

Present:

Mr. Justice Mohammad Marzi-ul-Huq
and

Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.2238 of 2002

Md. Haider Alam

...Appellant

-Versus-

The State

...Respondent

No one appears for the appellant

Mr. Khizir Hayat, D.A.G. with Mr. Yousuf
Mahmud Morshed, A.A.G.

...for the respondent

Judgment on 10.1.2012

Md. Ruhul Quddus, J:

This appeal under section 30 of the Special Powers Act, 1974 is directed against judgment and order dated 31.7.2002 passed by the Special Tribunal No.3, Rajshahi in Special Tribunal Case No.172 of 2001 arising out of Motihar Police Station Case No.16 dated 24.6.2001 convicting the appellant under section 25 B (2) of the Special Powers Act and sentencing him thereunder to suffer imprisonment for two years with a fine of Taka 500/- in default to suffer imprisonment for two months more. The Tribunal also confiscated the seized phensedyl in favour of the State.

Facts leading to this appeal, in brief, are that one Md. Saidur Rahman, a Sub-Inspector of Police posted to Katakali Police Camp under Matihar Police Station, Rajshahi lodged an *ejahar* on 24.6.2001 against the appellant bringing allegation of recovery of 56 bottles of Indian origin phensedyl which were allegedly smuggled from India into Bangladesh. Police recorded the case as Motihar Police Station Case No.16 dated 24.6.2001 under section 25B of the Special Powers Act and after investigation submitted charge sheet on 5.9.2001 against the sole appellant under the said section of law.

The case after being ready for trial, was sent to the Special Tribunal No.1, Rajshahi, wherein it was registered as Special Tribunal Case No.172 of 2001 and was sent to Special Tribunal No.3, Rajshahi for hearing and disposal. Learned Judge of the Special Tribunal by his order dated 25.10.2001 framed charge against the appellant under section 25B of the Special Powers Act, to which he pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined seven witnesses. Out of them, P.W.1 Md. Saidur Rahman is the informant; P.Ws.2-3 Aminul Huq and Jane Alam respectively are two constables and members of the police team; P.W.4 Md. Lutfar Rahman, a seizure list witness; P.W.5 Md. Aminul Islam, another constable and member of police team; P.W.6 Bijoy, another seizure list witness and P.W.7 Md. Shamsul Huda is a Sub-Inspector of Police and the Investigating Officer.

After closing the prosecution, learned Judge of the Special Tribunal examined the appellant under section 342 of the Code of Criminal Procedure, when he reiterated his innocence, but did not examine any witness in defense. The defense case as it appears from the trend of cross-examination is that the appellant was innocent and did not carry any phensedyl. He was falsely implicated in the present case as he did not fulfill the illegal demand of police.

After conclusion of trial, learned Judge of the Special Tribunal found the appellant guilty of offence under section 25 B (2) of the Special Powers Act and accordingly pronounced the judgment and order of conviction and sentence dated 31.7.2002, as stated above. Challenging the said judgment and order, the 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 Advocate for appellant. Yesterday it was taken up for hearing, but no one appeared to press the appeal. In view of its long pendency, we took it up for disposal and allowed Mr. Khizir Hayat, learned Deputy Attorney General to make his submission.

Mr. Khizir Hayat, learned Deputy Attorney General appearing for the State-respondent submitted that the prosecution case was proved by evidence of the informant, Investigating Officer and other members of the raiding party. Although the seizure list witnesses did not support the

recovery of phensedyl from possession of the appellant, they admitted their signatures on the seizure list. Thus the case has been proved beyond reasonable doubt and there is no reason to interfere with the judgment and order of conviction and sentence.

We have considered the submission of learned Deputy Attorney General and meticulously examined the evidence on record. The informant Md. Saidur Rahman (P.W.1) stated that at the relevant time he was posted to Katakhalı Police Camp under Motihar Police Station, Rajshahi. On 24.6.2001 i.e. date of occurrence he along with Constables Jane Alam (P.W.3), Aminul Huq (P.W.2), Md. Aminul Islam (P.W.5) was patrolling within Katakhalı area at about 2.30 p.m., when they saw a person moving suspiciously towards Katakhalı bridge. They challenged him and on search recovered 40 bottles of phensedyl from a bag kept with him and sixteen bottles from his person. They prepared a seizure list on the spot, obtained signatures of local witnesses thereon and thereafter, produced him to Police Station and lodged the *ejahar*. He proved the seizure list, *ejahar* and his signatures thereon. He further stated that six bottles of phensedyl were kept as *alamat* and the remaining bottles were destroyed under order of the pre-trial Court. He also identified the said bottles produced in the Court, which were stuck with labels of òPhensedyl, made in Indiaö. In cross-examination he did not disclose anything adverse. P.W.1 (informant) was sufficiently corroborated by P.W.2 Aminul Huq and P.W.5 Md. Aminul Islam, who were members of

the police team. The Investigating Officer Md. Shamsul Huda (P.W.7) deposed that at the relevant time he was posted to Motihar 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. He proved the charge sheet, sketch-map with index and his signatures thereon. P.W.3 Jane Alam, another constable of police and member of police team was tendered by the prosecution, while the defense declined to cross-examine him.

P.W.4, Md. Lutfar Rahman, a seizure list witness stated that on the date of occurrence he was sitting at the office of Transport Workers Union. At about 12 o'clock a police constable called him to police camp, where he saw some bottles of phensedyl on a table and a young man sitting on the floor. The police asked him to sign a paper and accordingly he signed it. He proved his signature thereon as exhibit-1/2. There is nothing in his evidence as to why he did sign the paper without seeing recovery of any phensedyl.

P.W.6, Bijoy stated that on 24.6.2001 at about 12 o'clock he had stopped his bus near to Katakali Mosque, when he was asked by the Police to sign a paper and accordingly he signed it. He proved his signature thereon as exhibit-1/3. He also did not explain as to why he signed the paper without seeing the recovery.

From a close scrutiny of the evidence, it appears that the informant as P.W.1 fully supported the *ejahar* without any deviation. P. Ws. 2 and 5, two members of the police team sufficiently corroborated the evidence of P.W.1 on material particulars. There is no inconsistency or contradiction in their evidence. P.W.7 being the Investigating Officer deposed in support of his investigation and submission of charge sheet. P.Ws.4 and 6, the local seizure list witnesses proved their signatures on the seizure list, and did not explain as to why they did sign the paper without seeing recovery of any phensedyl. They did not also say that the police had threatened or compelled them to sign the paper. Without any such explanation, their evidence to the extent that they did not see any recovery is not believable.

This is our common experience that in almost all the cases of smuggling or arms recovery, local seizure list witnesses do not support prosecution case. It may happen that they do it for illegal gain or out of fear of life and honour.

It is a well settled principle of law that the evidence of police personnel can form the basis of conviction if they appear to be not interested and their evidence are reliable, consistent and without any contradiction. This view lends supports from the cases of Mohiuddin Vs. State reported in 61 DLR 35, Kashem Vs. State in 54 DLR 212, Billal Miah Vs. State in 9 MLR 429, Rana Madbar and others Vs. The State in 51 DLR 499 and Abdur Razzak Talukder Vs. State in 51 DLR 83.

From the facts and circumstances of the present case it does not appear that there was any reason for the police to falsely implicate the appellant. There is also no reason to disbelieve the evidence of police personnel.

Learned Judge of the Special Tribunal considered each and every piece of evidence and also considered the young age of the appellant and awarded lowest sentence upon him. We do not find any illegality in the judgment and order of conviction and sentence.

In the result, the appeal is dismissed. The judgment and order dated 31.7.2002 passed by the Special Tribunal No.3, Rajshahi in Special Tribunal Case No.172 of 2001 is maintained. The appellant is directed to surrender before the Special Tribunal No.3, Rajshahi within one month from receipt of this judgment by the concerned Tribunal to serve out the remaining period of sentence, if any. In case of his failure to do so, the law will take its own course.

Send down the lower Court's record.

Mohammad Marzi-ul-Huq, J.

I agree.