

Present:

Mr. Justice Md. Salim

CRIMINAL APPEAL NO.6931 of 2025

Mohammad Rashid and another

.....Appellants.

-Versus-

The State

.....Respondent.

Mr. Mian Md. Shamim Ahsan with

Mr. Md. Sohrab Sarker, Advocate

.....For the Appellants.

Mr. Monzurul Alam Sujan, DAG

Mr. Towhidul Islam, AAG

Mr. Syed Akhtarul Islam, AAG

..... For the State.

Heard on 12.05.2026, 17.05.2026

and 18.05.2026.

Judgment on 21.05.2026

This appeal has been preferred against the judgment and order of conviction and sentenced dated 08.10.2024 passed by the learned Additional Sessions Judge, 4th Court, Cox's Bazar in S.T. Case No.559 of 2021 arising out of G.R. No.855 of 2017 (Teknaf) corresponding to Teknaf Model Police Station Case No.58 dated 30.11.2017 convicting the convict appellants under Table 9(Kha) of Section 19(1) of the Madok Drobbo Niyantaran

Ain, 1990 and sentencing them to suffer rigorous imprisonment for a period of 7(seven) years.

Prosecution case, in brief, is that P.W. 1 Nirmalendu Chakma, along with his other companion forces, on 30.11.2017, upon receiving secret information, went to the boat's dock at the merinedrive area of Khokapara village under Teknaf Police Station, Teknaf. Upon realizing the raiding party's presence, six or seven accused persons escaped from two boats. The raiding party searched two boats and found that two synthetic bags contained 1,00,000 pieces of yaba tablets, weighing about 9.50 kg, wrapped in five packets. Upon interrogation of the local people, the raiding party learned that the accused Mohammad Rashid owned one boat, and the accused Abul Kalam owned another. They also learned that the above two accused, along with accused Mohammad Ismail @ Messy, Abser, Mohammad Ismail, and Badiur Rahman, were smuggling the alleged narcotics from Mayenmer and kept their custody to sell over the country. However, they were unable to arrest any of the accused. Thereafter, they prepared a seizure list in the presence of witnesses and lodged the instant case.

The police, after investigation, submitted the charge sheet against the accused appellants under Tablet 9(Kha) of Section 19(1) of the Madok Drobbo Niyantaran Ain, 1990, before the Magistrate, Cognizance Court, Cox'bazar. Thereafter, the Magistrate took cognizance of the case against the accused appellants under Table 9(Kha) of Section 19(1) of the Madok Drobbo Niyantaran Ain, 1990.

The case being ready for trial, it was transferred to the Sessions Judge, Cox's Bazar, wherein it was registered as Sessions Case No. 559 of 2021.

Subsequently, the learned Additional Sessions Judge, 4th Court, Cox'sbazar, framed the charge under Tablet 9(Kha) of Section 19(1) of the Madok Drobbo Niyantaran Ain, 1990, which was read over and explained to the accused appellants, to which they pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined five (5) witnesses, while the defense examined none.

After the deposition of witnesses was recorded, the appellants were examined under Section 342 of the Code of Criminal Procedure, to which they pleaded not guilty.

After the conclusion of the trial, the learned Additional Sessions Judge, 4th Court, Coxbazar, by the impugned judgment and order dated 08.10.2024, convicted the accused appellants under Table 9(Kha) of Section 19(1) of the Madok Drobbo Niyantaran Ain, 1990 and sentenced them to suffer rigorous imprisonment for 7(seven) years.

Mr. Mian Md. Shamim Ahsan, the learned counsel appearing on behalf of the appellants, taking us through impugned judgment and the evidence on record, contends that the appellants have been falsely implicated in this case and that there is, in fact, no reliable evidence to prove the alleged recovery of the seized goods or knowledge of the appellants, that the appellants were not arrested with alleged narcotics, although the prosecution claimed that appellants are the owners of the alleged two boats, i.e., Dingi Naoka, from whom the raiding party recovered the alleged narcotics in an abandoned condition but failed to produce any documents regarding the ownership of the appellants.

On the contrary, Mr. Monzurul Alam Sujan, the learned Deputy Attorney General appearing for the State, vehemently opposes the contention so made by the learned counsel for the

accused appellants and contends that the trial court has very exhaustively considered the whole evidence on record and found the appellants guilty for recovery of a huge quantity of yaba tablets, which does not call for any interference by this Hon'ble Court.

We have anxiously considered the submission advanced by the learned counsel for the appellants, then that the learned Deputy Attorney General, perused the impugned judgment, evidence, and other materials on record.

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

P.W. 1 Nirmalendo Chakma, Sub-Inspector of Police, as informant, stated in his examination of chief that on 30.11.2017, he, along with his companion forces, upon receiving secret information, went to the boat's dock at the Marine Drive area of Khokapara village under Teknaf Police Station, Cox'sbazar. Upon realizing the raiding party's presence, six or seven accused persons escaped from two boats. They searched two boats and found that two synthetic bags contained 1,00,000 pieces of yaba tablets, weighing about 9.50 kg, wrapped in five packets. Upon interrogation of the local people, they found out that the accused

Mohammad Rashid owned one boat, and the accused Abul Kalam owned another. They also learned that the above two accused, along with accused Mohammad Ismail @ Messy, Abser, Mohammad Ismail, and Badiur Rahman, were smuggling the alleged narcotics from Myanmar and kept their custody to sell over the country. However, they were unable to arrest any of the accused. Thereafter, they prepared a seizure list in the presence of witnesses and lodged the instant case.

In cross-examination, this witness stated that the Investigating Officer can determine whether the ownership of the alleged boats was inquired into. No paper of ownership for the alleged boats was seized. He denied the suggestion that the accused persons were unaware of the alleged yaba.

P.W. 2- Jahidul Hoque, Sub-Inspector of Police, in his examination of the chief, stated that on 30.11.2017, under the leadership of the informant, they went to the boat's dock at the Marine Drive area of Khokapara village under Teknaf Police Station, Cox'sbazar. Upon realizing their presence, six or seven accused persons escaped from two boats. They searched two boats and found that two synthetic bags contained 1,00,000 pieces of yaba tablets, weighing about 9.50 kg, wrapped in five

packets. Upon interrogation by the local people, they came to know that the accused Mohammad Rashid owned one boat, and the accused Abul Kalam owned another. They also learned that the above two accused, along with accused Mohammad Ismail @ Messy, Abser, Mohammad Ismail, and Badiur Rahman, were smuggling the alleged narcotics from Myanmar and kept their custody to sell over the country. However, they were unable to arrest any of the accused. Thereafter, they prepared a seizure list in the presence of witnesses.

During cross-examination, this witness admitted that he is not a seizure list witness. He denied the suggestion that, in an abandoned condition, the alleged Yaba Tablets, Dingi boat, and nets were recovered.

P.W.3-Mohir Uddin Khan, I.O. of the instant case, stated in his examination-in-chief that on 30.11.2017, he was assigned to investigate the case. In the course of investigation, he visited the place of occurrence; recorded statements from the witnesses; prepared a sketch map with an index; sent the alamot for chemical examination. Then he submitted the charge sheet. He identified the charge sheet, sketch map, index, and his signature thereon as exhibits 3, 3/1, and 3/2.

In cross-examination, he stated that they were unable to arrest any of the accused.

P.W.4- Islam Mia, the seizure list witness, was declared hostile by the prosecution and, in cross-examination, stated that he did not know the owners of any boats.

In cross-examination by the defense, this witness stated that he did not see any of the accused flee.

P.W.5- Abdul Haque, as a seizure list witness in examination-in-chief, stated that the occurrence took place on 30.11.2017 at the boat's dock in the Marine Drive area. He is a fisherman, police asked him to sign a piece of white paper as he was coming out of the river after catching fish. He did not know the boat's owner.

During cross-examination, he stated that no Yaba Tablets were shown to him.

Analyzing the above evidence, it appears that 1,00,000/- pieces of yaba tablets were recovered from two abandoned boats, and the raiding party could not arrest any of the accused persons at the place of occurrence. Moreover, it appears that out of 5(five) witnesses, P.W.4 and P.W.5 are the seizure list witnesses who did not support the prosecution case. P.W.1 is the informant,

P.W.2 is a member of the raiding party, and P.W.3 is the investigating officer. However, none of the witnesses implicated the accused appellants in their evidence.

Notably, in order to convict an accused of the recovery of narcotics generally, the prosecution must establish where, when, and from whom alleged narcotics were recovered, the seizure should be conducted according to the law, and the accused had conscious possession or control or knowledge of the goods and brought and prove the chemical examination report of the alleged narcotics.

In the instant case, we have considered evidence on record as a whole and already noticed that the prosecution witnesses have failed to connect the accused appellants for recovery of the alleged narcotics/Yaba Tablets and their possession of the alleged Yaba Tablets. Moreover, there is nothing on record to establish that the appellants had knowledge of the contents of the Yaba Tablets in question.

Further, the crucial question for determination is whether the alleged Yaba Tablets contained amphetamine. On perusal of the evidence of P.W. 1 to P.W. 5 and other materials on record, it is manifest that the prosecution failed to bring the chemical

examination report of the alleged Yaba Tablet. It is true that in the charge sheet, there is merely a statement by the Investigation Officer that the alleged chemical examination revealed that ten Yaba Tablets were sent for chemical examination, which found amphetamine.

It is well settled that the Chemical examiner's report should not be accepted without formal proof. This view gets support of the case of Emma Charlotte Eve –vs- Narcotic Control Bureau on 5 April, 2000, Equivalent citations; 2000 VAD (DELHI) 65 laid:

“The crucial question which arises for determination is whether the substances produced before the trial court was cocaine. The learned Additional Sessions Judge, on the basis of the report of the Chemical Examiner, came to the conclusion that the parcel in question was found to contain cocaine. It is significant to mention that the report of the Chemical Examiner was not tendered in evidence. It is well settled that the formal proof of a document can be waived by the party against whom it is

sought to be used. In the instant case, the report of the Chemical Examiner is a disputed document and there is nothing on record to show or suggest that the appellant had waived her right to have the said report proved. Section 293 of the Crl. P.C. provides that any Government Scientific Expert may be received in evidence without examining the expert to whom the said Section applies. Section 293 engrafts a special rule of evidence and makes any document, purporting to be a report under the hand of a Government Scientific Expert to whom this Section applies upon any matter or thing duly submitted to him for examination and report, admissible in evidence without calling such expert as a witness. This, however, does not imply that without tendering the report in evidence, it can be made use of . Thus, the provisions contained in Section 293 Cr.P.C. do not rule out the requirement of the Indian Evidence Act and do not in any event override the provisions contained in Section 61 to Section 64 thereof. The document envisaged by

Section 293 Cr.P.C. can be used as evidence in an enquiry or a trial. It is a piece of evidence that does not require any formal proof but at the same time it must be tendered as evidence and used as such, so that the accused may have a chance of questioning the identity of the sampled packets. In the instant case, none of the prosecution witnesses has stated that the report of the Chemical Examiner dated 28.5.1996 pertains to the substance alleged to have been recovered from the appellant's possession. The document as noticed earlier was not even exhibited in evidence. In that view of the matter, the learned Additional Sessions Judge has committed a grave legal error in convicting the appellant on the basis of the said report. In failure of the said report, having been formally tendered in evidence, there is really no satisfactory evidence to show that the powder contained in the capsules recovered from the parcel in question was cocaine. The case must, therefore, fall to the ground.”

In another case of Mamtajuddin Khan Vs. the State, reported in 9 DLR (1957) 564, laid:-

“The last point urged by Mr. Bose is regarding the non examination of the Chemical Examiner. He has contended that in a murder case the Chemical Examiner's report should not have been accepted without examining the Chemical, Examiner himself in Court. So far as the reception of the Chemical Examiner's report in criminal cases is concerned, that is covered by section 510 of the Criminal Procedure Code which provides that any document (sic) to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under that Code, may be used as evidence in any inquiry, trial or other proceeding under that Code. According to the Chemical Examiner's report the viscera showed that there was arsenic poison in the same. Two witnesses, namely, P.Ws. 8 & 5, were examined to

show that some whitish powder was administered to the unfortunate girl and soon after the girl started vomiting and purging. There is no evidence what that stuff was. The presence of arsenic is to be found only in the Chemical Examiner's report. There is no other evidence that the appellant or anybody else on his behalf administered arsenic poison. Thus the prosecution in this case, in order to bring home a charge of murder by poisoning, must rely and rely solely on the Chemical Examiner's report. The Chemical Examiner has not been examined and Mr. Bose has rightly contended that had he been examined, perhaps, in course of cross-examination, certain facts could have been elicited from him to the advantage of the accused. In *Happu v. Emperor* 35 C.L.J. 280, it was held that the rule of law that the evidence of one party should not be received as evidence against another party without the latter having an opportunity of testing it by cross-examination applies with great force to a criminal case where death has been the result. This rule of

law should be strictly enforced if any weight is sought to be attached to a report on the chemical examination of suspect material. No person, therefore, ought to be put in peril of capital or any punishment on a written report not given on oath and untested by cross-examination. To accept such a report, whatever it may contain, as proof of death by arsenic poisoning, or of anything, is an impossible proposition in law. As, in the present case, there is no other evidence except the Chemical Examiner's report that the viscera contained arsenic poison and no evidence that the appellant administered arsenic poison to Anwara Begum, we think that it was incumbent on the prosecution to examine the Chemical Examiner to afford an opportunity to the defence to cross-examine, him. This not having been done, the case of the appellant has been prejudiced. In these circumstances, there must be a re-trial. The result, therefore, is that this appeal is allowed, the conviction and sentence passed on the appellant under section 302 are set aside and it is

directed that the appellant be retried under the said section according to law.”

In view of the above, we are of the firm view that in the absence of a chemical examination report under Section 50 of the Madok Drobbo Niyantran Ain, 1990, it cannot be said that the alleged Yaba Tablets or any ingredient of narcotics contained any ingredient of amphetamine or narcotics.

Further, the prosecution claimed that, in an abandoned condition, the alleged Yaba Tablets were recovered from two boats of the appellants. However, in that regard, P.W.1 to P.W.5 do not assist the prosecution in proving that the appellants are the owners of the alleged boats. Moreover, the informant (P.W. 1), in cross-examination, stated that the I. O. can determine whether the ownership of the alleged boats was inquired into. No papers of ownership of the alleged boats were seized. On the contrary, the I.O. (P.W.3) has nothing to say regarding the proof of ownership of the boats. Therefore, we are of the firm view that the prosecution has failed to prove that the appellants are the owners of the alleged boats from which the Yaba Tablets were recovered in an abandoned condition. Thus, the prosecution has

failed to prove that the alleged Yaba Tablets were recovered from the appellants' possession.

In the case in hand, evidence and materials relied upon by the prosecution to fasten guilt upon the convict-appellant only point a needle of suspicion towards the convict-appellant and nothing more. Suspicion, however strong, is no substitute for proof - and in Criminal Law the prosecution is to prove the guilt of the accused beyond a reasonable doubt.

It was imperative on the part of the learned Trial Judge to find out whether each and every incriminating circumstance in respect of implication of the convict-appellants in the felony has been established by credible, reliable, and clinching evidence. But the prosecution, by adducing evidence, has failed to connect the alleged Yaba Tablets with the convict appellants and to show that they had knowledge of them. Therefore, the learned Trial Judge committed a serious error in presuming the guilt of the convict-appellants first and trying, thereafter, to find out the other reason to justify such a conclusion without an objective, independent, and impartial analysis or assessment of materials before recording a finding of guilt upon the convict-appellants. The doubtful and suspect nature of the evidence sought to be

relied upon to substantiate the circumstances suffered from serious infirmities and lacked legal credibility. So, the findings of the learned Trial Judge do not deserve the merit of approval of this Court, having regard to the infirmities and illegalities vitiating them and the patent errors apparent on the face of the record, resulting in a serious and great miscarriage of Justice in convicting the appellants.

On assessing evidence, materials on record and rummaging fact and circumstances of the case and embarking a survey on the legal debate involved in the case, we are of this considered view that the prosecution failed to connect the convict-appellant in commission of offence under table 3(Kha) of section 19(1) of the Madok Drobbo Niyatron Ain, 1990 beyond any shadow of doubt and thus, convict appellants are required to be liberated of the charge and be acquitted on finding them not guilty of the charge staged against them. Thus, the appeal has substance, and the impugned judgment and order are liable to be set aside.

Accordingly, the appeal is allowed. The impugned judgment and order dated 08.10.2024, passed by the learned Additional Sessions Judge, 4th Court, Cox's Bazar, in S.T. Case

No.559 of 2021 arising out of G.R. No.855 of 2017 (Teknaf), corresponding to Teknaf Model Police Station Case No.58 dated 30.11.2017, is set aside.

The accused-appellants are acquitted of the charges levelled against them and discharged from their bail bonds.

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

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(Md. Salim, J).

Kabir(BO)