

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Appeal No. 5224 of 2018**

Md. Anowar Hossain and others  
.....Convict-appellants.  
-Versus-  
The State.  
.....Respondent.

**With**  
**Criminal Appeal No. 14293 of 2019**

S.M. Zaman alias Jamal  
.....Convict-appellant.  
-Versus-  
The State.  
.....Respondents.  
Ms. Hasina Akter, Advocate  
.....For the appellants.

Ms. Shahida Khatoon, D.A.G with  
Ms. Sabina Perven, A.A.G with  
Ms. Kohenoor Akter, A.A.G  
.... For the Sate.

**Heard on 09.06.2024 and**

**Judgment on 10.06.2024**

**Sheikh Abdul Awal, J:**

These two appeals being Criminal Appeal No.  
5224 of 2018 and Criminal Appeal No. 14293 of 2019 at

the instance of Md. Anowar Hossain and others are directed against the judgment and order of conviction and sentence dated 30.04.2018 passed by the learned Additional Sessions Judge, 4<sup>th</sup> Court, Cumilla in Sessions Trial Case No. 347 of 2015 arising out of G.R. No. 341 of 2014 corresponding to Kotwali Model Police Station Case No. 82 dated 24.04.2014 convicting the accused-appellants under table 9(Kha) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 and sentencing them thereunder to suffer rigorous imprisonment for a period of 5(five) years and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment for a period 04 (four) months more each and also convicting the accused-appellants under table 22(Ga) of the Madak Drobbya Niyontron Ain, 1990 and sentencing them thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Taka 2,000/- (two thousand) in default to suffer simple imprisonment for a period 04 (four) months more each.

Since both the appeals arose from a common judgment dated 30.04.2018 passed in Sessions Trial Case No. 347 of 2015, they are taken up together for hearing and are disposed of by this one judgment.

The prosecution case, in brief, is that one, S.I. Abdul Muntakim, DAD, RAB-11 as informant on 24.04.2014 at about 02:45 hours lodged an Ejahar with Kotwali Model Police Station against the accused appellants under table 9(Kha)/22(GA) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 stating, inter-alia, that while the informant along with other RAB forces were on special duty at Courtbari area under Kotwali police station and then at 21:00 hours got a secret information that some drug paddlers are selling and purchasing drugs in the house of Anwar Hossain of village Amtali and thereafter, the informant party informed the matter to their higher authority and as per instructions of the higher authority the informant and RAB forces rushed there while sensing the presence of RAB forces the accused persons tried to run away but the informant party apprehended accused S.M. Jamal Uddin and Helal Uddin in-front of the house of accused Anwar and on search, recovered 5 bottles of whiskey kept in a plastic bag and also recovered 50 yaba tablets from accused Jaman and recovered 4 bottles of whiskey from the pant pocket of accused Helal. Thereafter, the informant party apprehended the accused Anwar Hossain from his house and on search, recovered 250 yaba tablets from his wearing shirt pocket and also recovered 100

yaba tablets from accused Surjo Banu kept under her kamiz and thereafter, the informant party seized those whiskey and yaba tablets by preparing seizure list in presence of local witnesses.

Upon the aforesaid First Information Report, Kotwali Model Police Station Case No. 82 dated 24.04.2014 under table 9(Kha)/22(Ga) of section 19(1) of the Madak Drobya Niyontron Ain, 1990 was started against all 4 accused persons.

Police after completion of investigation submitted charge sheet against the accused-appellants, vide charge sheet No. 431 dated 02.06.2014 under table 9(kha)/22(Ga) 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 Sessions Judge, Cumilla, wherein it was registered as Sessions Trial Case No. 347 of 2015 which was subsequently transmitted to learned Additional Sessions Judge, 4<sup>th</sup> Court, Cumilla for trial wherein the accused-appellants were put on trial to answer a charge under table 9(Kha)/22(Ga) to section 19(1) of the Madak Drobya Niyontron Ain, 1990 to which the accused-appellants pleaded not guilty and

claimed to be tried stating that they have been falsely implicated in this case.

At the trial the prosecution side has examined in all 07(seven) witnesses to prove its case, while the defence examined none.

The defence case, from the trend of cross-examination of the prosecution witnesses and examination of the accused-appellants under section 342 of the Code of Criminal Procedure appeared to be that the accused-appellants were innocent and they have been falsely implicated in the case.

On conclusion of trial, the learned Additional Sessions Judge, 4<sup>th</sup> Court, Cumilla by the impugned judgment and order dated 30.04.2018 found the accused-appellants guilty under table 9(Kha) and 22(Ga) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990 and sentenced them as stated above.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 30.04.2018, the accused-appellants preferred these 2 criminal appeals.

Ms. Hasina Akter, the learned Advocate appearing for the convict-appellants in both the appeals in the course of argument takes me through the F.I.R, charge

sheet, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence dated 30.04.2018 and then submits that the appellants are innocent, who have been falsely implicated in this case, in-fact, no incriminating drugs were recovered from the direct possession and control of the accused-appellants. She next submits that in this case, the prosecution side examined total 7 witnesses to prove its case out of which PW-1 stated nothing against accused Helal and PW-3 stated in his deposition that all the drugs were recovered from all accused persons which is totally contrary from the FIR version as well as deposition of other witnesses, PW-4 was tendered, PW-5 seizure list witness stated nothing as to recovery of yaba tablets and whiskey from the direct possession and control of the convict-appellants. PW-6 and PW-7 both of them investigated the case and finally PW-7 submitted charge sheet against the accused-appellants, both these witnesses inconsistently deposed before the trial Court as to recovery of yaba tablets and whiskey from the possession of the convict-appellants and in the facts and circumstances of the case the learned Judge of the trial Judge ought to have given benefit of doubt to the accused-appellants although the trial Court below without considering all these aspects of the case

from a correct angle mechanically passed the impugned judgment and order of conviction and sentence against the appellants 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, which was according to her just, correct and proper. She submits that in this case the prosecution side examined in all 7 witnesses and all of them categorically testified that the seized drugs were recovered from the possession and control of the convict-appellants and thus, the learned Additional Sessions Judge, 4<sup>th</sup> Court, Cumilla on due consideration of the evidence on record justly found that the accused-appellants guilty under table 9(Kha)/22(Ga) to section 19(1) of the Madak Drobbya Niyontron Ain, 1990.

Having heard the learned Advocate and the learned Deputy Attorney General, perused the memo of appeal, the First Information Report, charge sheet, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence dated 30.04.2018. Now, the only question that calls for my consideration in this appeal is whether the trial Court committed any error in finding the

accused-appellants guilty of the offence under table 9(Kha)/22(GA) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990.

On scrutiny of the record, it appears that the prosecution to prove its case examined in all 7 (seven) witnesses out of which PW-1, A.S.I, Abdus Shahid, member of the raiding party stated in his deposition that on the basis of a secret information under the leadership of D.A.D. Md. Mostakim he along with other forces rushed to the place of occurrence and apprehended the accused Anwar Hossain, Surjoban Banu, Helal Uddin, S.M. Jamal Uddin and on search, recovered 7 bottles whiskey and 50 yaba tablets from accused Jaml Uddin, 4 bottles whiskey and 250 yaba tablets from accused Anwar Hossain and 50 yaba tablets from accused Surjo Banu. This witness identified the accused persons on dock. In cross examination the defence failed to find out any contradiction in the evidence of P W-1. PW-2, Md. Abdul Mustakim, Circle Adjutant, Ansar Battalion, informant of the case stated categorically in his deposition that on the basis a of secret information he along with other forces rushed to the place of occurrence and apprehended the accused persons and on search, recovered total 5 bottles whiskey and 50 yaba tablets from accused Jaman, 250 yaba tablets from accused



Anwar and 100 yaba tablets from the wife of accused Anwar and thereafter S.I. Asit Kumar prepared seizure list as per direction of this witness (informant) in presence of the witness. Defence cross-examined this witness but failed to find out any contradiction in the evidence of this witness. PW-3, S.I. Md. Abdul Latif, member of the raiding party gave similar type of evidence as like as PW-1 and PW-2 in respect of all material particulars. PW-4 was tendered. PW-5, Rubel, seizure list witness stated in his respective evidence that- “ঘটনার তারিখ আমার স্মরণ নাই। ২ বৎসর আগে। আমার দোকানে আমি স্বাক্ষর। সত্য যে এটা আমতলী পশ্চিমপাড়া আসামী আনোয়ার এর বসত বাড়িতে ঘটনা। আমি স্বাক্ষর করি। আমতলীস্থ আমার দোকানে। জব্দ তালিকায় প্রদত্ত খ ক্রমিকে এটা আমার স্বাক্ষর এটা সেই জব্দ তালিকা। প্রদঃ ১, ১/১। আমাকে র্যাব এর লোক আমাকে বন্দু দেখায়। আমাকে স্বাক্ষর করতে বললে আমি স্বাক্ষর করি। বন্দুয় কী আমি এসব চিনি কিনা তা জিজ্ঞাসা করে। আমি বলেছি আমি চিনি না।” PW-6, Md. Ikter Mia partly investigated the case. This witness stated in his deposition that he examined the witnesses under section 161 of the Code of Criminal Procedure. This witness proved the sketch map, index and signature as “Ext.-3, 3/1.” This witness also proved seized goods as material “Exts-I, II”. PW-7, S.I. Md. Saiful Islam stated in his deposition that on completion of the investigation he found a prima facie case and accordingly submitted

charge sheet against the accused appellants and he produced the relevant documents as per requirement of law, which were marked as exhibits.

On going through the F.I.R. together with the evidence of PWs, it appears that PW-1, PW-2, PW-3, PW-6 and PW-7 all of them in their respective deposition categorically stated that the accused-appellants were apprehended along with the seized drugs, all these witnesses deposed that accused appellants illegally kept in their possession the seized drugs and all the prosecution witnesses namely, PWs. 1-4 proved the prosecution case as to the time, place and manner of occurrence.

However, it is found that in this case the accused-appellants were apprehended along with whiskey as well as  $50+250+100 = 400$  yaba tablets separately and in that view of the matter the trial Court ought to have awarded sentence to the appellants under table 9(ka) in place of table 9(kha) to section 19(1) of the Drobbya Niyontron Ain, 1990.

In this connection certain provisions of law are required to be referred to for having a better view of the dispute in question. Tables 9(ka), 9(kha) and 22(Ga) of

section 19(1) of the Drobbya Niyontron Ain, 1990 which reads as follows:

৯	ফেনসাইক্লিআইন, মেথাকোয়াল, এল,এস,ডি, বারবিরেটস, এ্যামফিটামিন অথবা এইগুলির যে কোনটি দ্বারা প্রস্তুত মাদকদ্রব্য	(ক) মাদক দ্রব্যের পরিমাণ অনুর্ধ্ব ৫ গ্রাম হইলে অন্যান্য ৬ মাস এবং অনুর্ধ্ব ৩ বৎসর কারাদন্ড।
		(খ) মাদক দ্রব্যের পরিমাণ ৫ গ্রামের উর্ধ্ব হইলে অন্যান্য ৫ বৎসর এবং অনুর্ধ্ব ১৫ বৎসর কারাদন্ড।

ধারা-২২। লাইসেন্স ইত্যাদি ব্যতিরেকে কাজ করিবার দন্ডঃ

যদি কোন ব্যক্তি এই আইনের অধীন প্রদেয়-

(গ) লাইসেন্স ব্যতিরেকে ধারা ১০(১) এ উল্লিখিত কোন কিছু করেন, তাহা হইলে তিনি অন্যান্য ২ বৎসর এবং অনুর্ধ্ব ১০ বৎসরের কারাদন্ডে দন্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্ধদন্ডেও দন্ডনীয় হইবেন।

Considering the law, facts and circumstances of the case as discussed above, particularly the fact that the appellants have already been faced the agony of the protracted prosecution and also suffered the mental harassment for a long period of one decade, I think that, the ends of justice, will be met in the facts and circumstances of the case, if the sentence of the appellants is reduced to the period of 6 (six) months in place of 5 years in view of the provisions of table 9(ka)

to section 19(1) of the Drobbya Niyontron Ain, 1990 and the conviction and sentence of the accused-appellants under table 22(Ga) of section 19(1) of the Drobbya Niyontron Ain, 1990 is maintained with regard to accused-appellants namely, Md. Helal Uddin and S.M. Jaman and the conviction and sentence so far as it relates to recovery of whiskey under table 22(Ga) of section 19(1) of the Drobbya Niyontron Ain, 1990 against accused appellants namely, Surjo Banu and Anwar Hossain is set-aside as no whiskey was recovered from them.

In the result, therefore, the appeals are allowed in part with modification of sentence in the above manner.

Since both the appeals are allowed in part with modification of sentence the convict-appellants are directed to surrender their bail bond if so required after thorough calculation of their (pre and post trial) jail/custody period within 3 (three) months from today to suffer rest of the sentence, failing which the trial Court shall take necessary steps against the convict-appellants to secure their arrest.

Send down the lower Courts' records at once.