

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Appeal No. 2645 of 2017**

Md. Raihan

.....Convict-appellant.

-Versus-

The State

.....Respondent.

Mr. Mr. Sofiullah Haider, Advocate

.....For the appellant.

Ms. Shahida Khatoon, D.A.G with  
Ms. Sabina Perven, A.A.G with  
Ms. Kohenoor Akter, A.A.G.

.... For the respondent.

**Heard on 13.02.2024, 15.02.2024 and**  
**Judgment on 18.02.2024**

**Sheikh Abdul Awal, J:**

This Criminal Appeal at the instance of convict appellant, Md. Raihan is directed against the judgment and order of conviction and sentence dated 09.01.2017 passed by the learned Metropolitan Sessions Judge, Chattogram in Sessions Trial Case No. 2842 of 2014 arising out of G.R No. 184 of 2014 corresponding to Bakalia Police Station Case No. 45 dated 28.05.2014

convicting the accused-appellant under table 9(Kha) of section 19(1) of the Madak Drobya Niyontron Ain, 1990 and sentencing him thereunder to suffer rigorous imprisonment for a period of 6(six) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for a period 02 (two) months more.

The prosecution case, in brief, is that one, Md. Kamal Hossain Khan, Assistant Sub-Inspector, Bakalia Police Station, Chattogram as informant on 28.05.2014 at about 08:20 hours lodged an Ejahar with Bakalia Police Station against the accused appellant under table 9(Kha) of section 19(1) of the Madak Drobya Niyontron Ain, 1990 stating, inter-alia, that on the basis of a secret information the informant along with a contingent of police rushed to near about fruits shop in front of Sajeda market under Bakalia Police Station while the accused person sensing the presence of police tried to run away and thereafter, the police team on chase apprehended the convict-appellant and recovered total 800 yaba tablets from his left jeans pant pocket kept in 2 white polythine bags, which valued at Tk. 2,80,000/= and thereafter, the informant party seized those yaba tablets by preparing seizure list in presence of local witnesses.

Upon the aforesaid First Information Report, Bakalia Police Station Case No. 45 dated 28.05.2014 under table 9(Kha) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 was started.

During investigation of the case police visited the place of occurrence, prepared sketch-map, recorded statements of the witnesses under section 161 Cr.P.C. and found prima-facie case against the accused appellant and accordingly submitted charge sheet being charge sheet No. 185 dated 26.06.2014 under table 9(Kha) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 against the accused-appellant.

Thereafter, in usual course the case record was sent to the Court of learned Metropolitan Sessions Judge, Chattogram, wherein it was registered as Sessions Case No. 2842 of 2014. Ultimately, the accused-appellant was put on trial before the learned Metropolitan Sessions Judge, Chattogram to answer a charge under table 9(Kha) to section 19(1) of the Madak Drobbya Niyontron Ain, 1990 to which the accused-appellant pleaded not guilty and claimed to be tried stating that he has been falsely implicated in this case.

At the trial the prosecution side has examined in all 09(nine) witnesses to prove its case, while the defence examined none.

On conclusion of trial, the learned Metropolitan Sessions Judge, Chattogram by the impugned judgment and order dated 09.01.2017 found the accused-appellant guilty under table 9(Kha) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 6(six) years and to pay a fine of Tk. 5,000/- (five thousand) in default to suffer simple imprisonment for 02(two) months more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 09.01.2017, the accused-appellants preferred this criminal appeal.

Mr. Sofiullah Haider, the learned Advocate appearing for the convict-appellant in the course of argument takes me through the F.I.R, charge sheet, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence dated 09.01.2017 and then submits that at the time of occurrence the convict-appellant was a student of Narsingdi college, who went

to Cox's Bazar with his friends and became victim of circumstance, in-fact, he is not a yaba paddler and no incriminating yaba tablets were recovered from the direct possession and control of the accused-appellant. He next submits that in this case seizure list witnesses namely, PW-6 and PW-7 stated nothing in their respective evidence as to recovery of yaba tablets from the possession and control of the convict-appellant and rest witnesses, namely PW-1, PW-2, PW-3, PW-4, PW-5, PW-8 and PW-9 all are police witnesses, who inconsistently deposed before the trial Court as to recovery of yaba tablets from the possession of the convict-appellant although the trial Court below without considering all these material aspects of the case mechanically passed the impugned judgment and order of conviction and sentence dated 09.01.2017 against the appellant, which is liable to be set-aside.

Ms. Shahida Khatoon, the learned Deputy Attorney-General, on the other hand, supports the impugned judgment and order of conviction and sentence, which was according to her just, correct and proper. She submits that in this case the prosecution side examined in all 9 witnesses and all of them categorically testified that 800 yaba tablets were recovered from the possession and control of the convict-appellant and thus,

the learned Metropolitan Sessions Judge, Chattogram justly found that the accused-appellants guilty under table 9(Kha) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 6(six) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for 02(two) months more.

Having heard the learned Advocate and the learned Deputy Attorney General, perused the memo of appeal, the First Information Report, charge sheet, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence dated 09.01.2017. Now, the only question that calls for our consideration in this appeal is whether the trial Court committed any error in finding the accused- appellant guilty of the offence under table 9(Kha) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990.

On scrutiny of the record, it appears that the prosecution to prove its case examined in all 9 (nine) witnesses out of which PW-1, informant, A.S.I. Md. Kamal Hossain Khan stated in his deposition that on the basis of a secret information he along with other police forces rushed to the place of occurrence, that is, in-front

of Sajeda market and on chase apprehended the convict-appellant and on search recovered total 800 yaba tablets from his left bags of jeans pant which kept in 2 white polythine packets. In cross examination the defendant side could not able to discover anything as to the credibility of the witness on the matter to which he testifies and other witnesses namely, PW-2, PW-3, PW-4, PW-5, PW-8 and PW-9 in their respective evidence corroborated the evidence of PW-1 in respect of all material particulars. It further appears that seizure list witnesses namely, PW-6 and PW-7 in their respective evidence stated that they came to know that police seized total  $(400+400) = 800$  yaba tablets, who proved the seizure list as “Ext.-4/1 and 4/2” respectively.

On going through the evidence of PWs, it appears that all the prosecution witnesses namely PW-1, PW-2, PW-3, PW-4, PW-5, PW-8 and PW-9 proved the prosecution case as to the time, place and manner of occurrence and thus the prosecution proved the guilt of the accused petitioner beyond reasonable doubt. In the facts and circumstances of the case and the evidence on record, I find no reason to disbelieve the evidence of police witnesses.

On perusal of impugned judgment, I find no flaw in the reasonings of the trial court or any ground to assail the impugned Judgment. The learned Judge of the trial court appears to have considered all the material aspects of the case and justly passed the judgment and order of conviction and sentence dated 09.01.2017, I find no reason to interfere therewith.

However, at the end of the day, Mr. Mr. Sofiullah Haider the learned Advocate for the convict appellant after referring the decisions reported in 7 BLC 533 and III ADC (AD) 343 refers table 9(Ka) and 9(kha) of section 19 of the Madak Drobbya Niyontron Ain, 1990 and thereafter, submits that in order to maintain impugned conviction and sentence under table 9(Ka) of section 19 of the Madak Drobbya Niyontron Ain, 1990 it is essential for the prosecution to prove possession of more than 5 grams of methamphetamine but in the light of the decision reported 7 BLC 533 a single tablet contains only 5.1 mg methamphetamine and in this way allegedly 800 yaba tablets were recovered in this case which contain below than 5 grams methamphetamine and so, according to the learned Advocate, the prosecution has failed to prove recovery of more than 5 grams of methamphetamine from the possession of the appellant and in such view, the impugned order of



conviction and sentence under table 9(Kha) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 cannot stand in the eye of law.

I have studied both the decisions reported in 7 BLC 533 and III ADC (AD) 343 together with table 9(Ka) and 9(Kha) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 to the best of my ability and find a slight variation or mistake in the measurement of quantum of narcotics that would be fatal in order to determine the sentence of the accused and thus determination of quantum of narcotics is very much essential. For the different quantum of the Narcotics, the law prescribes different punishment.

In this case the informant without any scientific measurement mere on presumption stated in the FIR weight of the narcotics 80 grams which is not correct inasmuch as in the cited decision it has been held that according to chemical analysis a single tablet contains only 5.1 mg methamphetamine, near about 1000 pieces of yaba tablet will contain 5 grams of methamphetamine and will therefore, come under Table 9(Ka) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 and in that view of the matter in this case allegedly 800 yaba tablets were recovered which contains below 5 grams amphetamine and the same will constitute an offence

under Table 9(Ka) of section 19(1) of the Narcotics Control Act, 1990 and as such in this case the trial court below committed wrong in holding that the accused-appellant guilty under Table 9(Kha) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 instead of under Table 9(Ka) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 wherein the minimum sentence is 6 months and maximum sentence is 3 years.

Finally, the learned Advocate further submits that the accused-appellant has already suffered the agony of protracted trial, spanning over a period of six years. Appellant was 18 years of age at the time of occurrence and further that he has already undergone sentence for a period of more than 6 months (pre and post trial) and therefore in these circumstances appellant's sentence may be reduced to the period already undergone otherwise the appellant's future career will be ruined.

Learned Deputy Attorney General has, of course, been able to defend this case on merits but practically has nothing to say insofar as reduction of sentence imposed upon the appellant is concerned.

Now, let me examined the relevant provisions of law in this regard. In this connection table 9(Ka) and

9(Kha) of section 19 of the Madak Drobbya Niyontron Ain, 1990 reads as follows:

৯	ফেনসাইক্লিআইন, মেথাকোয়াল, এল,এস,ডি, বারবিরেটস, এ্যামফিটামিন অথবা এইগুলির যে কোনটি দ্বারা প্রস্তুত মাদকদ্রব্য	(ক) মাদক দ্রব্যের পরিমাণ অনুর্ধ্ব ৫ গ্রাম হইলে অনূ্যন ৬ মাস এবং অনুর্ধ্ব ৩ বৎসর কারাদন্ড।
		(খ) মাদক দ্রব্যের পরিমাণ ৫ গ্রামের উর্ধ্ব হইলে অনূ্যন ৫ বৎসর এবং অনুর্ধ্ব ১৫ বৎসর কারাদন্ড।

From the above, it appears that sentence of table 9(Ka) of section 19 of the Madak Drobbya Niyontron Ain, 1990 is minimum 6 months and maximum sentence is 3 years.

Now, let me see the cited decision reported in 7 BLC 593 for having a better view of the dispute in question, wherein it has been held as follows:

“In order to determine the sentence of the accused, determination of quantum of narcotics is very much essential. For the different quantum of the Narcotics, the law prescribes different punishment. To sustain a charge under the table as prescribed by section 19(1) of the Narcotics Control Act, the correct ascertainment of the quantum of the Narcotics is an essential factor. Under Table 9, if the

quantum of the narcotics in question (here methamphetamine) is found to be upto 5 grams the sentence will range from 6 months to 3 years but in case of even a smaller fraction above 5 grams, the sentence will range from 5 years to 15 years. Since a slight variation or mistake in the measurement may lead to greater punishment, it is necessary that the actual and real quantity of the Narcotics in question be ascertained accurately and the law interpreted carefully and strictly. Any reasonable doubt on this score must go to the benefit of the accused.

According to the chemical analysis report, as quoted above since a single tablet contains only 5.1 mg methamphetamine, near about 1000 pieces of Yaba Tablet will contain 5 grams of methamphetamine and will therefore, and come under Table 9 (Ka) of section 19(1) of the Narcotics Control Act. More than 1000 pieces of Yaba Tablet containing above 5 grams of methamphetamine will constitute an offence under Table 9(Kha) of section 19(1) of the said Act. In any sense, before awarding conviction anti sentence of any accused for possessing Yaba it is very essential to get an actual measurement of the quantum of methamphetamine that was seized or recovered from the office of the Department of Narcotics Control Laboratory”.

From the above quoted decision, it appears that according to chemical analysis report a single tablet contains only 5.1 mg methamphetamine/ Narcotics. In that view of the matter in this case police has allegedly been seized 800 yaba tablets which containing/ concerning below 5 grams of methamphetamine/ Narcotics and the same falls under table 9(Ka) of section 19 of the Madak Drobbya Niyontron Ain, 1990 in which highest sentence is 3 years and minimum sentence is 6 months as stated above. Besides, it is also

found that in this case no witnesses including chemical examiner stated anything as to the exact weight of methamphetamine /Narcotics.

In the case of Md. Ashraful Islam Vs The State III ADC (AD) 343, it has been held as follows:

“it is essential for the prosecution to prove possession of more than 25 grams of heroine. But, according to him, in the instant case there is no evidence of possession of more than 25 grams of heroin from the petitioner. Referring to the report of the chemical Examination No. 1671/1758 dated 12.09.1991 submitted by Assistant Chemical Examiner he submits that it appears from the said report that only 500 milligram of heroine was received by the Examiner for the examination which has allegedly been found to be heroine and so, according to the learned Advocate, the prosecution has failed to prove recovery of more than 25 grams of heroin from the possession of the petitioner and in such view, the impugned conviction and sentence cannot stand in the eye of law.

The submissions merit consideration.

Leave is, therefore, granted to consider the ground that the trial Court and the High court Division failed to consider that unless the quantity of hereon in question is ascertained by a report by chemical examiner the conviction under section 19(1) of Table 1(kha) of Narcotics Control Act, 1990 is not sustainable in law and as such it is liable to be set aside”.

Considering all these aspects of the case vis-a-vis principle laid down in the cited decisions reported in 7

BLC 533 and III ADC (AD) 343, I think, the ends of justice will be met in the facts and circumstances of the case, if the sentence of fine of the accused-appellant is maintained and the substantive sentence is reduced to the period already undergone, as prayed for.

In the result, therefore, the appeal is disposed of with modification of sentence. While maintaining the conviction of the accused-appellant, his sentence is reduced to the period already undergone by him. The sentence of fine is, however, maintained. The accused appellant may be discharged from his bail bond on payment of fine amounting to Taka 5,000/- (five thousand) in accordance with law.

Send down the lower Court records at once.