

In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.

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BEFORE THE COURT OF
ADDITIONAL SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI

Special Case No.9/3 of 2021

Date of institution: 18.05.2021

Date of decision: 22.11.2022

The State

...Versus...

1. Jaleel Khan son of Fazal Kareem, resident of Qaum Sipah, Tappa Warmaz Khel, village Speen Qabar, Tehsil Bara District Khyber.
2. Shaukat Khan son of Hameed Khan, resident of Qaum Shalobar, Tappa Dray Plaray, Village Qambar Abad, Tehsil Bara and District Orakzai...

..... (Accused facing trial)

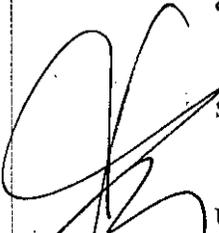
**Case FIR No.43, Dated 30.03.2021 u/s 9-D of KP-CNSA, 2019
registered at Police Station Kalaya Orakzai.**

JUDGMENT

Accused named above faced trial before this Court in case FIR No.43 dated 30.03.2021 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 Malak Abdul Janan SHO along with other police officials of Police Station Kalaya Orakzai, laid barricade on spy information regarding the smuggling of chars. Two persons travelling in the Motorcar bearing Registration No. 264/ASR, Chassis No. NZE-140-2028834, Engine No. X-978622, appeared from Teerah Maidan side and was stopped by the complainant for the purpose of checking. The Motorcar was driven by accused Jaleel Khan which was accompanied by co-accused Shaukat Khan. On

search of the Motorcar, the complainant found 10/10 packets of chars each, under both front Headlights and thus total 20 packets of chars from secret

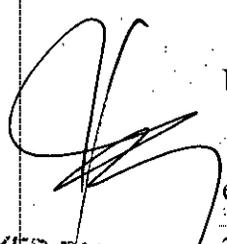

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cavities made under both front Headlights of the Motorcar. On the further search of the Motorcar, the complainant recovered 20 packets of chars from secret cavity made beneath the rear seat of the Motorcar. All the recovered 40 packets of chars were wrapped in yellow scotch tape, having weight of 1200 grams of each packet with total quantity of 48000 grams chars. Both the accused were arrested on the spot. Murasila 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 prescribed documents of case 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.

4. Prosecution was directed to produce evidence. The prosecution in order to prove its case against the accused, produced and examined as many as five (05) witnesses. The prosecution evidence is sketched below for ease of reference and determination of guilt or innocence of accused:

5. Raza Ali constable was examined as PW-1, who produced record pertaining to dispatch of case property to the FSL for chemical analysis. Ain Ullah Muharrir, who had registered the FIR Ex.PA on receipt of Murasila, was examined as PW-2. The star prosecution witness was complainant Malak



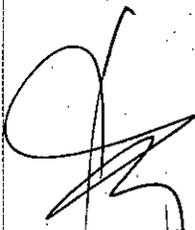
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Abdul Janan, whose statement was recorded as PW-3. He confirmed the initial report Ex.PA/1 to be true. Recovery of contraband vide recovery memo Ex.PW 3/1 was testified to be genuine. One of the marginal witness to the recovery memo was Shakeel Khan Constable, who was examined as PW-4. It was testified that the recovery was made from the Motorcar possessed by the accused and was documented vide recovery memo Ex.PW-3/1. Investigation Officer of the case was Shal Muhammad SHO who entered the witness box as PW-5. Preparation of site plan Ex: PB and examination of witnesses was confirmed by this witness.

6. After the closure of prosecution evidence, statements of accused were recorded u/s 342 of the Cr.PC. They wished to be examined on oath but not opted to produce evidence in their defence. Statements of both the accused were recorded under Section 340 (2) of the Code of Criminal Procedure, 1898.

7. Learned APP for the State and counsel for the accused have been heard and gone through the record with their assistance.

8. It was argued by learned APP that the recovery of narcotics is proved beyond doubt as is evident from the testimony of PW-3 and PW-4. That the recovery memo Ex.PW.3/1 has been proved to be correct and the testimony of the PWs has no contradiction on material particulars. That the offence is heinous in nature and that there is nothing on record which could show any kind of *mala fide* on part of police in charging the accused facing trial.

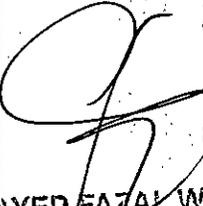


9. Conversely, learned defence counsel argued that no recovery has been made from possession of the accused and that the police have planted the recovery of narcotics against them with ulterior motive. That no independent witness came forward to support the prosecution case and that the testimony adduced by the prosecution is full of contradictions on material particulars. It was argued that as such very strong and consistent testimony would be required in order to prove his guilt.

10. Perusal of case record would reveal that according to FIR the accused were intercepted at barricade established on spy information on 30.03.2021 at 1400 hours and contraband/chars weighing 48000 grams were recovered from possession of both the accused in the presence of marginal witnesses namely, Constable Shakeel Khan and Constable Muhammad Raziq Vide Recovery memo (Ex. PW 3/1). The marginal witness Shakeel Khan (PW-4) was examined; whereas, Muhammad Raziq, marginal witness was abandoned. According to (PW-4), he was present with seizing officer on the eventful day. He stated that on search of the Motorcar, possessed by both the accused, the complainant found 10/10 packets of chars each, under both front Headlights with total of 20 packets of chars from secret cavities made under both front Headlights of the Motorcar. On the further search of the said Motorcar, the complainant also recovered 20 packets of chars from secret cavity made beneath the rear seat of the Motorcar.

11. With respect to proceedings conducted by the IO on the spot, the stance of the prosecution as per Murasila Ex. PA/1, FIR Ex. PA and recovery memo

Ex. PW-3/1 is; that after drafting of Murasila, recovery memo and card of arrest of the accused by the complainant, the same were handed over to PW-4 constable Shakeel Khan who took the same to the PS and handed over to Ain Ullah Moharrir PW-2, who registered FIR Ex. PA on the basis of such Murasila. He handed over copy of the FIR, Murasila, card of arrest and recovery memo to the IO Shal Muhammad PW-5. The said PW proceeded to the spot where he prepared site plan Ex. PB on the pointation of the complainant and recorded the statements of witnesses u/s 161 of the Code of Criminal Procedure, 1898. In order to prove its stance, the prosecution has produced constable Shakeel Khan as PW-4, Shal Muhammad IO as PW-5 and Ain Ullah Moharrir as PW-2. All the three witnesses narrated the aforementioned story and the sequence of different events in their statements. Constable Shakeel Khan as PW-4 in his statement has confirmed that he left the spot and reached the PS and handed over Murasila, card of arrest and recovery memo to the Moharrir of the Police Station. Ain Ullah Moharrir as PW-2 has confirmed that the Murasila, card of arrest and recovery memo were handed over to him by Constable Shakeel Khan and he drafted the FIR. Similarly, Shal Muhammad OI as PW-5 has confirmed that the case was handed over to him for investigation; where after, he left the PS and reached the spot. That the case property was shown to him on the spot by the seizing officer in sealed condition. He has also confirmed that the site plan Ex. PB was prepared on the spot and the statements of marginal witnesses were also recorded by him on the


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 District & Sessions Judge
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spot. The witnesses are also unanimous on the points of arrival of the IO on the spot, his departure and return to PS and the time of arrival of the complainant party to the PS. The statements of all the three witnesses are consistent regarding proceedings conducted by the IO on the spot, their statements could not have been shattered in cross examinations and the prosecution has proved its stance regarding proceedings conducted on the spot in the mode and manner as alleged by it; that too, without any reasonable doubt.

12. Chain of custody of the recovered material plays 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, transportation to FSL and other material questions are points for determination in accordance with the evidence.

13. 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 40 packets, 10 grams from each of the packet has been separated and sealed by him on the spot with affixing of three monograms of 'MJ' on each of the parcel. The complainant, after his arrival in the PS, has handed over the representative samples to PW-2 Moharrir Ain Ullah, who has made entry of the case property

in Register No. 19 and has kept the samples in safe custody. On 01.04.2021, the Incharge investigation has collected the samples from Moharrir and has

handed over the same to constable Raza Ali PW-1 for transmission to FSL, who has transmitted the same against a road permit certificate and deposited the same in FSL against proper receipt, which on return has been handed over by him to the IO. After receipt of FSL report, the same has been placed on file by the IO. The prosecution in order to prove its stance has examined the complainant as PW-3, Muharrir Ain Ullah as PW-2, Shal Muhammad, the IO of the case as PW-5 and Constable Raza Ali as PW-1. All the four witnesses have narrated the aforementioned story in their statements. Nothing contradictory could be extracted from the witnesses in their cross examinations.

14. As far as objection of not associating private witnesses is concerned, the police witnesses are also believed to be good witnesses as private witnesses unless some mala fide is shown on behalf of police witness. Similarly, Section 103 of Criminal Procedure Code , 1898 has specifically been excluded in the cases under the Khyber Pakhtunkhwa CNSA Act, 2019 vide Section 231 of the ibid Act; therefore, the failure of the seizing officer or the investigating officer to associate any private witness with the occurrence does not adversely affect the case of prosecution. As per Daily Dairy, the complainant was accompanied by constables Shakeel Khan and Muhammad Raziq who had already been examined in the Court.

15. In view of what is discussed above, it is held that the statements of the complainant and the eyewitness are consistent regarding the date, time and place of occurrence as well as the mode and manner of the recovery. The

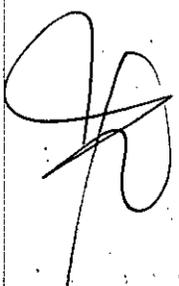


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scientific evidence in shape of FSL reports and other circumstantial evidence available on file is that of sufficient degree of cogency; therefore, the commission of offence is proved by the prosecution beyond shadow of reasonable doubt. Moreover, the witnesses of prosecution are unanimous regarding all material facts; therefore, the minor contradictions between the statement of PWs, cannot be taken to defeat the case of prosecution and in no way create reasonable doubts to shatter the case.

16. In view of what is discussed above, it is held that the prosecution has proved case beyond reasonable doubt, establishing the chain of the custody of the representative samples; that too, within the prescribed period of time, from the spot till these are received in the FSL. Similarly, as per report of FSL Ex. PZ/1, the representative samples no. 1 to 40 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.

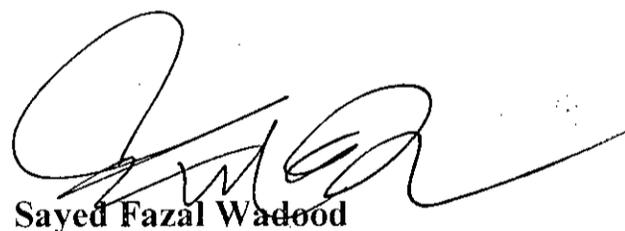
17. In circumstances, it is held that the prosecution has successfully proved its case against the accused facing trial without any shadow of reasonable doubt. Consequently, the accused facing trial, Jaleel Khan and Shaukat Khan are held guilty for having in their possession 48000 grams of chars. They are convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 and accordingly sentenced to suffer rigorous imprisonment for life and also to pay fine of Rs. 500,000/- (five lac) each. In case of default of the payment of fine, the accused shall further suffer simple imprisonment for six



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(06) months; however, the amount shall be made recoverable as arear of land revenue. The benefit of Section 382-B of Code of Criminal Procedure, 1898 is, extended to accused. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision while the Motorcar is confiscated to State for being used in smuggling of chars with secret cavities and therefore be shifted to Provincial Warehouse for auction in accordance with law as the Ex.PW-5/8 to Ex.PW-5/18 speak about its genuineness, if not required in any other case. Copy of the Judgement is delivered to the accused today free of cost and their thumb impression to this effect have been obtained at the margin of the order sheet; besides, the copy of Judgement shall also be issued to the District Public Prosecutor in line with Section-373 of the Code of Criminal Procedure, 1898 for free. Case file be consigned to District Record Room, Orakzai, after completion within specified time.

ANNOUNCED
22.11.2022



Sayed Fazal Wadood
Additional Sessions Judge/Judge Special
Court Orakzai

CERTIFICATE:

Certified that this Judgment is consisting upon nine (09) 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