

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 5377 of 2018

Md. Kamal Hossain

.....Convict-appellant.

-Versus-

The State

.....Respondent.

No one appears

.....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 13.03.2024.

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellant, Md. Kamal Hossain is directed against the judgment and order of conviction and sentence dated 13.11.2014 passed by the learned Additional Sessions Judge, 1st Court, Brahmanbaria in Sessions Case No. 18 of 2010 arising out of G.R. No. 137 of 2009 corresponding to Ashugonj Police Station Case No. 12 dated 20.08.2009 convicting the appellant under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 and sentencing him 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 simple imprisonment for 1(one) month more.

The prosecution case, in short, is that one, Mostafa Kamal, DAD/5663, Rab-9, Bhairab Camp, Kishoreganj as informant on 20.08.2009 at about 19:30 hours lodged an Ejahar with Ashugonj Police Station, Brahmanbaria against the convict appellant and another stating, inter-alia, that the informant along with other police forces while were on duty under Ashugonj police station area got a secret information that one Phensedyl Pedlar is waiting in front of a confectionery store near about Dhaka-Sylhet highway adjacent to Ujan Vati Hotel and then informant along with other police forces rushed there on 20.08.2009 at 15: 55 hours and found a person standing there along with a bag while sensing the presence of police he tried to run away but informant party apprehended him on chase and thereafter, on search recovered 50 bottles of Indian made Phensedyl Syrup from his bag keeping in right hand in presence of witnesses named Md. Shamim Ahmmed and Md. Salam Miah, which valued at Tk.20,000/-(twenty thousand). Thereafter, the informant party seized those phensedyl Syrups by preparing seizure list in presence of witnesses and on a query he disclosed his name is Md. Kamal Hossain and also disclosed that one Mariam Begum is the owner of those seized Phensedyls, who supplied the same to him and thereafter, police team arrested accused Mariam Begum at the pointing of accused Md. Kamal Hossain.

Upon the aforesaid First Information Report, Ashugonj Police Station Case No. 12 dated 20.08.2009 under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 (as amended in 2004) was started against the accused appellant and another.

Police after completion of investigation submitted charge sheet against the accused-appellant being charge sheet No. 113 dated 23.09.2009 under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 (as amended in 2004) and another accused has been left out from the charger sheet as police having not found prima-facie case against her.

Ultimately, the accused appellant was put on trial before the learned Additional Sessions Judge, 1st Court, Brahmanbaria to answer a charge under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 to which the accused-appellant pleaded not guilty and claimed to be tried stating that he has been falsely implicated in the case.

At the trial, the prosecution side examined in all 7(seven) witnesses and also exhibited some documents to prove its case, while the defence examined none. No one cross-examined the witnesses as the accused appellant after being enlarged on bail became absconding.

On conclusion of trial, the learned Additional Sessions Judge, 1st Court, Brahmanbaria by the impugned judgment and order dated 13.11.2014 found the accused-appellant guilty under table 3(ka) of section 19(1) of the Madok Drabnya Niontron Ain, 1990 and sentenced him 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 simple imprisonment for 1(one) month.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 13.11.2014, the accused-appellant preferred this criminal appeal.

No one found present to press the appeal on repeated calls in spite of fact that this petty old criminal appeal has been appearing in the list for hearing with the name of the learned Advocate for the appellant for a number of days.

In view of the fact that this petty old criminal appeal arising out of 3(three) years sentence, I am inclined to dispose of it on merit.

On scrutiny of the record, it that appears that one, Mostafa Kamal, DAD/5663, Rab-9, Bhairab Camp, Kishoreganj as informant on 20.08.2009 at about 19:30 hours lodged an Ejahar with Ashugonj Police Station, Brahmanbaria against the convict appellant on the allegation that the appellant was apprehended along with 50 bottles of Indian Phensedyl Syrups and Police after completion of investigation submitted charge sheet against the accused

appellant on 23.09.2009 under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990. It further appears that at the time of trial the prosecution examined in all 7 witnesses out of which PW-1, Mostofa Kamal, DAD, Rab-9, stated that on the date of occurrence he saw accused person, who sensing the presence of police tried to run away while police team apprehended him on chase, who disclosed his name, Kamaluddin and thereafter, police on search recovered total 50 bottles of Phensedyl Syrups from a bag kept in the hand of accused Kamal and thereafter, police seized those Phensedyl Syrups by preparing seizure list in presence of witnesses. This witness also proved the seized Physedyls as material exhibit and also proved the FIR as exhibit-1 and his signature thereon as exhibit-1/1. No one cross-examined this witness as the accused appellant after being enlarged on bail became absconding. PW-2, Majibar Rahman, Arms S.I. No. 3011, PW-3, Jamshed Uddin, member of the raiding party, PW-4, Md. Biplab Hossen, constable No. 5066, DMP Shadar Daptar all of them in their respective deposition corroborated the evidence of PW-1 in respect of all material particulars. PW-5, Md. Mohshin, constable, who was tendered. PW-6, S.I. Hossainuzzaman, who investigated the case and submitted charge sheet against the accused appellant. PW-7, Saidur Rahman, S.I. Rab-9 stated in his deposition that “টহল ডিউটি করাকালে ডিএডি মোস্তফা কামাল গোপন সংবাদে জানতে পারেন যে একজন লোক ঢাকা-সিলেট মহাসড়কের উত্তর পাশে হোটেল উজানভাটির পশ্চিম পাশে জামালউদ্দিন কনফেকশনারীর

সামনে ফেনসিডিল নিয়া অপেক্ষা করছে। উর্দতন কর্মকর্তাকে অবহিত করে তাদের নির্দেশ ক্রমে ঘটনাস্থলে ১৫.৫৫ ঘটিকায় উপস্থিত হই। আমাদের উপস্থিতি টের পেয়ে ১ জন লোক পালানোর চেষ্টা করলে তাকে ধৃত করি। ফেনসিডিল ৬টি প্যাকেটে পেপার ও পাটের সুতলী দ্বারা মোড়ানো ছিলো।” This witness also stated that he prepared seizure list on the place of occurrence in presence of witnesses. This witness proved the seizure list as exhibit- 4 and his signature thereon as exhibit-4/1. It further appears that in this case the chemical examiner submitted a report stating that the seized Phensedyl Syrups contained the ingredients of contraband drag “codeine”.

On a close perusal of the above quoted evidence, it appears that PW-1, PW-2, PW-3, PW-4 and PW-7 categorically stated in their respective evidence that the accused appellant was apprehended on 20.08.2009 and police on search recovered total 50 bottles phensedyl syrup from the exclusive position of the accused appellant. Prosecution witnesses namely PW-1, PW-2, PW-3, PW-4, PW-6 and PW-7 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 doubts.

On an analysis of the impugned judgment and order of conviction and sentence, I find no flaw in the reasonings of the trial Court below or any ground to assail the same. The learned trial Judge appears to have considered all the material aspects of the case and justly found the accused

appellant guilty for the offence under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990, I find no reason to interfere therewith.

On the basis of the material available on record and the allegations levelled against the appellant in the FIR and the charge-sheet, it cannot be concluded that the accused appellant was innocent and he has been falsely implicated in the case or the prosecution could not prove the guilt of the accused appellant beyond reasonable doubts.

In view of my discussions made in the foregoing paragraphs it is by now clear that the instant appeal must fail.

In the result, the appeal is dismissed, the judgment and order of conviction and sentence dated 13.11.2014 passed by the learned Additional Sessions Judge, 1st Court, Brahmanbaria in Sessions Case No. 18 of 2010 arising out of G.R. No. 137 of 2009 corresponding to Ashugonj Police Station Case No. 12 dated 20.08.2009 convicting the appellant under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 and sentencing him 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 simple imprisonment for 1(one) month more is hereby affirmed.

Since the appeal is dismissed, the convict appellant, Md. Kamal Hossain is directed to surrender his bail bond within 3 (three) months from today to suffer his sentence, failing which the trial Court shall take necessary steps to secure arrest against him.

Send down the lower Court records at once.