

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

SPECIAL CASE NO. : 39/3 OF 2021
DATE OF INSTITUTION : 16.06.2021
DATE OF DECISION : 26.11.2021

STATE THROUGH RAEES KHAN SHO, PS KALAYA LOWER
ORAKZAI
.....(COMPLAINANT)

-VERSUS-

MUHAMMAD WAZIR S/O LAL HUSSAIN, AGED ABOUT 48 YEARS,
TRIBE SHEIKHAN, SUB TRIBE UMARZAI, RAI CHIRI, PO MISHTI
MELA, MIYANKHEL TANRA, TEHSIL CENTRAL, DISTRICT
ORAKZAI
..... (ACCUSED FACING TRIAL IN CUSTODY)

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

FIR No. 32 **Dated:** 07.03.2021 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kalaya

JUDGEMENT
26.11.2021

The accused named above faced trial for the offence
u/s 9 (d) of KP CNSA Act, 2019 vide FIR no. 32, dated
07.03.2021 of PS Kalaya.

- (2). The case of the prosecution as per contents of Murasila
Ex. PA/1 converted into FIR Ex. PA is; that on 07.03.2021
complainant, Raees Khan ASHO/PW-3 alongwith other
police officials having laid a picket, was present at Kurez
check-post where at about 1400 hours a person walking on
foot from Kada Bazar towards the picket, having plastic bag
in his hand, was stopped. The bag was searched by

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

26/11/21

complainant/PW-3 wherefrom 05 packets of chars wrapped in yellow colour adhesive tape, each weighing 1200 grams of chars (total 6000 grams of chars) were recovered. The complainant/PW-3 separated 10 grams chars from each packet for chemical analysis through FSL, sealed the same in parcels no. 1 to 5 whereas the remaining quantity of chars weighing 5950 grams were sealed in parcels no. 6 to 10 and the plastic bag weighing 80 grams was packed and sealed by the complainant/PW-3 in parcel no. 11 by affixing monogram of "SH" on all the parcels. The accused disclosed his name as Muhammad Wazir s/o Lal Hussain who was accordingly arrested by issuing his card of arrest Ex. PW 3/1. The complainant/PW-3 took into possession the recovered chars vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the PS through constable Tafseer Ali/PW-4 which was converted into FIR Ex. PA by PW-6 Nasir Khan SI.

(3). After registration of FIR, it was handed over to PW-5, Muhammad Ishaq SI for investigation. Accordingly, after receipt of FIR, PW-5 reached on the spot and prepared site plan Ex. PB at the pointation of complainant. The sample for chemical analysis was sent to FSL vide his application Ex. PW 5/2 and road permit certificate Ex. PW 5/3 through Minhaz MHC, PW-2, the result whereof Ex. PK was received and placed on file by him. After completion of investigation, he

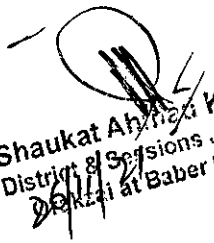
Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baher
26/11/21

handed over the case file to SHO who submitted complete challan against the accused facing trial.

- (4). Upon the receipt of case file for the purpose of trial, the accused was summoned through Addendum-B from jail 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 of prosecution is as follow;

I. Moharrir Ain Ullah is PW-1. He deposed that he has received the case property from the complainant duly packed and sealed which he has kept in mal khana in safe custody and to that effect he has made entry in register no. 19 Ex. PW 5/4. Similarly, while handing over of samples of chars to the IO for sending the same to FSL on 08.03.2021, he has also made entry in register no. 19.

II. Minhaz MHC is PW-2 who deposed that he has taken the samples of recovered chars in parcels no. 1 to 5 to the FSL alongwith application Ex. PW 5/2 and road permit certificate Ex. PW 5/3 for chemical analysis on 08.03.2021 and after submission of the same, he was given the receipt



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

of the parcels which he handed over to the IO upon his return.

III. Raees Khan SI/Incharge Syed Khalil Baba check-post appeared in the witness box as PW-3 and repeated the story narrated in the FIR.

IV. Constable Tafseer Ali appeared in the witness box as PW-4. He besides eyewitness of the occurrence is the marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-3 has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.

V. Investigating Officer Muhammad Ishaq SI was examined as PW-5 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 of Judicial Magistrate, sent the representative of samples to FSL and result of the same Ex. PK was placed on file by him with copy of register 19 Ex. PW 5/4 and submitted the case file to the SHO for onward proceedings.


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

VI. Lastly, Nasir Khan SI was examined as PW-6 who deposed that he has incorporated the contents of Murasila Ex. PC into FIR Ex. PA.

(5). Prosecution closed its evidence whereafter statement of the accused was recorded u/s 342 Cr.P.C but he 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.

(6). Learned DPP for the State submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars have 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 sample for chemical analysis has been transmitted to the FSL within the prescribed period of 72 hours which have been found positive for chars vide report of FSL Ex. PK, the complainant, the witness of the recovery, the

Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Baber
26/11

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 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.

(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 possession of the accused facing trial and the report of FSL support the case of prosecution, however, the accused facing trial is falsely implicated in the instant case. 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. 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:

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Meta
26/11/21

- (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, on 07.03.2021 complainant, Raees Khan ASHO/PW-3 alongwith other police officials having laid a picket, was present at Kurez check-post where at about 1400 hours a person walking on foot from Kada Bazar towards the picket, having plastic bag in his hand, was stopped. The bag was searched by complainant/PW-3 wherefrom 05 packets of chars wrapped in yellow colour adhesive tape, each weighing 1200 grams of chars (total 6000 grams of chars) were recovered. The complainant/PW-3 separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same in parcels no. 1 to 5 whereas the remaining quantity of chars weighing 5950 grams were sealed in parcels no. 6 to 10 and the plastic bag weighing 80 grams was packed and sealed by the complainant/PW-3 in parcel no. 11 by affixing monogram of "SH" on all the parcels.


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

26/11/21

The accused disclosed his name as Muhammad Wazir s/o Lal Hussain who was accordingly arrested by issuing his card of arrest Ex. PW 3/1. The complainant/PW-3 took into possession the recovered chars vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the PS through constable Tafseer Ali/PW-4 which was converted into FIR Ex. PA by PW-6 Nasir Khan SI.

53

State VS Muhammad Wazir
Case no. 39/3, FIR no. 32, dated 07.03.2021, u/s 9 (d) Khyber
Pakhtunkhwa CNSA, PS Kalaya Lower Orakzai

The prosecution in order to prove its contention produced complainant Raees Khan ASHO who was examined as PW-3. He reiterated the contents of FIR in his statement. The stance of the prosecution is further supported by the statement of constable Tafseer Ali as PW-4 who besides being eyewitness of the occurrence is a marginal witness of the recovery memo Ex. PC as well. He also narrated the same story as that of narrated by the complainant in his statement. The statements of the complainant and eyewitness were tried to be shattered in cross examination on the grounds; that the place of occurrence is a public place and the occurrence has allegedly taken place during broad daylight but no witness from public has been associated with the recovery by the complainant or IO, that as per copy of DD Ex. PW 3/2, the complainant while leaving the PS was accompanied by constables Najib Ullah and Saeed Gul while the marginal witnesses of the recovery memo Ex. PC are Zaman Ali HC and Tafseer Ali FC who were not present with the complainant, that the knife through which chars has been extracted for representative samples has not been taken into possession, that the monogram of "SH" as per statement of the complainant/PW-3 denotes "SHO" and the same monogram as per statement of said PW has also been used by the IO, that as per statement of the complainant/PW-3 the distance between the PS and spot is 35/40 km which can be covered within about

Shaukat Raees Khan
District & Sessions Judge
Orakzai at Kalaya
26/11/21

40 to 45 minutes but as per copy of DD Ex. PW 3/2 he has left the PS at 0820 hours and reached the spot at 0130 hours within 05 hours which shows that the story of prosecution is false.

Keeping in view the aforementioned objections of defence, careful perusal of the material available on file coupled with statements of the PWs, shows; that first as the police witnesses are also believed to be good witnesses as private witnesses unless some malafidy is shown on behalf of police witness and as section 103 Cr.P.C has specifically been excluded in the cases under Khyber Pakhtunkhwa CNSA Act, 2019 vide section 231 of the ibid Act, therefore the failure of the seizing officer or the investigating officer to associate any private witness with the occurrence does not adversely affect the case of prosecution. Second, true as per DD the complainant was accompanied by constables Najib Ullah and Saeed Gul while the marginal witnesses of the recovery memo are Zaman Ali HC and Tafseer Ali FC, but careful perusal of the recovery memo shows that both the witnesses are posted at Kurez check-post and being posted over there, their presence on the spot is natural. Third, though the distance between the spot and PS was admitted by witnesses of prosecution is 35/40 km which can easily be covered within 40/45 minutes but as the complainant was patrolling on the road from Kalaya to Kurez; therefore, the time consumed by the complainant on way from PS to spot is natural and

Shaukat Ahmad
District & Sessions Judge
Orakzai, Khyber Pakhtunkhwa
26/11/21

appealable to prudent mind. Fourth, as witnesses of prosecution are unanimous regarding all material facts; therefore, not taking into possession the knife through recovery memo Ex. PC and the minor contradictions between the statement of PW-3 and PW-4 regarding the time of departure from PS, cannot be taken to defeat the case of prosecution and in no way create reasonable doubts to shatter the case of prosecution.

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. Therefore, the recovery of contrabands is proved by the prosecution beyond shadow of any doubt.

- (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-4 constable Tafseer Ali who took the same to PS and handed over to Nasir Khan SI PW-6, 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 Muhammad Ishaq SI PW-5. The said PW proceeded to the spot where he prepared site plan Ex. PB on

Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Baber Maia


26/11/21

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 Tafseer Ali as PW-4, Nasir Khan SI as PW-6 and Muhammad Ishaq SI as PW-5. All the three witnesses narrated the aforementioned story and the sequence of different events in their statements. Constable Tafseer as PW-4 in his cross examination has confirmed that he left the spot for PS at 02:35 pm on a motorcycle and reached the PS at about 03:25/03:30 pm and handed over Murasila, card of arrest and recovery memo to Nasir Khan SI and then returned back to the spot. Nasir Khan SI as PW-6 in his cross examination has confirmed that the Murasila, card of arrest and recovery memo were handed over to him by Tafseer Ali at 1520 hours and he drafted the FIR 1530 hours. Similarly, Muhammad Ishaq SI as PW-5 in his cross examination has confirmed that the case was handed over to him for investigation at 1530 hours whereafter he left the PS and reached the spot at 1630 hours. That the case property was shown to him on the spot by the seizing officer in sealed condition. He has also confirmed that the site plan Ex. PB was prepared on the spot and the statements of marginal witnesses were also recorded by him on the spot. The witnesses are also unanimous on the points of arrival of the IO on the spot, his departure and return to PS and the time of arrival of the complainant party to the PS. The statements of all the three

26/11/21
Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

witnesses are consistent regarding proceedings conducted by the IO on the spot, their statements could not have been shattered in cross examinations and 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 packet has been separated and sealed by him on the spot with affixing of three monograms of 'SH' on each of the parcel. The complainant after his arrival in the PS has handed over the representative samples to PW-1 Ain Ullah MHC, who has made entry of the case property in register no. 19 and has kept the samples in safe custody. On 08.03.2021, the incharge investigation has collected the samples from MHC and has handed over the same to Minhaz MHC 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

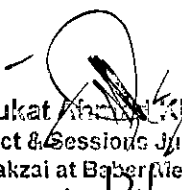

Shaukat Amir Khan
District & Sessions Judge
Orakzai at Baber Meia

26/11/21

complainant as PW-3, Ain Ullah MHC as PW-1, Muhammad Ishaq SI, the IO of the case as PW-5 and Minhaz MHC as PW-2. All the four witnesses have narrated the aforementioned story in their statements. Nothing contradictory could be extracted from the witnesses in their cross examinations.

In view of what is discussed above, it is held that the prosecution has proved beyond shadow of any doubt the chain of the custody of the representative samples, within the prescribed period of time, 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, Muhammad Wazir 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 four (04) 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, extended in his favour. The case property i.e., chars


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
26/11/21

State VS Muhammad Wazir
Case no. 39/3, FIR no. 32, dated 07.03.2021, u/s 9 (d) Khyber
Pakhtunkhwa CNSA, PS Kalaya Lower Orakzai

be destroyed 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. Consign.


Pronounced
26.11.2021


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

CERTIFICATE

Certified that this judgement consists of fourteen (14)
pages. Each page has been read, corrected wherever
necessary and signed by me.

Dated: 26.11.2021


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