

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Bashir Ullah

Criminal Appeal No. 1686 of 2015

Md. Yonus Babul alias Jang Babul and another
...Convict-Appellants-Petitioners
-Versus-

The StateRespondent-Opposite Party

Mr. Rajat Kanti Chakraborty, Advocate
.....For the petitioner.

Mr. S. M. Aminul Islam Sanu, DAG with

Mr. Md. Nasimul Hasan, AAG with

Mr. Md. Golamun Nabi, AAG and

Ms. Farhana Abedin, AAG

..... For the State

Heard on: 08.01.2026, 11.01.2026, 12.01.2026
13.01.2026 and 14.01.2026
Judgment on: 21.01.2026.

This appeal is directed against the judgment and order dated 12.03.2015 passed by the learned Additional Sessions Judge and Judge, Special Tribunal No. 02, Lakshmipur in Special Tribunal Case No. 22 of 2011 arising out of Ramgonj Police Station Case No. 10, dated 27.11.2010 corresponding to G.R. No. 153 of 2010 convicting the appellants under Section 25B(2) of the Special Powers Act, 1974 and sentencing the accused-appellant No. 1

namely Md. Yonus Babul alias Jang Babul to suffer rigorous imprisonment for a period of 2(two) years and to pay fine of Taka 2,000/-(two thousand) in default to suffer further simple imprisonment for a period of 2(two) months and accused-appellant No. 2 namely Md. Mamun to suffer rigorous imprisonment for a period of 1(one) year and also to pay fine of Taka 1,000/- (one thousand) in default to suffer simple imprisonment for a period of 1(one) month.

The prosecution case, in short, is that on 27.11.2010 about 19:30 p.m. Sub-Inspector of Police of Ramgonj Police Station Nooruddin Jahangir received secret information to the effect that some persons were selling drugs at Balua Chamuhuani under Ramgonj Police Station. Upon receipt of such information, the informant made General Diary being No. 869 dated 27.11.2010 and accompanied by police force preceded to the place of occurrence. On sensing the presence of police three persons attempted to flee. But two of them, namely Yonus Babul and mamun were apprehended. Upon search, 4(four) cans of beer were recovered from the possession of Yonus Babul and 2(two) cans of beer from the possession of Mamun, the total value being Taka 1,800/- (one thousand eight hundred). A seizure list was prepared in presence of local witnesses. The accused failed to produce any valid documents

authorising possession of those 06(six) cans of contraband beer. Thereafter, the accused were taken into custody and the informant lodged the FIR with Ramgonj Police Station which was registered as Ramgonj Police Station Case No. 10, dated 27.11.2010 under Section 25B(2) of the Special Powers Act, 1974.

On closure of investigation, the Investigating Officer submitted police report No. 08, dated 25.02.2010 recommending prosecution under Section 25B(2) of the Special Powers Act, 1974. The case record was transmitted to the learned Additional Sessions Judge and Judge, Special Tribunal No. 02, Lakshmipur, where the same was registered as Special Tribunal Case No. 22 of 2011. Thereafter, upon taking cognizance of offence, charge was framed against the accused under Section 25B(2) of the Special Powers Act, 1974 on 30.06.2011 wherein the accused pleaded not guilty and claimed to be tried when the charge was read out and explained to them. In course of trial, the prosecution examined 8 witnesses out of 12 charge sheeted witnesses while the defence examined none. After closure of the prosecution evidence, the accused were examined under Section 342 of the Code of Criminal Procedure, when they repeated their innocence.

Upon conclusion of the trial, the learned Additional Sessions

Judge and Judge, Special Tribunal No. 2, Lakshmipur by judgment and order dated 12.03.2015 found the charge proved and convicted the accused-appellants under Section 25B(2) of the Special Powers Act, 1974 and sentenced as aforesaid.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 12.03.2015 passed by the learned Additional Sessions Judge and Judge, Special Tribunal No. 2, Lakshmipur, in Special Tribunal Case No. 22 of 2011 the accused-appellants preferred this instant Criminal Appeal before this Court.

Mr. Rajat Kanti Chakraborty, learned Advocate appearing on behalf of the appellants submits that the convict-appellants are no way involved with this alleged offence and in order to prove the case, the prosecution examined as many as 8 witnesses out of 12 charge sheeted witnesses where 1 to 4 are police personnel who are not neutral witnesses.

He further contends that the prosecution failed to prove that the alleged incriminating articles that is seized 6 cans of beer were of foreign origin, contraband or smuggled into Bangladesh and that no chemical examination was conducted to establish the nature of the seized articles. Seizure list witnesses PW5, PW6, and PW7 categorically stated that no recovery was made in their presence and

as such the offence under Section 25B(2) of the Special Powers Act, 1974 against the appellant have not been proved. Hence, the judgment and order of conviction and sentence is liable to be set aside.

Learned counsel further submits that the appellants are day labourers, only earning members of their respective families and not habitual offenders and they had already suffered incarceration for about 3 months although the impugned judgment and order of conviction and sentence cannot be sustainable in law. He finally prays for allowing the appeal.

In support of his contention learned Advocate referred to cases of ***Nannu Mia @ Habibur Rahman Vs. State***, reported in 55 DLR (2003) 7; ***Jewel and another Vs. State***, reported in 5 BLC (2000) 248 and ***Rouf Mia alias Rup Mia and others Vs. The State***, reported in 40 DLR (1988) 348.

Per contra, Mr. S. M. Aminul Islam Sanu, learned Deputy Attorney General appearing for the State opposes the Rule and submits that the prosecution successfully proved the charge beyond reasonable doubt and that the trial Court upon proper appreciation of evidence on record, rightly convicted and sentenced the appellants, warranting no interference by this Court. He further submitted that 8

prosecution witnesses 5 were police personnel who consistently deposed about the recovery of six cans of contraband beer from the possession of the appellants.

He next contends that the defence failed to suggest any enmity between the appellants and the police personnel who recovered the alleged 6 cans of beer.

He further submits that the prosecution by examining independent and neutral witnesses successfully proved the case beyond shadow of doubt and as such the conviction and sentence will be upheld and the appeal is liable to be dismissed.

I have considered the submissions advance by the learned Advocates for the respective parties and perused the impugned judgment and order, annexure and other materials on records.

To substantiate the submission of the learned Advocates of the parties let see the evidence on record.

PW1, Nur Uddin Jahangir, a Sub Inspector of police and informant who prepared the seizure list stated that they arrested two accused when three were attempting to flee away. 4 cans of beers were recovered from Yonus Babul and 2 cans of beers were recovered from Mamun. He prepared seizure list. He proved seizure

list Exhibit-I and his signature Exhibit I/I and recovered 6 cans beers material Exhibit I series.

He denied the suggestion that no foreign beer was recovered.

PW2, Mosaraf Hossain, a constable of police stated that 4 cans of beers were recovered from Yonus Babul and 2 cans of beers were recovered from Mamun. He also denied the suggestion that no beer was recovered.

PW3, Md. Elias, a constable of police stated that 4 cans of beers were recovered from Yonus Babul and 2 cans of beers were recovered from Mamun. S.I. Nurruddin prepared the seizure list. He identified the accused on dock. He also denied the suggestion that no beer was recovered.

PW4, Nurul Amin, Assistant Sub Inspector of police stated that he was a member of the force and 4 cans of Singapore made beers were recovered from Yonus Babul and 2 cans of Singapore made beers were recovered from Mamun. He denied the suggestion that the accused were arrested from their house and the seizure list was prepared in the police station.

PW5, A.T.M. Bahar, a seizure list witness stated that he signed on a blank paper. In cross-examination he deposed that-

nothing was recovered in his presence.

PW6, Md. Liton, a seizure list witness stated that when he went to police station then they took his signature on a paper. In cross- examination he deposed that nothing was recovered from the accused.

PW7, Mostafizur Rahman, a seizure list witness stated that he put his signature on a blank paper. He saw nothing to recover. In cross- examination he deposed that he was not present at place of occurrence at the time of incident and nothing was recovered from the accused by the police.

PW8, Md. Anamul Kamal, investigating officer who submitted the police report deposed that he visited the place of occurrence, prepared sketch map and index Exhibit 3 and recorded statement of the witness. He further stated that after conclusion of the investigation submitted police report No. 08 dated 26.02.2010. In cross-examination he stated that recovered beers were not sent for chemical examination. He denied the suggestion that the accused were arrested from their house and the seizure list was prepared in the police station and he did not investigate the case properly.

Upon meticulous reappraisal of the evidence on record, it is evident that the prosecution failed to adduce any cogent evidence

that the incriminating articles are contraband or smuggled. Furthermore, the prosecution has not produced any paper, document or notification to show that the incriminating beers are contraband and prohibited under law. Before convicting an accused on the ground of smuggling, the prosecution is bound to prove that the seized goods are contraband and were smuggled goods. This principle finds support from the decision passed in *Forkan Mondal and others Vs. State* reported in 1991 BLD 231.

As such this Court finds that the prosecution case suffers from serious infirmities, inconsistencies and legal deficiencies, which strike at the root of the allegation brought against the accused-appellants under Section 25B(2) of the Special Powers Act, 1974.

The seizure list witness, PW5 stated that “আমার সামনে কোন কিছু উদ্ধার করা হয় নাই।” He further stated in cross-examination that আমি আসামীদের নিকট হতে পুলিশ কর্তৃক কোন কিছু উদ্ধার করিতে দেখি নাই। আমি থানায় গেলে একটা সাদা কাগজে আমার দস্তখত নেয়। PW6, Md. Litan, another seizure list witness in his examination-in-chief stated that ২-২½ বছর আগে আমি থানায় গেলে আমাকে একটা কাগজে স্বাক্ষর নেয়। He stated in his cross-examination that পুলিশকে আমি আসামীদের নিকট হইতে কোন কিছু উদ্ধার করিতে দেখি নাই। আমি সাদা কাগজে স্বাক্ষর করি। PW7, Mostafizur Rahman, seizure list witness stated that আমি কোন কিছু উদ্ধার করিতে দেখি নাই। জন্ম তালিকায় সাদা কাগজে আমি

দণ্ডিত করি। In cross-examination he stated আমি আসামীদের নিকট হতে পুলিশকে কোন কিছু উদ্ধার করতে দেখি নাই।

In view of the above evidence, it transpires that the seizure list witnesses examined by the prosecution did not support the alleged recovery in material particulars. Their testimonies are mutually contradictory and do not corroborate the version of the informant or the investigating officer. Such contradictions are not minor in nature but go to the root of the prosecution case, thereby rendering the alleged recovery highly doubtful.

The record shows that the recovered beers were not tested by a chemical test examination. Investigating Officer, PW8, Md. Enamul Kamal in cross-examination stated that প্রাণ বিয়ার রাসায়নিক পরীক্ষার জন্য প্রেরণ করা হয় নাই। Before awarding conviction and sentence trial Court must find that the goods were a contraband item and those were smuggled into Bangladesh and kept the same in possession for the purpose of sale. In this regard reliance may be placed upon the decision passed in *Nannu Mia @ Habibur Rahman Vs. State*, reported in 55DLR(2003) 7, wherein it has been held:

“... found in possession of the appellant was not tested by a chemical test examination in order to find out that the goods was of phensidyl or of

cough linctus (Syrup) and the same was a contraband item the bringing of which was illegal. In the absence of that it is very difficult to find the appellant is guilty under Section 25B(2) of the Special Powers Act. Before awarding conviction and sentence trial Court must find that the goods were a contraband item and those were smuggled into Bangladesh and kept the same in possession for the purpose of sale.”

The learned Deputy Attorney General appearing on behalf of the State argued that the defence failed to suggest any enmity of the witnesses with the appellants. There is no reason why these witnesses should depose falsely against the appellants. It is true that the defence failed to prove any enmity but the prosecution is to prove the accusation beyond reasonable doubt irrespective of the defence version of the case. Even, if it is found that the defence version of the case is false it will not absolve the prosecution of their responsibility of proving the case beyond reasonable doubt. Here in the present case on consideration of the evidence on record it is found that the prosecution failed to prove this case beyond reasonable doubt and the appellants are entitled to the benefit of doubt.

It is stated in the F.I.R. that “ব্যাংকের নিচে থাকা ০৩ জন লোক পুলিশ এর উপস্থিতি টের পাইয়া দৌড়ে পালানোর চেষ্টা কালে আমি সঙ্গীয় ফোর্সসহ ০২ জন লোককে গ্রেফতার করিতে সক্ষম হই। ধৃত লোক দ্বয়কে জিজ্ঞাসাবাদে তাহারা উপরোক্ত নাম ঠিকানা বলে এবং পালাইয়া যাওয়া লোকটির নাম সোহেল, পিতা-বাবুল মিয়া সাং- পূর্ব কাজির খিল বসার বাড়ী বলে জানায়। ... জিজ্ঞাসাবাদে ধৃত আসামীদ্বয় জানান তাহারা পলাতক আসামী সোহেল এর নিকট হইতে বিয়ার গুলি বিক্রির জন্য এনে নিজেদের হেফাজতে রাখিয়াছে।”

In view of the above-mentioned statement it appears that FIR itself suggests that the appellants were merely may be carrier or retail sellers. The principal offender was Sohel, son of Babul Miah but he was not apprehended and it appears from the police report that Sohel was not found and hence he was not sent up for trial which further weakens the prosecution case.

It transpires from the record that the alleged recovery of the incriminating articles was not made in strict compliance with the mandatory provisions of law.

It does not depict from the core essence of sworn testimony of alleged seizure witnesses that the alleged incriminating articles were actually recovered from unlawful possession of the accused persons. It has not been proved too that the incriminating articles were brought inside Bangladesh by smuggling and the accused persons

were involved with such unlawful act and keeping the same in their possession.

Besides, no chemical examination of the seized articles was done to show that the same were contraband alcoholic products which were allegedly manufactured in Singapore. Totality of evidence tendered together with settled legal proposition creates reasonable doubt as to recovery of alleged incriminating articles from possession of the accused persons. Benefit of it indubitably goes in favour of the accused persons.

On careful scrutiny of the impugned judgment, I find that the trial Court failed to properly consider the aforesaid material discrepancies and proceeded to convict the accused-appellants on conjectures and surmise rather than on evidence. The findings of the trial Court thus suffer from misreading and non-consideration of material evidence on record.

In the totality of the facts and circumstances, I am of the considered view that the prosecution has miserably failed to prove the charge against the accused-appellants under Section 25B(2) of the Special Powers Act, 1974 beyond all reasonable doubt. The accused-appellants are, therefore entitled to the benefit of doubt.

In the result, the appeal is allowed.

The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge and Judge, Special Tribunal No. 2, Lakshmipur, in Special Tribunal Case No. 22 of 2011 are hereby set aside.

The accused-appellants are acquitted of the charge, under Section 25B(2) of the Special Power Act, 1974.

Since the accused-appellants were enlarged on bail they are discharged from their bail bond immediately.

Let a copy of this judgment along with lower Court's record be communicated to the concerned Court forthwith.

(Md. Bashir Ullah, J:)

**Md. Sabuj Akan/
Assistant Bench Officer.**