10 SCOB [2018] HCD

HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Criminal Miscellaneous Case No. 44496 of 2016

Md. Shamim Howlader
---Convict –Petitioner (In Jail)

Vs.

The State
---Opposite-Party

Mr. Dewan Abdun Naser with
Mr. Md. Moniruzzaman Siraji, Advocates
…. For the petitioner

Mr. Md. Khurshedul Alam, D.A.G
…..For the opposite party

Heard and Judgment on 10.08.2017.

Present:
Mr. Justice Md. Rezaul Haque
And
Mr. Justice Muhammad Khurshid Alam Sarkar

Code of Criminal Procedure, 1898, Section 561A:
Section 561A the legislature enacts a special law relating to criminal offences with a view to combating the same in the society to a tolerable stage by smoothly concluding the trials of the cases under the said special law within the stipulated time. But, because of the tendency of the accused persons to remain in abscondence at the trial stage, they compel the trial Courts to delay the completion of the trial and, ultimately, the scheme of the special law gets frustrated. Until and unless the accused-turn-convicts are made to realize that non-preferring of appeals within the statutory period of 30 (thirty) days has a severe consequence of depriving themselves of the opportunity of challenging the trial Court's verdict, the tendency of the accused persons and their lawyers as to taking the matter lightly shall not be changed. They, at present, take it for granted that after being arrested by the police, if they file an application under Section 561A CrPC, stating some concocted reasons, they would be able to overcome the hurdle. This Court views the above prevailing situation of our country to be a fatal disease which eventually would cause collapse of the administration of criminal justice system of Bangladesh.
… (Para 14)

No application of a convict, who did not/could not prefer appeal within 30 (thirty) days under Section 561A of the CrPC, shall be entertained unless s/he satisfies this Court that s/he is a bonafide petitioner and s/he has come before this Court in clean hands, on top of showing that the case is one of no evidence or the trial Court did not have the jurisdiction to try the case (without jurisdiction) or the trial Court was not properly constituted (coram-non-judice). … (Para 16)

In order to establish the claim of bonafides, a petitioner shall be required to satisfy this Court that because of her/his peculiar personal circumstance, such as, (i) s/he was in prison in connection with another case without being notified about the case in question, (ii) s/he was attending the trial Court regularly from custody/jail, but s/he was not produced before the trial Court on the date of delivery of Judgment and, consequently,

could not file appeal within the stipulated time, (iii) her/his health condition was so fragile that s/he could not communicate with her/his lawyer or s/he could not authorise any one by putting her/his signature on the Vokalatnama for preferring appeal and (iv) for some other unavoidable circumstances, which would appear to be plausible to the High Court Division, s/he could not prefer appeal within the stipulated time. In other words, the petitioner shall be required to satisfy the High Court Division that s/he was not negligent in dealing with his/her case in the Special Tribunal and s/he did not designedly make any commonplace statement in the application under Section 561A CrPC as a device for attracting this Court's jurisdiction. … (Para 17)

If s/he takes a plea that s/he remained absent in the trial as per the advice of the lawyer, s/he must substantiate his/her statement by bringing an allegation of professional negligence to the Bar Council first and, then, file an application under Section 561A of the CrPC. … (Para 18)

On receiving the record (নথি) from the Magistrate, if the accused, who is on bail, does not turn up before the Tribunal, the Tribunal must fix a date for the appearance of the accused. If the accused, then, does not appear before the Tribunal on the fixed date, then the Tribunal shall direct the surety to produce the accused. After exhausting the above steps, if the accused does not turn up, then the Tribunal shall proceed to complete the trial as expeditiously as possible.

After pronouncement of the judgment and order of conviction and sentence, the Tribunal shall remind the learned Advocate of the accused that the accused will get only 30 (thirty) days to prefer an appeal, failing which, no application under Section 561A of the CrPC shall be entertained by the High Court Division. The learned Judge of the Tribunal, then, shall ensure that the learned Advocate of the accused-turn-convict has understood the cautionary directive outlined by this Court hereinabove that if the learned Advocate does not inform his client about the conviction and his right of preferring appeal within 30 (thirty) days, then the learned Advocate puts him/herself at a risk of facing the allegation of professional negligence in carrying out her/his duties.

The learned Judge of the Tribunal, then, shall record in the Order Sheet that s/he has brought to the notice of the learned Advocate the above cautionary directive.
… (Para 19)

Judgment

Muhammad Khurshid Alam Sarkar, J:

1. At the instance of the above named convict-petitioner (hereinafter referred to as the petitioner), this application has been filed in an expectation to set aside the Judgment and Order dated 24.04.2016 passed by the Special Tribunal No. 6, Barisal in Special Tribunal Case No. 40 of 2009, which has arisen out of Uzirpur Police Station Case No. 28 dated 29.03.2009 corresponding to G.R No. 74 of 2009, convicting the petitioner under Section 25-B(2) of the Special Powers Act, 1974 and sentencing him to suffer rigorous imprisonment for 7(Seven) years and to pay a fine of Tk. 5,000/- (Five Thousand), in default, to suffer rigorous imprisonment for additional 3 (three) months, by invoking this Court's power of quashment under Section 561A of the Code of Criminal Procedure, 1898 (CrPC).

2. The prosecution case, in short, is that the informant Anower Hossain, Sub-Inspector (S.I.) of Company-1, RAB-D, Barisal, lodged a First Information Report (FIR/Ejahar) alleging, *inter alia*, that on 29.03.2009 at about 17.30 hours when his force was on special duty, he got secret information that the accused-persons (the petitioner and another, named - Md Jahurul Howlader), having brought illegal narcotics (Madok Drobbya) through the border area of Jessore, were selling the same at their homestead in the Barisal City. On the basis of the said information, the informant-party raided the house of the petitioner but he along with his cohort managed to flee away. Then, upon searching, the raiding party recovered 107 bottles of phensidyle and lodged this FIR. On the basis of the said FIR, Uzirpur Police Station Case No. 28 dated 29.03.2009 was started and, after investigation, the police submitted charge sheet on 30.04.2009 in G.R No. 74 of 2009. Thereafter, the case was transferred to the Special Tribunal No. 1 and Sessions Judge, Barisal, who then assigned Special Tribunal No. 6 of Barisal to conduct trial of the case. The trial Court framed charge against the petitioner under Section 25B(2) of the Special Powers Act, 1974 (shortly, Special Powers Act). At the end of trial, the trial Court by its Judgment and Order dated 24.04.2016 convicted the petitioner under Section 25B(2) of the Special Powers Act and sentenced him to suffer rigorous imprisonment for 7(Seven) years as well as imposed a fine of Tk. 5,000/- (five thousand), in default, to suffer rigorous imprisonment for 3(three) months more. However, he did not prefer appeal within 30(thirty) days against the said Judgment and Order of conviction and sentence, for, he was absconding from the trial after being enlarged on bail by the trial Court.

3. Mr. Dewan Abdun Naser, the learned Advocate appearing on behalf of the convict-petitioner, submits that the allegations which have been brought against the petitioner have no basis at all, as the prosecution witnesses are interested, biased and hostile in nature and their testimonies are not only uncorroborated, but are full of discrepancies and contradictions and, moreover, the witnesses having not been properly examined by the trial Court, this case is to be seen as a case of no evidence. In support of the above submissions, Mr. Dewan Abdun Naser refers to the cases of Mofazzal Hossain Mollah Vs State 45 DLR(AD) 175, Md Sher Ali Vs State 46 DLR(AD) 67 and Pannu Mollah Vs State 56 DLR(AD) 142. Mr. Naser then humbly submits that even for the sake of argument if the allegations are accepted to be true, the quantum of sentence awarded has been too harsh in ratio with the nature of allegations and the deposition made by the witnesses. With regard to the failure of the petitioner to prefer an appeal within the 30 days of the Judgment and Order, he contends that after the occurrence on 29.03.2009, he was arrested on 07.03.2010 and, thereafter, he having been granted bail on 28.09.2010, was regularly attending the trial Court for nearly two years and when no witnesses were turning up, he was advised by his learned Advocate that there was no need to remain present in the Court and, under this impression, he did not attend the Court any further and, eventually, when he was arrested by the police on 13.08.2016, he came to know that his case has been ended up on 24.04.2016 vide the impugned Judgment and Order. He draws our attention to the fact that the petitioner has been languishing in jail for one year for no fault of his own but for the wrong advice of the learned Advocate of the trial Court, because had he been present on the date of pronouncement of the Judgment, there was no reason to enlarge him on bail by the appellate Court. He, then, humbly submits that the petitioner being a poor and illiterate person does not possess the knowledge about the procedures of a criminal trial and, thus, his Miscellaneous Case under Section 561A of the CrPC deserves to be considered positively by this Court, as was done in the case of Nesar Ahmed Vs Bangladesh 49 DLR(AD) 111. In a bid to cross the required thresholds set out by the larger Bench of this Court in the case of Alamgir Hossain Vs State 49 DLR 630, he refers to the cases of Jahangir Alam Vs State 56 DLR (AD) 217 and Zoad Miah Vs State 10 BLC(AD) 168 and professes

that the *ratio* laid down by the larger Bench does not bear any binding force after the pronouncement of the above two AD-cases because of the operation of Article 111 of the Constitution. By advancing the above contentions and making his arguments, he prays for making the Rule absolute.

4. Per contra, Mr. Md. Khurshedul Alam, the learned Deputy Attorney General on behalf of the State by placing Section 30 read with 34B of the Special Powers Act, submits that the Rule is liable to be discharged outright only on the ground of maintainability of this petition, as the petitioner did not prefer any appeal within 30 days of the delivery of the Judgment and, moreover, he having been enlarged on bail by the trial Court remained in abscondence for six years and filed this application only after being captured by the police. He emphatically submits that the petitioner in the past has abused the privilege of bail and, now, he is not eligible to invoke the extra-ordinary jurisdiction of this Court under Section 561A of the CrPC. In an endeavour to substantiate his submissions, he refers to a decision passed by a larger Bench of this Court in the case of Alamgir Hossain Vs State 49 DLR 630.

5. Having heard the learned Advocate for the petitioner and learned Deputy Attorney General and upon going through the petition along with its annexures and the relevant laws and decisions placed before us, it appears to us that the first & foremost question to be decided by this Court is whether the petitioner is entitled to invoke Section 561A of the CrPC towards showing this Court that this is a case of no evidence. In other words, whether this Court is competent to see and examine the evidence of the case in exercising its discretionary power under Section 561A of the CrPC.

6. From a plain reading of Section 34B of the Special Powers Act, it appears that the law heralds that the provisions of this law shall have an overriding effect over all the general laws of Bangladesh. Section 30 of the Special Powers Act stipulates that an appeal against any Order, Judgment or Sentence of a Special Tribunal is to be preferred within 30 (thirty) days. Furthermore, from the reading of the relevant provisions of the Limitation Act, 1908, namely, Sections 3, 5 and 29, we find that no Court is empowered to extend the time-limitation stipulated in the special laws for preferring appeal, save and except deducting the days taken in procuring certified copy or the time spent for being in a wrong forum, as was held in the case of Sharifa Begum Vs Bangladesh 325 LNJ 2016(1). With the above clear and unambiguous provisions of laws in place, there is no need of detailed interpretation of the above laws by this Court to come to the conclusion that when a special law prescribes a time-limit for preferring appeal, no appeal can be filed after the expiry of the said time-limitation. Now, this Court requires to analyze the facts & circumstances of the cases referred to by the learned Advocate for the petitioner in order to see whether a convict's application under Section 561A of the CrPC challenging the conviction and sentence is maintainable after expiry of the stipulated period for preferring appeal, by applying the *ratio* laid down in the cited cases in the backdrop of non-availability of any other statutory provisions.

7. In the case of Mofazzal Hossain Mollah Vs State 45 DLR (AD) 175, the accused after being convicted by the trial Court, unsuccessfully moved the appellate Court and the revisional Court. Thereafter, the convict invoked this Court's jurisdiction under Section 561A of the CrPC and the Appellate Division laid down a *ratio* that upon exhausting all the tiers prescribed in the CrPC, such as, trial, appellate and revisional fora, if a convict invokes extraordinary jurisdiction of the High Court Division under Section 561A of the CrPC, this Court is well empowered to entertain an application under the aforesaid provision to see whether the case is of no evidence. In the cited case, the petitioner having exhausted all the

fora had showed his bonafides before resorting to Section 561A of the CrPC and, thus, the *ratio* of the cited case is not applicable in this case.

8. In the case of Sher Ali Vs State 46 DLR(AD) 67, when the informant's Naraji application was rejected by the Magistrate, the same was allowed by the learned Sessions Judge in revision. Against the Sessions Judge's order, when the accused approached the High Court Division invoking its jurisdiction under Section 561A of the CrPC, the High Court Division took a view that the High Court Division is not empowered to entertain any application against any Judgment and Order passed by the Sessions Judge in any revisional case. The Apex Court, at Para 8 of this reported case, upon reiterating the principle set out in the case of Mofazzal Hossain Mollah Vs State 45 DLR(AD) 175 confirmed that "*The inherent power under Section 561A can be invoked at any stage of the proceeding, even after conclusion of trial, if it is necessary to prevent the abuse of the process of the Court or otherwise to secure the ends of justice*". In the light of the fact that, in the present case, the petitioner has directly invoked the inherent power of this Court without first approaching the appellate and/or revisional forum, there is no scope to apply the *ratio* of the case of *Sher Ali* 46 DLR(AD) 67 in this case.

9. In the case of Pannu Mollah Vs the State, the convict-petitioner having unsuccessfully moved the application under Section 561A of the CrPC preferred an appeal before the Appellate Division for setting aside the conviction under Section 19(a) and (b) of the Arms Act, 1878 and the Apex Court allowed the appeal upon appreciation of the evidence of the case. From a minute reading of the above reported Judgment, it surfaces that the issue of maintainability of an application under Section 561A CrPC was not agitated before the Appellate Division and, for that reason, the Apex Court did not have the opportunity to examine the issue. However, from perusal of the other 2 (two) cases referred to by the learned Advocate for the petitioner, namely, Jahangir Alam Vs State 56 DLR (AD) 217 and Zoad Miah Vs State 10 BLC(AD) 168, it appears to us that although the issue of maintainability of the application under Section 561A of the CrPC was raised in these two cases, but the Appellate Division without dwelling on the said issue simply opted to examine the evidence of the witnesses and, upon finding no legal evidence against the convicts, set aside their conviction and sentence.

10. In an endeavour to properly adjudicate upon the issue of competency and standing of an absconding-convict in invoking Section 561A CrPC, we undertook a research on the case laws on this point and it revealed that only the Larger Bench Case (Alamgir Hossain Vs State 49 DLR 630) has specifically delved deep into this issue towards resolving the legal position of a convict, who having been absconded at the time of pronouncement of Judgment of a case tried by the Special Tribunal, did not or could not prefer an appeal within the prescribed time of 30 (thirty) days. In the said case, the Larger Bench held that when an absconding-convict comes with clean hands before the High Court Division resorting to the extra-ordinary jurisdiction under Section 561A CrPC and makes out a clear case of no evidence or *coram-non-judice*, then this Court may entertain the absconding-convict's application under 561A CrPC to secure the ends of justice. The argument advanced by the learned Advocate for the petitioner that the Appellate Division's above two Judgments were passed after the Larger Bench's case was reported in the law journal and, therefore, the presumption would be that the Apex Court upon ignoring the *ratio* laid down by the Larger Bench has entertained the absconding-convict's application under Section 561A CrPC and, accordingly, the decisions of the Appellate Division being subsequent in point of time is the law of the land as per Article 111 of our Constitution - does not hold good.

11. In our opinion, the law laid down by the larger Bench in the case of Alamgir Hossain Vs State 49 DLR 630 still operates as a good law inasmuch as the Appellate Division did not have any occasion to specifically examine this point in any case. In the cases of Jahangir Alam Vs State 56 DLR (AD) 217 and Zoad Miah Vs State 10 BLC(AD) 168, the Appellate Division has set aside the convict's conviction simply on the basis of evidence without dealing with the issue of legal position; meaning standing/competency, of an absconding-convict. Had the Appellate Division examined the issue, there would have been an occasion for our Apex Court either to approve the *ratio* laid down by the Larger Bench of the High Court Division in the case of Alamgir Hossain Vs the State 49 DLR 630 or to settle the new criterion for invoking Section 561A of the CrPC by a convict who was absconding during the trial and at the time of delivery of Judgment and subsequently he did/could not avail the opportunity of preferring appeal within the statutory period of 30 (thirty) days.

12. It has been a common phenomenon of the accused persons to abstain from attending the Court during the trial inspite of serving the notice of the summons/warrant upon them and sometimes even after publishing the notice in the newspapers in compliance with the provisions of Section 87 & 88 of the CrPC or as per the provisions of the special laws. In some cases, before the date of pronouncement of the Judgments, the accused persons purposefully remain incommunicado and when the trial Court passes Judgment and Order of conviction and sentence, they opt to be in abscondence until arrested by the law enforcing agencies. Thereafter, at the time of filing applications under Section 561A CrPC, they, in some cases, come up with a plea that they were not aware of their case and, in some cases, it is their excuse that the concerned trial Court Advocate has advised them that they do not need to attend the Court any more. The plea of their Advocate's ill-advice cannot be taken into consideration by this Court until they can show that they have filed a complaint against the said Advocate for giving wrong advice or, at least, they satisfy this Court that after approaching this Court they are preparing to lodge a complaint to the Bar Council against their trial Court Advocate. However, if it is found that the accused, having been granted bail by the Magistrate, did not turn up to the trial Court and the trial Court proceeded with the trial without taking the measures for the appearance of the accused, in that scenario, a presumption may be had in favour of the convict that as a lay-person he cannot be held to have been aware of the fact that the trial of her/his case has been assigned to a different Court unless s/he is advised by her/his Advocate who was engaged at the Magistrate's Court, as was held in the case of Nesar Ahmed Vs Bangladesh 49 DLR (AD) 111. In the case in hand, however, the *ratio* of the above case does not apply in view of the fact that this petitioner was aware of transmission of his case from the Magistrate's Court to the trial Court and attended the trial Court on a few occasions. The petitioner's contention of being unaware of the subsequent development of his case due to his lawyer's negligence could have been considered by us, had he proved the said claim by filing a complaint against the learned Advocate who conducted his case in the trial Court towards convincing us that he has come up before this Court with clean hands.

13. In our way of scrutiny, we find that the petitioner, after being granted bail, could have availed the opportunity of filing an application for showing his presence (Hazira) through his learned Advocate on condition of appearing before the trial Court as and when required, but he has not filed any such application before the trial Court. In this era of advanced mobile technology, when most of the poor persons of our country, including a rickshaw-puller, is habituated in keeping contact with his family members and acquaintances over mobile, any one with ordinary prudence would hardly believe that the petitioner was not taking update on

his case from his lawyer. Had it truly been the case that the Advocate kept the petitioner in the dark, the petitioner would have allowed this Court to issue show cause notice upon the learned Advocate of the trial Court as to why he should not be referred to the Bar Council for adjudication of the allegation of professional negligence brought against him by the petitioner -when this Court wanted to do so during the hearing of this Rule. Therefore, from the manner of dealing with his case, it can be safely concluded that the petitioner intentionally abstained from attending the trial of the case and was adamant to remain in abscondence till he was arrested by the police. We, thus, find the allegation against the trial Court Advocate to be a commonplace statement designedly made to attract this Court's jurisdiction under Section 561A of the CrPC.

14. The legislature enacts a special law relating to criminal offences with a view to combating the same in the society to a tolerable stage by smoothly concluding the trials of the cases under the said special law within the stipulated time. But, because of the tendency of the accused persons to remain in abscondence at the trial stage, they compel the trial Courts to delay the completion of the trial and, ultimately, the scheme of the special law gets frustrated. Until and unless the accused-turn-convicts are made to realize that non-preferring of appeals within the statutory period of 30 (thirty) days has a severe consequence of depriving themselves of the opportunity of challenging the trial Court's verdict, the tendency of the accused persons and their lawyers as to taking the matter lightly shall not be changed. They, at present, take it for granted that after being arrested by the police, if they file an application under Section 561A CrPC, stating some concocted reasons, they would be able to overcome the hurdle. This Court views the above prevailing situation of our country to be a fatal disease which eventually would cause collapse of the administration of criminal justice system of Bangladesh.

15. Given the propensity of the accused persons and their learned Advocates in ignoring or lightly taking the legal requirement of remaining present in the Court-room on each of the dates of the trial, this Court feels it pertinent to lay down the following directives for the benefit of the accused-turn-convicts as well as for their trial-Court-Advocates.

16. No application of a convict, who did not/could not prefer appeal within 30 (thirty) days under Section 561A of the CrPC, shall be entertained unless s/he satisfies this Court that s/he is a bonafide petitioner and s/he has come before this Court in clean hands, on top of showing that the case is one of no evidence or the trial Court did not have the jurisdiction to try the case (without jurisdiction) or the trial Court was not properly constituted (coram-non-judice).

17. In order to establish the claim of bonafides, a petitioner shall be required to satisfy this Court that because of her/his peculiar personal circumstance, such as, (i) s/he was in prison in connection with another case without being notified about the case in question, (ii) s/he was attending the trial Court regularly from custody/jail, but s/he was not produced before the trial Court on the date of delivery of Judgment and, consequently, could not file appeal within the stipulated time, (iii) her/his health condition was so fragile that s/he could not communicate with her/his lawyer or s/he could not authorise any one by putting her/his signature on the Vokalatnama for preferring appeal and (iv) for some other unavoidable circumstances, which would appear to be plausible to the High Court Division, s/he could not prefer appeal within the stipulated time. In other words, the petitioner shall be required to satisfy the High Court Division that s/he was not negligent in dealing with his/her case in the

Special Tribunal and s/he did not designedly make any commonplace statement in the application under Section 561A CrPC as a device for attracting this Court's jurisdiction.

18. If s/he takes a plea that s/he remained absent in the trial as per the advice of the lawyer, s/he must substantiate his/her statement by bringing an allegation of professional negligence to the Bar Council first and, then, file an application under Section 561A of the CrPC.

19. As part of this Court's duty under Article 109 of the Constitution, the following guideline is laid down for the learned Judges of the Special Tribunals who shall mandatorily follow these guideline in conducting the cases under special laws:

i. On receiving the record (bw_) from the Magistrate, if the accused, who is on bail, does not turn up before the Tribunal, the Tribunal must fix a date for the appearance of the accused. If the accused, then, does not appear before the Tribunal on the fixed date, then the Tribunal shall direct the surety to produce the accused. After exhausting the above steps, if the accused does not turn up, then the Tribunal shall proceed to complete the trial as expeditiously as possible.
ii. After pronouncement of the judgment and order of conviction and sentence, the Tribunal shall remind the learned Advocate of the accused that the accused will get only 30 (thirty) days to prefer an appeal, failing which, no application under Section 561A of the CrPC shall be entertained by the High Court Division. The learned Judge of the Tribunal, then, shall ensure that the learned Advocate of the accused-turn-convict has understood the cautionary directive outlined by this Court hereinabove that if the learned Advocate does not inform his client about the conviction and his right of preferring appeal within 30 (thirty) days, then the learned Advocate puts him/herself at a risk of facing the allegation of professional negligence in carrying out her/his duties.
iii. The learned Judge of the Tribunal, then, shall record in the Order Sheet that s/he has brought to the notice of the learned Advocate the above cautionary directive.

20. In the result, the Rule is discharged. The bail granted earlier by this Court, at the time of issuance of Rule, is hereby recalled and the convict-petitioner is directed to immediately surrender before the learned Chief Judicial Magistrate, Barisal to complete the remaining period of the sentence awarded by trial Court.

21. However, this Court is of the opinion that this is an appropriate case for issuance of a certificate in favour of the convict-petitioner under Article 103(2)(a) of the Constitution, for, an important question of law as to interpretation of Article 111 is involved in this case, namely, whether the decisions given by the Appellate Division in the cases of Jahangir Alam Vs State 56 DLR (AD) 217 and Zoad Miah Vs State 10 BLC(AD) 168, wherein the Apex Court set aside the conviction of the absconding-convict without touching the issue of standing of a convict in filing an application under Section 561A CrPC, impliedly bears any force of law to entertain a convict's application under Section 561A CrPC in the backdrop of having a clear-cut guideline on the issue through a Judgment passed by the larger Bench of the High Court Division in the case of Alamgir Hossain Vs State 49 DLR 630.

22. Office is directed to send down the Lower Court Record (LCR) along with a copy of this Judgment and Order at once to the learned Chief Judicial Magistrate, Barisal.

23. The Registrar General of the Supreme Court of Bangladesh is directed to disseminate a copy of this Judgment to all the Courts of Sessions of Bangladesh so that they can be acquainted with the cautionary directive spelt out in this Judgment and the guideline set out by this Court to be followed by the learned Judges who conduct criminal trials under the Special laws.