

SI

In the court of Additional Sessions Judge-II/Judge Special Court,
Orakzai at Baber Mela Hangu.

Special case No.....03 of 2020
Date of Institution.....19.06.2020
Date of Decision.....25.11.2020

State through Khurshid Anwar ASHO Police Station Lower Orakzai
.....(*Complainant*)

VERSUS

Atif Ali S/o Rasheed Ali R/o Bar Muhammad Khel Cheri District lower
Orakzai..... (*Accused Facing Trial*)

Represented by:

Mr. Javed Iqbal Anwar Learned Sr.PP for State
Mr. Noor Karim Orakzai Advocate, counsel for accused

**CASE FIR NO. 23 DATED 01.04.2020 U/S 9-(d) KPCNSA OF POLICE
STATION LOWER ORAKZAI**

JUDGMENT

The prosecution story is that on 01-04-2020 at 16:00 Hours the complainant Khurshid Anwar ASHO along with other police official were on gasht and during gasht a barricade was laid down at Mir Mela check post, that during the said barricade a motorcar bearing registration No. BB-9804 Peshawar was proceeding from Mishti Mela which was stopped for the purpose of checking, that two young persons were seated in the rear seat of motorcar having plastic envelope blue color in their laps, that they were deboarded on suspicion where one person disclosed his name Atif Ali s/o Rasheed Ali and on the search of the envelope taken from his possession 03 packets chars were recovered each packet weighing 1000/1000 grams total 3000 grams whereas the empty plastic envelope was 15 grams, that 10/10 grams were separated for FSL from each packet and the remaining chars were sealed in separate parcels along with plastic envelope, that the other person disclosed his name Nawaz Ali s/o Rehan Ali and on the search of the envelope

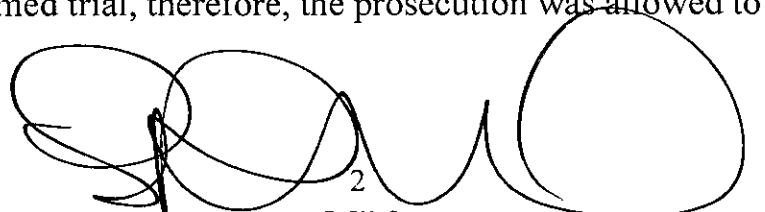
1
Additional District Sessions Judge
Orakzai

52

taken from his possession 02 packets chars were recovered each packet weighing 1000/1000 grams total 2000 grams whereas the empty plastic envelope was 15 grams, that 10/10 grams were separated for FSL from each packet and the remaining chars were sealed in separate parcel along with plastic envelope. The recovered chars were taken into possession through recovery memo and both the accused were arrested by issuing their card of arrest. The complainant drafted the Murasila and sent the same through Constable Asif Ali to the PS for registration of FIR against the accused on the basis of which case FIR Ex.PA was registered against the accused. After the registration of the case, the case was handed over to the investigation staff for the purpose of investigation.

The case was investigated and in the course of investigation, the investigation officer prepared the site plan Ex.PB at the instance of complainant. The IO interrogated the accused during investigation and produced accused before the court for custody. The IO also dispatched the samples to the FSL for chemical examiner report and received report of FSL in affirmative, which was placed on file. The I.O, during investigation, recorded the statements of PWs and accused u/s 161 Cr.P.C. After completion of investigation, the IO submitted the case file to the SHO for submission of complete challan and the SHO submitted challan against the accused for trial.

On 19.06.2020, complete challan was received by this Court for the trial of accused. The accused, being on bail, was summoned who appeared before the Court and after compliance of provision of 265-C Cr.P.C, charge was framed against the accused on 30.06.2020, to which the accused pleaded not guilty and claimed trial, therefore, the prosecution was allowed to produce its


2
SHAIKAT ALI
Addl: District & Sessions Judge
Pakhal, Hangu

evidence. During the trial of the case, the prosecution examined 06 PWs and on 05.10.2020, closed its evidence;

The gist of the prosecution evidence is as under:

PW-1 is the statement of Libab Ali Addl; Muharrir who stated that "On the receipt of Murasila from Khurshid Anwar SHO I incorporated the contents of Murasila into FIR Ex.PA which is correct and correctly bears my signature. When the SHO came to the PS he handed over to me the parcels and remaining case property. The remaining case property was kept in Mal Khana of PS and this respect entries were made in register 19. I handed over the samples sealed in parcels for FSL to the IO. My statement was recorded by the IO u/s 161 Cr.PC."

PW-2 is the statement of Muhammad Shafiq SHO who stated that "on completion of investigation that case file was handed over to me by the IO and I submitted complete challan against the accused which is Ex.PW-2/1 which correctly bears my signature."

PW-3 is the statement of Aftab Hassan SI who stated that "On 05-05-2020 Shal Muhammad SI/IO handed over to me parcel Nos.1,2,3,5 and 6 along with road certificate and application to the FSL which I took to the FSL Peshawar. I handed over the parcels to the concerned official in the FSL Peshawar and the receipt of the receiving the samples was handed over to me which on my return I handed over the same to the IO in the PS. On the same date my statement u/s 161 Cr.PC was recorded by the IO. The road certificate is Ex.PW-3/1."

PW-4 is the statement of Khurshid Anwar ASHO who stated that "On 01-04-2020 at 3:00 PM I along with Asif Ali constable, Shakeel Hassan

3
SHAKEEL ALI
Addl: District & Sessions Judge
Orakzai at Hangu

54

4

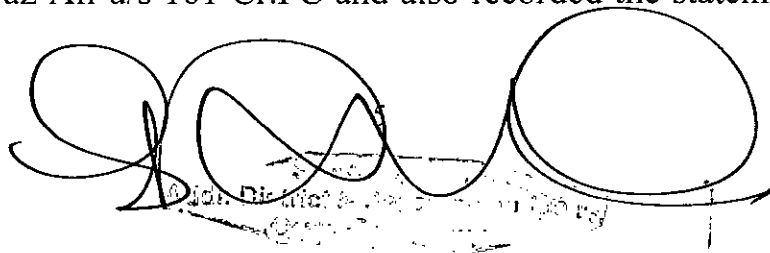
constable, Rasool Gul SI, Muhammad Ullah constable and Rahman Ullah, constable were present on barricade at Meer Mela check post. In the meanwhile a corolla vehicle bearing registration No. BB-9804 reached there which was stopped. Two persons were boarded in the rear seat of the vehicle. First one person namely Atif Ali was deboarded who had a blue shopper which was searched and on search it contained 03 packets chars. The chars were weighed and each packet was 1000/1000 grams total 3000 grams. 10/10 grams were separated from each packet and were sealed into separated parcels for the purpose of FSL. The remaining chars weighing 2970 grams along with shopper weighing 15 grams were sealed into parcel No.4. The other person who disclosed his name Nawaz Ali was also deboarded and chars two packets which was in a blue shopper was also recovered from his possession which was weighed on a weightment it was 1000/1000 grams total 2000 grams. 10/10 grams were separated from each packet and were sealed into separated parcels for the purpose of FSL. The remaining chars weighing 1980 grams along with shopper weighing 15 grams were sealed into parcel No.3. I prepared the recovery memo in the presence of marginal witnesses in respect of recovery of contrabands from both the accused. Both the marginal witnesses signed the recovery memo. I drafted the Murasila and sent the same through Constable Asif Ali to the PS for registration of FIR against the accused. I issued card of arrest of both the accused. The Murasila is Ex.PA, the recovery memo is Ex.PW-4/1 and card of arrest is Ex.PW-4/2 which I have seen today which correctly bears my signature. The IO prepared the site plan on my instance and pointation.”

PW-5 is the statement of Rasool Gul SI who stated that “I am incharge PP Meer Mela check post. On 01-04-2020 the complainant ASHO Khurshid

4
ASIF ALI
Addl: District & Sessions Judge
Orizai at Hangu

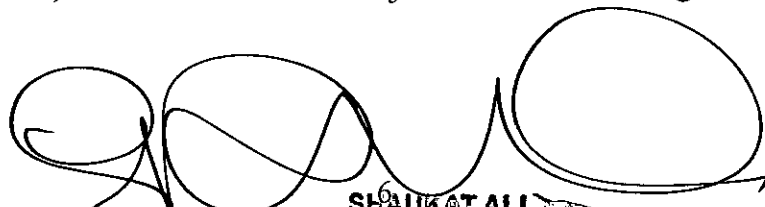
Khan ASHO came to the PP where we were on duty and laid barricade. In the meanwhile at about 4:00 PM the vehicle came bearing No. 9804 wherein in the rear seat two persons were boarded. One person who disclosed his name Atif Ali was deboarded having a blue shopper which was searched and on search there were 03 packets chars. Each packet was weighed which was 1000 grams each. The shopper was 15 grams on its weight. 10/10 grams was separated from each packet for FSL. The other person who disclosed his name Nawaz Ali also having a blue shopper containing two packets chars which was weighed on weight each packet was 1000 grams whereas the shopper was 15 grams. 10/10 grams was separated from each packet for FSL. The chars along with vehicle and accused were handed over to the complainant Khurshid Anwar and were taken to the PS by the complainant. I remained in the PP whereas the complainant left the PS along with the case property and accused. The case property chars containing in parcel No. 4 and 7 are before the court today which are Ex.P-1 and Ex.P-2 respectively.”

PW-6 is the statement of Shal Muhammad SI/IO who stated that “I was present in PS. On 01-04-2020 the Muharrir of the PS handed over to me Murasila, copy of FIR and card of arrest of accused for the purpose of investigation. After going through the contents of FIR I visited the spot for spot inspection. When I reached to the spot there SHO Khurshid Khan along with his police nafri was present. On the spot I inspected the case property and accused were also shown to me. I recorded the statement of PWs. I prepared the site plan at the pointation of ASHO Khurshid Khan which Ex.PB. I returned to the PS where the accused were in the lock-up of the PS. I preliminary interrogated the accused facing trial. I recorded the juvenile accused Nawaz Ali u/s 161 Cr.PC and also recorded the statement of Libab



Ali Muharrir and constable Asif. I produced accused Nawaz Ali for recording his confessional statement before the Illaqa Magistrate u/s 364/164 Cr.PC vide my application Ex.PW-6/1. I also produced accused Atif Ali for custody vide my application Ex.PW-6/2. The accused Nawaz Ali refused to confess and was sent to judicial lock-up whereas two days police custody of accused Atif Ali was granted. The accused Atif ali was also interrogated during his custody and the accused Atif Ali confessed his guilt before me and I recorded his statement u/s 161 Cr.PC. on the expiry of custody I produced accused Atif Ali for recording his confessional statement u/s 164/364 Cr.PC vide my application Ex.PW-6/3. The accused refused to confess and sent to judicial lock-up. I dispatched the parcels No. 1,2,3,4,5 and 6 vide my application Ex.Pw-6/4 along with road certificate already Ex.PW-3/1 to the FSL Peshawar through SI Aftab Hassan. When Aftab SI returned from the FSL he handed over to me the receipt which I placed on file. I recorded his statement u/s 161 Cr.PC. I annexed relevant page of Register No.19 which is Ex.PW-6/5. I also placed on file the arrival and departure DD which are Ex.PW-6/6. I received the FSL report Ex, PW-6/7 and placed it on file. I after completion of investigation submitted case file for accused Nawaz Ali under the Juvenile Justice System Act whereas for accused Atif Ali for submission of challan. Today I have seen the above documents prepared by me which are correct and correctly bears my signature.”

After the prosecution closed its evidence, the statements of the accused was recorded under section 342 Cr.P.C on 10-10-2020. The accused denied the allegation of the prosecution but he refused to be examined on oath or to produce defense, therefore case was adjourned for final arguments.

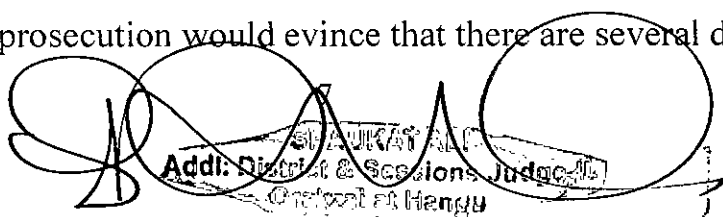

SHAIKAT ALI
Addl: District & Sessions Judge
Muzaffargarh

Learned Sr.PP for the State argued that the accused was arrested red handed along with chars recovered from his personal possession, that the samples were taken from each packet that were in safe custody of the police, which was sent to the FSL and the FSL report is in positive which supports the version of prosecution, that the case property was produced before the Court, which was exhibited, that the official witnesses of police are good witnesses and their evidence cannot be discarded only on the ground that they are police officials, that the PWs are consistent in their statements who supported the recovery from the accused, the learned Sr.PP argued that the prosecution has proved the case against the accused beyond any shadow of doubt and submitted that the accused may be convicted.

On the other hand, learned counsel for accused opposed the arguments of learned Sr.PP for the state and contended that the prosecution witnesses are not consistent in their statements and there are major contradictions on material points in the statements of prosecution witnesses, which create doubts in the case of prosecution, that the samples were sent to the FSL with unexplained delay and the prosecution could not prove the safe custody of the samples during that period, that the FSL report does not support the recovery from the possession of accused, that the alleged contraband is planted against the accused as there is no previous history of involvement of accused in such like cases, that the case of prosecution is full of doubts, the benefit of which shall be extended to the accused.

Arguments of learned Sr.PP for the State and learned counsel for the accused heard and available record perused.

The careful and cautious scrutiny of the statements of the witnesses produced by the prosecution would evince that there are several doubts in the


Addl. District & Sessions Judge
Hangu

SS

case against the accused which make the recovery of chars from the possession of accused not believable. The complainant Khurshid Khan ASHO (PW-04) that he separated 10/10 grams from each packet and sealed into parcels for the purpose of FSL, however the complainant did not mention that to whom he handed over those parcels. Libab Ali Addl; Muharrir (PW-01) stated that the complainant handed over to him the parcels and the remaining case property and he kept the remaining case property in the Maal Khan of PS and entries were made in register No. 19 whereas he handed over the samples to the IO. The IO sent the samples sealed in parcels No. 1,2,3,4,5 and 6 vide his application Ex.PW-6/4 on 05-05-2020 with a delay of more than one month. The IO could not explain the safe custody of the samples during that period and sending the samples with delay of more than one month to the FSL. Though the IO stated in his cross examination that the laboratory was closed due to COVID-19 however no written proof was produced to that effect therefore the explanation advanced by the IO was not plausible nor supported from the record, therefore in the absence of safe custody of the samples during the delay of more than one month and sending the samples to the FSL with such inordinate delay puts shadow of doubts on the recovery of contraband from the possession of accused.

The time of occurrence is 4:00 PM whereas the time of report is 4:45 PM. The complainant stated in his cross examination that he left the PS at 2:45 PM and reached to the place of occurrence which is Mir Mela check post at 3:00 PM. The complainant also stated in his chief examination that on 01-04-2020 at 3:00 PM he along with Asif Ali and other constables were present on Mir Mela check post and in the meanwhile a corolla vehicle came there which was stopped where the accused was arrested and the contraband was

8
SHAIKAT ALI
Addl: District & Sessions Judge
Gulistan Margu

S9

allegedly recovered. The complainant in his statement has not supported the time of occurrence mentioned in the Murasila Ex.PA which is 4:00 PM and not 3:00 PM which shows that no such occurrence has taken place at 4:00 PM as alleged by the prosecution. Furthermore the complainant stated in his cross examination that he left the PS at 2:45 PM and reached to Mir Mela check post at 3:00 PM whereas the contents of DD No. 5 dated 01-04-2020 Ex.PW-6/6 shows that the time of departure of the complainant from the PS is 11:30 hours and not 02:45 PM which negates the statement of complainant that he left the PS at 02:45 PM. Furthermore, PW-05 (Rasool Gul SI) stated in his cross examination that the SHO reached to PP at 03:00 PM and remained in the PP for about 45 mints which indicates that the complainant had left the place of occurrence at 03:45 PM, the time before the occurrence has taken place as the time of occurrence is 04:00 PM. The complainant stated in his cross examination that the IO came to the spot at 08:00 PM and he was present on the spot when the IO came there however this statement of the complainant is also belied by the Mad No.11 dated 01-04-2020 Ex.PW-6/6 which shows the time of arrival of the complainant to the PS is 07:00 PM/1900 hours. Besides the IO stated in his cross examination that he reached to the spot at 06:15/06:25 hours and return from the spot at 19:30 hours/07:30 PM. The IO further stated that first the complainant left the spot and then he left the spot for the PS which further negates the statement of complainant that he was present on the spot at 08:00 PM when the IO came to the spot. The statement of prosecution witnesses create doubts in respect of presence of prosecution witnesses on the spot and regarding the mode and manner of the offence as alleged by the complainant.


SHAIK ALI
Addl: District & Sessions Judge
Orakzai at Hangu

60

Rasool Gul SI (PW-05) who is the witness to recovery memo Ex.PW-4/1 stated in his examination in chief that he is incharge PP Meer Mela check post. On 01-04-2020 the complainant ASHO Khurshid Khan came to the PP where they were on duty and laid barricade. In the meanwhile at about 04:00 PM the vehicle came bearing No. 9804 wherein in the rear seat two persons were boarded. One person who disclosed his name Atif Ali was deboarded having a blue shopper which was searched and on search there were 03 packets chars. Each packet was weighed which was 1000 grams each. The shopper was 15 grams on its weight. 10/10 grams were separated from each packet for FSL. The other person who disclosed his name Nawaz Ali also having a blue shopper containing two packets chars which was weighed on weight each packet was 1000 grams whereas the shopper was 15 grams. 10/10 grams was separated from each packet for FSL. The chars along with vehicle and accused were handed over to the complainant Khurshid Anwar and were taken to the PS by the complainant. PW-05 stated that he remained in the PP whereas the complainant left the PS along with the case property and accused. Rasool Gul SI (PW-05) did not state about the preparation of recovery memo by the complainant in his presence and signing of the recovery memo by him. The signature of Rasool Gul SI on the recovery memo neither verified by the witness himself nor by the complainant rather the complainant stated in his cross examination that it is correct that both the signatures of the marginal witnesses of the recovery memo are in same hand writing which shows that both signatures were of the same person. Furthermore PW-05 (Rasool Gul SI) in his cross examination admitted that it is correct that in his CNIC he has put thumb impression which further support the fact that the marginal witness Rasool Gul had not signed the recovery

10
SHUKRAT ALI
Addl: District & Sessions Judge-1
Orizal at Hangu

memo and made doubtful the recovery of contraband in his presence from possession of accused, therefore, such recovery could not be believed.

The complainant stated that the weighment was made on digital scale which was present with him in his vehicle whereas PW-05 stated in his cross examination that the digital scale was available in the check post and he called subordinate police official to bring the digital scale from the PP. The complainant further stated in his cross examination that when the IO came to the spot, the IO also weighed the recovered contrabands however in another occasion the complainant stated that he had not handed over the contraband to the IO on the spot and the IO (PW-06) also contradicted the statement of complainant when he stated in his cross examination that he did not weigh the chars on the spot and further stated that he had not seen the chars and only seen the parcels of the chars. The accused were allegedly deboarded from a private passenger vehicle however the IO had not recorded the statement of the driver of the vehicle who was an independent witness to authenticate the recovery from the possession of accused. In the wake of inconsistent statements of prosecution witnesses, the recovery of contraband from the possession could not be believed.

The alleged chars which was recovered was chars *Garda* as per contents of Murasila Ex.PA and the samples in parcels No. 1,2,3,4,5, and 6 sent to the FSL vide road certificate Ex.PW-3/1 were also chars *Garda* whereas the FSL report Ex.PW-6/7 shows that it was chars the physical appearance of which was brown solid. The FSL report did not specifically mention that the chars was *Pukhta* or *Garda*, hence the FSL report does not support the recovery of contraband from the possession of accused. The accused cannot be convicted when there is even a single doubt in the

11
Sd/-
Jdt: District & Sessions Judge
Orizal at Hangu

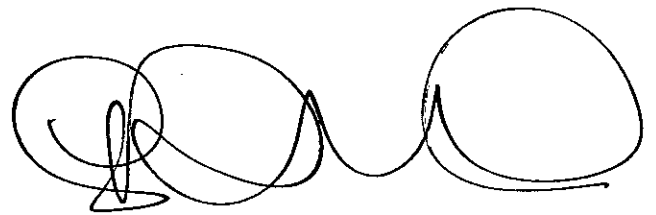
62

prosecution case regarding the guilt of the accused and in case of doubt in the prosecution case the accused shall be entitle to the befits of such doubt, not as a matter of grace or concession but is a matter of right. The case of prosecution is full of doubts the benefit of which shall be extended to the accused as matter of right.

As sequel to the above discussion, the prosecution has failed to bring home the guilt of the accused beyond any reasonable shadow of doubt therefore; the accused is acquitted in the instant case from the charges leveled against him by extending him the benefit of doubt. The accused is on bail, his sureties are discharged from the liability of bail bonds. The case property i.e. contraband be kept intact till the expiry of period of appeal/revision and where after the same be dealt with in accordance with law.

File be consigned to the District Record Room Orakzai after necessary completion and compilation.

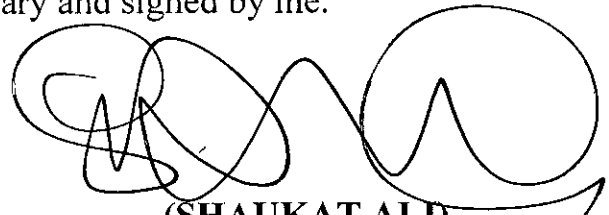
Announced
25th November, 2020



(SHAUKAT ALI)
Addl; Sessions Judge-II/
Judge Special Court,
Orakzai at Baber Mela, Hangu

CERTIFICATE

Certified that this judgment consists of -12- pages. Each page has been read, corrected wherever, necessary and signed by me.



(SHAUKAT ALI)
Addl; Sessions Judge-II/
Judge Special Court,
Orakzai at Baber Mela, Hangu