

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Appeal No. 7249 of 2011**

Md. Nur Islam and others.

.....Convict-appellants.

-Versus-

The State

.....Respondent.

None appears

....For the appellants.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

.... For the respondent.

**Heard on 07.03.2024 and Judgment  
on 11.03.2024**

**Sheikh Abdul Awal, J:**

This Criminal Appeal at the instance of convict appellant, Md. Nur Islam and 3 others is directed against the judgment and order of conviction and sentence dated 24.10.2011 passed by the learned Sessions Judge, Sirajgonj in Sessions Case No. 247 of 2009 arising out of G.R No. 108 of 2009 corresponding to Shahjadpur Police Station Case No. 20 dated 15.04.2009 convicting the accused-appellants under section 22(Ga) of the Madak Drobbya Niyontron Ain, 1990 and sentencing them thereunder to suffer rigorous imprisonment for a

period of 2(two) years and to pay a fine of Taka 2,000/- (two thousand) in default to suffer simple imprisonment for 02 (two) months more each.

The prosecution case, in brief, is that one, Belal Hossain, Sub Inspector of Police, Shahjadpur police station as informant on 15.04.2009 at about 22:45 hours lodged an Ejahar with Shahjadpur Police Station against the accused-appellants stating, inter-alia, that on the basis of a secret information the informant along with a contingent of police on 15.04.2009 at 21.05 hours went to the house of Md. Nur Islam of village: Potazia under Shahjadpur police station, District Sirajgonj while sensing the presence of police forces the accused persons somehow managed to escape from the place of occurrence. Thereafter, the informant and other police forces in presence witnesses namely, Shahid Ali, Arshad Ali, Hachen Ali made search in the house and recovered 2 Kg local made wine kept in 20 small polithine packet contained 100 gms in each packet and thereafter, the informant party seized those wine by preparing seizure list in presence of the witnesses.

Upon the aforesaid First Information Report, Shajadpur Police Station Case No. 20 dated 15.04.2009 under section 22(Ga) of the Madok Drabya Niyantaran Ain, 1990 was started against the convict-appellants.

Police after completion of usual investigation submitted charge sheet against the accused appellants being charge sheet No. 107 dated 23.05.2009 under section 22(Ga) of the Madok Drabya Niyantaran Ain, 1990.

Thereafter, in usual course the case record was sent to the Court of learned Sessions Judge, Sirajgonj wherein it was registered as Sessions Case No. 247 of 2009 in which the accused-appellants were put on trial to answer a charge under section 22(Ga) of the Madok Drabya Niyantaran Ain, 1990 to which the accused-appellants pleaded not guilty and prayed to be tried stating that they have been falsely implicated in the case.

At the trial the prosecution side examined in all 10(ten) witnesses to prove its case, while the defence examined none. The defence case, from the trend of cross-examination of the prosecution witnesses and examination of the accused-appellants under section 342 of the Code of Criminal Procedure appeared to be that the accused- appellants were innocent and they have been falsely implicated in the case.

On conclusion of trial, the learned Sessions Judge, Sirajgonj by his judgment and order dated 24.10.2011 found the accused-appellants guilty under section 22(Ga)

of the Madok Drobbya Niyontron Ain, 1990 and sentenced them thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Taka 2,000/- (two thousand) in default to suffer simple imprisonment for 02(two) months more each.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 24.10.2011, the accused-appellant preferred this criminal appeal.

No one found present to press the appeal on repeated calls despite of fact that this criminal appeal has been appearing in the list with name of the learned Advocate for the appellant for hearing for a number of days.

In view of the fact that this petty old case has been dragging before this Court for near about 12 years, I am inclined to dispose of it on merit on the basis of the evidence and materials on record.

Ms. Shahida Khatoon, the learned Deputy Attorney-General, appearing on behalf of the State-Respondent supports the impugned judgment and order of conviction and sentence dated 24.10.2011, which was according to her just, correct and proper.

Having heard the learned Deputy Attorney General and having gone through the materials on record, the only question that calls for my consideration in this appeal is whether the trial Court committed any error in finding the accused-appellants guilty of the offence under section 22(Ga) of the Drobbya Niyontron Ain, 1990 .

On scrutiny of the record, it appears that to prove the case against the accused appellants, the prosecution examined in all 10 witnesses out which PW-1, Md. Shahid Ali stated in his deposition that- “গত ১৫/৪/০৯ ইং তারিখ রাত্র ২১.০৫ ঘটিকায় আসামী নূর ইসলাম এর ঘর হইতে একটি ছোট প্লাস্টিকের বস্তা এবং ২০ টি পলিথিনের প্যাকেট ২ কেজি বাংলা মদ জন্ড তালিকায় দস্তখত দিয়াছি। এই সেই জন্ড তালিকা প্রদর্শনী-১। এতে থাকা আমার দস্তখত প্রদর্শনী ১/১।” This witness was declared hostile by the prosecution. PW-2, Md. Arshad Ali simply stated that he put his signature on the seizure list. PW-3, S.I. Belal Hossain, informant of the case stated that on 15.04.2009 at 21:05 hours at the time of operation sensing the presence of police 3/4 persons somehow managed to escape and thereafter, police team recovered total 20 packets local made wine and thereafter, police prepared seizure list in presence of the witnesses. This witness stated in his cross examination that- “আলামত রাসায়নিক পরীক্ষার জন্য কোন নমুনা সংগ্রহ করি নাই।” PW-4 and PW-5 both of them

in their respective deposition stated nothing against the accused-appellants as to recovery of incriminating wine. PW-6, A.S.I. Azam Hossain, member of the raiding party gave evidence in support of the prosecution and made similar statements like P. W- 3 in respect of all material particulars. This witness in his cross-examination stated that- “গমন করে আমরা আদালতে উপস্থিত আসামীগণের কাউকে দেখতে পাই নি। আমরা ঘটনাস্থলে যাওয়া পর সেখান থেকে তারা দৌড়ে পালিয়ে ছিল তাদের কাউকে আমরা চিনতে পারিনি।” PW-7, Constable Md. Babul Hossain, member of the raiding party, who in his deposition stated on 15.04.2010 they recovered 20 packets of wine from the house of the accused persons. This witness in his cross-examination stated that- “লোক পাতাদিয়া যায়। যারা পালায় তারা আসামী কিনা জানি না। আসামী ধরার চেষ্টা করি। কিন্তু পারি নাই। আগে আসামীর ঘর চিনিতাম না। আসামীর ঘর হইতে মদ উদ্ধার করি।” PW-8, Constable Md. Rafiqul Islam, member of the raiding party, who simply stated in his deposition that on 15.04.2009 they recovered 20 packets of wine from the house of the accused persons. PW-9 stated in his evidence that- “ঘটনা সম্পর্কে কিছু জানি না।” PW-10, S.I. Md. Kamrul Islam, Investigated the case. This witness stated in his evidence that he prepared seizure list and examined the witnesses under section 161 of the Code of Criminal Procedure and after

completion of investigation submitted charge sheet against the accused-appellants

From the above quoted evidence, it appears that public witnesses namely, PW-1, PW-2, PW-4, PW-5 and PW-9 in their respective testimony stated nothing as to recovery of local made wine from the house of the accused-appellants. Police witnesses in their respective evidence stated that sensing the presence of police the accused persons somehow managed to escape from the place of occurrence. Therefore, in this case there being nothing on record to show that the seized articles were recovered from the exclusive possession of the convict appellants. I also find from the prosecution witnesses that others had also access to the house of appellant, Md. Nur Islam. Under such circumstances, it is very difficult to saddle accused appellants with the responsibility of being in exclusive possession of the alleged local made wine. Besides, in this case the prosecution witnesses could not show any scarp of paper that the seized goods are contraband goods. It is thus difficult to believe that the alleged seized goods were actually contraband in nature. In view of the attending facts and circumstances of the case and the evidence on record, I am constrained to hold that the prosecution has failed to prove the charge against accused appellants beyond any reasonable

doubts. The learned Sessions Judge failed to properly evaluate the evidence on record as adduced before the trial court thereby coming to a wrong decision. In the facts and circumstances of the case and the evidence on record, it must be held that the prosecution failed to prove charge of carrying and possessing contraband wine against accused appellants beyond reasonable doubts. Consequently the appeal succeeds.

In the result, the appeal is allowed and the impugned judgment and order of conviction and sentence dated 24.10.2011 passed by the learned Sessions Judge, Sirajgonj in Sessions Case No. 247 of 2009 arising out of G.R No. 108 of 2009 corresponding to Shahjadpur Police Station Case No. 20 dated 15.04.2009 against accused appellants is set aside and they are acquitted of the charge levelled against them.

Accused appellants, (1) Md. Nur Islam (2) Salai alias Salauddin (3) Buddi alias Alauddin and (4) Hazrat are discharged from their bail bonds.

Send down the lower Court records at once.