

41

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

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

SPECIAL CASE NO. : 6/3 OF 2022
DATE OF INSTITUTION : 08.02.2022
DATE OF DECISION : 28.03.2022

STATE THROUGH AFTAB HASSAN SHO, POLICE STATION
KUREZ BOYA

.....(COMPLAINANT)

-VERSUS-

SYED HASHIM ABBAS S/O SYED MIRZA HASSAN, AGED ABOUT
35 YEARS, R/O CASTE MANI KHEL, TAPA SHAH ALMAS KHEL,
SABZI KHEL, MARAI BALA, DISTRICT KOHAT

..... (ACCUSED FACING TRIAL)

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

FIR No. 28 **Dated:** 15.11.2021 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kurez Boya

JUDGEMENT
28.03.2022

The above-named accused faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR
no. 28, dated 15.11.2021 of PS Kurez Boya.

- (2). The case of the prosecution as per contents of Murasila
Ex. PA/1 converted into FIR Ex. PA is; that on 15.11.2021 the
complainant, Aftab Hassan SHO, the PW-4 acting on the
information regarding smuggling of narcotics via motorcar no.
ACD495/Lahore, laid a picket in Hussaini Abad village near
Bardarbar check-post where at about 1630 hours a motorcar
ACD/Lahore of brown colour was stopped for the purpose of
checking. The driver of the motorcar was deboarded but

28-03-2022
Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

42

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

nothing incriminating was recovered from his possession; however, the complainant/PW-4 recovered a plastic bag wrapped with yellow colour adhesive tape from beneath the driver seat of the motorcar, the search of which led the complainant to the recovery of 1100 grams of chars. The complainant/PW-4 separated 10 grams of chars from total quantity for chemical analysis through FSL, sealed the same in parcel no. 1 whereas the remaining quantity of chars weighing 1090 grams were sealed in parcel no. 2 by affixing monogram of 'AH' on both the parcels. The accused disclosed his name as Syed Hashim Abbas s/o Mirza Hussain who was accordingly arrested by issuing his card of arrest Ex. PW 4/1. The complainant/PW-4 took into possession the recovered chars alongwith motorcar bearing no. ACD495/Lahore vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the PS through constable Waseem Ali which was converted into FIR Ex. PA by PW-3, Ain Ullah Madad Moharrir.

(3). After registration of FIR, it was handed over to PW-6, Hassan Jaan OII for investigation. Accordingly, after receipt of FIR, he reached on the spot, prepared site plan Ex. PB on the pointation of complainant, sent the samples for chemical analysis to FSL vide his application Ex. PW 6/2 through constable Junaid Ali PW-1, the result whereof Ex. PK was received and placed on file by him. After completion of

28-03-2022
District & Sessions
Qarkzai at B...

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

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

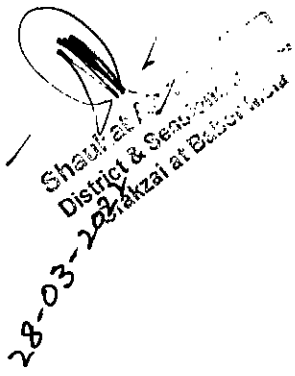
(4). Upon receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to him u/s 265-C Cr.P.C and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence of prosecution is as follow;

- I. Constable Junaid Ali is PW-1. He has taken the samples of recovered chars in parcel no. 1 to the FSL alongwith application Ex. PW 6/2 and road permit certificate Ex. PW 6/3 for chemical analysis on 19.11.2021 and after submission of the same, he was given the receipt of the parcels which he handed over to the IO upon his return.
- II. MHC Libab Ali is PW-2. He is the marginal witness of the recovery memo Ex. PC vide which the IO took into possession the recovered motorcar and made corrections in particulars of the motorcar.
- III. Madad Moharrir Ain Ullah is PW-3. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He also deposed that the SHO handed over the recovered contraband and motorcar to him.

Shaukat Ali
District & Sessions Judge
Guzai at Boker Nela
28-03-2022

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

- IV. Aftab Hassan SI, the seizing officer, appeared in the witness box as PW-4 and repeated the story as narrated in the FIR.
- V. Constable Waseem Ali appeared in the witness box as PW-5. He besides eyewitness of the occurrence, is the marginal witness of recovery memo Ex. PC as well, vide which the complainant has taken into possession the recovered chars alongwith motorcar. He also reiterated the contents of FIR in his statement.
- VI. Investigating Officer Hassan Jaan was examined as PW-6. He has prepared site plan Ex. PB on pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court of Judicial Magistrate vide his application Ex. PW 6/1, prepared recovery memo Ex. PC vide which he made correction in chassis number of the vehicle, verified the vehicle from FSL vide his application Ex. PW 6/2 the result whereof is Ex. PK, sent the representative of samples to FSL vide his application Ex. PW 6/3 & road permit certificate Ex. PW 6/4 and result of the same Ex. PK/1 was placed on file by him, placed on file copy of register 19 Ex. PW 6/6 with copy of DD no. 3 Ex. PW 6/5 and submitted the case file to the SHO for onward proceedings.



 District & Sessions Judge
 Kurez Boya
 28-03-2022

(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 which have been found positive for chars vide report of FSL Ex. PK/1, 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 alleged chars have been shown recovered from possession of the accused facing trial and the report of FSL support the case

28-03-20
Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Field

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

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.

(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?

The case of prosecution is, that the complainant alongwith constable Sadar Ali and constable Waseem Ali on 15.11.2021 left the PS for patrolling at 1605 hours (04:05pm) as per Daily Diary (DD) no. 16, Ex. PW 6/5. As per contents of Murasila Ex. PA/1, the complainant PW-4 received information regarding smuggling of narcotics during patrolling via motorcar number RCD-495/Lahore (later on

28-03-20
Suzakat Ahmad Khan
District & Sessions Judge,
Orakzai at B... Mela

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

corrected is ACD-495/Lahore) at which he laid a picket on the spot and at about 1700 hours (05:00 pm) the motorcar arrived, wherefrom beneath the driver seat a packet of chars wrapped with yellow colour solution tape was recovered which was weighed on the spot and turned 1100 grams, out of which 10 grams of chars was separated and sealed into parcel no. 1 while the remaining quantity of chars was sealed in parcel no. 2. Recovery memo Ex. PC/1 was drafted on the spot. The accused was arrested vide card of arrest Ex. PW 4/1. The Murasila Ex. PA/1 was drafted and handed over to constable Waseem Ali PW-5 to take the same to PS where, as per contents of FIR Ex. PA, at 1720 hours (05:20pm) FIR was registered by Madad Moharrir Ain Ullah PW-3. After registration of FIR, it was handed over to PW-6 Hassan Jan OII for investigation. Accordingly, as per statement of PW-6, the FIR was handed to him at 05:35 pm at which he proceeded to the spot and reached there at 06:05 pm. The IO remained on the spot for 20 minutes and returned to PS. On his return to PS, he prepared recovery memo Ex. PC wherein he corrected the particulars of motorcar regarding its registration number, color, mark and its chassis number.

Shahid Ahmad Khan
District & Sessions Judge,
Fakirzai of Baber Mela
28-03-2022

The prosecution is order of prove its case produced complainant Aftab Hassan SI as PW-4, constable Waseem Ali who besides being eyewitness of the occurrence is a marginal witness to the recovery memo Ex. PC, was examined as PW-

49

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

5, Ain Ullah Madad Moharrir was examined as PW-3 while Mr. Hassan Jan OII appeared in the witness box as PW-6. The complainant/PW-4 and the eyewitness/PW-5 reiterated the contents of FIR in their statements. PW-3 Madad Moharrir Ain Ullah confirmed that on receipt of Murasila, card of arrest and recovery memo through PW-5, he registered the FIR Ex. PA. PW-6 Hassan Jan OII stated that on receipt of copy of FIR, Murasila, card of arrest and recovery memo, he visited the spot, prepared the site plan on the pointation of PW-4 and in his cross examination he stated that the copy of FIR was handed over to him at 05:35 pm, he left the PS after 15 minutes and reached the spot at 06:05 pm and remained there on the spot for about 20 minutes. He further stated that on his return, the Moharrir handed over to him the recovered motorcar and in this respect, he prepared the recovery memo Ex. PC/1 wherein he corrected the particulars of the motorcar. As against the aforementioned story of prosecution when the PWs were subjected to cross examination, PW-4, the complainant stated that he left the PS at 04:00 pm and the information regarding smuggling was also received to him in the PS at 04:00 pm but as mentioned above as per contents of Murasila and his examination in chief, the information was received to him during patrolling. The occurrence as per Murasila Ex. PA/1 has taken place at 1630 hours (04:30 pm) while the Murasila has been drafted by him at 1700 hours (05:00 pm)

28-03-2022
Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Baher Mera

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

and the FIR has been registered at 1720 (05:20 pm); however, as against this in his cross examination he stated that he conducted all the proceedings in an hour which means that the Murasila should have been drafted at 1730 hours (05:30 pm) negating the version of prosecution vide which the Murasila has been drafted at 1700 hours and by 1730 hours even the FIR was registered. Similarly, when the complainant and the eyewitness were asked about the time of arrival of the IO on the spot, the complainant stated that the IO arrived at 04:40 pm while eyewitness stated that the IO arrived on the spot at 04:45 pm, the time, when even the Murasila was not drafted. Similarly, when PW-5 who has taken the Murasila to the PS was asked about the time of his departure from the spot while taking the Murasila to the PS, he stated that it was 04:50 pm when he left the spot, the time, when as per contents of Murasila Ex. PA/1, the Murasila was not even drafted. Further, when he was cross examined regarding the fact that as to how he went to the PS, he said that he went to the PS via motorcar of his friend but when he was asked about the name of his friend, the same was not even known to him. Most importantly he told in his cross examination that after handing over Murasila to the Moharrir he went to his room and did not return to the spot which puts a question mark upon the proceedings conducted by the IO on the spot. Furthermore, the stance of the prosecution that the recovery has been made from the

28-03-2022
Shahid Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mola

56

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

motorcar driving by the accused facing trial also seems doubtful, for, as per Murasila Ex. PC drafted by complainant on the spot, the particulars of motorcar are, RCD-495/Lahore, color grey, mark Alto, chassis number PK-607835 but later on correction in the particulars of the motorcar has been made by the IO in the PS regarding its registration number, color, mark and chassis number. In this respect when the IO/PW-6 was cross examined he stated that at the time of making inspection on the spot the motorcar was parked on the spot and he inspected the same on the spot. The incorrect particulars of the motorcar as mentioned in recovery memo Ex. PC coupled with the fact that had the motorcar was inspected by the IO on the spot, he would have had pointed out the incorrect particulars of the motorcar on the spot, shows that either the motorcar has not been recovered from the accused in the mode and manner as detailed in the Murasila and recovery memo Ex. PC or the IO has not visited the spot at all.

In view aforementioned contradictions between the statements of PWs, it is held that the prosecution failed to prove the mode and manner of the occurrence as detailed on file and the mode and manner of recovery and the investigation conducted on the spot.

With respect to transmission of the case property from the spot to the PS and sending of the representative samples to the FSL, the case of prosecution is, that after sampling and

28-03
Signature: A. J. Khan
District & Sessions Judge
Orainzi at Baber Bagh

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

sealing of case property in parcels on the spot, these were brought by the PW-4/complainant to the PS and handed over the same to Madad Moharrir, the PW-3, who deposited the same in Mal khana. The representative sample on 19.11.2021 was handed over by Moharrir of the PS to the IO who transmitted the same to FSL through constable Junaid vide road permit certificate.

In order to prove its case, the prosecution has produced Madad Moharrir Ain Ullah as PW-3, constable Junaid Ali as PW-1 and IO as PW-6. PW-3, though in his examination in chief stated that he had received case property from the complainant but he has not spoken a single word regarding entry of same in register no. 19 and handing over of parcel no. 1 to the IO. Similarly, regarding the entry of case property in register no. 19, an extract of the same as Ex. PW 6/6 has been placed on file but neither the original register no. 19 has been produced nor the official who has prepared the extract of register no. 19, has been produced before the court. Similarly, the occurrence has taken place on 15.11.2021 while as per report of the FSL Ex. PK the representative sample has been transmitted to FSL on 19.11.2021 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


28-03-2022
Enaikat Ahmad Khan
District & Sessions Jkt
Oralzal at Babur Khana

STATE VS SYED HASHIM ABBAS
FIR No. 28 | Dated: 15.11.2021 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

transmission to the PS and transmission of the representative sample to the FSL, it is held that the report of FSL cannot be relied for recording conviction.

(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 to FSL. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, Syed Hashim Abbas 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 motorcar be returned to its lawful owner, if not required in any other case. Consign.


Pronounced
28.03.2022


SHAUKAT AHMAD KHAN
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: 28.03.2022


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

