

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

SPECIAL CASE NO. : 11/3 (NEEM) OF 2023  
DATE OF ORIGINAL INSTITUTION : 13.02.2023  
DATE OF REMAND BACK : 23.07.2024  
DATE OF DECISION : 20.03.2025

STATE THROUGH MUHAMMAD YOUNAS SHO, POLICE  
STATION MISHTI MELA

.....(COMPLAINANT)

-VERSUS-

1. QEEMAT KHAN S/O ABDUL KHALIQ, AGED ABOUT 33  
YEARS, R/O CASTE MISHTI VILLAGE DARA HASSANZAI,  
DISTRICT ORAKZAI
2. UMMAT KHAN S/O ABDUL KHALIQ, AGED ABOUT 31  
YEARS, R/O CASTE MISHTI VILLAGE DARA HASSANZAI,  
DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

**Present** : Umar Niaz, District Public Prosecutor for State.  
: Abid Ali and Sana Ullah Advocates, the counsels for accused  
facing trial.

**FIR No. 50**                      **Dated: 18.12.2022**      **U/S: 9 (d) of the Khyber**  
**Pakhtunkhwa Control of Narcotic Substances Act, 2019**  
**Police Station: Mishti Mela**

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**JUDGEMENT**  
**20.03.2025**

The case is remanded back vide Order of the august  
Peshawar High Court, Peshawar passed in Cr.A No. 1303-  
P/2023 filed against the impugned judgment dated  
25.08.2023 of the undersigned's predecessor vide which the  
appellants were found guilty and have been convicted.

- (2).                      The FIR outlines the prosecution case as: On  
18.12.2022, the complainant, Muhammad Younas SHO  
along with Constables Saleem Khan and Muhammad Umar  
set up a picket on the spot where at about 1400 hours a red  
motorcycle traveling from Mishti Mela in the direction of  
the picket was stopped for inspection. Both individuals

  
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were disembarked from the motorcycle. Nothing incriminating was recovered from their personal search; however, a blue colour plastic shopper tied to the motorcycle's oil tank and a white colour bag in the pillion passenger's lap were recovered which led the complainant to the recovery of 2000 grams and 9000 of chars respectively. The driver of the motorcycle disclosed his name as Qeemat Khan while the person occupying the rear seat disclosed his name as Ummat Khan.

The instant case against the appellants/convicts was submitted for trial and formal charge was framed against them whereafter they have gone through the agonies of a long-protracted trial where the prosecution has examined as many as 05 witnesses. The statements of the appellants/convicts have been recorded u/s 342 CrPC wherein they have not admitted their guilt. Arguments were heard and the appellants/convicts were convicted and sentenced through the impugned judgment.

The appellants/convicts, feeling themselves aggrieved of the impugned judgment, filed an appeal before the august Peshawar High Court, Peshawar whereby the case was remanded to this Court for re-writing of judgment after hearing the appellants/convicts.

Arguments heard and record perused.

  
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- (4). It is crucial to examine the witnesses' testimonies and the weight of the available record with a careful and perceptive judicial eye in order to decide the outcome of the prosecution's case. Every word spoken, every detail presented, must be examined not in isolation but in harmony with the evidence at hand. The truth lies not only in what is said, but in the consistency, credibility, and relevance of each account, as well as its alignment with the established facts. In order to achieve justice, it must be ensured that no prejudice impairs the judgment and that each piece of testimony is evaluated with a judicial mind with fairness, accuracy and integrity.

Perusal of the case file reveals that the prosecution's case is marred by several inconsistencies that cannot be overlooked including the mode and manner of the occurrence, the investigation carried out on the crime scene and the safe custody of the case property. **First**, it is alleged that after intercepting the accused and effecting recovery of contraband from their possession, the recovery memo, card of arrest and Murasila were drafted by the SHO; however, astonishingly, the SHO/PW-3 and the IO/PW-5 both claimed to have written the ages of the accused on the card of arrest. The SHO said that;

*"The card of arrest is prepared with one ballpoint*

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*except the portion of the ages of both the accused. Self-*

*stated that at that point-I changed the ballpoint due to exhausting of ink in previous ballpoint."*

While the IO asserted that;

*"It is correct that the card of arrest provided to the accused which is attested and signed by me wherein the ages of accused are not mentioned. Self-stated that the ages of the accused are mentioned on card of arrest available on judicial file which is entered by me."*

**Second,** the presence of the complainant is also doubtful when the statements of marginal witness/eyewitness and the SHO is further scanned. Both of them contradicted each other in respect of the order of the documents prepared by the SHO/PW-3. The SHO said that it was the recovery memo, however the eyewitness said that it was the card of arrest which was prepared first. They also split apart while testifying about how the parcels were prepared. The eyewitness/PW-4 stated that he assisted the SHO in preparing the parcels, although the SHO claimed to have done it alone. Moreover, why hasn't the complainant/SHO brought up this point in the Murasila if the eyewitness's position is acknowledged to be accurate?

**Third,** the crime scene proceedings become questionable if the statement of the SHO as PW-3 is seen in juxtaposition with the Murasila Ex. PA/1. According to PW-3, he had taken into possession the recovered

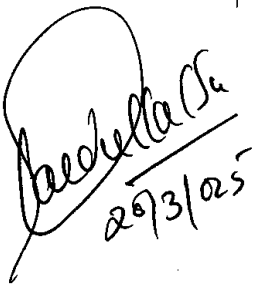
  
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contraband and the accused's motorcycle through recovery memo Ex. PC. The engine and chassis numbers of the aforesaid motorcycle had scratches on it, making them illegible. However, it remains unknown that why the SHO chosen not to disclose this information in the Murasila.

**Fourth**, as admitted on the record, the interception of the accused had led the seizing officer/PW-3 to conduct its proceedings on the crime scene. He alleged that he left the crime scene at 17:50 hours after completion of proceedings and reached the police station at 18:10 hours. Nonetheless, this claim is not supported by any daily diary; instead, the daily diary available on file as Ex. PW 5/9 indicates his arrival time as 16:10 hours.


**Fifth**, the IO/PW-5 reached the crime scene for conducting investigation where the site plan Ex. PB was prepared by him which shows that the place of occurrence is a straight road; thus, a question arises that why the accused facing trial, despite being in possession of a huge quantity of narcotics, would straightaway move towards the police party especially in the circumstances where the police officials were visible to them.

**Sixth**, with respect to transmission of the case property from the crime scene to the Police Station and sending of the representative samples to the FSL, the case of prosecution is, that after sampling and sealing of case

  
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property in parcels on-the spot, these were brought by the complainant/PW-3 to the Police Station and handed over the same to Muhammad Saeed MHC/PW-2, who deposited the same in Mal khana while parked the motorcycle in vicinity of the police station. The representative samples were handed over by Moharrir of the Police Station to the IO/PW-5 on 21.12.2022 who transmitted the same to FSL through constable Khalil Khan/PW-1 vide road permit certificate. If, in this respect, the register No. 19 Ex. PW 2/1 is gone through it transpires that there is no mentioning of handing/taking over of the test samples rather the signature available on the said document is not that of the Moharrir. Furthermore, admittedly, the occurrence took place on 18.12.2022 and the test samples for FSL were sent on 21.12.2022 i.e., on the fourth day of the occurrence. However, there is no information available on file to explain why the investigating officer held onto the test samples for four days before sending them for analysis.

**Seventh,** no driving license had been recovered from the possession of accused and in absence of any driving license, it could not be stated with certainty that who was driving the motorcycle at relevant time, so mere disclosing the accused as driver of the vehicle was not sufficient qua corroboration of the version of prosecution. The material discrepancies existed in the statements of prosecution

  
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witnesses, which also gave a hint that the prosecution case was not free from doubt, the benefit of which is to be extended to accused, the wisdom is drawn from case law reported in **2022 MLD 1612 and the case law reported in 2023 PCrLJ 154 [Peshawar]**.

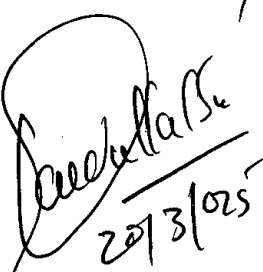
**Last but not the least**, since the mode and manner of the occurrence has been doubted due to differences in the statements of prosecution witnesses; therefore, the most reliable and helping evidence in such scenario could have been the call data record of the complainant, accused and investigation officer, which could have led their presence on the spot, movement of the Murasila Carrier from police station back to the spot either in person or with the Investigation Officer and also the movement of Investigation Officer from police station to the spot, however, the investigation officer has not collected any CDR data of the accused and police officials present on the spot at the time of occurrence.

- (5). It is a settled principle of law that courts decide the disputes on the basis of evidence irrespective of nature of case. There is, however, difference of degree of the quantum of evidence to be considered in deciding civil and criminal disputes. In civil nature disputes, cases are decided on the basis of preponderance of evidence, while, in criminal nature disputes, cases are decided beyond any

  
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shadow of reasonable doubt irrespective of the heinousness of the offence. It is also settled principle of law that it is not necessary that there should be many circumstances creating doubts rather a single circumstance, creating reasonable doubt in prudent mind about guilt of accused makes him entitled to its benefit, not as a matter of grace or concession but as a matter of right, the wisdom is drawn from case law reported in **2023 YLR 2579 of Peshawar High Court [Mingora Bench] and 2023 MLD 2047 [Peshawar]**.

- (6). Though huge quantity of narcotics has purportedly been shown recovered and it does not seem possible to implant such a huge quantity of chars against an accused; however, safe administration of justice also mandates the courts to be conscious of not the quantity of contraband but the quality of evidence produced before courts in reaching to correct and just conclusion of the case, wisdom is drawn from case law reported in **2021 PCrLJ 1461 [Peshawar]**; therefore, it is held with heavy heart that the evidence discussed above not only doubts the mode and manner about the recovery of contraband and poor investigation by the police but also makes the arrest of accused and the seizure of narcotics extremely doubtful. Moreover, so many discrepancies and contradictions in the case of prosecution have been noted, the accumulative effect of which provides that prosecution has failed to bring home the guilt against

  
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**STATE VS QEEMAT KHAN ETC.**

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the accused beyond shadow of reasonable doubt; therefore, in view of these facts, prosecution has failed to prove the commission of offence by the accused in the mode, manner and time stated by them. Thus, keeping in view the fact that the appellants/convicts have already gone through the agonies of a long-protracted trial, the appeal is accepted and the appellants/convicts are acquitted of the charges levelled against them. Case property be dealt with in accordance with law.

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

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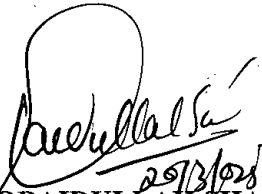
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**CERTIFICATE**



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

Dated: 20.03.2025

  
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Sessions Judge/Judge Special Court,  
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