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STATE VS SHAKEEL AHMAD

Case No. 01/03, FIR No. 44 | Dated: 29.06.2024 | U/S 11 (b) KP CNSA/15AA/5 Exp, | Police Station: Mishti Mela

IN THE COURT OF BAKHT ZADA

ADDITIONAL SESSIONS JUDGE-I/JUDGE SPECIAL COURT, ORAKZAI  
(AT BABER MELA)

CASE NO. : 01/03 OF 2024  
DATE OF ORIGINAL INSTITUTION : 21.08.2024  
DATE OF PRESENT INSTITUTION : 16.10.2024  
DATE OF DECISION : 09.12.2024

STATE THROUGH MUHAMMAD YOUNAS SHO, PS MISHTI  
MELA.

.....(COMPLAINANT)

**-VERSUS-**

SHAKEEL AHMAD S/O GULBAT KHAN, R/O QAUM MISHTI,  
TAPPA DARVI KHEL, VILLAGE SHALZARA, DISTRICT  
ORAKZAI.

.....(ACCUSED FACING TRIAL)

JUDGEMENT

09.12.2024

Accused Shakeel Ahmad S/O Gulbat Khan, Qaum

Mishti, Tappa Darvi Khel, Village Shalzara, District

Orakzai is facing trial in case FIR No. 44, dated

29.06.2024, registered U/S 11 (b) CNSA/15AA/5 Exp of

PS Mishti Mela, District Orakzai.

- (2). Facts of the prosecution case as reported in Murasila by the complainant Muhammad Younas Khan SHO, PS Mishti Mela are that he along with Constables Fazal Hameed No. 1247, Muhammad Umar No. 252 and Driver Sami Ul Haq No. 1349 were present at barricade on the main Mishti road, in the meanwhile a pedestrian coming from Dara Hassan Zai side was found suspicious, who on seeing the police party tried to escape, but was overpowered. During search, one 30 bore pistol bearing No. 2973 along with a fixed charger containing four (04)

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live rounds of the same bore recovered from the folding Strang of the person. On further search, the complainant/SHO recovered one hand grenade bearing No. POF-408001 from left pocket and for diffusing the same, BDU staff was called. The pistol along with ammunition was packed and sealed into parcel No. 1. On checking the plastic bag, white colour recovered from right pocket of the person, ICE was recovered which were weighed through digital scale which came out to be 200 grams. One gram ICE was separated and sealed in parcel No. 2 for sending the same to FSL for chemical analysis, while the remaining 199 grams ICE along with plastic bag were packed and sealed into parcel No. 3. After diffusing of recovered hand grenade, the same was packed and sealed into parcel No. 4. Video of the occurrence through mobile phone was prepared which was converted into USB and the said USB is sealed into parcel No. 5. 1/1 monograms of "MY" is sealed in all the parcels, while 3/3 seals of the same monograms were affixed on all the parcels. The parcels were taken into possession vide recovery memo. The accused disclosed his name as Shakeel Ahmad S/O Gulbat Khan, R/O Qaum Mishti, Tappa Darvi Khel, Village Shalzara, District Orakzai who was found to be involved in the commission of offense and his card of arrest was issued. Murasila along with

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card of arrest and recovery memo for the purpose of registration of FIR were handed over to Muhammad Umar No. 252 for taking the same to the PS and hence, the instant FIR.

(3). After registration of FIR No. 44, dated 29.06.2024, registered U/S 11 (b) CNSA/15AA/5 Explosive Substances Act, 2013 of PS Mishti Mela, District Orakzai, the same was handed over to Investigating Officer who visited the spot, prepared site plan Ex. PB on pointation of the complainant/SHO. After completion of investigation, he returned the case file to SHO for submission of complete challan.

(4). Complete challan in the instant case was submitted against the accused facing trial. The accused was summoned through "Zamima Bay" and on 21.08.2024 provisions of 265-C of the Code of Criminal Procedure, 1898 was complied with and copies of documents were supplied to the accused free of cost. Formal charge against the accused was framed on 13.09.2024 to which he pleaded not guilty and claimed trial whereafter, the prosecution witnesses were summoned.

(5). The prosecution recorded the statements of as many as six (06) PWs, the gist of their evidence is as under;

(6). The gist of the evidence is as follow;

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I. PW-01, Constable Saeed Khan: On 02.07.2024

the IO handed over to him parcels no. 1, 2 and 4 duly sealed along with road permit certificate no. 16/21-MM and 19/21-MM along with two applications addressed to FSL and road permit certificate 17/21-MM along with application addressed to BDU, Peshawar. He took all the parcels in which parcels no. 1 and 2 was submitted in FSL, Peshawar along with application and on road permit certificate received the acknowledgment from the official of FSL. Similarly, he took parcel no. 4 and handed over the same to official in BDU, Peshawar along with application and received endorsement on the road permit certificate. Later on, he handed over the road permit certificates to the IO on his return. The IO recorded his statements u/s 161 Cr. PC on the same day. He was cross examined by the defense counsel.

II. PW-02, Head Constable Ishtiaq Ali, BDU Staff.

On 29.06.2024 he was present in PS Mishti Mela. The SHO Muhammad Younas called him at about 1745 hours on his cellular phone and told him that he recovered a hand grenade. He proceeded to the spot where complainant/SHO

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handed over a hand grenade for the purpose of defusing. He defused the hand grenade on the spot and handed over back to the SHO along with his report which is Ex. PW 2/1. IO recorded his statement U/S 161 Cr. PC. He was also cross examined by the defense counsel.

III. PW-03, Muhammad Saeed Moharrir. On receipt of Murasila he incorporated the contents of Murasila into FIR Ex. PW 3/1. SHO handed over to him parcels no. 1 to 5 duly sealed along with accused. He kept the case property in Mall Khana of the police station and accused was locked up and made entries in register no-19. Attested copy of the register no. 19 is Ex. PW 3/2. On 30.06.2024, he handed over the case property in parcels no. 1, 3 and 4 to the IO for taking the same before Hon'ble Judicial Magistrate and made entries in register no. 19. On 02.07.2024 on direction of the IO he handed over parcels no. 1, 2 and 4 and made entry in register no. 19. He also made entries in Daily Diaries which is Ex. PW 3/3 (containing two pages). He produced the DDs of the case before the court (seen and returned). On return of constable Saleem Khan from FSL on 02.07.2024 the IO handed over to

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him road permit certificate no. 17/21-MM and 19/21-MM which he kept in register no. 19. The original of which produced before the court (seen and returned). The IO recorded his statement u/s 161 Cr. PC twice. He was thoroughly cross examined by the defense counsel.

IV. PW-04, Muhammad Younas Khan SHO, PS

Mishti Mela. He stated that on 29.06.2024 he along with police officials namely Fazal Hamid no. 1247, Muhammad Umar no. 252 along with driver Sami Ul Haq had made barricade at the place of occurrence at main road leading from Mishti Bazar to Dara Hassan Zai situated at In-Khan Talab at about 1740 hours that at the meantime a person coming from Dara Hassan Zai side on foot was found suspicious, who on seeing the police party tried to escape but was overpowered. During search of the person, he recovered one 30-bore pistol bearing no.2973 along with fixed charger containing four rounds of same bore from the folding Strang of the person. On further search he recovered white colour plastic bag from the right pocket side of accused while from the left side pocket he also recovered one hand Grande bearing no. POF-

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408001. For its defusing he called/summoned the BDU staff. The pistol along with its ammunition in parcel no.1 Ex. P1. On checking the plastic bag ICE was recovered which were weighed through digital scale which came out be 200 grams. From the recovered ICE, he separated 1 gram ICE for the purpose of FSL and sealed the same into parcel no. 2 while the remaining 199 grams ICE along with plastic bag in parcel no. 3 Ex. P2 while the hand Grande after its defusing was sealed into parcel no. 4. The video was made from the spot proceeding through cell phone by Muhammad Umar constable. After its converting into USB, the USB was sealed int parcel no. 5 Ex. P3. The person disclosed his name as Shakeel Ahmad s/o Gulbat Khan. The above-mentioned parcels were taken into possession vide recovery memo Ex. PW 4/1 in presence of marginal wetness namely Fazal Hamid and Muhammad Umar. All the parcels were sealed with monogram of "MY". The accused Shakeel Ahmad was arrested in the instant case vide card of arrest Ex. PW 4/2. Thereafter, he prepared Murasila Ex. PW 4/3 and was sent to PS for registration of case along with recovery memo

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and card of arrest to PS through constable Muhammad Umar No. 252. On arrival of the IO, the complainant/SHO pointed out the site plan to him who at his instance prepared the site plan. He also shown the case property to IO. He handed over the case property to the Moharrir of the PS for keeping the same for safe custody and directed him to make entry in relevant register. The accused was also handed over to Moharrir who kept him in police lock-up, after completion of investigation he submitted complete challan against the accused. His statement is also subjected to lengthy cross examination by the defense counsel.

V. PW-05, Constable Muhammad Umar: He was present with complainant/SHO and marginal witness to the recovery memo Ex. PW-4/1. He repeated the whole story as deposed by PW-04. He also took the Murasila to PS. He was also cross examined by the counsel for the defense at length.

VI. PW-06, Muhammad Hanif OII: After registration of the instant case, copy of FIR along with Murasila, recovery memo and card of arrest of accused were handed over to him for

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investigation. He along with investigation staff proceeded to the spot and prepared site plan Ex. PB at the instance of SHO which is correct with all its footnote. The SHO shown to him case property i.e. parcels 1 to 5 of the instant case. Thereafter, he recorded the statement of marginal witnesses namely Fazal Hamid and Muhammad Umar on the spot. From the spot inspection he along with investigation staff returned to the Police Station. In PS he recorded statement of Moharir of PS Muhammad Saeed and Incharge BDU Ishtiaq Ali. On 30.06.2024, he produced the accused Shakeel Ahmad along with case property before Illaqa Magistrate for his physical custody vide application Ex. PW 6/ 1 which was allowed and one day police custody. He interrogated the accused and confessed his guilt before him. So, I recorded his statement U/S 161 Cr. PC. on 01.07.2024 he vide application Ex. PW 6/2 produced the accused before Illaqa Magistrate for his confessional statement but accused refused confess his guilt before Illaqa Magistrate. On 02.07.2024, he along with application addressed to FSL authorities Ex. PW 6/3 and Ex. PW 6/4 respectively and application Ex. PW 6/5

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addressed to BDU Peshawar along with road permit certificates Ex. PW 6/6 to Ex. PW 6/8 handed over to constable Saeed Khan no. 167 for its transmission to FSL Peshawar and BDU Peshawar. After depositing the same before concerned, the constable handed over to him the road permit certificate. Thereafter, he recorded the statement of Moharrir of the PS and constable Saeed Khan regarding handing over the case property to him and its transmission to FSL and BDU Peshawar. On receipt of FSL report regarding ICE and pistol I placed on file the same which is Ex. PZ and Ex. PZ/1 while the BDU report is Ex PZ/ 2. He also placed on file sanction for prosecution against the accused on judicial file Ex PK. He was also cross examined by the counsel for the defense at length.

- (7). Prosecution abandoned PW Fazal Hamid being witness of the same facts as deposed by Muhammad Umar/PW-05 and closed its evidence whereafter the statement of accused was recorded u/s 342 Cr.PC but the accused neither wished to be examined on oath nor opted to produce any evidence in defence.

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- (8). **Arguments:**

Learned DyPP for the state argued that 200 grams of ICE, one 30-bore pistol along with four live-rounds and one hand grenade have been recovered from the possession of the accused facing trial. He stated that there are no contradictions in the statements of the PWs. The FSL report and the statements of the marginal witnesses fully supports the version of prosecution. He requested for conviction of the accused in the above-mentioned charges.

- (9). On the other hand, learned counsel for the accused facing trial argued that there are glaring contradictions in the statements of the PWs which are of fatal nature for the case of prosecution and the PWs failed to even present the correct narration of the occurrence before the court. It is argued that PW-04 has stated that the Murasila as started by the SHO on 1740 hours, while PW-05 Muhammad Umar has stated that the same was started writing by the SHO by at 18:15 hours. He also requested for de-sealing the USB and ICE. The request for de-sealing the USB and ICE was accepted and inside the parcel instead of USB, memory card along with card reader was found wherein no video was available, the screenshot of computerized message was taken, printed and placed on file. He argued that in absence of video and the above contradictions, the case of prosecution is

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full of doubts, therefore, the accused facing trial may be acquitted from the charges levelled against him.

(10). **Findings:**

Available record perused with the help of valuable assistance put forward by the learned Sr. PP for the state and defence counsel. It is the case of the prosecution that complainant Muhammad Younas Khan SHO along with constables Fazal Hameed No. 1247, Muhammad Umar N. 252 and driver Sami Ul Haq HC No. 1349 were present on Nakabandi at main road Mishti Bazar, in the meanwhile, a pedestrian came from Dara Hassan Zai side in suspicious condition, who on seeing the police tried to escape, but he was apprehended and his body search was carried out during which one 30 bore pistol bearing No. 2923 along with fixed charger and four live rounds of the same bore were recovered. On further search, one white colour plastic bag containing 200 grams ICE was recovered from the right side pocket and one hand grenade bearing No. POF408001 was recovered from the left side pocket of the accused. Video of the occurrence was prepared by the complainant through his personal mobile and converted the same into USB. The accused disclosed his name as Shakeel Ahmad S/O Gulbat Khan. The SHO took the same into possession vide recovery memo Ex. PW-4/1 in the presence of marginal witnesses.

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Card of arrest Ex. PW-4/2 of the accused was prepared.

Murasila Ex. PW-4/3 was drafted and sent to police station for registration of FIR through constable Muhammad Umar No. 252. After registration of the FIR, the IO proceeded to the spot, who prepared the site plan Ex. PB at the pointation of complainant. The prosecution recorded statements of as many as six PWs to prove their case wherein the statement of complainant/seizing officer was recorded as PW-04. During his examination in chief, he stated that the pistol along with its ammunition is sealed in parcel No. 1 Ex. P-1, but at the end of the statement when this court insisted on production of parcel No. 1, he failed to produce the same and the statement relating to the exhibition of parcel No. 1 is cancelled and the parcel No. 1 is deemed not exhibited. The said parcel No. 1 is not brought before the court for exhibition even during the statements of marginal witnesses of recovery memo Ex. PW-4/1. PW-04, during his cross examination stated that they were four police personnels, but contrary to his statement PW-05 Muhammad Umar stated that they were five police personnel at the time of recovery. According to Murasila Ex. PW-4/3 the occurrence took place at 1740 hours, but PW-05 stated during his cross examination that the SHO started drafting Murasila at 1815 hours. It is mentioned in

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the Murasila Ex. PW-4/3 that the complainant prepared video of the recovery proceedings through his mobile phone and converted the same into USB and sealed the same into parcel No. 5. At the request of the counsel for the accused facing trial during arguments the said parcel was de-sealed from where instead of USB, one memory card along with card reader were found. The said memory card with the help of card reader was fixed in the official computer of this court for watching video of the occurrence, but astonishingly the message was received that the memory card is empty and no video is saved therein. The screenshot of the message shown by the computer is obtained and its print out is placed on this file, while the USB is re-sealed by putting "AS" seal on the same in the court. All the above contradictions pertaining to the occurrence and non-availability of video of the occurrence are fatal grounds for the case of prosecution and which makes the prosecution case the one under the heavy clouds of doubts. There are plethora of judgements of the superior courts that benefit of doubt shall always be extended in favour of the accused.

*1. 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*

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*be ignored (PLD 1999 Lahore 56) (1999 SCMR 1220).*

*2. A single dent having created in the case of prosecution makes the accused entitled to benefit of doubt. It is to assort that the rule of criminal jurisprudence to give benefit of doubt to accused 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)*

(11). Keeping in view the above discussion, the prosecution failed to prove their case against the accused facing trial beyond any shadow of doubt, I, therefore acquit the accused facing trial from the charges levelled against him by extending benefit of doubt. He is in custody. He be released forthwith if not cited in any other case. Case property be kept intact till the expiry of period provided for appeal/revision under the law.

(12). Case file be consigned to the record room after its necessary completion and compilation.

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**CERTIFICATE**

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

Dated: 09.12.2024

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