

**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL JUDGE/JM,
DISTRICT ORAKZAI**

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Case No.....07/15AA OF 2024.
Date of Original Institution.....01.04.2024.
Date of Transfer In.....21.05.2024.
Date of Decision.....30.07.2024.

State through:

Muhammad Younas, SHO, PS Kurez Boya

.....**Complainant**

VERSES

*Naveed Ali S/O Noor Ali, R/O Qaum Bar Muhammad Khel, Tappa Khwaidad
Khel, Lower Orakzai*

.....**Accused facing trial**

JUDGEMENT

30.07.2024

Accused Naveed Ali S/O Noor Ali is facing trial in the instant case FIR No. 08, dated 02.03.2024, U/S 15AA of police station Kurez Boya.

1. Brief facts of the case as mentioned in the FIR are that complainant/SHO Muhammad Younas sent the Murasila, recovery memo and card of arrest through constable Saif Ullah No. 1530 wherein he has alleged that on the day of occurrence, he along with constables Junaid Ali No. 1607, Saif Ullah No. 1530, Fahim Abbas No. 491, Said Ullah No. 1635, Tanzeel Hassan No. 2221 and Shahid Ali No. 241 were on gasht in the official vehicle, being driven by Irshad Ali No. 663. When they reached Dawlai Kurez road, they found a person wearing sheet walking in suspicious condition. He

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was stopped and during his personal body search, one Kalashnikov bearing No. 56-1A18088878 hanging from his shoulder along with a fixed charger and 12 live rounds of 7.62 bore were recovered for which the accused could not produce any license/permit. The weapon was sealed into parcel No. 1 and video of the same was prepared through mobile phone and converted to USB which was sealed into parcel No. 2. On both the parcels one/one stamp of "MY" were sealed by putting 3 stamps of "MY" on the parcels. The accused disclosed his name as Naveed Ali S/O Noor Ali. He was arrested and the above-mentioned FIR was lodged.

2. After completion of investigation, interim challan followed by complete challan was submitted by prosecution against the accused facing trial.
3. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Formal charge against the accused facing trial was framed on 23.04.2024 to which he pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced as many as five (05) witnesses to prove its case against the accused facing trial, while rest of the PWs were given up by prosecution and closed its evidence.

Syed Ibnal Hassan, Moharrir, PS Kurez Boya deposed as PW-01.

He stated that constable Junaid Ali No. 1607 handed over to him the Murasila report along with recovery and card of arrest sent by ASHO.

He incorporated the contents of Murasila into FIR Ex. PW-1/1. After

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the arrival of SHO, the recovered ammunition in sealed condition was handed over to him in parcel No. 1 and USB sealed into parcel No. 2. He kept the same in the Mallkhana of the PS for safe custody and the accused was kept in lock-up of PS. DD regarding the departure and arrival of SHO is Ex. PW-1/2. He entered the details of sealed parcel sent to FSL in the DD which is Ex. PW-1/3. Entry in register-19 is Ex. PW-1/4. His statement was recorded by the IO U/S 161 Cr. PC.

6. PW-02, is the statement of SHO/complainant: He stated that on 02.03.2024, he along with police nafri on routine gasht in the official vehicle and when they reached Dawlai Kurez road, they found a person wearing sheet walking in suspicious condition. He was stopped and during his personal body search, one Kalashnikov bearing No. 56-1A18088878 hanging from his shoulder along with a fixed charger and 12 live rounds of 7.62 bore were recovered for which the accused could not produce any license/permit. The weapon was sealed into parcel No. 1 and video of the same was prepared through mobile phone and converted to USB which was sealed into parcel No. 2. On both the parcels one/one stamp of "MY" were sealed by putting 3 stamps of "MY" on the parcels. Accused was arrested at the spot. Murasila, recovery memo and card of arrest was prepared. The IO prepared site plan on his pointation. After completion of investigation, he submitted complete challan against the accused.

7. PW-03, is the statement of Khial Hussain. He stated that the IO handed over to him parcel No. 1 along with road permit certificate

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for FSL, Peshawar. He handed over the parcel No. 1 for chemical analysis to incharge FSL and his signature obtained on the receipt Ex. PW-3/1. His statement was recorded by the IO U/S 161 Cr. PC.

- 8.** *PW-04, is the statement of Hasham Khan.* He is IO of the case. He stated that copy of FIR along with relevant documents were handed over to him. He proceeded to the spot and prepared site plan Ex. PW-4/1 at the pointation of SHO/complainant. He produced the accused before Judicial Magistrate for obtaining his physical custody vide his application Ex. PW-4/2 which was turned down and accused was committed to judicial lock-up. He recorded the statements of all the PWs U/S 161 Cr. PC. Moharrir of the PS handed over to him parcel No. 1 for sending the same to FSL, Peshawar. He recorded the statements of PWs. After completion of investigation, he handed over the case file to the SHO for submission of complete challan.
- 9.** *PW-05, is the statement of Saif Ullah.* He is marginal witness to the recovery memo and he was present with SHO during the spot proceedings. He repeated the same story as deposed by SHO/complainant. FSL reported is Ex. PK. His statement was recorded by the IO U/S 161 Cr. PC.
- 10.** All the PWs were cross examined by the counsel for the accused facing trial.
- 11.** Private PW namely Junaid Ali was abandoned by prosecution and closed its evidence.

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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 defense evidence.
13. Arguments of the learned Sr. PP for the state and counsel for accused facing trial heard and available record perused.
14. It is the case of prosecution that SHO/complainant along with other police officials and driver were on routine gasht and when they reached Dawlai Kurez road, they found a person wearing sheet walking in suspicious condition. He was stopped and during his personal body search, one Kalashnikov bearing No. 56-1A18088878 hanging from his shoulder along with a fixed charger and 12 live rounds of 7.62 bore were recovered for which the accused could not produce any license/permit.
15. During evidence, the prosecution as many as 05 PWs. The statement of complainant Muhammad Younas SHO was recorded as PW-02, who stated during cross examination that he has signed the Kalashnikov with sharp object, but the perusal of record shows that the said fact is neither mentioned in the recovery memo nor in the murasila. It is also admitted by the complainant PW-02 that he has not mentioned in his murasila and recovery memo that whether the Kalashnikov in question was folding or having butt. These contradictions make the recovery of Kalashnikov doubtful. Furthermore, he mentioned during cross examination that Saif Ullah constable after taking murasila to the PS reached to the spot on 10:50, while PW-05 Saif Ullah has stated that he reached to the spot on

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 10:30. Similarly, the SHO has stated that the IO had remained at the spot for 30/35 minutes and he reached to the spot at 11:00AM, while IO has stated that he remained on the spot for about one hour and the constable Saif Ullah has reached back to the place of occurrence prior to him. Contrary to the statement of PW-02 and PW-04, PW-05 stated that the IO remained on the spot for 15 minutes. All these contradictions clearly shows that the occurrence has not taken place in the mode and manner as alleged by the complainant in the murasila and the whole case of the prosecution is under the heavy clouds of doubts.

16. It is to assert that the rule of criminal jurisprudence to give benefit of doubt to accused is much more than a mere rule of law. It is a rule of prudence which cannot be ignored (**PLD 1999 Lahore 56**) (**1999 SCMR 1220**).


17. There is no criminal history of accused facing trial. Accused has not confessed his guilt before the court. There are material contradictions in the statement of PWs and record before the court. Thus, prosecution badly failed to prove its case beyond reasonable shadow of doubts against the accused facing trial. I, therefore, acquit the accused facing trial named above from the charges levelled against him. He is on bail. His sureties are discharged from their liability. Case property be kept intact till the expiry of period provided for appeal/revision.

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

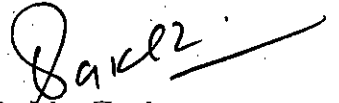
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CERTIFICATE

It is certified that this judgment consists of 07 pages. Each page has been dictated, read, corrected and signed by me.



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