

(60)

*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.04/21 of 2021

Date of institution: 06.09.2021

Date of decision: 26.02.2022

The State

...Versus...


1. Naqeeb Ullah son of Raj Wali, resident of Qaum Bezot, Tappa Mir Kali Khel, District Orakzai.
2. Bakhmeen son of Abdul Wali, resident of Qaum Bezot, Tappa Mir Kali Khel, District Orakzai. .... (Accused facing trial)

**Case FIR No.82, Dated 24.06.2021 u/s 9-D KP-CNSA, 2019  
registered at Police Station Kalaya Orakzai.**

**JUDGMENT**

Accused named above faced trial before this Court in case FIR No.82 dated 24.06.2021 u/s 9-D of Khyber Pakhtunkhwa Control of Narcotics Substance Act, 2019, registered at Police Station Kalaya, Orakzai.


2. Facts of the case are such that Shal Muhammad SHO along with other police officials of Police Station Kalaya Orakzai, having laid a picket, were present on the spot. Complainant stopped a person on suspicion who was riding on his Motorcycle. On search of his Motorcycle, the complainant recovered a blue colour plastic sack loaded on rear seat of the Motorcycle; which on checking, led the complainant to the recovery of 05 packets of chars. On weighing, each packet came out 1100 grams with a total of 5500 grams. The person, disclosed his name as Naqeeb Ullah. Similarly, another

  
**SAYED FAZAL WADOOD**  
Addl. District & Sessions Judge  
Orakzai at Hangu

(61)

person was moving towards the barricade riding on another Motorcycle who was also stopped by the complainant. On search of said person, the Police recovered blue colour plastic sack loaded on the rear seat of the Motorcycle. After checking the said plastic bag, it contained 05 packets of chars. After weighing of the recovered chars, it came out 1100 grams in each packet, with total of 5500 grams. The second person disclosed his name as Bakhmeen. Both the accused were arrested on the spot. Murasilla was drafted at the place of occurrence and sent to Police Station for bringing criminal law into motion which was given effect in the captioned FIR that culminated into present case.


3. After conclusion of the investigation, complete challan against the accused facing trial was presented. They were summoned through Zamima Bay being in custody and on appearance they have been provided copies in line with Section 265-C of the Code of Criminal Procedure-1898. Charge against the accused was framed to which they 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 six (06) witnesses. The prosecution evidence is sketched below for ease of reference and determination of guilt or innocence of accused:

  
**SAYED FAZAL WAJOOD**  
Anti-District & Sessions Judge  
Oranjal at Hangu

(62)

(i). Muhammad Zahid constable, PS Kalaya Orakzai, was examined as PW-1, stated that *"during relevant days, I was posted as Muharrir of the PS Kalaya. On 24-06-2021, I was present on my duty at Kalaya. The constable Syed Abbas Ali Shah brought Murasila along with the recovery memo and card of arrest to the PS which was sent by Shal Muhammad SHO. When SHO returned to the PS he handed over to me the case property i.e parcel No.1 and parcel No.22 in sealed condition along with the accused and two Motorcycles, one having registration No. F-2857/Hangu and other without number. 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 28-06-2021, I handed over the parcels No. 1 to 5 and 12 to 16 for the FSL to the IO and my statement to this extent was recorded under section 161 Cr.PC."*

(ii). PW-2 is the statement of Nikzad Ali Constable of Police Station Kalaya Orakzai, who deposed that *"on 28-06-2021, Aftab Hassan SI/IO handed over to me the parcel No.1 to 5 and 12 to 16 in sealed condition having monogram in the name of SH for the FSL along with application and road certificate. I went to the FSL Peshawar where I submitted the parcel for the FSL and obtained receipt on the road certificate Ex.PW-1/1."*

  
**SAYED FAZAL WADOOD**  
Addl. District & Sessions Judge  
Orakzai at Hangu

*On my returned to PS I handed over the receipt to the IO. My statement was recorded under section 161 Cr.PC.”*

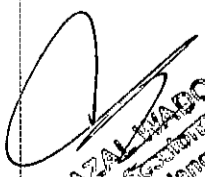
(iii). Ansar Ali, ASI Police Station Kalaya Orakzai, was examined as PW-3, stated that *“on 24-06-2021, I was present in the PS when constable brought Murasila to the PS. I incorporated its contents into FIR which is Ex.PA. Today I have seen the FIR which is correct and correctly bear my signature.”*

(iv). PW-4 is the statement of Shal Muhammad under training, Training Centre Kalaya Orakzai, who deposed that *“during the days of occurrence, I was posted as SHO Police Station Kalaya. On 24.06.2021, I along with the other police officials Syed Abbas Ali Shah and Ayaz Ali were present at Nakabandi on the spot. Meanwhile one person on motorcycle bearing No. F2857/Hangu Engine No. RMI 493395 of white color having cut chaises No. 70-CC, came to the spot having plastic shopper of blue color tied on said motorcycle through rope, who was stopped for the purpose of checking. The said person was deboarded from the motorcycle and search out. Nothing was recovered from the body search. On search of the said plastic shopper I recovered 05 packets of chars wrapped in yellow squash tape. Each packet came out 1100/1100 gram total 5500 grams after its weightment through digital scale. 10/10 grams were separated and sealed into parcel No 1 to 5 while remaining 1090/1090 grams sealed into parcel No 06 to 10 while the rope and empty plastic separately weighed and came out 25 grams and sealed the same in parcel No.11. The said person disclosed his name as Nageeb Ullah S/O Raj Wali caste Bezot Tappa Mir Kuli Khel. I charge him for the commission of offence. Likewise one other*

**SAYED FAZAL WADOOD**  
Addl. District & Sessions Judge  
Orakzai at Hangu

(64)

person on motorcycle without number having engine No.E-213937, Chaises No. S70484044, 70-CC having plastic shopper of blue color tied on said motorcycle through rope, who was stopped for the purpose of checking. The said person was deboarded from the motorcycle and searched out. Nothing was recovered from the body search. On search of the said plastic shopper I recovered 05 packets of chars wrapped in yellow squash tape. Each packet came out 1100/1100 gram, total 5500 grams after its weighment through digital scale. 10/10 gram were separated and sealed into parcel No 12 to 16 while remaining 1090/1090 grams sealed into parcel No 17 to 21 while the rope and empty plastic separately weighed and came out 25 grams and sealed the same in parcel No.22. The 3/3 mono grams in the name of SH were affixed on each parcel. The said person disclosed his name is Bakhmeen S/O Abdul Wali caste Bezot Tappa Mir Kuli Khel. I charged him for the commission of offence. In this respect, I prepared the Murasila Ex-PA/1. The above mentioned contraband along with two said Motorcycle were taken through the recovery memo which is Ex-PW 4/1 in the presence of the marginal witnesses. I have also issued card of arrest of the accused which is Ex-PW 4/2. I sent the Murasila to the PS through the hand of constable Syed Abbas Ali Shah for registration of the case. The IO prepared site plan on my pointation. On my returned back to the PS I handed over the accused along with the case property to the Muharrir of the PS. After completion of the investigation by the IO, I submitted complete challan against the accused Ex-PW-4/3. Today I have seen all the relevant documents which are correct and correctly bear my signatures. Today I produce case property that is parcels No. 06 to 11 that is P-1 to P-6 and motorcycle Ex-P7. Parcels No. 16 to 22 that is Ex-P-7 to P-13 and motorcycle Ex. P-14.”

  
SYED FAZAL MAHMOOD  
Additional District & Sessions Judge  
Orakzai at Mangu

(v). Syed Abbas Ali Shah Constable, Police Station Kalaya, Orakzai, was examined as PW-5; stated that *"during the days of occurrence I was posted at PS Kalaya. On 24.06.2021 I along with the SHO and constable Ayaz Ali were present at Nakabandi on the spot. Meanwhile one person on motorcycle bearing No. F2857/Hangu engine No. RMI 493395 of white color having cut chaises No. 70-CC, came to the spot having plastic shopper of blue color tied on said motorcycle through rope, who was stopped for the purpose of checking. The said person was deboarded from the motorcycle and search out. Nothing was recovered from the body search. On search of the said plastic shopper SHO recovered 05 packets of chars wrapped in yellow squash tape. Each packet came out 1100/1100 gram total 5500 grams after its weighment through digital scale. 10/10 gram were separated and sealed into parcel No 1 to 5 while remaining 1090/1090 grams sealed into parcel No 06 to 10 while the rope and empty plastic separately weigh and came out 25 grams and sealed the same in parcel No.11. Likewise one other person on motorcycle without number having engine No.E-213937, Chaises No. S70484044, 70-CC having plastic shopper of blue color tied on said motorcycle through rope, who was stopped for the purpose of checking. The said person was deboarded from the motorcycle and search out. Nothing was recovered from the body search. On search of the said plastic shopper SHO recovered 05 packets of chars wrapped in yellow squash tape. Each packet came out 1100/1100 gram total 5500 grams after its weighment through digital scale. 10/10 gram were separated and sealed into parcel No 12 to 16 while remaining 1090/1090 grams sealed into parcel No 17 to 21 while the rope and empty plastic separately weigh and came out 25 grams and sealed the same in parcel No.22. 3/3 mono grams in the name of SH were affixed on each*

*Syed Abbas Ali Shah*  
**SYED FAZAL WAJID**  
 Addl. District Magistrate, Judge  
 Orakzai of Hangu

(66)

parcel. The above mentioned contraband along with two said Motorcycle were taken through the recovery memo which is already Ex-PW 4/1 in my presence and I signed the recovery memo in the presence of the other marginal witness constable Ayaz Ali on the spot. My statement was recorded U/S 161 CrPC. Today I have seen the recovery memo which is correct and correctly bear my signature.”

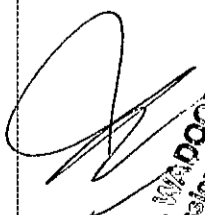
vi. PW-6 is the statement of Aftab Hassan SI Police Line Babar Mela Orakzai, who deposed that “during the relevant days, I was posted as OII at PS Kalaya on 24-06-2021, I was present in the PS and received card of arrest of accused, recovery memo, Murasila and copy of FIR from the Muharrir of the PS. I went to the spot and prepared site plan on the pointation of complainant Ex. PB. The complainant shown me the case property. I have examined the same on the spot and I recorded the statement of recovery witnesses u/s 161 Cr.PC. On return back to the PS I have interrogated the accused in PS who admitted their guilt before me I recorded their statements U/S 161 CrPC. On 25-06-2021 I produced the accused before the Illaqa Magistrate for recording confessional statement U/S 164/364 CrPC vide my application Ex. PW-6/1, however accused refused to confess before the court and were sent to the Judicial Lock-up. I sent the case property to the FSL through the hand of constable Nikzad on 28-06-2021 vide my application already Ex.PW-1/1 and road certificate Ex.PW-1/2 and received the FSL result Ex. PZ. I have annexed DD regarding departure and arrival of the SHO which is Ex.PW-6/2. I have annexed the copy of register No.19 on the file which is Ex.PW-6/3. I have recorded the statement of PWs u/s 161 Cr.PC. I have also issued the docket for verification of motorcycle in question from Excise Department and FSL vide my application Ex. PW-6/4 and Ex. PW-6/5 respectively. I took the

motorcycles in question to the FSL for laboratory vide my application Ex. PW-6/6 and also received the FSL result which is Ex. PZ/1 As both of the accused were underage, therefore, I have annexed Social Investigation report Ex. PW-6/7 and Ex. PW-6/8. After completion of investigation I handed over the case file to the SHO for onward submission of Juvenile challan against the accused. Today I have seen all the relevant documents which are correct and correctly bears my signatures.

4. On closure of prosecution evidence, statements of accused were recorded u/s 342 of the Code of Criminal Procedure-1898; wherein, accused professed their innocence and did not opt to produce defense evidence or to be examined on oath.

5. Learned Sr. PP for the State argued that accused are 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 file is deficient and the story advanced by the prosecution is not appealable to prudent mind. It was added that there is no independent witnesses of the occurrence and the evidence available on the file is full of contradictions. He submitted that prosecution has not been


  
**SAYED FAZAL WAHIDOOD**  
 District & Sessions Judge  
 Oranizal at Hangu



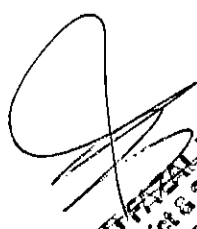
able to prove the case beyond reasonable doubt and requested for acquittal of the accused.

7. Perusal of case record would reveal that according to FIR the accused were intercepted at barricade on 06.09.2021 at 14:45 hours and contraband/chars weighing 5500 grams was recovered from accused Naqeeb ullah and 5500 grams from accused Bakhmeen, in presence of marginal witnesses Syed Abbas Ali Shah and constable Ayaz Ali vide Recovery Memo (Ex. PW-4/1). The former marginal witness (PW-5) was examined; whereas, the later marginal witness was abandoned. According to (PW-5), he was present with seizing officer on the eventful day. He stated that upon search of the motorcycle, chars wrapped in yellow scotch tape (Ex.P-1) was recovered from *plastic shopper* loaded on the seat of the motorcycle of each of the accused which each shopper contained 05 packets weighing 1100 grams with total of 5500 grams of chars. 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. With respect to time of lodging the report, Seizing Officer Shal Muhammad, under training at Training Centre Kalaya was examined as

  
**SAYED FAZAL WADOOD**  
District & Sessions Judge  
Orakzai at Hangu


PW-4, who stated that the occurrence took place at 14:30 hours while in his cross examination, the time of report has been mentioned by him as 16:40 hours while the Murasila has been drafted after the registration of FIR which is not possible at all. According to cross examination of PW-5, the eye witness of the occurrence, firstly accused Naqeeb ullah approached to the spot and then after 30 minutes accused Bakhmeen reached to the place of occurrence while according to the Murasila both the accused were intercepted at same time. As per statement of PW-4, the occurrence took place at 14:45 hours and they remained on the spot for 2 hours and then proceeded to the Police Station. The IO as PW-6 mentioned the time of arrival of the Seizing Officer as 17:50 hours. As PW-4 narrated, the Seizing Officer should have been reached to the Police Station at about 16:45 hours but the difference about 1 hour is not explained in their statements. All these contradictions are material 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-4/1. The Investigation Officer examined as PW-6 speaks about the place of occurrence as public place but no private witness has been associated that create serious doubt as was laid down in 2015 PCr.LJ-1430 [Peshawar].

  
**SAYED FAISAL MADANI**  
Addl. District & Sessions Judge  
Orakzai at Hangu

9. As per statement of PW-5, the complainant party has left the Police Station at 1:30 hours and the distance between the Police Station and the place of occurrence can be covered in five minutes. Moreover, PW-5 stated that the complainant party had not conducted routine patrolling and directly moved to barricade; whereas, the PW-4 has testified that the police party remained busy in routing patrolling for an hour and thereafter reached to the spot at about 14:30 hours. The gap of 01 hour between the time of leaving the Police Station and arrival at the spot has been contradicted in both statements of PWs. The colour of recovered chars has not been mentioned by any witness. The IO has not investigated regarding the ownership of the Motorcycles and neither any oral or documentary evidence has been produced in this respect.

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 have not recorded confession before the Court. They remained in police custody for sufficient time but no further recovery was made. The case property has not been produced before learned Area Magistrate while producing accused for grant of police

  
**SAYED FAZAL**  
District & Sessions Judge  
Orakzai at Hangu

custody and thus mandatory provision of law has been violated. The accused being of tender age have no criminal history in such like offences.

12. In the light of above discussion, 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 Naqeeb Ullah son of Raj Wali and Bakhmeen Ali son of Abdul Wali both residents of Qaum Bezot Tappa Mir Kali Khel, District Orakzai are acquitted from the charges levelled against them. The accused are in custody, they be released forthwith, if not required in any other case. Case property be destroyed 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**  
26.02.2022



**Sayed Fazal Wadood**  
Additional Sessions Judge/Judge Special  
Court Orakzai

**CERTIFICATE:**

Certified that this Judgment is consisting upon twelve (12) 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