

(52)

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

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

SPECIAL CASE NO. : 4/(JC) OF 2021
DATE OF INSTITUTION : 16.08.2021
DATE OF DECISION : 09.02.2022

STATE THROUGH AFTAB AHMAD ASHO, POLICE STATION
KALAYA

.....(COMPLAINANT)

-VERSUS-

ABDUL RAZIQ S/O SHER HAIDER AGED ABOUT 13 YEARS, TRIBE
QAMBAR KHEL, DISTRICT KHYBER

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

Present: Umar Niaz, District Public Prosecutor for state.
: Khursheed Alam Advocate for accused facing trial.

FIR No. 72 **Dated: 03.06.2021** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kalaya

JUDGEMENT
09.02.2022

The accused named above faced trial for the offence
u/s 9 (d) of KP CNSA Act, 2019 vide FIR no. 72, dated
03.06.2021 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 03.06.2021,
complainant, Aftab Ahmad ASHO, PW-5 alongwith constable
Jaseem Ahmad (past), constable Zulfed Ali and other police
officials having laid a picket, was present at Khwa Dand main
road headquarter chowk, when at about 1200 hours, a person
wearing white colour waistcoat on way from Mandar Khel
side towards picket was stopped for checking. The search of

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
09/02/22

53

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

the right and left side pockets of waistcoat worn by the accused led to the recovery of three packets of chars, each weighing 1200 grams, from each of the pocket of waistcoat while 03 packets and 04 packets of chars each weighing 1200 grams were recovered from 02 pockets made on back of the waistcoat. Total of 13 packets each weighing 1200 grams (15600 grams in total) were recovered from possession of the accused. The complainant/PW-5 separated 10 grams of chars from each packet for chemical analysis through FSL, packed and sealed the same into parcels no. 1 to 13 whereas the remaining quantity of chars weighing 1190/1190 grams were packed and sealed in separate parcels no. 14 to 26 with a waistcoat in parcel no. 27, affixing monograms of 'MJ' on all the parcels. The accused disclosed his name as Abdul Raziq s/o Sher Haider who was accordingly arrested by issuing his card of arrest Ex. PW 5/2. 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 Jasim Ahmad, PW-6 which was converted into FIR Ex. PA by PW-2, Muhammad Ayyub MHC.

Shaukat Ahsan Khan
District & Sessions Judge,
Orakzai at Baber Mata
09/07/21

- (3). After registration of FIR, it was handed over to PW-3, Shal Muhammad SI for investigation. Accordingly, after receipt of FIR, PW-3 reached the spot. He prepared site plan Ex. PB on the pointation of complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 04.06.2021, the IO sent

(54)

the samples for chemical analysis to FSL vide application Ex. PW 3/3 through constable Nikzad Ali, PW-4, vide road permit certificate Ex. PW 3/4, 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 Abdul Janan, PW-1, who submitted complete challan Ex. PW 1/1 against the accused facing trial.

- (4). Upon receipt of the case file for the purpose of trial, the accused was summoned through addendum-B from sub-jail Orakzai being in custody, 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;

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Bader Mela

09/07/22

- I. SHO Abdul Janan is PW-1. He has submitted complete challan Ex. PW 1/1 in the instant case against the accused facing trial.
- II. Muhammad Ayyub MHC is PW-2. He has registered FIR Ex. PA by incorporating the contents of Murasila Ex. PA/1 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 that he has

(SS)

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

recorded entry of the case property in register 19 and handed over the samples of the case property to the IO for sending the same to FSL on 04.06.2021.

III. Investigating Officer Shal Muhammad SI was examined as PW-3 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 Ex. PK was placed on file by him, annexing copy of register 19 Ex. PW 3/5 as well as daily diaries regarding departure and return of the complainant and submitted challan Ex. PW 3/8 against the accused.

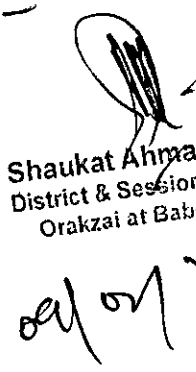
IV. Constable Nikzad Ali is PW-4. He deposed that he has taken the samples of recovered chars in parcels no. 1 to 13 to the FSL for chemical analysis on 04.06.2021 and after submission of the same, he was given the receipt of the parcels which he handed over to the IO.


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

V. Aftab Ahmad ASHO is the complainant of the case. He appeared in the witness box as PW-5. In his statement he repeated the story narrated in the FIR.

VI. Lastly, constable Jasim Ahmad appeared in the witness box as PW-6. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-5 has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement. The witness also deposed that he has taken the copies of Murasila, card of arrest and recovery memo to PS for registration of FIR.

(5). 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 opted to produce any evidence in defence. Accordingly, arguments of the learned DPP for the State and counsel for the accused facing trial heard and case file perused.


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Meia


(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

57

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

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 and that the prosecution has proved its case beyond shadow of any doubt.

(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.


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mola
09/02/22

58

State VS Abdul Raziq

**FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,**

Police Station: Kalaya

(8). In the light of arguments advanced by the learned DPP for the State, arguments of the 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?

(9). As per contents of Murasila Ex. PA/1, the complainant, Aftab Ahmad ASHO, PW-5, alongwith constable Jaseem Ahmad (past), constable Zulfed Ali and other police officials having laid a picket, was present at Khwa Dand main road headquarter chowk, when at about 1200 hours, a person wearing white colour waistcoat on way from Mandar Khel side towards picket was stopped for checking. The search of the right and left side pockets of waistcoat worn by the accused led to the recovery of three packets of chars, each weighing 1200 grams, from each of the pocket of waistcoat while 03 packets and 04 packets of chars, each weighing 1200 grams were recovered from 02 pockets made on back of the waistcoat. Total of 13 packets, each weighing 1200 grams


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

09/07/21

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

(59)

(15600 grams in total) were recovered from possession of the accused. The complainant/PW-5 separated 10 grams of chars from each packet for chemical analysis through FSL, packed and sealed the same into parcels no. 1 to 13 whereas the remaining quantity of chars weighing 1190/1190 grams were packed and sealed in separate parcels no. 14 to 26 with a waistcoat in parcel no. 27, affixing monograms of 'MJ' on all the parcels. The accused disclosed his name as Abdul Raziq s/o Sher Haider who was accordingly arrested by issuing his card of arrest Ex. PW 5/2. 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 Jasim Ahmad, PW-6 which was converted into FIR Ex. PA by PW-2, Muhammad Ayyub MHC.

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, Aftab Ahmad ASHO as PW-5. 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 3/6 wherein vide DD no. 3 of 03.06.2021, the complainant alongwith HC Muhammad Nawaz, constable Zulfed Ali and constable Ayaz Ali have left the PS at 08:20 am for the purpose of patrolling. Similarly, vide DD no. 7 of the same date, he has returned to the PS at 1550 hours (03:50

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

09/02/21

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

60

pm). The stance of the prosecution is further supported by the statement of constable Jaseem Ahmad as PW-6 who besides being eyewitness of the occurrence is a marginal witness of the recovery memo Ex. PC as well. He has also taken the Murasila to the PS for registration of FIR. He has narrated the same story as that of narrated by the complainant in his statement as PW-5. The statements of the complainant and eyewitness are tried to be shattered in the cross examination on the grounds; that the name of constable Jaseem Ahmad is not mentioned in the DD Ex. PW 3/6; however, this fact has been explained by both the above-named witnesses in their cross examinations to the fact that the constable Jaseem Ahmad PW-6 had not accompanied the police party from the PS and that he has later on joined the police party. The complainant/PW-5 has also been cross examined on the point that such a huge quantity of chars cannot be accommodated in a waistcoat but in this respect, he has explained that such like waistcoats are specially designed for smuggling and that the said waistcoat has also been taken into possession and produced before the court. Besides both the above PWs have been cross examined on different aspects of the mode and manner of recovery but nothing contradictory could be extracted from the mouth of any of the witness. Both the witnesses are unanimous on the point of their departure from the PS, their arrival on the spot, laying on a picket on the spot, the interception of the accused,

Shahidat Ahmad Khan
District & Sessions Judge,
Orakzai at Pabbar, Kalaya

09/07/21

(6)

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

recovery of chars from different pockets of the waistcoat worn by the accused, the colour of chars, weighing of the chars, separation of 10 grams of chars from each of the parcel, sealing all the parcels including the waistcoat in different parcels, affixing monogram of 'MJ' on each parcel, drafting of the Murasila, recovery memo and card of arrest, transmitting of the documents from the spot to the PS through PW-6 and registration of the FIR.

In view of what is discussed above, it is held that the statements of the complainant and the eyewitness are consistent regarding all the material points involving the recovery of chars from possession of the accused 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. Therefore, the recovery of 15600 grams of chars from possession of the accused is proved by the prosecution beyond shadow of any doubt.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Balochistan

- (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-6 constable Jaseem Ahmad who took the same to PS and

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

(62)

handed over to PW-2 Muhammad Ayyub MHC, the 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 PW-3. 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 Jaseem Ahmad as PW-6, Muhammad Ayyub MHC as PW-2 and Shal Muhammad SI as PW-3. All the three witnesses narrated the aforementioned story in their statements. Constable Jaseem Ahmad as PW-6 in his cross examination confirmed the facts that the Murasila was handed over to him at 1245 hours and he reached the PS at 1320 hours. The same fact is mentioned by Muhammad Ayyub MHC as PW-2 in his cross examination with a slight difference of the time of receipt of Murasila i.e., that he received the Murasila at 1310 hours, on the basis of which he registered FIR at 1320 hours. The complainant as PW-5, the eyewitness constable Jaseem Ahmad as PW-6 and the IO as PW-3 in their cross examinations have confirmed that the IO reached the spot at 1440 hours. Nothing contradictory could have been extracted from the mouth of any of the above-named witness either to disprove the chain of facts or the mode and manner of investigation conducted on the spot.

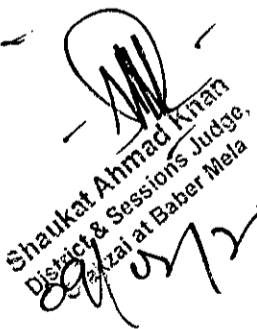

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

63

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 13 packets, 10 grams from each of the packet has been separated and sealed by him on the spot with affixing of three monograms of 'MJ' on each of the parcel. The complainant, after his arrival in the PS, has handed over the representative samples to PW-2 Muhammad Ayyub MHC, who has made entry of the case property in register no. 19 and has kept the same in safe custody. On 04.06.2021, the incharge investigation has collected the samples from Moharrir and has handed over the same to constable Nikzad Ali PW-4 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 he has been handed over to the IO.


Shaukat Ahmad Khan
District & Sessions Judge,
Kalaya at Baber Mela

(69)

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

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-5, Muhammad Ayyub MHC as PW-2, Shal Muhammad SI, the IO of the case as PW-3 and constable Nikzad Ali as PW-4. All the four witnesses have narrated the aforementioned story in their statements. In cross examination none of the witness has put any question regarding handing over of the case property to Moharrir, entry of the same in register no. 19 and keeping the same in mal khana. With respect to transmission of the samples to FSL, PW-4 in cross examination confirmed the facts that on 04.06.2021 the IO handed him over the samples in sealed condition and he left the PS at 07:30 am, reached the FSL at 11:30 am, handed over parcels to the official of FSL against a proper receipt which on return he handed over to the IO and that he returned the PS on same day at 05:30/06:00 pm.

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 13 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.


Shaukat Akmal Khan
District & Sessions Judge,
Orakzai & Baber Fields

(65)

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

(12). 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, Abdul Raziq is held guilty for having in his possession 15600 grams of chars. He is convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 *“punishable with death, imprisonment for life for atone which may extend to 14 years and with fine which may extend to Rs. 1000000 and not less than 05 lacs if the quantity of narcotics substance exceeds the limit of 01 kilograms. Provided that if the quantity exceeds 10 kilograms, the punishment shall not be less than imprisonment for life in any case.”*

With respect to deciding the quantum of sentence, as the quantity of chars recovered from the accused is slightly above 10 kilograms and as the accused is juvenile and the punishment of death cannot be passed against him u/s 16(1) of The Juvenile Justice System Act, 2018, Therefore, the accused is convicted and accordingly sentenced to imprisonment for life and fine of Rs. 600,000/- (six lacs). In case of default of the payment of fine, the accused shall further undergo simple imprisonment for six (06) months. The benefit of section 382-B Cr.P.C is extended to the accused. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision. Copy of the judgement delivered to the

Shaukat Ahmad
District & Sessions Judge
Orakzai District

09/07/21

State VS Abdul Raziq
FIR No. 72, Dated: 03.06.2021, U/S: 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019,
Police Station: Kalaya

(66)

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
09.02.2022

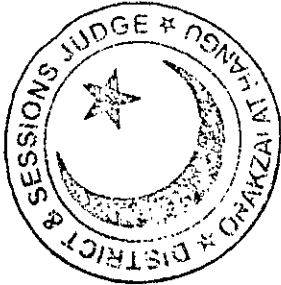


SHAUKAT AHMAD KHAN
Sessions Judge/Juvenile Court/ Judge
Special Court, Orakzai at Baber Mela

CERTIFICATE

Certified that this judgement consists of fifteen (15) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 09.02.2022



SHAUKAT AHMAD KHAN
Sessions Judge/Juvenile Court/ Judge
Special Court, Orakzai at Baber Mela