

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

SPECIAL CASE NO. : 13/3 OF 2020
DATE OF INSTITUTION : 17.06.2020
DATE OF DECISION : 26.11.2020

STATE THROUGH SALEEM KHAN ASHO, POLICE STATION,
UPPER ORAKZAI

.....(COMPLAINANT)

-VERSUS-

MUHAMMAD RAHEEM S/O JANA GUL, AGED ABOUT 40/41
YEARS, TRIBE MISHTI, SUB-TRIBE DORI KHEL, UPPER
ORAKZAI.

..... (ACCUSED FACING TRIAL ON BAIL)

Present: Umar Niaz, District Public Prosecutor for state.
: Abid Ali Advocate for accused facing trial.

FIR No. 17 **Dated:** 26.04.2020 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019

Police Station: Upper Orakzai Ghiljo

JUDGEMENT
26.11.2020

The story of the prosecution as per contents of Murasila Ex. PA converted into FIR Ex. 4/1 are that; on 26.04.2020, complainant, Saleem Khan ASHO alongwith other police officials were present at Krappa check-post when he received information about smuggling of chars from Dabori side. At about 11:40 am, the local police saw one person having a plastic sack on his right shoulder. On seeing the police party, the person tried to run away but the police chased and got hold of him. The police officials searched the plastic sack in possession of accused which lead to the recovery of 07



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packets of chars. Each packet was weighed through digital scale, each packet came out to be 1244 grams (total 7464 grams) of chars whereas the empty plastic shoper came out 42 grams. The police officials separated 10/10 grams chars from each packet and packed and sealed the same into parcels no. 1 to 6 for chemical analysis of FSL, whereas remaining quantity of chars including the plastic sack was packed and sealed in separate parcel bearing no. 7. The accused disclosed his name as Muhammad Raheem, who was accordingly arrested by issuing his card of arrest Ex. PW 1/1. The local police took into possession the recovered chars through recovery memo Ex. PC. Murasila Ex. PA was drafted and sent to the PS which was converted into FIR Ex. PW 4/1. Hence, the case in hand.



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(2). Upon the receipt of case file for the purpose of trial, notice was issued to the accused facing trial and upon his appearance, proceedings were initiated and he was charge sheeted to which he pleaded not guilty and claimed trial and accordingly the witnesses were summoned and examined. The gist of the evidence is as follow;

(3). Complainant, Saleem Khan ASHO as PW-1 whereas eyewitness constable Muhammad Shahid as PW-2 appeared and, in their evidence, repeated the story of FIR. Jahanzeb Khan SHO as PW-3 also appeared before the court and stated that he has submitted complete challan against the accused.

Madad Moharrir Abdul Manan as PW-4 deposed in respect of receipt of Murasila, card of arrest and recovery memo from constable Muhammad Imtiaz as well as receipt of accused and parcels of chars from complainant, Saleem Khan ASHO besides drafting of FIR Ex. PW 4/1 from the contents of Murasila Ex. PA. He further deposed with regard to entering of the case property in register no. 19 Ex. PW 4/2 as well as produced copy of the daily diary no. 3 Ex. PW 4/3 and daily diary no. 10 Ex. PW 4/4 regarding departure and return of Saleem Khan ASHO to the PS on the day of occurrence. Investigating officer Nawaz Sharif was examined as PW-5 who in his evidence deposed in respect of the investigation carried out by him in the instant case. Lastly, Malak Abdul Janan was also examined as PW-6 who stated to have received parcels no. 1 to 6 from investigating officer Nawaz Sharif alongwith road permit certificate Ex. PW 5/3 and application addressed to the incharge FSL for taking the same to FSL and stated to have handed over the same to official of FSL and obtained its receipt.



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(4). Thereafter, prosecution closed their evidence where after statement of 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.

(5). From the arguments and record available on file it reveals that the accused facing trial is directly, by name charged for the daylight occurrence reported within 40 minutes of the occurrence. The accused was arrested red handed and huge quantity of chars 7464 grams was recovered from his 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 07.05.2020 i.e. on the 12th day of the occurrence and the reason of delay in sending samples to the FSL has been cited by the investigating officer, Nawaz Sharif PW-5 was that by that time the FSL laboratory was closed on account of Covid-19 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.



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(6). The witnesses of the prosecution proved the safe custody of the case property and samples of chars from the venue of occurrence to the PS and from there to the FSL Peshawar and remaining chars in possession of Moharrir inside the mal-khana of the PS. The Moharrir, Abdul Manan PW-4 produced extract from register 19 Ex. PW 4/2 regarding entry of case property as well as copies of daily diary no. 3 and 10 dated 26.04.2020 Ex. PW 4/3 and Ex. PW 4/4 regarding the departure and return of the complainant from and to the PS on

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the day of occurrence. 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 ASHO Saleem Khan PW-1 and constable Shahid Khan PW-2 in their evidence stood firm regarding presence of witnesses at the spot, arrest of accused, recovery of chars, its weightment through digital scale, separation of samples for FSL and other proceedings carried out at the spot alongwith 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.

(8). The defence mainly raised objection to the effect that despite prior information no private person was associated with the recovery proceedings; that there is delay of 12 days in sending samples to the FSL; that in Murasila 7464 grams chars shown recovered whereas in FIR it is mentioned as 7664 grams; that the date of occurrence in the Murasila is mentioned as 26.04.2020 while on site plan it is mentioned as 24.04.2020; that accused has not made any confession; that the complainant of the case, Saleem Khan ASHO has got some ill-will with the accused. However, when the evidence is consulted, it transpires that there is no Abadi around the place



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of occurrence and the same is surrounded by hills and dry water channel and is an open place as described by the complainant, hence no question of arrangement of private person to associate him with the recovery process would arise besides to this effect no question of suggestion was put to the ocular account. Also, in number of judgements of the superior courts, it is held that police officials are as much good witnesses as like any other witnesses unless some malafidy is proved against the police witnesses, which malafidy is missing in the instant case. As far as the delay of 12 days in sending samples to the FSL is concerned, in this regard the investigating officer, Nawaz Sharif PW-5 in his very examination in chief explained that during those days the FSL laboratory Peshawar was closed due to Covid-19, hence the delay occurred. This portion of the examination in chief was not cross-examined and so much so that even no suggestion was given that either the FSL was open or that the witness is deposing falsely. As a matter of fact the FSL lab was closed during those days and many other FSL reports of this District were also pending with them and when contacted it was submitted in writing that they have only skeleton staff available not sufficient to complete the FSL reports in time, hence the delay occurred is properly explained. As far as the clerical difference between the quantity of chars mentioned in Murasila and FIR as well as the date of occurrence mentioned



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in the Murasila and site plan, the investigating officer in his cross examination explained that it is a clerical mistake whereafter the said witness was not put any question or suggestion regarding the same is either malafidly or falsely entered. Moreover, no doubt in the Murasila the total quantity of chars is mentioned as 7464 grams while in the FIR it is mentioned as 7664 grams but in both the Murasila and FIR one thing is common i.e. total 06 packets of chars was recovered and each packet was weighing 1244 grams making a total recovery as 7464 grams as mentioned in the Murasila. Thus, the explanation of same being clerical mistake is appealing to a prudent mind. No doubt, the accused has not confessed his guilt but the ocular account was successfully able to establish their version against him. As far as the alleged ill-will of the complainant with the accused is concerned, in this regard it has to be noted that earlier the accused was arrested for having in his possession 2405 grams chars and was nominated in case FIR no. 20 dated 17.11.2019 u/s 9 (d) KP CNSA in PS Upper Orakzai Ghiljo but however he was acquitted in that case by the present court on technical grounds. The record of the earlier case was produced as Ex. PW 5/4 to Ex. PW 5/8. The accused throughout the investigation or during the trial never raised the question of any ill-will of the complainant with him despite he being on bail besides the ocular account was not put a single question or suggestion with regard to the said ill-will.



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Moreover, only when he was put question no. 8 in the statement of accused regarding his previous involvement in such like cases, then the reply was that complainant has some personal ill-will with him. However, what was the nature of the ill-will? what was its duration? and what was its kind? Were never explained. Thus, in the absence of any proof regarding the malafidly involvement of the accused, the presumption would be drawn that the accused facing trial is a habitual narcotics smuggler.

(9). The story deposed by the ocular account in the absence of any malafidy etc. on their part is thus confidence inspiring, trustworthy and reliable. There exist no 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.

(10). The detailed discussion of the case would lead to the conclusion that the prosecution has successfully proved its case against the accused facing trial without any shadow of doubts. Therefore, this Court safely conclude that the accused facing trial on the base of evidence produced is guilty of the offence charged for. Therefore, the accused facing trial is convicted and sentenced u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 for having in his possession 7464 grams chars to suffer rigorous imprisonment for period of 3 years and also to pay fine of Rs. 200,000/- (two



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lac). In case of default, the accused shall further suffer simple imprisonment for 6 months. The case property i.e. chas be disposed of in accordance with law but after the expiry of period provided for appeal/revision. The accused is on bail, his bail stand cancelled alongwith the bail bonds. The accused is taken into custody, he be sent to the Sub-Jail Orakzai alongwith jail warrant to undergo the sentence so awarded.

- (11). File be consigned to Session Record Room after its necessary completion and compilation.

Announced
26.11.2020

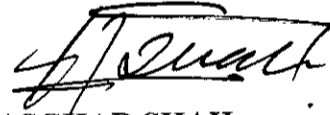


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CERTIFICATE

Certified that this judgment consists of nine (09) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 26.11.2020.



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