

IN THE COURT OF ASGHAR SHAH
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 8/3 OF 2020
DATE OF INSTITUTION : 03.02.2020
DATE OF DECISION : 18.03.2020

STATE THROUGH SALEEM KHAN SUB-INSPECTOR, POLICE
POST KRAPA, UPPER ORAKZAI
.....(COMPLAINANT)

-VERSUS-


MUHAMMAD RAHEEM S/O JAANA GUL, AGED ABOUT 40
YEARS, TRIBE MISHTI, SUB-TRIBE DARWI KHEL, UPPER
ORAKZAI.
..... (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for state.
: Abid Ali Advocate, for accused facing trial.

FIR No. 20 Dated: 17.11.2019 **U/S:** 9 (d) KP CNSA
Police Station: Ghiljo Orakzai

JUDGEMENT
18.03.2020

The story of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA are that; on 17.11.2019 at about 1510 hours, the local police were busy in patrolling in the locality when they found a person in suspicious condition having a plastic bag of small size in his left-hand. The said person was apprehended and upon the search of plastic bag, lead to the recovery of two packets chars garda which upon weighment found 2405 grams in total. The complainant separated 10 grams each from each packet for chemical analysis of the FSL and packed and sealed the same into parcels no. 1 and 3 whereas remaining 2385 grams chars


ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

were packed and sealed in parcel no.2. The accused disclosed his name as Muhammad Raheem who was accordingly arrested by issuing card of arrest Ex. PW 5/1. The recovery memo Ex. PC was drafted by taking into possession the recovered chars besides Murasila Ex. PA/1 was drafted and sent to the PS which was converted into FIR Ex. PA. Hence, the case in hand.

- (2). Upon the receipt of case file for the purpose of trial, notice was issued to the accused facing trial and upon his appearance, the proceedings were initiated and he was charge sheeted to which he pleaded not guilty and claimed trial and accordingly the witnesses were summoned who deposed in the following manner.

Zahid Amin, Sub-Inspector, Police Line Orakzai as PW-1 deposed;

“that during the days of occurrence, I was posted as SHO of police station Ghiljo Upper Orakzai. On 17-11-2019, I received Murasila from Saleem Khan Sub-Inspector through head constable Muhammad Akbar and thereafter, I reduced the contents of Murasila into FIR into Ex. PA which is correct and correctly bears my signature. After registration of the case, I handed over the copy of FIR and Murasila to investigation officer for



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Meia

onward investigation. After completion of the investigation by the IO, the case file was handed over to me by the IO and on 23-11-2019, I submitted complete challan in the instant case which is also correct and correctly bears my signature. The complete challan is Ex. PW 1/1."

Khalil Ur Rehman, AMHC, PS Upper Orakzai as PW-2 deposed;

"that on 17-11-2019, ASHO, Saleem Khan handed over to me the case property including parcels no. 1 and 3 (samples of chars for FSL) and parcel no. 2 remaining quantity 2385 grams chars garda and I kept the same in Mal Khana of the police station in safe custody. My statement was recorded by the IO u/s 161 Cr.P.C."

Muhammad Siraj Constable, Police Post Tor Kanra as PW-3 deposed;

"that during the relevant days, I was posted in the police post Krappa. On 22-11-2019, Muharrir of the police station handed over to me parcels no. 1 and 3 containing samples of chars garda for taking the same to the FSL and I took the same to the FSL



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Meela

alongwith FSL application and road permit certificate. I handed over the samples of chars garda mentioned above alongwith application of FSL and road permit certificate to the official of the FSL. I obtained receipt of the same from the FSL officials and on my return to the PS, I handed over original receipt to the Muharrir and copy to the incharge investigation Malik Abdul Janan SI. My statement was recorded by the IO u/s 161 Cr.P.C.”

Gul Asghar ASI, Police Station Upper Orakzai as PW-4 deposed;

“that on 17.11.2019, ASHO, Saleem Khan handed over the case property including parcel no. 1 and 3 (samples of chars for FSL) and parcel no. 2 (remaining quantity of chars 2385 grams) to Khalil Ur Rehman AMHC to kept the same in mal-khana of the PS and I made the entry of the same in register 19 of PS. The copy of register 19 is Ex. PW 4/1 which is correct and correctly bears my signature.”



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

Complainant, Saleem Khan, ASHO, Police Station Upper Orakzai as PW-5 deposed;

"that on 17.11.2019, I alongwith Fazal Subhan ASI, Muhammad Akbar HC, Zahir Khan HC and other police officials were on patrolling on foot on kacha road leading from Arrkhi to village Kharoo. At about 1510 hours, I found one person in suspected condition having plastic bag of small size in his left hand. The said person was over powered by me with the help of police party and recovered the said plastic bag from his possession. On checking, I found two packets of chars garda in the plastic bag. I weighed the two-plastic packet of chars through digital scale which stood 2405 grams. From the entire quantity of chars, I separated 10 grams from each packet and packed and sealed the same into parcels no. 1 and 3 while packed and sealed the remaining quantity of chars of garda into parcel no. 2. The person disclosed his name as Muhammad Raheem s/o Jaana Gul r/o tribe Mishti sub-tribe Darwi Khel. The accused was arrested by me on the spot and I issued his card of arrest Ex. PW 5/1. I have also prepared recovery memo



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

Ex. PC and took into possession the above-mentioned chargs garda in presence of marginal witnesses Muhammad Akbar HC and constable Zahir Khan. The remaining quantity of chargs today produced before the court in parcel no. 2 is Ex. P1. I also prepared Murasila Ex. PA/1 and sent it to PS for registration of FIR through Head Constable Muhammad Akbar. After registration of the case, the IO came to the spot and I pointed out the spot to him, who prepared site plan on my pointation. After return to the PS, I handed over the case property in 3 parcels mentioned above to Muharrir Muhammad Khalil who kept the same in mal-khana of the PS. All the documents prepared by me are correct and correctly bear my signatures.”

**Eyewitness, Muhammad Akbar HC,
Chennai Darha Darh Mamozai (DDM)
Upper Orakzai as PW-6** deposed on oath;

“that on 17.11.2019, I alongwith other police officials were present with Saleem Khan SI on patrolling by foot on kacha road leading from Arrkhi to Kharoo. At about 1510 hours we found one-person in suspected condition having one plastic bag in his left



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

hand. The said person was over powered by Saleem Khan with our assistance and recovered the said plastic bag from his left hand which contained two packets of chars garda. The said packets of chars garda were weighed through digital scale which stood 2405 grams. The SI Saleem Khan separated 10 grams from each packet for FSL and packed and sealed into parcel no. 1 and 3 while packed and sealed the remaining quantity of chars garda 2385 grams into parcel no. 2 and affixed the seal of GJ on all parcels. Accused was arrested on spot. The seizing officer Saleem Khan prepared card of arrest, recovery memo and Murasila on the spot. I being the marginal witness of the recovery memo (Ex. PC) correctly signed the same. The Murasila was handed over to me and I took the same to the PS for registration of FIR. After registration of the FIR, I returned to the spot and the IO recorded my statement u/s 161 Cr.P.C.”

**Investigating Officer, Malik Abdul Janan,
SI/IO, PS Upper Orakzai as PW-7 deposed;**

“that on 17.11.2019, I was busy in investigation of case FIR no. 19, dated



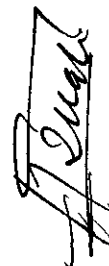
ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

17.11.2019, registered u/s 9 (d) CNSA alongwith my other investigation staff on kacha road leading from Arkho to Kharro which is situated at a distance of 30/35 Km from the PS. At that time police head constable Muhammad Akbar brought me copy of FIR and Murasila and then I visited the spot. On the spot I prepared site plan Ex. PB on pointation of complainant Saleem Khan SI. The complainant has shown me the case property and accused on the spot. I recorded statements of Muhammad Akbar HC and Zahir Khan u/s 161 Cr.P.C. After completion of investigation on the spot, I returned to PS alongwith my police staff and the Muharrir of PS handed over accused and case property to me for onward investigation. On 18.11.2019, I was on leave therefore, the accused Muhammad Raheem was produced before the court of Sessions Judge for obtaining his physical custody vide his application Ex. PW 7/1 which is correct and correctly bears his signature. I am well acquainted with his signature. During the course of investigation, accused confessed his guilt before me and I recorded his statement u/s 161 Cr.P.C. On



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

20.11.2019, I produced accused Muhammad Raheem before the court of Judicial Magistrate for recording his confessional statement vide my application Ex. PW 7/2 but the accused refused to confess his guilt and was sent to Judicial Lock-up. During the course of investigation, I placed on file copy of naqal-mad no. 10 and 13 daily diary 17.11.2019 Ex. PW 7/3 and 7/4 respectively and copy of application addressed to incharge FSL Ex. PW 7/5. On 22.11.2019, constable Muhammad Siraj took the samples of chars in parcel no. 1 and 3, 10 grams each, to the FSL and later on I received the FSL report Ex. PK in positive and I placed the same on judicial file. I have recorded the statement of constable Muhammad Siraj u/s 161 Cr.P.C on 22.11.2019. After completion of investigation, I handed over the case file to SHO for submission of challan. All the documents prepared by me are correct and correctly bear my signatures.”



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Meta

- (3). Thereafter, prosecution closed their evidence where after statement of the accused was recorded U/S 342 Cr.P.C but the accused neither wished to be examined on oath nor produced evidence in defence. Accordingly, arguments of

the learned DPP for the state and counsel for the accused facing trial heard and case file perused.

- (4). From the arguments and record available on file it reveals that the alleged recovery of contraband was affected on 17.11.2019 whereas as per report of the FSL Ex. PK, the samples of chars were received in the FSL Peshawar on 22.11.2019 i.e. after 5 days of the occurrence. The complainant in his statement as PW-5 has deposed that on the day of recovery he has handed over the recovered case property to the Moharrir of the Police Station and the Moharrir Khalil Ur Rehman as PW-2 also verified the said fact in his evidence but Muhammad Siraj Constable PW-3 deposed that on 22.11.2019, the Moharrir of the Police Station handed over to him the parcels of the chars for taking the same to the FSL and accordingly he received and handed over parcels of chars to the FSL Peshawar. It was not explained as to why the samples were dispatched to the FSL with delay of 05 days? and why it was not dispatched immediately to the FSL Peshawar? The late sending of samples of chars to the FSL Peshawar has created a doubt regarding the recovery and availability of the same for the purpose of FSL. **Secondly**, the local Police in the recovery memo Ex. PC as well as in Murasila Ex. PA/1 have mentioned that the recovered Chars were in Gardah (Powder) form but the report of FSL Ex. PK overleaf shows



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

that the form of the contraband received and examined in the FSL was brown solid as such the FSL report cannot be based as evidence for the conviction of accused facing trial as the same is not pertains to Chars Gardah which was allegedly recovered from the accused facing trial. Moreover, Rule 6 of Control of Narcotic Substances (Government analysts) Rules, 2001 provides that full protocols ought to be mentioned in the report of the government analysts and its non-compliance in such context would render the report as inconclusive and unreliable. Reliance is placed upon 2018 SCMR page 2039. In the present case no protocols are mentioned in the FSL report vide which the tests of the recovered case property were conducted besides the difference of nature of the recovered chars as mentioned in the Murasila and report of the FSL coupled with the late sending of samples to the FSL Peshawar has badly dented the version of the prosecution pertaining to the recovery of contraband, determination of its nature through FSL etc. Thus, the report of the FSL is inconclusive and unreliable. **Thirdly**, the recovery memo Ex. PC is showing that as many three parcels were prepared at the spot which were sealed with seal having abbreviation of G.J. However, the seal of G.J is not mentioned in the Murasila Ex. PA/1 to determine that the recovered contraband was sealed and Murasila was prepared at the spot. **Fourthly**, neither the colour of the



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Meia

plastic bag where from the alleged recovery of contraband is mentioned i.e. in the Murasila or in the evidence of the ocular account besides despite the alleged recovery of 02 packets, neither the same were scaled through digital scale nor each packet was scaled to determine the separate weight of each packet. The ocular account also admitted that the case property produced in the court having been sewed through thread and needle which fact is missing both in the recovery memo as well as in Murasila. So, there is a doubt regarding the case property recovered and the one produced in court to be the same. **Fifthly**, the quality of paper used for drafting Murasila and site plan is one and the same whereas paper used for drafting card of arrest and recovery memo is of the same quality, which means that the proceedings are either not carried out at the spot or have been carried out by somebody else at some various unknown places. Thus, the very presence of the PWs and the mode and manner of the occurrence alleged at the relevant time is doubtful. **Last but not the least**, it is necessary to mention here that accused facing trial is neither previous convict nor involved in any such case in the past besides neither he has not confessed his guilt nor any further recovery was effected at their pointation despite he being in police custody for two days. Also, no evidence was brought on record to prove their connection with the recovered contraband rather the evidence led by the




ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Meela

prosecution is full of doubts and contradictions which have denied the very presence of the witnesses and their proceedings at the spot at the relevant time. It seems that either the witnesses were not present at the relevant place on the relevant date and time or have not deposed in the mode and manner in which the occurrence was alleged to have had been committed.

(5). Accordingly, in the light of above, the above-named accused is acquitted of the charges levelled against him through the FIR in question. Accused is on bail, his bail bonds stand cancelled and his sureties stand discharged from the liabilities of bail bonds. The Chars be destroyed after the expiry of period provided for appeal/revision in accordance with law.

(6)- File be consigned to Sessions Record Room after its necessary completion and compilation.

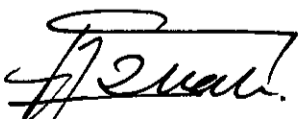
Announced
18.03.2020


ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela
18/3/20

CERTIFICATE

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

Dated: 18.03.2020.


ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela
18/3/20