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STATE VS RIAZ UR REHMAN  
FIR No. 54 | Dated: 22.09.2024 | U/S: 9 (d) of the Khyber  
Pakhtunkhwa CNSA 2019 | Police Station: Kurez

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

SPECIAL CASE NO. : 28/3 OF 2024  
DATE OF INSTITUTION : 23.10.2024  
DATE OF DECISION : 04.02.2025

STATE THROUGH SARDAR KHAN ASHO, POLICE STATION  
KUREZ

.....(COMPLAINANT)

-VERSUS-

RIAZ UR REHMAN S/O NIAZ MUHAMMAD KHAN, AGED ABOUT  
39 YEARS, R/O CASTE FEROZ KHEL, MIRBAK

..... (ACCUSED FACING TRIAL)


**Present:** Umar Niaz, District Public Prosecutor for the State.  
: Sana Ullah Khan Advocate for accused facing trial.

**FIR No. 54**                      **Dated:** 22.09.2024      **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station:** Kurez

JUDGEMENT  
04.02.2025

The accused named above faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic  
Substances Act, 2019 vide FIR no. 54, dated 22.09.2024 of  
Police Station Kurez.


- (2).                      The case of the prosecution as outlined in the  
Murasila based FIR is as follows: On 22.09.2024, the  
complainant, Sardar Khan ASHO along with other police  
personnel set up a picket on the spot where at about 09:30  
hours, a suspicious person holding a plastic bag in his right  
hand on way from Anjani towards the picket, was stopped.  
The complainant searched the bag and recovered 05 packets  
of chars, each weighing 1200 grams and wrapped in yellow

  
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colour scotch tape, totalling 6000 grams. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL and sealed them in parcels no. 1 to 5. The remaining quantity of chars weighing 5950 grams and the bag (10 grams) were sealed in parcel no. 6. The spot proceedings were recorded by driver Irfan Ullah using a cell phone and stored in a USB that was packed in parcel no. 7. All parcels were affixed/placed with monogram of 'AA'. The complainant took into possession the case property vide recovery memo. Subsequently, the accused who disclosed his name as **Riaz Ur Rehman** was arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to the police through Constable Syed Abbas Ali Shah which was converted into FIR by Syed Ibn Ul Hassan MM.

- (3). After registration of FIR, it was handed over to PW-6, Hashim Khan IO for investigation. Accordingly, after receipt of Murasila, card of arrest, recovery memo and copy of FIR, he visited the spot, prepared site plan Ex. PB on pointation of the complainant. On 24.09.2024, he sent the samples of chars in parcels no. 1 to 5 to the FSL for chemical analysis through Constable Khial Hussain/PW-1 along with application Ex. PW 6/2 vide road permit certificate Ex. PW 6/3 and recorded statements of marginal witnesses u/s 161 Cr.P.C. After completion of investigation,

  
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he handed over the case file to SHO for submission of challan.

- (4). Upon receipt of the case file for the purpose of trial, the accused was summoned through addendum-B from Sub-Jail, Orakzai, the provision of section 265-C Cr.P.C was complied with and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the prosecution examined as many as 06 witnesses. The gist of the evidence is as follow;

I. Constable Khial Hussain is the first witness of prosecution. He has taken parcels no. 1 to 5 containing samples of chars to the FSL for chemical analysis on 24.09.2024, and after submission of the same, he was given the receipt of the parcels which was handed over by him to the Investigation Officer upon his return.

II. Syed Ibn Ul Hassan MM appeared in the witness box as PW-2. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property from the complainant and kept it in Mal Khana in safe custody, by making its entry in register no. 19 Ex. PW 2/1. He has handed over parcels no. 6 and 7 to the IO for

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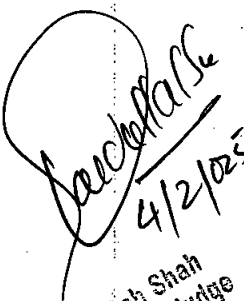
its production before the Magistrate and parcels no. 1 to 5 for sending it to the FSL.

III. Altaf Ali SHO is PW-3. He has submitted complete challan Ex. PW 3/1 in the instant case against the accused facing trial.

IV. Sardar Khan ASHO is the complainant of the instant case. He as PW-4 repeated the same story as narrated in the FIR.

V. Constable Syed Abbas Ali Shah appeared in the witness box as PW-5. He besides being eyewitness of the occurrence is the marginal witness of the recovery memo Ex. PC as well as vide which the complainant has taken into possession the case property. He also reiterated the contents of FIR in his statement.

VI. Lastly, the Investigation Officer Hashim Khan was examined as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared site plan Ex. PB on pointation of the complainant, recorded statements of witnesses u/s 161 CrPC, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 6/1 and Ex. PW 6/4, sent the representative samples to the

  
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FSL along with the application Ex. PW 6/2 vide road permit certificate Ex. PW 6/3 and its result was received and placed on file by him as Ex. PK. He has placed on file the attested copies of register no. 19 Ex. PW 2/1, copies of DDs of different police personnels and submitted the case file to the SHO for onward proceedings

(5). After closure of prosecution evidence, statement of the accused was recorded u/s 342 Cr.P.C; however, neither he wished to be examined on oath nor produced defence evidence. Accordingly, arguments of the learned DPP for the State and learned counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the state submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has been recovered from his possession which are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis have been transmitted to the FSL within

( the prescribed period which has been found positive vide

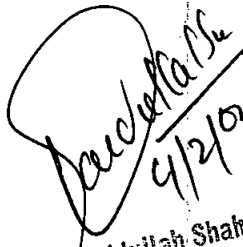
report of FSL Ex. PK. The complainant, the witness of the

recovery, the official transmitted the samples to the FSL and

the IO have been produced by the prosecution as witnesses,

whom have fully supported the case of the prosecution and

their statements have been lengthy cross examined but

  
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nothing contradictory could be extracted from the mouth of any of the witness and that the prosecution has proved its case beyond shadow of any doubt.

- (7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the alleged chars have been shown recovered on the spot and the report of FSL supports the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the IO on the spot, as detailed by the prosecution on the case file. He further submitted that the safe custody of the case property and its transmission from the spot to the PS has not been proved. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

- (8). To determine the veracity of the events at the crime scene on the relevant day at the relevant time in the mode and manner as alleged, the mode and manner of the investigation, and the safe custody of the case property, this Court while applying its judicial mind has to unfold the prosecution's story in juxtaposition with the testimonies given by the prosecution witnesses in the Court.

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It is alleged by the prosecution that the complainant/PW-4, after fencing the crime venue, intercepted the accused, recovered contraband chars from his possession at 09:30 hours. Following this, the complainant/PW-4 took into possession the recovered drugs and drafted the crucial documents which were sent to the police station where the FIR was chalked out at 11:40 hours. Paradoxically, the complainant/PW-4 claimed in the opening line of his cross-examination that the IO/PW-6 arrived at the crime scene at 10:30 hours besides uttered that the marginal witness's statement under section 161 CrPC was recorded at the same time as the IO's arrival on the scene at 10:30 hours. How could the IO/PW-6 have shown up on the spot of occurrence and record the statement of marginal witness when there was not even a formal FIR registered against the accused?. In this regard, **2020 P Cr. L J Note 72** is relied upon. Suppose that the complainant/PW-3's testimony regarding the time of recording marginal witness's statement under section 161 CrPC is accurate. If so, how can the prosecution justify the marginal witness's claim that his statement was recorded at 1300 hours?

It is admitted on the record that after preparation of parcels by the complainant/PW-4, monogram of 'AA' was affixed on them. According to his account, this monogram was not in his name but rather Altaf Ali SHO's. The

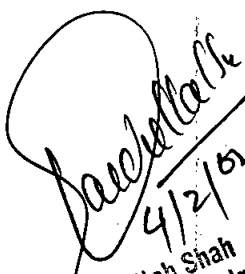
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prosecution has not offered any convincing justification for the complainant's usage of the monogram "AA" instead of a monogram of Sardar Khan ASHO which would definitely be "SK". Reliance is placed on **2018 MLD 1740**.

Moreover, the complainant/PW-4 and the eyewitness/PW-5 have not toed in line in respect of the time of leaving the spot after making spot pointation to the IO/PW-6. Abbas Ali Shah/PW-5 stated that their departure time was 12:40 hours, but the complainant/PW-4 stated that it was 13:30 hours. It calls into question the complainant party's presence on the crime venue and further erodes the prosecution's case.

Another damaging aspect of the case is that the complainant in his cross examination as PW-4 stated that he has handed over the case property to the Moharrir; however, he did not specify whether it was Syed Ibn Ul Hassan Madad Moharrir/PW-2 or otherwise, since he/PW-2 acknowledged that Libab Ali was the Moharrir at that time.

The statement of PW-5/eyewitness of the occurrence casts suspicion on the on-scene arrival of the IO/PW-6 by stating that the IO/PW-6 arrived on the spot to conduct investigation in a vehicle of police station, but in contrast the Daily Diary Ex. PW 2/2 which documents the departure of IO/PW-6 notes that he left the police station in a private vehicle.


  
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According to the available record, at the time of making recoveries from the accused facing trial, a police official namely, Driver Irfan Ullah was capturing the entire scenario at the crime scene through a mobile phone; however, the prosecution violated the **QANUN-E-SHAHADAT ORDER, 1984** by failing to produce the aforementioned witness to support their story.

Though the samples of chars have been transmitted to the FSL within the prescribed period of time and its report has been found positive but it cannot alone be taken into consideration for conviction of the accused when the complainant and the Investigation Officer have failed to establish the mode and manner in which the alleged occurrence took place and the mode and manner of investigation conducted on the spot, as the evidence presented remains inconclusive and lacking in detail. Furthermore, the investigation carried out by the IO are either inadequately explained or missing altogether. This failure to substantiate both the occurrence and the investigation raises serious doubts about the credibility and integrity of the case.

It is also necessary to mention here that the investigation officer has not gathered any CDR data of the accused facing trial and police officials present on the scene at the time of the incident, despite the fact that the presence

  
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of the complainant party has been questioned due to the lack of any supportive evidence. In such a situation, the most trustworthy and beneficial evidence could have been the call data record of the complainant and the accused, which could have led to their presence on the spot. Furthermore, accused facing trial has neither confessed his guilt nor any further recovery was affected at his pointation despite he being in police custody for some time. Also, no evidence was brought on record to prove his connection with the recovered contraband rather the evidence led by the 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.

- (10). Since it is well established law that a single doubt, if deemed reasonable, would provide the accused acquittal rather than a combination of multiple doubts, all of these contradictions and discrepancies in the prosecution's evidence raise severe questions about the prosecution's case.

As **2008 SCMR 1221** underlines that;

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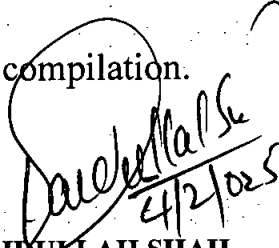
*"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single*

*infirmity creating reasonable doubt in the mind  
of a reasonable and prudent mind regarding the  
truth of charge-makers the whole case doubtful.  
Merely because the burden is on accused to  
prove his innocence it does not absolve the  
prosecution to prove its case against the  
accused beyond any shadow of doubt in his duty  
does not change or vary in the case".*

Thus, in view of the aforementioned discussion, it is held that there are various discrepancies in the prosecution case who failed to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Riaz Ur Rehman** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. The case property i.e., chargs be destroyed after the expiry of period provided for appeal/revision in accordance with law.

Judgment announced. File of this court be consigned to record after its necessary completion and compilation.

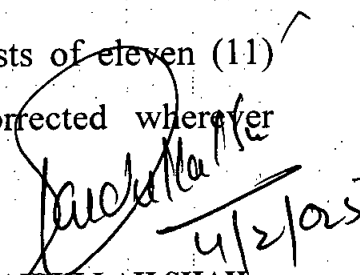
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**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of eleven (11) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 04.02.2025

  
**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela

