


IN THE COURT OF
SHAHNAZ HAMEED KHATTAK
JUDGE SPECIAL COURT HARIPUR
Narcotics Case No. 55/3 of 2021
The State ...VS... Gul Zaman

Order#	Date	Order/Proceedings
19	06.07.2023	<p><u>Present:</u> Mr. Habibullah Khan DyPP for the State; accused Gul Zaman on bail and his counsel Mr. Shahid Khan, Advocate.</p> <p>Arguments heard and record perused.</p> <p>Vide my detailed judgment of today consisting of eight (08) pages, separately placed on file, it is held that the case of prosecution is full of doubts, hence, by extending the benefit of doubt, accused Gul Zaman is hereby acquitted. He is on bail, his sureties are absolved from the liabilities of bond. Case property i.e. Chars be destroyed, but after the expiry of period of limitation required for appeal/revision. File be consigned to the record room after its completion and completion.</p> <p><u>Announced</u> 06.07.2023</p> <p> SHAHNAZ HAMEED KHATTAK Judge Special Court Haripur</p>

**IN THE COURT OF SHAHNAZ HAMEED KHATTAK
DSJ/JUDGE SPECIAL COURT HARIPUR**

Narcotics Case No: 55/3 of 2021
Date of Institution: 29.11.2021
Date of Decision: 06.07.2023

THE STATE

....VERSUS....

Gul Zaman S/o Noor Muhammad, caste Afghan Refugee, aged about 27/28 years R/o Mohallah Dhangar, Kholian Bala, Tehsil & District Haripur. ...(Accused)

**CHARGED VIDE CASE FIR NO. 722, DATED 08/10/2021, U/S 9
(b) KP CNSA, 2019, PS SARAI SALAH, HARIPUR**

JUDGMENT:

1. Accused named above faced trial in the subject case.
2. As per the contents of Murasila (Ex. PA/1), the FIR (Ex. PA) was chalked out on 08/10/2021, complainant Abdul Ghafoor Khan, SHO, alongwith, Yasir Khan IHC and Asif FC No. 843 were on routine *Gasht*, in search of Drug Peddlers and were present at Link Road *Mohri*, when a young person was found coming from the Orchard's side, who on seeing the police party, tried to escape but he was overpowered. On query, accused disclosed his name Gul Zaman S/o Noor Muhammad, caste Afghan, R/o Mohallah Dhangar Kholian Bala. On his personal search, Charas wrapped in plastic envelope was recovered from his right-side pocket, which was weighed on the spot with digital scale without plastic and found 95 grams. 5 grams sample was separated from the recovered lot and sealed into Parcel No. 1, for forensic analysis of FSL, while the remaining 90 grams was sealed into Parcel No. 2 (Ex. P1) by affixing 3 seals on each parcel and the

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seals were containing the abbreviation "AG". The complainant prepared recovery memo (Ex. PW2/1), issued card of arrest (Ex. PW7/1), drafted Murasila (Ex. PA/1) and thereby, the case was established.

3. The matter was investigated by Habib-ur-Rehman SI (PW-3). He visited the spot, prepared the Site Plan (Ex. PB), on the pointation of the complainant, recorded the statements of witnesses of recovery. He interrogated the accused, recorded his statement and produced him before the court for recording his confessional statement, vide application (Ex. PW3/2). He checked the parcels and drafted an application for FSL (Ex. PW3/1). He also recorded the statements of Moharrir and constable regarding safe custody and transmission of sample to the FSL. He also placed on file the copies of arrival and departure of complainant, which is (Ex. PW3/3). He also placed on file the report of FSL (Ex. PK). On conclusion of investigation, case in hand was handed over to the SHO for submission of Challan.

4. During trial, the accused was provided with copies of the statements and evidence collected against him U/s 265-C (1) Cr.PC, and was formally indicted, he claimed trial, therefore, prosecution evidence was summoned and examined.

5. Prosecution produced and examined Seven (07) PWs and closed its evidence. Accused was examined U/s 342 Cr.PC, he professed innocence, however, did not offer to appear as his own witnesses on oath or to produce evidence in his defence.

6. I have heard the arguments of Mr. Habibullah Khan, learned DyPP for the State and Mr. Shahid Khan Advocate learned counsel for the accused and have perused the case file, thoroughly.
7. The case of prosecution is primarily based upon recovery of 95 grams Chars recovered from the direct possession of the accused, separation of sample weighing 5 grams, sealing the sample into Parcel No. 1, while sealing of the remaining lot into Parcel No. 2, sending the sample to the FSL for forensic analysis and opinion. Positive report of the FSL showing that the recovered stuff was "Chars".

8. **Points for determination are:**

- a) *Whether the prosecution has proved through reliable, unimpeachable, and convincing evidence that 95 grams Chars was recovered from the direct possession of the accused?*
- b) *Whether the sample was properly separated, sealed and sent to the FSL and the prosecution has proved the safe chain of custody of the sample from the spot to the FSL, with no interruption?*
- c) *Whether the report of the FSL is admissible and mandatory protocols of the tests have been observed?*
- d) *Whether the investigation has properly been conducted and the process of investigation is transparent and thereby is confidence inspiring?*
- e) *Whether the testimonies of PWs are consistent on material particulars of the case in hand, as required by law?*

9. In order to prove its case, prosecution produced seven (07) PWs. Umair FC No. 480 was produced and examined as (PW-1); he has taken the parcel to the FSL vide receipt No. 264/21, which is (Ex. PW1/1). Marginal witness of the recovery memo Yasir Khan ASI produced and examined as (PW-2); he exhibited the recovery memo as (Ex. PW2/1). He deposed that the complainant had recovered the

contraband in his presence and admitted his signature on the recovery memo to have correctly been obtained by the complainant. Investigating Officer Habib-ur-Rehman SI examined as (PW-3), who investigated the instant case and the crux of his deposition has been mentioned in Para No. 3 (ibid). Sher Afzal Khan (MM) has been examined as (PW-4), who kept the case property in Mal-Khana of the Police Station. On 11/10/2021, vide Road Receipt No. 264/21 (Ex. PW1/1), he handed over the Parcel No. 1 to constable Umair No. 480 for onward transmission to the FSL for analysis and after depositing the same in FSL constable Umair No. 480 returned the Road Receipt to him and he made entries in the relevant registers. Ijaz Khan SHO examined as (PW-5), who submitted the complete challan (Ex. PW5/1) against the accused facing trial. Adil MHC, has been examined as (PW-6), who on receiving the Murasila, incorporated its contents into FIR (Ex. PA). He verified his handwriting and signature on the exhibited document. Complainant Abdul Ghafoor Khan SHO has also been examined as (PW-7). In his examination-in-chief, he spoke in-line with his report. He also exhibited Murasila as (Ex. PA/1), arrest card of the accused as (Ex. PW7/1). He verified his signatures on the above exhibited documents.

10. Record in the light of arguments of Mr. Habibullah Khan, learned DyPP for the State and learned counsel for the accused scrutinized and the court holds as follows:

In order to prove that whether the alleged contraband was recovered from possession of accused facing trial or otherwise, to this effect prosecution produced and examined the seizing officer/complainant Abdul Ghafoor as (PW-7), marginal witness of recovery memo, namely, Yasir Khan ASI as (PW-2) and relied upon the contents of recovery memo, brought on file as (Ex. PW2/1), Murasila (Ex. PA/1), FIR (Ex. PA), and the card of arrest brought on file as (Ex. PW7/1). So far as the testimonies of both these material prosecution witnesses are concerned, (PW-7) deposed that the Charas was recovered from the possession of accused facing trial, from his right-side pocket, which was weighed on digital scale without plastic on the spot. Regarding the nature and color of the substance allegedly recovered from the possession of accused, (PW-7) simply stated that he had recovered Charas, while, in his cross-examination, he expressed his unawareness about the two kinds of Charas *i.e. Charas Pukhta and Charas Garda* and also stated that he did not remember the color of stated contraband. However, concerning the shape, size and color of the contraband, the testimonies of both the material witnesses (PW-2 & PW-7) are silent. As far as the time to reach the place of recovery is concerned, Marginal witness (PW-2), in his cross examination stated that "*I cannot tell as to what time, we reached the stated place of recovery.*", while, Complainant (PW-7), in his cross-examination stated that "*An hour after leaving from the police post, we reached on the stated place of recovery.*" Hence, both the above-mentioned PWs have contradicted each other on material points.

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So far as the separation of representative sample, its dispatch to the FSL and maintaining safe chain of custody of the case property are concerned, prosecution has produced, examined and relied upon the testimonies of (PW-1), (PW-4), complainant (PW-7) and the Investigating Officer (PW-3). In the first leg, it is being said that the complainant, upon the recovery separated sample of 5 grams, sealed the same in Parcel No. 1, while the remaining was sealed in parcel No. 2 on the spot and the case property was deposited with the Moharrir of the PS, who then sent the same to FSL through (PW-1). Testimonies of the material prosecution witness shows that the Investigating Officer had visited the spot and checked the parcels on the spot, without opening and confirming that whether in fact Charas was sealed in both the parcels or otherwise. Yet, despite his visit to the spot, the complainant has neither handed over the possession of contraband nor the custody of accused to the Investigating Officer rather he himself

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took the same to the police station, hence, the alleged story of the shifting of the contraband as well as accused from the spot to the police station and then the transmission of sample to the FSL does not seem well-interwoven. The Investigating Officer should have taken the possession of the case property as well as custody of accused and by not doing so, the story of recovery, separation of sample and its transmission to the FSL and arrival of the Investigating Officer at the spot seems highly doubtful. Coming to the depositions of (PW-1) and (PW-4), the constable who took the sample to FSL and the Moharrir who dispatched the same to the FSL and kept the remaining case

property in the Mall Khana, (PW-4) brought on file a photo-state copy of receipt and placed the same on file as (Ex. PW1/1), claiming that it is the receipt whereby the parcel was deposited in the FSL. The exhibition of this document was objected upon by the defense counsel, therefore, the prosecution had ample opportunity to have brought on file the original receipt, but till the conclusion of trial no such receipt was brought, hence, (Ex. PW1/1) cannot be termed as admissible piece of evidence. Similarly, (PW-1) in his cross examination stated that his statement was not recorded when the parcels were handed over to him, which too creates doubt about handing over of any parcel to him and its transmission to the FSL. Considering the above, it is held that the direction of law has not been complied with in latter and spirit, hence, the prosecution's story is doubtful.

Though the FSL report is an admissible piece of evidence as a public document and protocols being observed, however, its evidential value could only be gauged with other evidence.

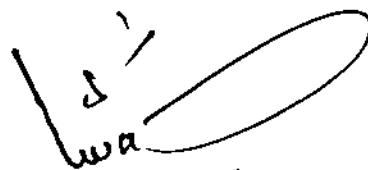
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The testimony of the Investigating Officer (PW-6), clearly shows that he has acted like a post office. He has not bothered himself to have seen the contraband by opening the parcels and confirming the assertion of complainant, comparing the case property sealed in different parcels, with each other. Further, he reached at the spot at 1935 hours, it was slightly dark and he nowhere mentioned the source of light through which he conducted the spot proceedings. Moreover, he did not point out as to which point of the road, the stated recovery was affected and he also did not mention the point wherefrom the

accused had decamped and the point from where he was apprehended. His site plan (Ex. PB) too shows that it neither shown the Orchards on both sides of the road nor the source of light. Further, constable Asif, who had taken the Murasila to the Police Station from the spot, has neither been examined by the Investigating Officer U/s 161 Cr.PC nor he was produced by the prosecution before the court for recording his statement, which also create serious dent in the prosecution's case. Considering the above, it is held that the testimonies of prosecution witnesses are not consistent and thereby are not confidence inspiring. The case of prosecution is doubtful, and prosecution has not been able to have brought home the guilt of accused, beyond doubt.

11. Accordingly, considering the above, by extending the benefit of doubt, accused Gul Zaman is hereby acquitted. He is on bail, his sureties are absolved from the liabilities of bond. Case property i.e. Chars be destroyed, but after the expiry of period of limitation required for appeal/revision. File be consigned to the record room after its completion and completion.

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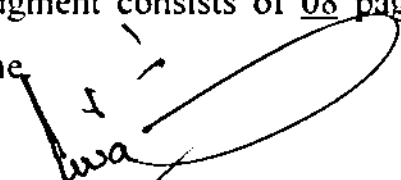
06.07.2023



SHAHNAZ HAMEED KHATTAK
Judge Special Court Haripur

CERTIFICATE

It is hereby certified that this judgment consists of 08 pages, each page read corrected and signed by me



SHAHNAZ HAMEED KHATTAK
Judge Special Court Haripur