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STATE VS ULFAT ALI

FIR No. 54 | Dated: 25.12.2023 | U/S: 9 (d) of the
Khyber Pakhtunkhwa CNSA, 2019 | Police Station:
Kurez Boya

IN THE COURT OF SYED OBAIDULLAH SHAH,
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 5/3 OF 2024
DATE OF INSTITUTION : 02.02.2024
DATE OF DECISION : 20.09.2024

STATE THROUGH MUHAMMAD YOUNAS SHO, POLICE
STATION KUREZ BOYA
..... (COMPLAINANT)

-VERSUS-

ULFAT ALI S/O ASMAT ALI, AGED ABOUT 27/28 YEARS, R/O
CASTE MANI KHEL, TAPA TERAYI, DISTRICT ORAKZAI
..... (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for state.
: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 54 **Dated:** 25.12.2023 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kurez Boya

JUDGEMENT
20.09.2024

The accused named above faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic
Substances Act, 2019 vide FIR no. 54, dated 25.12.2023 of
Police Station Kurez Boya.

(2). The case of the prosecution as outlined in Murasila
based FIR is; that on 25.12.2023, the complainant,
Muhammad Younas SHO along with constables Junaid Ali
and Saif Ullah duly armed in official vehicle driven by
Inshad Ali during routine patrolling were present on the spot,
where at about 1520 hours, a motorcycle rode by a person on
way from Zera Side, on seeing the police party, fell down
from the motorcycle while making his escape good from the

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spot and was overpowered. The local police recovered a white colour sack tied on the motorcycle with a rope wherefrom the complainant made recovery of 20 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 20,000 grams. The complainant separated 10 grams of chars from each packet with the help of sharp object for chemical analysis through FSL, sealed the same in parcels no. 1 to 20 whereas the remaining quantity of chars weighing 19800 grams along with the empty sack and the rope were sealed in parcel no. 21. The spot proceedings were filmed by constable Saif Ullah through his cellular phone which was converted into USB by packing it in parcel no. 22. All parcels were affixed/placed with monogram of 'MY'. The complainant took into possession the case property i.e., chars and motorcycle Honda-125 bearing Registration No. F7254 of white colour having Engine No. 7934125 and Chassis No. 116664 vide recovery memo. The accused disclosed his name as Ulfat Ali s/o Asmat Ali r/o Caste Mani Khel, Tapa Terayi Zera, District Orakzai who was accordingly arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to the police station through Constable Saif Ullah which was converted into FIR by Intikhab Ali MHC.

After registration of FIR, it was handed over to PW-5, Mohsin Ali IO for investigation. Accordingly, after receipt of


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Murasila, card of arrest, recovery memo and copy of FIR, he visited the spot, prepared site plan Ex. PW 5/1 on pointation of the complainant. On 27.12.2023, he sent the samples of chars in parcels no. 1 to 20 to the FSL for chemical analysis through constable Khial Hussain/PW-1 along with application Ex. PW 5/3 vide road permit certificate Ex. PW 5/4 and recorded the statements of marginal witnesses u/s 161 Cr.P.C. After completion of investigation, he handed over the case file to SHO for submission of challan.

(4). Upon receipt of the case file for the purpose of trial, the accused was summoned through addendum-B from Sub-Jail, Orakzai, copies of the record were provided to him in line with section 265-C Cr.P.C and he was charge sheeted but he pleaded not guilty and claimed trial. Accordingly, the prosecution examined as many as 05 witnesses. The gist of the evidence is as follow;

I. Constable Khial Hussain is PW-1. On 27.12.2023 he has taken parcels no. 1 to 20 containing samples of chars to the FSL for chemical analysis, and upon his return, he handed the receipt to the Investigation Officer.

II. Moharrir Intikhab Ali MHC appeared in the witnesses box as PW-2. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property i.e., chars in parcels


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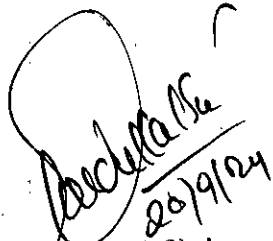
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no. 1 to 22 along with motorcycle from the complainant and kept the parcels in Mal khana in safe custody, by making its entry in register no. 19 Ex. PW 2/1 while parked the motorcycle in vicinity of the Police Station. He has handed over parcels no. 1 to 20 to the Investigation Officer for sending the same to the FSL.

III. Muhammad Younas SHO is the complainant of the instant case. He as PW-3 repeated the same story as narrated in the FIR. He has submitted complete challan Ex. PW 3/2 in the instant case against the accused facing trial.

IV. Constable Saif Ullah appeared in the witness box as PW-4. He besides being eyewitness of the occurrence is the marginal witness of the recovery memo Ex. PC as well vide which the complainant/PW-3 has taken into possession the case property. He also reiterated the contents of FIR in his statement.

V. Investigation Officer Mohsin Ali was examined as PW-5 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared site plan Ex. PW 5/1 on pointation of the complainant, recorded statements of witnesses u/s 161 CrPC, produced the accused


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before the court of Judicial Magistrate vide his application Ex. PW 5/2, sent the representative samples to the FSL along with the application Ex. PW 5/3 vide road permit certificate Ex. PW 5/4 and the result whereof was received and placed on file by him as Ex. PK. He has also placed on file daily diaries Ex. PW 5/5, copy of register no. 19 Ex. PW 2/1 and photographs of spot proceedings Ex. PW 5/6. Lastly, he has submitted the case file to the SHO for onward proceedings.

(5). Prosecution closed its evidence whereafter statement of the accused was recorded u/s 342 CrPC 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 learned 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 which have been found positive for chars vide report of FSL Ex. PK. The complainant, the witness of the recovery, the


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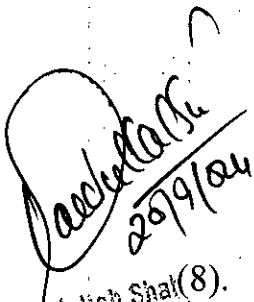
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official transmitted the sample to the FSL and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be 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 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. He further submitted that the safe custody of the case property and its transmission from the spot to the PS has not been proved. 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.

In the light of arguments advanced by the learned DPP for the State, arguments of the learned counsel for the


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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). As per contents of Murasila Ex. PA/1 based FIR Ex. PA is; that on 25.12.2023, the complainant, Muhammad Younas SHO/PW-3 along with constables Junaid Ali and Saif Ullah/PW-4 duly armed in official vehicle driven by Inshad Ali during routine patrolling were present on the spot, where at about 1520 hours, a motorcycle rode by a person on way from Zera Side, on seeing the police party, fell down from the motorcycle while making his escape good from the spot and was overpowered. The local police recovered a white colour sack tied on the motorcycle with a rope wherefrom the complainant made recovery of 20 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 20,000 grams. The complainant separated 10 grams of chars from each packet with the help of sharp object for chemical analysis through


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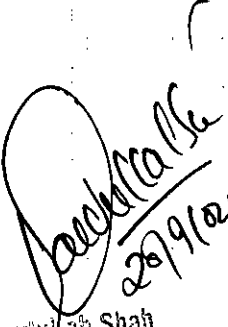
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FSL, sealed the same in parcels no. 1 to 20 whereas the remaining quantity of chars weighing 19800 grams along with the empty sack and the rope were sealed in parcel no. 21 (Ex. P1). The spot proceedings were filmed by constable Saif Ullah/PW-4 through his cellular phone which was converted into USB by packing it in parcel no. 22 (Ex. P2). All parcels were affixed/placed with monogram of 'MY'. The complainant/Pw-3 took into possession the case property i.e., chars and motorcycle Honda-125 bearing Registration No. F7254 of white colour having Engine No. 7934125 and Chassis No. 116664 vide recovery memo Ex. PC. The accused disclosed his name as Ulfat Ali s/o Asmat Ali r/o Caste Mani Khel, Tapa Terayi Zera, District Orakzai who was accordingly arrested on the spot by issuing his card of arrest Ex. PW 3/1. Murasila Ex. PA/1 was drafted and sent to the police station through Constable Saif Ullah/PW-4 which was converted into FIR Ex. PA by Intikhab Ali MHC/PW-2.

The prosecution in order to prove its case in the mode and manner as alleged, has examined Muhammad Younas SHO, the complainant of the case, as PW-3 who has reiterated the contents of Murasila Ex. PA and Head Constable Saif Ullah, the eyewitness of the occurrence and marginal witness of recovery memo Ex. PC as PW-4 who besides repeating the same story as narrated in the FIR, has stated to have taken the documents to the police station for


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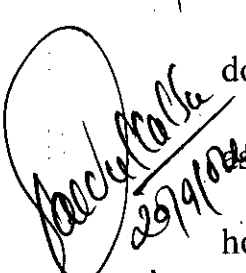
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registration of FIR and handed over the documents to Intikhab Ali MHC/PW-2 who has registered the FIR Ex. PA. The witnesses have been cross examined.

With regard to the circumstances surrounding the occurrence, as per contents of Murasila Ex. PA/1, the complainant/PW-3 was conducting a patrol at a picket located at Zera Daulat Musa Morr (curve) where the occurrence has allegedly taken place at about 1520 hours ensuing in preparation of the Murasila Ex. PA/1 and other documents which were handed over to the PW-4 for taking it to the police station for registration of FIR on the basis of which the FIR Ex. PA has been chalked out at about 1750 hours. However, when the eyewitness of the occurrence, Saif Ullah/PW-4 was cross examined, he contradicted the entire proceedings of the complainant by stating that;

"I left the spot at 03:20 pm for taking the documents to the PS for registration of FIR. I returned to the alleged spot at 04:30 pm. I do not know the distance between these places. The IO recorded my statement u/s 161 CrPC at about 04:20 pm on 25.12.2023".

This statement indicates that PW-4 took the documents to the police station at 15:20 hours, the same time as the time of occurrence, and returned to the spot at 16:30 hours, which was before the FIR had been lodged against the accused facing trial; therefore, the aforementioned



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contradictions make the presence of the complainant party doubtful on the spot and the material contradiction regarding the time of occurrence, the time of report, the time of registration of FIR lead to failure of the prosecution to prove the recovery and proceedings conducted on the spot in the mode and manner as alleged by the prosecution.

Regarding the procedures for sampling and sealing as outlined in the Murasila report Ex. PA/1, the complainant/PW-3 has recovered 20,000 grams of chars from accused facing trial wherefrom 10 grams of chars have been separated for chemical analysis to FSL, sealed the same in parcels no. 1 to 20 whereas the remaining quantity of chars weighing 19800 grams along with empty sack were sealed in parcel no. 21. The spot proceedings were filmed by constable Saif Ullah/PW-4 through his cellular phone which was converted into USB, the same was packed and sealed by the complainant/PW-3 in parcel no. 22 and a monogram of 'MY' was affixed/placed on all parcels. During cross-examination regarding the preparation of the parcels and the documentation, PW-4 claimed that each parcel was prepared by the complainant/PW-3 in 10 minutes, while the total time taken for documentation was 40 minutes. A careful calculation of these figures indicates that nearly four hours were expended on preparing all parcels and documents, despite the incident occurring at 15:20 hours and being


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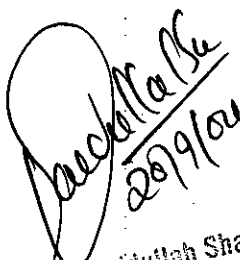
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reported at 17:00 hours. The difference between the calculated time provided by PW-4 and the time alleged by the prosecution creates serious doubt in the prosecution case. Moreover, as per the complainant/PW-3's version, all parcels were prepared by him in the presence of marginal witnesses; however, Constable Saif Ullah/PW-4 he contradicted this factum in his cross examination that they collectively done the process of packing and sealing with the complainant/PW-4. Furthermore, as per contents of FIR Ex. PA, Murasila report Ex. PA/1, recovery memo Ex. PC and court statement of complainant/PW-3, it is clearly mentioned that the complainant/PW-3 had not given any specific or corresponding number to each alleged parcel of chars. In this respect the reliance is placed on **2020 YLR 2524**.

The cross-examination of the complainant/PW-3 also revealed contradictions regarding whether the opening of the sack was tied with a rope or a piece of cloth. This claim was further disputed by PW-4, who stated that the opening was tied with plastic wire. As discussed earlier, the time of occurrence is 1700 hours in the month of December and IO/PW-5 reached to the spot at about 06:45 pm. PW-4 testified that when the IO arrived, it was still daylight, raising questions about the plausibility of daylight at 18:45 hours in December.


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These numerous contradictions collectively lead to the conclusion that the prosecution has failed to establish its case against the accused in the mode and manner as alleged.

- (10). With respect to process of investigation allegedly conducted by Investigation Officer/PW-5, he after receipt of the documents, has proceeded to the spot and prepared site plan Ex. PW 5/1 on pointation of the complainant which point to the place of occurrence as Kacha Road leading from Zerra to Sepoye while it has been shown in the Murasila Ex. PA/1 as Zerra Daulat Musay Morr. Moreover, as per version of the complainant as PW-3, he had not handed over any photographs to the IO on the spot which has been contradicted by PW-4 in his cross examination that the complainant/PW-3 has handed over the photographs on the spot to the IO. Let the stance of the PW-4 is admitted as true then how come it possible that the complainant/PW-3 had taken out the print of the photographs on the spot while referring to the site plan Ex. PB prepared by the Investigation Officer/PW-5 where there is no shop or any printing facilities has been shown on the spot.

Besides, as per daily diary no. 11, the Investigation Officer, Mohasin Ali/PW-5 was accompanied by three police officials namely, constables Syed Afsar Ali Shah, Nasir Hussain in a private vehicle driven by Zar Khan who left the police station at about 1805 hours and proceeded to the spot


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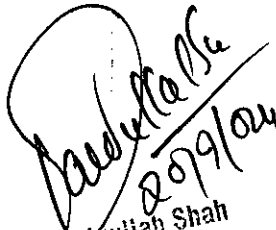
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for investigation. The number of police officials accompanying the IO was also opposed by the complainant as PW-3 in his cross examination. The IO/PW-5 also failed to explain the version of the complainant who admitted in his cross examination that the IO/PW-5 recorded the statement of the driver Inshad Ali u/s 161 CrPC. Additionally, a driving license was not taken into possession from the accused which is repellent to the common sense that without driving license a person would drive a vehicle or whether he is able to drive or not, which aspect of the case has created reasonable doubt in the prosecution case. Besides not an iota of evidence has been placed on file proving the nexus of the accused facing trial with the motorcycle in question.

In view of aforementioned dents noted in the case of prosecution, it is held that there are various doubts regarding the mode and manner of investigation allegedly conducted on the spot leading to failure of the prosecution to prove its case.

- (11). With respect to transmission of the case property from the spot to the Police Station and sending of the representative samples 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 complainant/PW-3 to the Police Station and handed over the same to Intikhab Ali MHC/PW-2, who deposited the same in Mal khana while parked the motorcycle in vicinity of the police station. The


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representative samples were handed over by Moharrir of the Police Station to the IO/PW-5 on 27.12.2023 who transmitted the same to FSL through constable Khial Hussain/PW-1 vide road permit certificate.

In order to prove its case, the prosecution produced Intikhab Ali MHC as PW-2, constable Khial Hussain as PW-1 and Mohsin Ali IO as PW-5. The samples of chars have been sent to the FSL on 27.12.2023 vide application addressed to the incharge FSL Ex. PW 5/2; however, the factum of the application bearing stamp of Hashim Khan OII has neither been explained by the IO nor the statement of Hashim Khan was recorded u/s 161 CrPC. PW-2, though in his examination in chief has stated that he had received case property from the complainant, made entry of the same in register no. 19, handed over parcels no. 1 to 20 to the IO and a copy of the same as Ex. PW 2/1 has been placed on file. But as per copy of register no. 19 Ex. PW 2/1, the case property and a motorcycle have been received by PW-2 from the complainant/PW-3; however, the relevant column of register no. 19 lacks the name of the said official or his signature.

Hence, in view of what has been discussed above, though the representative samples, as per report of FSL Ex. PK, have been found as chars but keeping in view the failure of the prosecution to prove the safe custody of the case

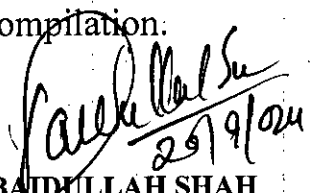

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property, it is held that the report of FSL cannot be relied for recording conviction.

(12). 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 in the mode and manner as detailed in the report. Similarly, the prosecution has also failed to prove the alleged mode and manner of the investigation carried out by the IO on the spot. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Ulfat Ali** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision in accordance with law while the motorcycle be returned to its lawful owner.

Judgment announced. File of this court be consigned to record after its necessary completion and compilation.

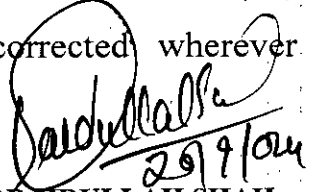
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SYED OBAIDULLAH SHAH
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CERTIFICATE

Certified that this judgment consists of fifteen (15) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 20.09.2024


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