

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 11696 of 2018

Md. Anowar Hosen

.....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 28.05.2024.

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellant, Md. Anowar Hosen is directed against the judgment and order of conviction and sentence dated 31.05.2018 passed by the learned Special Judge, Janonirapotta Biggnokari Aporadh Daman Tribunal and Special Sessions Judge Court, Cumilla in Sessions Case No. 3 of 2012 (52/12) arising out of G.R. No. 377 of 2011 corresponding to Choddogram Police Station Case No. 03 dated 03.10.2011 convicting the accused appellant under table 5(Ka) and 7(Ka) of Section 19(1) of the Madok Drabnya Niyontron Ain, 1990 and sentencing him

thereunder to suffer rigorous imprisonment for a period of 03(three) years and 01(one) year respectively with a direction that both the sentence shall run concurrently.

The prosecution case, in short, is that one Md. Amzad Hosen, S.I./126, RAB-11, CPC-2 Shaktala, Cumilla as informant on 03.10.2011 at about 21.30 hours lodged an Ejahar with Choddogram Police Station, Cumilla against the convict appellant stating, inter-alia, that on 03.10.2011 while the informant along with other members of RAB were on special duty got a secret information as to drug dealing and thereafter, the informant party rushed to the house of Sotto Miah at Gomer Bari village under Choddogram Police Station, Cumilla and apprehended the accused appellant and thereafter on search, recovered total 48 bottles of phensedyl and 2 Kgs. Ganja from a plastic bag kept in hand of the accused, which valued at Tk.60,000/-(sixty thousand) and thereafter, informant party seized those phensedyls and ganja by preparing seizure list in presence of witnesses.

Upon the aforesaid First Information Report, Choddogram Police Station Case No. 03 dated 03.10.2011 under table 3(Kha) and 7(Ka) of Section 19(1) of the Madok Drabnya Niyontron Ain, 1990 was started against the accused appellant.

Police after completion of usual investigation submitted charge sheet against the accused-appellant, vide charge sheet No. 360 dated 04.11.2011 under table 3(Kha)

and 7(Ka) of Section 19(1) of the Madok Drabbya Niyontron Ain, 1990. Ultimately, the accused appellant was put on trial before the learned Special Judge, Janonirapotta Biggnokari Aporadh Daman Tribunal and Special Sessions Judge Court, Cumilla. The trial was held in absentia against the accused appellant since the accused appellant was absconding.

At the trial, the prosecution examined in all 7(seven) witnesses and also exhibited some documents to prove its case, while the defence examined none.

On conclusion of trial, the learned Special Judge, Janonirapotta Biggnokari Aporadh Daman Tribunal and Special Sessions Judge Court, Cumilla by the impugned judgment and order dated 31.05.2018 found the accused-appellant guilty under table 5(Ka) and 7(Ka) to Section 19(1) of the Madok Drabbya Niyontron Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 03(three) years and 01(one) year respectively with a direction that both the sentence shall run concurrently.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 31.05.2018, 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 appears that one Md. Amzad Hosen, S.I./126, RAB-11, CPC-2 Shaktala, Cumilla as informant on 03.10.2011 at about 21.30 hours lodged an Ejahar with Choddogram Police Station, Cumilla against the convict appellant on the allegation that the accused appellant was apprehended along with 48 bottles phensedyl Syrup and 2 kgs Ganja, which valued at Tk.60,000/-(sixty thousand). Police after completion of investigation submitted charge sheet against the accused appellant under table 3(Kha) and 7(Ka) of Section 19(1) of the Madok Drabbya Niyontron Ain, 1990. It further appears that at the time of trial the prosecution examined in all 7 witnesses out of which PW-1, Md. Amzad Hosen, S.I. as informant stated in his deposition that on 03.12.2011 on the basis of a secret information the informant along with other RAB forces apprehended the accused appellant with a plastic bag and on search recovered total 48 bottles of phensedyl and 2kgs ganja from that bag. This witness also stated that informant party seized those goods by preparing seizure list in presence of local witnesses. This witness proved the FIR as exhibit-1 and his signature there on as exhibit-1/1. This witness proved the seizure list as exhibit-2 and his signature thereon as exhibit-2/1. This witness also proved the material exhibits as exhibit-I series. PW-2, Md. Moniruzzaman, PW-3, Abu

Bakar, PW-4, Md. Nazmul Haque, PW-5, Md. Kabir Hosen, all these witnesses are members of RAB, who gave evidence in support of the prosecution case and made similar statements like PW-1 and they also proved that 48 bottles of phensedyl and 2kgs ganja kept in a bag was recovered from the accused appellant. PW-6, S.I. Abdullah al Mahfuz, who investigated the case and submitted charge sheet against the accused appellant. This witnesses in his deposition stated that during investigation he visited the place of occurrence, prepared sketch map and examined the witnesses under section 161 of the Code of the Criminal Procedure and after completion of investigation submitted charge sheet against the accused appellant under table 3(Kha) and 7(Ka) of Section 19(1) of the Madok Drabbya Niyontron Ain, 1990. This witness in his deposition also stated that during investigation he obtained chemical examination report from the chemical examiner, which shows that the seized phensedyl syrups contained the ingredients of contraband drug “codeine” PW-7, Nabi Hossain, seizure list witness stated in his deposition that he put his signature on seizure list and proved the same as exhibit-2/2. This witness identified the accused on doc.

On an analysis of the impugned judgment it appears that the learned Special Judge, Janonirapotta Biggnokari Aporadh Daman Tribunal and Special Sessions Judge Court, Cumilla 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 03.10.2011 the accused appellant was apprehended along with contraband phensedyls and ganja.

On perusal of the evidence of the prosecution witnesses it is found that the P. W 1 informant and PW-2, Md. Moniruzzaman, PW-3, Abu Bakar, PW-4, Md. Nazmul Haque, who were the eye witnesses of the occurrence, by their respective testimony corroborated each other in support of the prosecution case. The informant, P.W 1 deposed that the accused appellant illegally possessed contraband phensedyls and ganja and the prosecution witnesses proved that the accused appellant kept in his possession phensedyls and ganja and failed to show any legal document in ‘ respect of those articles. The chemical examination report together with the evidence of prosecution witnesses, it appears to me that members of the raiding party and seizer list 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 doubt.

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 1 (one) year in place of 03(three) years for the offence under table 5(Ka) of Section 19(1) of the Madok Drabbya Niyontron Ain, 1990 and conviction under 7(Ka) of Section 19(1) of the Madok Drabbya Niyontron Ain, 1990 to suffer 1 year sentence is, however, maintained.

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 1 (one) year in place of 03(three) years for the offence under table 5(Ka) to Section 19(1) of the Madok Drabbya Niyontron Ain, 1990 and the conviction under 7(Ka) of Section 19(1) of the Madok Drabbya Niyontron Ain, 1990 to suffer 1 year sentence is, however, maintained with a direction that both the sentence for the offence under table 5(Ka) and 7(Ka) of Section 19(1) of the Madok Drabbya Niyontron Ain, 1990 shall run concurrently. Sentence of fine is however, maintained.

Since the appeal is dismissed the convict-appellant appellant, Md. Anowar Hosen 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. Anowar Hosen to secure arrest against him.

Send down the lower Court records at once.