

*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.38/3 of 2021  
Date of institution: 23.12.2021  
Date of decision: 09.04.2022

The State

...Versus...

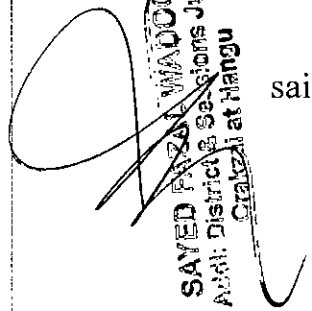
1. Khan Shareef son of Sayed Hanif, resident of Qaum Sheikhan, Tappa Bazid Khel, Mir Mela and District Orakzai.
2. Hidayat Ullah son of Abdul Janan resident of Qaum Ali Khel Tappa Jasrat Khel, Baghnak and District Orakzai. .... (Accused facing trial)

**Case FIR No.15, Dated 05.10.2021 u/s 9-D KP-CNSA, 2019  
Registered at Police Station Daboori Orakzai.**

**JUDGMENT**

Accused named above faced trial before this Court in case FIR No.15 dated 05.10.2021 u/s 9-D of Khyber Pakhtunkhwa Control of Narcotics Substance Act, 2019, registered at Police Station Daboori Orakzai.

2. Facts of the case are such that complainant along with other police officials of Police Station Daboori Orakzai, were reportedly available in the area. On getting spy information regarding smuggling of chars, Sub Inspector Imtiaz Khan laid on barricade. Two persons were coming from Daboori side while riding on Motorcycle. Complainant stopped the persons on suspicion. By search of them, complainant recovered a plastic sack lying on rear seat of the Motorcycle between both of the accused. On search of said sack, the local police found 05 packets of chars. On weighing, each

  
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packet came out 1100 grams with a total of 5500 grams. The driver disclosed his name as Khan Shareef and the person setting on rear seat of the Motorcycle disclosed his name as Hidayat Ullah. 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 seven (07) witnesses. The prosecution evidence is sketched below for ease of reference and determination of guilt or innocence of accused:

(i). Abdullah constable, PS Daboori Orakzai, was examined as PW-1, stated that *"on 06-10-2021 the IO handed over to me sealed parcels No. 1 to 5 for FSL along with the application and road permit certificate I took the parcels to the FSL on the same day. I handed over the parcels in the laboratory to the FSL concerned against the receipt. On return when I*

reached to the PS I handed over the receipt to Abdullah Muharrir. The OII also recorded my statement u/s 161 Cr.PC. The road certificate is Ex.PW-1/1. Today I have seen the relevant documents which are correct.”

(ii). PW-2 is the statement of Imtiaz Khan, SHO PS Daboori Orakzai, who deposed that “during relevant days I was posted as SHO of PS Dabori. On 05-10-2021, I along with constable Naveed khan Abdul Haq and Ahsan were on ordinary gusht. I got the information about the smuggling of chars I made the Nakabandi at pukhta road Abdul khel Dabori ta Ghiljo. In the meanwhile, I stopped the motorcycle bearing No.2051-Kohat having two person presents on it. During personal checking one plastic bag was recovered containing chars which was laying in between the front and back person who were riding on motorcycle. When the bag was opened it contained 05 packets of chars which were weighed through the digital scale. 05 packets were recovered and each packet contained 1100/1100 grams total of 5500 grams. Out of which 10/10 grams chars from each packet were separated for FSL and sealed into parcel No. 1 to 05. While the remaining 5450 grams were sealed into parcel No. 06 Ex.P1 duly stamped with the Monogram of DB. The motorcycle was red in color model 2014 Honda 125-CC No.2051/Kohat was also taken into possession. In this respect I have prepared recovery memo which is placed on file Ex.PW2/1.

I also prepared the card of arrest of both the accused which is Ex.PW2/2.

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*Murasila is also prepared by me which is Ex.PW2/3. The Murasila along with card of arrest and recovery memo was sent to the PS through the constable Abdul Haq for registration of FIR. After arrival of OII the site plan was prepared by the IO on my pointation. After spot inspection, I left the spot and handed over the recovered contraband along with motorcycle to Moharrir of the PS. My statement was recorded by IO under Section 161 Cr.P.C. I made my entry in DD about my departure and arrival to the PS."*

(iii). Abdul Haq constable, PS Daboori, Orakzai, was examined as PW-3, stated that "during relevant days I was posted as constable of PS Dabori. On 05-10-2021, I along with constable Naveed khan and SHO Imtiaz Khan were on routine patrolling. The SHO got the information about the smuggling of chars. We made the Nakabandi at pukhta road Abdul khel Dabori ta Ghiljo. In the meanwhile, we stopped the motorcycle bearing No.2051-Kohat having two person presents on it. During personal checking one plastic bag was recovered containing chars which was lying between the front and back person who were riding on motorcycle. The SHO opened the bag and found 05 packets of chars which were weighed through the digital scale. 05 packets were recovered and each packet contained 1100/1100 grams total of 5500 grams. Out of which 10/10 grams chars from each packet were separated by the SHO for FSL and sealed into parcel No. 1 to 05. While the remaining 5450 grams were sealed into parcel No. 06 already Ex.P1 duly stamped with the Monogram DB. The motorcycle was red in color model 2014 Honda 125-CC No.2051/Kohat was also taken into possession. In this respect, the SHO prepared the recovery memo, card of arrest and murasila. The SHO handed over to me recovery memo and

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*murasila, I handed over the same to the moharrir of the PS. After registration of FIR, I along with the IO came to the spot. After arrival of OII the site plan was prepared by the IO on our pointation. My statement was recorded by IO under Section 161 Cr.P.C. I made my entry in DD about my departure and arrival to the PS."*

(iv). PW-4 is the statement of Ihsan Ullah, constable PS Daboori Orakzai, who deposed that *"during relevant days I was posted as constable of PS Dabori. I am marginal witness to the recovery memo already Ex.PW2/1. The SHO during personal checking of the accused who were on motorcycle, one plastic bag was recovered containing chars which was laying in between the front and back person. The SHO opened the bag and found 05 packets of chars which were weighed through the digital scale. 05 packet were recovered and each packet contained 1100/1100 grams total of 5500 grams. Out of which 10/10 grams chars from each packet were separated by the SHO for FSL and sealed into parcel No. 1 to 05. While the remaining 5450 grams were sealed into parcel No. 06 already Ex.P1 duly stamped with the Monogram DB. The motorcycle was red in color model 2014 Honda 125-CC No.2051/Kohat was also taken into possession. In this respect, the recovery memo was prepared by the SHO in my presence. My statement was recorded by the IO under Section 161 Cr.PC."*

(v). Abdullah Khan MM, PS Daboori, Orakzai, was examined as PW-5, stated that *"during relevant days I was posted as MM of PS Daboori. On 05-10-2021, I was present on duty at PS Daboori. The constable Abdul Haq brought the Murasila to PS which was sent by Imtiaz Khan SI/NET. I incorporated its contents into FIR No. 15 dated 05-10-2021 which is correct and correctly bears my signature. The FIR is Ex.PA. To this extent,*

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my statement was recorded u/s 161 Cr.PC. Imtiaz Khan SI/NET handed over to me parcel No.1 to 6 along with Motorcycle. I also kept the case property parcel No.01 to 06 and Motorcycle in the Malkhana of the PS for safe custody on the same day and correctly entered in Register No.19. Copy of extract of Register No.19 is Ex.PW-5/1. I handed over the parcel No. 01 to 05 for the FSL to the IO on 06-10-2021 while the parcel No.6 kept in the malkhana of the PS for safe custody. To this extent, my statement was also recorded by the IO u/s 161 Cr.PC. Today I have seen the FIR which is correct and correctly bears my signature.”

(vi). PW-6 is the statement of Malik Abdul Janan, ASI presently posted to Police Line Orakzai, who deposed that “during relevant days I was posted as SHO PS Daboori. On dated 19-10-2021, I submitted complete challan against the accused after completion of investigation”

(vii). PW-7 is the statement of Gul Asghar, OII PS Daboori Orakzai, stated that “during relevant days I was posted as OII PS Daboori. Copy of FIR was handed over to me and I proceeded to the spot. During spot inspection, I prepared the site plan on the pointation of complainant which is Ex.PA. The SHO shown the accused along with contrabands on the spot. I recorded the statements of PWs on the spot. On dated 06-10-2021 I produced the accused before Illaqa Magistrate for confession u/s 164/364 vide my application Ex.PW-7/1. My application was turned down and the accused was sent to Judicial Lockup. I also recorded the statement of the accused u/s 161 Cr.PC. I placed Naqalmaid Roznamcha report No.10 dated 05-10-2021 prepared by the Muharrir of the PS which is Ex.PW-7/2. I also placed on file the Naqalmaid Roznamcha No.04 dated 05-10-2021 which is Ex.PW-7/3. I also placed on file Road certificate No. 13/21-D prepared by the

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*Muharrir which is already Ex.PW-1/1. Application for the FSL is also drafted by me which is placed on file and is Ex.PW-7/4. On dated 05-10-2021 I applied for the verification of Motorcycle No. Y2051/Kohat red in color recovered from the possession of accused vide my application Ex.PW-7/5. Verification and particulars of the Motorcycle provided by the Excise the Taxation office Kohat which is also placed on file which is Ex.PW-7/6. FSL report regarding chars is also placed on file which is Ex.PK. Similarly, application for FSL report regarding the chassis and engine number of the recovered Motorcycle is placed on file which is Ex.PW-7/7 and the report of Incharge FSL KPK about the examination of Motorcycle is also placed on file which is Ex.PW-7/8. The detail of the registration regarding the Motorcycle provided by the Excise Authority Kohat is also placed on file which is Ex.PW-7/9. All the exhibits are correct and correctly bear my signatures. After completion of the investigation I handed over the file to SHO for submission of challan."*

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 the barricade was established on spy information that led the police to spot arrest and recovery. Accused are directly charged in the contents of FIR followed by spot arrest and evidence available on the file is sufficient to establish a proved case of the commission of offence by the accused. He added that the offence is heinous

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Addl: District & Sessions Judge  
Orakzai at Hinggu


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in nature and prosecution has proved it 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 able to prove the case beyond reasonable doubt and requested for acquittal of the accused.

7. Perusal of case record reveals that according to FIR the accused were intercepted at barricade on 05.10.2021 at 1200 hours and contraband/chars weighing 5500 grams was recovered from both accused, in presence of marginal witnesses. The recovered material has been reported by the Forensic Science Laboratory as chars and the accused have committed the offence. The mode and manner in which crime has been committed is required to be proved by prosecution.

A. The time of occurrence shown in FIR Ex.PA is 1200 hours; whereas, its registration time is 1250 hours. Murasila Ex.PW-2/3, recovery memo Ex.PW-2/1 and card of arrest Ex.PW-2/2 have been sent to the Police Station for registration of case; the complainant SHO stated while recording statement as PW-2. He, while recording cross examination, categorically


  
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stated that I had written all details over the pack on sealing the case property and there is no change in the writing over the package sealed on the spot. It was further added that no alteration and deletion has been made. The case FIR number was also reflected on the package and if sealing of case property was at the spot, the same entry was impossible to appear on the sealed packs. In other words, the proceedings have taken place in the Police Station and the recovery as shown by the prosecution is concocted.

B. The recovery proceedings are doubtful on the score that Seizing Officer (PW-2) has admitted the fact that one Khalil Stenotypist has drafted the Murasila etc. on his dictation and he usually accompanies him in proceedings. The prosecution witness during cross examination as PW-4 had completely denied the fact of presence of Khalil Steno at the time of recovery and thus the contradiction of Seizing Officer (PW-2) and recovery witness (PW-4) is of the nature that cannot be ignored.

C. Monogram with the name of DB is neither owned by Seizing Officer nor by Investigation Officer of the case. In this regard, "State vs Javid Iqbal" reported as 2021 YLR, 662, provides following guidelines. *"After allegedly recovering the charas from possession of the accused the parcels of the recovered substance were sealed with monogram reading as WK, which was neither the abbreviation of the name of Seizing Officer/Recovery Officer nor Investigation Officer. Prosecution witnesses had not been able*

  
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 Magt. District & Sessions Judge  
 Orakzai at Hangu


*to advance any explanation whatsoever as to why Recovery Officer had not put his own monogram on the seals of the parcels prepared by him and as to why he had used the monogram of some other officer, whose posting was even not shown at Police Station at the relevant time.”*

D. Besides, no witness from public either associated with recovery of chars or to cite as marginal witness to the recovery memo Ex.PW-2/1. The Investigation Officer examined as PW-2 speaks about the spy information but no private witness has been associated that create serious doubt as was laid down in 2015 PCr.LJ-1430 [Peshawar].

F. The colour of recovered chars has not been mentioned by any witness nor its nature being pukhta or garda has been identified.

G. 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 accused have no criminal history in such like offences.

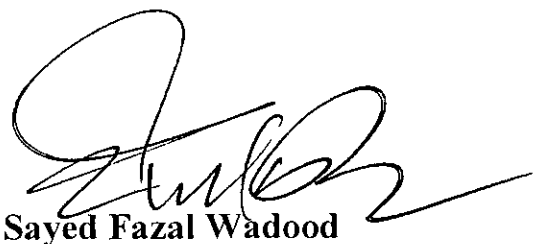
8. The examination of record as discussed above has given birth to reasonable doubt, the benefit of which has to be extended in favour of accused as was ordained in 2003 PLD 84 [Peshawar]. These facts and circumstances render the evidence as insufficient to believe the mode and manner of the crime narrated. In the light of above discussion, it is being held that the prosecution evidence is falling under insufficient category of

  
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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 Khan Shareef son of Syed Haneef and Hidayat Ullah son of Abdul Janan 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. The Order of Superdari dated 30-11-2021; passed in CMA No. 9/4 of 2021 is hereby confirmed as the Motorcycle is neither stolen nor tempered and validly registered in the name of petitioner. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

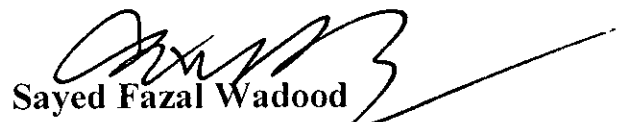
**ANNOUNCED**  
09.04.2022



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

**CERTIFICATE:**

Certified that this Judgment is consisting upon eleven (11) 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