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STATE VS WADA GUL  
FIR No. 30 | Dated: 18.05.2024 | U/S: 9 (d) of the Khyber  
Pakhtunkhwa CNSA 2019 | Police Station: Kurez

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

SPECIAL CASE NO. : 18/3 OF 2024  
DATE OF ORIGINAL : 01.07.2024  
DATE OF DECISION : 17.10.2024

STATE THROUGH AFTAB HASSAN SHO, POLICE STATION  
KUREZ

.....(COMPLAINANT)

-VERSUS-

WADA GUL S/O BILAL KHAN, AGED ABOUT 47 YEARS, R/O  
CASTE FERAZ KHEL, TAPA QASIM KHEL, PO FERAZ KHEL,  
MIRBAK KALEY, TEHSIL LOWER, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)


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

**FIR No. 30**                      **Dated:** 18.05.2024      **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station:** Kurez

JUDGEMENT  
17.10.2024

The above-named accused faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR  
No. 30, Dated 18.05.2024 of Police Station Kurez.

(2).                      The case of the prosecution as outlined in the  
Murasila based FIR is as follows: on 30.05.2024, the  
complainant, Aftab Hassan SHO alongside Constables  
Junaid Ali, Saif Ullah and Shafaat Ali in official vehicle  
driven by Inshad Ali during routine patrolling were present  
on Ghodzara road where at about 1200 hours a sceptical  
person holding a green colour plastic bag in his right hand  
on way from Anjani towards them, was stopped. The search

  
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of the shopper led the complainant to the recovery of 02 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 2000 grams. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 2 whereas the remaining quantity of chars weighing 1980 grams with the shopper were sealed in parcel no. 3. The spot proceedings were captured in a cellular phone, converting it into USB which was sealed in parcel no. 4. Monograms of 'AH were placed/affixed on all parcels. The accused disclosed his name as **Wada Gul** s/o Bilal Khan who was accordingly arrested by issuing his card of arrest. The complainant took into possession the recovered chars vide recovery memo. Murasila was drafted and sent to police station through constable Junaid Ali which was converted into FIR by Moharrir Syed Ibn Ul Hassan.

- (3). After registration of FIR, it was handed over to Hashim Khan OII for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan Ex. PB on pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 20.05.2024, the IO sent the samples of chars for chemical analysis to FSL vide application Ex. PW 5/2 through constable Abdul Shakoore and road permit certificate Ex. PW 5/3, it's result Ex. PK was received and placed on file by him. After completion of

  
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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 in line with section 265-C CrPC 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 is as follow;

I. Constable Khial Hussain is PW-1. He has taken the samples of recovered chars in parcels no. 1 to 2 to the FSL for chemical analysis on 20.05.2024 and after submission of the same, he has handed over the receipt of the parcels to the IO.

II. Moharrir Syed Ibn Ul Hassan appeared in the witness box as PW-2. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has also received the case property duly packed and sealed from the complainant which he had kept in Mal Khana in safe custody by making its entry in Register No. 19 Ex. PW 2/1 and handed over the samples of the case property in parcels no. 1 to 2 to the IO for sending the same to FSL on 20.05.2024. He has

  
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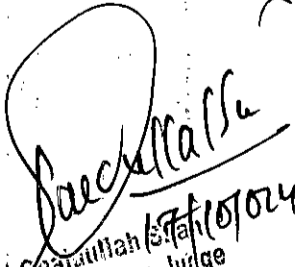
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also drafted daily diaries (DD) Ex. PW 2/2 and  
Ex. PW 2/3.

- III. Aftab Hassan SHO is the complainant of the instant case. He as PW-3 reiterated the same story as narrated in the FIR. He has also submitted complete challan Ex. PW 3/2 against the accused facing trial.
- IV. Constable Junaid Ali is PW-4. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.
- V. Lastly, Investigating Officer Hashim Khan 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 the site plan Ex. PB on pointation of the complainant, recorded the statements of witnesses u/s 161 CrPC, produced the accused before the court of Judicial Magistrate vide his application Ex. PW 5/1, sent the representative samples to the FSL along with application addressed to the incharge FSL Ex. PW 5/2 and road permit certificate Ex.

  
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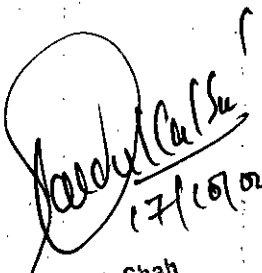
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PW 5/3 and it's result Ex. PK was placed on file by him. He has also placed on file copy of Register No. 19 Ex. PW 1/1 and copies of daily diaries and submitted the case file to SHO for its onward submission.

(5). Prosecution closed its evidence whereafter the statement of 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 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 and it has been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses of the recovery, the official transmitted the samples 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

  
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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 chargs 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. 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 light of the arguments advanced by learned DPP for the State, arguments of 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 occurrence has taken place in the mode and manner as alleged by the prosecution?
- (ii). Whether the investigation has been carried out in the mode and manner as alleged by the prosecution?
- (iii). Whether the case of prosecution is substantiated through report of FSL?

  
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(9). The prosecution's case is built upon the testimonies of several police witnesses, including SHO Aftab Hassan (PW-3), Constable Junaid Ali (PW-4), and Investigation Officer Hashim Khan (PW-5). Statements of all the aforementioned witnesses have been reproduced herein before, wherein they have unanimously supported the case of prosecution.

It is evident from the record that the presence of complainant/PW-3 along with constables Junaid Ali/PW-4, Saif Ullah and Shafaat Ali with driver Inshad Ali, is corroborated by Daily Diary (DD) No. 12 of 18.05.2024 which indicates that the complainant/PW-3 together with the aforementioned witnesses and driver had left the police station at 10:40 am for patrolling of the area. This fact has also been confirmed by the complainant and eyewitness in their statements as PW-3 and PW-4 respectively. Moreover, the factum of the presence of the complainant party is also supported by the site plan Ex. PB which depicts the complainant/PW-3, the witnesses and the official vehicle at the spot of occurrence.

With respect to recovery, weighing, packing and sealing of the chars, both the complainant/PW-3 and eyewitness/PW-4 are unanimous on the key facts: that the accused was holding a shopping bag in his right hand; that two (02) packets of chars wrapped in yellow colour scotch tape were recovered from a shopping bag which was

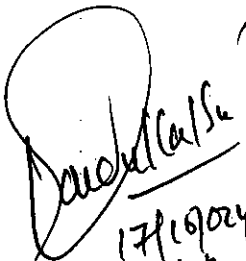
  
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weighed on the spot; that 10 grams of chars has been separated from each packet for representative samples, leading to the preparation of numerous parcels. Both the witnesses have been cross examined on different aspects but no contradictions were drawn from their statements except that some minor contradictions i.e., specific place of occurrence, the name of the person who recorded spot proceedings in a USB. In his cross examination, however, the complainant/PW-3 have explained all these minor and negligible facts which were confirmed by the eyewitness/PW-4.

After preparation of the relevant documents i.e., Murasila, card of arrest and recovery memo, these were handed over to PW-4 for its transmission to the police station who has taken it to the police station and handed over to PW-2/Moharrir of the police station for registration of FIR. In this respect, the complainant/PW-3 and the Murasila Carrier/PW-4 are unanimous on the point that the documents have been handed over to PW-4 at 12:30 pm, he has travelled to the police station where, after handing over it to PW-2, FIR has been registered. Similarly, both the witnesses are also unanimous on the fact that constable Manzoor Ali/PW-4, after handing over the documents to PW-1, has returned to the spot at 02:30 pm.

  
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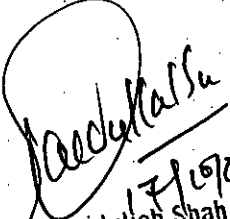
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With respect to making of investigation on the spot, the IO/PW-5 after receipt of the Murasila, has gone to the spot which is supported by DD No. 15 of 18.05.2024. The factum of arrival of the IO on the spot is substantiated by the complainant/PW-3 and the eyewitness as PW-4. The time of arrival of the IO/PW-5 to the spot is supported by the statement of the complainant/PW-3 and the DD of 18.05.2024 besides the said DD is in line with the statement of IO/PW-5 regarding the time of his return to the police station which is 1555 hours. The number and names of the officials who accompanied the IO/PW-5 are also confirmed by the statements of PW-3, PW-4, PW-5 and the DD of the relevant day.

Regarding safe custody of the case property from the spot to the police station and its transmission to the FSL, the prosecution relied upon the testimonies of Constable Khial Hussain/PW-1, Syed Ibn Ul Hassan/PW-2, Aftab Hassan SHO/PW-3 and Hashim Khan IO/PW-5. The complainant/PW-3 has corroborated the facts regarding recovery of different packets of chars from possession of the accused facing trial, extracting the samples for FSL, its transmission to the police station and handing it over to Syed Ibn Ul Hassan/PW-2 who entered its details in register no. 19 Ex. PW 2/1. All these facts have been confirmed by PW-2 and PW-4 in their statements recorded before the court as

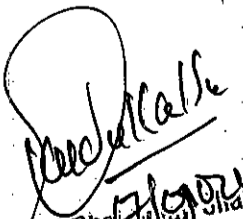
  
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well. The samples of chars in parcels no. 1 to 2 were transmitted to the FSL within the prescribed period of time through constable Khial Hussain on 20.05.2024 whose departure and arrival to the police station are established through DD No. 14 of 20.05.2024 and the statements of Moharrir/PW-2 and IO/PW-5, leading to the positive result of FSL which is placed on file as Ex. PK which further strengthens the case of prosecution against the accused facing trial. The chain of transmission of the case property from the spot to the police station and then from the police station to the FSL, is supported by statement of complainant/PW-3, statement of Moharrir of the police station as PW-2 and statement of constable Khial Hussain as PW-1.

The testimonies of prosecution witnesses were consistent and detailed, and they were corroborated by the physical evidence, including the sealed parcels and the video recording. The recovery process was carried out according to standard procedures, and the chain of custody was maintained. The recovery of the chars was witnessed by two police officers namely Constables Junaid Ali/PW-4 and Saif Ullah, and the contraband was sealed in parcels, each bearing monograms. Although the defence raised minor discrepancies regarding the Murasila, which however do not significantly undermine the recovery process, particularly

  
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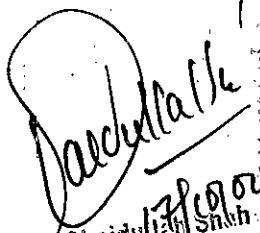
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given the corroborative testimonies of the police officials and the positive FSL report. The FSL report confirmed the nature of the contraband as chars, which supports the prosecution's case. The FSL report, which confirmed that the recovered substance was chars, is a key piece of evidence and the defence did not challenge its authenticity, and it remains a vital piece of evidence linking the recovered substance to the accused facing trial.

- (10). Hence, in view of what is discussed above, it is held that the prosecution has successfully bring home the charge against the accused facing trial. Therefore, the accused namely, **Wada Gul** is held guilty of the offence u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act. However, keeping in view the minor contradictions, which though do not go to the root of case of prosecution, but these cannot be ignored at all. Moreover, the accused is first offender and he must have a chance of repentance; therefore, instead of sentencing him at once, he is placed on probation for a period of one (01) year subject to the executing of bonds in the sum of Rs. 50,000/- with two sureties to the effect that the accused would commit no offence and to keep the peace and be of good behavior during the period of bond and to appear and receive the sentence, if called upon to do so during that period to the satisfaction of Probation Officer concerned. Case property

  
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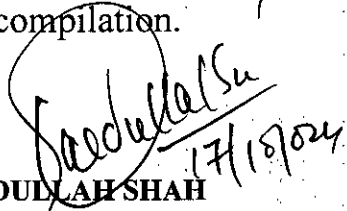
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i.e., chars be destroyed in accordance with law after the  
period provided for appeal/revision.

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

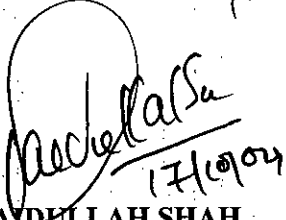
Dated: 17.10.2024

  
**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court,  
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**CERTIFICATE**

Certified that this judgment consists of twelve (12)  
pages. Each page has been read, corrected wherever  
necessary and signed by me.

Dated: 17.10.2024

  
**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela

