

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 5279 of 2018

Md. Akash alias Shiblu

.....Convict-appellant.

-Versus-

The State

.....Respondent.

Mr. Ali Ahsan Mullah, 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 11.06.2024.

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellant, Md. Akash alias Shiblu is directed against the judgment and order of conviction and sentence dated 07.05.2018 passed by the learned Sessions Judge, Brahmanbaria in Sessions case No. 326 of 2016 arising out of G.R. No. 333 of 2015 corresponding to Akhaura Police Station Case No. 16 dated 11.08.2015 convicting the accused appellant under table 3(kha) of Section 19(1) of the Madok Drobbya Niyatron Ain, 1990 and sentencing him thereunder to suffer rigorous imprisonment for a period of 03(three) years and to pay fine of Tk. 3,000/- (three

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

The prosecution case, in short, is that one, Md. Mosarof Hosen, Habilder No.52479, 12 BGB, as informant on 11.08.2015 at about 11.30 hours lodged an Ejahar with Akhaura Police Station, Brahmanbaria against the convict appellant and another stating, inter-alia, that on 10.08.2015 at 19.00 hours while the informant along with his forces were on petrol duty got a secret information that some people are coming with illegal goods from India and then informant party ambushed inside the bamboo garden and thereafter, on at 00.30 hours they saw 2 persons are coming from India into Bangladesh and thereafter, the informant party apprehended the accused Md. Akash Mia and another accused somehow managed to escape and thereafter, informant party on search, recovered 50 bottles of Indian made phensedyl and 10 bottles of Indian Eskuff Syrups from him kept a bag, which valued at Tk. 20,000+4,000/- =24,000/- (twenty four thousand) and thereafter, police seized those phensedyls and Eskuff Syrups by preparing seizure list in presence of witnesses.

Upon the aforesaid First Information Report, Akhaura Police Station Case No. 16 dated 11.08.2015 under table 3(kha) to 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. 333 dated 17.09.2015 under table 3(Kha) of Section 19(1) of the Madok Drabbya Niyontron Ain, 1990 (as amended in 2004). Ultimately, the accused appellant and another were put on trial before the learned Sessions Judge, Brahmanbaria to answer a charge under table 3(Kha) of Section 19(1) of the Madok Drabbya Niyontron Ain, 1990 to which the accused appellant and another pleaded not guilty and claimed to be tried stating that they have been falsely implicated in this case.

At the trial, the prosecution examined in all 6(six) witnesses and also exhibited some documents to prove its case, while the defence examined none.

On conclusion of trial, the learned Sessions Judge, Brahmanbaria by the impugned judgment and order dated 07.05.2018 found the accused-appellant guilty under table 3(kha) of Section 19(1) of the Madok Drobbya Niyatron Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 03(three) years and to pay fine of Tk. 3,000/- (three thousand) in default to suffer rigorous imprisonment for 3(three) months more while acquitting another accused Md. Sumon Miah from the charge levelled against him.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 07.05.2018, the accused-appellant preferred this criminal appeal.

Mr. Ali Ahsan Mullah, the learned Advocate, appearing for the convict-appellant submits that in this case accused appellant has been made scapegoat in-fact no incriminating phensedyls and Eskuff syrups were recovered from the possession and control of the accused appellant, seizure list witnesses namely PW-5 and PW-6 stated nothing against the appellant which creates doubt as to involvement of the accused appellant and that the accused appellant is entitled to get benefit of doubt.

Ms. kohinoor Akter, the learned Assistant Attorney General, on the other hand, supports the impugned judgment which was according to her just, correct and proper. She submits that in this case prosecution examined in all 6 witnesses, all of them categorically testified that accused appellant was apprehended with phensedyls and Eskuff Syrups and the Investigating officer obtained chemical examination report from the chemical examiner which shows existence of “Codeine Phosphate” and “Chlorpheniramine” in the seized articles and thus, the trial Court justly found the accused appellant guilty of the offence under table 3(kha) of Section 19(1) of the Madok Drobbya Niyatron Ain, 1990.

Having heard the learned Advocate and the learned Assistant Attorney General and having 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, the only question that calls for consideration in this appeal is whether the trial Court committed any error in finding the accused-appellant guilty of the offence under table 3(kha) of Section 19(1) of the Madok Drobbya Niyatron Ain, 1990.

On scrutiny of the record, it appears that one, Md. Mosarof Hosen, Habilder No.52479, 12 BGB, as informant on 11.08.2015 at about 11.30 hours lodged an Ejahar with Akhaura Police Station against the convict appellant on the allegation that convict-appellant was apprehended with contraband 50 bottles of Indian made phensedyl and 10 bottles of Eskuff Syrups. 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 Drobbya Niyatron Ain, 1990 (as amended in 2004). It further appears that at the time of trial the prosecution examined in all 6 witnesses out of which PW-1, Md. Mosarof Hosen, Habilder 52479 (BGB), informant of the case, stated that on 10.08.2015 while the informant along with his forces were on special duty got a secret information that some people are coming from India into Bangladesh and thereafter the informant party on chase apprehended the accused appellant and another one

somehow managed to escape. This witness also stated that the informant party found a bag in the hand of the accused and on search recovered total 50 bottles of Indian phensedyl and 10 bottles of Eskuff Syrup from that bag. Thereafter, informant party seized those phensedyls and Eskuff Syrups by preparing seizure list in presence of witnesses. This witness proved the FIR as exhibit-1 and his signature thereon as exhibit-1/1 and also proved the seizure list as Ext-2 and his signature thereon as Ext-2/1. This witness also stated in his deposition that he produced 2 bottles of seized articles in Court as alamot, this witness identified the accused on doc. Defence cross-examined this witness but failed to find out any contradiction in the evidence of PW- 1. PW-2, Nazrul Islam (BGB), member of the raiding party stated in his deposition that they apprehended the accused appellant under the leadership of Mosarof Hossain and seized 50 bottles of phensedyl and 10 bottles of Eskuff Syrup from his possession and thereafter, informant party prepared seizure list. This witness identified the accused on doc. PW-3, Zia Uddin, (BGB), member of the raiding party, this witness was tendered adopting the evidence of PW-2. PW-4, S.I. Mizanur Rahman, investigated case, who stated in his deposition that during investigation he visited the place of occurrence, prepared sketch-map, and examined the witnesses under section 161 of the Code of Criminal Procedure. This witness proved the relevant documents as per requirement of law, which were marked as exhibits. This

witness also stated that after completion of investigation he found prima-facie case against the accused appellant and another accordingly submitted charge sheet against the accused appellant and another. This witness was cross-examined by defence but failed to find out any contradiction in his evidence. PW-5, Md. Aru Miah, seizure list witness. This witness in his deposition stated that – “প্রায় ২/২^১/_২ বছর আগের ঘটনা। B.G.B লোকেরা গত রাত ১২/১.০০ টার দিকে আমার বাড়ির পাশে কতক লোককে ধৃত করে। তারা আমাকে ডেকে তুলে। B.G.B এর লোকেরা আকাশ নামে ১ জনকে আটক করে এবং ফেন্সিডিল উদ্ধার করে। তারা জব্দ তালিকায় আমার স্বাক্ষর নেয়। জব্দ তালিকার এই স্বাক্ষর আমার প্রদঃ ২/২, আকাশ ডকে উপস্থিত।” PW-6, Shafiqul Islam, another seizure list witness. This witness stated in his deposition that-“প্রায় ২/২^১/_২ বছর আগের ঘটনা। রাত ১২/১.০০ টার দিকে B.G.B এর লোকেরা আমাকে ডেকে আনে। B.G.B এর লোকেরা আমাকে ১টি জব্দ তালিকায় স্বাক্ষর দিতে বলে আমি ১ জন লোককে এবং ফেন্সিডিল সেখানে দেখি।। লোকটির নাম আকাশ। সে ডকে উপস্থিত আছে। আমি জব্দ তালিকায় স্বাক্ষর করি। জব্দ তালিকায় এই স্বাক্ষর আমার। প্রদঃ ২/৩।

On an analysis of the above quoted evidence it appears that PW-1, PW-2, PW-3 were members of the raiding party they categorically testified that the accused appellant was apprehended along with a bag and raiding party on search recovered 50 bottles of Indian made phensedyl and 10 bottles of Eskuff Syrup from his bag. It further appears that PW-5 and PW-6, seizure list witnesses also gave evidence in support of the prosecution case. Besides, in this case

chemical examiner submitted his report stating that- “প্লাস্টিকের বোতল দুইটিতে রক্ষিত তরল পদার্থে “ কোডিন ফসফেট ও ক্লোরিফেনিরামিন মেলিয়েট” পাওয়া গিয়াছে” which has been duly exhibited by the investigating officer. In this case all the prosecution witnesses proved the prosecution case as to the time, place and manner of occurrence and thus the prosecution proved the guilt of the accused appellant beyond reasonable doubts. Therefore, I find no reason to interfere with the impugned judgment and order of conviction and sentence dated 07.05.2018 passed by the learned Sessions Judge, Brahmanbaria.

I find no flaw in the reasonings of the trial Court or any ground to assail the impugned Judgment and order of conviction and sentence.

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 Assistant 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 is 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. Akash alias Shibli 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. Akash alias Shibli to secure arrest against him.

Send down the lower Court records at once.