

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

Criminal Appeal No.5474 of 2024

In the matter of:

An appeal under Section 30 of the Special Powers Act, 1974.

-And-

In the matter of:

Shamsuddin

.... Accused-appellant

-Versus-

The State

.... Opposite Party

Mr. H M Shanjid Siddique, Advocate

... For the accused-

appellant.

Mr. Sujit Chatterjee, D.A.G. with

Mr. Moududa Begum, A.A.G.

Mr. Mirza Md. Soyeb Muhit, A.A.G.

Mr. Mohammad Selim, A.A.G.

Mr. Zahid Ahmed (Hero), A.A.G.

... For the State

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice A.K.M. Rabiul Hassan

The 2nd July, 2024

This appeal at the instance of the accused No.1 Shamsuddin challenging the legality and propriety of impugned order dated 02.06.2024 passed by the learned

Additional Session Judge, Fourt Court. Sylhet rejecting a petition filed by the appellant for recall of PW1 Md. Abdul Mannan and PW2 Osman Gani for cross examination.

Mr. H M Sanjid Siddique, learned Advocate for the appellant submits that due to unavailability of the appointed Advocate of the appellant above mentioned above mentioned two important prosecution witnesses could not be cross examined. PW1 is the informant of above case and PW2 is an important witness to the seizure list. If above two prosecution witnesses are not cross examined the appellant will be seriously prejudiced.

Mr. Sujit Chatterjee, learned Deputy Attorney General for the State submits that the case is fixed for pronouncement of judgment. The appellant cross examined PW3-PW6 in 2022 but they deliberately abstained from making make any endeavor for cross examination of above two prosecution witnesses.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

In this case under Section 19A and 19(f) of the Arms Act one foreign made revolver was allegedly recovered from the personal possession of the appellant.

PW1 Abdul Mannan and PW2 Osman Gani were examined on 09.03.2021 when the appellant was present in the Court on bail. Above two PWs were retired Police Officers and elderly persons. PW3-PW6 were examined by the prosecution and cross examined by the appellant in September 2022. During above period the appellant did not make any endeavor for recall and cross examination of above two prosecution witnesses. For the first time they have submitted a petition to the learned Judge of the trial Court on 22.08.2023 for cross examination of above two prosecution witnesses. We find no reasonable explanation as to above inordinate delay in submitting

this petition for cross examination of above two prosecution witnesses.

Above two prosecution witnesses who were retired Police Officers and elderly persons may not be easily available cross examination and the disposed of the case will be held up for an indefinite period of time.

If such a belated petition for cross examination of prosecution witnesses who were examined in presence of the appellant is allowed despite no reasonable cause then it will be very difficult for the trial Court to conclude the trial of any Criminal Case of serious nature.

In above view of the materials on record we are unable to find any substance in this appeal and the same is dismissed summarily.

MD. MASUDUR RAHMAN
BENCH OFFICER