

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 5213 of 2018

Md. Borkat Ali Biswas

.....Convict-appellant.

-Versus-

The State

.....Respondent.

Mr. Md. Fazlur Rahman, Advocate

.....For the convict- appellant.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

.... For the respondent.

Judgment on 04.06.2024.

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellant, Md. Borkat Ali Biswas is directed against the judgment and order of conviction and sentence dated 07.02.2018 passed by the learned Additional Sessions Judge, 2nd Court, Faridpur in Sessions case No. 253 of 2012 arising out of G.R. No. 33 of 2012 corresponding to Boalmari Police Station Case No. 14 dated 27.02.2012 convicting the accused appellant and another under table 3(ka) of Section 19(1) and 19(4) of the Madok Drobbya Niyatron Ain, 1990 and sentencing them thereunder to suffer rigorous

imprisonment for a period of 03(three) years and to pay fine of Tk. 5,000 (five thousand) in default to suffer rigorous imprisonment for 3(three) months more.

The prosecution case, in short, is that one, Md. Zakir Hosen, A.S.I. as informant on 27.02.2012 at about 12.40 hours lodged an Ejahar with Boalmari Police Station against the convict appellant and another stating, inter-alia, that on 27.02.2012 while the informant under the leadership of PSI, Mahmud Hossen and others were on special duty at Moyna Union Prishaed area got a secret information that 2 accused were crossing Boalmari Alengkhali Ghatper through a red motorcycle along with Indian phensedyls for the purpose of sale and then police team rushed at eastern side of Satoir Alengkhali pacca road in front of the house of Abdur Rashid@ Roshu Member under Boalmari Police Station and accordingly at 9.10 hours police team apprehended the accused persons and on search, recovered 24 bottles of phensedyl syrup from the accused, Barkat Ali Biswas and 22 bottles of phensedyl syrup from the accused, Md. Alamgir Hossen in presence of witnesses and thereafter, informant party seized those phensedyl syrups by preparing seizure list in presence of witnesses.

Upon the aforesaid First Information Report, Boalmari Police Station Case No. 14 dated 27.02.2012 under table 3(kha) of Section 19(1) of the Madok Drobbya Niyatron

Ain, 1990 was started against the accused appellant and another.

Police after completion of usual investigation submitted charge sheet against the accused-appellant and another, vide charge sheet No. 38 dated 28.03.2012 under table 3(Kha) of Section 19(1) of the Madok Drabbya Niyontron Ain, 1990. Ultimately, the accused appellant and another were put on trial before the learned Additional Sessions Judge, 2nd Court, Faridpur to answer a charge under table 3(Kha) of Section 19(1) of the Madok Drabbya 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 and the trial was held in absentia against another accused, Md. Alamgir Hossen as he was absconding.

At the trial, the prosecution examined in all 5(five) witnesses and also exhibited some documents to prove its case, while the defence examined none.

On conclusion of trial, the learned Additional Sessions Judge, 2nd Court, Faridpur by the impugned judgment and order dated 07.02.2018 found the accused-appellant and another guilty under table 3(ka) of Section 19(1) and 19(4) of the Madok Drobbya Niyatron Ain, 1990 and sentenced them thereunder to suffer rigorous imprisonment for a period of 03(three) years and to pay fine of Tk. 5,000(five

thousand) in default to suffer rigorous imprisonment for 3(three) months more each.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 07.02.2018, the accused-appellant preferred this criminal appeal.

Mr. Mr. Md. Fazlur Rahman, the learned Advocate, appearing for the convict-appellant submits that long back the tadbirker of the case took back the file of the case in taking no objection certificate and thus, he is not in a position to do the case.

Ms. Shahida Khatoon, the learned Deputy Attorney General, on the other hand, supports the impugned judgment which was according to him just, correct and proper. She submits that in this case the accused appellant and another were caught red handed with 24+22 =46 bottles of Indian Phensedyl and police prepared seizure list in presence of witnesses and during trial and prosecution witnesses namely PW-1, PW-2, PW-3, PW-5 categorically stated that accused appellant and another were apprehended with phensedyls and they proved the prosecution case as to time, place and manner of occurrence and therefore, the trial Court below committed no illegality in awarding conviction and sentence to the accused appellant and another under table 3(ka) of Section 19(1) and 19(4) of the Madok Drobya Niyatron Ain, 1990.

Having heard the learned Advocate and the learned Deputy Attorney General, perused the memo of Appeal, F.I.R, Charge sheet, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence. Now, the only question that calls for consideration in this appeal is whether the trial Court committed any error in finding the accused-appellants guilty of the offence under table 3(ka) of Section 19(1) and 19(4) of the Madok Drobya Niyatron Ain, 1990.

On scrutiny of the record, it appears that one, Md. Zakir Hosen, A.S.I. as informant on 27.02.2012 at about 09.30 hours lodged an Ejahar with Boalmari Police Station against the convict appellant and another on the allegation that the accused appellants were apprehended along with 46 bottles phensedyl Syrup. Police after completion of investigation submitted charge sheet against the accused appellant and another under table 3(kha) of Section 19(1) of the Madok Drobya Niyatron Ain, 1990. It further appears that at the time of trial the prosecution examined in all 5 witnesses out of which PW-1, Abdur Rashid, seizure list witnesses stated in his deposition that police apprehended 2 persons with phensedyl Syrups. He proved the seizure list and his signature and also identified total 46 bottles of phensedyl. This witness in his cross-examination stated that “বোতলগুলো আমার সামনে গুনেছিল। আমার স্বাক্ষর একটা সাদা কাগজে নেয়। সেখানে বসে আর কিছু লেখা পড়া হয়নি।” This witness also stated in

his cross-examination that ঐ দিন স্বাক্ষরের পর আমাকে আর থানায় ডাকেনি বা কোন জিজ্ঞাসাবাদ করেনি। আমি মেম্বার, আমাকে সাক্ষ্য মান্য করায় আমি সাক্ষ্য দিচ্ছি” PW-2, A.S.I. Md. Zakir Hossain, informant of the case stated in his deposition stated that on the basis of a secret information on 27.02.2012 at 9.10 hours the informant party apprehended the accused appellant along with motorcycle and on search, recovered total 46 bottles phensedyl from the accused persons. This witness proved the seizure list and his signature thereon as exhibit-1, 1/1 and material exhibit 46 bottles phensedyl as exhibit-I,II and III and proved the F.I.R. and his signature as exhibit-2, 2/1. The accused appellant and another were absconding and thereby the state defence lawyer cross-examined this witness but could not able to discover anything as to the credibility of the witness on the matter to which he testifies. PW-3, Ekramul Hossen@ Huda, member of the raiding party, stated in his deposition that on 27.02.2012 the accused appellant and another were apprehended with total 46 bottles phensedyl and police seized those phensedyl by preparing seizure list in presence of witnesses. PW-4, Lutfor Sheikh, a local witness, who was declared hostile by the prosecution. PW-5, P.S.I, Mahmud Hossen Mulla, who investigated the case and after completion of investigation submitted charge sheet against the accused appellant and another. This witness stated that “জব্দকৃত আলামত ৪৬ বোতল ফেনসিডিল হতে ০১ বোতল ফেনসিডিল রাসায়নিক পরীক্ষার জন্য প্রেরন করি।” This witness also stated that he obtained chemical

examination report and proved the same as exhibit-5. This witness also proved the other documents in support of the prosecution case as material exhibit Nos. 3,3/1, 4, 4/1.

On an analysis of the impugned judgment, it appears that the learned Additional Sessions Judge, 2nd Court, Faridpur on due consideration of the entire evidence and materials on record came to the conclusion that the prosecution has been succeeded to prove that on 27.02.2012 the accused appellant and another were apprehended with contraband phensedyls.

On perusal of the above quoted evidence together with the FIR, Charge sheet, chemical examination report, it appears that in this case member of raiding party PW-1 and PW-3 categorically stated in their evidence that accused appellant and another on 27.02.2012 was apprehended by them and on search recovered total 46 bottles phensedyl syrup from their possession. PW-1, local seizure list witness who supported the prosecution case although PW-4, Lutfar Sheikh was declared hostile by the prosecution. PW-5, P.S.I. Mahmud Hossen, Investigating Officer, who stated in his deposition that during investigation he sent 1 bottle of seized phensedyl for chemical examination and he obtained chemical examination report stating as follows:-

“০১ টি প্লাষ্টিকের বোতলে প্রায় ১০০ এম এল বাদামী তরল পদার্থে অপিয়াম উদ্ভূত 'কোডিন' পাওয়া গিয়াছে। সীল মোহর অক্ষত ছিল।”

P. W 5 deposed that on completion of the investigation he found a prima facie case and accordingly submitted charge sheet against the accused appellant and another and he produced the relevant documents as per requirement of law, which were marked as exhibits. The Trial Court on perusal of the evidence of the prosecution witness found that the PW-2 informant, and PW-3 as member of the reading party, who were the eye witnesses of the occurrence, by their testimony proved the prosecution case and corroborated each other in support of the prosecution case and the informant, PW-2 deposed that the accused appellant and another illegally possessed contraband phensedyls and the prosecution witnesses proved that the accused appellant and another kept in his possession total 46 bottles Indian phensedyl and failed to show any legal document in respect of those articles.

The prosecution witnesses namely PW-1, PW-2, PW-3 and PW-5 proved the prosecution case as to the time, place and manner of occurrence and thus the prosecution proved the guilt of the accused appellant. Therefore, I find no reason to interfere with the impugned judgment and order of conviction and sentence dated 07.02.2018 passed by the learned Additional Sessions Judge, 2nd Court, Faridpur

However, considering the law, facts and circumstances as discussed above, particularly the fact that the convict appellant has already faced the agony of the protracted prosecution and suffered mental harassment for a long period and also having suffered his sentence to some extent, I think, ends of justice, will be met in the facts and circumstances of the case, if the sentence of fine is maintained and the substantive sentence is reduced to the period of 2(two) years in place of 03(three) years.

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 are concerned.

In the result, the appeal is dismissed with modification of sentence. The period of sentence of the convict appellant is reduced to the period of 2(two) years in place of 03(three) years. Sentence of fine is however, maintained.

Since the appeal is dismissed the convict-appellant appellant, Md. Borkat Ali Biswas is directed to surrender his bail bond within 3 (three) months from today to suffer his sentence in accordance with law, failing which the trial Court concerned shall take necessary steps against the convict-appellant, Md. Borkat Ali Biswas to secure arrest against him.

Send down the lower Court records at once.