

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 4772 of 2018

Md. Moshiur Rahman and another
.....Convict-appellants.

-Versus-

The State
.....Respondent.

Mr. Md. Nazmul Hussain for

Mr. Rashedul haque, Advocate

.....For the convict- appellants.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

.... For the respondent.

Heard and Judgment on 20.02.2024.

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellant Nos.1. Md. Moshiur Rahman and 2. Md. Moin Uddin is directed against the judgment and order of conviction and sentence dated 18.04.2018 passed by the learned Judge, Special Tribunal No. 2, Thakurgaon in Special Tribunal Case No. 191 of 2013 arising out of G.R. No. 281 of 2013 (Thakurgaon) corresponding to Thakurgaon Sadar Police Station Case No. 21 dated 15.04.2013 convicting the appellants under Section 25B(2) of the Special Powers Act, 1974 and sentencing

them thereunder to suffer rigorous imprisonment for a period of 05(five) years and to pay fine of Tk. 3,000/ (three thousand) in default to suffer simple imprisonment for 3(three) months more each.

The prosecution case, in short, is that one, Ranju Ahmed, S.I. D.B. Thakurgaon as informant on 15.04.2013 at about 22:45 hours lodged an Ejahar with Thakurgaon Sadar Police Station against the convict appellants stating, inter-alia, that while informant along with other police forces were on special duty as per G.D. No. 102 dated 15.04.2013 for recovery of drugs and then the informant party at 20.15 hours got a secret information that two accused persons were bringing drugs by Motorcycle and thereafter, informant party at about 20:35 hours apprehended the accused persons along with their Motorcycle and on search, recovered total 50 bottles of Indian made Phensedyl syrups, which valued at Tk. 25,000/-(twenty five thousand). Thereafter police seized those Phensedyls by preparing seizure list in presence of local witnesses.

Upon the aforesaid First Information Report, Thakurgaon Sadar Police Station Case No. 21 dated 15.04.2013 under Section 25B(2) of the Special Powers Act, 1974 was started against the accused appellants

Police after completion of usual investigation submitted charge sheet No. 175 dated 30.05.2013 under Section 25B(2) of the Special Powers Act, 1974 against the accused-appellants. Ultimately, the accused appellants were put on trial before the learned Judge, Special Tribunal No. 2, Thakurgaon in Special Tribunal Case No. 191 of 2013 in which the accused-appellants pleaded not guilty and claimed to be tried stating that they have been falsely implicated in the case.

At the trial, the prosecution examined in all 8(eight) witnesses and also exhibited some documents to prove its case, while the defence examined none. The defence case, from the trend of cross-examination of the prosecution witnesses and examination of the accused-appellants under section 342 of the Code of Criminal Procedure appeared to be that the accused-appellants were innocent and they have been falsely implicated in the case.

On conclusion of trial, the learned Judge, Special Tribunal No. 2, Thakurgaon by the impugned judgment and order dated 18.04.2018 found the accused-appellants guilty under Section 25B(2) of the Special Powers Act, 1974 and sentenced them thereunder to suffer rigorous imprisonment for a period of 05(five) years and to pay

fine of Tk. 3,000/ (three thousand) in default to suffer simple imprisonment for 3(three) months more each.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 18.04.2018, the accused-appellants preferred this criminal appeal.

Mr. Md. Nazmul Hussain, the learned Advocate appearing for the convict appellants submits that in this case prosecution side examined in all 8 witnesses out of which only seizure list witnesses namely PW-5 was declared hostile and rest police witnesses inconsistently deposed before the trial court as to recovery of the phensedyls in question although the learned Judge, Special Tribunal No. 2, Thakurgaon without properly considering the evidence and materials on record most illegally found the accused appellants guilty for the offence under Section 25B(2) of the Special Powers Act, 1974 and sentenced them thereunder to suffer rigorous imprisonment for a period of 05(five) years and to pay fine of Tk. 3,000/ (three thousand) in default to suffer simple imprisonment for 3(three) months more each which is liable to be set-aside.

Ms. Kohenoor Akter, the learned Assistant Attorney General, on the other hand, supports the

impugned judgment and order of conviction, which was according to her just, correct and proper. She submits that in this case prosecution examined in all 8 witnesses out of which PW-5 declared hostile and rest police witnesses in one voice testified that accused appellants were apprehended along with 50 bottles of Indian made Phensedyl syrups.

Having heard the learned counsel for the parties and having gone through the materials on record, the only question that calls for my consideration in this appeal is whether the learned tribunal judge committed any error in finding the accused-appellants guilty of the offence under Section 25B(2) of the Special Powers Act, 1974.

On scrutiny of the record, it that appears that one, Ranju Ahmed, S.I. D.B. Thakurgaon as informant on 15.04.2013 at about 22:45 hours lodged an Ejahar with Thakurgaon Sadar Police Station against the convict appellants stating, inter-alia, that the informant along with other police personnel on the basis of a secret information apprehended the accused persons along with their Motorcycle and on search, recovered total 50 bottles of Indian made Phensedyl syrups, which valued at Tk. 25,000/-(twenty five thousand). Thereafter, police

seized those Phensedyls by preparing seizure list in presence of local witnesses. Police after completion of investigation submitted charge sheet under Section 25B(2) of the Special Powers Act, 1974 against the accused appellants. It further appears that at the time of trial the prosecution examined in all 8 witnesses out of which PW-1, Ranju Ahmed, stated in his deposition that on the basis of a secret information the informant along with other police forces apprehended the accused appellants from near about Raju rice mill at about 20:35 hours along with their motorcycle and on such recovered total 50 bottles of phensedyl which kept in a Ghani bag and police prepared seizure list in presence of witnesses. This witness proved the seizure list as exhibit-1 and his signature thereon as exhibit-1/1. This witness also proved the FIR as exhibit-2 and his signature thereon as exhibit 2/1 and also identified the accused appellants on doc. This witness also identified the seized phensedyls in Court as material exhibit. PW-2, Constable, Md. Shofiullah Mahmud and PW-3, constable, Md. Riazul Islam, both of them in their respective testimony corroborated the evidence of PW-1 in respect of all material particulars. PW-4, constable, Md. Jashim Uddin, was tendered. PW-5, Md. Nazrul Islam, stated in his deposition that-“ঘটনার তারিখ মনে নাই। প্রায় ০২ বছর আগের

ঘটনা। ঘটনা হরিনাবায়নপুর দিঘিডাঙ্গী ভোলার হাট মোড় হতে ১০০ গজ পশ্চিমে পাঁকা রাস্তায় ঘটনা। ০২ জনকে দেখি, পুলিশ জব্দ তালিকা প্রস্তুত করেন। আমি স্বেচ্ছায় স্বাক্ষর করি। এইটি আমার স্বাক্ষর। প্রদর্শনী-১/৩”

This witness in his cross-examination stated that-“সাদা কাগজে স্বাক্ষর দেন। ঘটনা জানিনা।” PW-6, Mohammad Nur Islam, stated in his deposition that- “১৫/৪/১৩ইং তারিখে রাত ২০.৩৫ টায় ঘটনা। হরিনারায়ন পুর দিঘি ডাংঙ্গী মৌজাস্থ ভোলার হাট মোড় হতে অনুমান ১০০ গজ পশ্চিমে পাকা রাস্তার উপর ঘটনা। ০২ জন আসামী মটর সাইকেলে করে আসতে ছিল। তখন পুলিশ তাদেরকে আটক করে এবং তাদের নিকট ৫০ বোতল ফেসিডিল উদ্ধার করেন। মোবাইল পান পুলিশ। আসামীদ্বয়ের নাম মোঃ মশিউর ও মাইনউদ্দিন। তারা ডকে আছে। চিনি তাদেরকে। (সনাক্ত) সাক্ষীদের সম্মুখে পুলিশ জব্দ তালিকা তৈরী করেন এবং স্বাক্ষর নেন। অদ্য আদালতে জব্দকৃত ফেসিডিল আছে।” PW-7, S.I. Md. Abdul Malek, investigating officer, who in his deposition stated that during investigation he examined the witnesses under section 161 of the Code of the Criminal Procedure. This witness identified the accused persons on doc. PW-8, Md. Ranju Ahmed, 2nd Investigating Officer, who deposed that during investigation he examined the witnesses under section 161 of the Code of Criminal Procedure and visited the place of occurrence. This witness also stated that sketch map prepared by earlier investigating officer, he submitted charge sheet against the accused appellants being charge sheet No. 175 dated 30.05.2013 under

Section 25B(2) of the Special Powers Act, 1974. The defence cross-examined the PWs but failed to find out any contradictions in the evidence of PWs.

On an analysis of the above quoted evidence, it appears that all the police witnesses including local witness namely PW-6 in their respective evidence categorically stated that accused appellants were apprehended on 15.04.2013 and police on search, recovered total 50 bottles phensedyl syrups from the exclusive position of the accused persons. It further appears that the learned Judge, Special Tribunal No. 2, Thakurgaon on due consideration of the entire evidence and materials on record found the accused appellants guilty under Section 25B (2) of the Special Powers Act, 1974 and sentenced them thereunder to suffer rigorous imprisonment for a period of 05(five) years and to pay fine of Tk. 3,000/ (three thousand) in default to suffer simple imprisonment for 3(three) months more each.

It is found that public witness namely PW-5 was declared hostile by the prosecution although it appears from his evidence that he deposed the manner of occurrence as stated above. In the facts and circumstances, I find no reason to discard the evidence of police witnesses. The evidence of police witnesses

cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case.

On scrutiny of the evidence on record, it is found that PW-1, PW-2, PW-3, PW-6, PW-7, PW-8 who were eye witness of the occurrence, they proved the prosecution case as to the time, place and manner of occurrence and thus the prosecution proved the guilt of the accused appellants beyond reasonable doubt.

On a close perusal of the impugned judgment, I find no flaw in the reasonings of the learned Judge, Special Tribunal No.2, Thakurgaon or any ground to assail the same. Impugned judgment and order of conviction appears to be well founded in law and fact.

However, considering all the aspects of the case as revealed from the materials on record particularly the fact that the convict appellants have already faced the agony of the protracted prosecution and suffered mental harassment for a long period and also having suffered their sentence to some extent (pre and post trial), I think, ends of justice will be met, if their sentence is reduced to the period of 1 (one) year in place of 5(five) years.

In the result, the appeal is dismissed. The period of sentence of the convict appellants is reduced to the

period of 1 year in place of 5 (five) years. Sentence of fine is maintained.

The convict-appellant Nos. 1. Md. Moshiur Rahman and 2. Md. Moin Uddin are directed to surrender their bail bond within 3 (three) months from today to suffer their sentence in accordance with law, failing which the trial Court shall take necessary steps against the convict-appellant Nos. 1. Md. Moshiur Rahman and 2. Md. Moin Uddin to their secure arrest.

Send down the lower Court records at once.