

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

SPECIAL CASE NO. : 23/3 OF 2020
DATE OF INSTITUTION : 27.10.2020
DATE OF DECISION : 05.04.2021

STATE THROUGH HAKIM ALI SHAH SI, POLICE POST ZERA,
KALAYA LOWER ORAKZAI

.....(COMPLAINANT)

-VERSUS-

ABDUL KARIM S/O RAZIM SHAH, AGED ABOUT 46 YEARS, TRIBE
FEROZ KHEL, SUB-TRIBE JAISAL KHEL TAJIKAN, LOWER
ORAKZAI

..... (ACCUSED FACING TRIAL IN CUSTODY)


Present: Umar Niaz, District Public Prosecutor for state.
: Mudassir Ijaz Advocate for accused facing trial.

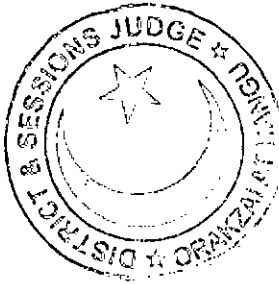
FIR No. 101 **Dated:** 10.09.2020 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019

Police Station: Lower Orakzai Kalaya

JUDGEMENT
05.04.2021

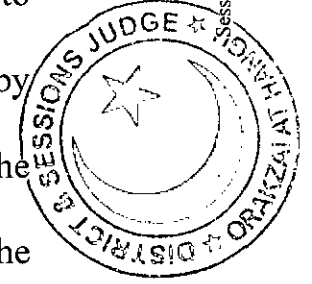
The story of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA are that; on 10.04.2020, complainant, Hakim Ali Shah SI received spy information about smuggling of narcotics/chars from Anjari side in pick-up no. B-9495/Kuram Agency towards District Khyber side. On this information, complainant alongwith other police officials laid barricade on Ghaz Dara road. At about 1600 hours, the above-mentioned pick-up came to spot from Anjari side which was signalled to stop by the complainant and upon stoppage of the said vehicle, the local police deboarded the


ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela



driver of the vehicle who disclosed his name as Abdul Karim s/o Raheem Shah. The complainant started search of the vehicle, and upon search, found one secret cavity made with iron piece on the back of cabin of the vehicle. The complainant, Hakim Ali Shah SI opened the secret cavity and found 27 packets chars. Each packet was weighed on the spot through digital scale which came out to be 1200 grams each packet (total 32,400 grams) of chars. The complainant separated 10/10 grams chars from each packet and packed and sealed the same into parcels no. 1 to 27 for chemical analysis of FSL, whereas remaining quantity of chars was packed and sealed in separate parcels no. 28 to 54 (Ex. P1 to Ex. P27). Similarly, the iron piece was packed and sealed by the complainant into parcel no. 55 (Ex. P28). The complainant affixed monogram of MS on all the parcels. The complainant also took photographs of the vehicle (Ex. PW 4/2 and Ex. PW 4/3) and took into possession the recovered vehicle alongwith key (Ex. P29 and Ex. P30 respectively). The accused was accordingly arrested by issuing his card of arrest Ex. PW 4/1. The local police took into possession the recovered chars alongwith the vehicle in question through recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the PS which was converted into FIR Ex. PA. Hence, the case in hand.

Asghar Shah
 ASGHAR SHAH
 Sessions Judge/Judge Special Court,
 Orakzai at Baber Mela



(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;

- I. Constable, Khan Wada as PW-1 and deposed that he has taken the samples of recovered contrabands to the FSL for chemical analysis on 11.09.2020 and after submission of the same, he was given the receipt of the parcels which he handed over to the IO upon return. PW-1 further deposed that he alongwith driver Tariq Aziz has also taken the recovered vehicle to the FSL for examination and on return parked the same in PS.
- II. Ain Ullah Moharrir deposed as PW-2 in respect of registration of FIR Ex. PA from the contents of Murasila besides deposed in respect of receipt of case property duly packed and sealed from the complainant which he thereafter kept in mal khana in safe custody whereas the recovered pick-up was parked inside the PS. The witness further deposed in respect of recording of entry regarding the case property in register 19 Ex. PW

Asghar Shah

ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela



2/1 as well as handing over of samples of the case property for FSL to the IO on 11.09.2020.

III. Muhammad Shafiq SHO as PW-3 deposed in respect of submission of complete challan Ex. PW 3/1 in the instant case against the accused facing trial.

IV. Complainant, Hakim Ali Shah SI and eyewitness, Sadar Ali HC, in their evidence as PW-4 and PW-5 respectively, repeated the story of FIR.

V. Lastly, investigating officer Shal Muhammad was examined as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case including preparation of site plan Ex. PB, recording statements of PWs, producing accused for obtaining physical custody through application Ex. PW 6/1, sending samples of chars and recovered vehicle to FSL Peshawar through constable, Khan Wada alongwith application Ex. PW 6/2 and road permit certificate Ex. PW 6/3, taking photographs of the vehicle through recovery memo Ex. PW 5/1, applied for verification of vehicle through Ex. PW 6/5, receipt of report of DC Kurram regarding he vehicle Ex. PW 6/6, receipt of FSL reports regarding vehicle and chars Ex. PK and

ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Meia



Ex. PK/1, placing on file the daily diaries Ex. PW 6/7 to Ex. PW 6/9 in respect of him and complainant departure and arrival to the PS, and finally submission of case file to the SHO for onward submission of challan in the court.

(3). 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.

(4). From the arguments and record available on file it reveals that the counsel for the defence mainly argued his case on the strength of possibilities i.e., the place of occurrence and police naka bandi being visible from quite some distance, there was every possibility of the accused, if having huge quantity of narcotics, could easily fled away. It was also submitted that the length of the secret cavity, as per version of the ocular account, is six feet and there was no possibility to take out packets of chars by hand without using any tool for the same. That it is not possible to recover, weigh, pack and seal twenty-seven packets of chars within 45 minutes besides objected that the nature of chars being garda or pukhta is not mentioned in the initial report. Alongwith same other objections with regard



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Meela



to the mode and manner of the occurrence were raised during the course of arguments.

- (5). However, it has to be remembered that the evidence produced is to be shattered not on the basis of possibilities but to contradict the PWs on material points with regard to the mode and manner of the occurrence. In this regard, the record reveals that accused facing trial is directly and by name charged for the daylight occurrence for the recovery of huge quantity of narcotics in the promptly lodged report. The single accused is charged has ousted the chances of substitution or wrong implication. The recovery was affected from the secret cavity of the pick-up, which secret cavity was made in the cabin of the pick-up body and was closed with iron plate which vehicle was being driven and in the sole control and possession of the accused facing trial thereby clearly showing his intention for smuggling of huge quantity of narcotics with pre-planning. The substance recovered proved chars vide report of the FSL Ex. PK/1 and the samples of chars received in the FSL within 24 hours of its recovery. The vehicle was proved non-registered and non-custom paid as per report of the DC Kurram Ex. PW 6/6 besides the said report is showing that the registration number plate B-9495/Kurram agency which was affixed on the recovered pick-up is registered in the name of vehicle fielder. As such, no document with regard to the vehicle was produced by the accused. The recovered pick-up



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Meia



in question proved during the evidence that the same was in sole possession of the accused facing trial at the time of occurrence, having secret cavity, used for the commission of offence for the transportation of huge quantity of narcotics and proved non-custom paid.

(6). The complainant, Hakim Ali Shah SI PW-4 and eyewitness, Sadar Ali HC PW-5 in their evidence stood firm regarding the mode and manner of the occurrence and despite lengthy cross examination, nothing favourable to the accused could be extracted from their mouths. There exist though little bit omissions in the evidence of the ocular account, however the same has by no means either denied the mode and manner of the occurrence or have disputed the availability of the PWs on the spot on the very day of the occurrence. The prosecution proved the safe custody of the case property from the spot to the PS and thereafter its dispatch to the FSL by producing the Moharrir, Ain Ullah PW-2 who not only produced extract from register 19 in respect of safe custody of the case property but also deposed in respect of the handing over of samples to the IO for its onward submission to the FSL besides the PW-1 constable, Khan Wada deposed in respect of receipt of samples of the case property and its safe dispatch to the FSL Peshawar for chemical analysis. The Investigating Officer, Shal Muhammad SI PW-6 besides other proceedings has placed on file the copies of the daily diary Ex. PW 6/7 to Ex. PW 6/9 in

Asghar Shah

ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Meia

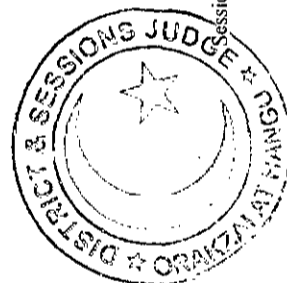


respect of arrival of the complainant and other police officials from the spot to PS on the day of occurrence confirming thereby their presence at the spot on the very day and time of occurrence. The counsel for the accused though objected the non-production of the daily diary pertaining to the departure of the complainant from the PS to the spot. But, however, when the said question was put to the complainant in cross examination, it was submitted that on the day of occurrence he was deputed at police post Zera and there from he proceeded for naka bandi to the spot and that no daily diaries maintained in the police post Zera in the newly merged District.

(7). As for as the objections of the defence are concerned, the same as discussed earlier are possibilities which were not proved by the defence to be in their favour. Moreover, the possibilities if could not be proved by the parties who alleges the same, then an adverse inference would be drawn that the same happened in the mode and manner as alleged by the other party. For example, if it was claimed that the place of occurrence is visible from quite some distance and that had the accused was in possession of huge quantity of narcotics, then it was easy for him to flee away from some distance while seeing the police. However, the same version being not proved, the version of the prosecution is more appealing that the accused was bold enough and have placed the narcotics in secret cavity was under presumption to pass the naka bandi

Asghar Shah

ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

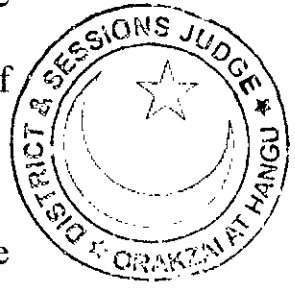


without any hindrance but failed to do so. As far as the length of six feet and recovery of packets of chars by hand is concerned, this question when put to the complainant in evidence then he replied that the secret cavity is closed from both the ends and opened from the middle and as such it is very easy to take out the samples by hand from the secret cavity. Moreover, with regard to completion of proceedings at the spot, the ocular account stood firm regarding the completion of the proceedings within 45 minutes, the defence could not shatter their version regarding the completion of proceedings in the time alleged. The nature of substance recovered proved through report of FSL as chars besides when the said question was put to the complainant in evidence, it was replied that the chars were in little bit soft form at the time of its recovery and that due to weather conditions the nature of chars changes its form.

- (8). 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, the accused facing trial, Abdul Karim s/o Razim Shah is convicted and sentenced u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 for having in his possession 32,400 grams chars to suffer rigorous imprisonment for life and also to pay fine of Rs. 500,000/- (five lac). In case of default, the accused shall further suffer



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela



simple imprisonment for 6 months. The benefit of section 382-B Cr.P.C is however extended in his favour. The case property i.e., chas be destroyed while the pick-up in question stand confiscated to the state being used in the commission of offence but after the expiry of period provided for appeal/revision. Copy of the judgement delivered to the accused today free of cost and his thumb impression to this effect obtained at the margin of the order sheet besides the copy of judgement also be issued to the District Public Prosecutor u/s 373 of the Cr.P.C free of cost.

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

Announced
05.04.2021



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment consists of ten (10) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 05.04.2021.



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

05/04/21