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State vs Arab Khan
Case no.: 46/3, FIR no.: 1, Dated: 20.03.2021,
u/s 9(d) CNSA, PS: Dabori

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

SPECIAL CASE NO. : 46/3 OF 2021
DATE OF INSTITUTION : 17.08.2021
DATE OF DECISION : 12.01.2022

STATE THROUGH INSPECTOR ZAHID AMEEN, PS DABORI,
UPPER ORAKZAI

.....(COMPLAINANT)

-VERSUS-

ARAB KHAN S/O QEEMAT SHAH AGED ABOUT 28 YEARS, TRIBE
ZAKHA KHEL, ARHANGA, LANDI KOTAL, DISTRICT KHYBER

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

Present: Umar Niaz, District Public Prosecutor for State.
: Abid Ali Advocate for accused facing trial.

FIR No. 01 **Dated:** 20.03.2021 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Dabori

JUDGEMENT
12.01.2022

The accused named above faced trial for the offence
u/s 9 (d) of KP CNSA Act, 2019 vide FIR no. 01, dated
20.03.2021 of PS Dabori.

- (2). The case of the prosecution as per contents of Murasila
Ex. PA/1 converted into FIR Ex. PA is; that on 20.03.2021
complainant, Inspector Zahid Ameen, the PW-2 alongwith
other police officials having laid a picket, were present on
mettled road near Nala post where he received information
about smuggling of narcotics via motorcycle. At about 1440
hours a motorcycle riding by two persons came from Sambog
side. On seeing the police, the person seated on the rear seat
of the motorcycle made his escape good while the person

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driving the motorcycle, when signalled to stop, sped past the police party but he was overpowered by the local police. His person was searched but nothing incriminating was recovered from him; however, the complainant/PW-2 recovered a white colour plastic shopper from side handle of the motorcycle. The search of which led the complainant to the recovery of 1150 grams of chars. The complainant/PW-2 separated 10 grams chars from total quantity for chemical analysis through FSL, sealed the same in parcel no. 1 whereas the remaining quantity of chars weighing 1140 grams were sealed in parcel no. 2. The accused disclosed his name as Arab Khan s/o Qeemat Shah who was accordingly arrested by issuing his card of arrest Ex. PW 2/1. The complainant/PW-2 took into possession the recovered chars alongwith Honda 125CC motorcycle of black colour bearing no. 8147/DGK vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the PS through Latif Khan HC which was converted into FIR Ex. PA by PW-1 Muhammad Jaan ASHO.

(3). After registration of FIR, it was handed over to PW-4, Muhammad Raheem SI for investigation. Accordingly, after receipt of FIR, PW-4 reached on the spot, prepared site plan Ex. PB at the pointation of complainant, sent the sample for chemical analysis to FSL vide his application Ex. PW 4/3 through constable Kaleem Ullah PW-6, the result whereof Ex. PK was received and placed on file by him. After completion

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of investigation, he 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, 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. Muhammad Jaan ASHO is PW-1 who deposed that he has dictated the contents of Murasila Ex. PC to Moharrir Muhammad Khalil who reduced it into FIR Ex. PA.

II. Zahid Ameen, Inspector Police Line Orakzai appeared in the witness box as PW-2 and repeated the story narrated in the FIR.

III. Constable Shah Nawaz appeared in the witness box as PW-3. He besides eyewitness of the occurrence, is the marginal witness of recovery memo Ex. PC as well, vide which the complainant/PW-2 has taken into possession the recovered chars alongwith motorcycle. He also reiterated the contents of FIR in his statement.

IV. Investigating Officer Muhammad Raheem SI was examined as PW-4 who in his evidence deposed in respect of the investigation carried out by him

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

(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, 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 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 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

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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:

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

(9). The case of prosecution as per Murasila Ex. PA/1, the site plane Ex. PB and recovery memo Ex. PC is, that on 20.03.2021 the complainant PW-2 alongwith constable Shah Nawaz PW-3 and HC Latif Khan having laid a picket were

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present on the spot where he received information regarding smuggling of chars. At about 14:40 hours, two persons riding a motorcycle on way from Sambog side towards the check-post, on seeing the police party the person occupying the rear seat of motorcycle came down from the motorcycle and made his escape good while the person driving the motorcycle when signaled to stop the motorcycle, sped past the police party and tried to escape but was overpowered. A plastic bag tied to the handle of the motorcycle was searched wherefrom chars Garda was recovered which on weighing turned 1150 grams, out of which 10 grams were separated and sealed into parcel no. 1 for chemical analysis through FSL while rest of 1140 grams of chars were separately sealed into parcel no. 2. The complainant drafted the recovery memo Ex. PC and Murasila Ex. PA/1. The accused was arrested vide arrest card Ex. PW 2/1. Murasila Ex. PA/1 was handed over to Head Constable Latif Khan for transmitting the same to PS. Accordingly, the HC took the Murasila to PS and handed it over to PW-1 Muhammad Jaan (ASHO) who registered the case vide FIR Ex. PA. After registration of FIR, it was handed over to PW-4 Muhammad Rahim (SI) for investigation who proceeded to the spot where he prepared the site plan Ex. PB and recorded the statements of PWs on the spot.

In order to prove its case, prosecution produced Muhammad Zahid Amin Inspector, the complainant of the case, constable Shah Nawaz, the eyewitness and the marginal

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witness to the recovery memo, Muhammad Jaan (ASHO), the scriber of the FIR and Muhammad Rahim (SI), the investigation officer, as PW-2, PW-3, PW-1 and PW-4 respectively.

The material available on file and the statements of above-named PWs were gone through. As per case of prosecution, the date of occurrence is 20.03.2021. The complainant PW-2 alongwith HC Dilawar Khan, HC Latif Khan, constable Irfan Ullah and PW-3 Shah Nawaz, as per daily dairy no. 3 Ex. PW 4/5, had left the PS on that day at 0830 hours. The present occurrence, as per site plan Ex. PB, is situated near Nala check-post where the complainant, HC Latif Khan and constable Irfan Ullah have been shown at points no. 2, 3 and 4 respectively while the accused on motorcycle have been shown seen by the police party at point no. 'A' at distance of 275 to 279 paces. The time of occurrence is 1440 hours, the time of registration of FIR is 1510 hours. The IO alongwith constable Kaleem Ullah as per his statement has left the PS for proceeding towards the spot at about 1520 hours where he has spent 02 hours on the spot.

Contrary to the aforementioned contention of the prosecution, the witnesses in their cross examinations had told different stories i.e., the complainant PW-3 in his cross examination told that on that day they had left the PS at 02:00 pm while PW-3 the eyewitness said that they had left the PS at 02:20 pm, as against the contents of daily dairy Ex. PW 4/5

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where they have shown left the PS at 0830 hours (08:30 am).
As per DD Ex. PW 4/5, the complainant was accompanied by
HC Dilawar Khan, HC Latif Khan, constable Irfan Ullah and
constable Shah Nawaz but in the Murasila Ex. PA/1 the
complainant has shown himself accompanied by HC Latif
Khan, constable Irfan Ullah and constable Shah Nawaz to the
exclusion of HC Dilawar Khan while in the site plan Ex. PB
he (complainant) has shown himself accompanied by HC Latif
Khan and constable Irfan Ullah while constable Shah Nawaz,
the PW3 is nowhere shown in the site plan. As per site plan
Ex. PB, the accused at point 'A' has first seen by police party
at about 270 to 279 paces but as per cross examination of PW-
3 the accused was/were first seen at a distance of 10 meters
when they (accused) took a turn on a curve while as per cross
examination of complainant/PW-2, the accused were first seen
at a distance of 100 meters. The existence of curve which is
admitted by both PW-2 and PW-3 is also not shown in the site
plan Ex. PB. The witnesses are also not unanimous on the spot
of occurrence for, as per cross examination of
complainant/PW-2, it is situated near the boundary of District
Khyber while according to the cross examination of PW-3 it is
10/12 km away from the boundary of District Khyber. The
witnesses are also not agreed upon the time of arrival of IO on
the spot, the time consumed by the IO on the spot, the time of
departure of IO from the spot and the fact whether he was all
alone or accompanied by someone. In this respect, PW-3 in his

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cross examination told that he was all alone when arrived on the spot at 03:10 pm and remained on the spot for about 20/25 minutes while PW-2 told that the IO came on the spot at 03:00pm (even prior to registration of FIR at 03:10pm) and remained on the spot for about 15/20 minutes. As against them as per statement of IO/PW-4, he has come to spot alongwith constable Kaleem Ullah, left the PS at 1520 hours (03:20 pm) and remained on the spot for about 02 hours. Beside above, the eyewitness as PW-3 in his cross examination has also told that his statement is not recorded by the IO.

In view of the aforementioned contradictions between the statements of witnesses regarding material points, it is held that the prosecution failed to prove that the eyewitness PW-3 was present on the spot. These contradictions also lead to believe that the occurrence has not taken place and the investigation have not been conducted on the spot in the mode and manner as alleged by the prosecution in the Murasila Ex. PA/1, recovery memo Ex. PC and site plan Ex. PB.

With respect to transmission of the case property from the spot to the PS and sending of the representative sample to the FSL, the case of prosecution is, that after sampling and sealing of case property in parcels on the spot, these were brought by the PW-2/complainant to the PS and handed over the same to Moharrir of the PS, the PW-5, who deposited the same in Mal khana. The representative sample on 20.03.2021 was handed over by PW-5 to the IO who transmitted the same

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to FSL through constable Kaleem Ullah vide road permit certificate.

The prosecution in order to prove the aforementioned transaction of events, examined the complainant as PW-2, the IO as PW-4, the Moharrir as PW-5 and constable Kaleem Ullah as PW-6. However, as against the contention of the prosecution regarding transmissions and safe custody of the case property and transmission of the representative sample to the FSL within the prescribed period of time, the complainant as PW-2 in his cross examination told that he had sent the contraband through constable to the PS as against the contention of prosecution that the contraband were taken by the complainant himself to the PS. Similarly, PW-5 in his statement though, has told that he has deposited the case property in Mal khana but he has nowhere stated that the entry was also made by him in register no. 19. Similarly, the occurrence has taken place on 20.03.2021 while as per report of the FSL Ex. PK the representative sample has been transmitted to FSL on 24.03.2021 with a delay of one day.

Hence, in view of what is discussed above, though the representative sample, as per report of FSL Ex. PK, has been found as Chars but keeping in view the failure of the prosecution to prove the safe custody of the case property, its transmission to the PS and transmission of the representative sample to the FSL within the prescribed period of 72 hours, it

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is held that the case of prosecution is not substantiated through the report of FSL.

(10). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the alleged recovery of chars from possession of the accused facing trial. It also failed to prove the mode and manner of recovery and the mode and manner of proceedings conducted on the spot as alleged by the prosecution. Similarly, the prosecution has also failed to prove the safe custody of case property and transmission of the representative sample within the prescribed period. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, Arab Khan is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is on bail, his bail bonds stand cancelled and his sureties are released of the liabilities of bail bonds. The chars be destroyed after the expiry of period provided for appeal/revision in accordance with law. The motorcycle be returned to its lawful owner. Consign.


Pronounced
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Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgement consists of twelve (12) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 12.01.2022


SHAUKAT AHMAD KHAN
Sessions Judge/Judge Special Court,
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