

Present:

Mr. Justice Mohammad Marzi-ul-Huq
and

Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.1396 of 2005

Tuntu Das alias Tuntu and another

...Appellants

-Versus-

The State

...Respondent

No one appears for the appellants

Mr. Khizir Hayat, Deputy Attorney General

... for the respondent

Judgment on 8.4.2012

Md. Ruhul Quddus, J:

This appeal is directed against judgment and order dated 29.3.2005 passed by the Metropolitan Assistant Sessions Judge, Court No.5, Chittagong in Session Trial Case No.869 of 2002 [arising out of Panchlaish Police Station Case No.31(3)2000] convicting the appellants under section 22 (Ga) of the Madak Drobyo Niyontron Ain, 1990 and sentencing each of them thereunder to suffer simple imprisonment for five years with a fine of Taka 2000/-, in default to suffer simple imprisonment for two months more.

Informant Tapon Kanti Sharma, a Deputy Inspector of the Directorate of Narcotics lodged an *ejahar* with Panchlaish Police Station, Chittagong on 25.3.2000 alleging, *inter alia*, that on receipt of secret information, he along with others formed a raiding party and started patrolling at Oxygen area within

Panchlaish Police Station. At one stage, a private car having registration No.Kha-4636 was passing through the area. They gave signal to stop the car, but the car proceeded ignoring the signal, for which they started chasing it. Ultimately they stopped the car near to a house owned by one Kashem Member at Hajipara Road and recovered fifty polythene bags full of country made *liquor* with help of the local people. The liquor, in quantity, comes to six hundred liters in total. They, however, arrested the appellants while two others including the driver of car fled away. The informant took sample of one hundred milli-liters of liquor, preserved it in a glass bottle for chemical examination and took another one liter to exhibit as *alamat*. Then he went to police station with the seized goods and lodged the *ejahar*.

The *ejahar* gave rise to Panchlaish Police Station Case No.31 dated 25.3.2000. The Informant himself took up the investigation and submitted charge sheet under section 22 (Ga) of the Madak Drobyo Niyontron Ain, 1990 (hereinafter called the Ain) against the appellants and under sections 21 and 33(1) of the Ain against co-accused Ranjit Chowdhury.

The case having been ready for trial was sent to the Metropolitan Sessions Judge, Chittagong and was registered as Session Trial Case No. 869 of 2002. Learned Metropolitan Sessions Judge took cognizance of offence against all the accused and transferred the case to the Fifth Court of Metropolitan Assistant Sessions Judge, Chittagong for hearing and disposal. Learned Metropolitan Assistant Sessions Judge by his order dated 5.6.2003 framed charge against the appellants under section 22 (Ga) of the Ain to which they pleaded not guilty and claimed to be tried.

Prosecution examined only three witnesses out of twelve, who were named in the charge sheet. Of them, Informant Tapon Kanti Sharma deposed as P.W.1 and also as P.W.3 in the capacity of Investigating Officer. Another member of raiding party named Md. Abu Taher deposed as P.W.2.

After the prosecution was closed, the appellants were examined under section 342 of the Code of Criminal Procedure to which they reiterated their innocence, but did not adduce any evidence in defense. Learned Judge, after conclusion of trial found them guilty of offence under section 22 (Ga) of the Ain and accordingly pronounced his judgment and order of conviction and sentence on 29.3.2005, as aforesaid, while acquitted co-accused Ranjit Chowdhury. Challenging the said judgment and order of conviction and sentence, the appellants moved in this Court with the instant criminal appeal and subsequently obtained bail.

This criminal appeal has been posted in the cause list as item No.2 with name of the Advocate for appellants. It is taken up for hearing, but no one appears to press the appeal. In view of its long pendency, we take it up for disposal and allow the Deputy Attorney General to make his submission.

Mr. Khizir Hayat, learned Deputy Attorney General appearing for the State-respondent submits that the P.Ws.1 and 2 have corroborated each other and proved the allegation of carrying illegal liquor against the appellants. There is nothing on record that the said witnesses had any rivalry or any sort of dispute with the appellants, for which they might be falsely implicated in the case. The defense case that the appellants were arrested whimsically by the police, while they were going through the area is, therefore, not believable.

We have considered the submissions of learned Deputy Attorney General, gone through the record and examined the evidence. There is nothing on record to justify as to why the local seizure list witnesses were not examined in the present case. The informant himself was a member of the raiding party, who lodged the *ejahar* and also investigated the case, which is not encouraged as a matter of prudence. The manner of recovery as described in the seizure list and that stated in the evidence of P.W.1 are not same. It is also not very clear in the *ejahar* or in the evidence of P.W.1, whether the appellants were arrested from the car and the liquor was recovered from their exclusive possession. In such a case the appellants have been convicted only on the evidence of two witnesses, who were members of raiding party. The other local witnesses, seizure list witnesses or other members of the raiding party were not examined to prove the allegation against them.

Under the facts and circumstance, we are of the view that the evidence in the present case is hopelessly insufficient, which itself casts a doubt over the prosecution case, and as such the appellants are entitled to benefit of doubt.

In the result, the appeal is allowed. The judgment and order of conviction and sentence dated 29.3.2005 passed by the Metropolitan Assistant Sessions Judge, Court No5, Chittagong in Session Trial Case No. 869 of 2002 is set aside. The appellants are acquitted of the charge under section 22 (Ga) of the Ain and discharged from their bail bonds.

Send down the lower Court's record.

Mohammad Marzi-ul-Huq, J:

I agree.