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

SPECIAL CASE NO. : 15/3 OF 2020  
DATE OF INSTITUTION : 18.06.2020  
DATE OF DECISION : 02.09.2020

STATE THROUGH INSPECTOR FAROOQ KHAN, POLICE STATION,  
LOWER ORAKZAI

.....(COMPLAINANT)

-VERSUS-

1. GUL SHAD S/O ALI BADSHAH, AGED ABOUT 27 YEARS, R/O MALAKDEEN KHEL, BARA MAIDAN, DISTRICT KHYBER.
2. DAWA GUL S/O GUL REHMAN, AGED ABOUT 29 YEARS, TRIBE UTMAN KHEL, TEHSIL LOWER ORAKZAI

..... (ACCUSED FACING TRIAL IN CUSTODY)

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

**FIR No.** 53                      **Dated:** 29.05.2020      **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station:** Lower Orakzai

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**JUDGEMENT**  
02.09.2020

The story of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA are that; on 29.05.2020, Inspector, Farooq Khan alongwith other police officials were busy in patrolling in the locality when an informer informed the Inspector about smuggling of chars from Utman Khel side through a motorcycle; On receipt of information, the local police made a barricade on the kacha road near Shiraz Garhi check-post. At about 11:00 am, the local police saw a

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motorcycle coming from Utman Khel side having boarded two persons. That the motorcycle was signalled to stop. Upon the stoppage of motorcycle, the local police deboarded the driver of the motorcycle who disclosed his name as Gul Shad Khan and upon his search, the police officials found one plastic sack in his lap, inside which 7 packets of chars were found. Upon weighment through digital scale, each packet came out 1260 grams (total 8820 grams) of chars whereas the empty plastic shoper came out 15 grams. Similarly, the police officials also deboarded the person sitting on the rare seat of the motorcycle who disclosed his name as Dawa Gul, and upon his search, the police officials found one plastic sack in his lap too, inside which 7 packets of chars were found. Upon weighment through digital scale, each packet came out 1260 grams (total 8820 grams) of chars whereas the empty plastic shoper came out 15 grams. The police officials separated 10/10 grams chars from each packet and packed and sealed the same into parcels no. 1 to 7 and 9 to 15 for chemical analysis of FSL, whereas remaining quantity of chars was packed and sealed in separate parcels bearing no. 8 and 16. The local police took into possession the recovered chars and motorcycle bearing no. Honda 3543 KPK through recovery memo. Both the accused were accordingly arrested by issuing card of arrest Ex. PW 4/1. Murasila Ex. PA/1 was drafted and

  
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sent to the PS which was converted into FIR Ex. PA. Hence, the case in hand.

(2). Upon the receipt of case file for the purpose of trial, notice was issued to the accused facing trial and upon their appearance, proceedings were initiated and they were charge sheeted to which they pleaded not guilty and claimed trial and accordingly the witnesses were summoned.

(3). PW-1 Muhammad Shafiq appeared before the court and stated to have submitted complete challan in the instant case. PW-2 Khan Wada appeared before the court and deposed that he has taken the samples of chars to FSL Peshawar. PW-3 Muharrir Ain Ullah deposed in respect of drafting of FIR Ex. PA from the contents of Murasila Ex. PA/1. The witness also deposed in respect of receipt of Murasila, card of arrest and recovery memo from constable Irfan Ullah as well as receipt of accused, case property, parcels of chars and motorcycle from complainant, Inspector Farooq. The PW-3 further deposed with regard to entering of the case property in register no. 19 Ex. PW 3/1 as well as produced copy of the daily diary Ex. PW 3/2 regarding departure and return of the IO to the PS on the day of occurrence. The witness also deposed with regard to handing over of samples of chars to the constable Khan Wada for FSL Peshawar. The complainant, Inspector Farooq Khan as PW-4 while the eyewitness constable Shahid Khan as PW-5 in their evidence repeated the story of FIR.

  
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Lastly, the prosecution examined the investigating officer, Shal Muhammad as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case.

(4). Thereafter, prosecution closed their evidence where after statements of the accused were recorded U/S 342 Cr.P.C but both 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.

(5). From the arguments and record available on file it reveals that both the accused facing trial are directly, by name charged for the daylight occurrence reported within 35 minutes of the occurrence. Both the accused were arrested red handed and huge quantity of chars was recovered from their immediate possession. The nature of substance recovered proved chars via report of FSL Ex. PK. The samples of chars received in the FSL Peshawar on 01.06.2020 i.e. within 72 hours of the occurrence besides the FSL report overleaf showing the proper/full protocol used for the test of the samples and result thereof is positive as provided by Rule 6 of Control of Narcotic Substances (Government analysts) Rules, 2001.

(6). The witnesses of the prosecution proved the safe custody of the case property and samples of chars from the



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venue of occurrence to the PS and from there the samples of chars to the FSL Peshawar and remaining chars in possession of Moharrir inside the mal-khana of the PS. The complainant, Inspector Farooq Khan as PW-4 in his evidence alleged that after completion of proceedings at the spot, he handed over accused and case property to the Moharrir of the PS for further proceedings. This statement of the complainant was fortified by the Moharrir Ain Ullah as PW-3. The prosecution also examined constable Khan Wada as PW-2 who deposed regarding the taking of samples of chars to the FSL Peshawar. The defence throughout in their cross-examination has not alleged any interference, tempering or changing nature of the case property from the spot to the PS or while the same were lying in the mal-khana of the PS till its final dispatch to the FSL Peshawar.

(7). The recovery witnesses Inspector Farooq Khan PW-4 and constable Shahid Khan PW-5 in their evidence stood firm regarding mode and manner of the occurrence and despite they being cross-examined at length nothing favourable to the accused could be extracted from their mouths. Nothing was alleged by the defence that either the accused were charged for certain ill-will, ulterior motives or malafidy. The story deposed by the ocular account in the absence of any malafidy etc. on their part is thus confidence inspiring, trustworthy and reliable. No doubt certain minor

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omissions do exist in the evidence of the prosecution but these are not of such nature either to deny the presence or proceedings of the witnesses carried out at the spot at the relevant time of the occurrence. There exist no major contradictions in between the statements of the ocular account or the formal witnesses and all the witnesses deposed in line with the story reported in the first information report.

(8). With regard to the recovered motorcycle Ex. P3, it was the contention of the defence that through report of ETO Karak Ex. PW 6/8, the recovered motorcycle is not in the name of either of accused facing trial but belong to one, Shahram Jehan besides no keys of the same were recovered. However, when this preposition was placed before the investigating officer, Shal Muhammad Khan PW-6, then it was his assertion that no doubt the keys of the motorcycle have been recovered by the complainant but not shown in the recovery memo by the complainant. The investigating officer was further of the view that since motorcycles are been sold to one after another therefore, he has not associated the person named in the report of the ETO Karak with the investigation of the instant case. The reply of the investigating officer is appealing to a prudent mind besides the witnesses of the prosecution have successfully proved that the recovered motorcycle was in possession of the

  
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accused facing trial and has been used for the transportation of huge quantity of narcotics and more so till date, no other person came forward to claim the ownership of the motorcycle in question. Thus, it can be held safely that the recovered motorcycle belongs to the accused facing trial.

(9). The detailed discussion of the case would lead to the conclusion that the prosecution has successfully marshalled their troops against the accused facing trial and have concluded the same in their favour. There exist no major contradictions in the evidence of the prosecution leading towards doubts in favour of accused facing trial. Therefore, this Court safely held that both the accused facing trial on the base of evidence produced are guilty of the offence charged for. However, being first offenders and of young age, a lenient view is taken and both are convicted and sentenced in the following manner;

- I. Accused Gul Shad Khan s/o Ali Badshah is convicted for having in his possession 8820 grams chars and sentenced u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 to suffer rigorous imprisonment for period of 5 years and also to pay fine of Rs. 500,000/- (five lac). In case of default, the accused shall further suffer simple imprisonment

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for 6 months. The benefit of section 382-B Cr.P.C is however extended in his favour.

II. Accused Dawa Gul s/o Gul Rehman is convicted for having in his possession 8820 grams chars and sentenced u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 to suffer rigorous imprisonment for period of 5 years and also to pay fine of Rs. 500,000/- (five lac). In case of default, the accused shall further suffer simple imprisonment for 6 months. The benefit of section 382-B Cr.P.C is however extended in his favour.

III. The case property i.e. chars be destroyed while the recovered motorcycle no. 3543 KPK stand confiscated to the State but after the expiry of period provided for appeal/revision.

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

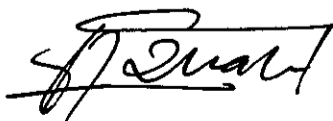
**Announced**  
02.09.2020

  
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**CERTIFICATE**

Certified that this judgment consists of eight (08) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 02.09.2020.

  
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