

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Original Jurisdiction)**

Present:

**Mr. Justice Ashish Ranjan Das
And
Mr. Justice Md. Riaz Uddin Khan
Criminal Appeal No. 8221 of 2021.**

In the matter of:

Md. Mahbub

.....Convict-appellant.

Versus

The State

.....Respondent.

Mr. S.M. Asraful Hoque, D.A.G. with

Ms. Fatema Rashid, A.A.G. with

Mr. Md. Shafiquzzaman (Rana), A.A.G. with

Mr. Md. Akbar Hossain, A.A.G.

..... For the State.

**Heard on 19.03.2024, 21.04.2024 and
Judgment on: 25.04.2024.**

Ashish Ranjan Das, J.

Learned Additional Metropolitan Sessions Judge, 8th Court, Dhaka in Metropolitan Sessions Case No. 1072 of 2017 arising out of G.R. No. 388 of 2016 corresponding to Darus Salam Police Station Case No. 20 dated 10.08.2016 convicted this appellant Md. Mahbub under Section 19(1) Table 1 (Kha) of the Madok Drabbya Niyontron Ain, 1990 and sentenced him to suffer rigorous imprisonment for life followed by a fine of Tk. 20,000/- (twenty thousand). Hence is this appeal.

We have heard the learned Advocate for the convict-appellant and the objection raised by the learned Deputy Attorney General.

Succinct fact relevant for the purpose that could be gathered from the file is that a police patrol party of Darus Salam Police Station comprising of officers P.W. 1 and P.W.2 and other forces was on patrol around Mitali market area under Darus Salam Police Station, Mirpur, Dhaka when they received a secret source information and accordingly by the police van they rushed to Diabari. It was by the time at about 10.30 P.M. On the road in front of a Motor workshop and others shops the police found a person trading drugs on the road. They gave him a chase and caught. He introduced himself as Md. Mahbub. Upon search in presence of witnesses from his hip pocket 550 puria of prohibited drug heroin could be recovered and seized there. The alamat and the accused were taken into police custody. After coming back to the Thana the P.W.2 Sub-Inspector Md. Jobayer lodged an F.I.R. as a result Darus Salam Police Station Case No. 20 dated 10.08.2016 was set on motion.

During investigation statement of witnesses were recorded under Section 161 of the Code of Criminal Procedure (for short the Code). The alamat was forensically examined and a report could be had (exhibit-4) and after investigation the police filed charge sheet finding the allegation primarily proved.

Accordingly cognizance was taken, charge under Section 19(1) Table 1 (Kha) of the Madok Drabbya Niyontron Ain, 1990 was framed to which the sole accused pleaded innocence and prayed to be tried. In order to bring the charge home the prosecution examined 4 witnesses while the defence examined none. The witnesses were Md. Mahmudul Hasan, A.S.I.(P.W.1), Mr. Jobayer S.I., Mr. Jahangir, S.I., the investigation officer and a local witness to the seizure Md. Ontor Hossain P.W.4. P.W. 1 and 2 the members of the recovery party and Sub-Inspectors attached to Darus Salam Police Station described the case that was narrated in the F.I.R. The only local witness P.W.4. However P.W.4 practically disowned the case. He stated that in fact not at night rather on the day at about 2.55 P.M. that is at noon the police detained him on the road. He found this accused

detained in the police van. The police disclosed that they had recovered heroin and took his signature on a piece of blank paper. That is to say it happened not at 10.30 P.M. in Diabari area rather he saw the accused detained in police van at noon time and he witnessed no recovery proceeding. Significant is that the prosecution swallowed this evidence and did not claim him hostile.

The learned lawyer for appellant further pointed out that according to the investigation officer P.W.3 there were shops around the place of occurrence of Diabari area and from one shop the police collected a weighing scale and found that 550 puria weighed about 200 gram. But strange is that no person from or around the place of occurrence was cited as a witness. Even the examiner of the alamat was not produced to mean that the substance examined was heroin.

The learned Deputy Attorney General vehemently argued that in such a situation evidence of local witnesses is not required. In fact the issue has been settled in a catena of decisions by the apex courts of the entire subcontinent and within the mischief of section 134 of the Evidence Act a

conviction could be based on solitary testimony of a witness he may be a police. But the condition attached there to is that the interested witnesses that is the members of the recovery party that is the police has to be branded as absolutely truth full. If there is any deficit that independent corroboration will be call for. In the instant case the informant admitted that he used to be an assistant S.I. during the period while in the team there was sub-inspector and other members. We fail to understand while an A.S.I. had to lead the operation. Investigation officer P.W.3 frankly admitted that he collected no evidence from the place of occurrence nor any person either of the surrounding shops or a passerby was cited by the witness. Thus only local witness available seems to have been cited failing form a distant area of Mirpur.

Further it requires defenite evidence to conclude that as many as 550 purias were accommodated inside the hip pocket of the pant, which was not there.

Thus we find convincing substance in the submission of the learned Advocate for the convict appellant that this conviction and sentence is based in fact on no legal evidence.

As a result, the appeal is allowed. The judgment of conviction and sentence passed in Metropolitan Sessions Case No.1072 of 2017 dated 18.10.2021 by the learned Additional Metropolitan Sessions Judge, 8th Court, Dhaka is set aside.

The appellant to be set at liberty if not otherwise wanted in connection with any other case or proceeding.

The seized alat remains confiscated should be disposed of in accordance with law.

Communicate the judgment and order to the court below at once.

Send down the lower court record.

Md. Riaz Uddin Khan, J

I agree.

Md. Atikur Rahman, A.B.O.