

In The Supreme Court of Bangladesh

High Court Division

(Criminal Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE MD. SHOHROWARDI**

**CRIMINAL APPEAL NO. 5563 OF 2014.**

Nurul Islam and another

..... Appellants.

-Versus-

The State

..... Respondent.

Mr. Md. Azizur Rahman (Dulu), Advocate with

Mr. Md. Nasir Uddin Khan (Samrat), Advocate

.....For the Appellants.

Mr. Md. Akhtaruzzaman, D.A.G with

Mr. Sultan Mahmood Banna, AAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Kaium, AAG

... For the State

**Heard on 23.04.2025, 30.04.2025**

**Judgment on: 07.05.2025**

**MD. Shohrowardi, J.**

This appeal under section 30 of the Special Powers Act, 1974 is directed against the impugned judgment and order of conviction and sentence dated 06.08.2014 passed by the Special Tribunal No. 2, Brahmanbaria in Special Tribunal Case No. 11 of 2009 arising out of Brahmanbaria Police Station Case No. 14 dated 07.10.2008 corresponding G.R. No. 967 of 2008 convicting the appellants under section 25B(2) of the Special Powers Act, 1974 and sentencing them thereunder to

suffer rigorous imprisonment for 3 years and fine of Tk. 10,000, in default, to suffer imprisonment for 02 months more.

The prosecution case in short is that at the time of conducting an anti-drug operation on the occasion of durgapuja on 07.10.2008 at 06.45 pm at Brahmanbaria Pourashava area the raiding party headed by Sub-Inspector Md. Shahid Miah, DB, was searching a baby taxi being No. Sylhet-Kha-02-0788 to the western side of Ayesha Filling Station at Cumilla-Brahmanbaria highway under Brahmanbaria Police Station. At that time, the members of the raiding party found total 199 bottles of Phensedyl under the back side of the said vehicle and arrested driver Babul Mia, and Nurul Islam who was sitting in the back seat of the baby taxi. Thereafter, in the presence of witnesses, the members of the raiding party seized those Phensedyl and prepared the seizure list in the presence of the witnesses.

Inspector Abdul Kashem was appointed as the investigating officer of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index, and recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, he found the prima facie truth of the allegation made against the accused persons and submitted charge sheet on 25.11.2008 against the accused Nurul Islam and Babul Mia under section 25B(2) of the Special Powers Act, 1974.

After that, the Chief Judicial Magistrate, Brahmanbaria sent the case records to the Special Tribunal, Brahmanbaria who took cognizance of the offence against the accused under section 25B(2) of the Special Powers Act, 1974 which was

read over and explained to the accused persons and they pleaded not guilty to the charge and claimed to be tried following law. After that, Special Tribunal No. 1 by order dated 30.06.2009 transferred the case to the Special Tribunal No. 2, Brahmanbaria.

During the trial, the prosecution examined 7 witnesses to prove the charge against the accused persons. After examination of the prosecution witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure, 1898 and they declined to adduce any DW. After concluding the trial, the trial court by impugned judgment and order convicted the accused persons and sentenced them as stated above against which they filed the appeal.

P.W. 1 Sub-Inspector Md. Shahid Miah stated that on 07.10.2008 while he was discharging his duty in Detective Branch, Brahmanbaria, he along with the members of the raiding party were searching the vehicle at Aysha Filling Station area on the Cumilla- Brahmanbaria road at about 06.00 pm. A baby taxi being No. Sylhet-Ga-02-0788 reached the place of occurrence from the south side. A passenger was sitting in the back seat of the baby taxi. On interrogation, he disclosed his name as Nurul Islam and the accused Babul Mia was driving the baby taxi. Searching the baby taxi, the members of the raiding party recovered 04 packets. In the presence of witnesses, they opened the packet and found a total 150 bottles of Phensedyl, 50 bottles in each packet and 49 bottles of Phensedyl in one packet. The driver and the passenger admitted that they brought those Phensedyl from Sylhet. Four bottles of Phensedyl were seized. P.W. 1 proved the four bottles of Phensedyl as material exhibit-I series. He

proved the seizure list as exhibit-1 and his signature on the seizure list as exhibit-1/1. He lodged the FIR. He proved the FIR as exhibit No. 2 and his signature on the FIR as exhibit-2/1. During cross-examination, he stated that on interrogation Nurul Islam stated that he was the passenger. No Phensedyl was recovered from the body of the Nurul Islam. He denied the suggestion that the accused Nurul Islam was not aware of the recovered goods. The accused Babul Mia stated that he is not aware of the recovered goods. He denied the suggestion that the driver was not aware of the goods or he filed a false case against the driver.

P.W. 2 Constable No. 330 Ahammed Ullah stated that on 07.10.2008 he was engaged in anti-drug operation. During the festival of durgapuja on that day at 6.30/6.45 pm while they were searching the vehicle near Ramrail Aysha Filling Station, Cumilla-Brahmanbaria highway road, the members of the raiding party searched baby taxi being No. Ga-02-0788 and recovered 199 bottles of Indian Phensedyl kept under the back seat of the baby taxi and those Phensedyl were kept in four packets. 50 bottles of Phensedyl were kept in each packet and 49 bottles of Phensedyl were kept in one packet. Babul Mia was the driver of the baby taxi and Nurul Islam was the passenger of the baby taxi. During cross-examination, he admitted that no Phensedyl was recovered from the body of Nurul Islam. He denied the suggestion that the Phensedyl was not recovered from the possession of the accused Nurul Islam. Cumilla-Brahmanbaria highway is a busy road. The baby taxi was kept at the place of occurrence at about 1/1.50 hours. After the occurrence, 10/15 people assembled at the place of occurrence. None is named in the FIR as a witness. Babul said

that he was not aware of the Phensedyl. He denied the suggestion that accused Babul was not involved with the occurrence.

P.W. 3 Constable No. 547 Shafiqur Rahman stated that the occurrence took place on 07.10.2008 at 8.06 pm at the Aysha Filling Station area on Cumilla-Brahmanbaria highway. At that time, they were searching the baby taxi being No. Sylhet-Kha-02-0788 and recovered 199 bottles of Phensedyl kept under the back seat of the baby taxi. 50 bottles of Phensedyl were kept in each 3 packets and 49 bottles of Phensedyl were kept in a packet. On interrogation, they admitted that they brought those Phensedyl from the border area. In the presence of the witnesses, they seized the recovered Phensedyl and prepared the seizure list. During cross-examination, he stated that the occurrence took place in the Pourashava area at 6.45 pm. After the occurrence, many people assembled at the place of occurrence and Babul said that he was not involved with the occurrence. The accused persons said that they are not known to each other. No Phensedyl was recovered from the body of the accused Nurul Islam.

P.W. 4 Nazmul Haque stated that the occurrence took place 2 years ago at 8.00 pm in front of Ramrail Aysha Filling Station. He was an employee of the said filling station. The police personnel of DB recovered Indian goods from the baby taxi. They instructed me to sign the seizure list. Accordingly, he signed the seizure list. He proved his signature as exhibit-1/2. He did not see the accused and the goods. The accused persons present in court were not known to him.

P.W. 5 Md. Jahed Mia stated that the occurrence took place on 07.10.2008 in the evening in front of Ramrail Aysha Filling Station. Searching the baby taxi, police recovered 199 bottles of Phensedyl. He signed the seizure list. He proved his signature on the seizure list as exhibit-1/3. During cross-examination, he admitted that he did not see the accused and the recovered goods or the person who prepared the seizure list. The seizure list was read over to him and he signed the seizure list.

P.W. 6 Md. Abdul Monaf is the Sub-Inspector of DB. He stated that on 07.10.2008 he was discharging his duty at Akhaura Thana. He verified the address of the accused Babul Mia. Accordingly, he submitted the report through Sub Case Docketed (SCD). Defence declined to cross-examine P.W.6.

P.W. 7 A.S.I Shamiron Barua stated that on 07.10.2008 he was posted at Kasba Thana. He verified the address of the accused Nurul Islam and after investigation, he sent the SCD. Defence declined to cross-examine P.W. 7.

The learned Advocate Md. Azizur Rahman (Dulu) appearing on behalf of the appellants submits that the evidence of P.Ws. 1, 2 and 3 as regards the recovery of the Phensedyl was not corroborated by any independent, neutral and reliable locals and the prosecution did not examine the investigating officer in the case and the trial court without any report of the chemical examiner as regards the seized articles illegally convicted the accused. Therefore, the trial court committed illegality in finding the appellant guilty of the offence. He prayed for setting aside the impugned judgment and order passed by the trial court.

The learned Assistant Attorney General Mr. Sultan Mahmood (Banna) appearing on behalf of the state submits that at the time of searching the baby taxi on Cumilla-Brahmanbaria road, only police personnel were present and P.Ws. 1, 2 and 3 stated that 199 bottles of Phensedyl kept in 4 packets under the back seat of the baby taxi was recovered and the accused Babul was the driver and Nurul Islam was sitting on the back seat of the baby taxi and the Phensedyl were recovered from joint possession of the appellants. He further submits that there is no contradiction in the evidence of P.Ws. 1, 2 and 3 as regards the recovery of the Phensedyl from their possession. P.Ws. 4 and 5 also corroborated the evidence of P.Ws. 1 to 3. By cross-examining P.Ws. 1, 2 and 3, the defence failed to bring any contradiction in their evidence and there is no reason to disbelieve those witnesses. The prosecution proved the charge against the accused persons beyond all reasonable doubt and the trial court on correct assessment and evaluation of the evidence convicted the accused persons. He prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Md. Azizur Rahman (Dulu) who appeared on behalf of the appellant and the learned Assistnat Attorney General Mr. Sultan Mahmood Banna who appeared on behalf of the State, perused the evidence, impugned judgment and order passed by the trial court and the records.

On perusal of the evidence, it appears that on 08.10.2008 at about 7.00 pm 199 bottles of Phensedyl made of India kept in 4 packets under the back seat of the baby taxi being No. Kha-02-0788 were allegedly recovered. The accused Babul Mia was the driver of the said baby taxi. At the time of

recovery, accused Nurul Islam was sitting in the back seat of the baby taxi. P.W. 1 stated that on 07.10.2008 at 6 pm, he was searching the baby taxi at Ramrail near Aysha Filling Station on Cumilla- B-Baria highway. They searched the baby Taxi No. Sylhet-Kha-02-0788 and recovered 199 bottles of Phensedyl kept in 4 packets under the back seat of the said baby taxi. The accused Babul Mia was the driver and the accused Nurul Islam was the passenger of the baby taxi. He proved 4 bottles of Phensedyl as material exhibit-I series. P.W. 2 Constable No. 330 Ahammad Ullah and P.W. 3 Constable No. 547 Shafiqur Rahman corroborated the evidence of P.W. 1 as regards the recovery of 199 bottles of Phensedyl kept in 4 packets under the back seat of the said baby taxi. Although P.Ws. 4 and 5 stated that Indian Phensedyl was recovered from the baby taxi but they stated that at the time of recovery, they were not present at the place of occurrence.

To prove the charge under section 25B(2) of the Special Powers Act, 1947 for alleged recovery of Phensedyl, report of the chemical examiner is indispensable. The chemical examiner is only competent to ascertain the nature of the liquid kept in the recovered bottles. In the instant case, the investigating officer was not examined and Phensedyl allegedly recovered from the said baby taxi was not sent to the chemical examiner to ascertain the nature of liquid. In the absence of any report from the chemical examiner, it cannot be said that the Phensedyl was found in the bottles recovered from the baby taxi.

Because of the above evidence, facts and circumstances of the case, findings observation and proposition, I am of the



view that the prosecution failed to prove the charge against the accused persons beyond all reasonable doubt.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order passed by the trial court against the accused Nurul Islam and Babul Mia are hereby set aside.

Send down the lower court's record at once.

However, there will be no order as to costs.