

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

(64)

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

Special Case No.36/3 of 2021

Date of institution: 21.12.2021

Date of decision: 29.03.2023

The State

...Versus...

Khalid Khan son of Khizar Ameen, resident of Qaum Zakha Khel, Zao Din Khel,  
District Khyber.


..... (Accused facing trial)

**Case FIR No.135, Dated 02.11.2021 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.135 dated 02.11.2021 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 Muhammad Shafiq SHO along with other police officials of Police Station Kalaya Orakzai, were present on barricade while a Motorcycle appeared from Hindra side and was stopped by the complainant for the purpose of checking. On search of the person, the complainant found a blue color shopper containing 04 packets of chars, from lap of said person namely Khalid Khan. All the recovered 04 packets of chars were wrapped in yellow scotch tape, having weight of 1000 grams of each packet with total quantity of 4000 grams chars. Accused was arrested on the spot. Murasila was drafted at the place

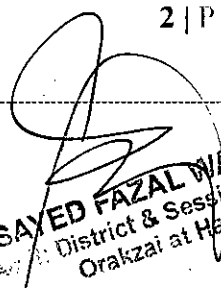
  
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of occurrence and sent to Police Station for bringing criminal law into motion which was given effect in the captioned FIR that culminated into present case.

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.

4. Prosecution was afforded opportunity of leading evidence. In order to prove its case against the accused, prosecution produced and examined as many as Five (05) witnesses. Such evidence is sketched below for ease of reference in determination of guilt or innocence of accused:

5. Wali Ullah Muharrir, was examined as PW-1, who has registered the FIR Ex.PA on receipt of Murasila. He also kept to case property along with Motorcycle in the Malkhana for safe custody vide register No. 19 Ex.PW-1/1. PW-2 is the statement of Syed Abbas Ali Shah, who has taken the parcels to FSL Peshawar for chemical analysis vide road certificate Ex.PW-2/1. The star prosecution witness was complainant Muhammad Shafiq SHO, whose statement was recorded as PW-3. He confirmed the initial report Ex.PA to be true. Recovery of contraband vide recovery memo Ex.PW 3/1 was testified to be genuine. He arrested the accused and issued his card of arrest as Ex.PW-3/2. He drafted the


  
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Murasila Ex.PW-3/3. After completion of investigation, he submitted complete challan Ex.PW-3/4 against the accused facing trial. One of the marginal witness to the recovery memo was Shafi Ayaz Constable, who was examined as PW-4. It was testified that the recovery was made from the lap of accused the accused and was documented vide recovery memo. He took the Murasila and Card of arrest to the Police Station and handed over the same to the Muharrir for registration of FIR. Investigation Officer of the case was Mehdi Hassan, who was entered in the witness box as PW-5. He prepared site plan Ex.PW-5/1. 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 applications Ex.PW-5/2 and 5/3. He exhibited FSL Application as Ex.PW-5/4 and 5/5, application to ETO Hangu as Ex.PW-5/6 and FSL reports as Ex.PW-5/7 and 5/8. After completion of investigation he handed over the case file to SHO.

6. After closure of prosecution evidence, statement of accused was recorded u/s 342 of the Code of Criminal Procedure-1898; wherein, accused professed his innocence and did not opt to produce defense evidence or to be examined on oath.

7. It was argued by learned APP that the recovery of narcotics is proved beyond doubt as is evident from the testimony of PW-3 and PW-4. That the recovery memo Ex.PW 3/1 has been proved to be correct and the testimony of the PWs has no contradiction on material particulars. That the offence is heinous in

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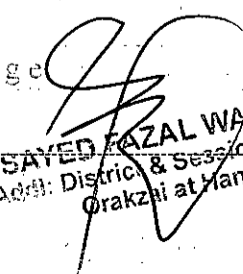
nature and that there is nothing on record which could show any kind of *mala fide* on part of police in charging the accused facing trial.

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. According to FIR, the accused was intercepted on barricade where the police party was on patrolling on 02.11.2021 at 15:00 hours and contraband/chars weighing 4000 grams were recovered from possession of the accused in the presence of marginal witnesses namely, Constable Islam Muhammad and Shafi Ayaz Vide Recovery memo (Ex. PW 3/1). The marginal witness Shafi Ayaz constable was examined as PW-4; whereas, Islam Muhammad, marginal witness was abandoned. According to PW-4, he was present with seizing officer on the eventful day. On search of the Shopping bag, possessed by the accused, the complainant found 04 packets of chars; which were wrapped in yellow scotch tape; having weight of 4000 grams of each packet, with total quantity of 4000 grams. Case property was sealed, Murasila Ex.PW-3/3 was drafted and card of arrest Ex.PW-3/2 was issued. The case property was transmitted to Police Station in sealed condition.

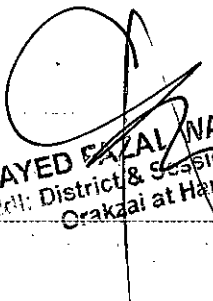
10. With respect to proceedings conducted by the IO on the spot, the stance of the prosecution as per Murasila Ex. 3/3, FIR Ex. PA and Recovery Memo Ex.

PW-3/1 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-4 constable Shafi Ayaz who took the same to the PS and handed over to Wali Ullah Muharrir PW-1, who registered FIR Ex. PA on the basis of such Murasila. He handed over copy of the FIR, Murasila, card of arrest and recovery memo to the IO Mehdi Hassan PW-5. 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. The prosecution has produced Constable Shafi Ayaz as PW-4, Mehdi Hassan IO as PW-5 and Wali Ullah Muharrir as PW-1. All the three witnesses narrated the aforementioned story and the sequence of different events in their statements. Constable Shafi Ayaz as PW-4 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 the Muharrir of the Police Station. Wali Ullah Muharrir as PW-1 has confirmed that the Murasila, card of arrest and recovery memo were handed over to him by Constable Shafi Ayaz and he drafted the FIR Ex-PA. Similarly, Mehdi Hassan OI as PW-5 has confirmed 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 confirmed that the site plan Ex. PB was prepared on the spot and the statements of marginal witnesses were also recorded by him. 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 PS. The statements of all the three 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

  
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proved its stance regarding proceedings conducted on the spot in the mode and manner as alleged by it; that too, without any reasonable doubt.

12. 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 for determination in accordance with the evidence. 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 04 packets, 10 grams from each of the packets has been separated and sealed by him on the spot by affixing of three monograms of 'MS' on each of the parcel. The complainant, after his arrival in the PS, has handed over the representative samples to Muharrir Wali Ullah PW-1, who has made entry of the case property in Register No. 19 Ex.PW-1/1 and has kept the samples in safe custody. On 03.11.2021, the Incharge investigation has collected the samples from Muharrir for transmission to FSL. The Incharge Investigation handed over the parcels to Constable Syed Abbas Ali Shah who has transmitted the same against a road permit certificate Ex.PW-2/1 and deposited the same in FSL. After receipt of FSL report Ex.PZ, the same has been placed on file by the IO. The complainant was examined as PW-3, Muharrir Wali Ullah as PW-1, Mehdi Hassan, the IO of the case as PW-5 and Constable Shafi Ayaz as PW-4. All the witnesses have narrated the aforementioned story in their statements. Nothing contradictory could be extracted from the witnesses in their cross

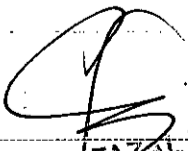
  
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examinations. It is, therefore, can safely be concluded that recovery and its safe custody as well as transmission has been proved.

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 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 Shafi Ayaz and Islam Muhammad; one of them had already been examined in the Court.


14. Sequel to 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 recovery from the direct possession of accused, its safe custody and transmission as discussed above had been proved. 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. Moreso, 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 circumstances, it is held that the prosecution has successfully proved its case against the accused facing trial beyond reasonable doubt. Consequently, the accused facing trial, Khalid Khan is held guilty for having in his possession

  
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4000 grams of chars. He is convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019; however, while sentencing the convict, lenient view is being taken on the scores of first offender; young age; and, the illness of the convict as patient of blood disorder (chronic anemia and B-12 deficiency) determined by the Standard Medical Board constituted at the stage of bail. Accordingly, he is sentenced to suffer rigorous imprisonment for 08 months and also to pay fine of Rs. 500,000/- (five lacs). In case of default of the payment of fine, the accused shall further suffer simple imprisonment for two months and seven days. The benefit of Section 382-B of Code of Criminal Procedure, 1898 is extended to accused. He is on bail, his bails bonds stand canceled and his sureties are absolved from the liabilities of bail bonds. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision. Copy of the Judgement is delivered to the accused today free of cost and his thumb impression to this effect has 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 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**  
29.03.2023

  
Sayed Fazal Wadood  
AD&SJ/JSC, Orakzai at Baber Mela

**CERTIFICATE:**

Certified that this Judgment is consisting upon eight (08) pages; each page has been read over and signed by me after making necessary corrections therein.

  
Sayed Fazal Wadood,  
AD&SJ/JSC, Orakzai at Baber Mela