

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

**Present:**

**Mr. Justice S.M. Mozibur Rahman**

**Criminal Appeal No. 2378 of 2000.**

Babul Sardar.

..... Accused-Appellant.

-Versus-

The State

..... Respondent.

Mr. Mohammad Hossain, Advocate.

.... for the appellant.

Mr. Bibhuti Bhuson Biswas, A.A.G. with

Mr. Md. Abdul Bari, A.A.G

... for the state

**Heard & Judgment on: 22.11.2016.**

This appeal is directed against the judgment and order of conviction and sentence dated 31.08.2000 passed by the learned Judge of special Tribunal No. 6, Satkhira in S.T.C. No. 365 of 1996 arising out of G.R. Case No. 237 of 1996 corresponding to Kolaroa Thana Case No. 08 dated 20.06.1996 convicting the appellant under section 25B (1)(b) of the Special Powers Act, 1974 and sentencing him to suffer rigorous imprisonment for 03(three) years with a fine of Tk. 20,000/- in default to suffer rigorous imprisonment for 6(six) months.

The facts relevant for the purpose of disposal of the appeal, in short are that on 19.06.1996 informant and his companion forces arrested this convict-appellant and recovered Indian goods of different item worth Tk. 1,11,210/-. Then the informant prepared a seizure list in presence of the local witnesses and lodged an F.I.R. with the Kolaroa Police Station on the basis of which a regular case was started against the accused appellant.

After concluding the police investigation, Charge Sheet being No. 103 dated 23.08.1996 was submitted against the accused appellant under section 25B(1)(b) of the Special Powers Act, 1974. The learned Judicial Magistrate after making the case record ready for trial sent it to the Court of learned Special Tribunal No. 1 who sent the same record to the learned Judge of the Special Tribunal No. 6, Satkhira for trial and disposal. Thereafter, charge was framed on 12.01.1999 against the accused appellant under section 25B(1)(b) of the Special Powers Act, 1974 and charge so framed was duly read over and explained to the accused-appellant to which he pleaded not guilty and claimed to be tried.

During the trial of the case, in total 6 witnesses were examined by the prosecution in support of the allegation brought against the accused-appellant when the defence examined none.

After the closure of prosecution evidences as has been stated above, the accused appellant was duly examined by the trial court under section 342 of the Criminal Procedure Code, 1898 to explain the circumstances appeared against him in the evidence upon which he again pleaded to be not guilty and stated that he would not adduce any defence witnesses nor submit any document in support of his defence.

The learned Judge of the Special Tribunal after scrutinizing oral and documentary evidence led by the prosecution in support of the charge framed against the accused-appellant passed the impugned Judgment and order of conviction and sentence against the accused appellant.

Being aggrieved by and dissatisfied with the Judgment and Order of conviction and sentence passed by the Trial Court, the appellant preferred the instant Criminal Appeal.

Mr. Mohammad Hossain, the learned Advocate on behalf of the appellant submits that, the learned Judge of the Tribunal erred in law in not arriving at a conclusive findings and decision as because the appellant was not found to have been bringing the article seized in to Bangladesh from any other country. He further submits that the learned trial court erred in law in affirming the Judgment and order of conviction and sentence without taking into account the actual facts and circumstances of the case. At one stage of his argument, learned Advocate submits that since the offence alleged to have been committed by the appellant falls within the purview of section 25B(2) of the Special Power Act, 1974 and since the minimum punishment of such offence is only one year and since the accused appellant suffered more than one year, this appeal may be disposed of imposing minimum punishment of one year which have already been served out by the accused appellant and in that case, he would not press on merit of this long pending appeal where valuation of incriminating articles including the boat belonging to the appellant is Tk.1,11,210/- only.

On the other hand Mr. Bibhuti Bhuson Biswas, with Mr. Md. Abdul Bari, Assistant Attorney General on behalf of the state submits that the learned Trial Court after evaluating the prosecution evidence, correctly arrived at the decision that the accused-appellant was guilty of the charge framed against him and rightly convicted and sentenced him by the impugned judgment and order of conviction.

In view of the above submission of the learned Advocate for both the sides, I have perused the record of the case and all other relevant papers lying therewith. It appears that the seized articles were recovered from the possession of the convict appellant. It was not recovered at the time when he was bringing such articles of Indian origin in to Bangladesh. As per seizure list it appears that all the incriminating articles except the boat of the appellant are saleable goods in the open market. In that view of the matter, I find substance in the submission of the learned Advocate for the convict appellant that even if it is considered that the convict appellant had committed the offence, it does not come within the purview of section 25B(1)(b), but 25B(2) of the Special Power Act, 1974.

On perusal of the lower Court's record, it is seen that the convict appellant was arrested on 20.06.1996 and obtained bail on 20.10.1997 long one year four months after the date of arrest. Subsequently he was again sent to custody on the date of passing impugned judgment on 31.08.2000 and obtained bail on 18.10.2000 after preferring this appeal. As such, considering the nature of offence as well as long 20 years pendency of this case and about one year 6(six) months custody period of the convict appellant, I think ends of Justice would be met best if the impugned order of conviction and sentence is altered and the accused appellant is convicted under section 25B(2) instead of section 25B(1)(b) of the Special Power Act, 1974 reducing the sentence to one year with a fine of Taka 5000/- in default to suffer imprisonment for one month which have already been served out by the convict appellant in connection with this case.

In view of the discussion made above and considering the facts and circumstances of the case, this Criminal Appeal may be allowed in part.

**In the result, the Appeal is allowed in part.** The impugned order of conviction and sentence dated 31.08.2000

passed by the learned Judge of Special Tribunal No. 06, Satkhira in S.T. Case No. 365 of 1996 is altered and appellant is convicted under section 25B(2) of the special power Act, 1974 in view of the observation embodied hereinbefore and accordingly, his sentence of imprisonment for three years with a fine of taka 20,000/- is reduced to one year with a fine of Taka 5000/- in default to suffer imprisonment for one month which has already been served out by the accused appellant in connection with the proceedings of this case. The trial Court will not issue any conviction warrant against the convict appellant particularly in respect of this case.

Send down the L.C.R. along with a copy of this judgment to the concerned Court at once for information and necessary action.