

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 5008 of 2016

Ambula Begum.

.....Convict-appellant.

-Versus-

The State.

.....Respondent.

Mr. M. Ali Murtaja, Advocate

.....For the appellant.

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 12.03.2024, 16.05.2024 and
Judgment on 19.05.2024

Sheikh Abdul Awal, J:

This criminal appeal at the instance of convict appellant, Ambula Begum is directed against the judgment and order of conviction and sentence dated 05.05.2016 passed by the learned Judge, Special Tribunal No.4, Sylhet in Special Tribunal Case No. 114 of 2013 arising out of G.R No. 49 of 2009 (Kotwali) corresponding to Kotwali Model Police Station Case No. 59 dated 13.07.2009 convicting the accused-appellant

under section 25B(2) of the Special Powers Act, 1974 and sentencing her 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 15 (fifteen) days more.

The prosecution case, in short, is that one, Benu Chandra Deb, A.S.I, Kotwali model police station, Sylhet as informant on 13.07.2009 at about 20:20 hours lodged an Ejahar with Kotwali Model Police Station against the accused-appellant stating, inter-alia, that on 13.07.2009 at 10:50 hours as per G.D. No. 1133 dated 13.07.2009 the informant along with other police forces while were special duty got a secret information about phensedyl deals and then they rushed to Ambarkhana Point under Kotwali Model Police Station and apprehended the accused from in-front of Jame Masjid and on interrogation she disclosed about 9 bottles of phensedyl keeping with her body and thereafter, the informant party seized those phensidyl syrups from her by preparing seizure list in presence of the witnesses.

Upon the aforesaid First Information Report, Kotwali Model Police Station Case No. 59 dated 13.07.2009, under section 25B(2) of the Special Powers Act, 1974 was started.

Police after completion of usual investigation submitted charge sheet No. 706 dated 31.08.2009 under section 25 B(2) of the Special Powers Act, 1974 against the accused appellant and another.

In usual course, thereafter, the case record was sent to the court of learned Senior Special Tribunal, Sylhet, wherein it was registered as Special Tribunal Case No. 208 of 2009. Ultimately, the case was transmitted to Special Tribunal No.4, Sylhet and renumbered as Special Tribunal Case No. 114 of 2013. Thereafter, the accused-appellant and another were put on trial to answer a charge under section 25-B of the Special Powers Act, 1974 to which the accused appellant pleaded not guilty and claimed to be tried stating that she has been falsely implicated in this case.

At the trial, the prosecution has examined as many as 04(four) witnesses to prove its case, while the defence examined none.

The defense case is of innocence and false implication, no occurrence took place as alleged by the prosecution.

On conclusion of trial, the learned Judge, Special Tribunal No.4, Sylhet by the impugned judgment and order dated 05.05.2016 found the accused appellant

guilty under section 25B(2) of the Special Powers Act, 1974 and sentenced her 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 15 (fifteen) days more, while acquitted another accused from the charge levelled against him.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 05.05.2016 the accused-appellant preferred this appeal.

Mr. M. Ali Murtaja, the learned Advocate appearing for the convict-appellant made the case heard in-part on 12.03.2024 but subsequently, the reasons best known to him as to why he did not turn to appear in the case for days together despite of fact that this matter has been appeared in the list with the name of the learned Advocate for so many days.

Ms. Shahida Khatoon, the learned Assistant Attorney-General for the State simply opposes the appeal.

Having heard the learned Assistant Attorney General, perused the record including the first information report, charge sheet, deposition of witnesses and other 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-appellant guilty of the offence under section 25B(2) of the Special Powers Act, 1974.

On scrutiny of the record, it appears that the accused-appellant was apprehended along with total 9 bottles of phensidyl and thereafter, police seized those phensidyl syrups by preparing seizure list in presence of the witnesses. Police after completion of investigation having found prima-facie case and submitted charge sheet against the accused-appellant and another under section 25B of the Special Powers Act, 1974. It further appears that the prosecution to prove its case examined in all 4 witnesses out of which PW-1, A.S.I, Benu Chandra Deb stated in his deposition that on the basis of a secret information he along with other police forces rushed to the place of occurrence and apprehended the accused Ambula Begum with 9 bottles of phensidyl syrup and thereafter, police seized those phensidyl syrups by preparing seizure list in presence of the witnesses. It further appears that PW-2 and PW-3 both are members of the raiding party, who corroborated the evidence of PW-1 in respect of all material particulars. PW-4, Md. Pasha as seizure-list witness he stated nothing as to recovery of phensidyl syrups from the

possession and control of the accused-appellant. This witness also stated that he put his signature on paper seeing nothing therein.

By the way it may be mentioned that in this case police prepared seizure list stating that- “০৯টি ভারতীয় তৈরী আমদানী নিষিদ্ধ ফেন্সিডিল যাহার কর্কের উপরে ইংরেজীতে phensedyl লেখা আছে, যাহার ০১ (এক)টি বোতলের গায়ে লেভেল আছে বাকী ০৮ (আট) টি বোতলের গায়ের লেভেল নাই। প্রতিটি বোতলের কর্ক intact আছে।”

It appears that in this case the prosecution could not show any chemical examination report to prove that 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 beyond any reasonable doubts. The learned Judge of the Special Tribunal failed to evaluate the evidence on record thereby reaching a wrong decision in finding the accused- appellant guilty of the offence under section 25B(2) of the Special Powers Act, which occasioned a miscarriage of justice. Furthermore, in this case none of the prosecution witnesses testified any single word as to the fact that the

accused-appellant brought those seized phensidyl syrups from India by way of smuggling and kept the same under her possession and control for the purpose of sale and in that view of the matter it is difficult to hold the appellant is guilty for the offence under section 25B (2) of the Special Powers Act. In that light, it creates a doubt in the case of the prosecution about the accused being involved in the alleged crime. It is trite law that if any benefit of doubt arises, then the benefit should be given to accused. In that light, the trial Court ought to have acquitted the accused by giving the benefit of doubt. In that view of the matter, the judgment of the trial Court is to be interfered with. Consequently the appeal succeeds.

In the result, the appeal is allowed and the impugned order of conviction and sentence passed by the learned Judge, Special Tribunal No.4, Sylhet in Special Tribunal Case No. 114 of 2013 arising out of G.R No. 49 of 2009 (Kotwali) corresponding to Kotwali Model Police Station Case No. 59 dated 13.07.2009 against accused appellant, Ambula Begum is set-aside and she is acquitted of the charge levelled against her.

Convict appellant, Ambula Begum is discharged from his bail bond.

Send down the lower Court records at once.