

**IN THE COURT OF JAMAL SHAH MAHSOOD,**  
**ADDITIONAL SESSIONS JUDGE-I, ORAKZAI**

**Special Case 5/3 of 2019**

Date of Institution 14-11-2019  
Date of Decision 07-03-2020

**STATE**

**VS**

**AJMER ALI** s/o Muhammad Nazeer (aged about 38 years);  
belonging to Sepoy tribe: r/o of Lakhrikhel, Kharkhushta village,  
Tazi Khel, Lower Orakzai.

**(Accused)**

- Case FIR No. 38
- Dated: 25-10-2019
- Under Section: 9 (d) of KP-CNSA
- Police Station: Lower Orakzai
- DPP Umar Niaz and APP Syed Amir Shah for State
- Aman Khan Bangash, Jabir Hussain and Wahid Meraj  
Advocates, for defense

**JUDGMENT:**

1. The accused, Ajmer Ali, is facing trial for the alleged recovery of 12240 grams of Chars from his possession.
2. The case was registered in PS Lower Orakzai on 25-10-2019, after receipt of a murasila (Ex. PW-1/1) sent by SHO Ishtiaq Hassan (PW-1). The SHO had reported that he was on routine patrol of the area in official vehicle, along with other police personnel; that when his police party was present on Kohat-Kalaya road, near under-construction FC Fort at Zera, one person carrying a bag over his shoulder, started running away on seeing the police party; that the said person was apprehended, and on checking, the plastic bag he was carrying was found to contain 12 packets of chars; that the said person revealed his name as Ajmer Ali (accused facing trial). That the packets of chars were weighed with digital scales and each

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packet was found to be 1020 grams; that a 10-gram sample was separated from each parcel and sealed into separate parcels (parcel no. 1-12) for FSL analysis; and that the remaining bulk (12120 grams) was sealed in parcel no. 13. That the chars and plastic bag were taken into possession by police and that the accused was arrested. This murasila sent to the PS for registration of FIR and investigation.

3. On completion of investigation, challan was submitted against the accused who was summoned from Sub-Jail Orakzai (at Baber Mela), to answer the charge; he pleaded not guilty and claimed trial. In order to prove the charge against the accused, the prosecution produced 06 PWs during the trial.

4. The gist of prosecution evidence is as follows:

**PW-1** is Sub-Inspector, Ishtiaq Hassan (SHO), the Complainant/seizing officer. He repeated the narration of his Murasila in his examination in chief. He produced parcel No. 13 (Ex. P-1) containing the bulk of substance (12120 grams). He also got exhibited Murasila (Ex. PW 1/1), card of arrest (Ex. PW 1/2) and recovery memo (Ex. PW 1/3).

**PW-2** is ASI Hakim Ali, who was present with the SHO during the relevant time. He is a witness of the recovery proceedings and the recovery memo Ex. PW 1/3.

**PW-3** is Labab Ali HC, who was serving as Additional *Madad Muharrir* in PS Lower Orakzai during the relevant days. He was handed over the 13 parcels of the case by PW-1 (complainant/seizing officer), on the day of occurrence. These

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parcels were deposited in *Malkhana* of PS and entries made in Register no. 19 (Ex. PW 3/1).

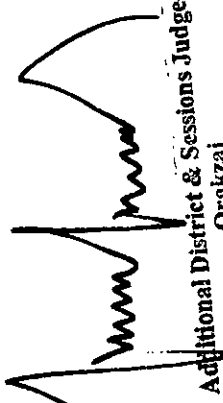
**PW-4** is Constable Amir Nawaz; he took parcels No. 1-12 to FSL Peshawar (application to FSL Ex. PW 4/1 and road certificate Ex. PW 4/2).

**PW-5** is Sub-Inspector Khurshid; who was serving as ASHO in the PS; he received the Murasila from Constable Yousaf Ali and entered its contents in FIR Register (Ex. PA).

**PW-6** is Sub-Inspector Shal Muhammad, the investigating officer of the case. He conducted the following proceedings in investigation:

- Visited the spot and prepared site plan/recovery sketch (Ex. PB), on the pointing of the complainant (PW-1).
- Recorded statements of marginal witnesses of recovery memo.
- Inspected the sealed parcels and the accused on the spot.
- Returned to PS and obtained the case property from Muharrir.
- Recorded statements of Moharrir (PW-3) & ASHO (PW-5).
- Interrogated the accused and obtained his further custody, for 03 days, from Judicial Magistrate concerned.
- On further interrogation obtained confessional statement from accused, however, the confession was refused by accused when produced before the Judicial Magistrate.
- Dispatched the samples (parcels No.1 to 12) to FSL Peshawar for report.
- Placed on case file the FSL report (Ex. PZ).

- Changed the section of law, in record of the case, from 9 (c) CNSA to 9 (d) KP-CNSA, after instructions from prosecution office.
  - Placed on file the relevant copy of Register no. 19 (Ex. PW 3/1) and the copies of relevant entries of daily dairy of PS (Ex. PW 6/3 & 6/4).
  - Handed over the case file to SHO, on completion of investigation.
5. The defense was given opportunity to cross-examine the PWs. On close of prosecution evidence, the statement of accused was recorded u/s 342 Cr.PC. He did not wish to get examined on oath, nor opted to produce any evidence in defense. Thereafter, the APP for State and the defense counsel presented their respective arguments on trial and the record of the case was perused.
6. The prosecution, during arguments, claimed that the case has been proved against accused beyond shadow of any reasonable doubt, and that minor discrepancies in prosecution evidence, if any, cannot be made a ground for acquittal. The defense counsel, on the other hand, stressed that the prosecution has failed to prove the mode and manner of alleged recovery and arrest proceedings, in line with the FIR; and also, the safe and proper custody of the alleged narcotics, by pointing out the contradictions in the prosecution evidence.
7. The safe and proper custody of the parcels of narcotics is of prime importance for prosecution. In the present case the 13 parcels of narcotics, according to prosecution case, were carried from the spot by the complainant (PW-1) to the police station and handed over to Muharrir (PW-3), on the night of occurrence. The IO (PW-6),

  
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according to prosecution evidence, had visited the spot in presence of complainant and the accused, however, he did not take possession of the parcels there. The Muharrir (PW-3), in his examination in chief, stated that when the IO returned to the PS, after visiting the spot on the day of occurrence, he showed the parcels to the IO. This PW-3 stated that he deposited the parcels in malkhana and made entries in register no. 19. He admitted that he did not mention the date of deposit of parcels in register no. 19 (Ex. PW-3/1). PW-3 also admitted that in the last column of Ex. PW-3/1 there is no number of receipt or the name of the constable who took the parcel to the FSL.

8. The investigating officer (PW-6), on the other hand, stated that when he returned to the PS, on the night of occurrence, the muharrir handed over the case property to him. Thus, the safe and proper custody of the parcels no. 1 to 13 has become suspicious. The copy of register no. 19 (Ex. PW-3/1) does not bear the date when the parcels were deposited in the malkhana of PS, and the last column of the same shows that, on 28-10-2019, parcels no. 1 to 12 were handed over to an unnamed constable through an unnumbered receipt for sending to FSL Peshawar.

9. Constable Amir Nawaz (PW-4), the person who, according to prosecution case, had taken parcels to FSL Peshawar, stated that the parcels were handed over to him by IO Shal Muhammad (PW-6). Thus, according to this witness, the parcels remained with the IO from the night of occurrence till sending to FSL, on 28-10-2019. According to Ex. PW-6/1, the case property was produced before the Judicial Magistrate on 26-10-2019 - at the time of obtaining of

custody of accused. However, the copy of register no. 19 does not bear any endorsement that the case property was removed from the malkhana for the purpose of production before Judicial Magistrate. In the circumstance, it is clear that the case property remained with the IO of the case all the time and was not properly deposited in the safe custody of malkhana. Or that the case property could be removed from the malkhana by any police official, without making official entry in respect of its removal. The claim, of prosecution, that the parcels remained in safe and proper custody in malkhana is thus proved incorrect.

10. During evidence of PW-1, the case property (parcel no. 13) was examined in court and the stitching on one side of parcel was found partially broken and repaired with stapler pins. The seizing officer stated that he did not remember whether he had mentioned the color of narcotics in the murasila, however, the marginal witness of recovery memo (PW-2) stated that the same was grey-black. The FSL report (Ex. PZ), on the other hand, states the color of narcotics as brown.

11. Moreover, the FSL report does not bear any endorsement in respect of the protocols/procedures of the test applied for determining the character of substance; which is in violation of the Rule no. 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 – which Rules have been kept intact under the saving provisions of section of 59 (2) of KP-CNSA, 2019. Thus, the FSL report (Ex. PZ) remains inconclusive, suspicious and untrustworthy. Even otherwise, as the chain of custody of narcotics is broken in the present case, therefore, the report of FSL has lost its reliability.

12. As far as mode and manner of arrest of the accused is concerned; all the prosecution witness are police officials and subordinates to the complainant-SHO (PW-1). It is admitted by prosecution that there was an FC check-post near the place of occurrence, but that no independent witness was associated with the recovery proceedings. The distance between the place of occurrence and the police station has been mentioned by PW-1 as 90 minutes; according to IO (PW-6), the SHO left the spot at about 09:00 pm, but according to Ex. PW-6/3 the SHO had reached PS at 09:40 pm. The SHO and marginal witness (PW-1 & PW-2) emphatically stated that, on the day of occurrence, they had left the PS at 12:00 noon, however, according to Ex. PW-6/4 they had left PS at 09:00 am. The Muharrir (PW-3) stated that the SHO, on return to PS, handed over the parcels of case to him after *maghrib* time. These contradictions cast doubts on the mode and manner of recovery. In absence of independent witnesses such doubts cannot be set aside easily, as all the PWs were police officials belonging to the same PS and they could not establish the timings of the case according to their own documents exhibited during trial.

13. Failure to prove safe and reliable custody of case property, especially narcotics, from its seizure until its deposit in FSL and production before court is a sufficient doubt to warrant acquittal of accused. The prosecution case being riddled with suspicions and doubts, cannot be made a ground for conviction of accused. The benefit of doubts in the prosecution case is to be extended to the accused, as of rights.

14. Resultantly, the accused facing trial, **Ajmer Ali** s/o Muhammad Nazeer, is acquitted of the charge levelled against him. He is in custody; he shall be released forthwith if not required in any other case.
15. Case property (narcotics) shall be dealt with in accordance to law after the expiry of period of limitation for appeal/revision.
16. Let a copy of this judgement be sent to the office of DPP Orakzai in terms of section 373 CrPC and this file be consigned to the record room after its proper compilation.

**Announced**  
**07-03-2020**

  
**Jamal Shah Mahsood**  
ASJ-I/Special Court, Orakzai

**CERTIFICATE**

It is hereby certified that above order/judgement consists of 08 pages, each of which has been signed.

  
ASJ-I/Special Court, Orakzai