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**IN THE COURT OF SHAUKAT AHMAD KHAN**  
**SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI**  
**(AT BABER MELA)**

SPECIAL CASE NO. : 36/3 OF 2021  
DATE OF INSTITUTION : 21.04.2021  
DATE OF DECISION : 30.09.2021

STATE THROUGH MUJAHID KHAN SI, PS KALAYA

.....(COMPLAINANT)

-VERSUS-

ZABAN ALI S/O HABIB HASSAN, AGED ABOUT 46 YEARS, R/O  
CASTE MANI KHEL, TAPA TIRAYI HAL KHADIZAI DISTRICT  
ORAKZAI

..... (ACCUSED FACING TRIAL ON BAIL)

**Present:** Umar Niaz, District Public Prosecutor for state.  
: Sana Ullah Khan Advocate for accused facing trial.

**FIR No. 27**                      **Dated:** 27.02.2021      **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019

**Police Station:** Kalaya

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JUDGEMENT  
30.09.2021

The accused named above faced trial for the offence u/s 9 (d) of KP CNSA Act, 2019 vide FIR no. 27, dated 27.02.2021 of PS Kalaya, District Orakzai.

(2).                      The case of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA is; that on 27.02.2021, complainant, Mujahid Khan SI, PW-4 alongwith other police officials having laid a picket, was present at Boya check-post, when at about 10:30 am, a pick-up on way from Kurez side was stopped for checking. A person seated in the body of pick-up was having a white colour plastic sack in his lap

  
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which on checking led to the recovery of 05 packets of chars. On weighing each turned 1200 grams (total 6000 grams). The complainant/PW-4 separated 10 grams of chars from each packet for chemical analysis of FSL, packed and sealed the same into parcels no. 1 to 5 whereas the remaining quantity of chars weighing 1190/1190 grams were packed and sealed in separate parcels no. 6 to 10 with a sack in parcel no. 11, affixing three monograms of MS on all the parcels. The accused disclosed his name as Zaban Ali s/o Habib Hassan who was accordingly arrested by issuing his card of arrest Ex. PW 4/1. The complainant/PW-4 took into possession the recovered chars vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the PS through constable Akseer Ali, PW-5 which was converted into FIR Ex. PA by PW-3 Moharrir Ain Ullah.

- (3). After registration of FIR, it was handed over to PW-6, Shal Muhammad Khan SI for investigation. Accordingly, after receipt of FIR, PW-6 reached the spot. He prepared site plan Ex. PB at the pointation of complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 01.03.2021, the IO sent the samples for chemical analysis to FSL vide application PW 6/2 through constable Minhaz Hussain, PW-2, vide road permit certificate Ex. PW 6/3, the result whereof Ex. PK was received and placed on file by him. After completion of investigation, he handed over the case file to SHO Malak

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Abdul Janan, PW-1, who submitted complete challan Ex. PW 1/1 against the accused facing trial.

(4). Upon the receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to him u/s 265-C Cr.P.C and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

I. SHO Malak Abdul Janan is PW-1. He has submitted complete challan Ex. PW 1/1 on 02.03.2021 in the instant case against the accused facing trial.

II. Constable Minhaz Hussain is PW-2. He deposed that he has taken the samples of recovered chars in parcels no. 1 to 5 to the FSL for chemical analysis on 01.03.2021 and after submission of the same, he was given the receipt of the parcels which he handed over to the IO.


III. Moharrir Ain Ullah deposed as PW-3 in respect of registration of FIR Ex. PA by incorporating the contents of Murasila therein. He also deposed in respect of the case property received by him from the complainant duly packed and sealed which he had kept in mal khana in safe custody. The witness further deposed in respect of recording of

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entry of the case property in register 19 as well as handing over of samples of the case property for sending the same to FSL to the IO on 01.03.2021.

IV. Mujahid Khan SI is the complainant of the case. He appeared in the witness box as PW-4. In his statement he repeated the story narrated in the FIR.

V. Constable, Akseer Ali appeared in the witness box as PW-5. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-4 has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement. The witness deposed in respect of taking the copies of Murasila, card of arrest and recovery memo to PS.

  
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VI. Lastly, investigating officer Shal Muhammad SI was examined as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PB on the pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court, sent the representative samples to FSL and result of the same was placed on file

by him as well as annexing daily diaries regarding departure and return of SI Mujahid Khan in PS.

(5). Thereafter, prosecution closed its evidence whereafter statement of the accused was recorded U/S 342 Cr.P.C but the accused neither wished to be examined on oath nor wanted to produce evidence in defence. Accordingly, arguments of the learned DPP for the state and counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the state submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis have been

transmitted to the FSL within the prescribed period which have

been found positive for chars vide report of FSL Ex. PK. The

complainant, the witness of the recovery, the official

transmitted the sample to the FSL and the IO have been

produced by the prosecution as witnesses, whom have fully

supported the case of the prosecution and their statements have

been lengthy cross examined but nothing contradictory could

be extracted from the mouth of any of the witness of the

prosecution, that the prosecution has proved its case beyond

shadow of any doubt.


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(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the alleged chars have been shown recovered from his possession and the report of FSL support the case of prosecution, however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the IO on the spot, as detailed by the prosecution on the case file. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by the learned DPP for the state and learned counsel for the defence and the available record, following are the points for determination of charge against the accused facing trial:

- (i). Whether the recovery is proved to have been made from possession of accused facing trial in the mode and manner as detailed in the Murasila?
- (ii). Whether the occurrence has taken place and the investigation have been conducted in the mode and manner as detailed in the file?
- (iii). Whether the recovered substance is proved through report of FSL as chars?

  
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(9). As per contents of Murasila Ex. PA/1, the complainant alongwith Libab Ali HC, constable Akseer Ali and other police officials were present at Boya check-post when at about 10:30 hours a pick-up was stopped for checking. A person boarding the body of the pick-up was having a plastic sack in his lap which was searched on the basis of suspicion which led the complainant, PW-4 to the recovery of 05 packets of chars wrapped in yellow solution tape. Each packet on weighing through digital scale turned 1200 grams, a total of 6000 grams of chars. The complainant separated 10 grams of chars from each of the parcel as representative samples for chemical analysis to FSL and sealed into parcels no. 1 to 5 while rest of the chars were sealed by him in parcels no. 6 to 10 with empty sack in parcel no. 11 affixing three monograms of MS on each of the parcel. He conducted the search, seizure and in this respect prepared the recovery memo Ex. PC on the spot in the presence of marginal witnesses, Libab Ali HC and constable Akseer Ali, PW-5. The prosecution in order to prove the recovery of chars in the mode and manner as detailed in the Murasila Ex. PA/1 and recovery memo Ex. PC, examined the complainant Mujahid Khan SI as PW-4. In his examination in chief, he has reiterated the story detailed in the Murasila Ex. PA/1. With respect to his presence on the spot, he produced copy of daily diary Ex. PW 4/2 wherein vide DD no. 7 of 27.02.2021, the complainant alongwith constables Najib Ullah

  
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and Junaid Ali have been shown departed from the PS at 0920 hours (09:20 am) for the purpose of checking in Boya area. Similarly, vide DD no. 12 of the same date, he has returned to the PS at 1630 hours (04:30 pm). The stance of the prosecution is further supported by the statement of constable Akseer Ali as PW-5 who besides being eyewitness of the occurrence is a marginal witness of the recovery memo Ex. PC as well. He has almost narrated the same story as that of narrated by the complainant in his statement as PW-4. The statements of the complainant and eyewitness are tried to be shattered in the cross examination on the grounds; that the names of constable Junaid Ali and Wali Muhammad are not mentioned in the Murasila or in the site plan. That the complainant was not posted at Boya check-post, where the occurrence has taken place, rather one, Shayaz Khan ASI was Incharge of the check-post; therefore, in these circumstances the complainant was required to prove his presence on the spot but the prosecution has failed in this respect. That the complainant has neither shown the colour, make and model of the pick-up nor he has mentioned the name of the driver in the Murasila. That there are contradictions in the statements of both the witnesses regarding the time of departure and arrival of the complainant to and from the PS and that of the time of arrival and departure of the IO to and from the spot of occurrence and that no

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witness from the public has been associated by the complainant with the occurrence.

Keeping in view the aforementioned objections of defence, careful perusal of the material available on file coupled with statements of the PWs shows; that as statements of complainant and eyewitness are consistent regarding the time, date and place of occurrence, the mode and manner of recovery and the mode and manner of proceedings conducted by him on the spot; therefore, their statements cannot be thrown away on the aforementioned dents for the reasons that all the material and relevant facts are mentioned in the Murasila Ex. PA/1 and site plan Ex. PB and mere non-mentioning of the names of police officials named in the DD, in the Murasila does not render the aforementioned documents inadmissible in evidence. Second, true, the complainant during relevant days was not posted at Boya check-post and one, Shayaz Khan ASI was Incharge of the check-post but both the witnesses when asked, have explained the whole situation in their cross examination, to the fact that the said ASI/Incharge of the check-post having performed night duty was asleep at that time and that the constable Akseer Ali who was performing duty at the check-post has been associated as witness with the occurrence. Third, it is also true that the name of the driver and the colour, make and model of the pick-up boarded by the accused is not mentioned in the Murasila Ex.

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PA/1 but this fact has also been explained by both the witnesses in their cross examination to the fact that the pick-up was passenger vehicle, its colour was red with a roof covered with grey colour Tarpal. With respect to non-association of private witness with the occurrence, the complainant has explained that there is no abadi near the place of occurrence.

Hence, in view of what is discussed above, it is held that the statements of the complainant and the eyewitness are consistent regarding the date, time and place of occurrence and the mode and manner of the recovery. The presence of the complainant and the eyewitness on the spot at the relevant time is also proved. The statements of both the witnesses could not have been shattered in cross examination regarding material facts. The minor contradictions regarding the time of arrival and departure of the complainant to and from the PS and the time of the arrival of the IO to and from the spot, are natural, for, one cannot be expected to remember such a minute detail. Therefore, the recovery of contrabands is proved by the prosecution beyond shadow of any doubt.

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- (10). With respect to proceedings conducted by the IO on the spot, the stance of the prosecution as per Murasila Ex. PA/1, FIR Ex. PA and recovery memo Ex. PC, is; that after drafting of Murasila, recovery memo and card of arrest of the accused by the complainant, the same were handed over to PW-5

constable Akseer Ali who took the same to PS and handed over to PW-3 Ain Ullah, Moharrir of the PS who registered FIR Ex. PA on the basis of Murasila. He handed over copy of the FIR, Murasila, card of arrest and recovery memo to incharge investigation Shal Muhammad. The said Shal Muhammad SI proceeded to the spot where he prepared site plan Ex. PB on the pointation of the complainant and recorded the statements of witnesses u/s 161 Cr.P.C. In order to prove its stance, the prosecution has produced Constable Akseer Ali as PW-5, Ain Ullah Moharrir as PW-3 and Shal Muhammad SI as PW-6. All the three witnesses narrated the aforementioned story in their statements. Constable Akseer Ali as PW-5 when cross examined as to how and by which means he transmitted the documents to PS, he stated that he boarded a passenger vehicle within 05 minutes of receipt of Murasila from the complainant and reached the PS at about 12:30 pm. This fact is also confirmed by the complainant in his cross examination as PW-4 i.e., "*constable Akseer Ali went to the PS in passenger vehicle i.e., flying coach within 05/10 minutes boarded by about 08/10 passengers*". With respect to return of constable Akseer Ali to the spot, he stated that he returned to the spot at about 03:00 pm and almost the same time is told by the complainant in his cross examination i.e., "*constable Akseer Ali returned to the spot at about 03:30 to 04:00 pm*". With respect to the arrival of the IO on the spot,

  
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the complainant as PW-4 and constable Akseer Ali as PW-5 are unanimous regarding the time of the arrival of the IO on the spot and the time of departure of the IO from the spot; however, the IO in cross examination has contradicted both the witnesses on this point i.e., as per cross examination of complainant as PW-4, *"the IO remained on the spot till 04:30 pm. Firstly, we left the spot at about 04:30 pm and then the IO". I reached to the PS at about 05:30 pm"*. On this point when constable Akseer Ali PW-5 was cross examined, he stated that the *"IO reached the spot at about 04:30 pm and remained on the spot for about half an hour"*. But the IO has contradicted both the witnesses i.e., *"I reached to the spot for investigation at about 1330/1335 hours. I consumed 35/40 minutes on the spot"*. However, as discussed earlier the statements of the witnesses are consistent on material points; therefore, cannot be discredited on a mere ground of their failure to tell the exact time of happening of a particular fact.

  
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In view of what is discussed above, it is held that the statement of witnesses of the prosecution are consistent regarding the mode and manner of the proceedings conducted on the spot and their statements have not been shattered on material points; therefore, the prosecution has proved its stance regarding proceedings conducted on the spot in the mode and manner as alleged by it, without shadow of any doubt.

(11). The case of the prosecution regarding the chain of the custody of the representative samples, their transmission to the FSL within the prescribed period of time and following full protocols of the tests applied in the FSL, is; that after seizure of the contrabands by the complainant containing 05 packets, 10 grams from each of the parcel has been separated and sealed by him on the spot with affixing of three monograms of MS on each of the parcel. The complainant after his arrival in the PS has handed over the representative samples to PW-3 Ain Ullah, who has made entry of the case property in register no. 19 and has kept the samples in safe custody. On 01.03.2021, the incharge investigation has collected the samples from Moharrir and has handed over the same to Minhaz Hussain constable PW-2 to transmit the same to FSL, who has transmitted the same against a road permit certificate and deposited the same in FSL against proper receipt which on return has been handed over by him to the IO. After receipt of FSL report Ex. PK, the same has been placed on file by the IO. The prosecution in order to prove its stance has examined the complainant as PW-4, Ain Ullah Moharrir as PW-3, Shal Muhammad SI, the IO of the case as PW-6 and constable Minhaz Hussain as PW-2. All the four witnesses have narrated the aforementioned story in their statements. In cross examination the defence has objected to the aforementioned stance of the prosecution on the grounds that the nature of the

  
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chars is not mentioned in the Murasila. That as per cross examination of the complainant as PW-4 the recovered contraband was kacha (powdered form). That he has separated 10 grams from each of the packet through knife, which is not appealable to prudent human mind as to the fact that as to how a sample can be separated from powder through knife. That PW-3 Moharrir of the PS has not issued any receipt while handing over the parcels to the IO. That it is not mentioned in the statement of constable Minhaz Hussain, who has transmitted the samples to FSL, that the samples at the time of handing over to him were in sealed condition. True, the nature of the recovered substance is not mentioned in the Murasila; however, the complainant as PW-4 when cross examined in this respect, he explained that the recovered substance was kacha in nature but he has turned wrong the suggestion that kacha chars is used to be in powdered form. Moreover, counsel for the accused also failed to lay hand on any material suggesting that the chars kacha must be in powdered form. The objection of the defence regarding issuance of receipt to the IO while handing over samples, is also not valid in the eyes of law, for, the law requires that entry in that respect must be made in register no. 19 which has rightly been complied with by the Moharrir of the PS. Similarly, the objection of the defence regarding non-mentioning of the fact of case property in sealed condition in statement u/s 161 Cr.P.C of PW-2

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Minhaz Hussain, also holds no ground for, the complainant as well as the eyewitness of the occurrence have categorically stated in their statements that the samples were affixed with three monograms of MS by the complainant on the spot. It is also mentioned in report of the FSL Ex. PK that the samples were bearing three seals of MS each.

In view of what is discussed above, the prosecution has proved beyond shadow of any doubt the chain of the custody of the representative samples from the spot till these are received in the FSL. Similarly, as per report of FSL Ex. PK, the representative samples no. 1 to 5 were found positive for chars after following full protocols of the tests applied. Hence, the case of the prosecution is substantiated by the report of FSL.

(12). Therefore, in light of what is discussed above, it is held that the prosecution has successfully proved its case against the accused facing trial without any shadow of doubt. Hence, the accused facing trial, Zaban Ali is held guilty for having in his possession 6000 grams of chars. He is convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 and accordingly sentenced to suffer rigorous imprisonment for three (03) years and also to pay fine of Rs. 500,000/- (five lac). In case of default of the payment of fine, the accused shall further suffer simple imprisonment for three (03) months. The benefit of section 382-B Cr.P.C is however

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extended in his favour. The case property i.e., chargs be destroyed 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. The copy of judgement also be issued to the District Public Prosecutor u/s 373 of the Cr.P.C free of cost. Consign.

**Pronounced**  
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**CERTIFICATE**

Certified that this judgement consists of sixteen (16) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 30.09.2021



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