

STATE VS ZULFIAR ETC

Case No. 01/CNSA, FIR No. 41 | Dated: 11.07.2024 | U/S 9 (d) KP CNSA/15AA, | Police Station: Kurez
Boya

IN THE COURT OF BAKHT ZADA

ADDITIONAL SESSIONS JUDGE-I/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 01/CNSA OF 2024
DATE OF ORIGINAL INSTITUTION : 28.09.2024
DATE OF PRESENT INSTITUTION : 14.10.2024
DATE OF DECISION : 18.04.2025

STATE THROUGH AFTAB HASSAN SHO, PS KUREZ BOYA
.....(COMPLAINANT)

-VERSUS-

1. ZULFIQAR S/O MUHAMMAD SHOAIIB, R/O STORI KHEL,
DISTRICT ORAKZAI
 2. ADIL S/O ZULFIQAR, R/O STORI KHEL, DISTRICT
ORAKZAI
- (ACCUSED FACING TRIAL)

JUDGEMENT

18.04.2025

Accused (1) Zulfiqar and (2) Adil, both are Residents of Qaom Stori Khel, District Orakzai, are facing trial in case FIR No. 41, dated 11.07.2024, registered U/S 9 (d) KP CNSA/15AA of PS Kurez Boya, District Orakzai.

- (2). Facts of the prosecution case as reported in Murasila are that on 11.07.2024 complainant SHO Aftab Hassan along with police officials namely Saif Ullah No. 1530, Ijaz Ali No. 684 and driver Inshad Ali No. 663 were on Gasht of the area in official Pick-up. They laid barricade on main road near *Gudar* post and were busy in checking vehicles. At 0915 hours, two pedestrians coming from Chaman Jana side were stopped due to suspicion. They disclosed to be father and son namely Zulfiqar and Adil. Zulfiqar s/o Shoaib was in custody of white plastic sack in his right hand, which was checked and 04 packets of chars, wrapped

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in yellow scotch tape were recovered. Each packet was found to be 1000/1000 grams by weighing through digital scale and the total was 4000 grams. The empty plastic sack was weighed and found to be 55 grams. 10 grams chars were separated with the help of sharp object from each packet for sending the same to FSL for chemical analysis. The same were packed and sealed into parcel No. 1 to 04, while the remaining 3960 grams chars along with plastic sack were packed and sealed into parcel No. 05. The second person namely Adil was searched and one 30 bore pistol bearing no. 4248 along with a fixed charger containing 05 rounds of 30- bore were recovered from his Shalwar-fold for which he failed to produce any license/permit. Pistol was signed with sharp object and the same was sealed along with ammunition into parcel no.6. Video of the occurrence was prepared through cell phone, which was converted into USB and sealed the same in parcel No. 07. 1/1 stamp of monograms "AH" is sealed inside all the parcels, while 3/3 seals of the same monograms were affixed on all the parcels. Both the accused were found to be involved in the commission of the offence. They were arrested and their joint card of arrest was issued. Murasila along with card of arrest and recovery memo were handed over to Constable Saif Ullah no. 1530 for taking the same to PS registration of FIR.

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- (3). After registration of the FIR, the same was handed over to Investigation Officer, who visited the spot, prepared site plan Ex. PB, at the pointation of the complainant/SHO. After completion of investigation, he returned the case file to SHO for submission of complete challan.
- (4). Complete challan in the instant case was submitted against both the accused facing trial. Both the accused were on bail, who were summoned. On 14.10.2024, accused Zulfiqar and Adil appeared before the court and provisions of 265-C of the Code of Criminal Procedure, 1898, was complied with. Formal charge against the accused were framed on 23.10.2024, to which they pleaded not guilty and claimed trial, whereafter the prosecution witnesses were summoned.
- (5). The prosecution recorded the statements of as many as five (05) PWs, the gist of their evidence is as under.

- I. PW-01, Shamsher Ali. He stated that on 13.07.2024, the IO handed over to him parcel No. 1 to 4 & 6 along with two applications and two road permit certificates for transmission of the same to FSL, Peshawar. He took the parcels and handed over the same to concerned official of the FSL, Peshawar along with applications against acknowledgment from him on road permit certificates. On his return to the PS, he handed

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over the road permit certificates to the IO. The IO recorded his statement U/S 161 Cr.PC. He was cross examined by the defence counsel.

- II. PW-02, Libab Ali. He stated that on 11.07.2024, he received Murasila along with recovery memo and card of arrest from Aftab Hassan SHO through constable Saif Ullah no. 1530. He registered the present FIR Ex. PW 2/1 correctly incorporated the contents of the Murasila into FIR. After registration of the FIR copy of the same was handed over to Investigation staff for investigation. SHO handed over to him parcels no. 1 to 7 having the monogram of "AH" which he kept in mall khana of the PS and also made entry in the relevant register no. 19 which is Ex. PW 2/2. On 12.07.2024, he handed over the parcels no. 5, 6 and 7 to the IO for producing the same before the Illaqa Magistrate at the time of producing of the accused before the court. Later on, the IO returned the said parcels to him which he kept in the mall khana of the PS. On 13.07.2024, he handed over parcels no. 1 to 4 containing 10 grams of chars each and parcel no. 6 containing 30-bore pistol along with its ammunition to the IO for its onwards transmission to the FSL. His statement u/s 161 Cr. PC was also recorded by the IO. He

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produced DDs regarding departure and arrival of the SHO from the PS which is Ex. PW 2/3 and Ex. PW 2/4. Similarly, he also placed on file the DDs of the departure and arrival of the IO from the PS which is Ex. PW 2/5 and Ex. PW 2/6. He was also cross examined by defense counsel.

III. PW-03, Aftab Hassan OII. He stated on oath that on 11.07.2024, he along with police officials namely Saif Ullah, Ijaz Ali and driver Inshad Ali in official vehicle were on gasht in the locality. During gasht, they made barricade at the place of occurrence i.e., main road near *Gudar* post. Meanwhile, at about 0915 hours two persons in suspicious condition coming on foot from Chaman Jana side were stopped for search. One of the persons disclosed his name as Zulfiqar S/O Muhammad Shoaib, R/O Qaum Stori Khel. From the possession of his right hand, he recovered a plastic sack of white colour and on checking the same, 04 packets of Chars wrapped in yellow scotch tape were found. On weighing through digital scale each packet came out to be 1000grams making the total of 4000grams. Empty sack was weighed and came out to be 55 grams. Out of each packet 10 grams chars were separated with sharp object for the purpose of sending the

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same to FSL and packed and sealed into parcel No.

1 to 4, while the remaining contraband of Chars

(3960 grams) along with plastic sack were sealed

into parcel No. 5 Ex. P-1. Similarly, the other

person disclosed his name as Adil S/O Zulfiqar,

R/O Qaum Stori Khel. From his personal search,

one 30 bore pistol bearing No. 4248 along with a

fixed charger containing 05 rounds of the same

bore were recovered from the folding string, for

which he failed to produce any valid

license/permit. On the body of pistol, he put his

initial with sharp object and the pistol along with

ammunition were packed and sealed into parcel

No. 6 Ex. P-2. Video of the occurrence was

prepared through mobile phone and converted into

USB and sealed the same in parcel No. 7 Ex. P-3.

All the above-mentioned parcels were affixed with

the monogram of "AH" and were taken into

possession vide recovery memo Ex. PW-3/1 in

presence of marginal witnesses. Accused were

arrested and their card of arrest Ex. PW-3/2 was

issued. Murasila Ex. PW-3/3 was prepared and

was sent to PS along with recovery memo and card

of arrest through constable Saif Ullah. On arrival

of the IO, he pointed out the spot for preparation

of site plan, who prepared site plan at his instance.

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On his return to the PS, he handed over the case property for keeping the same in safe custody along with accused to Moharrir. After completion of investigation, he submitted complete challan Ex. PW-3/4 against the accused. His statement was recorded by the IO U/S 161 Cr. PC. He was also cross examined by the defence counsel.

IV. PW-04, Saif Ullah constable. He is marginal witness to the recovery memo already exhibited as Ex.PW-3/1. He also took Murasila, recovery memo and card of arrest to the PS for registration of the case. He narrated the same story as described by PW-03 in his statement. His statement was also recorded by the IO u/s 161. Cr.PC. He was also cross examined by the defence counsel.

V. PW-05, Arif Gul OII. He stated that after registration of the instant case, copy of FIR along with relevant documents were handed over to him for investigation. He along with investigation staff proceeded to the spot. After reaching the spot, the SHO along with police officials and accused were present at the spot. The SHO shown to him case property in sealed condition and again handed over to the SHO. The SHO pointed out the place

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of occurrence to him and he prepared site plan Ex.

PB at the instance of SHO. He recorded the

statements of PWs namely constables Saif Ullah

and Ijaz. After spot inspection, the investigation

staff returned to the PS, where in PS he recorded

the statement of Moharrir Libab Ali regarding the

registration of FIR and safe custody of case

property. Thereafter, he interrogated the accused.

On 12.07.2024, he vide application Ex. PW-5/1

produced the accused before Ilaqa Magistrate for

obtaining his physical custody along with case

property which was turned down and accused was

admitted to Judicial lock-up. He recorded his

statement U/S 161 Cr. PC. On 13.07.2024, he

handed over the parcel No. 1 to 4 containing 10

grams of Chars, one 30 bore pistol sealed in parcel

No. 6 bearing No. 4248 along with five rounds

with the monogram of "AH" to constable

Shamsher along with applications addressed to

FSL authorities Ex. PW-5/2 & Ex. PW-5/3 and

road certificates Ex. PW-5/4 & Ex. PW-5/5. After

return of the constable Shamsher Khan from FSL,

Peshawar, he handed over to him the road

certificate. He recorded the statement of Shamsher

Khan and Moharrir Libab Ali U/S 161 Cr. PC

regarding handing over the case property to him as

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well as its onward transmission to FSL. On receipt of FSL reports, he placed the same on file which are Ex. PW-5/6 & Ex. PW-5/7. After completion of investigation, he handed over the case file to the SHO for submission of complete challan. He recorded the statements of PWs U/S 161 Cr. PC. He was also cross examined by the defence counsel.

- (6). Prosecution abandoned PW FC Ijaz Ali constable being witness of the same facts as deposed by PW-04, and closed its evidence, whereafter the statements of accused were recorded u/s 342 Cr. PC, but the accused neither wished to be examined on oath, nor opted to produce any evidence in defence.

(7). Arguments:

Learned Sr. PP for the state argued that recovery of 4000 grams of chars has been made from the personal possession of accused Zulfiqar and one 30-bore pistol along with a fixed charger containing 05 rounds of the same bore recovered from the possession of accused Adil. He stated that there are no contradictions in the statements of the PWs. The FSL report and the statements of the marginal witnesses fully supports the version of prosecution. That there is no ill will of the police with the accused facing trial and the chances of false implications

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of the accused facing trial are not there. He requested for conviction of the accused facing trial on the above-mentioned charges.

- (8). On the other hand, learned counsel for the accused facing trial argued that there are glaring contradictions in the statements of PWs. It is not appealing to prudent mind that a father can associate his minor son while smuggling Chars. Furthermore, the USB produced by the Incharge Mall Khana was found empty at the time of checking the same through official computer of the court. He argued that the prosecution badly failed to bring home charges against the accused facing trial beyond shadow of any doubts. He prayed for acquittal of the accused in the instant case.

(9). Findings:

After hearing arguments, available record perused. It is the case of prosecution that on 11.07.2024 at 0915 hours complainant Aftab Hassan SHO along with police officials during checking near *Gudar* Check post notice two persons coming towards to them from Chaman Jana side. They were stopped being in suspicious condition. They introduced themselves to be father and son namely Zulfiqar s/o Muhammad Shoaib and Adil s/o Zulfiqar. Zulfiqar was having a white plastic sack in his right hand from which 04 packets of Chars, wrapped in yellow scotch

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tape were recovered. Each packet was found 1000/1000 grams on weighing through digital scale and the total was 4000 grams. The empty sack was 55 grams. 10 grams from each packet were separated through sharp object and sealed into parcels No. 1 to 4 for sending the same to FSL, while the remaining 3960 grams were sealed into parcel no. 5. During search, one 30-bore pistol along with fixed charger and five live rounds were recovered from the trouser-fold of accused Adil. He failed to produce any license or permit in respect of the same. After itching his signature on the pistol, the same was sealed into parcel No. 6. Video of the occurrence was prepared and converted into USB which was sealed into parcel No. 7. In order to prove its case, the prosecution recorded the statement of complainant Aftab Hassan as PW-3. He stated during cross examination that *Gudar* Check-Post and the place of occurrence are at the distance of about 150 steps from each other and that he has not associated any official as witness from *Gudar* check post. Being SHO the witness shows his ignorance about the name of Incharge of *Gudar* check post, but on the other hand PW-5 Arif Gul investigation officer has stated that the place of occurrence is situated at the distance of 50 paces from *Gudar* check post. Another eye-witness Saif Ullah/PW-5 has stated that the spot was at the distance of 15 paces from *Gudar* check post. PW-4 also stated during cross examination that he went to PS

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through motorcycle of official of Gudar check post, but still PW-3/SHO Aftab Hassan and investigation officer Arif Gul have denied to disclose the name of the Incharge of the said check post. Similarly, statement of Shafaat constable has not been recorded u/s 161 Cr. PC, on whose motorcycle PW-4 went to the PS. Despite of situation of Gudar check post at about 15 paces, neither any official/Incharge of the said check post have been associated at the time of laying barricade and recovery, nor their statements have been recorded u/s 161 Cr. PC by the investigation officer. The complainant/PW-3 has stated during cross examination that he saw firstly the accused at the distance of about 10 paces from him. PW-5/investigation officer stated that the place of occurrence is visible from almost the distance till which the visibility is possible. It is not appealing to prudent mind that despite seeing the police from such a long distance and the accused facing trial being in possession of contraband Chars and pistol were still moving towards the barricade. This stance of the PWs makes the story of the prosecution doubtful. PW-4/Murasila carrier stated that he left the PS at 10:45 am after handing over the Murasila to Moharrir and that the IO came to the spot after 10 minutes of his arrival to the spot, but the investigation officer/PW-5 during cross examination stated that he left the PS for the spot at 11:00 am and reached there by 11:30 am. He also

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stated that the Murasila carrier/PW-4 accompanied him to the spot. The statements of both the PWs i.e. PW-4 and PW-5 have been recorded on oath and such a glaring contradiction in their statements in respect of the spot proceedings, clearly indicates that they are not truthful witnesses. It is also not appealing to prudent mind that a father while smuggling contraband Chars can associate, his minor son (co-accused Adil), having pistol in his possession along with him. Last but not the least, today during arguments the USB of video was requisitioned from District Mall Khana at the request of learned counsel for the accused. The USB was produced, which is de-sealed in presence of the learned Sr. PP for the state and learned defense counsel, whereafter the same was played through official computer of this court and it was found that the same is empty and no video is saved therein. Print out of the properties of the video is obtained and placed on file. The necessity and significance of collection evidence through the use of modern techniques has been recognized, not only by the legislature by amending article 164 of Qanoon E Shahadat Order 1984, through the criminal laws (amendment) Act, 2023; but also by Supreme Court of Pakistan and its judgments reported in 2024 SCMR 934, titled "Zahid Sarfaraz Gill Vs State" and in case titled "Imdad Ullah Vs State" reported in 2024 PCRLJ 652, Peshawar.

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(10). Keeping in view the above discussion, the prosecution failed to prove their case against the accused facing trial beyond any shadow of doubt, I, therefore acquit both the accused facing trial Zulfiqar and Adil from the charges levelled against them by extending benefit of doubt. Accused are on bail. Their sureties are discharged from the liability of their bail bonds. Case property be kept intact till the expiry of period provided for appeal/revision under the law.

(11). Case file be consigned to the record room after its necessary completion and compilation.

Announced:
18.04.2025

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18.4.25

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Sessions Judge-I/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment consists of fourteen (14) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 18.04.2025

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Sessions Judge-I/Judge Special Court,
Orakzai at Baber Mela