

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

SPECIAL CASE NO. : 9/3 OF 2020
DATE OF INSTITUTION : 11.02.2020
DATE OF DECISION : 13.06.2020

STATE THROUGH SALEEM KHAN SI, POST KRAPA UPPER
ORAKZAI (GHILJO)
.....(COMPLAINANT)

-VERSUS-

GHAMEEN REHMAN S/O NOOR ZADA, AGED ABOUT 45/46
YEARS, R/O TRIBE SHEIKHAN, SUB-TRIBE UMARZAI, UPPER
ORAKZAI.
..... (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for state.
: Akbar Yousaf Khalil and Sana Ullah Khan Advocates, for
accused facing trial.

FIR No. 19 Dated: 17.11.2019 **U/S:** 9 (d) KP CNSA
Police Station: Upper Orakzai (Ghiljo)

JUDGEMENT
13.06.2020

The story of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA are that; on 17.11.2019 at about 1410 hours, the local police were on their routine patrolling in the locality. Meanwhile, they came across a person in suspicious condition having in his right hand a small size plastic sack. The search of the said plastic bag lead to the recovery of three packet of Chars garda which upon weighment came out 3605 grams. For chemical analysis through FSL, chars 10 grams each were separated from three packets and packed and sealed in parcels no. 1, 3 and 5 whereas the remaining quantity of chars were sealed in a



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separate parcel. The accused disclosed his name as Ghameen Rehman, who was accordingly arrested by issuing his card of arrest Ex. PW 5/1, Murasila Ex. PA/1 was drafted and sent to the police station for the registration of FIR Ex. PA.

- (2). Upon the receipt of case file, notice was issued to the accused facing trial as he was on bail and upon his appearance, the proceedings were initiated and he was charge sheeted to which he pleaded not guilty and claimed trial and accordingly the witnesses were summoned who deposed in the following manner.

Zahid Ameen, Inspector, police line Upper Orakzai as PW-1 deposed;


“that during the days of occurrence, I was posted as SHO of police station Upper Orakzai. On 17-11-2019, I received Murasila from Saleem Khan Sub-Inspector through head constable Zahir Khan and thereafter, I reduced the contents of Murasila into FIR into Ex. PA which is correct and correctly bears my signature. After registration of the case, I handed over the copy of FIR and Murasila to investigation officer for onward investigation. After completion of the investigation by the IO, the case file was handed over to me by the IO and on 23-11-

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2019, I submitted complete challan in the instant case which is also correct and correctly bears my signature. The complete challan is Ex. PW 1/1."

Khalil Ur Rehman, AMHC, police station Upper Orakzai as PW-2 deposed;

"that on 17-11-2019, ASHO, Saleem Khan handed over to me the case property including parcels no. 1, 3 and 5 (samples of chars for FSL) and parcel no. 2 remaining quantity of chars weighing 3575 grams chars garda and I kept the same in Mal Khana of the police station in safe custody. To this effect, I made entry in register 19 of the PS which is Ex. PW 2/1 which is correct and correctly bears my signature. On 21.11.2019, I drafted an application addressed to the In-charge FSL Ex. PW 2/2 for chemical analysis for the sample of chars. I handed over the application alongwith parcels no. 1, 3 and 5 to take the same to the FSL for chemical analysis which was onward transmitted by him on 22.11.2019 to the FSL."


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Malik Abdul Janan, Sub-Inspector/In-Charge Investigation PS Upper Orakzai as PW-3 deposed;

“that on receipt of copy of FIR and Murasila, I visited the spot and there, on pointation of complainant Saleem Khan Sub-Inspector, I prepared site plan Ex. PB. I recorded the statements of PWs Muhammad Akbar HC and Zahir Khan constable u/s 161 Cr.P.C. The complainant has shown me the case property and accused on the spot. on 18.11.2019, I was on leave therefore, the accused was produced before this court for obtaining his physical custody by the SHO Zahid Ameen. I am well acquainted with his signature, therefore, his application for physical custody is Ex. PW 3/1. During course of investigation accused confessed his guilt before me therefore, I recorded his statement u/s 161 Cr.P.C. On 20.11.2019, I produced the accused before the court of Judicial Magistrate vide my application Ex. PW 3/2 for recording his confessional statement 164/364 Cr.P.C but the accused refused and was sent to the judicial lock-up. On 22.11.2019, I sent constable




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Muhammad Siraj who took the sample of chars to the FSL and later on, I received the FSL report Ex. PK which is placed on file. I have also placed on file copies of naqal-mad no. 10 and 13 daily diary dated 17.11.2019, which are Ex. PW 3/3 and 3/4 respectively. After completion of investigation, I handed over the case file to SHO for submission of challan. All the documents prepared by me are correct and correctly bear my signatures.”

Muhammad Siraj constable, Police Post Krapa, Upper Orakzai PW-4 deposed;

“that on 22.11.2019, Moharrir of PS Khalil Rehman handed over parcels no. 1, 3 and 5, each containing 10 grams chars garda alongwith application addressed to the in-charge FSL and road permit certificate (raseed rahdari) which I took to the FSP Peshawar and handed over the same to the official of the FSL. The official of FSL handed over to me the road permit certificate duly signed which I further handed over to the moharrir of the PS in original and handed over the copy of the same to the investigation officer. My statement was recorded by the IO u/s 161 Cr.P.C.”


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**Saleem Khan, SI/ASHO, Police Station,
Upper Orakzai PW-5 as deposed;**

*“that on 17.11.2019, I alongwith
Fazal Subhan ASI, Muhammad Akbar HC,
constable Zahir Khan and other police nafri
were on gasht by foot on kacha road leading
from Arkhi to Kharoo. At about 1410 hours, I
found one person in suspected condition having
one plastic sack of small size in his right hand,
who was over powered and the said plastic
small sack was recovered by me from his
possession. The plastic sack was checked and it
contained 3 packets of chars garda which was
weighed on the spot by me with digital scale
which came out 3605 grams. On the spot, I
separated 10 grams on chars garda from each
packet and packed and sealed them into parcels
no. 1, 3 and 5 for FSL while packed and sealed
the remaining quantity of chars garda into
parcel no. 2 weighing 3575 grams in presence
of marginal witnesses. I affixed the monogram
of GJ on the parcels containing chars garda.
The accused disclosed his name as Ghameen ur
Rehman, who was arrested by me on the spot.
On the spot, I prepared recovery memo Ex. PC*




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and took into possession the above-mentioned case property. I also prepared card of arrest of the accused Ex. PW 5/1 and prepared Murasila Ex. PA/1. I sent the Murasila to PS through constable Zahir Khan for registration of the case. After registration of the case the IO came to the spot who prepared site plan already exhibited Ex. PB on my pointation. After completion of proceedings on the spot I returned to the PS and handed over the case property to the moharrir of the PS. Today the case property produced in parcel no. 2 is Ex. P1. All the documents prepared by me are correct and bears my signature correctly.”

Zahir Khan constable, Police Post Daradar Mamozai, Upper Orakzai as PW-6 deposed;

“that on 17.11.2019, I was present with SI Saleem Khan. At about 1410 hours, accused Ghameen Rehman was over powered by him and he recovered one small size plastic sack from his right hand. The said plastic sack was examined by him which contained three packets of chars garda. The three packets of chars garda were weighed on the spot with digital scale and it came out 3605 grams. Out


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of them, 10 grams from each packet was separated for FSL and packed and sealed them into parcels no. 1, 3 and 5 while packed and sealed the remaining quantity of chars 3575 grams into parcel no. 2 and affixed monogram of GJ on all parcels. To this effect the complainant Saleem Khan SI prepared recovery memo Ex. PC which is correct and correctly bears my signature. The recovery memo is also signed by Muhammad Akbar HC. After that Saleem Khan handed over to me the Murasila which I took to the PS for registration of the case. After registration of the case I returned to the spot and recorded my statement before investigation officer Malik Abdul Janan."




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- (3). Thereafter, prosecution closed their evidence where after statement of 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 allegedly the local police recovered three packets of chars from the possession of accused but neither the

separate weight of each packet was carried out nor it is mentioned in the Murasila or recovery memo that the subject weight was carried out by means of digital or manual scale. In every case of narcotics, it is the recovery memo which is drafted at the first followed by Murasila. In the instant case in the recovery memo Ex. PC it is mentioned that seal of G.J were affixed on the case property however the said fact is missing in the Murasila to determine that both the recovery memo and the Murasila were drafted at the spot. The Moharrir of the PS Khalil Rehman PW-2 also in his examination-in-chief could not utter a single word that the parcels received to him were in sealed condition. Thus, at the very outset doubts are attracted towards the case of prosecution.

- (5). The case property was allegedly recovered on 17.11.2019 but the samples were received in the FSL for chemical analysis on 22.11.2019 i.e. after five days of the occurrence and it was not explained as to why the case property was kept in the PS for five days. The Moharrir of the PS namely Khalil Rehman as PW-2 deposed that he handed over the samples of chars to the constable Muhammad Siraj on 21.11.2019, yet the constable Siraj further retained the same in his possession for one day for the reasons not furnished at all. If the case property was recovered and available with the local police then what was


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the hinderance of its immediate dispatch to the FSL Peshawar and by not doing so immediately, doubts are attracted with regard to the mode and manner of recovery and availability of the alleged chars at the hands of local police. Moreover, the local Police in the recovery memo Ex. PC 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 were conducted. Thus, the report of the FSL is inconclusive and unreliable.

- (6). The ocular account as well as investigating officer in their evidence are in contradiction to each other regarding presence of particular number of police officials at the spot



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at the relevant time. The complainant Saleem Khan PW-5 in his evidence deposed that at the spot he prepared recovery memo, card of arrest and Murasila and handed over the same to the constable Zahir Khan who took the same to PS. But the SHO of the PS Zahid Ameen as PW-1 deposed that he only received Murasila. As such the very contradiction in the statements of the PWs would denote that either they were not present at the spot or have not deposed in the mode and manner in which the occurrence was alleged to have been committed. It is also necessary to mention here that accused facing trial is neither previous convict nor involved in any such case in the past besides neither he has confessed his guilt nor any further recovery was affected at his pointation despite he being in police custody for two days. Also, no evidence was brought on record to prove his connection with the recovered contraband.

(7). Accordingly, in the light of above, both the above-named accused is acquitted of the charges levelled against him through the FIR in question. Accused is on bail, his bail bonds stand cancelled and his sureties stand discharge from the liability of bail bonds. The Chars be destroyed after the expiry of period provided for appeal/revision in accordance with law.



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(8). File be consigned to Sessions Record Room after its necessary completion and compilation.

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CERTIFICATE

Certified that this judgment consists of twelve (12) pages. Each page has been read, corrected where-ever necessary and signed by me.

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