

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Appeal No. 11843 of 2018**

Md. Shawkat Hossain Bepari  
.....Convict-Appellant.

-Versus-

The State.  
.....Respondent.

Mr. Sk. Zulfikar Alam, 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.

**Heard on 21.05.2024, 29.05.2024,  
30.05.2024 and Judgment on 30.05.2024**

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellant, Md. Shawkat Hossain Bepari is directed against the judgment and order of conviction and sentence dated 24.09.2018 passed by the learned Special Sessions Judge, 4<sup>th</sup> Court, Dhaka in Sessions Case No. 257 of 2011 (Metro. Sessions Case No. 6778 of 2011) arising out of G.R No. 112 of 2011 corresponding to Tejgaon Industrial Area Police Station Case No. 35 dated 25.05.2011 convicting the accused-appellant under table

3(ka) to section 19(1) of the Madok Drabya Niyantran Ain, 1990 and sentencing him thereunder to suffer rigorous imprisonment for a period of 7(seven) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer rigorous imprisonment for 03(three) months more and also convicting the accused-appellant under table 9(ka) to section 19(1) of the Madok Drabya Niyantran Ain, 1990 and sentencing him thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer rigorous imprisonment for 03(three) months more with a direction that both the sentences shall run concurrently.

The prosecution case, in brief, is that one, Md. Khokon Mia, 19/Armed S.I., CPC, RAB-2 Dhaka as informant on 25.05.2011 at about 01.45 hours lodged an Ejahar with Tejgaon Industrial Area Police Station against the accused appellant stating, inter-alia, that while the informant along with other RAB forces were on patrol duty near about Madhaya Kunipara behind the jheel under Tejgaon police station and then found a man standing with a bag and at one stage sensing the presence of RAB members that man tried to escape while the informant party apprehended him on chase and on search, recovered 50 yaba tablets from the pocket of his

wearing shirt and 50 litres liquid phensidyl from his hand bag and thereafter, the informant party seized those yaba tablets and phensidyls by preparing seizure list in presence of the witnesses.

Upon the aforesaid First Information Report, Tejgaon Industrial Area Police Station Case No. 35 dated 25.05.2011 under table 3(kha)/9(ka) of section 19(1) of the Madok Drabya Niyantran Ain, 1990 was started against the appellant.

Police after completion of usual investigation submitted charge sheet against appellant, vide charge sheet No. 216 dated 16.06.2011 under table 3(kha)/9(ka) of section 19(1) of the Madok Drabya Niyantran Ain, 1990.

Thereafter, in usual course the case record was sent to the court of learned Metropolitan Sessions Judge, Dhaka, wherein it was registered as Metro. Sessions Case No. 6778 of 2011. Ultimately, the case was transmitted to Special Sessions Judge, 4<sup>th</sup> Court, Dhaka and renumbered as Sessions Case No. 257 of 2011. Thereafter, the accused-appellant was put on trial to answer a charge under table 3(kha)/9(ka) of section 19(1) of the Madok Drabya Niyantran Ain, 1990 to which the accused appellant pleaded not guilty and

prayed to be tried stating that he has been falsely implicated in this case.

At the trial, the prosecution side examined as many as 08(eight) witnesses to prove its case, while defence examined none.

The defence case as it appears from the trend of cross-examination of the prosecution witnesses and examination of the accused-appellant under section 342 of the Code of Criminal Procedure that the accused-appellant has been falsely implicated in the case.

On conclusion of trial, the learned Special Sessions Judge, 4<sup>th</sup> Court, Dhaka by the impugned judgment and order dated 24.09.2018 found the accused-appellant guilty under table 3(ka)/9(ka) of section 19(1) of the Madok Drabya Niyantran Ain, 1990 and sentenced him under table 3(ka) of section 19(1) of the Ain to suffer rigorous imprisonment for a period of 7(seven) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer rigorous imprisonment for a further period of 03(three) months and also sentenced him under table 9(ka) of section 19(1) of the Ain to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer rigorous imprisonment for a further

period of 03(three) months with a direction that both the sentences shall run concurrently.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 24.09.2018, the convict-appellant preferred this criminal appeal.

Mr. Sk. Zulfikar Ali, the learned Advocate appearing on behalf of the convict-appellant at the very outset submits that the appellant is a young man and his PC/PR is nil and he has already faced the agony of the protracted prosecution and suffered mental harassment for a long period of more than one decade, his sentence may kindly be reduced to the period of sentence already undergone for the ends of justice.

Ms. Kohenoor Akter, the learned Assistant Attorney-General appearing for the State supports the impugned judgment and order of conviction and sentence, which was according to her just, correct and proper. She submits that in this case 8 witnesses were examined and all of them testified in one voice that the accused was apprehended with 50 yaba tablets and 50 litres liquid phensidyls. She adds that the seized goods were examined by the chemical examiner, who found

ingredients of contraband drugs and as such, the appeal is liable to be dismissed.

Having heard the Advocate and the learned Assistant Attorney General, perused the record including the impugned judgment, first information report, charge sheet, deposition of witnesses and other materials on record, the only question that calls for my consideration in this appeal is whether the learned trial Judge committed any error in finding the accused-appellant guilty of the offence under table 3(ka)/9(ka) of section 19(1) of the Madok Drabya Niyantran Ain, 1990.

On scrutiny of the record, it appears that the accused was apprehended by the RAB forces on 25.05.2011 and on search they recovered 50 yaba tablets and 50 litres liquid phensidyls kept in a hand bag and police after completion of investigation having found prima-facie case and submitted charge sheet against the convict-appellant under table 3(kha)/9(ka) of section 19(1) of the Madok Drabya Niyantran Ain, 1990. It further appears that at the trial the prosecution side examined in all 8 witnesses out of which, PW-1, A.S.I. Md. Billal Hossain, member of the raiding party stated in his deposition that on 25.05.2011 at 19:10 hours under the leadership of S.I. Khokon he and other forces apprehended the accused Md. Shawkat Hossain Bepari and on search, recovered 50 yaba tablets and 50

litres liquid phensidy1 from his hand bag. This witness also proved the seizure list as “Ext.-1/1”, PW-2 and PW-3 adopted the evidence of PW-1. PW-4, S.I. Md. Abdul Quddus, Investigating officer, who during investigation visited the place of occurrence, prepared sketch-map, examined the witnesses under section 161 of the Cr.p.c. and obtained chemical examination report. This witness also deposed that on completion of the investigation he found a prima facie case and accordingly submitted charge sheet against the accused and he produced the relevant documents as per requirement of law, which were marked as exhibits. PW-5, S.I. Khokon Mia, informant of the case, who deposed the F.I.R case in details. In cross examination the defence could not able to discover anything as to the credibility of the witness on the matter to which she testifies. PW-6, Md. Shipon Shikder stated in his deposition that- “সেখানে ধৃত লোকটাকে তল্লাশী করে শার্টের বাম পকেট থেকে ইয়াবা ট্যাবলেট পেয়েছে। দারোগা বলে ৫০ পিস ইয়াবা ট্যাবলেট উদ্ধার করেছে। র্যাব ঘটনাস্থলের বালুর মাঠে ফেলানা প্লাস্টিক কন্টেইনারের ভিতর থেকে ফেনসিডিল উদ্ধার করেছে।” PW-7, Corporal Md. Shamsul Islam and PW-8, Constable Jahangir Alam both of them are members of the raiding party, they gave evidence in support of the prosecution and made similar statements like PW- 5.

On a close perusal of the above quoted evidence, it appears that all the PWs in their respective evidence

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. It is found that the trial Court below in the facts and circumstances of the case and on due consideration of the entire evidence and materials on record found the accused-appellant guilty under table 3(Ka)/9(ka) of section 19(1) of the Drobbya Niyontron Ain, 1990 and sentenced him thereunder as stated above. The learned trial Judge appears to have considered all the material aspects of the case and justly came to the conclusion that the accused-appellant guilty of the offence under table 3(ka)/9(ka) of section 19(1) of the Madok Drabya Niyantran Ain, 1990.

However, considering the law, facts and circumstances of the case as discussed above, particularly the fact that the appellant has already been faced the agony of the protracted prosecution and also suffered the mental harassment for a long period of more than one decade, I think that, the ends of justice, will be met in the facts and circumstances of the case if the conviction and sentence under table 3(ka) to section 19(1) of the Madok Drabya Niyantran Ain, 1990 is reduced to the period of 2 (two) years in place of 7 years, as prayed for.



Learned Assistant Attorney General has, of course, been able to defend this case on merits but practically has nothing to say insofar as to reduction of sentence.

Therefore, sentence of appellant under table 3(ka) to section 19(1) of the Madok Drabya Niyontran Ain, 1990 is reduced to the period of 2 (two) years in place of 7 years. However, conviction and sentence under table 9(ka) of section 19(1) of the Drobbya Niyontron Ain, 1990 as well as fine is maintained. Both the sentences shall run concurrently.

The record suggests that the convict-appellant having already been suffered for more than 10 (ten) months of his sentence and the same must be deducted from his substantive sentence in accordance with law.

The appeal is, accordingly, dismissed with modification of sentence in the above manner. Since the appeal is dismissed, the convict-appellant is directed to surrender his bail bond within 3 (three) months from today to suffer his rest sentence in accordance with law, failing which the Trial Court shall take necessary steps against the convict-appellant, Md. Shawkat Hossain Bepari to secure arrest.

Send down the lower Courts' records at once.