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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.19/III of 2021

Date of institution: 27.07.2021

Date of decision: 19.01.2022

The State

...Versus...

Wajid Rehman son of Behram Khan, resident of Qaum Bezot, Tappa Mir
Kali Khel District Orakzai. ... (Accused facing trial)


**Case FIR No.73, Dated 08.06.2021 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.73 dated 08.06.2021 u/s 9-C Khyber Pakhtunkhwa Control of Narcotics Substance Act, 2019, registered at Police Station Kalaya Orakzai.

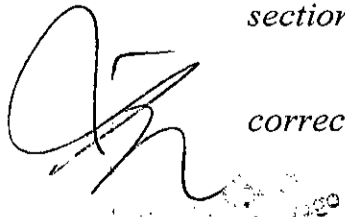
2. Facts of the case are such that Malak Abdul Janan SHO Police Station Kalaya Orakzai while on routine patrolling of the area had noticed accused as suspicious. He overpowered the accused and recovered chars measuring 700 grams from the fold of his trouser which was wrapped in yellow scotch tape. Out of 700 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 Wajid Rehman Son of Behram Khan, resident of Bezot, Mir Kali Khel, Orakzai. Murasilla was drafted on the spot and sent to Police Station for lodging the case which

was given effect in the captioned FIR culminated into present case.


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3. After conclusion of the investigation, complete challan against the accused facing trial was presented. He was summoned for being on bail and on appearance 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 five (05) witnesses. The crux of the prosecution evidence is sketched below:

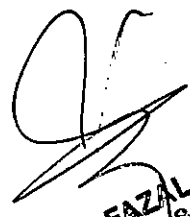
(i). Muhammad Ayub Muharrir, PS Kalaya Orakzai, was examined as PW-1, who Stated that on 08-06-2021, I was present on my duty at Kalaya. The constable Waiz Ali brought Murasila to the PS which was sent by Malak Abdul Janan SHO. I chalked out the FIR Ex.PA on the basis of Murasila. When SHO returned to the PS he handed over to me the case property i.e parcel No.1 and parcel No.2 in sealed condition along with the accused. I locked the accused in the PS lockup and also entered the detail of the case property in register No.19 and kept the case property in the Malkhana of the PS for safe custody. To this extent my statement under section 161 Cr.PC was recorded. On 10-06-2021, I handed over the parcel for the FSL to the IO and my statement to this extent was recorded under section 161 Cr.PC. Today I have seen the FIR which is correct and correctly bears my signature.



(ii). PW-2 is the statement of Nikzad Ali Constable of Police Station Kalaya Orakzai, who deposed that "on 10-06-2021 Muhammad Ishaq SI/IO handed over to me the parcel No.1 in sealed condition having monogram in the name of MJ for the FSL along with application Ex.PW-2/1 and road certificate Ex.PW-2/2. I went to the FSL Peshawar where I submitted the parcel for the FSL and obtained receipt on the road certificate. On my returned to PS I handed over the receipt to the IO. My statement was recorded under section 161 Cr.PC.

(iii). Malak Abdul Janan, SHO Police Station Daboori Orakzai, was examined as PW-3, stated that "during the period of occurrence I was posted as SHO Police Station Kalaya. I was on routine patrolling of the area. I had noticed a person suspicious. I overpowered him and on search of his body, one packet of chars measuring 700 grams has been recovered. I separated chars measuring 10 grams for FSL examination and sealed the same into parcel No.1; whereas, the balance quantity was separately sealed as case property into parcel No.2 Ex.P-1. 3/3 monograms in the name of MJ were affixed on each parcel. I arrested the accused and prepared the Murasila which was sent to Police Station through the hand of Constable Waiz Ali. I also prepared recovery memo, card of arrest on the spot. Murasila is Ex.PA/1, recovery memo is Ex.PW-3/1 and Card of arrest is

Ex.PW-3/2. The IO prepared site plan on my pointation. Today I have seen


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the relevant documents which are correct and correctly bear my signatures."

(iv). PW-4 is the statement of Waiz Ali constable of Police Station Kalaya, who deposed that *"I am the marginal witness of the recovery memo already Ex.PW-3/1 vide which the SHO recovered one packet of chars wrapped in yellow scotch tape from the accused which came out 700 grams after its weighment through digital scale. 10 grams were separated for the FSL and sealed the same into parcel No.1 while remaining 690 grams sealed into parcel No. 2 already Ex.P-1. 3/3 monograms in the name of MJ were affixed on each parcel. I along with other marginal witness Yasir Ali signed the recovery memo which is correct and correctly bears my signature. I also took the Murasila from the spot to the PS for registration of the case. My statement under section 161 Cr.PC was recorded by the IO."*

(v). Muhammad Ishaq Incharge Investigation PS Daboori, was examined as PW-5; stated that *"during the relevant days, I was posted as SI in Investigation Wing of the PS Kalaya. The investigation in the instant case was entrusted to me on 08-06-2021 after registration of FIR. I received copy of FIR, Murasila, card of arrest and recovery memo and thereafter I visited the spot. On the spot, the complainant have shown me the case*

property and accused. On pointation of complainant, I prepared site plan


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Ex. PB. I have recorded statements of marginal witnesses of recovery memo Ex.PW-3/1 u/s 161 Cr.PC. After completion of investigation I came back to the PS. In the PS, I recorded statement of Muharrir Muhammad Ayub u/s 161 Cr.PC. Accused was interrogated by me. On 09-06-2021, I produced accused before the court of Judicial Magistrate along with case property for obtaining his three days police custody vide my application Ex.PW-5/1, but my application was turned down and accused was sent to Judicial Lockup. I recorded statement of accused u/s 161 Cr.PC. On 10-06-2021, I collected parcel No.1 duly packed and sealed from Muharrir and sent the same to the FSL through Constable Nikzad Ali along with application addressed to the Incharge FSL already exhibited Ex.PW-2/1 and road permit certificate already exhibited PW-2/2 for chemical analysis. On return of Nikzad Ali from FSL Peshawar I recorded his statement u/s 161 Cr.PC. I have also recorded the statement of Muharrir u/s 161 Cr.PC. During course of investigation, I placed on file copy of register-19 Ex.PW-5/2 (STO by counsel for accused; the extract of register No.19 has prepared by the Muharrir and has not been exhibited at the time when his examination was recorded as PW-1). I have also placed on file copies of Naqalmad regarding departure of complainant from the PS and his return to the PS which are Ex.PW-5/3 and Ex.PW-5/4. After receipt of FSL, I placed the same on file Ex.PK. After completion of investigation, I handed over case file to the SHO for submission of challan. The complete challan


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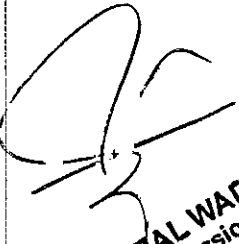
is Ex.PW-5/5. All the documents prepared by me are correct and correctly bear my signatures.

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 DyPP 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 is heinous in nature and prosecution has proved its case beyond doubt entailing conviction of the accused.


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 doubt and requested for acquittal of the accused.

7. Perusal of case record would reveal that according to FIR the accused was intercepted during routine patrolling of the area at barricade established


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on spy information on 08.06.2021 at 1200 hours and contraband/chars weighing 700 grams was recovered in presence of marginal witnesses namely Waiz Ali Constable and constable Yasir Ali vide recovery memo (Ex. PW-3/1). The former marginal witness (PW-4) was examined; whereas, the later marginal witness was abandoned. According to (PW-4), he was present with seizing officer on the eventful day. He stated that on body search of accused, chars wrapped in yellow scotch tape (Ex.P-1) was recovered from *Budh Shalwar* of the accused which contained single packet weighing 700 grams. 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 and other material questions have not been brought on record that renders the chain of custody disconnected.

8. Seizing Officer Malak Janan SHO, of PS Daboori was examined as PW-3, who stated that he has separated 10 grams of chars for FSL with his bare hands while recovery witness examined as PW-4 contradicted that the same had been done with the help of knife. Seizing Officer stated that Police Party was present at the right side of the main road; whereas, the recovery witness termed at left side. The Seizing Officer and recovery witness have also contradicted in timing of incident. All these contradictions are material


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in nature and lead to creation of doubt in the recovery proceedings. Besides, no witness from public either associated with recovery of chars or to cite as marginal witness to the recovery memo Ex.PW-3/1. The Investigation Officer examined as PW-5 speaks about the place of occurrence as Bazar which fact has been confirmed by PW-4 but no private witness has been associated that create serious doubt as was laid down in 2015 PCr.LJ-1430 [Peshawar].

9. The texture of the chars as to whether it was garda or pukhta as none attestation of documents by Investigation Officer examined by PW-5 are points worth consideration when the recovery is doubtful. Similarly, the Investigation Officer has contradicted in timings of different proceedings conducted at various stages, with other witnesses examined as PW-1 to PW-4.

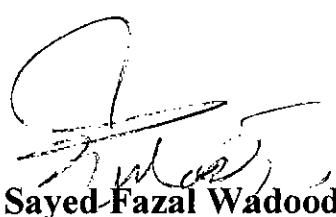
10. The examination of record as discussed above has given birth to reasonable doubt, the benefit of which has to be extended in favour of accused as was ordained in 2003 PLD 84 [Peshawar]. These facts and circumstances render the evidence as insufficient to believe the mode and manner of the crime narrated.

11. 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 criminal history in such like offences.

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12. In the light of above discussion, separately placed on file, consisting upon nine (09) pages, it is being held that the prosecution evidence is falling in insufficient category of cogency; whereas, the secure category evidence is full 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 Wajid Rehman son of Behram Khan resident of Qaum Bezot Tappa Mir Kali Khel, District Orakzai 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 be dealt with as per law after expiry of period of appeal/revision. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

ANNOUNCED
19.01.2022



Sayed Fazal Wadood
Additional Sessions Judge/Judge Special
Court Orakzai

CERTIFICATE:

Certified that this Judgment is consisting upon nine (09) 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