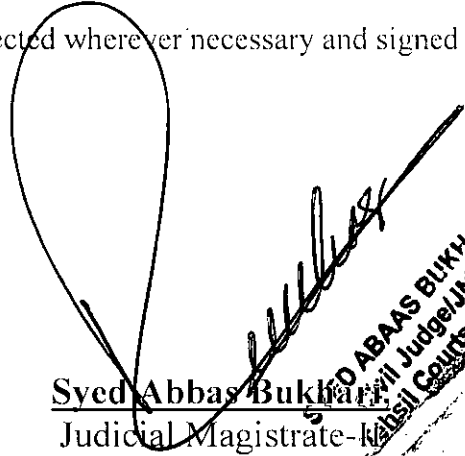
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CERTIFICATE

Certified that this order consists of fifteen (15) pages,
each page has been read, corrected wherever necessary and signed by
me.

Dated: 25.04.2024.



Syed Abbas Bukhari
Judicial Magistrate-II
Tehsil Courts Kalaya