

STATE VS SHAMS UR REHMAN
 Case No.: 09/CNSA || FIR No.: 115 || Dated: 17.11.2022 ||
 U/S 9 (d) CNSA || Police Station: Kalaya

IN THE COURT OF BAKHT ZADA
 ADDITIONAL SESSIONS JUDGE-I/JUDGE SPECIAL COURT,
 ORAKZAI
 (AT BABER MELA)

SPECIAL CASE NO. : 09/CNSA OF 2024
 DATE OF ORIGINAL INSTITUTION : 05.06.2024
 DATE OF TRANSFER IN : 10.10.2024
 DATE OF DECISION : 29.11.2024

STATE THROUGH MUJAHID KHAN SI, POLICE STATION KALAYA

.....(COMPLAINANT)

-VERSUS-

1. SHAMS UR REHMAN S/O YOUSAF, AGED ABOUT 18/19 YEARS,
 R/O CASTE STORI KHEL, TARKHO SAM, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL IN CUSTODY)

Present: Sr. Public Prosecutor for State.

: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 115 **Dated:** 17.11.2022 **U/S:** 9 (d) of the Khyber
 Pakhtunkhwa Control of Narcotic Substances Act, 2019.

Police Station: Kalaya

JUDGEMENT

29.11.2024

The accused, Shams Ur Rehman s/o Yousaf, Caste Stori Khel r/o Anjani is facing trial in case FIR No. 115, dated 17.11.2024, registered u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act of PS Kalaya.

2. The case of the prosecution as per contents of Murasila based FIR is, that on 17.11.2022, the complainant Mujahid Khan SI (NET) along with other officials constables Rafi Ullah no. 325, Sader Ali HC/481 acting upon information regarding smuggling of narcotics by the accused facing trial via motorcycle, laid picket on the spot i.e. village Wochpal main Anjani bazar to Bara road. During naka bandi a motorcycle rider Shams appeared from Anjani bazar side, who on seeing the police party turned the motorcycle

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and tried to decamp from the spot, who was chased through official pick-up and at some distance the accused abandoned the motorcycle and plastic bag and made his escape good in the dark of the night. The plastic sack was checked and seven (7) packets of chars, wrapped with yellow solution tape were recovered and weighed through digital scale and each packet was found 1000/1000 grams and the total Chars were found to be 7000 grams while the plastic sack was 44 grams by weighing digital scale. 10 grams of chars were separated from each packet for the purpose of chemical analysis and sealed into parcels no. 1 to 7 while the remaining 990/990 grams were sealed into parcels no. 8 to 14 and plastic sack was sealed into parcel no. 15 by putting one stamp of monogram "SH" and affixing three stamps of monogram of "SH" on each parcel. All the parcels along with motorcycle Honda-125, red colour chassis no. EA227818, Engine no. 8745608 were taken into possession vide recovery memo. The Murasila and recovery memo were sent to PS through constable Sadar Ali HC/481 for the registration of FIR.

3. After registration of FIR, it was handed over to Investigation Officer Muhammad Hanif 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 through constable Khaleel Rehman along with application Ex. PW 6/1 and road permit certificate Ex. PW 6/2. After completion of investigation, he handed over the case file to SHO for submission of challan. As the accused facing trial was at large and being absconder challan u/s 512 Cr. PC initially

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submitted against him and statement of DFC, Ahmad Khel of PS Kalaya was recorded as SW-1. Whereafter statements of Constable Khalil Ur Rehman, Nasir Ahmad SHO, Aftab Ahmad SHO, complainant Mujahid Khan SI, Muhammad Jamil Moharrir, Shal Muhammad SHO and Muhammad Hanif OII were recorded as PW-1 to PW-8 respectively. Whereafter, the evidence was closed and the accused was declared as proclaimed offender

4. The accused Shams Ur Rehman was arrested and his card of arrest was issued on 17.11.2022, whereafter supplementary challan was submitted against him.

5. Upon the receipt of case file for the purpose of trial, the accused was summoned through addendum-B from sub-jail Orakzai, being in custody, copies of the record were provided to him u/s 265-C Cr. PC and formal charge was framed against him, to which he pleaded not guilty and claimed trial. On 04. 01. 2024 accused submitted Form-B issued by NADRA before the trial court wherein he alleged that he is juvenile and may be tried under the Juvenile Act. As per his Form-B, his date of birth was 25.01.2007 and thus his age falls within the definition of Juvenile and prosecution was allowed to submit both the challan afresh against the accused, Shams Ur Rehman under the Juvenile Act as per law.

Accordingly, the witnesses were summoned and examined. The

of the evidence of prosecution is as follows;

- I. **Khalil Rehman FC as PW-1:** He has taken the samples of recovered chars in parcels no. 01 to 07 to the FSL along with application and transit receipt for chemical analysis on 22.11.2022 and after

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submission of the same, he was given the receipt of the parcels which he handed over to the IO upon his return.

II. Nasir Ahmad SHO as PW-2: On 04.01.2024 he has prepared Juvenile Challan against the accused facing trial, which is Ex. PW2/1 and sent the same to the court for regular trial.

III. Aftab Ahmad SHO as PW-3: He has conducted supplementary investigation against the accused facing trial and prepared challan, which is Ex. PW 3/1.

IV. Mujahid Khan SI (NET) as PW-4: the complainant, in the instant case is appeared in the witness box as PW-2 and repeated the story narrated in the FIR.

V. Constable Sadar Ali HC 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, besides he has transmitted the Murasila to the PS for registration of FIR. Furthermore, he has reiterated the contents of FIR in his statement. He has also taken recovery memo and Murasila to police station from the spot handed over to him by the complainant.

VI. Muhammad Jamil Moharrir as PW-6: He has incorporated the contents of Murasila into FIR Ex. PW 6/1 and he received the case property i.e. parcels

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no. 1 to 14 along with motorcycle which were put by him in mal khana of the PS while the parked the motorcycle in the vicinity of the PS, and made entries in the register no. 19 Ex. PW 6/2. He also made entries regarding the departure and arrival of police officials/Officer in DDs Ex. PW 6/3 (consisted of four pages). He further deposed that on 14.10.2023 he has handed over parcels no. 1 to 07 to the IO for its onward transmission to the FSL.

VII. Shal Muhammad SHO as PW-7: he has prepared Interim Challan against the accused during investigation in the instant case which is Ex. PW 7/1. The accused being absconder, therefore he has submitted challan u/s 512 Cr. PC which is Ex. PW 7/2.

VIII. Muhammad Haneef OII as PW-8: 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 the pointation of complainant, recorded the statements of witnesses on the spot, sent the of samples to FSL vide his application Ex. PW 8/1 and road permit certificate Ex. PW 8/2 and results of the same Ex. PK was placed on file by him. He also placed on file extract of DDs which is Ex. PW 8/3. As the accused was avoiding his lawful arrest, therefore, he submitted an application before the court of Judicial Magistrate for issuance of warrant

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u/s 204 Cr. PC Ex.PW 8/4 and application for issuance of proclamation notice u/s 87 Cr. PC Ex.PW 8/5. He has also drafted applications for verification of the motorcycle to the ETO and the FSL. The report of the same was received and placed on file by him which is Ex. PK/1. The report of ETO regarding the motorcycle was found tempered, therefore he added sections 420/468/471 vide memo of addition Ex. PW 8/6 in the instant case. After completion of investigation, he handed over the case file to the SHO for submission of challan. He further deposed that on 28.04.2023 the accused was arrested and handed over to him and on 29.04.2023 he produced the accused before the Illaqa Magistrate vide application Ex. PW 8/7 and three-days custody was granted in favour of accused. On 02.05.2023 he has produced the accused before the same court for his confessional statement vide application Ex. PW 8/8 but the accused denied and was sent to the judicial lock-up. After completion of investigation, he submitted case file to the SHO for submission of challan.

6. Prosecution closed its evidence whereafter statements 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 Sr.PP for the State, arguments of counsel for the accused facing trial heard.

7. Learned Sr.PP for State argued that the prosecution has proved the case against accused beyond shadow of doubt; that the

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recovery of contraband chars is proved against the accused; that prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused; that FSL result in respect of the samples, separated from the contraband, is positive; that there is no malafide on part of the prosecution to falsely involve the accused in the case, therefore, he requested to award them maximum punishment.

8. Counsel for the accused facing trial argued that prosecution has failed to prove its case against accused facing trial beyond reasonable shadow of doubt; that prosecution evidence contradicts and suffers major inconsistencies; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that the statement of single private person regarding recovery has not been recorded; that recovery is not effected from immediate possession of accused facing trial; that the accused facing trial has not confessed his guilt; that the case against the accused facing trial is not proved and request is made for his acquittal.

9. After hearing arguments available record perused. It is the case of prosecution that on 17.11.2022, complainant Mujahid Khan SI (NET) of PS Kalaya along with constable Rafi Ullah and head constable Sadar Ali were on patrolling. In the meanwhile, the complainant received spy information regarding smuggling/ transportation of narcotics by the accused facing trial Shams Ur Rehman. On the said information he laid barricade on the main Anjani to Bara Road, where at about 05:00 pm accused facing trial riding on motorcycle was seen, who was approaching towards the barricade, but on seeing the police party from some distance he turned back the motorcycle and he was chased by the police. The

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accused left his motorcycle and a plastic bag of yellow colour and made his escape good in the nearby *Abadi* (populated area) due to darkness of night. On checking the bag seven (7) packets of Chars, wrapped in yellow scotch tape, each weighing 1000 grams and total 7000 grams were recovered. Murasila Ex. PA/1 and recovery memo Ex. PC were sent to PS for registration of FIR.

10. The prosecution in order to prove its case have produced as many as eight (8) PWs. It is mentioned in the report that the accused reached to the barricade at about 05:00 pm and on seeing the police party he took turns towards back on his motorcycle and made his escape good. In the site plan Ex. PB the U-turn point of the motorcycle is shown at point "B" while the police party is shown at points no. 1,2,3 and 4 on the barricade and the distance between point "B" and points no. 1,2,3 is shown about 40 paces. It is not appealing to prudent mind that despite of pitching dark at 05:00 pm, particularly in the month of November, where the evening commence at about 05:00 pm, then how the complainant managed to identify the accused facing trial from a distance of about 40 paces, which is making the question of identification of the accused facing trial doubtful, furthermore, it is also admitted in the report that the search of the accused was not possible due to pitching dark in the area. The police have neither recovered the registration book of the motorcycle nor the investigation officer has established any nexus of the motorcycle with the accused facing trial. No recovery of any motorcycle and contrabands chars has been effected from direct possession of the accused facing trial, which is fatal ground for the case of prosecution, The whole proceedings of the prosecution is in vacuum and creating doubt.

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It is to assert that the rule of criminal jurisprudence to give benefit of doubt to accused is much more than a mere rule of law. It is a rule of prudence which cannot be ignored (**PLD 1999 Lahore 56**) (**1999 SCMR 1220**).

The prosecution has failed to substantiate its case against the accused beyond reasonable doubts. Failure of prosecution to comply the mandatory provision of law created doubts in prosecution version and it is settled principle of criminal law that benefit of doubt always goes in favour of accused.

A single dent having created in the case of prosecution makes the accused entitled to benefit of doubt. It is to assort that the rule of criminal jurisprudence to give benefit of doubt to accused much more than a mere rule of law. It is a rule of prudence which cannot be ignored (PLD 1999 Lahore 56) (1999 SCMR 1220)

Supreme Court in case of Tariq Parvez Vs the State (1995SCMR 1345) has observed that the concept of benefit of doubt to an accused person is deep rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is only circumstance which creates reasonable doubt in prudent mind about the occurrence of the accused, so the same be extended to him not as concession but as a matter of right.

11. So, in view of the above, the case of prosecution is full of doubts and has no feet to stand coupled with fact that today learned Sr. PP for that state also submitted an application u/s 494 Cr. PC read with section 5 (b) of the Khyber Pakhtunkhwa prosecution act, 2004 for withdrawal of prosecution in the instant case , therefore,

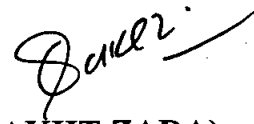
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by considering the same and extending benefit of doubt, I hereby
acquit the accused facing trial from the charges levelled against
him. He is on bail; his bails bonds stand cancelled and his sureties
are absolved from the liabilities of bail bonds. Case property; the
chairs, shall be destroyed after expiry of period of appeal/revision.

12. File be consigned to District Record Room, Orakzai after
its necessary completion and compilation within the span allowed
for.

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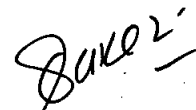


(BAKHT ZADA)
Additional Sessions Judge-I, Orakzai
at Baber Mela.

CERTIFICATE

Certified that this judgement consists of ten (10) pages.
Each page has been read, corrected wherever necessary and signed
by me.

Dated: 29.11.2024



(BAKHT ZADA)
Additional Sessions Judge-I, Orakzai
at Baber Mela.