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*In the name of almighty Allah who has unlimited
jurisdiction over and beyond the universe.*

BEFORE THE COURT OF
ADDITIONAL SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI

Special Case No.23/3 of 2021

Date of institution: 09.08.2021

Date of decision: 21.06.2023

The State

...Versus...

Muhammad Younis son of Abdul Badshah, resident of Qaum Kamar Khel,
Tappa Khwaidad Khel District Khyber. (Accused facing trial)


**Case FIR No. 87 Dated 12.07.2021 u/s 9-C KP-CNSA, 2019
registered at Police Station Kalaya Orakzai.**

JUDGMENT

Accused named above faced trial before this Court in case FIR No.87 dated 12.07.2021 u/s 9-C Khyber Pakhtunkhwa Control of Narcotics Substance Act, 2019, registered at Police Station Kalaya Orakzai.

2. Facts of the case are such that Muqaddar Khan SHO Police Station Kalaya Orakzai while on routine patrolling of the area had noticed accused as suspicious. He overpowered the accused and recovered chars measuring 710 grams from the fold of his trouser which was wrapped in yellow scotch tape. Out of 710 grams of chars recovered, 10 grams was separated for examination through Forensic Science Laboratory. The accused was arrested on the spot who disclosed his name as Muhammad Younis son of Abdul Badshah. Murasilla was drafted on the spot and sent to Police Station for registration of case which was given effect in the captioned FIR

culminated into present case.


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3. On conclusion of the investigation, complete challan against the accused facing trial was presented. He was summoned for being on bail and on appearance, he was provided copies in line with Section 265-C of the Code of Criminal Procedure-1898. Charge against the accused was framed to which he pleaded not guilty and claimed trial. Prosecution was directed to produce evidence. The prosecution in order to prove its case against the accused, produced and examined as many as six (06) witnesses. The crux of the prosecution evidence is sketched below:

5. Muhammad Ayub Muharrir, was examined as PW-1, who has registered the FIR Ex.PA on receipt of Murasila. He also kept the case property in the Malkhana for safe custody vide register No. 19 Ex.PW-1/1. The star prosecution witness was complainant Muqadar Khan ASHO, whose statement was recorded as PW-2. He confirmed the initial report Ex.PA to be true. Recovery of contraband vide recovery memo Ex.PW-2/3 was testified to be genuine. He arrested the accused and issued his card of arrest as Ex.PW-2/1. He drafted the Murasila Ex.PW-2/2. One of the marginal witness to the recovery memo was Shamim Hussain Constable, who was examined as PW-3. It was testified that the recovery was made from accused and was documented vide recovery memo. He took the Murasila and Card of arrest to the Police Station and handed over the same to the Muharrir for registration of FIR. PW-4 is the statement of Nikzad

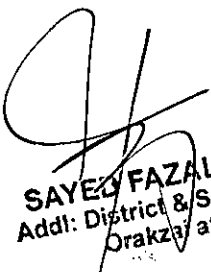

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Ali, who has taken the parcels to FSL Peshawar for chemical analysis vide Road Certificate Ex.PW-4/1 and FSL Application Ex.PW-4/2. Investigation Officer of the case was Mehdi Hassan, who was entered in the witness box as PW-5. He prepared site plan Ex.PB. Preparation of site plan and examination of witnesses was confirmed by this witness. He had produced the accused before the Illaqa Magistrate vide applications Ex.PW-5/1. He exhibited FSL result as Ex.PZ-1. On completion of investigation, he handed over the case file to SHO for onward submission of complete challan against the accused. PW-6 is the statement of Shal Muhammad SHO who has submitted the complete challan Ex.PW-6/1.

4. On closure of prosecution evidence, statement of accused was recorded u/s 342 of the Code of Criminal Procedure-1898; wherein, accused professed innocence and did not opt to produce defense evidence or to be examined on oath.

5. Learned APP for the State argued that accused is directly charged in the contents of FIR followed by spot arrest and evidence available on the file are sufficient to establish a proved case of the commission of offence by the accused. He added that the offence has been committed and prosecution has proved its case beyond doubt entailing conviction of the accused.


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6. On the contrary, learned counsel for the accused contended that evidence available on the file is deficient and the story advanced by the prosecution is not appealable to prudent mind. It was added that there is no independent witness of the occurrence and the evidence available on the file is full of contradictions. He submitted that prosecution has not been able to prove the case beyond shadow of reasonable doubt and requested for acquittal of the accused.

7. Perusal of case record reveals that according to FIR, the accused was intercepted during routine patrolling of the area at barricade established on 12.07.2021 at 19:15 hours and contraband/chars weighing 710 grams was recovered in presence of marginal witnesses namely Shan Ali Constable and constable Shamim Hassan vide recovery memo (Ex. PW-2/3). The marginal witness Shamim Hassan (PW-3) was examined; whereas, Shan Ali marginal witness was abandoned. According to (PW-3), he was present with seizing officer on the eventful day. He stated that on body search of accused, chars wrapped in yellow scotch tape was recovered from trouser fold of the accused which contained single packet weighing 710 grams. Chain of custody of the recovered material play pivotal role in the cases of Narcotics. No witness from public either has been associated with recovery of chars or being cited as marginal witness to the recovery memo. The complainant (PW-2) states that the Murasila and recovery memo has been


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prepared on his direction; whereas, the Marginal Witness (PW-3) has negated this fact and stated that it was the complainant himself who drafted Murasila and recovery memo and this is sufficient to create a dent. Similarly, the departure and arrival of the Police Party, transportation of the recovered material to Police Station, custody at Police Station and other material questions have not been brought on record that renders the chain of custody disconnected.

8. The accused facing trial has not recorded confession before the Court. He remained in police custody for sufficient time but no further recovery was made. The accused has no previous criminal history in such like offences.

9. The examination of record as discussed above has given birth to reasonable doubt, the benefit of which has to be extended in favour of accused as was ordained in 2003 PLD 84 [Peshawar]. These facts and circumstances render the evidence as insufficient to believe the mode and manner of the crime narrated.

10. In the light of above discussion, it is being held that the prosecution evidence is falling under insufficient category of cogency; whereas, the secure category evidence is of material contradictions that had given birth to reasonable doubt. Consequently, the benefit of doubt is extended to the

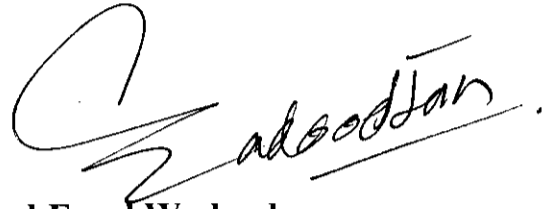

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accused facing trial and resultantly, accused Muhammad Younis son of

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Abdul Badshah, resident of Qaum Kamar Khel, Tappa Khwaidad Khel District Khyber is acquitted from the charges levelled against him. He is on bail, his bails bonds stand canceled and his sureties are absolved from the liabilities of bail bonds. Case property; the chars, shall be destroyed. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

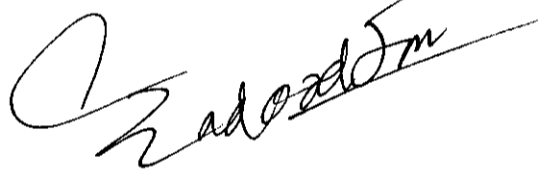
ANNOUNCED
21.06.2023



Sayed Fazal Wadood
Additional Sessions Judge/Judge Special
Court Orakzai

CERTIFICATE:

Certified that this Judgment is consisting upon six (06) pages; each page has been read over and signed by me after making necessary corrections therein.



Sayed Fazal Wadood
Additional Sessions Judge/Judge Special
Court Orakzai