

**IN THE COURT OF ASGHAR SHAH**  
**SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI**  
**(AT BABER MELA)**



SPECIAL CASE NO. : 6/3 OF 2019  
DATE OF INSTITUTION : 20.11.2019  
DATE OF DECISION : 04.02.2020

STATE THROUGH KHURSHEED ANWAR, ASHO LOWER  
ORAKZAI KALAYA  
.....(COMPLAINANT)

**-VERSUS-**

1. WAJID ULLAH S/O YOUSAF DIN AGED ABOUT 19 ½ YEARS R/O TRIBE AKA KHEL SATAR KHEL, VILLAGE SHEEN DRANG BARA, DISTRICT KHYBER.
2. ABDUL WAHID S/O MASHAL KHAN AGED ABOUT 19 ½ YEARS R/O TRIBE UTHMAN KHEL KATA PANRA LOWER ORAKZAI. .... (ACCUSED FACING TRIAL)

**Present:** Umar Niaz, District Public Prosecutor for state.  
: Akbar Yousaf Khalil Advocate, for accused facing trial.

**FIR No. 33 Dated: 27.09.2019 U/S: 9 (d) KP CNSA**  
**Police Station: Lower Orakzai Kalaya**

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JUDGEMENT  
04.02.2020

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The story of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA are that; on 27.09.2019 the local police were on their routine patrolling in the locality when they received spy information pertaining to the smuggling of narcotics through motorcycle from Bezote side. Upon the receipt of said information, the local police laid a barricade at Kalaya-Kohat road near village Muslimabad. It was about 1430 hours when a motorcycle came to the spot from Bezot side having boarded two persons. The motorcycle was signalled to stop and accordingly the same was stopped at some distance. Both the riders were having plastic shoppers

in their laps, hence they were deboarded from the motorcycle and upon the search of plastic shopper in the hand of driver of motorcycle namely Wajid Ullah led to the recovery of seven packets Chars Gardah. The plastic shopper in the hand of person sitting on the rear seat of the motorcycle namely Abdul Wahid upon the search led to the recovery of Eight packets Chars Gardah. Each packet of Chars Gardah was weighed at the spot which came out 1000grams each (15000grams/15kg in total). The ASHO separated 10 grams each from each packet and the remaining Chars Gardah 14850grams were sealed into various parcels. The motorcycle of the accused was also taken into possession. The accused were arrested through card of arrest Ex. PW-5/2, recovery memo Ex. PW-5/1 and Murasila Ex. PA/1 were drafted. Murasila was sent to the Police Station and accordingly FIR in question was registered against the accused facing trial.

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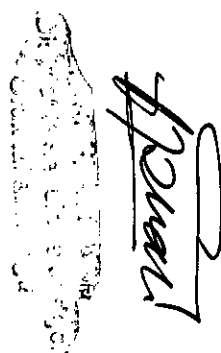


(2). Upon the receipt of case file, accused were summoned from the Jail and accordingly they were produced in the court through Addendum-B. Proceedings were initiated and they were charge sheeted to which they pleaded not guilty and claimed trial and accordingly the witnesses were summoned who deposed in the following manner.

**Lubab Ali MHC, PS Lower Orakzai Kalaya**  
**as PW-1 deposed;**

*“that on 27.09.2019 I received Murasila from ASHO, Khurshid Anwar through Constable, Khanwada, I incorporated the contents of Murasila into FIR Ex. PA which is correct and correctly bears my signature. After returned of Khurshid Anwar, ASHO to the PS, he handed over parcels no. 1 to 7 and 9 to 16 containing samples of Chars/Gardah 10 grams each and parcels no. 8 weighing 6930 grams of Chars/Gardah while parcel no 17 containing Chars/Gardah weighing 7920 grams. The ASHO also handed over motorcycle Honda 125 without registration number which I parked in PS. The above-mentioned articles were duly entered in register 19 of the PS. My statement was recorded by the IO U/S 161 Cr.P.C.”*

**Mujahid Khan SI, Lower Orakzai Kalaya**  
as PW-2 deposited;



*“that during the days of occurrence I was posted as SHO of PS Lower Orakzai Kalaya. On completion of investigation by the IO, I submitted complete challan against the accused which was prepared on my dictation by Anar Gul ASI.*

*The complete challan is Ex. PW-2/1 which is correct and correctly bears my signature."*

**Ameer Nawaz Constable, Police Station Lower Orakzai Kalaya as PW-3** deposed;

*"that on 30.09.2019 Incharge Investigation, Shal Muhammad Khan handed over to me parcels no. 1 to 7 and 9 to 16 containing 10 grams of Chars/Gardah each along with application addressed to the Incharge FSL, Peshawar and road permit certificate (Raseed Rahdari) which I took to the FSL for chemical analysis. After handing over the above-mentioned parcels, application and road permit certificate to the official of FSL, receipt (Raseed Rahdari) was handed over to me which I handed over to the Incharge Investigation, Shal Muhammad Khan at PS lower Orakzai Kalaya. My statement was recorded by the IO."*

**Shal Muhammad IO, Police Station Lower Orakzai PW-4** deposed;

*"that on receipt of copy of FIR and Murasila, I along with other Police Officials visited the spot and there on pointation of complainant, Khursheed Anwar, ASHO, I*

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prepared site plan Ex. PB. On the spot ASHO, Khursheed Anwar have shown me the case property and accused. I recorded statements of marginal witnesses of the recovery memo U/S 161 Cr.P.C. After completion of investigation on the spot, I returned to the PS and there accused and parcels of samples of Chars were handed over to me for onward proceeding. On 28.09.2019 I produced accused Wajid Ullah and Abdul Wahid before the court of Judicial Magistrate vide my application Ex. PW-4/1 along with case property, as a result of which three days physical custody was granted to me. During the course of investigation, I recorded the statement of the accused U/S 161 Cr.P.C. I have also recorded statements of PWs Khanwada and Lubab Ali, Muharrir. Accused confessed his guilt before me therefore, I produced him before the court of Judicial Magistrate on 30.09.2019 vide my application Ex. PW-4/2 for recording his confessional statement U/S 164/364 Cr.P.C but the accused refused to confess their guilt and were sent to Judicial Lockup. On 30.09.2019 I handed over the samples of Chars in parcels no. 1 to 7 and

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9 to 16 along with application addressed to the Incharge FSL the copy of which Ex. PW-4/3 and road permit certificate (Raseed Rahdari) Ex. PW-4/4 who took the same to the FSL for chemical analysis. On the same day I recorded statement of Ameer Nawaz U/S 161 Cr.P.C. On 11.10.2019 I received FSL report Ex. PK and I placed the same on judicial file. During course of investigation I placed on file copy of register-19 Ex. PW-4/5. After completion of investigation I handed over the case file to SHO for submission of challan. All the above-mentioned documents were drafted by Ilyas Khan, ASI on my dictation which are correct and correctly bear my signatures."

**Khursheed Anwar ASHO, Police Station Lower Orakzai PW-5 deposed;**

"that on 27.09.2019 I was on routine gasht along with other Police Nafri. During the gasht I received information that narcotics will be smuggled through motorcycle from bezote side. Relying upon the same information I made barricade on the spot meanwhile one, motorcycle without registration number Honda-125cc engine

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no.3059422 chassis no. 4399111 of red colour came to the spot having boarded two persons. I signaled to stop and the motorcycle was stopped at some distance. The driver of motorcycle having one green plastic shopper in his lap while the other person sitting on the rear seat also having in his lap a shopper. Both persons were deboarded from the motorcycle. On search of the shopper in the hand of driver containing seven (7) packets of Chars/Gardah who disclosed his name as Wajid Ullah s/o Yousaf Din r/o caste Akakhel, Sanzkhel, Sheen daran bara, District Khyber presently Karkhan Lower Orakzai. On the search of the green shopper in the hand of person sitting on the rear seat containing eight (8) packets of Chars/Gardah who disclosed his name as Abdul Wahid s/o Mishal Khan r/o caste Uthman Khel, Katta panra, Lower Orakzai. On weighing each of seven packets recovered from the driver namely accused Wajid Ullah through digital scale came out 1000/1000grams Chars/Gardah from which 10/10grams from each packet of Chars/Gardah were separated for the FSL for chemical analysis and were

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*Asghar Shah*

sealed in parcel no 1 to 7 while remaining were sealed and packed in parcel no 8. Similarly, on weighing each of eight packets recovered from the accused Abdul Wahid through digital scale came out 1000/1000grams Chars/Gardah from which 10/10grams from each packet of Chars/Gardah were separated for the FSL and were sealed in parcels no 9 to 16 while remaining were packed and sealed in parcel no 17. I took into possession the above-mentioned case property along with motorcycle through recovery memo Ex. PW-5/1. The parcel no 8 is Ex. P1, parcel no 17 is Ex. P2 and motorcycle is Ex. P3. I issued the card of arrest of the accused which is Ex. PW-5/2. I also got prepared Murasila Ex. PA/1 and sent the same to the PS through constable, Khan Wada for the registration of FIR. The recovery memo, card of arrest and Murasila have been prepared upon my dictation by HC Muhammad Saleem which correctly bears my signature and that of the marginal witnesses. The IO prepared site plan on my pointation."


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**Hakim Ali Shah ASI, Police Station Lower Orakzai PW-6 deposed;**




"that on 27.09.2019 I along with ASHO were on routine gasht Kalaya, Kohat road, Bezote, Muslim Abad. I am the marginal witness with the recovery memo already exhibited as Ex. PW-5/1 vide which seizing officer recovered and took into possession seven (7) packets of Chars/Gardah from the possession of driver of motorcycle namely Wajid Ullah s/o Yousaf Din r/o caste Akakhel, Sanzkhel, Sheen darang bara, District Khyber presently Karkhan Lower Orakzai. While eight (8) packets of Chars/Gardah were recovered from the possession of accused namely Abdul Wahid s/o Mishal Khan r/o caste Uthman Khel, Katta panra, Lower Orakzai who was sitting on the rear seat of the motorcycle. On weighing each of seven packets recovered from the driver namely accused Wajid Ullah through digital scale came out 1000/1000grams Chars/Gardah from which 10/10grams from each packet of Chars/Gardah were separated for the FSL for chemical analysis and were sealed in parcel no 1 to 7 while remaining were sealed and packed in parcel no 8. Similarly, on weighing each of eight packets recovered from

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*the accused Abdul Wahid through digital scale came out 1000/1000grams Chars/Gardah from which 10/10grams from each packet of Chars/Gardah were separated for the FSL and were sealed in parcels no 9 to 16 while remaining were packed and sealed in parcel no 17. 1/1 monogram were put inside the parcel while 3/3 monogram in the name of MK were affixed on the above-mentioned parcels by the ASHO. The parcel no 8 is already exhibited as Ex. P1, while parcel no 17 as Ex. P2 and motorcycle as Ex. P3. I along with other marginal witness Muhammad Saleem signed the recovery memo on the spot. My statement was recorded by the IO U/S 161 Cr.P.C. Today I have seen the recovery memo Ex. PW-5/1 which is correct and correctly bears my signature and that of other witnesses."*


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- (3)- Thereafter, prosecution closed their evidence where after statement of both the accused was recorded U/S 342 Cr.P.C but the accused neither wished to be examined on oath nor produced evidence in defence. Accordingly, arguments of the learned DPP for the state and counsel for the accused facing trial heard and case file perused.

(4)- From the arguments and record available on file it reveals that despite the local Police having prior information have not attempted to associate any private person with the recovery process which created a doubt regarding the mode and manner of the recovery. **Secondly**, the local Police in the recovery memo Ex. PW-5/1 as well as in Murasila Ex. PA/1 have mentioned that the recovered Chars were in Gardah (Powder) form but the report of FSL Ex. PK overleaf shows that the form of the contraband received and examined in the FSL was brown solid as such the FSL report cannot be based as evidence for the conviction of accused facing trial as the same is not pertains to Chars Gardah which was allegedly recovered from the accused facing trial. Moreover, Rule 6 of Control of Narcotic Substances (Government analysts) Rules, 2001 provides that full protocols ought to be mentioned in the report of the government analysts and its non-compliance in such context would render the report as inconclusive and unreliable. Reliance is placed upon 2018 SCMR page 2039. In the present case no protocols are mentioned in the FSL report vide which the tests of the recovered case property was conducted. Thus, the report of the FSL is inconclusive and unreliable. **Thirdly**, the recovery memo Ex. PW-5/1 is showing that as many Seventeen parcels were prepared at the spot which were sealed with seal having abbreviation of M.K. However,

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neither the number nor the seal of M.K is mentioned in the Murasila Ex. PA/1 to determine that the recovered contraband was sealed and Murasila was prepared at the spot. **Fourthly**, in the Murasila Ex. PA/1 as well as in the statement of complainant, Khursheed Anwar ASHO PW-5, it is mentioned that the Murasila was sent through Constable Khanwada. However, neither the said Khanwada is shown in the site plan nor he was produced for evidence to support the stance of complainant/ocular account. **Fifthly**, the complainant, Khursheed Anwar ASHO, in his very examination in chief deposed that the colour of the shopper in the lap of accused i.e. driver of motorcycle was green whereas the other eye witness Hakim Ali Shah, ASI PW-6 deposed that the colour of the shopper was blue. The ocular account also admitted that the case property produced in the court having been sewed through thread and needle which fact is missing both in the recovery memo as well as in Murasila. So, there is a doubt regarding the case property recovered and the one produced in court to be the same. **Sixthly**, the complainant, Khursheed Anwar ASHO PW-5 deposed that the recovery memo, Murasila and card of arrest have been drafted by Muhammad Saleem HC upon his dictation but the said Muhammad Saleem has not been produced for evidence to support the said documents besides it was not explained as to why despite the complainant being

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present on the spot was unable to prepare the said documents of his own. Thus, a doubt is created with regard to the presence of complainant as well as of his proceedings of recovery of contraband etc at the spot at the relevant time of occurrence. **Seventhly**, the Investigating Officer, Shal Muhammad Khan PW-4 in his evidence deposed that he recorded the statements of the witnesses on 17.11.2019 i.e. after Fifty (50) days of the occurrence and no explanation whatsoever is available for such delay which created a doubt and the statements of the witnesses are thus not worth believing. **Eighthly**, the motorcycle which was allegedly recovered from the possession of accused facing trial was not proved to be the ownership of accused facing trial nor any investigation report pertaining to the said motorcycle in shape of MRA report or FSL report is available. **Last but not the least**, it is necessary to mention here that accused facing trial are neither previous convict nor involved in any such case in the past besides neither they have confessed their guilt nor any further recovery was effected at their pointation despite they being in police custody for three days. Also, no evidence was brought on record to prove their connection with the recovered contraband rather the evidence led by the prosecution is full of doubts and contradictions which have denied the very presence of the witnesses and their proceedings at the spot at the relevant

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time. It seems that either the witnesses were not present at the relevant place on the relevant date and time or have not deposed in the mode and manner in which the occurrence was alleged to have had been committed.

- (5)- Accordingly, in the light of above, both the above-named accused are acquitted of the charges levelled against them through the FIR in question. Accused are in custody, they be released forthwith, if not required in any other case. The Chars be destroyed after the expiry of period provided for appeal/revision in accordance with law while the recovered motorcycle stand confiscated in favour of state.
- (6)- File be consigned to Sessions Record Room after its necessary completion and compilation.

Announced  
04.02.2020



**ASGHAR SHAH**  
Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of fourteen (14) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 04.02.2020.



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Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela

04-02-20.