

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

Special case No.....1/3 of 2021  
Date of Original Institution ....23.09.2020  
Date of present Institution.....04.01.2021  
Date of Decision.....29.03.2021

State through Niqab Hussain SI Police Post Tazi Khel Police Station Lower  
Orakzai

.....(*Complainant*)

**VERSUS**

Shahan Ali S/o Asmat Ali R/o Qaum Mani Khel Tappa Tirai District lower  
Orakzai..... (*Accused Facing Trial*)

**Represented by:**

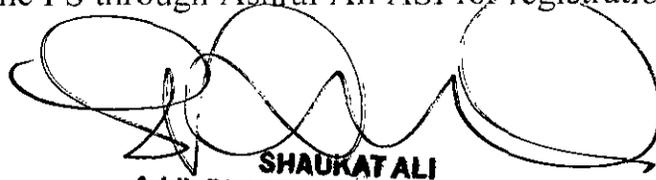
Mr. Javed Iqbal Anwar Learned Sr.PP for State

Mr. Abid Ali Advocate, counsel for accused

**CASE FIR NO. 81 DATED 18.07.2020 U/S 9-(d) KPCNSA OF POLICE  
STATION LOWER ORAKZAI**

**JUDGMENT**

The prosecution story is that on 18-07-2020 Niqab Hussain SI along with Muhtaj Ali and other Police constables were present on Naka Bandi at Pukhta Road in front of Tazi Khel check post when in the meanwhile a pickup proceeding from Kalaya was stopped for the purpose of search and a person sitting in the pickup was deboarded for the purpose of search on suspicion, that on his physical search two packets chars wrapped in yellow scotch tape was recovered from his possession and on weightment each packet was 1200/1200 grams total 2400 grams. That 10/10 grams were separated for FSL from each packet and the remaining chars were sealed in separate parcels as case property. The accused disclosed his name SHahan Ali s/o Asmat Ali who was arrested by issuing his card of arrest and the Murasila was drafted which was sent to the PS through Ashraf Ali ASI for registration of FIR against the



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accused on the basis of which case FIR Ex.PA was registered against the accused. After the registration of the case, 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. The IO also dispatched the samples to the FSL for chemical examiner report and received report of FSL in affirmative, which was placed on file. The I.O, during investigation, recorded the statements of PWs and accused u/s 161 Cr.P.C. After completion of investigation, the IO submitted the case file to the SHO for submission of complete challan and the SHO submitted challan against the accused for trial.

On 23.09.2020, complete challan was received for the trial of accused. The accused, being on bail, was summoned who appeared before the Court and after compliance of provision of 265-C Cr.P.C, charge was framed against the accused on 06.10.2020, 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 06 PWs.

The gist of the prosecution evidence is as under:

**PW-1** is the statement of Libab Ali Addl; Muharrir who stated that "During relevant days I was posted as Muharrir of the PS lower District Orakzai. On 18-07-20 I was present in the PS. At about 10:10 a.m ASI Ashraf Ali handed over to Murasila, recovery memo and card of arrest. I chalked out the FIR on the basis of Murasila which is Ex.PA. I handed over the copy of

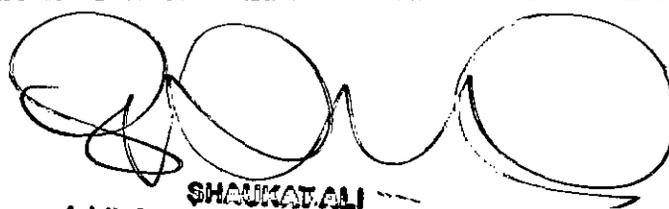


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FIR along with relevant documents to the investigation staff. My statement was recorded by the IO. When the complainant returned to the PS he handed over to me the case property which include the parcels No. 1 to 4. I entered the same in the register No. 19 Ex. PW-1/1 and I kept the parcels No. 3 and 4 in maal khana for safe custody. I handed over the parcel No. 1 and 2 to the IO for FSL. Today I have seen all the relevant documents which are correct and correctly bears my signature”.

**PW-2** is the statement of Khan Wada ~~QORP~~ <sup>Shahali</sup> who stated that “On 21-07-2020 the Aftab Hassan SI handed over to me samples sealed in parcel No. 1 and 2 along with application and road certificate for FSL and I took the same to the FSL. I handed over the parcels in the FSL to the official of the FSL against receipt Ex.PW-2/1. I handed over the receipt on the road certificate to the IO. My statement was recorded by the IO u/s 161 Cr.PC.”

**PW-3** is the statement of Niqab Hussain SI who stated that “on 18-07-2020 we had laid barricade at Tazi Khel picket. We were searching vehicle coming from Kalaya Side. The accused was seated in a passenger pick-up who was deboarded from the pick-up on suspicion. The accused had two pickets chars which were tied with his belly with the help of foled of shalwar. The chars was recovered. After the arrest of accused the accused was taken to the picket where I prepared card of arrest, recovery memo and Murasila. I separated 10/10 grams from each parcel for FSL whereas the remaining 1190/1190 was separated sealed as a case property. I handed over the Murasila to Ashraf ASI who took the same to the PS. When the IO came to the spot he prepared the site plan at my instance. Today I have seen card of arrest Ex.PW-3/1, recovery memo Ex.PW-3/2 and Murasila Ex.PA which is correct and



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correctly bears my signature. Today the case property is before the court in parcel No. 3 and 4 which are Ex.P-1 and P-2”

**PW-4** is the statement of Ashraf Ali ASI  who stated that “on 18-07-2020 the complainant had laid barricade at Tazi Khel picket. I was present with the complainant and we were searching vehicle coming from Kalaya Side. The accused was seated in a passenger pick-up along with other 5/6 passengers who was deboarded from the pick-up on suspicion. The accused was searched who had two packets chars in the foled of his shalwar. The chars were weighed on digital scale and each packet was 1200/1200 grams. The complainant separated 10/10 grams from each parcel for FSL whereas the remaining 1190/1190 was separated sealed as a case property. The complainant prepared Murasila, card of arrest and recovery memo and all the 03 documents were handed over to me to take the same to the Muharrir of the PS and I took the same to the PS on motorcycle. I handed over the Murasila, recovery memo and card of arrest to the Muharrir at 12:00 noon and thereafter I came back to check post Tazi Khel. The IO then came to the spot and prepared the site plan in the instance of complainant. Today I have seen the recovery memo which correctly bears my signature”

**PW-5** is the statement of Muhammad Shafiq SHO who stated “after completion of investigation the case file was handed over to me by the IO and I submitted complete challan Ex.PK in the instant case which is correct and correctly bears my signature”.

**PW-6** is the statement of Aftab Hussain SI/IO who stated that “after registration of FIR, the Murasila, recovery memo and card of arrest along with copy of FIR was handed over to me for investigation. I proceeded to the spot

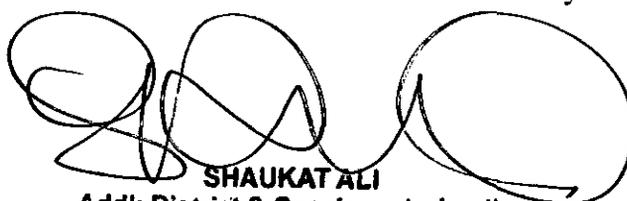
  
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for spot inspection and prepared site plan Ex.PB on the pointation of complainant. I recorded the statement of witnesses to the recovery memo on the spot. I returned to the PS from the spot and recorded the statements of Muharrir in the PS. The accused was handed over to me in the PS and I produced him before the magistrate vide my application Ex.PW-6/1 and one custody was granted. I interrogated the accused during custody and on 20-07-2020 I produced accused for further custody vide my application Ex.PW-6/2 which was refused. I recorded the statement of accused u/s 161 Cr.PC. I dispatched samples in parcel No. 1 and 2 to the FSL through Constable Khan Wada vide my application Ex.PW-6/3 and road certificate already Ex.PW-2/1. When PW Khan Wada returned from the FSL I recorded his statement u/s 161 Cr.PC. I placed on file DD Ex.PW-6/4 and copy of relevant page of register 19 already Ex.PW-1/1. I received the FSL report Ex.PZ and placed it on file. After completion of investigation I handed over the case file to the SHO for submission of challan who submitted complete challan in the instant case. Today I have seen the above documents which are correct and correctly bears my signature”

After the prosecution closed its evidence, the statements of the accused was recorded under section 342 Cr.P.C on 08-03-2021. The accused denied the allegation of the prosecution but he refused to be examined on oath or to produce defense, therefore case was adjourned for final arguments.

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

The complainant Niqab Hussain SI on 18.07.2020 during Naka Bandi arrested the accused. The time of occurrence narrated by complainant in the



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Murasila is 10:20 hours and the time of report is 11:00 hours. The complainant (PW-3) stated that after drafting the Murasila it was handed over to Ashraf ASI who took the same to the PS. The complainant during the course of cross examination stated that the Murasila was sent at 11:00 AM to the PS. Ashraf Ali ASI (PW-4) stated that he took the Murasila to the PS and handed over the same to the Muharrir at 12:00 Noon and thereafter came back the Tazi Khel Check post. The prosecution produced Libab Ali Additional Muharrir PS Upper Orakzai (PW-1) who stated at the very outset office examination in chief that on 18.07.2020 he was present in the PS and at about 10:10 AM ASI Ashraf Ali handed over to him Murasila recovery memo and card of arrest on the basis of which FIR Ex.PA was registered. The Muharrir received the Murasila, recovery memo and card of arrest of accused at 10:10 AM which is a time before the occurrence as the time of occurrence is 10:20 hours. The statement of Libab Ali (PW-1) totally denied the occurrence on 10:20 hours and recovery of alleged contraband from the accused in the mode and manner alleged by the complainant. Besides the complainant stated in his cross examination that it was 10:00 hours when the accused was arrested whereas the time of occurrence is 10:20 hours. The complainant in his own statement also negated the time of occurrence mentioned by him in the Murasila Ex.PA, therefore the occurrence on the alleged time mentioned in the Murasila and the recovery of contraband from the accused is thus became highly doubtful.

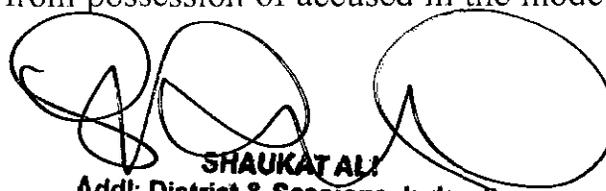
The complainant Niqab Hussain is illiterate as stated by him in his cross examination. The complainant deposed that he never drafted Murasila in any other case and the Murasila Ex.PA in the instant case was written on his dictation by Muhtaj Ali constable. The complainant stated in his cross examination that he cannot read the Murasila Ex.PA and do not know its



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contents, therefore it is not appealable to a prudent mind that how the complainant dictated the Murasila to Muhtaj Ali constable when he can neither read nor write nor understand the contents of Murasila. In such circumstances the drafting of Murasila by the complainant on the spot could not be believed which shows that the proceedings were not conducted in the mode and manner as alleged by the complainant. Furthermore, the complainant during his cross examination stated that the card of arrest of accused, recovery memo and Murasila was prepared at Tazi Khel Check Post and he did not prepare the aforementioned documents at the spot where the accused was arrested. PW Ashraf Ali stating in his cross examination that the complainant started paper work on the spot and thus contradicted the complainant on material aspect of the case which further put doubts regarding the arrest of accused at the place of occurrence and recovery of contraband from his possession.

Ashraf Ali ASI (PW-4) is the marginal witness to recovery memo Ex.PW-3/1 stated in his cross examination that he cannot read the contents of recovery memo which was placed before him for reading during his cross examination. PW Ashraf Ali also stated that he cannot write which shows that Ashraf Ali ASI can neither read nor understand the contents of recovery memo Ex.PW-3/1, therefore his statement is not worth reliable to believe the recovery of contraband from possession of accused. The complainant and marginal witness to the recovery memo both are unaware of the contents of documents in the shape of Murasila and recovery memo, therefore their statement could not be relied upon to connect the accused to the commission of offence. There are numerous doubts in the prosecution case in respect of recovery of contraband from possession of accused in the mode and manner

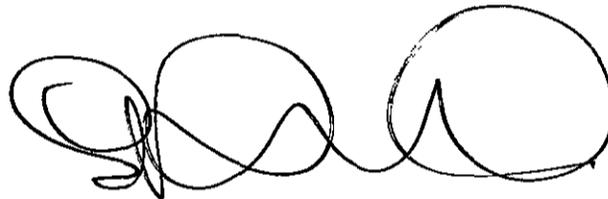
  
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alleged by the complainant for which the accused is entitled, therefore the benefit of doubt shall be extended to the accused as a matter of right.

As sequel to the above discussion, the prosecution has failed to bring home the guilt of the accused beyond any reasonable shadow of doubt therefore; the accused is acquitted in the instant case from the charges leveled against him by extending him the benefit of doubt. The accused is on bail, his sureties are discharged from the liability of bail bonds. The case property i.e. contraband be kept intact till the expiry of period of appeal/revision and where after the same be dealt with in accordance with law.

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

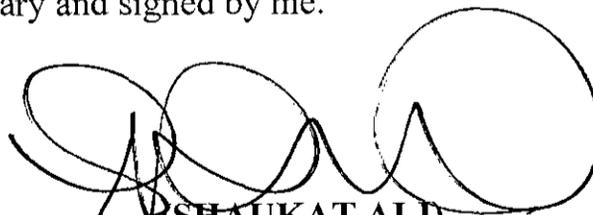
Announced  
29.03.2021



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CERTIFICATE

Certified that this judgment consists of -08- pages. Each page has been read, corrected wherever, necessary and signed by me.



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