

In the court of Additional Sessions Judge-II/Judge Special Court,
Orakzai at Baber Mela Hangu.

Special Case No. 09 of 2020
Date of Institution. 15.12.2020
Date of Decision. 22.02.2021

State through Muhammad Jan SI Police Station Upper Orakzai
.....(*Complainant*)

VERSUS

Khan Zeb s/o Muhammad Shafi; aged about 27 years r/o Ali Khel, Tapa Jesrat
Khel, Baghnak, District Upper Orakzai

..... (*Accused Facing Trial*)

Represented by:

Mr. Javed Iqbal Anwar Learned Sr.PP for State.
Mr. Noor Karim Orakzai Advocate, counsel for accused.

**CASE FIR NO. 53 DATED 08.11.2020 U/S 9-(d) KP CNSA OF POLICE
STATION UPPER ORAKZAI**

JUDGMENT

The complainant Muhammad Jan SI on 08.11.2020 was present on *Naka Bandi* at Nala post Dabori along with Latif Khan HC, Waris Khan HC and constable Mujeeb Rehman when in the meanwhile a person was coming on foot from Daqbori having a yellow color plastic sack on his shoulder was stopped on suspicion, that the sack was searched and during search 05 packets chars were recovered and on weighment each packet was 1210/1210 gram total 6050 grams, that from each packet 10/10 gram were separated and sealed the same into parcels No. 1 to 05 for chemical analysis, whereas remaining quantity of chars was packed and sealed in separate parcel No. 6 to 10 as case property and the sack was sealed separately in parcel No.11. The accused disclosed his name as Khan Zeb s/o Muhammad Shafi r/o Ali Khel, Tapa Jesrat Khel, Baghnak, District Upper Orakzai who was accordingly arrested by issuing card of arrest.


SHAIKAT ALI
Jd: District & Sessions Judge-II,
Orakzai at Hangu

The complainant drafted the Murasila and sent to the PS through Constable Mujeeb-u-Rehman for registration of FIR.

After the registration of the FIR, the case was handed over to the investigation staff for the purpose of investigation. The case was investigated and in the course of investigation, the investigation officer prepared the site plan Ex.PB at the instance of complainant. The IO interrogated the accused during investigation and produced accused before the court for custody and custody was granted. The IO dispatched the samples to FSL for chemical analysis and placed on file the FSL report Ex.PZ. The IO recorded the statement of PWs and after completion of investigation submitted the case file to the SHO for submission of complete challan who submitted complete challan in the instant case.

On 15.12.2020, complete challan was received for the trial of accused. Accused Khan Zeb who was on bail who was summoned. The accused on bail appeared before the Court on 18-12-2020 and after compliance of provision of 265-C Cr.P.C, charge was framed against the accused on 23.12.2020, to which the accused pleaded not guilty and claimed trial, therefore, the prosecution was allowed to produce its evidence. During the trial of the case, the prosecution examined 05 PWs;

The gist of the prosecution evidence is as under:

PW-1 is the statement of Abdul Manan MHC who stated that "I was present in PS when at 12:50 hours I received Murasila, card of arrest and recovery memo brought by Constable Mujeeb-u-Rehman. I checked out Case FIR PA on basis of Murasila and correctly incorporated the content of Murasila. After registration of FIR I handed over the copy of FIR along with Murasila,

2
SHAUKAT ALI
Jdt. Dy. District & Sessions Judge
Orakzai at Hangu

card of arrest and recovery memo to the IO for investigation. The IO recorded my statement u/s 161 Cr.P.C. At 16:10 hours the complainant along with accused and case property reach to the PS and handed over to me the accused and case property. I incorporated the case property in register No.19 the relevant page is EX-PW1/1. I handed over the parcel No.01 to 05 containing sample to the IO and parcels NO 06 to 10 were kept in Mallkhana.”

PW-2 is the statement of Muhammad Jan SI who stated that “On 08-11-2020 I had laid barricade at Nala Post Dabori where a person was coming from Dabori side on foot having a plastic sack on his shoulder who was stopped on suspicion and on search of the sack 05 packets chars was recovered. I weighed each packet separately which were 1210/1210 grams each total 6050 grams. I separated 10/10 grams from each packet for FSL analysis and sealed into parcels No. 1 to 5 whereas the remaining chars were sealed into parcels No. 6 to 10. The sack was separately sealed in parcel No. 11 which was 50 grams. The accused disclosed his name Khan Zeb s/o Muhammad Shafiq. I prepared Murasila, card of arrest of accused and recovery memo and handed over the same to Constable Mujeeb Rehman to take the same to the PS. The Murasila Ex.PA, card of arrest Ex.PW-2/1 and recovery memo is Ex.PW-2/2. When the IO came to the spot for spot inspection he prepared the site plan in my instance and pointation. After spot proceedings I took the accused along with case property to the PS. I handed over the case property and accused to Manan Muharrir of the PS. Today I have seen the above documents which are in my hand writing are correct and correctly bears my signature.”

PW-3 is the statement of Latif Khan HC who stated that “On 08-11-2020 Muhammad Jan had laid barricade at Nala Post Dabori. During nak bandi we were checking vehicle and searching persons passing through the naka bandi.

3
SHAUKAT ALI
1st District & Sessions Judge II.
Orakzai at Hangu

Where a person was coming from Dabori side on foot having a plastic sack on his shoulder who was stopped on suspicion and on search of the sack 05 packets chars was recovered and each packet 4010 grams and total 4 kg of chars was recovered. The witness again stated that these were 05 packets and in each packet 1210/1210 grams chars the witness volunteer that today I made statement in other case of narcotics therefore the weight of narcotics was mixed up by me inadvertently. The chars was total 6050 grams. The complainant separated 10/10 grams from each packet for FSL analysis and sealed into parcels No. 1 to 5 whereas the remaining chars were sealed into parcels No. 6 to 10. The sack was separately sealed in parcel No. 11 which was 50 grams. The complainant prepared 03 documents however I do not know the names of those documents. One document was read over to me and I signed the same. The complainant then handed over all the documents to Constable Mujeeb Rehman who took the same to the PS. Thereafter the IO came to the spot and recorded my statement u/s 161 Cr.PC. after spot proceedings we along with the accused and case property returned to the PS. The case property is before the court today in parcel No. 6 to 11 which are Ex.P-1 to P-6. Today I have seen the recovery memo which correctly bears my signature”

PW-4 is the statement of Ashraf Khan Constable who stated that “On 11-11-2020 the IO handed over to me sealed parcels No. 1 to 5 for FSL along with the application and I took the parcels to the FSL on the same day. I handed over the parcels in the laboratory against the receipt. On return when I reached to the PS I handed over the receipt to Nawaz Sharif IO/SI. The IO also recorded my statement u/s 161 Cr.PC. The road certificate is Ex.PW-4/1.”

PW-5 is the statement of Nawaz Sharif SI/IO who stated that “On 08-11-2020 Murasila, card of arrest, recovery memo and copy of FIR was handed

4
SHAIKAT ALI
Add: District & Sessions Judge,
Ghakzal at Hangu

over to me for investigation by Muharrir of the PS. during the investigation I visited the spot and prepared site plan Ex.PB on the pointation of complainant. I recorded the statement of witnesses to the recovery memo in the PS. I produce accused before the Illaqa magistrate on 19-11-2020 for custody vide my application is Ex.PW-5/1 and one day custody was granted. The accused confessed his guilt during investigation and on the expiry of custody I produced the accused before the magistrate for recording his confessional statement vide my application is Ex.PW-5/2 but accused refused to confessional statement and was sent to judicial lock-up. I dispatched samples for chemical analyses to the FSL vide my application is Ex.PW-5/3 through Constable Ashraf Ali. I received FSL report Ex.PZ and placed on file. I placed on file the DD Ex.PW-5/4. I recorded the statement of PWs and accused and after completion of investigation I submitted the case file to SHO for submission of complete challan, who submitted complete challan Ex.PK.”

On 25-01-2021 after the prosecution closed its evidence, the statements of accused was recorded under section 342 Cr.P.C on 28-01-2021. The accused denied the allegations of the prosecution but he refused to be examined on oath or to produce defense, therefore case was adjourned for final arguments.

Learned Sr.PP for the state argued that huge quantity of contraband has been recovered from the possession of accused, that the prosecution witnesses are consistent in their statements and there is no material contradiction regarding the recovery of contraband and mode and manner of arrest of the accused, that the case property was produced before the court which was duly exhibited and the defense could not rebut the same, that the samples were separated from each packets which was timely sent to the FSL and the FSL

5
SHAUKAT ALI
Addl. District & Sessions Judge-II,
Orakzai at Hangu

report is also in positive. Learned Sr.PP argued that the prosecution fully proved the case against the accused and the accused may be convicted.

On the contrary learned counsel for the accused vehemently opposed the arguments of prosecution and argued that the prosecution witnesses contradicted each other on material points therefore their evidence is not worth reliable, that the alleged contraband are planted against the accused and the whole proceeding were carried out in the PS, that the samples to the FSL were sent with unexplained delay and the safe custody of the samples also not established by the prosecution witnesses, that there are doubts in the prosecution case the benefit of which may be extended to accused and the accused may be acquitted from the charges leveled against him.

Arguments of learned Sr.PP for the State and learned counsel for the accused already heard and available record perused.

The case of prosecution is that the complainant during *Naka Bandi* at Nala check post at Dabori arrested the accused along a sack containing 05 packets chars each weighing 1210/1210 total 6050 grams was allegedly recovered on search of the sack. The complainant Muhammad Jan SI (PW-02) stated that 05 packets chars each weighing 1210/1210 gram total 6050 grams was recovered by him, however Latif Khan HC (PW-03); witness to the recovery memo Ex.PW-2/2 at the very out set of his chief examination totally negated the version of the complainant and stated that on search of the sack 05 packets chars were recovered and each packet was 4010 grams and total 04 kg chars was recovered. Furthermore PW-03 during his cross examination stated that his statement was not recorded by the IO. The statement of PW-03 shows that neither he was present on the spot with the complainant nor the recovery

6
SHAUKAT ALLI
Audi: District & Sessions Judge-II,
Orakzai at Hangu

has been effected in the mode and manner asserted by the complainant in the Murasila Ex.PA. PW-03 further stated that the FIR No. was written on the recovery memo when he was signing the recovery memo. PW-03 stated in his cross examination that it is correct that he has signed on the blank documents. The statement of Latif Khan HC (PW-03) further negated the spot proceedings and recovery of contraband from the possession of accused and creates serious doubts in the case of prosecution.

The occurrence took place at 11:00 hours and the time of report is 11:30 hours whereas the time of chalking of FIR is 12:50 hours when the Murasila, card of arrest and recovery memo was received by Abdul Manan MHC (PW-01) who incorporated the contents of Murasila into FIR at 12:50 hours. Abdul Manan MHC stated that he was present in the PS when at 12:50 hours he received Murasila, card of arrest and recovery memo. The complainant PW-03 during cross examination stated that on the recovery memo and card of arrest FIR No. was later on inserted by the Muharrir of the PS when he sent it at 3:30 p.m. The complainant was negated by the Latif HC PW-03 who stated in his cross examination that the FIR No. was written on the recovery memo when he was signing the recovery memo which shows that the recovery memo was not prepared on the spot as alleged by the complainant. Furthermore the card of arrest and recovery memo was sent along with the Murasila to the PS where the Muharrir reduced the Murasila into FIR, therefore when the recovery memo and card of arrest was sent to the PS at 3:30 p.m. as stated by the complainant in his cross examination then the registration of FIR at 12:50 hours and occurrence at 11:30 hours creates doubts regarding the arrest of the accused at the place of occurrence and recovery of contraband from the possession of accused.


SHAUKAT ALI
Add: District & Sessions Judge-II,
Orakzai at Hangu

The complainant stated that he prepared Murasila, card of arrest of accused and recovery memo. During the cross examination of complainant it was found that there was a difference between the hand writing of Murasila Ex.PA and recovery memo Ex.PW-2/2 and when the complainant was asked to explain, then he stated in his cross examination that there may be difference in the writing of Murasila and recovery memo. Furthermore the IO stated in his cross examination that the hand writing of the recovery memo Ex.PW-2/2 and site plan Ex.PB are in the same hand writing and further stated that the hand writing of Murasila Ex.PA and hand writing of site plan Ex.PB are in different hand writing which reflects that the recovery memo and Murasila were not prepared by one person and negates the complainant that he prepared the recovery and Murasila on the spot after the arrest of the accused. The complainant stated that constable Mujeeb-u-Rehman returned to the spot from the PS at about 1:00 p.m. and when Mujeeb-u-Rehman reached to the spot the IO also reached at that time however the IO stated in his cross examination that he recorded the statement of Mujeeb-u-Rehman in the PS when he returned to the PS from the spot. Constable Mujeeb-u-Rehman was not produced by the prosecution as prosecution witness who allegedly took the Murasila, card of arrest and recovery memo to the PS. The presence of constable Mujeeb-u-Rehman on the spot with the complainant and taking the Murasila to the PS could not established and the chain of occurrence was not proved. The parcels were prepared with the help of sewing machine. The IO stated in his cross examination that the parcels were prepared with the help of sewing machine and further stated that he has not seen himself sewing machine in the PS which further creates doubts regarding the preparation of samples and sealing of samples and case property into parcels by the complainant on the spot. The statement of the prosecution witnesses are full of contradictions and are not


SI

confidence inspiring to connect the accused with the commission of offence. The statement of prosecution witnesses do not support the recovery of contraband from the possession of accused and the story of prosecution is full of doubts the benefit of which shall be extended to the accused.

In view of the above facts and circumstances of the case the prosecution could not prove the case against the accused, hence the accused facing trial Khan Zeb is acquitted from the charges leveled against him. The accused is on bail, his sureties are discharged from the liability of bail bonds. The case property be dealt with in accordance with law.

File be consigned to the District Record Room Orakzai after necessary completion and compilation.

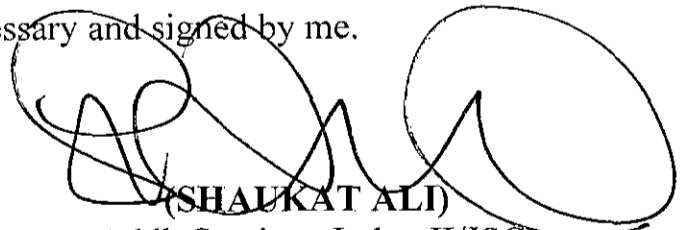
Announced
22nd February, 2021



(SHAUKAT ALI)
Addl; Sessions Judge-II/JSC,
Orakzai at Baber Mela, Hangu

CERTIFICATE

Certified that this judgment consists of -09- pages. Each page has been read, corrected wherever, necessary and signed by me.



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Orakzai at Baber Mela, Hangu