

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

Special case No.....10 of 2020
Date of Original Institution18.09.2020
Date of Present Institution.....16.12.2020
Date of Decision.....29.01.2021

State through Muhammad Rahim Khan SI Police Station Upper Orakzai
.....(**Complainant**)

VERSUS

Ajmir Asghar s/o Afzal Shah ; aged about 34 years r/o Caste Ali Khel,
Tappa Jaserat Khel, Targho, Taghnaka, Ghiljo District Orakzai
..... (**Accused Facing Trial**)

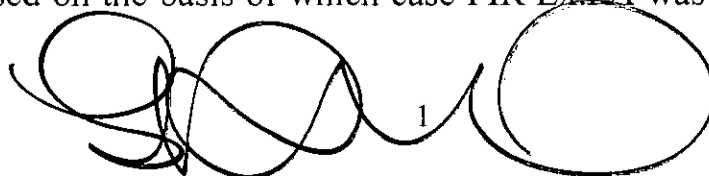
Represented by:

Mr. Javed Iqbal Anwar Learned Sr.PP for State
Mr. Jabir Hussain Advocate and Mr. Insaf Ali Advocate, counsels for
accused

**CASE FIR NO. 32 DATED 18.08.2020 U/S 9-(c) KP CNSA OF
POLICE STATION LOWER ORAKZAI**

JUDGMENT

The prosecution story is that on 18-08-2020 the complainant Muhammad Rahim SI was present on metal road on Naka Bandi along with other police official at Nala Post Dabori, that in the meanwhile a young person was coming from Dabori side who was stopped on suspicion and was searched, that during his personal search from his side pocket one plastic envelope white color was recovered containing chars *Garda* weighing 390 grams, that from the total chars 10 grams were separated for FSL and sealed into parcel No. 1 and the remaining 380 chars was sealed in parcel No. 02 as case property, that the accused disclosed his name Ajmir Asghar s/o Afzal Shah who was arrested and Murasila was drafted and sent through Constable Haroon to the PS for registration of FIR against the accused on the basis of which case FIR Ex.PA was registered against



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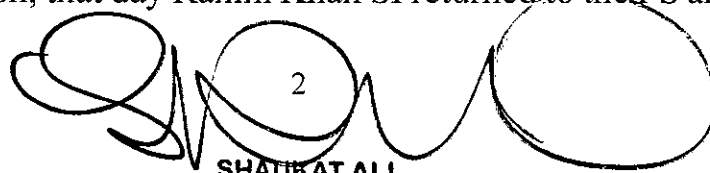
the accused. After the registration of the case, the case was handed over to the investigation staff for the purpose of investigation.

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 recorded the statement of prosecution witnesses and accused u/s 161 Cr.PC. The IO also dispatched the samples sealed in parcel No. 1 to the FSL for chemical examiner report and received report of FSL in affirmative, which was placed on file. 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.

The complete challan was received on 18-09-2020 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 10.10.2020, to which the accused pleaded not guilty and claimed trial, therefore, the prosecution was allowed to produce its evidence. During the trial of the case, the prosecution examined 04 PWs.

The gist of the prosecution evidence is as under:

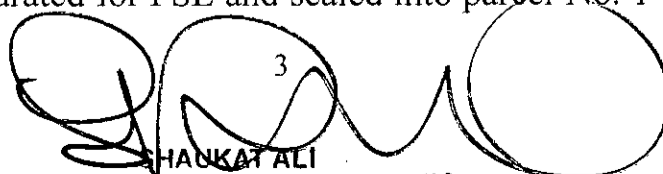
PW-1 is the statement of Abdul Manan HC who stated that "During the days of occurrence of the instant case, I was posted as Madad Muharrir in PS Upper Orakzai. On 18-08-2020, Constable Haroon brought a Murasila to the PS which was sent by Rahim Khan SI. I reduced the contents of the Murasila into FIR register as FIR no. 32. The copy of FIR is Ex. PA. Thereafter, I handed over the original Murasila and a copy of FIR to IO. Later on, that day Rahim Khan SI returned to the PS and handed


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over 02 parcels to me. I handed over parcel no. 1 to IO and placed parcel no. 2 in the maal-khana after making entry about the same in register no.19. My statement was recorded u/s 161 CrPC. Today I have seen the copy of FIR which is correct and correctly bears my signature.”

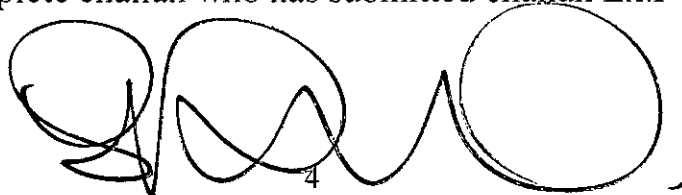
PW-2 is the statement of Muhammad Rahim SI who stated that “ I along with Abid, Rukh Amin and Haroon were present at Pukhta road near PP Dabori on Naka Bandi when a young person was coming from Dabori side who was stopped on suspicion and was searched. During search of the accused from the side pocket one plastic envelope white color as recovered which was containing chars garda and on weighment it was 390 grams. 10 grams was separated for FSL and sealed into parcel No. 1 whereas the remaining 380 grams was sealed into parcel No. 2. The accused disclosed his name Ajmir Asghar. I drafted the Murasila and prepared the recovery memo and card of arrest and sent the same to the PS through constable Haroon for registration of FIR. The Murasila is Ex.PA whereas the recovery memo and card of arrest are Ex.PW-2/1 and Ex.PW-2/2 respectively. I took the accused to the PS and handed over the case property along with the accused to the Muharrir of the PS then I left for PP Dabori. The IO prepared the site plan in my instance and pointation. Today I have seen the FIR which correctly bears my signature.”

PW-3 is the statement of Abid Ullah Constable who stated that “I was present with the complainant on naka bandi at Pukhta road near PP Dabori when a young person was coming from Dabori side who was stopped on suspicion and was searched. During search of the accused from the side pocket chars was recovered and on weighment it was 390 grams. 10 grams was separated for FSL and sealed into parcel No. 1 whereas the


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remaining 380 grams was sealed into parcel No. 2. The complainant drafted the Murasila and prepared the recovery memo and card of arrest and sent the same to the PS through constable Haroon for registration of FIR. The case property in parcel No.2 is Ex.P-1. My statement was recorded u/s 161 Cr.PC. Today I have seen the recovery memo which correctly bears my signature.”

PW-4 is the statement of Malak Janan SI/IO who stated that “On receipt of copy of FIR, Card of arrest, recovery memo and Murasila, I visited the spot along with my police nafri and there on the spot I prepared site plan Ex. PB on the pointation of SI Reheem. The SI Raheem has shown me the case property and accused on the spot and thereafter, I recorded statements of marginal witnesses of the recovery memo Constable Abid and Rukh-ul-Amin. Thereafter, the complainant returned to the PS and after completion of proceedings on spot, I along with police nafri returned back to the PS. In the PS, I recorded statements of Muharrir Abdul Manan u/s 161 Cr.P.C. On 19.08.2020, I produced accused before the court of Judicial Magistrate vide my application Ex. PW 4/1 for obtaining his 03 days physical custody, as a result of which three days police custody was turndown. I recorded the statement of accused u/s 161 Cr.P.C and sent to judicial lock-up. On 24.08.2020, I took the parcels no. 1, containing 10 grams of chars garda along with road permit certificate Ex. PW 4/3 and application Ex. PW-4/2. The FSL report is Ex. PZ which is placed on file. I annexed attested copy of register no. 19 Ex.PW-4/4 on the case file. After completion of investigation I handed over the case file to the SHO for submission complete challan who has submitted challan Ex.PW-4/5 which



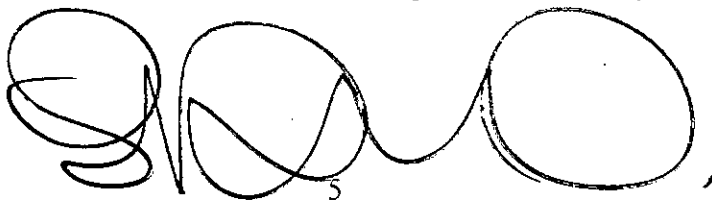
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correctly bears his signature. Today I have seen the above documents which are correct and correctly bears my signature.”

On 13.01.2021 after the prosecution closed its evidence, the statements of the accused was recorded under section 342 Cr.P.C on 19-01-2021. 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.

Learned APP for the State argued that the chars was recovered from the personal possession of accused during his body search, that the sample sealed in parcel No.1 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 of chars from the accused, the learned APP 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 APP for the state and argued that there are major contradiction in the statement of prosecution witnesses who do not support the allegation of prosecution, that the sample was sent to the FSL with unexplained delay and the prosecution could not prove the safe custody of the sample 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

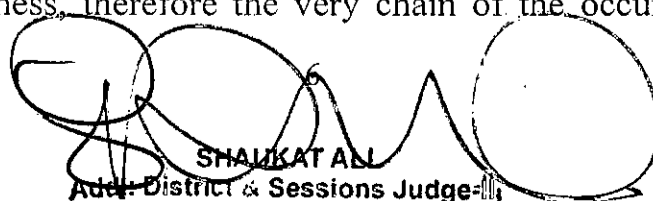


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of accused in such like cases, that the case of prosecution is full of doubts, the benefit of which shall be extended to the accused.

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

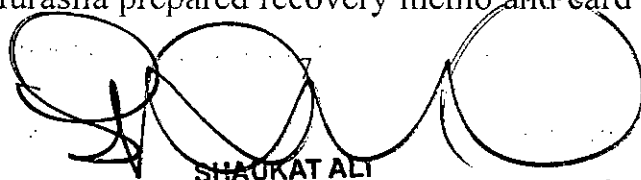
The prosecution case in brief is that the accused is charged for having his possession char weighing 390 grams allegedly recovered from his side pocket during his body search on *Naka Bandi* at Dabori Check Post. The prosecution in support of allegation against the accused examined Muhammad Rahim SI/Complainant (PW-02) and Abid Ullah the witness to the recovery memo (PW-03) and other two witnesses. The complainant narrated in the Murasila Ex.PA and also in his statement before the court as PW-02 that he was accompanied by constables Abid, Haroon and Rukh Ullah and after the arrest of the accused he drafted Murasila, prepared recovery memo and card of arrest of accused and sent the same to the PS through constable Haroon for registration of FIR. Abdul Manan HC Muharrir of the PS (PW-01) stated in his examination in chief that constable Haroon brought Murasila to the PS on 18-08-2020 which was sent by Rahim Khan SI and he reduced the contents of Murasila into FIR. There is nothing in his statement that he received recovery memo and card of arrest of the accused which shows that recovery memo and card of arrest were not handed over to constable Haroon which negates the statement of complainant that he drafted the Murasila, prepared recovery memo and card of arrest and sent the same to the PS through constable Haroon for registration of FIR. Furthermore constable Haroon who took the Murasila, recovery memo and card of arrest to the PS was also not examined as prosecution witness, therefore the very chain of the occurrence starting


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from the spot has not been established which puts doubts in the prosecution case. Reliance is placed on the Judgement of Peshawar High Court in case titled Javed and two others Vs The State reported in 2020 YLR 311.

Malak Janan SI (PW-04) is the investigation officer who investigated the case against the accused stated that SI Rahim has shown him the case property and accused on the spot and thereafter he recorded statement of margin witnesses of the recovery memo Ex.PW-2/1 namely constable Abid and Rukh-ul- Amin, however, Abid Ullah Constable (PW-03) who is cited as witness to the recovery memo stated in his cross examination that he only signed the recovery memo and did not make any statement which makes his presence with the complainant at the time of occurrence not believable. Constable Abid Ullah in his cross examination further stated that he is conversant with the hand writing of complainant and stated that he cannot say that who wrote the Murasila and card of arrest and cannot confirm that the recovery memo is in the hand writing of complainant, which creates doubts in the spot proceeding by the complainant and makes the case of prosecution doubtful and statement of prosecution witnesses unworthy of any credit and could not be based for the conviction of accused. Furthermore the IO stated that he prepared the site plan Ex.PB on the pointation of complainant however the complainant stated otherwise in his cross examination that the writing of the site plan is also in his hand writing which he perused today which shows that all the documents were prepared by the complainant and makes the spot proceeding as narrated by the complainant in the Murasila highly doubtful.

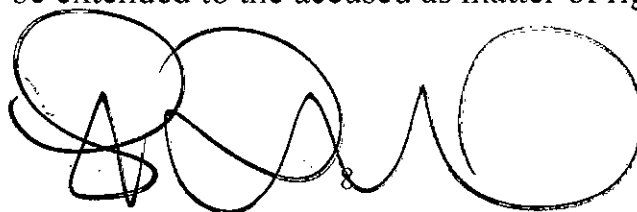
The complainant in his evidence before the court as PW-02 stated that he drafted Murasila prepared recovery memo and card of arrest of the



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accused and in his cross examination stated that the writing in the site plan is also in his hand writing which he perused today. During the cross examination the counsel for accused requested that the witness who is the scribe of the Murasila may write a few lines to compare it with the writing of Murasila recovery memo and card of arrest. The request was allowed and the witness wrote about six lines on a white paper from the Murasila which was placed on file for comparison. The writing on the plain paper before the court by the complainant when compared under article 84 of the Qanun-e-Shahadat order, 1984 with the writing of Murasila, card of arrest and recovery memo to determine the genuineness of writing of complainant, the writing of the complainant on plain paper before the court was totally a different hand writing which shows that the Murasila, recovery memo and card of arrest is not in the hand writing of complainant which makes the arrest of the accused in the mode and manner at the place of alleged occurrence and recovery of chars from his possession seriously doubtful.

The evidence produced by the prosecution is not reliable and confidence inspiring and do not connect the accused with the commission of offence. There are many doubts regarding the arrest of the accused and recovery of alleged chars from his possession in the mode and manner narrated by the complainant. 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 the accused shall be entitle to the benefits of such doubt. There are numerous doubts in the prosecution case the benefit of which shall be extended to the accused as matter of right.

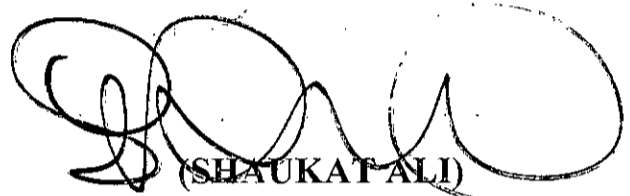


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As sequel to the above discussion, the prosecution could not prove the case against the accused beyond any reasonable shadow of doubt therefore; the accused is acquitted in the instant case from the charges leveled against him by extending him the benefit of doubt. The accused is on bail, his sureties are discharged from the liability of bail bonds. The case property be kept intact till the expiry of period of appeal/revision and where after the same be dealt with in accordance with law.

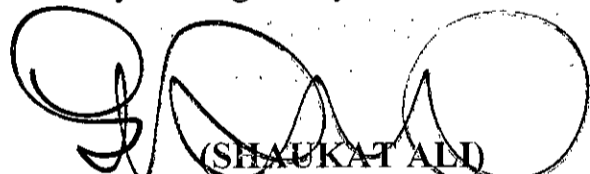
File be consigned to the District Record Room Orakzai after necessary completion and compilation.

Announced
29th January, 2021


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CERTIFICATE

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


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