

Present:

Mr. Justice Md. Salim

CRIMINAL APPEAL NO. 8326 of 2021

Mr. Helal Miah

..... Appellant.

-Versus-

The State

..... Respondent.

Mr. Md. Shahariar Bhuiyan, Advocate

..... For the
Appellant.

Mr. Monzurul Alam Sujan, DAG

Mr. Towhidul Islam, AAG

Mr. Syed Akhtarul Islam, AAG

..... For the State.

Heard on 17.05.2026, 14.06.2026,

21.06.2026 and 22.06.2026

Judgment on 22.06.2026

This appeal has been preferred against the judgment and order of conviction and sentenced dated 17.11.2021 passed by the learned Judge, Special Tribunal, Sunamgonj in Special Tribunal Case No.61 of 2017 corresponding to Sunamgonj Sadar Model Police Station Case No.05 dated 08.03.2017 convicting the appellant under Section 25B(2) of the Special Powers Act, 1974 and sentencing him to suffer rigorous imprisonment for a period of 02 (two) years with a fine of Tk.5,000/- in default to suffer simple imprisonment for 3(three) months more.

The prosecution case, in brief, is that P.W.1, as informant, lodged an information with Sunamgonj Sadar Model Police Station against the accused-appellant, alleging, inter alia, that on 07.03.2011 at about 22:40 hours, the informant, along with other members of the accompanying force, was on patrol duty. During the course of such duty, the informant received secret information that certain persons were proceeding from the border area towards Rajballav carrying illegal contraband liquor. Acting upon the said information, the informant and the accompanying force immediately rushed to the place of occurrence and intercepted the accused-appellant and another person. Upon searching their possession, the informant recovered 180 (one hundred and eighty) bottles of “Officer’s Choice” whisky, which were allegedly being transported illegally. Thereafter, a seizure list was prepared in accordance with law, the recovered articles were seized, and the accused person was arrested.

After investigation, the police submitted a charge sheet against the accused-appellant and another under Section 25-B of the Special Powers Act, 1974, before the Chief Judicial Magistrate, Sunamgonj.

The case being ready for trial, it was transferred to the Court of Special Tribunal, Sunamgonj, wherein it was registered as Special Tribunal Case No. 61 of 2017.

Subsequently, the learned judge of the Special Tribunal, Sunamgonj, framed the charge under section 25B(2) of the Special Powers Act, 1974, which was read over and explained to the accused appellant, to which he pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined 6 (six) witnesses, while the defense examined none.

After the deposition of witnesses was recorded, the convict appellant was examined under section 342 of the Code of Criminal Procedure, to which they pleaded not guilty.

After the conclusion of the trial, the learned judge of the Special Tribunal, Sunamgonj, by the impugned judgment and order dated 17.11.2021, convicted the accused appellant under Table 25B(2) of the Special Powers Act, 1974 and sentenced him to suffer rigorous imprisonment for a period of 02 (two) years with a fine of Tk.5,000/- in default to suffer simple imprisonment for 3(three) months more.

Being aggrieved by and dissatisfied with the above judgment and order, the accused appellant preferred the instant appeal before this court.

Mr. Md. Shahariar Bhuiyan, the learned Advocate appearing on behalf of the appellant, having taken us through the impugned judgment, the evidence on record and other relevant materials, submits that the alleged contraband, namely Indian-made liquor, was not recovered from the conscious possession or exclusive control of the appellant. It is contended that the appellant had no personal knowledge of the alleged contraband, as he was merely a motorcycle driver who used to carry passengers for hire to earn his livelihood. It is further submitted that the prosecution has miserably failed to prove the charge beyond reasonable doubt, inasmuch as the evidence of the prosecution witnesses suffers from material contradictions and inconsistencies, particularly with regard to the place of occurrence, which has been described differently by different prosecution witnesses. The learned counsel further contends that the learned judge of the trial Court failed to appreciate that P.W.2 and P.W.3, who were independent witnesses, did not support the prosecution case and were declared hostile. It is also argued that the prosecution failed to examine the seizure-list

witnesses in support of the alleged recovery, thereby casting serious doubt on the genuineness of the seizure. In such circumstances, it is submitted that the prosecution has failed to establish the charge against the appellant beyond all reasonable doubt and, as such, the impugned judgment and order of conviction and sentence are liable to be set aside.

On the contrary, Mr. Towhidul Islam, the learned Assistant Attorney General appearing on behalf of the State, vehemently opposes the submissions advanced by the learned Advocate for the appellant. He contends that the prosecution has successfully proved the charge against the appellant beyond reasonable doubt by adducing the evidence of competent and trustworthy witnesses. He further submits that the learned judge of the trial Court, upon proper appraisal of the oral and documentary evidence on record, rightly held that conviction may safely be based on the testimony of police personnel alone, provided that such evidence is found to be credible, reliable and inspires confidence. It is, therefore, contended that the learned judge committed no illegality or infirmity in recording the order of conviction and sentence, and as such, the impugned judgment and order call for no interference by this Court.

We have anxiously considered the submission advanced by the learned counsel for the appellant, and the learned Assistant Attorney General, perused the impugned judgment, evidence, and other materials available on record.

In order to prove the charge, the prosecution examined as many as six witnesses. Of them-

P.W. 1 Md. Solaiman Hossain, DAD as informant, stated in his examination-in-chief that on 07.03.2011 at about 22:40 hours, the informant, along with other members of the accompanying force, was on patrol duty. During the course of such duty, the informant received secret information that certain persons were proceeding from the border area towards Rajballavpur carrying illegal contraband liquor. Acting upon the said information, the informant and the accompanying force immediately rushed to the place of occurrence and intercepted the accused-appellant and another person. Upon searching their possession, the informant party recovered 180 (one hundred and eighty) bottles of “Officer’s Choice” whisky, which were allegedly being transported illegally. Thereafter, a seizure list was prepared in accordance with law, the recovered articles were seized, and the accused persons were arrested.

In cross-examination, this witness stated that the raiding party consisted of S.I. Nurul Haque, S.I. A.B. Jamser, Nayek Subal Sarker, Constable Sohel Rana and Driver Constable Zumon. He then stated that the accused, Helal, was a poor man and used the alleged motorcycle to carry passengers for hire to earn his livelihood.

P.W. 2 - Abdul Khalek, a Member of the Union Parishad and a seizure list witness, was declared hostile by the prosecution.

During cross-examination, this witness admitted that he is a seizure list witness. He denied the suggestion that the accused was his nephew and, therefore, he gave false evidence.

P.W.3, Shorfat Ali, an independent witness, did not support the prosecution case and was, accordingly, declared hostile by the prosecution.

In the cross-examination by the defense, he stated that accused Helal drove the motorcycle carrying the passenger to survive. He did not see the occurrence.

P.W.4 - Jomsed Ali, ASI of police, deposed that he is presently serving at Netrakona Police Lines. It has further been stated that on 07.03.2017, while he was serving with RAB, CPC Sunamganj, an expedition was conducted in the Ballavpur area

under Sunamganj Sadar Police Station based on secret information under the leadership of DAD Solaiman Hossain. During the operation, two persons were found carrying two sacks on a motorcycle. On sensing the presence of the RAB personnel, an attempt was made to flee, during which the motorcycle overturned. One of the riders managed to escape, while the other, who disclosed his name as Helal Mia, was apprehended along with the motorcycle and the two sacks. Thereafter, in the presence of the witnesses, the two sacks were searched and a total of 180 bottles of Indian-made “Officer’s Choice” liquor, kept in four cartons, were recovered. Subsequently, a seizure list was prepared by S.I. Nurul Haque in the presence of the witnesses.

In cross-examination by the defense, this witness stated that they were present at the scene of the occurrence from 22:55 hours.

P.W.5- Md. Nurul Haque, in his examination-in-chief, stated that an operation was conducted under the leadership of Commander BGB along with the participation of members of RAB. At the same time, they were positioned at Ballavpur Adar Bazar. During the operation, secret information was received that foreign contraband liquor was being transported towards

Ballavpur by a motorcycle. After the matter had been reported to the superior authority, a raid was conducted. At Ballavpur Brickfield, adjacent to the earthen road leading to Ballavpur Adar Bazar, two persons were spotted carrying two jute sacks on a motorcycle. Sensing the presence of the RAB team, they attempted to flee. While turning the motorcycle around, it fell to the ground. They recovered 80 bottles of Indian-made Officer's Choice.

During cross-examination, he stated that the alleged wine was recovered beside a hut on the road.

P.W.6- Md. Shibli Kayes Mir, investigation officer of the formal witness, in his examination-in-chief, stated that in course of investigation, he prepared a sketch map with the index, recorded the statement of the witness under section 161 of the Code of Criminal Procedure and after investigation, he submitted the charge against the accused appellant and another under section 25B(2) of the Special Powers Act, 1974. He identified the sketch map and its index, which were marked as exhibits, and also identified his signatures thereon. This concludes the evidence adduced by the prosecution, whereupon the prosecution side closed its case.

Analyzing the above evidence on record, it appears that the prosecution case is that 180 bottles of “Officer’s Choice” whisky were allegedly recovered from two gunny bags said to have been carried by the convict-appellant, who failed to produce any valid license, permit or other lawful document in support of his possession of the said liquor. However, a close examination of the oral evidence reveals material discrepancies and inconsistencies that cast serious doubt on the prosecution’s case.

P.W.1, the informant, stated in the First Information Report as well as in his deposition that on 07.03.2017 at about 22:40 hours the raiding party recovered the alleged liquor and arrested the appellant. Nevertheless, none of the prosecution witnesses, except the informant, gave cogent, consistent evidence directly implicating the appellant in the alleged recovery. P.W.2, one of the seizure-list witnesses, did not support the prosecution case and was accordingly declared hostile. Likewise, P.W.3, a Member of the concerned Union Parishad and an independent witness, also failed to support the prosecution version and was declared hostile. P.W.4 was not a member of the raiding party, and his testimony does not disclose that he witnessed the alleged recovery of the

contraband. P.W.5, in his deposition, stated that he filled in the form for the First Information Report, which was prepared at about 22:55 hours. His evidence is confined to filling up the form of the FIR column and does not establish the alleged recovery or the appellant's conscious possession of the contraband.

It is a cardinal principle that, to convict of an accused under 25B of the Special Powers Act, it has to be fully established that the seized goods are contraband goods and were illegally imported into Bangladesh without payment of customs duties and other taxes. Those are actually recovered from the accused's possession within Bangladesh territory.

In the instant case, from the discussion of the evidence on record, it appears that the prosecution version suffers from material inconsistencies. It lacks independent corroboration of the alleged recovery and the appellant's involvement. Thus, on careful consideration of the witnesses discussed above, it is very difficult to rely on their evidence, given the glaring omissions and contradictions in their court testimony.

Considering the above, it appears that the learned Judges of the trial Court have not considered the material

discrepancies, contradictions, and omissions of the witnesses in their judgment, for which an error has crept in, resulting in the conviction of the appellant. On a careful consideration of the evidence on record, we are of the firm view that the appellant is entitled to the benefit of doubt and he is liable to be acquitted. We find merit in the appeal.

Resultantly, the appeal is allowed.

The impugned judgment and order dated 17.11.2021, passed by the learned judge of the Special Tribunal, Sunamgonj, in Special Tribunal Case No. 61 of 2017, is set aside.

The accused appellant is acquitted of the charge leveled against him and discharged from his bail bond.

Send down the lower court records at once along with a copy of the judgment.

.....
(Md. Salim, J).

Rakib(ABO)