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In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI

Special Case No.26/3 of 2021

Date of institution: 06.09.2021

Date of decision: 28.01.2023

The State

...Versus...

Rizwan Ullah son of Quwat Shah, resident of Qaum Bar Qambar Khel, Shekhmal Khel, Sam Baba Kajoori, District Khyber.

..... (Accused facing trial)

**Case FIR No.57, Dated 02.05.2021 u/s 9-D of KP-CNSA, 2019
registered at Police Station Kalaya Orakzai.**

JUDGMENT

Accused named above faced trial before this Court in case FIR No.57 dated 02.05.2021 u/s 9-D of Khyber Pakhtunkhwa Control of Narcotics Substance Act, 2019, registered at Police Station Kalaya, Orakzai.

2. Facts of the case are such that Mr. Aftab Ahmed ASHO along with other police officials of Police Station Kalaya Orakzai, were present on barricade while a Motorcar bearing Registration No. V-7915/Sindh, white in color appeared from Feroz Khel side and was stopped by the complainant for the purpose of checking. The Motorcar was driven by accused Rizwan Ullah. On search of the Motorcar, the complainant found 24 packets of chars, from secret cavity made beneath the rear seat of said Motorcar. All the recovered 24 packets of chars were wrapped in yellow scotch tape, having weight of 1200 grams of

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each packet with total quantity of 28,800 grams chars. Accused was arrested on the spot. Murasila was drafted at the place of occurrence and sent to Police Station for bringing criminal law into motion which was given effect in the captioned FIR that culminated into present case. During the investigation, two persons namely Khilwat Shah and Khanan have been revealed by the accused as actual owners of recovered chars and thus they were also charged as co-accused.

3. After conclusion of the investigation, complete challan against the accused facing trial was presented. He was summoned through "*Zamima Bay*" being in custody and on appearance, he has been provided prescribed documents of case in line with Section 265-C of the Code of Criminal Procedure-1898. Charge against the accused was framed to which he pleaded not guilty and claimed trial. The co-accused being absconding have been proceeded against under Section 512 of the Code of Criminal Procedure, 1898.

4. Prosecution was afforded opportunity of leading evidence. In order to prove its case against the accused, prosecution produced and examined as many as Eight (08) witnesses. Such evidence is sketched below for ease of reference in determination of guilt or innocence of accused:

5. Wasil Khan SI, was examined as PW-1, who had registered the FIR Ex.PA on receipt of Murasila, card of arrest and recovery memo. He handed over the FIR along with documents to Investigation staff for investigation. Wali Ullah

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Muharrir was examined as PW-2, who locked the accused in the PS and kept the case property in Malkhana of the PS for safe custody. Muhammad Haneef ASI was examined as PW-3, who has taken the parcels 1 to 24 to FSL Peshawar for chemical analysis. The star prosecution witness was complainant Aftab Ahmed SI, whose statement was recorded as PW-4. He confirmed the initial report Ex.PA to be true. Recovery of contraband vide recovery memo Ex.PW 4/1 was testified to be genuine. He arrested the accused and issued his card of arrest as Ex.PW-4/2. He drafted the Murasila Ex.PW-4/3. He produced case property parcel No. 25 to 48 as Ex.P-1 to P-24 along with the Motorcar P-25, Registration Book Ex.P-26 and Key Ex.P-27. One of the marginal witness to the recovery memo was Syed Ali Shah Constable, who was examined as PW-5. It was testified that the recovery was made from the Motorcar possessed by the accused and was documented vide recovery memo Ex.PW-4/1. Shal Muhammad SHO was examined as PW-6, who submitted the complete challan against accused namely Rizwan ullah (arrested accused) and challan under Section 512 Cr.PC against absconding accused namely Khilwat Shah and Khanan Ex.PW-6/1. After the transfer of Investigation Officer Muhammad Ishaq in the instant case, the remaining Investigation of the case was entrusted to Aftab Hassan SI/IO, who entered in the witness box as PW-7. He produced FSL reports regarding the vehicle in question as Ex.PK, ETO report as Ex.PW-7/1 and letter addressed to

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DPO Orakzai as Ex.PW-7/3. Investigation Officer of the case was Muhammad Ishaq who was examined as PW-8. Preparation of site plan Ex: PB and examination of witnesses was confirmed by this witness. He had produced the accused before the Illaqa Magistrate vide application Ex.PW-8/1. During investigation, he prepared nomination memo Ex.PW-8/2. He produced application which was written by him to Judicial Magistrate for recording confession of the accused as Ex.PW-8/3, interrogation report as Ex.PW-8/4, FSL application Ex.PW-8/5, road permit certificate Ex.PW-8/6, FSL report regarding chars as Ex.PK-1, excise application Ex.Ex.PW-8/7 and 8/8 and CDR data of accused Ex.PW-8/11. After his transfer from the concerned Police Station, he handed over the case to Aftab Hassan SI for remaining Investigation.

6. After the closure of prosecution evidence, statement of accused was recorded u/s 342 of the Code of Criminal Procedure, 1898. He wished to be examined on oath but not opted to produce evidence in his defence. Statement of accused was recorded under Section 340 (2) of the Code of Criminal Procedure, 1898.

7. It was argued by learned APP that the recovery of narcotics is proved beyond doubt as is evident from the testimony of PW-4 and PW-5. That the recovery memo Ex.PW.4/1 has been proved to be correct and the testimony of the PWs has no contradiction on material particulars. That the offence is heinous

in nature and that there is nothing on record which could show any kind of *mala fide* on part of police in charging the accused facing trial.

8. Conversely, learned defence counsel argued that no recovery has been made from possession of the accused and that the police have planted the recovery of narcotics against him with ulterior motive. That no independent witness came forward to support the prosecution case and that the testimony adduced by the prosecution is full of contradictions on material particulars. It was argued that as such very strong and consistent testimony would be required in order to prove his guilt which is missing.

9. Perusal of case record would reveal that according to FIR the accused was intercepted at barricade established on 02.05.2021 at 1300 hours and contraband/chars weighing 28800 grams were recovered from the vehicle driven by accused in the presence of marginal witnesses namely, Constable Syed Ali Shah and Constable Rasheed Khan Vide Recovery memo (Ex. PW-4/1). The marginal witness Syed Ali Shah (PW-5) was examined; whereas, Rasheed Khan, second marginal witness was abandoned. According to (PW-5), he was present with seizing officer on the eventful day. He stated that on search of the Motorcar, possessed by the accused, the complainant recovered 24 packets of chars from the secret cavity made beneath the rear seat of the said Motorcar.

10. With respect to proceedings conducted by the IO on the spot, the stance of the prosecution as per Murasila Ex. 4/3, FIR Ex. PA and recovery memo Ex.

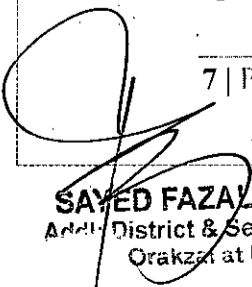
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PW-4/1 is; that after drafting of Murasila, recovery memo and card of arrest of the accused by the complainant, the same were handed over to PW-5 constable Syed Ali Shah who took the same to the PS and handed over to Wasil Khan SI PW-1, who registered FIR Ex. PA on the basis of such Murasila. He handed over FIR, Murasila, card of arrest and recovery memo to the IO Muhammad Ishaq SI PW-8. The said PW proceeded to the spot where he prepared site plan Ex. PB on the pointation of the complainant and recorded the statements of witnesses u/s 161 of the Code of Criminal Procedure, 1898. In order to prove its stance, the prosecution has produced constable Syed Ali Shah as PW-5, Muhammad Ishaq and Aftab Hassan Investigation Officers as PW-7 and PW-8, Wasil Khan SI as PW-1 and Wali Ullah Muharrir as PW-2. All the witnesses narrated the aforementioned story and the sequence of different events in their statements. Constable Syed Ali Shah as PW-5 in his statement has confirmed that he left the spot and reached the PS and handed over Murasila, card of arrest and recovery memo to Wasil Khan SI, who was examined as PW-1 confirming that the Murasila, card of arrest and recovery memo were handed over to him by Constable Syed Ali Shah and he drafted the FIR. Similarly, Muhammad Ishaq OI as PW-8 has established that the case was handed over to him for investigation; where after, he left the PS and reached the spot. That the case property was shown to him on the spot by the seizing officer in sealed condition.

He has also established that the site plan Ex. PB was prepared on the spot and the statements of marginal witnesses were also recorded by him on the spot. The witnesses are also unanimous on the points of arrival of the IO on the spot, his departure and return to PS and the time of arrival of the complainant party to the Police Station. The statements of all the witnesses are consistent regarding proceedings conducted by the IO on the spot; their statements could not have been shattered in cross examinations and the prosecution has proved its stance regarding proceedings conducted on the spot in the mode and manner as alleged by it; that too, without any material contradiction.

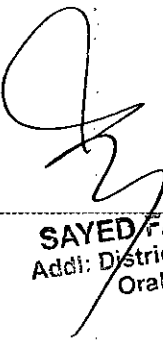
11. Chain of custody of the recovered material plays pivotal role in the cases of narcotics. The departure and arrival of the Police Party, transportation of the recovered material to Police Station, its entry in the relevant register, custody at Police Station, transportation to FSL and other material questions are points for determination in accordance with the evidence.

12. The case of the prosecution regarding the chain of the custody of the representative samples, their transmission to the FSL within the prescribed period of time and following full protocols of the tests applied in the FSL, is; that after seizure of the contrabands by the complainant containing 24 packets, 10 grams from each of the packet has been separated and sealed by him on the spot with affixing of three monograms of 'MJ' on each of the parcel. The


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complainant, after his arrival in the PS, has handed over the representative samples to PW-2 Wali Ullah, who has made entry of the case property in Register No. 19 and has kept the samples in safe custody. On 03.05.2021, the Incharge investigation collected the samples from Moharrir and handed over the same to Muhammad Haneef ASI, PW-3 for transmission to FSL, who has transmitted the same against a road permit certificate and deposited the same in FSL against proper receipt, which on return has been handed over by him to the IO. After receipt of FSL report, the same has been placed on file by the IO. The prosecution in order to prove its stance has examined the complainant as PW-4, Muharrir Wali Ullah as PW-2, Muhammad Ishaq and Aftab Hassan, the Investigation Officers of the case as PW-7 and PW-8 and Constable Syed Ali Shah as PW-5. All the above mentioned witnesses have narrated the aforementioned story in their statements. Nothing contradictory could be extracted from the witnesses in their cross examinations.

13. As far as objection of not associating private witnesses is concerned, the police witnesses are also believed to be good witnesses as private witnesses unless some mala fide is shown on behalf of police witness. Similarly, Section 103 of Criminal Procedure Code, 1898 has specifically been excluded in the cases under the Khyber Pakhtunkhwa CNSA Act, 2019 vide Section 231 of the ibid Act; therefore, the failure of the seizing officer or the investigating officer


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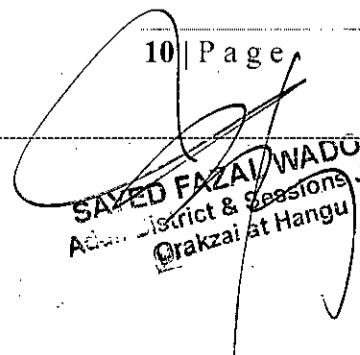
to associate any private witness with the occurrence does not adversely affect the case of prosecution. As per Daily Dairy, the complainant was accompanied by constables Syed Ali Shah and Rasheed Khan who had already been examined in the Court.

14. In view of what is discussed above, it is held that the statements of the complainant and the eyewitness are consistent regarding the date, time and place of occurrence as well as the mode and manner of the recovery. The scientific evidence in shape of FSL reports and other circumstantial evidence available on file is that of sufficient degree of cogency; therefore, the commission of offence is proved by the prosecution beyond reasonable doubt. Moreover, the witnesses of prosecution are unanimous regarding all material facts; therefore, the minor contradictions between the statement of PWs, cannot be taken to defeat the case of prosecution and in no way create reasonable doubts to shatter the case.

15. In view of what is discussed above, it is held that the prosecution has proved case beyond reasonable doubt, establishing the chain of the custody of the representative samples; that too, within the prescribed period of time, from the spot till these are received in the FSL. Similarly, as per report of FSL, the representative samples no. 1 to 24 were found positive for chars after following full protocols of the tests applied. Hence, the case of the prosecution is substantiated by the report of FSL.

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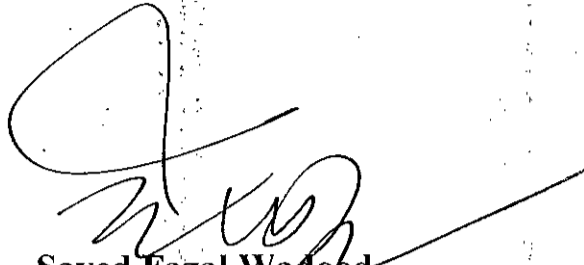
16. In circumstances, it is held that the prosecution has successfully proved its case against the accused facing trial without any shadow of reasonable doubt. Consequently, the accused facing trial, Rizwan Ullah is held guilty for having in his possession 28800 grams of chars. He is convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 and accordingly sentenced to suffer rigorous imprisonment for life and also to pay fine of Rs. 500,000/- (five lac). In case of default of the payment of fine, the accused shall further suffer simple imprisonment for six (06) months; nevertheless, the amount shall be made recoverable as arear of land revenue. The benefit of Section 382-B of Code of Criminal Procedure, 1898 is, extended to accused. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision while the Motorcar is confiscated to State for being used in smuggling of chars with secret cavities and therefore be shifted to Provincial Warehouse for auction in accordance with law, if not required in any other case. The absconding accused namely Khanan son of Siyal and Khilwat Shah son of Kabal Khan being proclaimed offenders be entered in register concerned and perpetual warrant of arrest be issued against them. Copy of the Judgement is delivered to the accused today free of cost and his thumb impression to this effect have been obtained at the margin of the order sheet; besides, the copy of Judgement shall also be issued to the District Public Prosecutor in line with


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Section-373 of the Code of Criminal Procedure, 1898 for free. Case file be
consigned to District Record Room, Orakzai, after completion within specified
time.

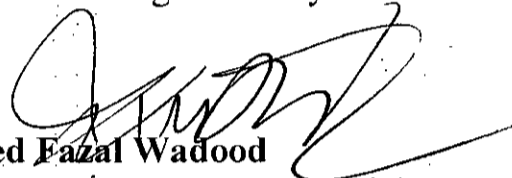
ANNOUNCED
28.01.2023



Sayed Fazal Wadood
Additional Sessions Judge/Judge Special
Court Orakzai

CERTIFICATE:

Certified that this Judgment is consisting upon eleven (11) pages; each
page has been read over and signed by me after making necessary corrections
therein.



Sayed Fazal Wadood
Additional Sessions Judge/Judge Special
Court Orakzai