

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

PRESENT:

MR. JUSTICE MD. SHOHROWARDI

Criminal Appeal No. 6138 of 2007

Md. Saju Pramanik

..... Appellant.

-Versus-

The State

..... Respondent.

None appears

.....For the appellant.

Mr. S.M. Golam Mostofa, D.A.G with

Mr. A. Mannan, AAG

... for the respondent.

Heard on 14.08.2023, 11.10.2023

Judgment delivered on 16.10.2023

Md. Shohrowardi, J.

This appeal under section 410 of the Code of Criminal Procedure, 1898 has been preferred challenging the legality of the impugned judgment and order dated 14.11.2007 passed by Sessions Judge, Bogra in Special Session Case No. 13 of 2004 convicting the appellant under table 1(Ka) of section 19(1) of the মাদক দ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and sentencing him thereunder to suffer rigorous imprisonment for 07 (seven) years.

The prosecution case, in a nutshell, is that Md. Rafiqul Islam Sub-Inspector, Narcotics Control Department along with the departmental staff on 31.10.2001 at 11:00 am raided the house of accused Md. Saju Pramanik and accused Most. Santo situated at Fulbari Staff Quarter. In the presence of witnesses, he searched the bedroom of the accused persons and recovered 20 grams(20 puria) of heroin kept under the bed of the cot and seized the heroin along with the pipe and angta used for consumption of heroin and the scale for measuring the heroin. He prepared the seizure list at the place of occurrence and took the signatures of witnesses. He sent the sample of recovered heroin for the report of the chemical examiner. Sensing the presence of the members of the raiding party, the accused

persons fled away. Thereafter, P.W. 4 Sub-Inspector Rafiqul Islam lodged the FIR.

P.W. 6 Inspector Abdul Mozid took up the investigation of the case, 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. After completing the investigation, found prima facie truth of the allegation made against the accused persons in the FIR and submitted charge sheet against them on 19.05.2002 under table 1(Ka) of section 19(1) and section 20/25 of the মাদক দ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০.

Thereafter, the case record was transmitted on 09.02.2004 to the Sessions Judge, Bogra. On 30.3.2004, charge was framed against the accused persons under table 1(Ka) of sections 19(1) and section /20/25 of the মাদক দ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ which was read over and explained to them and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 06 (six) 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.

P.W. 1 A.S.I. Dewan Abdus Sattar is a member of the raiding party. He stated that on 31.10.2001 under the leadership of informant Md. Rafiqul Islam and other staff of the Narcotics Control Department raided the house of the accused persons situated at village Fulbari Maddhapara in the presence of the witnesses, searched the house of the accused persons and recovered 20 grams(20 puria) of heroin kept in the pot of plastic under the bed of the cot, 03 pipes used for consumption of heroin, one scale for measuring heroin and one packet of angta. At the time of recovery of the heroin, the accused persons were not present in the house.

P.W. 2 Md. Rezzak is a witness on the seizure list. He stated that the accused persons were known to him. On 31.10.2001, the police and the staff of the Narcotics Control Department recovered

20 grams (20 puria) of heroin, one scale for measuring heroin and angta etc searching the house of the accused persons. The accused persons used to sell the heroin. He put his thumb impression on the seizure list. He proved the seizure list as exhibit-1 and his signature as exhibit-1/1. He stated that witness Haji Md. Abdur Rashid also signed the seizure list along with him.

P.W. 3 Alhaj Md. Abdur Rashid is the witness on the seizure list. He stated that the accused persons were known to him and all of them were residents of the same village. The police went to the house of the accused persons on 31.10.2001 and searching their house recovered 20 grams (20 puria) of heroin and prepared the seizure list. He signed the seizure list. He proved his signature on the seizure list as exhibit-2/1. The accused persons were absconding at the time of recovery of the heroin.

P.W. 4 Md. Rafiqul Islam is the informant. He stated that on 31.10.2001 he was posted at the Narcotics Control Department, Bogra. On that day at 11:00 am, he along with the departmental staff raided the house of the accused persons situated at Fulbari Maddhapara. He along with the 3 witnesses searched the house of the accused persons. At the time of searching their house recovered 20 grams (20 puria) of heroin kept under the bed of the cot. He also recovered the scale used for measuring the heroin, 3 pipes and angta used for consumption of heroin. He prepared the seizure list at the place of occurrence and took the signatures of the witnesses and sent the alams to the chemical examiner for the report. At the time of recovery of the heroin, the accused persons were absconding. He proved the seizure list as exhibit-1 and his signature on the seizure list as exhibit-1/1. He proved the FIR as exhibit-2 and his signature as exhibit-2/1. He stated that he served along with the A.S.I. Abdur Rezzak Mia and his handwriting are known to him. He proved the FIR form as exhibit-3 and the signature of A.S.I. Abdur Rezzak Mia as exhibit-3/1.

P.W. 5 Md. Sohrab Hossain is a constable of the Police. He stated that on 31.10.2001, he was posted at the Narcotics Control Department, Bogra. On that day under the leadership of Sub-Inspector Rafiqul Islam along with the departmental staff at 11:00 am raided the house of the accused persons situated at village Fulbari and recovered 20 grams (20 puria) of heroin kept in the pot of plastic under the bed of the cot. The members of the raiding party also recovered 03 pipes and angta used for the consumption of heroin and a scale used for measuring the heroin. He prepared the seizure list at the place of occurrence and took the signatures of the witnesses.

P.W. 6 Inspector Abdul Mazid is the investigating officer. He stated that in 2001, he was posted at the Directorate of Narcotics Control Department, Bogra. During the investigation, he visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and sent the recovered alamats for the report of the chemical examiner. Subsequently, he received the report of the chemical examiner and in the report, he opined that heroin was found in the sample sent for report of the chemical examiner. He proved the sketch map and index as exhibit-4 and his signature as exhibit-4/1. He proved the report of the chemical examiner as exhibit-5 and the recovered alamats as material exhibit- 'Ka series. During cross-examination, he affirmed that the houses of Alam and Jannat were situated adjacent to the house of the accused persons. He affirmed that he talked to them but they refused to be a witness. The neighbouring people identified the house of the accused persons. He denied the suggestion that no heroin was recovered from the house of the accused persons. He denied the suggestion that Abdul Rashid and Rezzak tried to grave the house property of the accused for which he implicated the accused persons in connivance with them.

No one appears on behalf of the appellant.

The learned Deputy Attorney General Mr. S.M. Golam Mostofa Tara appearing along with the learned Assistant Attorney General Mr. A. Monnan on behalf of the State submits that P.Ws. 1 to 5 are the direct witnesses of recovery of the heroin from the possession of the accused persons. The amount recovered from the possession of the accused persons was sent for the report of the chemical examiner and in the report of the chemical examiner (exhibit-5) heroin was found. P.W. 6 proved the report of the chemical examiner (exhibit-5) and the amounts as material exhibit- 'Ka' series). He further submits that during the trial defence did not cross-examine the P.Ws. 1 to 5 and the prosecution proved the charge against the accused to the hilt beyond all reasonable doubt. Therefore, he prayed for the dismissal of the appeal.

I have considered the submission of the learned Deputy Attorney General, perused the evidence, the impugned judgment and order passed by the trial court and the records.

At the very outset, it is noted that at the time of the framing charge, the accused persons were present in court but subsequently, they absconded and did not cross-examine P.Ws. 1 to 5. The defence only cross-examined P.W. 6.

On perusal of the records, it appears that P.W. 4 Md. Rafiqul Islam along with P.W. 1 Dewan Abdus Satter and P.W. 5 Md. Sohrab Hossain of the narcotics control department searched the house of accused on 30.01.2011 at 11:00 am in the presence of P.W. 2 Md. Rezzak and P.W. 3 Alhaj Md. Abdur Rashid and recovered 20 grams (20 puria) of heroin kept in the of plastic pot under the bed of the cot of the house of the accused. The evidence of P.W. 4 as regards recovery of 20 grams of heroin, 03 pipes and angta used for consumption of the heroin and the scale used for measuring the heroin is corroborated by P.Ws. 1 and 5 who are the members of the raiding party. P.Ws. 2 and 3 who are the locals and the witnesses of the seizure list also corroborated the evidence of P.W.1 as regards the recovery of the heroin from the possession of the accused Md.

Saju Pramanik. The defence did not cross-examine P.Ws. 1 to 5. Therefore, their evidence as regards the recovery of 20 grams of heroin from the possession of the accused Md. Saju Pramanik remained uncontroverted by the defence. The report of the chemical examiner (exhibit-5) also disclosed that heroin was found in the sample sent for the report of the chemical examiner. The prosecution also proved the recovered heroin as exhibit-‘Ka series.

In view of the above evidence, observation, findings and the proposition, I am of the view that the prosecution proved the charge against the accused Md. Saju Pramanik to the hilt beyond all reasonable doubt.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the trial court is modified as under:

The accused Md. Saju Pramanik is found guilty of the offence under table 1(Ka) of section 19(1) of the মাদক দ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and he is sentenced thereunder to suffer rigorous imprisonment for 03 (three) years.

In the result, the appeal is disposed of with modification of the sentence.

Send down the L.C.R. at once.

(MD. SHOHWARDI, J.)