

3 SCOB [2015] HCD 116**High Court Division
(Criminal Appellate Jurisdiction)**

Criminal Appeal No. 1041 of 1997

Md. Rezaul Amin alias Neelo,
Son of Late Yunus Mia of Nazirpara,
Police Station- Chandpur, District-
Chandpur, at present Bangladesh Medical
Hall, Chowdhury Ghat, Chandpur.

...Appellant

-Versus-

The State

...Respondent

No one appears for the appellant

Mr. Md. Jashim Uddin, Assistant Attorney
General
... for the respondent

Judgment on 12.05.2015

Present:**Mr. Justice Md. Ruhul Quddus**

In the present case being a case of drug/narcotics, it was incumbent on the prosecution to get the seized phensedyl examined by a chemical expert to prove that the seized articles were actually *madak drobyo*/drug and under what category of *madak drobyo*/drug it fell. Absence of such chemical examination and contradictions between the two sets of prosecution witnesses, casted a shadow of doubt over the prosecution case. ... (Para 15)

Judgment**Md. Ruhul Quddus, J:**

1. This criminal appeal under section 410 of the Code of Criminal Procedure is directed against the judgment and order dated 30.04.1997 passed by the Sessions Judge, Chandpur in Sessions Case No. 4 of 1995 arising out of Chandpur Police Station Case No. 2 dated 06.07.1993 corresponding to G. R. No.80 of 1993 convicting the appellant under section 22(ga) of the Madak Drobyo Niontron Ain, 1990 and sentencing him thereunder to suffer rigorous imprisonment for 3 (three) years with a fine of Taka 5,000/- in default to suffer rigorous imprisonment for 06 (six) months more.

2. The informant Md. Shafiqur Rahman Mukul, a Sub-Inspector of police produced the arrested appellant and another to Chandpur police station on 06.07.1993 and lodged an *ejahar* alleging, *inter alia*, that on receipt of a secret information he along with some police forces ambushed near to Chowdhury Ghat Municipal Market at about 5.30 p.m. A rickshaw with a passenger came in front of a pharmacy named Bangladesh Medical Hall and delivered a packet to the appellant, the owner of the pharmacy. The informant with the forces rushed to the pharmacy and caught hold of the appellant and the rickshaw puller Siddique Mia. The passenger of the rickshaw, however, managed to escape. The appellant disclosed his name as

Tazul Islam and admitted that he was his partner in illegal business of phensedyl. The informant seized the packet and recovered 16 bottles of Indian phensedyl therefrom.

3. The informant himself was assigned for investigation, but before completion of the same, was transferred elsewhere and another Sub-Inspector of police named Sushil Chandra Das completed the investigation and submitted charge sheet against all the three accused under sections 20 (ga) of Madak Drobyo Niontron Ain, 1990.

4. The case being ready for trial was sent to the Court of Sessions Judge, Chandpur. The learned Sessions Judge by order dated 25.01.1995 framed charge against the accused, to which two of the accused including the appellant who were facing trial pleaded not guilty and claimed to be tried in accordance with law.

5. The prosecution in order to prove its case examined eight witnesses. After closing the prosecution evidence, the accused were examined under section 342 of the Code of Criminal Procedure, to which they reiterated their innocence, but did not examine any witness in defense. However, the defense case as it appears from the trend of cross-examinations is that the police demanded illegal gratification from the appellant, but being refused had initiated the present case at the instigation of the neighboring medical shop-owners absolutely on false allegation.

6. After conclusion of hearing, the learned Sessions Judge pronounced the impugned judgment and order of conviction and sentence against the sole appellant and acquitted two other co-accused. Against the conviction and sentence, the appellant moved in this Court and subsequently obtained bail.

7. Mr. Md. Jashimuddin, learned Assistant Attorney General appearing for the State takes me through the evidence and other materials on record and submits that the case having been proved against the appellant beyond all reasonable doubts, the learned Sessions Judge rightly passed the judgment and order of conviction and sentence.

8. It appears that the P.W.1 Md. Safiqur Rahman Mukul, a Sub-inspector of police and leader of the raiding party supported the prosecution case and exhibited the *ejahar*, seizure list, sketch map etc. and his signatures thereon. He however, admitted in cross-examination that the seized phensedyl was not sent to the chemical expert for determination of its substance. P.W.2 Altaf Uddin Sarker a seizure list witness although supported the recovery of phensedyl from Bangladesh Medical Hall in brief, in cross-examination stated that he did not see any recovery therefrom and that he saw those phensedyl at Sumon Store and had signed the seizure list sitting at the said store.

9. P.W.3. Md. Noor Nabi, being a formal witness and Officer-in-Charge of the concerned police station, supported the prosecution case.

10. P.W.4 Md. Khalilur Rahman a shop-owner of Chandpur Municipal Super Market stated that at the time and date of occurrence he was staying at his shop, when the informant had gone to him and told that some phensedyl was recovered from the appellant. He did not know anything more and at this stage he was declared hostile.

11. P.W.5 M. A. Razzak Khondker was a local and independent witness stated that he did not see the occurrence. The Sub-Inspector of police told him that some phensedyl was

seized. He, however, did not see the accused. At this stage this P.W.5 was also declared hostile.

12. P.W.6 Nurul Islam Gazi another local and independent witness and a shop keeper of Municipal Hawkers Market stated that he also did not see anything and knew nothing about the occurrence. At this stage the prosecution declared him hostile.

13. P.W.7 Sidduque Ahmed, a Sub-Inspector of police and member of the raiding party supported the prosecution case in all materials particulars and did not disclose anything adverse.

14. P.W.8 Sushil Chandra Das, a Sub-Inspector of police and the second investigating officer, who submitted the charge sheet deposed in respect of his part of investigation.

15. From a careful assessment of evidence, it appears that only P.Ws.1 and 7, two members of the raiding party were the eye witnesses, who supported the prosecution case. But none of the local witnesses supported the prosecution case. In the present case being a case of drug/narcotics, it was incumbent on the prosecution to get the seized phensedyl examined by a chemical expert to prove that the seized articles were actually *madak drobyo*/drug and under what category of *madak drobyo*/drug it fell. Absence of such chemical examination and contradictions between the two sets of prosecution witnesses, casted a shadow of doubt over the prosecution case. There is nothing on record to presume that the local witnesses did not dare to depose against the appellant because of fear or that they had any special relation to favour him. The charge sheet also shows the previous crime record of the appellant to be nil.

16. In such a case, the appellant is entitled to benefit of doubt. The charge brought against him having not been proved beyond all reasonable doubts, the impugned judgment and order of conviction and sentence should not sustain. Thus I find merit in the appeal.

17. Accordingly, the appeal is allowed. The impugned judgment and order of conviction and sentence dated 30.04.1997 passed by the Sessions Judge, Chandpur in Sessions Case No. 4 of 1995 arising out of Chandpur Police Station Case No. 2 dated 06.07.1993 corresponding to G. R. No.80 of 1993 is hereby set aside. The appellant is acquitted of the charge and released from his bail bond.