

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

SPECIAL CASE NO. : 33/3 OF 2024
DATE OF ORIGINAL INSTITUTION : 03.06.2024
DATE OF TRANSFER-IN : 26.11.2024
DATE OF DECISION : 24.02.2025

STATE THROUGH IMTIAZ KHAN SHO, POLICE STATION
DABORI

.....(COMPLAINANT)

-VERSUS-

ASMAT ULLAH S/O NOOR MUHAMMAD, AGED ABOUT 33/34
YEARS, R/O CASTE AKHEL, DALAK NAWASI, SARKA GHILJO

..... (ACCUSED FACING TRIAL)

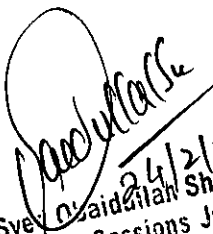
Present: Umar Niaz, District Public Prosecutor for the State.
: Khursheed Alam Advocate for accused facing trial.

FIR No. 03 **Dated: 18.03.2024** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Dabori

JUDGEMENT
24.02.2025

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. 03, dated 18.03.2024 of
Police Station Dabori.

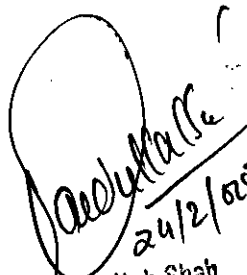
- (2). The case of the prosecution as outlined in the
Murasila based FIR is as follows: On 18.03.2024, the
complainant, Imtiaz Khan SHO along with other police
personnel set up a picket on the spot. Meanwhile, the
complainant, alerted his official, after receipt of information
regarding smuggling of chars through Arhanga on a
motorcycle. At about 16:30 hours, a motorcycle heading


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from Arhanga was signalled to stop; however, instead of doing so he accelerated the motorcycle but the complainant abled to halt the motorcyclist. A white colour plastic shopper was found hanging from motorcycle's left handle wherefrom 03 packets of chars, each weighing 1000 grams, totalling 3000 grams were recovered. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL and sealed them in parcels no. 1 to 3. The remaining quantity of chars weighing 2970 grams. The complainant took into possession the case property vide recovery memo. Subsequently, the accused who disclosed his name as **Asmat Ullah** was arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to the police through Constable Sami Ullah which was converted into FIR by Moharrir Khalil Ur Rehman.

- (3). After registration of FIR, it was handed over to PW-5, Gul Asghar 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. PW 5/1 on pointation of the complainant. On 20.03.2024, he sent the samples of chars in parcels no. 1 to 3 to the FSL for chemical analysis through Constable Muhammad Ismail/PW-4 along with application Ex. PW 5/4 vide road permit certificate Ex. PW 5/3 and recorded statements of marginal witnesses u/s 161 Cr.P.C. After completion of


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investigation, 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, 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 05 witnesses. The gist of the evidence is as follow;

I. Imtiaz Khan SHO is the complainant of the instant case. He as PW-1 repeated the same story as narrated in the FIR. He has submitted complete challan Ex. PW 1/4 in the instant case.

II. Constable Sami Ullah appeared in the witness box as PW-2. He besides being eyewitness of the occurrence is the marginal witness of the recovery memo Ex. PW 1/1 as well as vide which the complainant has taken into possession the case property. He also reiterated the contents of FIR in his statement.

III. Moharrir Khalil Ur Rehman appeared in the witness box as PW-3. He has incorporated the contents of Murasila Ex. PW 1/3 into FIR Ex. PW 3/1. He has received the case property from the complainant and kept it in Mal Khana in safe


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custody besides parked the motorcycle in vicinity of the police Station, by making its entry in register no. 19 Ex. PW 3/2. He has handed over parcels no. 1 to 3 for sending it to the FSL.

IV. Constable Muhammad Ismail is PW-4. He has taken parcels no. 1 to 3 containing samples of chars to the FSL for chemical analysis on 20.03.2024, and after submission of the same, he was given the receipt of the parcels which was handed over by him to the Moharrir upon his return.

V. Lastly, the Investigation Officer Hashim Khan was examined as PW-5 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared site plan Ex. PW 5/1 on pointation of the complainant, recorded statements of witnesses u/s 161 CrPC, produced the accused before the court of Judicial Magistrate vide his application Ex. PW 5/2, sent the representative samples to the FSL along with the application Ex. PW 5/3 vide road permit certificate Ex. PW 5/4 and its result was received and placed on file by him as Ex. PW 5/5. He has placed on file the attested copies of register no. 19 Ex. PW 3/2, copies of DDs of different police


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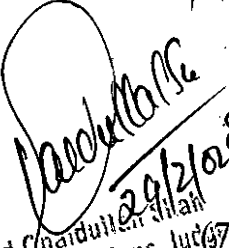
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personnels and submitted the case file to the SHO
for onward proceedings

(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. PW 5/5. 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 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.

Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the


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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.

It is alleged by the prosecution that the complainant/PW-1, after fencing the crime venue, intercepted the accused, recovered contraband chars from his possession and drafted the Murasila Ex. PW 1/3. The Seizing Officer further alleged in his statement as PW-1 that the spot

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proceedings were captured through a mobile phone; nevertheless, the Murasila Ex. PW 1/3 has no mentioning of making videography on the spot, even though it has been scribed by PW-1. Even the presence of the official who made videography on the spot is not substantiated through any daily diary which could show his departure from the police station. The prosecution also violated the **QANUN-E-SHAHADAT ORDER, 1984** by failing to produce the aforementioned witness to support their story.

In addition, it has also been claimed that after intercepting the accused and making recovery from his possession, the contraband was sealed in different parcels by the complainant, but this version is contradicted by the complainant's failure to mention any monogram abbreviation in the Murasila Ex. PW 1/3. Furthermore, the complainant, a witness of paramount importance, has neither in his court statement as PW-1 nor in his report Ex. PW 1/3 has mentioned that whether the chars were pukhta or garda which were recovered in the instant case. The texture of the recovered chars was also not mentioned in the Murasila Ex. PW 1/3.

As discussed above, after apprehension of the accused facing trial, certain crucial documents were drafted and sent to the police station through Constable Sami Ullah/PW-2 who then gave them to the Moharrir Khalil Ur

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Rehman/PW-3, followed by registration of FIR Ex. PW 3/1 at 1720 hours. There is a variation in the time of occurrence between the FIR Ex. PW 3/1 and the Murasila Ex. PW 1/3 when examined closely. The time of incidence is 16:30 hours in the Murasila, whereas 16:00 hours is mentioned in the FIR. The relevant law dealing with preparation of such documents mandates that the contents of the FIR should include the essential details of the crime, such as the nature of the offense, the time and the place where it occurred, as well as the identity of the accused, if known. The august High Court in various case laws have clarified that the FIR should be a verbatim record of the information given by the complainant. This means that the police should record the statement in the exact wording of the complainant, ensuring accuracy and preventing any alterations that may affect the authenticity of the complaint.

Another discrepancy arises from the statements of the complainant as PW-1 and the eyewitness as PW-2. Both of them alleged that PW-2 have taken the documents to the police station and then returned to the spot where the IO/PW-5 has recorded the statement of PW-2 under section 161 CrPC; however, they contradicted each other in respect of the time of his return to the spot as the complainant/PW-1 claimed that it was 17:25 hours while PW-2 stated that it was 17:45 hours.


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Besides above, the Investigation Officer/PW-5 has neither testified the factum of the registration of the motorcycle in the name of accused nor has proved the nexus of the accused with the motorcycle nor produced any receipt through which the motorcycle was given to him on rent. Moreover, a driving license was not taken into possession from the accused which is repellent to the common sense that without driving license a person would drive a vehicle or whether he is able to drive or not, which aspect of the case has created reasonable doubt in the prosecution case.

All the doubts and discrepancies discussed above call into question the complainant party's presence on the crime venue, the mode and manner of the occurrence and the mode and manner of the investigation conducted on the spot and erodes the prosecution's case.

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


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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.

- (9). 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 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.


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- (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;

"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-makes 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, **Asmat Ullah** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is on bail. His bail bonds stand cancelled and his sureties are discharged of

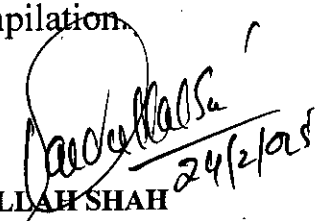

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the liabilities of the bail bonds. The case property be dealt
with in accordance with law.

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

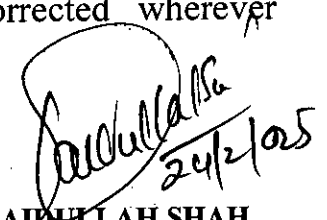
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CERTIFICATE

Certified that this judgment consists of twelve (12)
pages. Each page has been read, corrected wherever
necessary and signed by me.

Dated: 24.02.2025


SYED OBAIDULLAH SHAH
Sessions Judge/Judge Special Court,
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