

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 6809 of 2014

Abdul Halim and another

.....Convict-appellants.

-Versus-

The State.

.....Respondent.

Mr. Kazi Akbar Ali with

Mr. Sikder Mahmudur Razi, Advocates.

.....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 09.06.2024, 10.06.2024 and

Judgment on 12.06.2024.

This criminal appeal at the instance of convict appellant, Abdul Halim and another is directed against the judgment and order of conviction and sentence dated 25.09.2014 passed by the learned Judge, Special Tribunal No.5, Mymensingh in Special Tribunal Case No. 51 of 2007 arising out of G.R No. 223 of 2007 corresponding to Kotwali Police Station Case No. 85 dated 30.03.2007 convicting the accused-appellants

under section 19(f) of the Arms Act, 1974 and sentencing them thereunder to suffer rigorous imprisonment for a period of 7(seven) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for 06(six) months more each.

The prosecution case, in short, is that one, Md. Lutfor Rahman as informant on 30.03.2007 at about 16:20 hours lodged an Ejahar with Kotwali Police Station against the accused appellants and others stating, inter-alia, that while the informant and another as passengers of rickshaw reached near about Ranakhali bridge saw 3/4 persons being armed with Dao, Churi, Dagger etc. were standing on the bridge for robbery or dacoity and thus the informant raised hue and cry and then witnesses came to the place of occurrence and caught-hold of 3 accused persons and thereafter the informant informed the matter to local chairman over mobile phone. Thereafter, the local chairman informed the matter to kotwali police station and accordingly police came to the place of occurrence and arrested the accused persons and seized those articles by preparing seizure list in presence of the witnesses.

Upon the aforesaid First Information Report, Kotwali Police Station Case No. 85 dated 30.03.2007

was started against the accused appellants and 2 others under section 19(A) of the Arms Act, 1878.

Police after completion of investigation submitted charge sheet against the accused-appellants and another being charge sheet No. 244 dated 18.04.2007 under section 19(A) of the Arms, 1878.

Thereafter, the case was transmitted to the Court of the learned Special Tribunal No.1, Mymensing wherein the same was registered as Special Tribunal Case No. 51 of 2007. Ultimately, the case was transmitted to the learned Judge, Special Tribunal No.5, Mymensingh for trial before whom the present accused-appellants were put on trial to answer a charge under section 19(f) of the Arms Act, 1878 to which the accused appellants pleaded not guilty and claimed to be tried stating that they have been falsely implicated in this case.

At the trial the prosecution examined as many as 7 witnesses out of 11 charge sheeted witnesses, while the defence examined none. The defence case, from the trend of cross-examination of the prosecution witnesses and examination of the appellant and another under section 342 of the Code of Criminal Procedure appeared to be that the accused-appellants are innocent and they have been falsely implicated in the case.

On conclusion of trial, the learned Judge, Special Tribunal No.5, Mymensingh by the impugned judgment and order dated 25.09.2014 found the accused appellant guilty under section 19(f) of the Arms Act, 1878 and sentenced them thereunder to suffer rigorous imprisonment for a period of 7(seven) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for 06(six) months more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 25.09.2014, the accused-appellants preferred this criminal appeal.

Mr. Kazi Akbar Ali, the learned Advocate appearing for the convict-appellants in the course of argument takes me through the F.I.R, charge sheet, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence dated 25.09.2014 and thereafter, submits that the allegations against the accused-appellants that Dao, Churi, Dagger were recovered from the accused-appellants and others which does not attract to the provision of section 19(f) of the Arms Act although the trial Court most illegally and hopelessly found the accused-appellants guilty of the offence under section 19(f) of the Arms Act and as such,

the same is liable to be set-aside. The learned Advocate in support of his submission has relied on the decisions reported in 50 DLR 529, 15 MLR 328, 2 MLR (AD) 113.

Ms. Shahida Khatoon, the learned Deputy Attorney-General, on the other hand, simply supports the impugned judgment and order of conviction and sentence.

Having heard the learned Advocate and the learned Deputy Attorney General, perused the memo of appeal, the first information report, charge sheet, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence, the only question that calls for my consideration in this appeal is whether the the learned Judge, Special Tribunal No.5, Mymensingh committed any error in finding the accused- appellants guilty of the offence under section 19(f) of the Arms Act.

On scrutiny of the record, it appears that the prosecution to prove the charge of the offence under section 19(f) of the Arms Act for carrying and possessing Dao, Churi, Dagger etc. examined in all 7 witnesses out of which PW-1, Md. Lutfor Rahman Ripon, informant of the case stated in his deposition that-

“রাস্তার মাঝখানে রানাখালী পুলের নিকট ৫/৭ জন লোককে দেখি এবং ভয় পেয়ে ডাক চিৎকার দেই। এলাকার লোকজন দৌড়িয়ে এসে কয়েকজন লোককে ধৃত করে। কিছু পরে থানা থেকে পুলিশ আসে এবং আমাকে বাদী হইয়া মামলা করার জন্য বলে।” This witness in his cross-examination stated that- “ঘটনাস্থলে ৫/৭ জন লোককে দেখে চিৎকার দেই। ঐ ৫/৭ জন লোককে চিনতে পারি নাই। কে কাকে ধৃত করে বলিতে পারিব না। আমি পুলিশকে সংবাদ দিই নাই। আমি সাদা কাগজে দস্তখত দিই।” PW-2, Mokbul Hossain, seizure list witness stated in his cross-examination that- “ঘুমের মধ্যে উঠে শুনি চুরি ডাকাতি হইয়াছে। ঘটনার রাতে আশে পার্শ্বে কোন চুরি ডাকাতি হয় নাই। জন্ম তালিকায় কি লেখা ছিল জানি না।” PW-3, Motaleb, seizure list witness, stated in his cross-examination that- “আমি হাংগামা শুনে ঘটনাস্থলে যাই। কিসে আমাদের দস্তখত নেয় বলিতে পারিব না। ঘটনাস্থলে কি ঘটে আমি জানি না।” PW-4, S.I. Abdul Majid Ahammed prepared the seizure list, who also investigated the case and submitted charge sheet. This witness also deposed as PW-7, who proved the seizure list and his signature as “Ext.2/3” sketch-map as “Ext.-3” and his signature thereon as “Ext.-3/1”, index as “Ext.-4” and his signature thereon as “Ext.-4/1”. This witness also stated that during investigation he examined the witnesses under section 161 of the Code of Criminal Procedure. PW-5 was declared hostile by the prosecution. PW-6 gave evidence in support of the prosecution case.

On scrutiny of the evidence on record, it appears that none of the witnesses in their respective evidence stated that the accused-appellants were apprehended along with Dao, Chiuri, and Dagger etc. Besides, it is well settled that Dao, Churi, Dagger does not come within the definition of Arms Act although the trial Court below without applying its judicial mind into the facts and circumstances of the case and law bearing on the subject most illegally found the accused-appellants guilty of the offence under section 19(f) of the Arms Act, which occasioned a failure of justice.

In the case of Mozammel Hossain Vs State reported in 49DLR 624, it has been held as follows:

“Considering the law as aforesaid we hold that no licence is required to keep a dagger and consequently a person cannot be convicted if he is found in possession of a dagger. The impugned conviction and sentence is, therefore, wholly illegal”.

In the case of Saiful Islam Milon and another Vs State, reported in 50DLR 529, it has been held as follows:

“The prosecution appears to have failed to prove that "Disco razor" or "Spring Knife" are "arms" within the definition of the Arms Act even if they are taken to be "daggers”.

In view of my discussions made in the foregoing paragraphs vis-à-vis the above decisions reported in 50DLR 529 and 49DLR 624 it is by now clear that the instant appeal must succeed.

In the result, the appeal is allowed and the impugned judgment and order of conviction and sentence passed by the learned Judge, Special Tribunal No.5, Mymensingh against accused appellants is set-aside and they are acquitted of the charge levelled against them.

Accused appellants namely, 1) Abdul Halim and 2) Zia are discharged from their bail bonds.

Send down the lower Court records at once.