

Present:
Mr. Justice Mohammad Marzi-ul-Huq
and
Mr. Justice Md. Ruhul Quddus

Jail Appeal No.343 of 2007

Md. Tarique Aziz
... Appellant
-Versus-
The State
...Opposite Party
Mr. Hasna Begum, Advocate
... for the appellant
Mr. Yousuf Mahmud Morshed, A.A.G.
õ for the opposite party

Judgment on 15.3.2012

Md. Ruhul Quddus, J:

This appeal under section 420 of the Code of Criminal Procedure is directed against judgment and order dated 29.3.2007 passed by the Special Tribunal No.4, Rajshahi in Special Tribunal Case No. 55 of 2006 convicting the accused-appellant under section 6 of the Explosive Substance Act and sentencing him thereunder to suffer rigorous imprisonment for ten years. By the same judgment and order, the Tribunal convicted three others principal accused under sections 4(b) and 6 of the Explosive Substance Act and sentenced each of them thereunder to suffer rigorous imprisonment for fifteen years.

Facts leading to this appeal, in brief, are that the informant Md. Mosharrf Hossain, a Warrant Officer deputed to RAB-5 produced three persons along with 3978 detonators to Godagari Police Station on 18.12.2005 and lodged an *ejahar* alleging, *inter alia*, that on the previous day he along with his forces had raided Natore Railway Station area and arrested two of them, namely, Md. Shafiullah alias Tareque and Md. Tarikul Islam. On information received from them, the RAB personnel arrested the third person Md. Rezaul Karim from his house at village Charboarmary within the police station of Godagari, Rajshahi and following his statement they recovered 3978 pieces of detonators from a nearby land owned and possessed by one Iliasur Rahman alias Khyapa.

The *ejahar* gave rise to Godagari Police Station Case No.18 dated 18.12.2005. The police, after investigation, submitted charge sheet on 22.1.2006 under sections 4(b) and 6 of the Explosive Substance Act against four persons adding the appellant as an accused therein.

The case after being ready for trial was sent to the Special Tribunal No.1, Rajshahi and was numbered as Special Tribunal Case No.55 of 2006. Thereafter, it was sent to the Special Tribunal No.4, Rajshahi for hearing and disposal. Learned Judge of the Tribunal by his order dated 12.2.2006 framed charge against all the accused including the appellant under sections 4(b) and 6 of the Explosive Substance Act, to which he pleaded not guilty and claimed to be tried.

In course of trial, the prosecution examined the witnesses, namely, P.W.1 Md. Mosharraf Hossain, the informant; P.W.2 Shaikh Mashiur Rahman, a Sub-Inspector of Police deputed to RAB-5 and a member of the raiding party, which arrested the appellant; P.W.3 Md. Mostafa Kamal Haider, a RAB personal; P.W.4 Md. Zakir Hossain, Commander of the raiding party, which arrested the appellant; P.Ws.5-10 Md. Jalal Uddin, Md. Tofazzal, Md. Haibur, Md. Abdur Razzaque, Rezanul Huq and Shajahn Ali respectively the local seizure list witnesses; P.W.11 Md. Kamruzzaman, a member of raiding party, which arrested the appellant, and P.W.16 Md. Serajul Islam, the Investigating Officer. P.Ws.12-15 were tendered by the prosecution and the defense declined to cross-examine them. Among the witnesses examined, P.Ws.1, 3, 5-7 and 16 did not raise any allegation against the appellant, even did not mention his name in their evidence. P.Ws.2, 4, 8, 9, 10 and 11 though mentioned his name, did not raise any allegation.

For the purpose of deciding the instant appeal we need not to discuss the evidence of those, who did not even mention the appellant's name. Let us examine the evidence of those witnesses, who mentioned his name.

P.W.2 Sheikh Mashiur Rahman stated that on 9.12.2006 under the command of Subedar Md. Zakir Hossain, a RAB team raided the appellant's house and arrested him at about 1.20 a.m. and recovered

fifteen militant (সন্ত্রাস) books and three audio cassettes from his possession. In his petty long deposition, he stated nothing else showing involvement of the appellant in keeping the explosive recovered.

P.W.4 Md. Zakir Hossain under whose command the RAB personnel raided the appellant's house corroborated the evidence of P.W.2 in respect of his arrest and recovery of fifteen militant books with three audio cassettes. He proved the said books and cassettes as material exhibits. He (P.W.4) stated nothing else showing complicity of the appellant in keeping the explosive.

P.Ws.8-9 Md. Abdur Razzaque and Rezanul Huq respectively two local seizure list witnesses stated that on 9.12.2006 at the time of *Magrib* prayer, some books and cassettes were recovered from the house of the appellant. P.W.10 Shahjan Ali, another seizure list witness stated that on 9.12.2006 some RAB personnel arrested the appellant and recovered some books and cassettes from his house after the *Magrib* prayer.

P.W.11 Md. Kamruzzaman, a Sub-Inspector of Police deputed to RAB-5 at the relevant time stated that the raiding party arrested the appellant from his house on 9.12.2005 and recovered fifteen militant books and three audio cassettes therefrom. He (appellant) was a member of J. M. B (Jamaatul Mujahedin, Bangladesh, an organization of Islamist Militants). Immediately after securing his arrest, the appellant disclosed that sometimes he used to possess materials for preparation of bomb. In

cross-examination P.W.11 stated that the recovered articles were mere books and cassettes, not any explosive substance.

After closing the prosecution, learned Judge of the Tribunal examined the appellant under section 342 of the Code of Criminal Procedure, when he reiterated his innocence, but declined to adduce any evidence in defense. During the examination, learned Judge brought into his notice only about recovery of fifteen militant books and three audio cassettes from his possession, nothing else.

Learned Judge of the Tribunal, after conclusion of trial, found three accused (Md. Shafiullah alias Tarique, Md. Tariqul Islam and Md. Razaul Karim) guilty of offence under sections 4(b) and 6 of the Explosive Substance Act and sentenced each of them to suffer rigorous imprisonment for fifteen years, while convicted the present appellant under section 6 of the said Act and sentenced him thereunder to suffer rigorous imprisonment for ten years, as aforesaid. Challenging the said judgment an order of conviction and sentence, the appellant filed the instant jail appeal.

Mrs. Hasna Begum, a panel lawyer appointed by the Ministry of Law, Justice and Parliamentary Affairs to provide legal aid to the appellants in jail appeals, submits that the appellant was arrested on 9.12.2005 and only some religious books and cassettes were recovered from his house, whereas the present case allegedly for recovery of huge

explosive was filed on 18.12.2005 without mentioning his name. It is also not clear as to how his name was included in the charge sheet without any specific description of his involvement in the alleged occurrence. Most of the prosecution witnesses did not mention his name and who mentioned his name, did not raise any allegation against him. So, the impugned judgment and order of conviction and sentence, so far as it relates to the appellant, is based on no evidence. The appellant in the meantime has suffered more than six years for no fault and as such he should be released at once on setting aside the impugned judgment and order.

On the other hand, Mr. Yousuf Mahmud Morshed, learned Assistant Attorney General appearing for the State, submits that the Court can convict an accused even relying on only one witness. The appellant's complicity with the offence has been proved by the evidence of P.W.11, who stated that the appellant, after securing his arrest, disclosed that he used to keep explosive substance at his house. Admittedly he is a member of J.M.B, an extremist organization. Under the facts and circumstances of the present case, the judgment and order of conviction has been rightly passed and there is nothing to interfere with by this Court.

We have examined the evidence on record and considered the submissions of the learned Advocates of both the sides. It appears that none of the prosecution witnesses except P.Ws.2, 4, 8, 9, 10 and 11 mentioned the name of the appellant. The said witnesses, however, did

not raise any allegation against him except recovery of fifteen militant books and three audio cassettes from his possession. It further appears that none of the prosecution witnesses disclosed the contents of the said books and cassettes. P.W.11 rather admitted that those were mere books and cassettes, not any explosive substance. The appellant was arrested on 9.12.2005 on the allegation that he was a member of J.M.B and fifteen militant books and three audio cassettes were recovered from his house. The present *ejahar* was lodged on 18.12.2005 without mentioning his name. It is also not clear in the charge sheet as to how his complicity in the alleged occurrence was detected by the police in course of investigation. None of the prosecution witnesses stated any single word regarding his involvement in keeping the detonators recovered under control of the principal accused. Therefore, we fail to understand as to how this appellant can be convicted in the present case under section 6 of the Explosive Substance Act.

Trial of this case was held under section 4 (b) and 6 of the Explosive Substance Act. For better appreciation of law the said sections are quoted below:

"4. Punishment for attempt to cause explosion or for making or keeping explosive with intent to endanger life, person or property-
Any person who [unlawfully or maliciously]-**(a)** does any act with intent to cause by an explosive substance, or conspires to cause by an explosive

substance, an explosion in [Bangladesh] of a nature likely to endanger life or to cause serious [injury to person or property]; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious [injury to person or property] in [Bangladesh], or to enable any other person by means thereof to endanger life or cause serious [injury to person or property] in [Bangladesh];

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with [imprisonment for a term which may extend to twenty years, and shall not be less than three years] to which fine may be added.

"6. Punishment of abettors- Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence".

The evidence or any other material in the case, does not show that the appellant supplied or solicited money, or provided premises or supplied any materials to the principal accused in preparing the detonators, or that he procured, counseled, aided or abetted them in commission of the alleged occurrence in any manner whatsoever. Therefore, only because of keeping in possession of some books and cassettes whatever militant or religious, or being a Member of any

extremist organization, a person cannot be held guilty of offence under section 6 of the Explosive Substance Act.

For the reasons stated above the impugned judgment and order of conviction, so far it relates to the appellant Md. Tarique Aziz, appears to be based on no evidence and therefore, it should not sustain in law.

In the result, this jail appeal is allowed. The impugned judgment and order dated 29.3.2007 passed by the Special Tribunal No.4, Rajshahi in Special Tribunal Case No. 55 of 2006 convicting the appellant Md. Tarique Aziz, son of Omar Ali Mollah, of Village Baruipara, Police Station Godagari, District Rajshahi is hereby set aside. The appellant is acquitted of the charge leveled against him and be set at liberty forthwith, if not wanted in any other case.

Send down the lower Court's record.

Mohammad Marzi-ul-Huq, J:

I agree.