

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 5294 of 2018

Most. Ramicha Khatun @Most. Hamida
Khatun

.....Convict-appellant.

-Versus-

The State.

.....Respondent.

Mr. Das Tapan Kumar, 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 07.03.2024 and
Judgment on 10.03.2024.

Sheikh Abdul Awal, J.

This criminal appeal at the instance of the convict appellant, Most. Ramicha Khatun @Most. Hamida Khatun is directed against the judgment and order of conviction and sentence dated 01.10.2015 passed by the learned Special Sessions Judge and Jananirapatta Bignakari Aporadh Daman Tribunal, Khulna in Sessions Case No. 878 of 2011 arising out of G.R. No. 248 of 2011 corresponding to Sonadanga Model Police Station Case No. 28 dated 26.02.2011 convicting the accused-

appellant under table 3(Ka) of section 19(1)/19(4) of the Madokdrabya Niantran Ain, 1990 and sentencing him thereunder to suffer rigorous imprisonment for a period of 3(three) years and to pay a fine of Tk. 5,000/- (five thousand) in default to suffer rigorous imprisonment for 06(six) month more.

The prosecution case, in short, is that one, Md. Abu Bakkar Siddique, Sergeant (in-charge), Gallamari Police Box as informant on 26.02.2011 at about 16:05 hours lodged an Ejahar with Sonadanga Police Station against the accused appellant stating, inter-alia, that while the informant along with a contingent of police force were on Special duty on the basis of a G.D. No. 35 dated 26.02.2011 near about Mega Cyber Cafe in front of Gallamari Police Box and then at about 13:40 hours found accused, Most. Ramicha Khatun was walking in a suspicious manner and then police team apprehended her and on search, recovered total 24 bottles of Indian made Phensedyl syrups from her, which valued at Tk. 2,400/- (two thousand and four hundred). Police seized those phensedyl syrups by preparing seizure list in presence of witnesses.

Upon the aforesaid First Information Report, Sonadanga Model Police Station Case No. 28 dated

26.02.2011 under table 3(Kha) of section 19(1)/19(4) of the Madokdrabya Niantran Ain, 1990 was started.

Police after completion of investigation submitted charge sheet being charge sheet No. 87 dated 29.03.2011 under table 3(Kha) of section 19(1)/19(4) of the Madokdrabya Niantran Ain, 1990 against the accused appellant.

Ultimately, the accused appellant was put on trial before the learned Special Sessions Judge and Jananirapatta Bignakari Aporadh Daman Tribunal, Khulna to answer a charge under table 3(Kha) of section 19(1)/19(4) of the Madokdrabya Niantran Ain, 1990. The accused appellant after being enlarged on bail became absconding and accordingly, the trial was held against the accused appellant in-absentia.

At the trial, the prosecution side examined in all 05(five) witnesses and also exhibited some documents to prove its case, while the defence examined none.

On conclusion of trial, the learned Special Sessions Judge and Jananirapatta Bignakari Aporadh Daman Tribunal, Khulna by the impugned judgment and order dated 01.10.2015 found the accused appellant guilty under table 3(Ka) of section 19(1)/19(4) of the Madokdrabya Niantran Ain, 1990 and sentencing her

thereunder to suffer rigorous imprisonment for a period of 3(three) years and to pay a fine of Tk. 5,000/- (five thousand) in default to suffer rigorous imprisonment for 06(six) month more.

Aggrieved convict appellant then preferred this criminal appeal.

Mr. Das Tapan Kumar, the learned Advocate appearing for the convict-appellant submits that in this case as per evidence of PW-1, the incriminating Phensedyl syrups were recovered in presence of witnesses, Md. Mizanur Rahman Sheikh and Md. Anwarul Islam Babu although those witnesses were not examined by the prosecution which creates serious doubt and thus the trial Court ought to have drawn an adverse inference under Section 114(g) of the Evidence Act against the prosecution for non-examination of independent witnesses whose statements were recorded by the Investigating Officer during the course of the investigation. The learned Advocate further submits that in this case 5 prosecution witnesses were examined, all of them were police personnel, who deposed before the trial Court inconsistently as to recovery of phensedyl from the possession of convict appellant. Finally, the learned Advocate submits that PCPR of the convict appellant is nil, who have been

made scapegoat in this case and no independent local witnesses supported the prosecution case although the learned Judge, trial Court below without considering all these vital aspects of the case mechanically found the accused appellant guilty under table 3(Ka) of section 19(1)/19(4) of the Madokdrabya Niantran Ain, 1990 and as such, the same 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 dated 01.10.2015, which was according to her just, correct and proper.

Having heard the learned Advocate and Deputy Attorney General 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 trial Court committed any error in finding the accused- appellant guilty of the offence under table 3(Ka) of section 19(1)/19(4) of the Madokdrabya Niantran Ain, 1990.

On scrutiny of the record, it appears that one, Md. Abu Bakkar Siddique, Sergeant, as informant on 26.02.2011 at about 16:05 hours lodged an Ejahar with Sonadanga Police Station against the accused appellant

on the allegation that on 26.02.2011 the accused appellant was apprehended along with 24 bottles of Indian Phensedyl Syrup, which valued at Tk. 2400/- (two thousand and four hundred) and Police after completion of investigation on 29.03.2011 submitted charge sheet against the accused appellant under table 3(Kha) of section 19(1)/19(4) of the Madokdrabya Niantran Ain, 1990. It further appears that the accused appellant after being enlarged on bail became absconding and that the trial of the accused appellant was held in absentia. At the trial prosecution side examined in all 5 witnesses to prove its case out of which PW-1, Md. Abu Bakkar Siddique, S.I. Gallamari Police Box in-Charge stated in his deposition that while he along with other police forces were on special duty on 26.2.2011 at 13:40 hours apprehended the accused appellant and on search, recovered total 24 bottles of phensedyl from her possession. This witness proved the FIR as exhibit-1 and his signature thereon as exhibit-1/1. This witness proved the seizure list as exhibit-2 and his signature thereon as exhibit -2/1 and also proved the seized phensedyl as material exhibit. PW-2, Constable, Zahidul Islam, PW-3, Constable, Emdadul Haque, PW-4, Constable, Md. Monjurul all these PWs. in their respective evidence corroborated the evidence of PW-1 in respect of all

material particulars. PW-5, S.I. Abdullah Al-Manum, Investigating Officer. This witness stated in his deposition that during investigation he visited the place of occurrence, examined the witnesses under section 161 of the Code of Criminal Procedure and obtained chemical examination report and after completion of investigation he submitted charge sheet against the accused appellant under table 3(Kha) of section 19(1)/19(4) of the Madokdrabya Niantran Ain, 1990.

From the above, it appears that all the police witnesses in their respective evidence categorically testified that on 26.02.2011 at 13:50 hours the accused appellant was apprehended along with 24 bottles of Indian phensedyls syrup in presence of local witnesses, namely Md. Mizanur Rahman Sheikh and Md. Anwarul Islam Babu although the prosecution having failed to examine those witnesses and as per FIR one lady constable checked the body of lady convict appellant and recovered total 24 bottles of phensedyl although the prosecution side neither mentioned her name in the FIR not cited her in the body of charge sheet as witness 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 and benefit of this defect must go to the accused appellant.

From the position of law as aforementioned, it can be said that the entire prosecution case is doubtful by applying a straight jacket formula of non-examination of a material witnesses and drawing of adverse inference under Section 114 (g) of the Evidence Act.

As discussed above, there are so many limps and doubts about the existence of the facts as well as circumstance. In that light, it creates a doubt in the case of the prosecution about the accused appellant being involved in the alleged crime. It is trite law that if any benefit of doubt arises, then the benefit should be given to accused. In that light, the trial Court ought to have acquitted the accused by giving the benefit of doubt. In that light, the judgment of the trial Court is to be interfered with.

In the result, the appeal is allowed. The impugned judgment and order of conviction and sentence dated 01.10.2015 passed by the learned Special Sessions Judge and Jananirapatta Bignakari Aporadh Daman Tribunal, Khulna in Session Case No. 878 of 2011 arising out of G.R. No. 248 of 2011 corresponding to Sonadanga Model Police Station Case No. 28 dated 26.02.2011 convicting the accused-appellant under Table

3(Ka) of Section 19(1)/19(4) of the Madokdrabya Niantran Ain, 1990 is set-aside and the accused appellant, Most. Ramicha Khatun @Most. Hamida Khatun is acquitted of the charge levelled against her.

Accused appellant, Most. Ramicha Khatun @Most. Hamida Khatun is discharged from her bail bond.

Send down the lower Court records at once.