

Present:

Mr. Justice Mohammad Marzi-ul-Huq

and

Mr. Justice Md. Ruhul Quddus

Jail Appeal No.1050 of 2008

Mohibul Alam

...Appellant

-Versus-

The State

...Respondent

No one appears for the appellant

Mr. Khizir Hayat, D. A. G. with Mr. Yousuf Mahmud
Morshed, A. A. G.

... for the respondent

Judgment on 13.5.2012

Md. Ruhul Quddus, J:

This appeal under section 420 of the Code of Criminal Procedure is directed against judgment and order dated 10.9.2008 passed by the Assistant Sessions Judge, Court No.3, Kushtia in Session Case No.86 of 2007 convicting the appellant under clause 1(Ka) of section 19(1) of the Madak Drobyo Niyontron Ain, 1990 and sentencing him thereunder to suffer simple imprisonment for eight years.

Informant Md. Anwar Hossain, a Sub-Inspector of the Directorate of Narcotics Control, Kushtia Circle produced the arrested appellant to Kushtia Police Station on 5.12.2006 and lodged an *ejahar* alleging, *inter alia*, that on the basis of secret information, he along with Sub-Inspector Kamol Krishna Biswas, Sepoy Md. Zakir Hossain, Md. Saiful Islam and Papia Sultana raided the appellant's house at the turning of Chowhas West at 7 a.m. They searched

the house in presence of the witnesses and found the appellant standing in a south facing room at southern side. On searching his body, they recovered sixteen tiny packets of heroin from a match-box kept in his left chest-pocket. The informant made a seizure list on the spot, obtained signature of the witnesses thereon and collected sample for chemical examination. Thereafter they produced the appellant to the police station.

The *ejahar* gave rise to Kushtia Police Station Case No.4 dated 5.12.2006. Police after investigation submitted a charge sheet on 20.12.2006 against the appellant under clause 1(Ka) of section 19(1) of the Madak Drobyo Niyontron Ain, 1990 (hereinafter called the Ain).

The case having been ready for trial was sent to the Sessions Judge, Kushtia and was registered as Session Case No.86 of 2007. Learned Sessions Judge took cognizance of offence against the appellant and sent the case record to the Third Court of Assistant Sessions Judge, Kushtia for hearing and disposal. Learned Assistant Sessions Judge framed charge under clause 1(Ka) of section 19(1) of the Ain against the appellant by order dated 24.5.2007, to which he pleaded not guilty and claimed to be tried.

Prosecution examined six witnesses in order to prove its case. Of them, P.W.1 Md. Anwar Hossain, the informant stated that he had received secret information on 5.12.2006 and raided the appellant's house at the turning of Chowrhas West at about 7 a.m. They found the appellant inside the south face room at the north of the house and recovered sixteen tiny packets of heroin from a match-box kept in his pocket in presence of two local witnesses, namely, Mannan and Selim. He made a seizure list on the spot and took

signatures of the witnesses thereon. He proved the *ejahar*, seizure list, and his signatures thereon. He also proved the recovered heroin as material exhibit and identified the appellant on dock.

P.Ws.2 and 5 Md. Zakir Hossain and Md. Saiful Islam respectively two members of the raiding party fully supported the prosecution case in their evidence and corroborated that of the informant (P.W.1).

P.W.3 Md. Abdul Mannan, a seizure list witness admitted his signature on the seizure list and proved the same, though in cross-examination stated that he did not see to recover the articles. P.W.4 Selim, another seizure list witness stated that he was present at the time of recovery and saw the raiding party to recover sixteen tiny packets from the chest pocket of the appellant. He proved his signature on the seizure list. But in the contrary, he denied to see any recovery in his cross-examination.

P.W.5 Faruk Sultan, the Investigating Officer stated that after he was assigned to investigate the case, he visited the place of occurrence, prepared the sketch map with index and recorded statements of the witnesses under section 161 of the Code. He proved the sketch map, charge sheet, report of chemical expert, and his signatures on the charge sheet and sketch map.

After the prosecution was closed, the appellant was examined under section 342 of the Code, when he reiterated his innocence, but did not examine any witness in defense. Learned Judge, after conclusion of trial, found him guilty of offence under clause 1(Ka) of section 19(1) of the Ain and accordingly pronounced his judgment and order of conviction and sentence as

aforesaid. Against the said judgment and order of conviction and sentence, the appellant filed the instant jail appeal.

Mr. Khizir Hayat, learned Deputy Attorney General appearing for the State-respondent submits that the prosecution case has been proved by the evidence of the informant, Investigating Officer, two members of the raiding party and also by two seizure list witnesses to the extent that they signed the seizure list. There is no contradiction or inconsistency in the evidence of P.Ws.1, 2, 5 and 6, which may cast any doubt over the prosecution case. The learned Judge discussed all the evidence and assigned reasons behind the conviction. The appeal is, therefore, liable to be dismissed.

We have considered the submissions advanced by the learned Deputy Attorney General and gone through the evidence on record. It appears that the Informant (P.W.1) deposed in consistency with the *ejahar* and without any departure. P.Ws. 2 and 6, two members of the raiding party sufficiently corroborated P.W.1. There is no contradiction or inconsistency in their evidence, which may cast any doubt over the prosecution case. P.W.5, the Investigating Officer proved the report of chemical expert, which shows that the articles kept in the tiny packets recovered from the appellant, were heroin. P.Ws.3-4, two local seizure list witnesses though in cross-examination stated that they did not see any recovery, admitted their signatures on the seizure list. Moreover, P.W.4 Selim stated in his examination-in-chief that he saw recovery of sixteen tiny packets from chest pocket of the appellant on the date and time of occurrence. They did not say that the police threatened or otherwise compelled them to sign the seizure list. So it is not believable that they did not see the recovery. There is also nothing on record to show that the police and

the concerned official of the Directorate of Narcotics Control had any enmity with the appellant and falsely implicated him.

Learned Assistant Sessions Judge considered and discussed all the evidence and arrived at definite finding that the prosecution was able to prove the case against the appellant beyond reasonable doubt. We do not find any illegality in the impugned judgment and order of conviction and sentence.

Accordingly the jail appeal is dismissed. The judgment and order dated 10.9.2008 passed by the Assistant Sessions Judge, Court No.3, Kushtia in Session Case No.86 of 2007 is maintained.

Send down the lower Court's records.

Mohammad Marzi-ul-Huq, J:

I agree.