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STATE VS GHANI GUL

Case No. 15/CNSA, FIR No. 19 | Dated: 18.04.2024 | U/S 9 (d) KP CNSA, | Police Station: Kurez Boya

IN THE COURT OF BAKHT ZADA

ADDITIONAL SESSIONS JUDGE-I/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 15/CNSA OF 2024
DATE OF ORIGINAL INSTITUTION : 03.06.2024
DATE OF PRESENT INSTITUTION : 17.10.2024
DATE OF DECISION : 16.12.2024

STATE THROUGH ALTAF ALI ASHO, PS KUREZ BOYA
.....(COMPLAINANT)

-VERSUS-

GHANI GUL S/O MEHRAN GUL, R/O QAUM MALAK DIN
KHEL, DISTRICT KHYBER.
.....(ACCUSED FACING TRIAL)

JUDGEMENT

16.12.2024

Accused Ghani Gul S/O Mehran Gul, Qaum Malak
Din Khel, District Khyber is facing trial in case FIR No.
19, dated 18.04.2024, registered U/S 9 (d) KP CNSA of
PS Kurez Boya, District Orakzai.

(2). Facts of the prosecution case as reported in
Murasila by the complainant Altaf Ali ASHO, PS Kurez
Boya, are that on 18.04.2024 at 10:00AM, he along with
Hajat Hassan ASI, Constables Saif Ullah No. 1530,
Shafaat Ali No. 1483 and driver Hassan Raza No. 674
were on patrolling duty in a private vehicle. Upon
reaching the place of occurrence near, Mir Qasim Morr
situated at Godar, a pedestrian having red colour sack on
his shoulder was heading towards village Zerra was found
in suspicious condition and stopped. On checking the
sack, 15 packets Chars wrapped in yellow scotch tape
were recovered and on weighing through digital scale,
each packet came out to be 1000/1000 grams and total

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15000 grams. 10 grams chars were separated with the help of sharp object from each packet for sending to FSL for chemical analysis and packed and sealed into parcel No. 1 to 15, while the remaining 14850 grams chars along with empty bag were packed and sealed into parcel No. 16. Video of the occurrence was prepared at the spot with the mobile phone and the same was converted into USB and sealed the same in parcel No. 17. 1/1 stamp of monograms "AA" is sealed in all the parcels, while 3/3 seals of the same monograms were affixed on all the parcels. The accused disclosed his name as Ghani Gul S/O Mehran Gul, R/O Qaum Malak Din Khel, District Orakzai, who was found to be involved in the commission of offense and his card of arrest was issued. Murasila along with card of arrest and recovery memo were handed over to Constable Saif Ullah No. 1530 for taking the same to PS registration of FIR.

- (3). After registration of FIR No. 19, dated 18.04.2024, registered U/S 9 (d) CNSA of PS Kurez Boya, District Orakzai, the same was handed over to Investigating Officer, who visited the spot, prepared site plan Ex. PB at the pointation of the complainant/ASHO. After completion of investigation, he returned the case file to SHO for submission of complete challan.

- (4). Complete challan in the instant case was submitted against the accused facing trial. The accused was in

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Judicial Lock-up, who was summoned through "Zamima Bay". On 10.06.2024, the accused was brought before the court and provisions of 265-C of the Code of Criminal Procedure, 1898, was complied with. Formal charge against the accused was framed on 20.06.2024, to which he pleaded not guilty and claimed trial, whereafter the prosecution witnesses were summoned.

(5). The prosecution recorded the statements of as many as six (06) PWs, the gist of their evidence is as under. The gist of the evidence is as follow;

I. PW-01, Khyal Hassan FC: On 20.04.2024, Investigation Officer namely Mohsin Ali OII handed over to him parcel no. 01 to 15 along with application for FSL and transit receipt (رسید رابداری). He took the same to FSL Peshawar and delivered it to the concerned official. He handed over the acknowledgement receipt to the Investigation officer. His statement was recorded by the IO U/S 161 Cr. PC. He was cross examined by the defence counsel.

II. PW-02, Intekhab Ali Moharrir. On 18.04.2024, constable Saifullah belt no. 1530 brought Murasila report, card of arrest and recovery memo which were handed over to him in the Police Station. He incorporated contents of Murasila into FIR Ex.PA. The copy of FIR along

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with other relevant documents were handed over to Mohsin Ali Investigation officer in the Police Station. Later the ASHO returned from the spot to Police Station and handed over to him parcels no 01 to 17 in sealed condition having monogram of AA. To this effect, he made entries in the register no. 19 copy of which is Ex.PW-2/1 (original seen and returned). On 19.04.2024 parcels no. 16 and 17 duly packed and sealed were handed over to investigation officer for production before the court along with accused. Thereafter, the IO deposited parcel no. 16 and 17 in District malkhana. On 20.04.2024, he handed over parcels no. 01 to 15 duly packed and sealed having monogram of "AA" to the IO Mohsin Ali, who dispatched the same to FSL through constable Khiyal Hussain belt no. 483 for chemical analysis. He has also made entries in DD regarding the departure and arrival of the complainant and Investigation officer along with other officials on 18.04.2024 to 20.04.2024. Copy of DD is Ex. PW-2/2. His statement was recorded by the IO U/S 161 Cr. PC thrice. He was cross examined by the defense counsel at length.

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III. PW-03, Altaf Ali ASHO (complainant). On 18.04.2024, he along with other police officials namely Saifullah constable, ASI Hajat Hussain and constable Shafat Ali were on patrolling in the area in official vehicle driven by Syed Hassan Raza. During gasht, at about 10 AM suspicious person having a red colour sack on his shoulder was going on foot. On search of the sack 15 packets of chars were recovered. The person disclosed his name as Ghani Gul son of Mehran Gul resident of Qaum Malak Din Khel District Khyber. On weighing of the packets, each packet came out of 1000 grams total 15000 grams. 10/10 grams were separated from each parcel for FSL which was sealed into parcel no. 1 to 15 while the remaining chars weighing 14850 grams along with sack was sealed into parcel no. 16. On each parcel, monogram of AA was affixed. PW-03/ASHO Altaf Ali prepared the recovery memo in presence of marginal witnesses namely Saifullah constable and Hajat Hussain ASI. Which is Ex. PW 3/1, while the chars in parcel no. 16 Ex. P-1. Videography of the occurrence was done through Mobile phone and converted into USB which was sealed in parcel No. 17. He prepared Murasila, Ex. PA along with card of

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arrest, Ex. PW-3/2 and handed over all the documents to constable Saifullah for transmission to police station. After registration of FIR, investigation officer Mohsin Ali came to the spot and on the spot, he shown him the case property in sealed condition along with accused. The IO prepared site plan at his pointation. His statement was also subjected to lengthy cross examination by the defence counsel.

IV. PW-04, Constable Saif Ullah. He is marginal witness of the recovery to the recovery memo Ex. PW-3/1. He was present with ASHO on the day of occurrence. His statement U/S 161 Cr. PC was recorded by the IO. He was also cross examined by the defence counsel.

V. PW-05, Naseeb Khan SHO: He stated that after completion of investigation, he prepared complete challan Ex. PW-5/1 against the accused.

VI. PW-06, Mohsin Ali OII. He is OII of the case. On receipt of copy of FIR, Murasila, card of arrest and recovery memo, he visited the spot. Complainant ASHO Altaf Ali along with police nafri were present on the spot. On the spot, the complainant has shown him the case property i.e., recovered chars in parcels no. 1 to 17 in sealed condition. He prepared site plan Ex. PW

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6/1 on pointation of complainant. He interrogated the accused in the PS. On 18.04.2024, he produced the accused before the Judicial Magistrate vide application Ex. PW 6/2. On completion judicial custody of the accused he produced the accused before the Judicial Magistrate for recording his statement vide application Ex. PW 6/3. He placed on file the photographs of the proceeding on spot which were handed over the seizing officer which is Ex. PW 6/4. On 20.04.2024 he took parcels no. 1 to 15 from Moharrir of the PS and handed over to Khial Hussain constable along with application Ex. PW 6/5 and road certificate Ex. PW 6/6 for taking the same to FSL who took the parcels to FSL and on return he handed over to him road certificate duly stamped and signed by the FSL official. On receiving of FSL report, he placed on file which is Ex. PW6/7. On completion of investigation, he handed over the case file SHO for submission of challan. He recorded the statements of PWs U/S 161 Cr. PC.

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- (6). Prosecution abandoned PW Hajat Hassan ASI being witness of the same facts as deposed by PW-04 and closed its evidence whereafter the statement of accused was recorded u/s 342 Cr.PC but the accused

neither wished to be examined on oath, nor opted to produce any evidence in defence.

(7). Arguments:

Learned DyPP for the state argued that 15000 grams chars have been recovered from the possession of the accused facing trial. He stated that there are no contradictions in the statements of the PWs. The FSL report and the statements of the marginal witnesses fully supports the version of prosecution. That there is no ill will of the police with the accused facing trial and the chances of false implications of the accused facing trial are not there. He requested for conviction of the accused facing trial on the above-mentioned charges.

(8). On the other hand, learned counsel for the accused facing trial argued that there are contradictions in the statements of PWs about the mode and manner of the occurrence. That the witnesses failed to state the correct account of the occurrence during their statements and the same were badly shattered during cross examination. He argued that it is against the natural conduct of a person having such a huge quantity of narcotics in his possession and still he walk on the road, despite of the fact that on both sides of the road vast area consisted of fields and mountains is situated. He prayed that the prosecution badly failed to prove case against the accused facing trial beyond shadow of any doubt, therefore, the accused

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facing trial may be acquitted from the charges levelled against him.

(9). Findings:

After hearing arguments, available record perused.

It is the case of prosecution that on 18.04.2024 at 10:00AM, the complainant along with other police witnesses were on patrolling in their private vehicle driven by driver Hassan Raza No. 674 and in the meanwhile near Mast Mir Qasim Morr, a pedestrian having a red colour bag on his shoulders was heading towards village Zerra. He was stopped due to his suspicious condition and on checking, 15 packets of chars wrapped in yellow scotch tape were recovered. On weighing the same through digital scale, each packet was found to be 1000grams and the total came out to be 15000 grams. 10 grams from each packet was separated through sharp object for sending the same to FSL for chemical analysis. The accused was arrested. Recovery memo along with Murasila and card of arrest were sent to PS, where the FIR was registered.

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(10).

The complainant appeared as PW-03 and stated in his examination in chief that on the eventful day, he along with other police officials were on patrolling in their official vehicle driven by Syed Hassan Raza. This statement of complainant PW-03 is contradictory to Murasila where the complainant has written that he along

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with other police officials were on gasht in their private car. PW-06 OII Mohsin Ali while preparing the site plan Ex. PW-6/1 has shown the official vehicle/mobile at point "A" and during cross examination he has also admitted it correct that as per site plan, the government police vehicle was parked at point "A". Furthermore, the complainant during his examination in chief as PW-03 has also mentioned that they were on patrolling in the official vehicle, but he improved his statement during his cross examination and stated that they were in their private motorcar which all are contradictory to each other and to the Murasila Ex. PA and give rise to doubts about the crime scene. The date and time of occurrence is mentioned in Murasila Ex. PA is 18.04.2024 at 10:00AM, while the date and time of report is mentioned as 18.04.2024 at 11:40AM. The video of the occurrence when watched through the official computer of this court shows that the total length of the video is about 3 to 4 minutes, during which the seizing officer has not only recovered the alleged contraband Chars, weighed the same through digital scale, but he has also started writing board of arrest, recovery memo and Murasila, but the time of report in the Murasila is mentioned 11:40 hours and such a long delay of about one hour and forty minutes is not justifiable keeping in view the length of the video. At the time of arguments, this court requisitioned the USB

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from the District Mall Khana which is de-sealed from one corner and the video was watched and its properties were examined through the official computer of this court, but astonishingly the properties of the video disclosed that the same has been prepared and converted into USB on 19.04.2024 instead of 18.04.2024, meaning thereby that the video has been prepared one day after the occurrence i.e., on 19.04.2024 at 06:52AM. The date of preparation of video can also be verified from the name of the video mentioned in the properties of the same, the screenshot of which is taken and placed on file. It is admitted fact that a person can lie, but the computer and circumstances cannot. Neither the prosecution, nor the seizing officer itself can justify the date and time mentioned in the properties of the video which is totally in contradiction to the claim and case of the prosecution and makes their case falsify. In order to further corroborate the evidence of prosecution, Intekhab Ali Moharrir recorded his statement as PW-02 wherein he stated that parcel No. 1 to 15 were sent by him to the FSL authority while contrary to his statement the IO recorded his statement as PW-06 and he stated during cross examination that he has sent the samples to FSL on 20.04.2024. In the Murasila Ex. PA, the presence of one constable Shafaat Ali No. 1483 is shown with the complainant at the time and place of occurrence, but

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astonishingly no point is given to him by the IO in the site plan Ex. PW-6/1. The complainant/PW-03 during his cross examination has stated that the card of arrest of the accused was prepared at the spot at that time and nothing were inserted later on, but the perusal of card of arrest, recovery memo and Murasila shows that FIR number is entered upon the all the above documents in the same hand writing, with the same pen and in the same flow, which also creates doubts about the mode and manner of the occurrence, particularly when the whole case is examined in juxtaposition with the video prepared by the seizing officer.

- (11). All the above contradictions pertaining to the occurrence and the video prepared by the seizing officer on the subsequent day of the occurrence are all fatal grounds for the case of prosecution and which makes the prosecution case the one under the heavy clouds of doubts. There are plethora of judgements of the superior courts that benefit of doubt shall always be extended in favour of the accused.

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1. 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).

2. A single dent having created in the case of prosecution makes the accused entitled

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to benefit of doubt. It is to assert 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)

(12). Keeping in view the above discussion, the prosecution failed to prove their case against the accused facing trial beyond any shadow of doubt, I, therefore acquit the accused facing trial from the charges levelled against him by extending benefit of doubt. He is in custody. He be released forthwith if not required in any other case. Case property be kept intact till the expiry of period provided for appeal/revision under the law.

(13). Case file be consigned to the record room after its necessary completion and compilation.

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CERTIFICATE

Certified that this judgment consists of thirteen (13) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 16.12.2024

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Sessions Judge-I/Judge Special Court,
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