

In The Supreme Court of Bangladesh  
High Court Division  
(Criminal Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE MD. SHOHROWARDI**  
**CRIMINAL APPEAL NO. 6623 OF 2015.**

Md. Khalil Miah

..... Appellant.

-Versus-

The State and another

..... Respondents.

Mr. Shihab Uddin Mahmood, Advocate

.....For the appellant

Mr. Sultan Mahmood Banna, AAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Kaium, AAG

... For the State

**Heard on 22.04.2025 and 23.04.2025**

**Judgment on: 24.04.2025**

**MD. Shohrowardi, J.**

This appeal under section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order of conviction and sentence dated 20.08.2015 passed by Jana Nirapatta Bignakari Aparadh Daman Tribunal-Cum-Special Sessions Judge, Cumilla in Sessions Trial Case No. 360 of 2008 arising out of G.R. No. 259 of 2008 corresponding Burichang Police Station Case No. 26 dated 28.09.2008 convicting the appellant and another under table 7(Ka) of section 19(1) of the মাদক দ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and sentencing him thereunder to suffer rigorous imprisonment for 01(one)

year and fine of Tk. 500, in default, to suffer imprisonment for 07(seven) days

The prosecution case, in short, is that S.I. Md. Mohi Uddin, along with S.I. Zakir Hossain, Constable Younus Miah on 28.09.2018, was engaged in an anti-drug operation at Burichang Thana area, and he obtained secret information that two persons with two bags of cannabis were going from Sangkuchail to Rajapur, Burichang, on foot. At 4.05 pm, he, along with the officer and the force, reached the paddy field of village Sangkuchail near the house of Hakim Bhuiyan. At that time, sensing the presence of the police personnel, two persons attempted to flee along with the bags. At that time, they were detained, and they disclosed their names and addresses as mentioned in the FIR. In the presence of the witnesses present there, searching their bags, they recovered 4 kg of cannabis at 4.45 pm. He prepared the seizure list in the presence of witnesses Mr. Zaharul Haque, Abdul Barek, and Anowar. On interrogation, they confessed that they took the cannabis from the border area and were going to Sangkuchail-Rajapur of Cumilla city to sell the cannabis.

S.I. Md. Mejba Ul Alam was appointed as Investigating Officer. During investigation, he visited the place of occurrence, prepared the sketch map and index, and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, and sent the alamats for report of the chemical examiner. After completing the investigation, the Investigating Officer found the truth of the allegation made against the accused persons and submitted charge sheet on 03.11.2008 against the accused Kalil Miah and Hamidur Rahman.

During trial, charge was framed against the accused persons under table 7/Ka of section 19(1) of the মাদক দ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০, which was read over to the accused who pleaded not guilty to the charge and claimed to be tried following law. The prosecution examined 5 witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898, and he declined to adduce any DW.

P.W. 1 S.I. Mahi Uddin Miah is the informant. He stated that on 28.09.2008, while he was conducting an anti-drug operation along with S.I. Zakir Hossain and Constable Younus Mia, he found two persons on the Sangkuchail village road. While they went to them, they attempted to flee. At that time, they were detained and searching their two bags made of polythene found 4 kgs of cannabis in two bags. Two kgs of cannabis were kept in each bag. The accused persons disclosed their names as Khalil and Hamidur Rahman. They also disclosed that they purchased cannabis from the border area to sell the same in the city. He proved the FIR and the seizure list. During cross-examination, he stated that there were many houses beside the place of occurrence.

P.W. 2 Constable No. 1268 Md. Younus Miah stated that on 28.09.2008, while he was on duty along with S.I. Mohi Uddin at Rajapur-Sangkuchail pacca road. He saw two persons near the paddy field of Hakim Bhuiyan. At that time, sensing their presence, they attempted to flee away and they detained those persons. Both of them carried one bag, and 2 kg of cannabis was kept in each bag. He stated that two bags were recovered from the accused Khalil Mia and Hamidur Rahman.

S.I. of Police prepared the seizure list at the place of occurrence. He proved the alamat and identified the accused persons. The defence did not cross-examine P.W. 2.

P.W. 3 ASI Samiron Barua stated that he verified the address and PC and PR of the accused.

P.W. 4 Abdul Barek is a witness of the seizure list. He stated that he could not remember the date of occurrence. Subsequently, stated that the occurrence took place on 28.09.2008 at 05.00 pm while he was returning from Burichang to his house. On the way to his house, S.I. instructed him to sign the paper. He identified his signature on the seizure list. During cross-examination, he stated that there were many houses adjacent to the place of occurrence. The place of occurrence is a public road. He did not see any goods. He signed as per instruction of the police.

P.W. 5 Zahirul Haque is a rickshaw puller. He is a witness to the seizure list. He could not say the date of occurrence, but he stated that the occurrence took place about two years ago before Eid. On that day, after disclosure of his name and address, police instructed him to sign the paper. He identified his signature on the seizure list as Exhibit-Ka. He signed the seizure list while he was present at the west side of the local bazaar. At that time, no one was present there. He signed the seizure list following the instruction of the police. The accused persons were not known to him. He did not see any goods.

The learned Advocate Mr. Md. Shihab Uddin Mahmood, appearing on behalf of the appellant, submits that in the seizure list, it has been stated that 02 bags were kept in a sack and 2 kgs of cannabis was kept in each bag. Nothing has

been mentioned in the seizure list from whom the alleged bags were recovered. He further submits that the evidence of P.Ws.1 and 2 as to the recovery of 02 bags full of cannabis from possession of the accused persons is not corroborated by P.Ws 4 and 5. He also submits that although the alleged cannabis was sent for report of the chemical examiner but report of the chemical examiner was not proved in the case, and the trial court convicted the accused without any report of the chemical examiner. He lastly submits that the investigating officer was not examined by the prosecution for which the defence was seriously prejudiced. 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 P.Ws. 1 and 2 recovered 01 bag from each accused and 2 kgs of cannabis was kept in each bag and P.Ws. 4 and 5 signed the seizure list which proved that they were also present at the time of recovery of the alleged cannabis. There is no material contradiction in the evidence of P.Ws 1 and 2 as to the alleged recovery of the cannabis. Therefore, the trial court legally passed by impugned judgment and order. He prayed for dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Md. Shihab Uddin Mahmood, who appeared on behalf of the appellant, and the learned Assistant 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 reveals that in the seizure list dated 28.09.2008 (exhibit-2), it has been mentioned that

two kgs of cannabis were kept in each bag and 2 bags were kept in a sack made of jute. Those alamats were allegedly recovered from possession of the accused Md. Khalil Mia and Hamidur Rahman. P.Ws. 1 and 2 stated that 2 kg of cannabis kept in 01 bag was recovered from each accused. It is found that 2 bags were kept in a sack. Therefore, the statement made by P.Ws 1 and 2 that 4 kgs of cannabis kept in 2 bags was recovered from possession of the appellants is doubtful.

On perusal of the evidence, it appears that report of the chemical examiner was not proved during the trial of the case. The investigating officer was not examined in the case. To prove the offence under table 7(Ka) of section 19(1) of the মাদক দ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ the report of the chemical examiner is indispensable. In the absence of any report of the chemical examiner, it cannot be said that the narcotics were kept in the bags. Furthermore, the seizure list witness P.Ws 4 and 5 did not corroborate the recovery of the cannabis from possession of the accused persons.

In view of the above evidence, facts and circumstances of the case, findings and observation, I am of the view that the prosecution failed to prove the charge against the accused Md. Khalil Mia 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 Md. Khalil Mia is hereby set aside.

However, there will be no order as to costs.

Send down the LCR at once.



