

Present
Justice Sk. Tahsin Ali

Criminal Appeal No. 3625 of 2017

Abdullah Al Noman
Convict-Appellant

-Versus-

The State

----- Respondent

Mr. Mohammed Zafar Alam, Advocate

.... for the convict-appellant

Mr. Md. Mizanur Rahman, DAG with

Mr. Md. Ahidul Islam, AAG

Mr. Abdullahil Maruf Fahim, AAG

Ms. Nasima Khatun, AAG

----- For the State

**Heard on: 05.05.2026, 06.05.2026,
 07.05.2026, 11.05.2026, 18.05.2026, 08.06.2026
 and**

Judgment on: 09.06.2026

This appeal was directed against the judgment and order of conviction and sentence dated 23.03.2017 passed by the learned Additional Metropolitan Session Judge, 5th Court, Chattogram in Sessions Case No. 1602 of 2013 arising out of Kotwali Police Station Case No. 06 dated 03.09.2012 corresponding to G.R. No. 1075 of 2012 convicting the appellant under Clause 9(Kha) of Section 19(1) of the Madok Drabba Niyatron Ain, 1990 and sentencing him to suffer rigorous imprisonment for a period of 6(six) years and also pay of fine of Tk. 3,000/- (three thousand)

in default to suffer simple imprisonment for 3(three) months more.

The prosecution case, in short is that one Zakir Hossain, Inspector of Madak Drabba Niyatron Adhidaptar, Chittagong Metro Upa area, Chittagong as informant lodged First Information Report (FIR) with Kotwali Police Station against the appellant alleging inter alia that on 03.09.2012 informant got secret information, he formed a raiding team and confined the appellant when the appellant came towards at in front Modern Saj Jewelers then searched the body in presence of witnesses and recovered the alleged incriminating articles from his wearing pant pocket and thereafter prepared seizure list in presence of witnesses. Hence, the case.

After investigation the investigating officer submitted charge sheet being No. 583 dated 14.10.2012 against the appellants under Table 9(Kha) of Section 19(1) of the Madok Drabba Niyatron Ain, 1990. The convict-appellant was arrested on 03.09.2012 by the police. Thereafter, the convict-appellant obtain bail bay this Hon'ble Court on 10.12.2012. The learned trial court has been framed charges against the accused. On 23.03.2017 the learned Additional Metropolitan Sessions Judge,

5th Court, Chattogram delivered judgment and convicting the appellant under Table 9(Kha) of Section 19(1) of the Madok drabba Ninyantron Ain, 1990 and sentencing him to suffer rigorous imprisonment for a period of 6(five) years and pay a fine of Tk. 3,000/- (three thousand) in default to suffer simple imprisonment for 3(three) months more.

Being aggrieved and dissatisfied with the judgment and order dated 23.03.2017 the convict-appellant preferred this appeal.

On 09.04.2017 the convict-appellant enlarged on bail by this Hon'ble court in Criminal Appeal No. 3453 of 2017 for a period of 6(six) months. On 02.09.2019 the earlier bail order was extended till disposal of the Rule. The Lower Court Records (L.C.R) was attached with this appeal on 04.05.2026.

Mr. Mohammed Zafar Alam, learned Advocate appearing on behalf of the convict-appellant while Mr. Md. Mizanur Rahman, DAG with Mr. Md. Ahidul Islam, AAG, Mr. Abdullahil Maruf Fahim, AAG, Ms. Nasima Khatun, Assistant Attorney General appeared on behalf of the state.

Mr. Mohammed Zafar Alam, learned advocate appearing on behalf of the convict-appellant submits that the trial court

found the convict-appellant guilty under Table 9(Kha) of Section 19(1) of the Madok Drabba Niyatron Ain, 1990 and sentenced him to suffer rigorous imprisonment for a period of 6(six) years. He further submits that the convict-appellant remained in custody during the trial and after trial in jail near about 4(four) months, though the learned advocate for the convict-appellant did not go into merit of the case. In support of his submission, he cites some decisions, in the case of Syed Kaisarul Islam Vs. State reported in 12 BLC (2007) page 420, in the case of Moshfiqul Islam Vs. State reported in 6 BLC (2001) page-705 and a decision of this Division Nadia Akter Rimi Vs. The State passed the Judgment dated 06.03.2024 in Criminal Appeal No. 4307 of 2018. Learned advocate for the convict-appellant further submits that the relevant portion made in Paragraph No. 9 of the judgment in Nadia Akter Rimi Vs. The State is reproduced below:

“Admittedly the accused-appellant is not owner of the house in question (place of occurrence) and at the time of occurrence she was aged about 18 years although the prosecution miserably failed to produce

any witnesses of the rented house and it is on record that in this case no independent witnesses were examined to prove the search and recovery of phensidyl syrups but the trial court below without considering all these aspects of the case most illegally passed the impugned judgment and order of conviction and sentence against the appellant, which is liable to be set-aside.”

Another relevant paragraph No. 18 in the said case is reproduced below:

“The proposition of law is by now well settled that the search and seizure of incriminating articles must be held strictly in complying with the requirement of Section 103 of the Code of Criminal Procedure otherwise search and seizure cannot be held legal. This principle of law is applicable in the instant case inasmuch as no local and

private witnesses supported the alleged recovery and seizure. I have already noticed that in this case no independent witnesses specially no one of the alleged place of occurrence has been examined by the prosecution without reasonable explanation which raises a presumption under Section 114(g) of the Evidence Act against the prosecution to the effect that had they been examined, they would not support the prosecution case.”

Learned advocate for the convict-appellant further contends that in view of Sections 103 of the Code of Criminal Procedure and 114(g) of the Evidence Act, the burden of proving the case lies upon the prosecution. In support of his submission, he has referred to some reported decisions, including the judgment of the Appellate Division, in the case of *The State Vs. Asif Khan Riyad and another*, reported in 7 ALR (AD) 2016(1) page-8. He draws kind attention of this court to the footnote of the said judgment, which is reproduced below:

“Seizure list witnesses were not examined as such alleged recovery of seized ammunitions from the possession of the accused-appellant not proved.”

Mr. Md. Mizanur Rahman, learned Deputy Attorney General appearing on behalf of the state, opposes the appeal. In support of his submission he relied another judgment cited by the learned Trial Court in the case of Tuta Pramanik Vs. State 59DLR page-492, which is reproduced below:

“Even if the independent witnesses and the seizure list witnesses do not support the prosecution case conviction can be given relying upon the evidence of police witnesses if it inspires confidence or worthy of credit.”

Heard the learned advocate for the convict-appellant and the learned Deputy Attorney General for the state and perused the Appellate Division Judgment cited by the learned advocate for the convict-appellant. Having considered the submissions of

the learned advocate and settled principle of law by the Hon'ble Appellate Division, I am of the considered view that the Justice would be best served if the appeal is allowed.

Considering the above facts and circumstances of the case, I am inclined to allow the appeal.

In the result, the appeal is allowed and the judgment and order of conviction and sentence dated 23.03.2017 passed by the learned Additional Metropolitan Sessions Judge, 5th Court, Chattogram in Sessions Case No. 1602 of 2013 is hereby set-aside.

Send down the Lower Courts Record.

Communicate the judgment and order at once.

Shokat (B.O.)