

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.3/21J of 2021

Date of institution: 27.07.2021

Date of decision: 23.06.2023

(52)

The State

.....Versus.....

Hazrat Umar son of Nasrat Ullah, resident of Qaum Mishti, Tappa Haider Khel, Sanzai Dara, District Orakzai. (Accused on trial)

**Case FIR No.19, Dated 14.04.2021 u/s 9-D of KP-CNSA, 2019
registered at Police Station Kalaya Orakzai.**

JUDGMENT

Accused named above faced trial before this Court in case registered vide FIR No.19 dated 14.02.2021 u/s 9-D of Khyber Pakhtunkhwa Control of Narcotics Substance Act, 2019, of Police Station Kalaya, Orakzai.

2. Facts of the case are such that Rasool Gul SI along with other police officials of Police Station Kalaya Orakzai, were available on barricade. One person was moving by foot towards the barricade from Mishti side having blue color plastic bag in his hand. He was stopped for the purpose of checking. On search, the complainant recovered 02 packets of chars from the plastic sack possessed by the said person which were wrapped in yellow scotch tape, having weight of 800 grams of each packet with total quantity of 1600 grams. Accused was arrested on the spot. Murasila was drafted at the place of occurrence and sent to Police Station for bringing criminal law into motion which was given effect in the above cited FIR that culminated into present case.


SAYED FAZAL WADOOD
Addl. District & Sessions Judge
Orakzai at Hangu

(3)

3. After conclusion of the investigation, complete challan against the accused facing trial was presented. He was summoned being on bail and on appearance, he has been provided prescribed documents of case 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.

4. 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 prosecution evidence is sketched below for ease of reference in determination of guilt or innocence of accused:


5. Ain Ullah Muharrir, who had registered the FIR Ex.PA on receipt of Murasila, recovery memo and card of arrest, was examined as PW-1. He exhibited the copy of Register No.19 as Ex.PW-1/2 and Naqalmad No.15 as Ex.PW-1/1. PW-2 is the statement of Constable Raza Ali, who has taken the parcels to FSL Peshawar for chemical analysis vide Road Certificate Ex.PW-2/1 and FSL Application Ex.PW-2/2. PW-3 is the statement of Raees Khan SI, who has submitted the Juvenile Challan (Ex.PW-3/1) against the accused in instant case. The star prosecution witness was complainant Rasool Gul SI, whose statement was recorded as PW-4. He confirmed the initial report Ex.PA to be true. Recovery of contraband vide recovery memo Ex.PW-4/1 was testified to be genuine. He arrested the accused and issued his card of arrest as Ex.PW-4/2. He drafted the Murasila Ex.PA-1. One of the marginal witness to the recovery memo was Shah Ayaz Constable, who was examined as PW-5. 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. Investigation Officer of the case was Shal Muhammad, who was entered in the witness box as PW-6. 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-6/1. He exhibited FSL result as Ex.PZ. On completion of investigation, he handed over the case file to SHO for onward submission of complete challan against the accused.

6. After the closure of prosecution evidence, statements of accused was recorded u/s 342 of the Cr.PC. Accused neither opted examination on oath nor opted to produce evidence in his defence.

7. It was argued by learned APP representing State that the recovery of narcotics is proved beyond doubt as is evident from the testimony of PW-4 and PW-5 (Seizing Officer and Marginal Witness). That the recovery memo Ex.PW.4/1 has been proved to be correct and the testimony of the PWs has no contradiction on material particulars. That the offence is heinous in nature and there is nothing on record which could show any kind of *mala fide* on part of police in charging the accused. He concluded that accused has been arrested on the spot and has been specifically named in the contents of FIR.

8. Conversely, learned defence counsel argued that no recovery has been made from possession of the accused and that the police have planted the recovery of narcotics


SAYED FAZAL WADOOD
 District & Sessions Judge
 Orakzai at Hangu

53

against him with ulterior motive. That no independent witness came forward to support the prosecution case and that the testimony adduced by the prosecution is full of contradictions on material particulars. It was argued that very strong and consistent testimony would be required in order to prove his guilt which is missing in present case. He concluded that samples have been sent with considerable delay which creates a reasonable doubt.

9. Chain of custody of the recovered material play pivotal role in the cases of Narcotics. The departure and arrival of the Police Party, transportation of the recovered material to Police Station, its entry in the relevant register, custody at Police Station, prompt and safe transmission of material to FSL are questions of paramount importance. In present case, the samples of chars were sent to the FSL with unexplained delay of 10 days which is obviously a substantial delay doubted the case reasonably. It has been settled in "Qaisar etc. vs State" case reported as 2022 SCMR 1641 by August the Supreme Court of Pakistan, that any break in the chain of safe custody or safe transmission of representative samples, makes the report of chemical examiner worthless and unreliable for justifying conviction of the accused.

10. 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 for such like offences.

11. 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

56
PLD 84 [Peshawar]. These facts and circumstances render the evidence as insufficient

to believe the mode and manner of the crime narrated.

12. No witness from public either associated with recovery of chars or to cite as marginal witness to the recovery memo Ex.PW-3/2.


13. 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 accused facing trial and resultantly, accused Hazrat Umar son of Nasrat Ullah resident of Qaum Mishti, Tappa Haider Khel Sanzai Dara, District Orakzai presently Shahoo Khel Tehsil and District Hangu, 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
23.06.2023


Sayed Fazal Wadood,
AD&SJ/JSC, Orakzai at Baber Mela

CERTIFICATE:

Certified that this Judgment is consisting upon five (05) pages; each page has been read over and signed by me after making necessary corrections therein.


Sayed Fazal Wadood,
AD&SJ/JSC, Orakzai at Baber Mela