

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

SPECIAL CASE NO. : 49/3 OF 2021
DATE OF INSTITUTION : 04.09.2021
DATE OF DECISION : 22.06.2022

STATE THROUGH SHAL MUHAMMAD SHO, POLICE STATION
KALAYA

.....(COMPLAINANT)

-VERSUS-

MUHAMMAD RAHEEM S/O AJIZ GUL, AGED ABOUT 26 YEARS,
R/O CASTE QAMAR KHEL, TAPA YOUSAF KHEL, MEERO DARA
DISTRICT KHYBER

..... (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for state.
: Syed Muzahir Hussain Advocate for accused facing trial.

FIR No. 95 **Dated: 30.07.2021** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kalaya

JUDGEMENT
22.06.2022

The above-named accused faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR
no. 95, dated 30.07.2021 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
30.07.2021, the complainant, Shal Muhammad SHO/PW-3
alongwith constables Abbas Ali Shah no. 550 and Abdul
Sattar no. 1454 having laid a picket, was present on main
road near Mirbak mosque where at about 1500 hours a
Honda 125 motorcycle of red colour on way from
headquarter chowk was stopped for checking. The person of
the person riding the motorcycle was searched but nothing

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incriminating was recovered from him. A plastic bag tied with the seat of the motorcycle was searched which led the complainant to the recovery of 30 packets of chars, each weighing 1200 grams, total 36,000 grams. The complainant/PW-3 separated 10 grams of chars from each packet for chemical analysis through FSL, packed and sealed the same into parcels no. 1 to 30 whereas the remaining quantity of chars weighing 1190 grams each were packed and sealed in parcels no. 31 to 60 with a plastic bag along with 05 yards rope in parcel no. 61, affixing monograms of 'SH' on all the parcels. The accused disclosed his name as Muhammad Raheem s/o Ajiz Gul 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 Abbas Ali Shah/PW-4 which was converted into FIR Ex. PA by PW-1, Muhammad Ayyub MHC.

- (3). After registration of FIR, it was handed over to PW-5, Aftab Hassan OII for investigation. Accordingly, after receipt of FIR, the IO reached the spot, prepared site plan Ex. PB on pointation of complainant and recorded statements of PWs u/s 161 Cr.P.C. On 02.08.2021, the IO sent the samples for chemical analysis to FSL vide application Ex. PW 5/2 and road permit certificate Ex. PW 5/3 through constable Nikzad

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Ali/PW-2, the result whereof Ex. PK was received and placed on file by him. On 16.09.20221, the IO also sent the motorcycle to FSL Peshawar and its result was placed on file by him which is Ex. PK/1. After completion of investigation, he handed over the case file to SHO Shal Muhammad Khan/PW-3 who submitted complete challan Ex. PW 3/2 against the accused facing trial.

(4). Upon receipt of the 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 prosecution produced as many as 05 witnesses. The gist of the evidence is as follow;

1. *Muhammad Ayyub AMHC is PW-1. He has registered FIR Ex. PA by incorporating the contents of Murasila Ex. PA/1 therein. He has also received the case property from the complainant duly packed and sealed which he had kept in mal khana in safe custody while parked the motorcycle in the premises of PS. The witness further deposed that he has recorded entry of the case property in register 19 and handed over the samples of the case property to the IO for sending the same to FSL on 02.08.2021.*

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- II. *Constable Nikzad Ali is PW-2. He has taken the samples of recovered chars in parcels no. 1 to 30 to the FSL for chemical analysis alongwith application and road permit certificate on 02.08.2021 and after submission of the same, he was given the receipt of the parcels which he handed over to the IO.*
- III. *Shal Muhammad SHO is the complainant of the case. He appeared in the witness box as PW-3. In his statement he repeated the story as narrated in the FIR. He has also submitted complete challan Ex. PW 3/2 in the instant case.*
- IV. *Constable Abbas Ali Shah appeared in the witness box as PW-4. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-3 has taken into possession the recovered chars and motorcycle. He also reiterated the contents of FIR in his statement. The witness also deposed that he has taken the copies of Murasila, card of arrest and recovery memo to PS for registration of FIR.*
- V. *Investigating Officer Aftab Hassan SI was examined as PW-5 who in his evidence deposed in respect of the investigation carried out by him*


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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, sent the representative samples to FSL and result of the same Ex. PK was placed on file by him, sent the motorcycle to FSL whose result Ex. PK/1 was placed on file by him, annexing copy of register 19 Ex. PW 5/1 as well as daily diaries regarding departure and return of the complainant and submitted challan Ex. PW 5/2 against the accused.

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

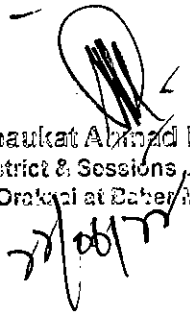
(6). Learned DPP for the state submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis have been transmitted to the FSL within the prescribed period

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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 the 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 his possession and the report of FSL support the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. 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. Learned counsel for accused submitted that as per cross examination of complainant/PW-3 and the eyewitness/PW-4, after their departure from PS at 08:20 hours, they patrolled various other areas and finally reached at the place of Naka Bandi; but strange enough none of the witness can tell the time as to when they reached those places and as to how much time


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they spent over there except the time of departure from PS and their arrival on the spot. Similarly, the eyewitness/PW-4 cannot tell the colour of motorcycle, colour of the bag and other particulars which means that story of prosecution as narrated in FIR is concocted and fake. That as per version of the complainant/PW-3, while leaving the PS he was in possession of investigation kit but the same is not mentioned in the Daily Diary wherein he has shown himself left the PS along with police nafri. That on the spot the conduct of accused and the conduct of complainant/PW-3, eyewitness/PW-4 and other police officials towards the mode and manner of the occurrence and the mode and manner of recovery also seems not in natural cause of things and does not appeal to prudent mind. In this respect learned counsel for defence referred to arrival of accused on the spot, who despite having opportunity of escape, has been shown approached with huge quantity of chars in his possession straight towards the police party. That the complainant/PW-3 and the eyewitness/PW-4 have also been cross examined regarding the opening of bag whether tied or knotted but none of them can exactly tell this fact. That neither the complainant/PW-3 nor eyewitness/PW-4 can tell the colour of chars which means that none of them at all has seen the chars on spot or otherwise. Similarly, when it comes to the process of sampling and sealing of chars in about 60 packets,


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the complainant/PW-3 told that he spent 40 minutes on the whole process which is too less a time for extracting and weighing 10 grams of chars and packing and sealing of all 61 parcels, hence does not appeal to prudent mind. That as per site plan Ex. PB, a service station has been shown on northern side of the spot but both the complainant/PW-3 and eyewitness/PW-4 in their cross examination told that there is petrol pump on northern side. That despite availability of private witness, no one from public has been associated with the occurrence. Learned counsel for defence, with respect to safe custody of case property and transmission of samples to FSL, argued that the prosecution has also failed to prove the safe custody of case property and transmission of samples to FSL. He submitted that the IO has recorded two separate statements of Moharrir/PW-1 but he has made addition in first statement of said PW which has also been admitted by PW-1. That PW-1 has made improvements in his court statement regarding contents of parcels and monograms on the parcels. That extract of register no. 19 does not bear signature of Moharrir/PW-1. Similarly, the statement of Nikzad Ali/PW-2 who has transmitted samples to FSL, has not been recorded at the time of handing over parcels to him. That this PW has also made improvements in his court statement regarding receipt of parcels by him in sealed condition with monogram affixed over these parcels. Learned

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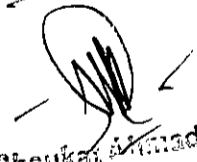
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counsel for the defence concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by the learned DPP for the State, arguments of the 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 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). With respect to mode and manner of recovery and the mode and manner of investigation allegedly conducted on the spot, the case of prosecution is, that on 30.07.2021, the complainant, Shal Muhammad SHO/PW-3 along with constables Abbas Ali Shah no. 550 and Abdul Sattar no. 1454 having laid a picket, was present on main road near Mirbak mosque where at about 1500 hours a Honda 125 motorcycle of red colour on way from headquarter chowk was stopped for checking. The person of the person riding the motorcycle was searched but nothing incriminating was


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recovered from him. A plastic bag tied with the seat of the motorcycle was searched which led the complainant to the recovery of 30 packets of chars, each weighing 1200 grams, total 36,000 grams. The complainant/PW-3 separated 10 grams of chars from each packet for chemical analysis through FSL, packed and sealed the same into parcels no. 1 to 30 whereas the remaining quantity of chars weighing 1190 grams each were packed and sealed in parcels no. 31 to 60 with a plastic bag along with 05 yards rope in parcel no. 61, affixing monograms of 'SH' on all the parcels.

In order to prove its case, prosecution examined the seizing officer Shal Muhammad Khan SHO as PW-3, constable Abbas Ali Shah who besides being eyewitness of the occurrence, has also transmitted the Murasila, recovery memo and card of arrest from the spot to the PS for registration o FIR and after handing over these documents to Moharrir/PW-1, has returned to the spot. He is also a marginal witness to recovery memo Ex. PC. Moharrir Muhammad Ayyub, who has registered FIR on the basis of Murasila, has been examined as PW-1. The investigating officer Aftab Hassan SI has been examined as PW-5. The complainant/PW-3 and the eyewitness/PW-4 in their cross examinations have confirmed that they had left the PS at 08:20 hours in the morning. That prior to arrival on the spot they patrolled the areas of Chapri Feroz Khel, Manzakhy


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area, Anjanri and Syed Khalil Baba check post areas. That the bag containing chars was tied with a seat of motorcycle with a rope which has been taken in possession and sealed in parcel no. 61. That the opening of the bag was tied with a rope which has not been taken into possession. That Murasila, recovery memo and card of arrest are drafted by the complainant/PW-3 in his own handwriting. That the complainant was in possession of investigation kit. That the eyewitness/PW-4 after receiving the Murasila, recovery memo and card of arrest, reached the PS within 10/15 minutes where he handed over the documents to Moharrir and remained in the PS for about 10 minutes. That IO arrived on the spot at about 1650 hours. That the complainant party returned to the PS at about 1710/1720 hours. That the eyewitness as marginal witness of recovery memo has signed the same on the spot. Similarly, the IO/PW-5 in his cross examination also confirmed that the copy of FIR, Murasila, card of arrest and recovery memo were handed over to him at 1645 hours. That he reached the spot at about 05:00 pm. The IO was also put to a suggestion in affirmative regarding case property and accused to the extent that while leaving the PS he had not seen the case property and accused as these were not yet transmitted to the PS. The IO also confirmed that the site plan was prepared by the IO on pointation of complainant/PW-3. All the three material witnesses regarding


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mode and manner of recovery, mode and manner of the investigation conducted on the spot are unanimous on all material points except a slight contradiction in statement of the eyewitness/PW-4 regarding arrival of the IO on the spot and departure of complainant party from the spot.

During lengthy cross examination of all the three witnesses, nothing beneficial to the defence could be extracted from the mouth of any of the witness except the objections raised by learned counsel for defence in his arguments i.e., that after departure of the complainant party from PS they have patrolled various other areas but neither the time of arrival of the complainant party on those points nor the time spent by the complainant party over there is remembered to the PWs except the time of their departure from the PS, the time of arrival of complainant party on the spot, the time of arrival of the IO on the spot and departure of the complainant party from the spot. That the colour of the motorcycle, the colour of bag and other particulars are also not remembered to the eyewitness/PW-4. That the investigation kit in possession of the complainant/PW-3 has not been mentioned in dairy diary, but all these particulars are the minute details which, in the normal course of thing, cannot be expected to be remembered to the witness. The objections of learned counsel for defence regarding the fact that the rope with which the opening of bag was tied, has not


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been taken into possession, also does not create any doubt regarding recovery. Similarly, the points raised by learned counsel for defence regarding visibility of police party to the accused from a long distance and making no efforts by the accused to escape and that the colour of chars are not mentioned in the Murasila, also do not cast any doubt over the mode and manner of recovery. The objections of learned counsel for defence that the complainant/PW-3 has consumed 40 minutes upon sealing and sampling of 61 parcels which is too less a time for completion of process and does not appeal to prudent mind, also not valid for, in normal course of things the complainant alone is not supposed to carry out all these process and he is used to be assisted by other police officials on the spot but in this respect neither the complainant/PW-3 nor the eyewitness/PW-4 has been cross examined. Similarly, the objections of learned counsel for defence to the site plan Ex. PB where a service station has been shown while PWs in their cross examinations have told a patrol pump over there, also holds ground, for, on one hand there is nothing contradictions available on file as to show that the occurrence has not taken place on the spot as shown in the site plan Ex. PB while on the other hand almost every petrol pump is used to have a service station inside it. Similarly, non-association of a private witness by the complainant with process of search or recovery, also does not adversely affect the case of


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prosecution for, in common routine no one poke nose into these affairs and by now it is well settled principle of law that the police official are as good witnesses as private witness unless some malifidy on part of police witnesses toward the accused is proved on record.


(10). 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 30 packets, 10 grams from each of the packet has been separated and sealed by him on the spot with affixing of 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 Muhammad Ayyub MHC, who has made entry of the case property in register no. 19 and has kept the same in safe custody. On 02.08.2021, the incharge investigation has collected the samples from Moharrir and has handed over the same to constable Nikzad Ali 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 he has been handed over 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 complainant as PW-2, Muhammad Ayyub

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MHC as PW-1, Aftab Hassan SI, the IO of the case as PW-5 and constable Nikzad Ali as PW-2. All the four witnesses have narrated the aforementioned story in their statements. In cross examination none of the witness has put any question regarding handing over of the case property to Moharrir, entry of the same in register no. 19 and keeping the same in mal khana. With respect to transmission of the samples to FSL, PW-2 in cross examination confirmed the facts that on 04.06.2021 the IO handed him over the samples in sealed condition and he left the PS, reached the FSL, handed over parcels to the official of FSL against a proper receipt on the same which on return he handed over to the IO and that he returned the PS on same day.

In cross examination the defence ~~no~~ failed to extract anything contradictory towards the safe custody of case property and transmission of samples from the spot to the PS and thereafter to the FSL except that both PW-1 and PW-2 have made improvements in their court statements to the extent of receipt of samples in sealed condition with monograms affixed over all these parcels but as the court statement of a witness is not necessarily be a ditto copy of his statements recorded u/s 161 CrPC; therefore, the additions regarding the receipt of case property in sealed condition with monograms over the parcels do not come within the definition of dishonest improvements and do not any way


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District & Sessions Judge
Quazaiat Bazar, Kalaya

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suggest that at the time of receipt of the case property by PW-1 or at the time of handing over the parcels to the PW-2 these were not in sealed condition.

In view of what is discussed above, the prosecution has proved beyond shadow of any doubt the chain of the custody of the representative samples from the spot till these are received in the FSL. Similarly, as per report of FSL Ex. PK, the representative samples no. 1 to 30 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.

(11). In light of aforementioned discussion, 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 Raheem is held guilty for having in his possession 36,000 grams of chars. He is convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 *"punishable with death, imprisonment for life or imprisonment for a term which may extend to 14 years and with fine which may extend to Rs. 1000000 and not less than 05 lacs if the quantity of narcotics substance exceeds the limit of 01 kilograms. Provided that if the quantity exceeds 10 kilograms, the punishment shall not be less than imprisonment for life in any case."*


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As the quantity of chars exceeds the limit of 10 kilograms; therefore, he is sentenced to imprisonment for life and fine of Rs. 600,000/- (six lacs). In case of default of the payment of fine, the accused shall further undergo simple imprisonment for six (06) months. The benefit of section 382-B Cr.P.C is extended to the accused. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision. The motorcycle, being used in the commission of offence, is confiscated to the state. 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. 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
22.06.2022



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

CERTIFICATE

Certified that this judgement consists of seventeen (17) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 22.06.2022



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

