

**In The Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 176 of 2000

Md. Lalu Sheikh and another

-Vs-

The State

None appears

..For the appellant

Mr. S.M. Golam Mostofa Tara, DAG with

Mr. Md. Shaifour Rahman Siddique Saif, AAG
.....for the respondents

Heard on 27.08.2023

Judgment on 28.08.2023

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order of conviction and sentence dated 08.02.2000 passed by Assistant Sessions Judge, Court No.3, Rajshahi in Sessions Case No. 35 of 1999 arising out of Rajpara Police Station Case No. 17 dated 16.02.1997 convicting the appellants under section 19(1)(3)(Ka) of the মাদক দ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and sentencing them thereunder to suffer rigorous imprisonment for 02 (two) years.

The prosecution case, in short, is that P.W. 2 Md. Abdul Bari, Inspector of Narcotics Control Directorate, Rajshahi Sadar Circle and other staff based on secrete information on 16.02.1997 at 7:00 pm raided the shop of accused persons used for selling phensedyl situated beside the bus stand of Guripara and in the presence of the witnesses namely P.W. 3 Gargis and P.W. 4 Kalu Sheikh entered into the shop and recovered 14 bottles of Indian phensedyl kept in polythene bag under the ground. After that, the informant prepared the seizure list and sent one bottle of phensedyl for the report of the chemical examiner. At the time of recovery of the alleged phensedyl, the accused persons were absconding.

P.W. 6 Solaiman Ali took up the investigation of the case and during the investigation, recorded the statement of the witnesses, visited the place of occurrence, prepared the sketch map and index and after completing the investigation submitted charge sheet against the accused persons on 20.03.1998 under section 19(1)(3)(Ka) of মাদক দ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০. After that, the case record was sent to the Sessions Judge, Rajshahi and subsequently the Sessions Judge, Rajshahi was pleased to transfer the case to the Assistant Sessions Judge, Court No.3, Rajshahi for trial.

During trial, charge was framed under section 19(1) 3(Ka) of the মাদক দ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and the charge was read over and explained to the accused persons who pleaded not guilty to the charge and claimed to be tried following the law. During the trial, the prosecution examined 06 witnesses to prove the charge against the accused persons. After examination of the prosecution witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure, 1898 and they declined to examine any DW. The trial Court by impugned judgment and order convicted the accused persons and sentenced them as stated above against which the accused persons prepared the instant appeal.

P.W. 1 Kazi Mansur Rahman is the Inspector of the Directorate of Narcotics Control Department, Joypurhat Circle. He stated that on 16.02.1997 at 7:00 pm he along with P.W. 1 Inspector Abdul Bari and other staff encircled the shop of the accused persons situated beside Guripara bus stand under Rajpara Thana and in the presence of two witnesses searched the shop of the accused persons and recovered 15 bottles containing 50 ml of phensedyl in each bottle kept in polythene bag under the ground and prepared the seizure list and took the signatures of the witnesses. One bottle of phensedyl was sent for a chemical examination. During cross-examination, he stated that after the recovery of the goods, the seizure list was prepared.

P.W. 2 Abdul Bari is the Inspector of Rajshahi 'A' circle, Directorate of Narcotics Control, Rajshahi. He stated that on 16.02.1997, based on secrete

information at 7:00 pm he along with the staff encircled the shop of accused Lalu and Abdus Samad situated at Guripara bus stand under Rajpara Thana and searched the shop of the accused persons in the presence of the witnesses and recovered 14 bottles of Phensedyl kept in polythene bag under the ground and prepared the seizure list. He proved the signature of the witnesses on the seizure list and sent the symbol of the phensedyl for the report of the chemical examiner. He handed over the recovered alamot to the custody of the Narcotics Control Department. He proved the FIR as exhibit-1 and his signature as exhibit-1/1. During cross-examination, he stated that the seizure list was prepared on the road situated in front of the shop.

P.W. 3 Gorgis is a witness on the seizure list. He stated that on the way to his house in the evening while he reached in front of the godown of leather, the officers of the Narcotics Control Department stopped him and requested to sign the paper and as per instruction of the officers of the Narcotics Control Department he signed. At that time, Kalu Sheikh was also present there. He stated that he put his thumb impression on the seizure list.

P.W. 4 Kalu Sheikh is also a witness on the seizure list. He stated that he put his thumb impression on the seizure list.

P.W. 5 Abdul Awal is the Chemical Examiner. He stated that on 05.03.1997 Inspector of the Narcotics Control Department sent one bottle containing 50 ml liquid through the Sepoy Abul Kalam Azad. After chemical examination, he found chlorpheniramine and codeine phosphate. He proved the report as exhibit-3 and his signature as exhibit-3/1.

P.W. 6 Solaiman Ali is the Inspector of the Narcotics Control Department and the investigating officer of the case. He stated that on 22.02.1998 he took up investigation of the case, and received the alleged alamots which are Indian phensedyl and were kept under the ground. During the investigation, he visited the place of occurrence and prepared the sketch map and index. He proved the sketch map and index as exhibit-5 and his signature as exhibit-5/1. During the investigation, he recorded the statement of

witnesses under section 161 of the Code of Criminal Procedure, 1898. During cross-examination, he stated that he found soil on 13 bottles of phensedyl. He received the bottles on 22.02.1998.

None appears on behalf of the appellants.

The learned Deputy Attorney General, Mr S.M. Golam Mostofa Tara appearing on behalf of the State submits that informant P.W. 2 Abdul Bari along with Inspector P.W. 1 Kazi Monsur Rahman and other staff of the Narcotics Control Department raided the shop of the accused persons and in presence of witnesses on 16.02.1997 at 7:00 pm recovered 14 bottles of phensedyl. P.W. 5 Chemical Examiner Abdul Awal found phensedyl in the liquid kept in the bottles sent for the chemical examination. He further submits that the prosecution witnesses proved the charge against the accused persons beyond all reasonable doubt. Therefore, he prayed for the dismissal of the appeal.

I have considered the submission of the learned Deputy Attorney General, perused the evidence, impugned judgment and order passed by the trial court and the records.

On perusal of the records, it appears that 14 bottles of phensedyl were allegedly recovered from the shop of accused persons situated beside Guripara bus stand under Rajpara Thana. The place of occurrence is a shop. No statement is made by the PWs. 1 and 2 that the accused persons are relative. No explanation has been given as to how two persons become the owner of a shop. In the FIR, it has been stated that P.W. 2 recovered 14 bottles of Phensedyl in the presence of neutral witnesses P.Ws. 3 and 4. P.W. 3 stated that while he was returning home in the evening, the officers of the Narcotics Control Department requested him in front of the godown of leather at Guripara to sign the seizure list and he put his thumb impression. P.W. 4 Kalu Sheikh stated that he knows nothing about the occurrence. However, he stated that he put his thumb impression on the seizure list. At that time, the prosecution declared him hostile. During cross-examination, he denied the

suggestion that on 16.02.1997 at 7:00 pm police recovered 14 bottles of phensedyl from the shop.

The evidence of police personnel or the officers of the Narcotics Control Department are not sacrosanct. The ground reality cannot be ignored. The place of occurrence is situated beside Guripara bus stand and there were many shops but those shop owners and locals were not examined in the case. P.W. 3 Gorgis is a day labour and resident of village Raypara and P.W. 4 Kalu Sheikh is a resident of Guripara and both of them are illiterate persons. No explanation has been given by the prosecution why P.W. 2 did not search the shop in the presence of shopkeepers of the Guripara bus stand. No independent witness was examined to prove that the accused persons are the owner of the shop from where 14 bottles of phensedyl were recovered. Furthermore, the accused persons were not present at the time of recovery of the alleged phensedyl.

In view of the above evidence, findings, observation and proposition, I am of the view that the prosecution failed to prove the charge against the accused persons to the hilt beyond all reasonable doubt.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order of conviction and sentenced passed by the trial court is hereby set aside.

Send down the lower Court's record at once.

