

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

Juvenile case No.....02 of 2020
Date of Institution.....09.03.2020
Date of Decision.....15.01.2021

State through Muhammad Shafiq Khan SHO Police Station Lower Orakzai
.....(**Complainant**)

VERSUS

Munawar Khan s/o Hashmat Khan; aged about 16 years r/o Shalu Bar
Tappa Qamber Khel, Iran Khel, Arjali Nadi District Khyber
..... (**Accused Facing Trial**)

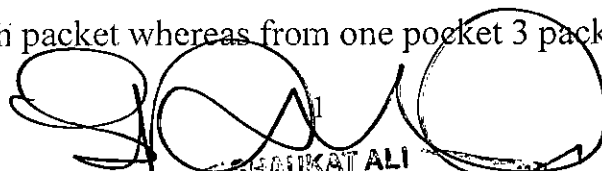
Represented by:

Mr. Javed Iqbal Anwar Learned Sr.PP for State
Mr. Shahab Khan Advocate, counsel for accused

**CASE FIR NO. 42 DATED 04.12.2019 U/S 9-(d) KPCNSA OF POLICE
STATION LOWER ORAKZAI**

JUDGMENT

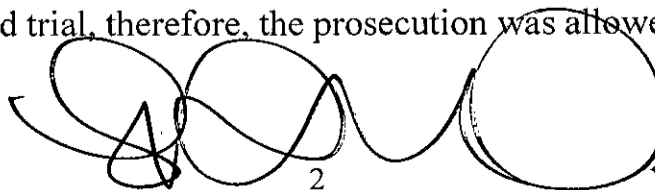
The prosecution story is that on 04-12-2019 the complainant Muhammad Shafiq Khan SHO received information that chars shall be smuggled on motorcycle from sultan Zai side and on that information barricade was laid down at Sultan Zai road near Sultan Zai bridge, that during the said barricade a motorcycle was coming from Sultan Zai side which was signaled to stop and the motorcycle stopped at a distance and the person riding the motorcycle wearing a chadar who was deboarded form the motorcycle, that the person disclosed his name Monawar Khan s/o Hashmat Khan cast Shalo Bar Bar Qamber Khel Bara District Khyber presently Anjari Lower Orakzai, that the chadar was removed from him who was wearing a waist coat which was specially designed for the smuggling of narcotics, that the waist coat was searched which was containing 04 pocket, that from 03 pockets 2/2 packets from each packet whereas from one pocket 3 packets chars garda was


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recovered which was weighed on digital scale and on weighment it was 1200/1200 grams each packet total 10800 grams, that the waist coat was separately weighed which was 220 grams, that 10/10 grams were separated for FSL from each packet and sealed into parcel No. 1 to 9 and the remaining chars 10/10 grams along with waist coat was sealed in parcel No. 10 , that motorcycle Honda 125 along with chars garda was taken into possession and the accused was arrested. The complainant drafted the Murasila and sent the same through Constable Muhammad Sadiq 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 09.03.2020, 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 18.03.2020, to which the accused pleaded not guilty and claimed trial, therefore, the prosecution was allowed to produce its



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evidence. During the trial of the case, the prosecution examined 05 PWs and on 16.12.2020, 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 "I was present in the PS when Muhammad Sadiq constable took the Murasila, recovery memo and card of arrest and handed over the same to me in the PS. I chalked out the FIR on the basis of Murasila which is Ex.PA. I handed over the copy of FIR, Murasila and card of arrest to the IO. Later on when the SHO came to the PS he handed over the case property to me. The case property containing parcels No. 1 to 9 for FSL, motor cycle and remaining case property parcel No.10. I made entry of the case property in the register 19 and kept the case property in the Maal Khana of the PS. I have shown the case property to the IO who after examination returned me parcel No.10. My statement was recorded by the IO u/s 161 Cr.PC. Today I have seen the FIR which correctly bears my signature."

PW-2 is the statement of Ameer Nawaz Constable who stated that "During the days of occurrence I was posted at PS Lower Orakzai. On 12-12-2019 Shal Muhammad Khan IO handed over to me parcels No. 01 to 09 along with application to the FSL and road certificate. I took those parcels to the FSL Peshawar. I handed over the parcels to the official at FSL Peshawar and handed over the receipt of the parcels by affixing stamp on road certificate and on returned I handed over the receipt to the IO. The road certificate is Ex.PW-2/1. The IO recorded my statement u/s 161 Cr.PC"

PW-3 is the statement of Aftab Ahmad ASI who stated that "I along with the SHO was present at Naka Bandi near Sultan Zai. From Sultan Zai

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side a person on motorcycle was proceeding towards us on high speed. The complainant/SHO signaled the motorcycle to stop and the motorcycle stopped at a distance of few paces. The person riding the motorcycle was deboraded who was wearing a waistcoat specially designed for smuggling of narcotics. The waistcoat was removed from the person riding the motorcycle. The waistcoat having four pockets was searched and from the three pockets chars two packets each was recovered whereas from the 4th pocket three packets chars was recovered. Total 9 packets were recovered which were wrapped in a plastic tap. The chars was weighted each packets containing 1200/1200 grams total 10800 grams along with scotch tape. The waistcoat was separately weighted which was 220 grams. 10/10 grams were separated from each packets for FSL and sealed into parcel No. 1 to 9 whereas the remaining chars along with the waistcoat was sealed into parcel No.10. In each packet the stamp of MK was put whereas on each parcel three stamps of MK was also affixed. The complainant prepared the recovery memo in my presence. The complainant took into possession the case property, motorcycle and also arrested the accused. I signed the recovery memo which I have seen today which is correctly available on the recovery memo. Later on at 1:30 hours the IO came to the spot and prepared the site plan in the instance of complainant"

PW-4 is the statement of Muhammad Shafiq Khan SHO who stated that "I was on gasht. During gasht I received information that chars shall be smuggled on Sultan Zai road. I on that information put nak bandi near Sultan Zai on bridge. On Sultan Zai road the accused on motorcycle was proceeding towards us on high speed. I signaled the motorcycle to stop and the motorcycle stopped at a distance of few paces. The person riding the motorcycle was deboraded disclosed his name Munawar Khan, who was wearing a waistcoat

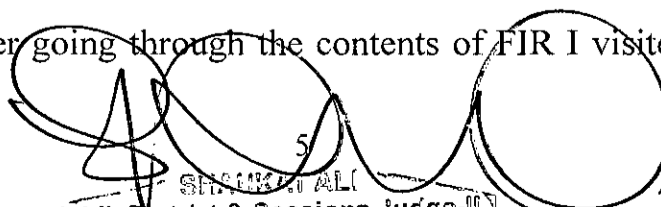
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Munawar Khan
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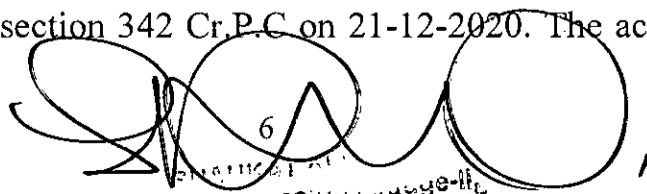
pecially designed for smuggling of narcotics. The waistcoat was removed from the person riding the motorcycle. The waistcoat having four pockets was searched and from the three pockets chars two packets each was recovered whereas from the 4th pocket three packets chars was recovered. Total 9 packets were recovered which were wrapped in a plastic tape. The chars was weighted each packets containing 1200/1200 grams total 10800 grams along with scotch tape. The waistcoat was separately weighted which was 220 grams. 10/10 grams were separated from each packets for FSL and sealed into parcel No. 1 to 9 whereas the remaining chars along with the waistcoat was sealed into parcel No.10. In each packet the stamp of MK was put whereas on each parcel three stamps of MK was also affixed. I prepared the recovery memo Ex. PW- 4/1 on the spot in my presence of marginal witnesses. I also prepared the card of arrest Ex.PW-4/2 of the accused I drafted the Murasila Ex.PA/1 and sent the same to the PS through Constable Muhammad Sadiq for registration of FIR. I was present at the spot when at 1:30 PM the IO came to the spot and prepared the site plane EX.PB on my instance. We left the place of occurrence at 3:00 Pm and reached to the PS at 4:00 PM. I handed over the case property and samples along with motorcycle to the Muharrir and the accused was put in the lock-up. Today the case property parcel No. 10 is before the court which is Ex.P1 and the motor cycle is Ex.P2. After completion of investigation I submitted complete challan Ex.PW-4/3. Today I have seen the above documents which is correctly bears my signature”

PW-5 is the statement of Shal Muhammad SI/IO who stated that “I was present in PS. On 04-12-2019 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


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spot inspection. When I reached to the spot there SHO Muhammad Shafiq along with his police nafri was present. On the spot I inspected the case property and accused was also shown to me. I recorded the statement of PWs. I prepared the site plan at the pointation of SHO which Ex.PB. I returned to the PS where the accused was in the lock-up of the PS. I preliminary interrogated the accused facing trial. I recorded the statement of Constable Muhammad Sadiq and Libab Ali Muharrir. On 05-12-2019 I produced accused before the Illaqa Magistrate u/s 364/164 Cr.PC vide my application Ex.PW-5/1 and 02 days custody was granted. I interrogated the accused during custody and on the expiry of custody I again produced the accused for further custody vide my application Ex.PW-5/2. The application of further custody was refused and the accused was sent to the judicial lock-up. I dispatched the parcels No. 1 to 9 through application along with road certificate already Ex.PW-2/1 to the FSL Peshawar through Constable Ameer Nawaz. I received the FSL report Ex.PZ which is placed on file. The copy of register No. 19 is Ex. PW-5/4. When Ameer Nawaz constable returned from the FSL. I recorded his statement u/s 161 Cr.PC. I placed on file the arrival and departure DD which are Ex.PW-5/5. I issued letter Ex. PW-5/6 to Excise Office for the verification of documents and motorcycle. I received the report from Excise office which is Ex.PW-5/7. On completion of investigation I submitted case file to the SHO for submission of challan. The accused was juvenile and this respect the probation officer submitted his report which is Ex.PW-5/8 and I placed it on file. Today I have seen the above documents which are correctly bears my signature.”

After the prosecution closed its evidence, the statements of the accused was recorded under section 342 Cr.P.C on 21-12-2020. The accused denied


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the allegation of the prosecution but he refused to be examined on oath or to produce defense, therefore case was adjourned for final arguments.

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 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 DD available on file does not support the recovery of contrabands from the possession of accused and negates the case of prosecution, 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.



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

The complainant on 04-12-2019 during gusht received information regarding the smuggling of chars. The accused was allegedly arrested during Nakabandi on Sultan Zai road near Sultan Zai Bridge and chars was allegedly recovered from the possession of accused. The complainant stated that they enter their departure from the PS and arrival to the PS in the daily diary of the PS and make correct entry in the DD. In daily diary No.4 and 10 dated 04-12-2019 Ex.Pw-5/5 the departure of the complainant from the PS and his arrival to the PS was incorporated, the copy of which was placed on file by the IO during his investigation of the case. The IO stated in his cross examination that DD Nos.4 & 10 dated 04-12-2019 Ex.PW-5/5 is correct and he has correctly placed it on file. It is specifically mention in the DD No.4 & 10 the complainant left the PS in a private vehicle for gusht, however PW-03 and PW-04 stated in their cross examination that they were on gusht in an official vehicle pick up which is against the entry made in the DD Ex.PW-5/5 and negates the gasht of the complainant on the date and time of the occurrence. Secondly the time of occurrence narrated in the Murasila Ex.PA is 10:20 hours and Aftab ASI stated in his cross examination that they left the PS for gusht at 08:00 Hours however the DD Ex.PW-5/5 reflects the time of departure of the complainant from the PS for gusht is 11:20 hours. The complainant also stated in his cross examination that in DD No. 4 Ex.PW-5/5 his departure from the PS is 11:20 hours which is time after the time of occurrence which negates the occurrence as alleged by the complainant on the time mentioned in the Murasila and also negates the recovery of contraband from the possession of the accused in the mode and manner alleged by the prosecution. Furthermore

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the complainant alleged that chars 10800 grams were recovered from the accused however mad No. 10 dated 04-12-2019 Ex.PW-5/5 shows that only 220 grams chars was recovered from the accused which further negates the recovery of alleged quantity of chars from the possession of accused and makes the story of prosecution highly doubtful.

The report of the Forensic Science Laboratory Ex.PZ available on file shows that it is deficient in terms of rule 6 of control of narcotic substance (Government Analyst) Rule 2001 as it does not refer the necessary protocols and does not mention the tests applied and their results which affect the reliability of FSL report in respect of contraband allegedly recovered from the possession of accused. The FSL report in the instant case is deficient which is not a conclusive proof of recovery of narcotic substance from the accused. The FSL report in the case against the accused does not meet the requirements of law therefore such report cannot be relied upon for the conviction of accused and the recovery of contraband from possession of accused cannot be believed. Reliance is placed on 2015 SCMR 1002 and on the judgement reported in Criminal Petition No. 733 of 2019 of august Supreme Court of Pakistan in case title Qaiser Javid Khan vs the State.

The careful and cautious scrutiny of the statements of the witnesses produced by the prosecution would evince that there are several doubts in the case against the accused which make the recovery of chars from the possession of accused not believable. Aftab Ahmad ASI (PW-03) stated during his cross examination that the chars were in slab form and was hard and each packet containing one slab. The complainant stated in his cross examination that chars garda was recovered and it was not in powder form however when the case property was de-sealed on the application of counsel

MS NAUKAT
Addl District & Sessions Judge
Orakzai Hangu

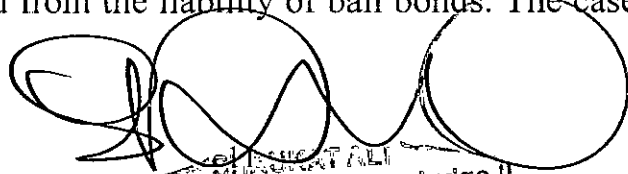
for accused and it was found that one packet was in powder from which negated the statement of PW-03 and made the recovery doubtful. Furthermore the complainant stated that the Murasila was drafted by Aftab Ahmad ASI on his dictation but Aftab Ahmad ASI nowhere stated in his statement that Murasila was drafted by him on the dictation of complainant. The complainant and Aftab ASI stated in their cross examination that on the spot at that time only accused facing trial was arrested and no other person was arrested however Mad No. 10 dated 04-12-2019 Ex.PW-5/5 shows that another accused was also arrested on the same date vide case FIR No. 43 of the same PS which makes the statement of complainant and PW-03 not believable. Furthermore when the complainant was asked that whether constable Sadiq who took the Murasila to the PS returned to the spot or not, to this question the complainant answered that constable Sadiq did not return to the spot, however the IO belied the complainant and stated that when we reached to the spot for spot inspection constable Sadiq was present there. The complainant stated in his cross examination that the particulars of the case were written by Aftab ASI (PW-03) on the parcels and the FIR No. was later on written on parcel No.10 by Aftab ASI in the PS after the registration of the case however Aftab ASI negated the complainant (PW-04) and stated that he does not know that who wrote FIR No. on the parcels and stated that the SHO himself wrote the particular of the case on parcel No. 10. Furthermore the presence of the Aftab ASI is also doubtful on the spot along with the complainant as his name is not mentioned in the DD No. 4 dated 04-12-2019 regarding the departure of complainant from the PS. PW Aftab Ahmad ASI also stated in his cross examination that his name is not mentioned in DD NO. 4 Ex.PW-5/5 which negates his presence with the complainant.

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As per content of Murasila the accused was arrested on 04-12-2019 and chars was allegedly recovered from him. The samples were separated from the packets on 04-12-2019 and were handed over to Muharrir who handed over the same to the IO however the IO dispatched the samples sealed into parcels No. 1 to 9 to the FSL on 12-12-2019 after a delay of 08 days which is nowhere explained. There is no evidence of the safe custody of the samples during the intervening period which makes the report of chemical examiner seriously doubtful. The alleged chars which was recovered was chars *Garda* as per contents of Murasila Ex.PA and the samples in parcels No. 1 to 9 sent to the FSL vide road certificate Ex.PW-2/1 were also chars *Garda* whereas the FSL report Ex.PZ 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 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.

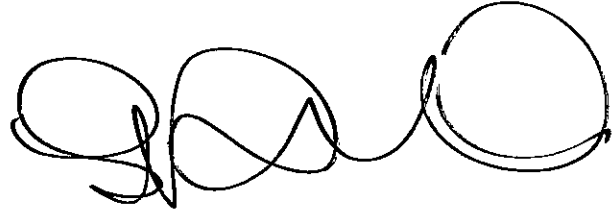
As sequel to the above discussion, the prosecution has failed to bring home the guilt of the accused beyond any reasonable shadow of doubt therefore; the accused is acquitted in the instant case from the charges leveled against him by extending him the benefit of doubt. The accused is on bail, his sureties are discharged from the liability of bail bonds. The case property be


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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.

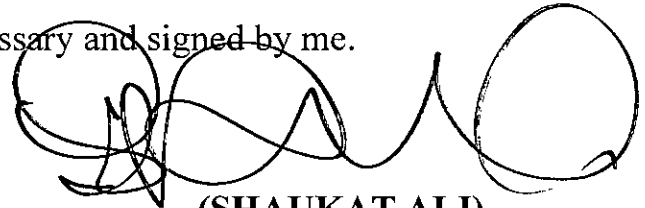
Announced
15th January, 2021



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