

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

Criminal Appeal No.2962 of 2002

Md. Manzil alias Md. Manzil Miah

... Appellant

-Versus-

The State

...Respondent

No one appears for the appellant

Ms. Syeda Rabia Begum, A.A.G.

..for the respondent

Judgment on 8.1.2012

Md. Ruhul Quddus, J:

This criminal appeal under section 30 of the Special Powers Act, 1974 is directed against judgment and order dated 8.9.2002 passed by the Special Tribunal No.4, Kushtia in Special Tribunal Case No.158 of 2001 convicting the sole appellant under section 19A of the Arms Act, 1878 and sentencing him thereunder to suffer rigorous imprisonment for fourteen years.

Facts leading to this appeal, in brief, are that the informant Md. Majibar Rahman, a Havilder of Bangladesh Rifles (now BGB) produced the arrested appellant and two others along with a German origin revolver to Daulatpur Police Station, Kushtia on 11.6.2001 and lodged an *ejahar* against them bringing allegation of keeping the said arms illegally

with the appellant. The police recorded the case as Daulatpur Police Station Case No.11 dated 11.6.2001 under section 19A of the Arms Act and after investigation submitted charge sheet against them on 31.8.2001 under the same section of the Arms Act.

The case after being ready for trial, was sent to the Special Tribunal No.1, Kushtia, wherein it was numbered as Special Tribunal Case No.158 of 2001 and subsequently it was sent to Special Tribunal No.4, Kushtia for hearing and disposal. The learned Judge of the Tribunal by his order dated 18.10.2001 framed charge against the appellant and two others under the same section of the Arms Act, to which they pleaded not guilty and claimed to be tried.

The prosecution in support of its case examined as many as thirteen witnesses, including the informant Md. Majibar Rahman; five Sepoys, who were members of the raiding party; two seizure list witnesses, three other local witnesses, and two Investigating Officers. After closing the prosecution, the learned Judge of the Tribunal examined the accused under section 342 of the Code of Criminal Procedure, when they reiterated their innocence, but did not examine any witness in defense.

The defense case as it transpires from the trend of cross-examination that the appellant was quite innocent and was falsely implicated in the case out of village enmity between two groups.

After conclusion of trial, the learned Judge of the Tribunal found the appellant guilty of offence under section 19A of the Arms Act and sentenced him as aforesaid, while acquitted two other co-accused as the charge was not proved against them. Challenging the said judgment and order of conviction and sentence, the convict-appellant moved in this Court with the instant criminal appeal and subsequently obtained bail.

This appeal has been appearing in the cause list for several days with name of the learned Advocate for the appellant. Today it is taken up for hearing, but no one appears to press the appeal. In view of its long pendency for more than nine years, we take it up for disposal even in absence of the appellant and allowed the learned Assistant Attorney General to assist the Court and make her submissions.

Ms. Syeda Rabia Begum, learned Assistant Attorney General submits that P.W.1 has fully supported the prosecution case. His evidence has been corroborated by evidences of the members of raiding party. The case has also been proved by the evidence of P.W.7, a seizure list witness and that of P.Ws.8-10, three local witnesses. There is no minimum contradiction in the evidence of prosecution witnesses, who supported the case and therefore, the learned Judge of the Tribunal rightly convicted and sentenced the appellant. There is nothing to interfere with by this Court.

We have gone through the records including the evidence of the prosecution witnesses and have considered the submissions of learned

Assistant Attorney General. The informant Md. Majibur Rahman (P.W.1) stated that on receipt of a secret information, he along with his forces rushed to the place of occurrence i.e. the turning of Kilick Bazar, arrested the appellant therefrom and recovered a German origin revolver from his waist. He (P.W.1) had prepared a seizure list on the spot and obtained signatures of the seizure list witnesses thereon. Thereafter, he produced the arrested persons along with the revolver to Daulatpur police station and lodged the *ejahar*. He proved the seizure list, *ejahar* and his signatures thereon as exhibits-1, 1/1, 2 and 2/1 respectively. He also proved the revolver produced before the Tribunal as material exhibit-Ka. He was exhaustively cross-examined, but disclosed nothing adverse. His evidence was sufficiently corroborated by the evidence of his forces, who were included in the raiding party, namely, P.W.2 Fazlul Haque, P.W.3 Lokman Hossain, P.W.5 Mizanur Rahman. Two other members of the raiding party, namely P.Ws.4 and 6 were tendered by the prosecution and the defense declined to cross-examine them.

P.W.7 Dr. Khorshed Ali, a local seizure list witness and a vital witness in this case stated that on the date of occurrence i.e. 11.6.2001 some BDR personnel raided Kilick Bazar and arrested the appellant along with two others. They recovered a revolver from him and prepared a seizure list, wherein he put his signature that was proved as exhibit-1/2. In cross-examination he stated that during seizure, he was present at the place of occurrence. He denied the suggestion that out of second

marriage he had rivalry with the appellant and therefore, he deposed falsely.

P.W.8 Siddik Fakir stated that when the BDR personnel arrested the appellant and two others on 11.6.2001 at about 3 p.m., he was present at Kilick Bazar. After searching his (appellant) body, they recovered a revolver and prepared a seizure list there. He also identified the arms produced before the Tribunal. In cross-examination, he stated that earlier he had initiated a criminal case against the appellant, but denied the suggestion that because of that case he deposed falsely against him (appellant).

P.Ws.9 and 10, Habib Fakir and Rafiq Bapari are two other local witnesses, who supported the prosecution case in their examinations-in-chief and denied any rivalry with the appellant in their cross-examinations.

P.W.11 Yeakub Ali, another seizure list witness stated that he heard that the BDR personnel had arrested the appellant and two others. On receipt of the said news he approached to Mahishkundi camp, where the BDR personnel asked him to sign a paper. According to their instruction, he put his signature on the seizure list, which was marked as exhibit-1/3. In cross-examination he stated that there were two rival groups in their village. One of the groups was lead by P.W.7 Dr. Khorshed Ali. He did not see any arms.

P.W.12 Humayun Kabir, a Sub-Inspector of Police and the Investigating Officer stated that initially the case was investigated by another Sub-Inspector of Police named B. Zaman. After his transfer, he (P.W.12) was assigned on 31.8.2001 to conclude the investigation. After careful examination of the case docket, he submitted charge sheet against all the three accused under section 19A of the Arms Act. In cross examination he stated that he himself did not examine any witness.

P.W.13 Badiuzzaman, a Sub-Inspector of Police and the first Investigating Officer stated that on 11.6.2001 he was posted to Daulatpur Police Station. After being assigned for investigation, he visited the place of occurrence, prepared the sketch map with index and examined the witnesses under section 161 of the Code of Criminal Procedure. As the case was proved prima-facie against the accused, he prepared the charge sheet, but before submitting the same he was transferred elsewhere and handed over the case docket to the Officer-in-charge. He proved the sketch map with index and his signature thereon as exhibits-3 and 3/1 respectively.

It appears that all the prosecution witnesses except P.W.11 have supported the prosecution case. There are no contradiction in their evidence, which can cast a shadow of doubt on the same. P.W. 11 Yeakub Ali, who is a member of local Union Parisad denied to have seen any arms, though admitted his signature on the seizure list and exhibited the same. There is no explanation in his evidence as to why he put his

signature on the seizure list without seeing any recovery. Therefore, the evidence of P.W.11 is not trustworthy. It may happen that he (P.W.11) deposed favouring the appellant, because he did not want him (appellant) to be hostile. P.W.11 also stated that there were two rival groups in their village, one of which was lead by P.W.7 Dr. Khorshed Ali. But we do not find any such suggestion or question put towards P.W.7, while he was cross-examined. Under the circumstances the defense case of local enmity is not believable. The learned Judge of the Special Tribunal being the trial Judge discussed each and every piece of evidence and arrived at finding of guilt against the appellant. We do not find any illegality or non-consideration of evidence in the impugned judgment.

In the result, the appeal is dismissed. The judgment and order of conviction and sentence dated 8.9.2002 passed by the Special Tribunal No.4, Kushtia in Special Tribunal Case No.158 of 2001is maintained. The appellant Md. Manzil alias Md. Manzil Miah is directed to surrender before the trial Court to serve out the remaining period of sentence within one month from receipt of this judgment by the trial Court. In case of his failure to do so, the law will take its own course.

Send down the lower Court records.

Mohammad Marzi-ul-Huq, J:

I agree.