

IN THE COURT OF SPECIAL JUDGE AT BARPETA.

**Present :- Sri Vinod Kumar Chandak, M.A., M. Com., LL.B.,AJS,
Special Judge,
Barpeta.**

**JUDGMENT IN SPECIAL NDPS CASE NO. 05 OF 2017
(G.R. Case 1647 of 2017)**

Howly P.S. Case No 162 of 2017

State of Assam

-versus-

1. Mafidur Rahman,
S/O Lt. Anowar Hussain,
Resident of Hazipara,

2. Atul Baishya,
S/O Lt. Tapou Baishya,
Resident of Kaljhar,

Both are of P.S. - Howly,
District – Barpeta.

..... Accused.

APPEARANCES :

For the State : Sri Lalit Ch. Nath, learned P.P., Barpeta.
For the Accused : Mr. Dipak Das and
Mr. Mufazzal Haque, learned Advocate, Barpeta.

**CHARGE FRAMED UNDER SECTION 20(B) of NARCOTIC DRUGS &
PSYCHOTROPIC SUBSTANCES ACT, 1985.**

Date of Charge : 19.01.2018,
Date of Prosecution evidence : 09.03.2018, 15.09.2018, 22.11.2018,
06.04.2019, 17.09.2019, & 20.11.2019,
Date of Statement of accused : 17.12.2019,
Date of Argument : 22.01.2020,

Date of Judgment

: 12.02.2020.

J U D G M E N T

1. The prosecution case, in brief, is that on 11.04.2017 SI Pankaj Das of Howly Police Station lodged FIR before the Officer-in-Charge, Howly Police Station, alleging, interalia, that on 11.03.2017 at around 9:00 AM, while Constable No.05 Mazibar Rahman and Constable No.95 Hemanta Das and HG Ali Ahmed were on patrolling duty at Howly town, then with reference to Howly P.S. GDE No. 317, dated 11.03.2017, they caught accused Mafidur Rahman on being handed over by public of Howly bazar alleging that the said accused sells ganja in Howly bazar. On interrogation, it is learnt that he used to purchase ganja from a Pan shop situated at Kaljhar chowk. Then on 12.03.2017 he alongwith SI M.N. Das, SI Pulin Phukan and staff searched the Pan shop of accused Atul Baishya, showed by accused Mafidur Rahman, and recovered total 6.20 kg of suspected Ganja(cannabis). DSP Babul Ch. Nath arrived at the place of occurrence and on being authorized by DSP Babul Ch. Nath, SI Pulin Phukan seized the suspected Ganja as per provisions of NDPS Act. He sent samples of the seized Ganja for examination and also arrested the accused persons and forwarded them to court.

On receipt of the aforesaid F.I.R. by the Officer-in-charge, Howly Police Station, the same was registered as Howly P.S. Case No. 162/2017 under section 20(B) of NDPS Act and caused investigation of the same.

Police, on completion of investigation, filed charge sheet in the case against the above named accused persons Mafidur Rahman and Atul Baishya, under section 20(B) of NDPS Act, 1985 vide charge sheet No.65/2017, dated 30.04.2017.

2. My learned Predecessor-in-office received the case record alongwith the case diary of the case. On appearance of accused persons, copy was furnished to them by my learned Predecessor-in-office.

3. Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for

the accused and the prosecution in this behalf, charge was framed by my learned predecessor-in-office against the accused persons u/s 20(B) of NDPS Act, 1985 which was read over and explained to the accused persons, to which, all the accused persons pleaded not guilty and claimed to be tried.

4. During the course of trial, **10(ten)** number of witnesses including the I/O were examined on behalf of the prosecution to prove the charge u/s 20(B) of NDPS Act, 1985 against the accused persons.

On completion of prosecution evidence, statement of above named accused persons were recorded u/s 313 of CrPC. The accused persons denied all the alleged incriminating materials against them. They claimed themselves to be innocent. They denied to adduce evidence in their defence.

5. I have heard Mr. L. C. Nath, learned Public Prosecutor for the State as well as learned Defence Counsel for the accused persons, who are facing trial for commission of offence u/s 20(B) of NDPS Act, 1985.

6. Now the point for determination before this court are as follows ---

(1) Whether on 11.03.2017 at 9:00 AM at Kaljhar, within the jurisdiction of Howly PS, District Barpeta, the accused persons were found in possession of 6.20 Kgs of suspected Ganja(cannabis) in contravention of any provision of Narcotic Drugs and Psychotropic Act and thereby committed an offence punishable u/s 20(B) of NDPS Act, 1985 ?

DISCUSSION, DECISIONS AND REASONS THEREOF

7. To decide the above point and section of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

Witness **Sri Dhrubajyoti Hazarika [P.W.1]** has deposed that on 16-03-2017 when he was working as Deputy Director of Drugs and Narcotics

Division, Directorate of Forensic Science, Assam, he received a sealed parcel from my Director in connection with Howly P.S. GDE No. 338 dated 12-03-2017. The parcel consists of 1(one) exhibits enclosed in a sealed envelope cover. The facsimile of the seal was found to be "S.P. CONFDL BARPETA".

Description of Articles:-

1(one) sealed envelopes marked as Sample "A-1", having a closed polythene packet containing about 25g dry plant materials which was marked by me as DN-109/2017.

On careful examination following United Nation Drug Testing Manual the result of examination was found as follows.

Exhibit DN-109/2017 gave positive test for Cannabis(Ganja).

PW1 exhibited the report vide Ext.1 and Ext.1(1) as his signature. His report was forwarded by the then Director-in-charge Mr. G.N. Deka. Ext.2 is the said forwarding letter and Ext. 2(1) is the signature of Mr. G.N. Deka which is known to PW1.

Cross-examination of PW1 is declined by defence side.

Witness **Hemanta Das [PW2]** deposed that he knows both the accused persons. Incident occurred in the year 2017, but he forgot the date. While he was on patrolling duty in Howly town, O/C Sir informed him over telephone that a person is confined in bazar by some persons and asked to take that person to thana. Then they went to bazar and brought accused Mafidur to thana and on searching the accused in thana, about 8 nos. of small packets were found in his

pocket. Then they again went on duty handing over accused to O/C.

During his cross examination for accused Mafidur Rahman

PW2 stated that accused Mafidur did not sell Ganja in his presence. He did not state before police that on searching accused Mafidur 8 nos. of packets of Ganja found, as police did not take his statement. They took accused Mafidur to thana on being asked by O/C. They handed over accused to O/C alongwith 8/10 nos. of packets like Ganja, but not to I/O of the case. He also stated that I/O did not seize anything from them.

During cross-examination for Atul Baishya, PW2 stated that

Command Certificate is needed to go outside thana and it is not needed to go within the jurisdiction of thana and so, he did not get Command Certificate. Accused Mafidur was searched by O/C Sir and before searching the accused, O/C was not searched. Before searching the accused, O/C did not serve any notice to accused asking him about presence of Gazetted Officer. When they caught the accused in bazar, they did not inform O/C to come. He also stated that no Ganja was seized at the place of occurrence. He further stated that there was no Gazetted Officer when they took the accused to thana.

Witness **Mazibar Rahman [PW3]** deposed that he knows accused Mafidur Rahman, but he does not know the other accused person. Incident occurred in the year 2017. At the time of incident he was on patrolling duty alongwith Hemanta and other police personnels. At about 7:00/7:30 PM, driver Constable Dwipen Das informed that something had happened in the market and so, they went there and found accused Mafidur being caught by two boys, who told them he was doing business of ganja. Then they handed over accused Mafidur in thana and

O/C found some small packets in his pocket.

Defence for accused Atul Baishya declined to cross-examine PW3

During his cross-examination for Mafidur, PW3 deposed that he did not state about recovery of small packets in the pocket of accused, as I/O did not ask him about the incident.

Witness **Himan Baishya [PW4]** deposed that he knows accused Atul Baishya, but he does not know the other accused person. Before about one year, police found 700/800 gm ganja in the shop of accused Atul Baishya. Police called him. One Jaher was having a fruit shop nearby. Police seized one weighing machine from that shop and he put his signature in the seizure list. PW4 exhibited the seizure list as Ext.3 wherein Ext.3(1) is his signature. At that time accused Atul Baishya was not present and his younger son was there. Police also seized the ganja vide seizure list Ext.4 wherein Ext.4(1) is his signature.

During cross examination for accused Atul Baishya, PW4 stated that nothing was written when he put signatures on the the Ext.3 and Ext.4. He put his signatures on blank papers. It is not seen from Ext.4 that Ganja was recovered from the possession of Atul Baishya. He does not know the name of Trade Licence holder of the shop of Atul Baishya. Police did not serve any notice to the boy of the shop before searching the shop. Except police no other officer was present there. Nobody checked the police personnels before entering into the shop.

During cross-examination for accused Mafidur Rahman, PW4 stated that Mafidur does not have any shop at Kaljhar chowk.

Witness **Jahidul Islam [PW5]** deposed that he does not know the accused persons. His maternal uncle Jaher Ali Talukdar was having a fruit shop in Kaljhar chowk. One day, in the evening, while he was in shop, police came and took weighing machine from him. At that time Jaher was not in the shop. Later on, the weighing machine was returned back and police took his signature. PW5 exhibited his signature as Ext.4(2). He further stated that while putting his signature, nothing

was written on the paper.

During cross-examination PW5 stated that he does not know anything regarding the incident of this case.

Witness **Ali Ahmed [PW6]** deposed that he does not know accused Atul Baishya but he knows co-accused Mafidur Rahman who is absent today. On 11/03/2017 he was doing duty under Howly PS. On that day he was doing his duty with mobile patrolling party in the evening.

Constable Dipen Das, Constable Hemanta Das and Mazibar Rahman were also with him at that time. After one and half hour of the duty, somebody telephoned constable Dipen Das. Dipne Das was driving their police vehicle at that time. Then they reached Howly fish market. Then someone from the public showed the accused Mafidur Rahman. Then they apprehended him and took him to police station. Later on, in the thana they came to know that accused Mafidur Rahman was found in possession of small packet of ganja in his pocket.

During cross-examination PW6 deposed that they were not given Command certificate as they did not cross border of their duty.

PW6 denied that he stated before police that they went for their duty at about 8.30 AM.

Nothing was seized from the possession of accused Mafidur Rahman on the spot. He did not know about the incident till the accused was brought to police station.

Witness **Mahibul Islam Khan [PW7]** deposed in his evidence that on 12/03/2017 police seized one weighing machine. He did not sign the seizure list Ext. 3. Ext 3(2) is not his signature.

Defence declined to cross-examine PW7.

Witness **Jahidul Islam [PW8]** deposed that he knows the accused Atul Baishya of this case. Accused Atul Baishya is a pan shop owner. He is also a

pan shop owner. He does not know other accused of this case. Before two and half years ago in the afternoon he saw gathering of people with police. Police asked his name and address. He does not know anything about the incident.

Defence declined to cross examine PW8.

Witness **Ajmat Ali [PW9]** deposed in his evidence he does not know both accused persons of this case. Ext. 4 is the seizure list and Ext. 4(3) is his signature. He does not remember why he gave his signature.

At this stage witness is declared hostile as prayed by learned Public Prosecutor.

He denied that he stated before police that **on 12-03-2017 I went towards Kaljahr market. At about 1.55-2.00 PM police searched the shop of accused Atul Baishya and recovered ganja inside the shop of said Atul Baishya. Police seized the recovered ganja in presence of witnesses. The estimated weight of recovered ganja may be 600 grams.**

He also denied that he has deposed falsely today to defend the accused in this case.

During cross-examination, PW9 deposed that he did not go through the content of the seizure list. He does not know anything about the incident and content of the seizure list. He did not see the recovery of seized articles from the shop of the accused person. He does not know anything about the incident of this case. Police did not examine him and he did not given any statement to the police in this case.

Witness **Pulin Phukan [PW10]**, who is the I/O of this case, deposed that on 11-03-2017 he was working at Howly PS as 2nd officer. On that day, at about 9.00 AM, the patrolling party consisting of Mazibar Rahman, Hemanta Das and Home Guard Ali Ahmed etc. reported at their PS. They also brought one Mafidur Rahman alongwith them alleging that he was found selling ganja at Howly daily market.

The same was entered into Howly PS GDE No. 317, dated 11-03-2017. Ext.5 is the extract copy of the said GDE. Ext.5(1) is the signature of then O/C cum SI Munindra Narayan Das.

The persons of the patrolling party alongwith said Mafidur Rahman were examined. The said Mafidur Rahman disclosed that he was selling ganja at Howly daily market and agreed to disclose and show the source of purchasing the same.

On 12-03-2017 at about 12.30 PM PW10 alongwith O/C Munindra Narayan Das alongwith staff went to Kaljhar chowk after entering the same into Howly PS GDE No. 338 dated 12-03-2017. Ext. 6 is the extract copy of the said GDE and Ext. 6(1) is the signature of O/C Munindra Narayan Das.

On reaching Kaljhar, accused Mafidur Rahman showed the betel nut shop of accused Atul Baishya who was selling ganja from their shop. The betel nut shop of Atul Baishya was searched in presence of witnesses. They found one black polythene bag containing suspected ganja in the shop of accused Atul Baishya.

In the meantime, DSP HQ namely Babul Ch. Nath was informed, who arrived on the spot. He authorized him writing to search and seize the suspected

narcotic items. Ext.7 is the said authority letter and Ext.7(1) is the signature of DSP Babul Ch. Nath, which he knows.

One electronic weighing machine was seized from the shop of Jahidul Islam to measured the weight of seized narcotic. Ext.3 is the seizure list and Ext.3(3) is his signature.

On weighing the recovered ganja it was found to be 620 grams. He drew three samples from the said suspected ganja of 25 grams each in presence of witnesses. The same was seized in presence of witnesses and accused persons vide seizure list Ext.4. Ext.4(4) is his signature.

The owner of the betel nut shop Sri Atul Baishya was arrested. Witnesses were examined. He also drew sketch map of the place of incident vide Ext.8. Ext.8(1) is his signature.

The accused persons alongwith the seized articles, documents etc. were brought to Howly PS. The seizure list alongwith seized articles and accused persons were sent to Hon'ble court for seeing them.

The sample of ganja were sent to FSL Kahilipara through SP Barpeta. On 11-04-2017 he received the report which gave positive report.

Then O/C SI Pankaj Das lodged one FIR before the O/C Howly PS which was registered as Howly PS case No. 162/2017 and directed PW10 to investigate the case. Ext. 9 is the FIR and Ext 9(1) and 9(2) are the signature of the said O/C Pankaj Das, which PW10 knows.

On completion of investigation and getting approval from the higher authority, he submitted charge-sheet against the accused person u/s 20(B) of the

NDPS Act. against both the accused persons being Howly PS Charge-sheet No. 65/2017 dated 30-04-2017. Ext.10 is the charge-sheet and Ext. 10 (1) is his signature.

During cross-examination PW10 deposed that he has not mentioned in the charge-sheet that copy of the GDE entry is enclosed alongwith the charge-sheet.

He did not record the statement of Babul Ch. Nath u/s 161 Cr.PC. No explanation is there, in this regard, in the case diary.

He did not prepare the memorandum of discovery on the basis of the statement of Mafidur Rahman in present of witnesses.

No order of search warrant was taken before searched of shop of Atul Baishya. No noticed was issued to accused Atul Baishya that his shop will be searched in presence of Magistrate. He recorded the statement of gaonburrah but he did not identify the shop of accused Atul Baishya.

DSP did not sign in the seizure list at the time of seizure. No noting was made that it was prepared in presence of DSP. Nobody searched PW10 before he entered into shop of accused Atul Baishya.

PW10 denied that he did not follow the procedure as per NDPS Act. while investigation of this case.

8. Learned counsel for the accused strenuously submitted that the seizure of the suspected cannabis [ganja] has not been proved by any reliable evidence. It is further submitted that prosecution has failed to prove that the seized cannabis [ganja] was recovered from the exclusive possession of the accused persons. It is also submitted that no independent witness corroborated the fact of seizure and hence, it cannot be said that offence under Section 20 [b] of NDPS Act is made out and proved against the accused.

The prosecution side, on the other hand, submitted that prosecution has been able to prove the case against the accused beyond all reasonable doubt by examining the reliable witnesses and that the evidence of the police personnel

should not be discarded as nothing could be brought by the defence that they are the interested witnesses and that they had any motive behind implicating the accused.

9. In the case of ***Ranjit Sarkar & another – versus- Sandip Das & others, 2013 [1] GLJ 87***, the Hon'ble High Court, in its judgment, has held thus :

“The narcotic Drugs and Psychotropic Substances Act, 1985 is a special law enacted by the Parliament with an object for controlling and regulating the operations relating to narcotic drugs and psychotropic substances. It was felt that due to fast increase of consumption of drugs, the country has becoming one of the centres of Narcotics-under-world-criminals and in order to curb this, the NDPS Act was brought into force. The act has prescribed stringent punishment for the offenders and special procedure to be followed. Under the act specific procedure has been laid down for arresting the persons, their search, and deposit of articles recovered, taking sample therefrom, etc. under different sections prescribed in Chapters V and V-A of the Act. The Act prescribes the application of the provision of the Criminal Procedure Code in so far as the same which is not inconsistent with the provisions of the Act with respect to the issue of warrants, arrest, searched and seizures thereunder. The legislature deliberately made such provisions and has given some safeguards and there are almost mandatory provisions. Ignorance and/or non-compliance of the prescribed provisions by the investigating agency is fatal for the prosecution. The benefit of such non-compliance will definitely facilitate a wrongdoer to escape from punishment.”

10. From the case records, I found that the accused was forwarded/produced alongwith seized cannabis [ganja] before the this court on 12.03.2017 and the I.O. has seized the aforesaid suspected cannabis in presence of witnesses on that very day at 12.30 PM vide seizure list [Exhibit-4].

Interestingly, I.O. of the case [PW4] deposed that he sent the sealed sample to FSL, Kahilipara for chemical analysis. But the I.O.[PW4] though produced

the seized suspected cannabis of the case before the this court on 12.03.2017, but there is no mention in the said order that the same was sent to FSL after obtaining order from the learned Magistrate. The law requires that seized contraband articles should be produced before the Magistrate first and then, with the order of the Magistrate the same should be sent to the FSL. The law also requires that the sample should be drawn, packeted and sealed in presence of the Magistrate before sending it to the FSL.

11. There is no entry/record in the case diary that the seized articles were kept in the police station Malkhana. But no explanation in this regard was forthcoming from the prosecution. PW10 also did not produce the Malkhana Register to support his contention.

12. Keeping of the seized contraband in safe custody from the time of seizure till production before the CJM or Magistrate and drawing, packeting and sealing of sample for sending it to FSL, is a statutorily cast duty of the Officer-in-charge. He cannot escape from this duty and responsibility merely showing that he produced the seized contraband to the investigating officer [PW10] and PW10 sent the sample of the contraband to the FSL through the S.P., Barpeta, without meeting the requirement of law. The prosecution side took no care to produce the Malkhana Register.

In this regard, I would like to refer the case of the ***State of Rajasthan – versus- Gurmail Singh reported in (2005) 3 SCC 59***. It was a case where the prosecution claimed that the seized articles were kept in Malkhana till it was taken over, but the Malkhana Register was not produced in support thereof. It was in such situation, considered as a serious infirmity in the prosecution case. Section 55 of the NDPS Act is exhaustive in regard to taking charge of articles seized and keeping them in custody by police. The said section is reproduced below for the sake of appreciation and ready reference :

“Section-55:- Police to take charge of articles seized and delivered – An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which

may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the Police Station."

13. The Hon'ble Apex Court in ***Gurbax Singh -versus- State of Haryana reported in AIR 2001 SC 1002*** held that the provision under Section 52 & 57 of the NDPS Act is directory still the I.O. cannot totally ignore the said provision and failure on his part in compliance with the same will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the articles.

In the present case, it is needless to say that the I.O. of the case [PW10] failed to discharge his statutory duties and the responsibility in the matter of keeping the seized contraband under the safe custody and also in observing/following the entire process of packeting the sample and sending them for chemical examination as required under the law.

14. If the steps taken by the prosecution in this regard is considered in the light of the said provisions of law, one can easily come to conclusion that there was no compliance of the said statutory procedure.

15. In the case of ***Ganesh Chetry & another -versus- State of Assam, reported in 2012 (3) GLT 401 [2012 (5) GLJ 23]***, the Hon'ble Gauhati High Court observed that the Court is to take note that the NDPS Act is a special law with stringent provision for control and regulation of operation relating to narcotic drugs and psychotropic substances and illicit trafficking. The offence under the NDPS Act, therefore, is always treated with serious penal provision. Due to serious penal provision provided in the said Act, it is always emphasized that the procedural safeguards under the statute are followed strictly. The settled law is that more stringent the law, stricter compliance of procedure laid down in the law is needed.

16. In the case of ***Md. Moinul Haque- versus- State of Assam, Criminal Revision Petition No.269/2004***, the Hon'ble High Court, in its *Special NDPS 05 of 2017*

judgment, has held in Para Nos.12,13 & 14 as follows :

“Needless to say, there is a difference between witnessing the search and seizure of incriminating articles by police and obtaining the signatures of some local persons as seizure witnesses. The seizure-list may be prepared in presence of independent local persons but it would not mean that the recovery/seizure of articles was made in presence of the seizure witnesses. Here lies the importance and necessity of examining the seizure witnesses to testify that they were present and witnessed the recovery and seizure of seized articles and they are not merely witnesses to preparation of seizure-list. For want of such evidence, the deposition of the seizure witnesses could be discarded as bereft of evidentiary value. I am taking this view on the face of the evidence of PW2, wife of the accused person, who, according to the prosecution, was present at the time of raid and search but she denied the very basic fact of recovery/seizure of the seized articles. She stated in her evidence that her signature was obtained by police on a piece of white paper and the police did not record her statement during investigation. This important witness deposed against the prosecution and the prosecution did not ask the court to declare her hostile to take the opportunity of cross-examination and demolishing her evidence against the prosecution. The evidence of PW2 has remained unimpeached. The learned court below could not appreciate the consequences of not getting the said PW2 declared as hostile and not taking the opportunity of cross-examination and completely became oblivious about the same.

The law requires that before conducting a search the concerned police officer is bound to call upon some independent respectable people of the locality to witness the search. It may be dispensed with in case independent person is not available in a given case. In such a situation, if the police conduct the search, it cannot be disbelieved simply on the ground that no independent and respectable witness was examined by the prosecution. Here is a case where the search was made in a village and it was possible to call and have the presence of independent and respectable persons of the village. The learned court below put overemphasis and reliance on the evidence of the village VDP Secretary [PW1], who was not an independent witness in real sense as he was a party to the raid and search by police. In this regard reference may be made to the decision of the Hon'ble Apex Court in **Sahib Singh – versus- State of Punjab**, reported in **AIR 1997 SC**

2417, wherein it has been observed and held in **Paragraph-7** as reproduced below-

“Having gone through the record we find much substance in each of the above contentions. Before conducting a search the concerned police officer is required to call upon some independent and respectable people of the locality to witness the search. In a given case, it may so happen that no such person is available or, even if available, is not willing to be a party to such search. It may also be that after joining the search, such persons later on turn hostile. In any of these eventualities the evidence of the police officers who conducted the search cannot be disbelieved solely on the ground that no independent and respectable witness was examined to prove the search but, if it is found... as in the present case... that no attempt was even made by the concerned police officer to join with him some persons of the locality who were admittedly available to witness the recovery, it would affect the weight of evidence of the police officer, though not its admissibility. We find from the record that the arms and ammunitions allegedly recovered from the appellant and seized were not packeted and sealed. In *Amarjit Singh -versus- State Punjab, 1995 Supp (3) SCC 217*, this court has observed that non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. From the record we further find that there is no evidence to indicate with whom the revolver was after its seizure by PW-3 till it was sent to the Arms Expert for testing through constable Baita Singh. This missing link also weakens the prosecution case. For all these infirmities we are of the view, that the appellant is entitled to the benefit of reasonable doubt.”

17. In the present case, I have already discussed and pointed out the manner in which the recovery/seizure, drawal of sample, packeting and sealing of the sample and sending them to the FSL, without strictly observing the procedure laid down under Section 55 of the NDPS Act. Moreover, all the seizure witnesses who have been shown in the seizure list [Exhibit-4], have not supported the prosecution case that they were present at the time of actual seizure. Seizure witness [PW4] deposed in his evidence that he signed in blank paper. Nothing was written on Ext.3 and Ext.4 at the time of he putting his signature. Moreover, Ext.4 does not show that suspected Ganja was recovered from possessions of accused

Atul Baishya. PW9 Ajmat Ali demolished the case of prosecution by deposing that he put his signature in the seizure-list [Ext.4] but he can't say why he put his signature there. He was declared hostile. Another seizure witness Jahidul Islam [PW8] simply stated that he doesn't know anything about the incident. Moreover, though PW5 Jahidul Islam, S/O Md. Saharuddin has claimed to be his signature at Seizure-list[Ext.4] as Ext.4(2), but his father name doesn't tally at Seizure-list[Ext.4]. There is no evidence that seized ganja was sealed at the spot by the informant/I.O. [PW10] as per prescribed procedure of law. The procedure adopted by the prosecution is found to be far from satisfaction of the court. The judicial conscience does not accept the procedure adopted by the prosecution in the present case. In such a situation, the court is bound to take a view that the prosecution committed serious irregularity and infirmity in the investigation of the matter. The existence of contradiction and inconsistency in the evidence of important prosecution witnesses does not inspire the confidence of the court to approve conviction and sentence against the accused. There are several missing links in the investigation of the prosecution case and prosecution has failed to convince the court that charge against the accused has been proved beyond all reasonable doubt.

Moreover, FIR[Ext.9] shows that seized Ganja of about 620 gram was found from the shop of accused Atul Baishya on being shown by co-accused Mafidur Rahman. However, Seizure-list[Ext.4] prepared by I.O.[PW10] shows that alleged recovery of Ganja was made from the possession of accused Mafidur Rahman and not Atul Baishya. There is no explanation from the prosecution side to clarify this vital discrepancy in their case.

Moreover, PW2, PW3 & PW6, who brought the accused Mafidur Rahman to Howly P.S. on 11.03.2017 from fish market, deposed that said accused was found in possession of small packets of Ganja in his pocket. PW2 even claimed that 8 nos. of Ganja packets were recovered from the possession of said accused. PW3 also corroborated the same by deposing that O/C of Howly P.S. recovered some small packets.

But interestingly, I.O. of the case [PW10] deposed nothing that small packets of Ganja were recovered from the pocket of accused Mafidur Rahman.

Therefore, I am unable to persuade myself to record conviction and sentence against the accused persons and hence, accused Mafidur Rahman & Atul

Baishya are entitled to acquittal on benefit of doubt, which I accordingly do.

18. In the result, accused **Mafidur Rahman & Atul Baishya** are **acquitted** of the charge under section 20(B) of NDPS Act, levelled against them, on benefit of doubt.

19. The seized cannabis [ganja] are to be destroyed immediately as per rule, if not done.

20. Given under my hand and seal of this Court on this **12th day of February, 2020.**

Sd/-
Special Judge, Barpeta.

Typed by me
(Kavery Das, Stenographer)

A P P E N D I X

(A) **Prosecution witnesses:**

P.W.1	= Sri Dhrubajyoti Hazarika,
P.W.2	= Hemanta Das,
P.W.3	= Mazibar Rahman,
P.W.4	= Himan Baishya,
P.W.5	= Jahidul Islam,
P.W.6	= Ali Ahmed,
P.W.7	= Mahibul Islam Khan,
P.W.8	= Jahidul Islam,
P.W.9	= Ajmat Ali,
P.W.10	= Pulin Phukan, the I.O.,

(B) **Prosecution Exhibits:**

Ext.1	= FSL,
Ext.1(1)	= Signature of PW1,
Ext.2	= Forwarding letter to FSL through S.P.,
Ext.2(1)	= Signature of G.N. Deka,
Ext.3	= Seizure List,
Ext.3(1)	= Signature of PW4,
Ext.3(2)	= Signature of PW7,
Ext.3(3)	= Signature of PW10,
Ext.4	= Seizure-list,
Ext.4(1)	= Signature of PW4,
Ext.4(2)	= Signature of PW5,
Ext.4(3)	= Signature of PW9,
Ext.5	= Extract copy of Howly PS GDE No.317, dtd. 11.03.2017,
Ext.5(1)	= Signature of PW10,
Ext.6	= Extract copy of Howly PS GDE No.338, dtd. 12.03.2017,
Ext.6(1)	= Signature of PW10,
Ext.7	= Authority Letter,
Ext.7(1)	= Signature of PW10,
Ext.8	= Sketch map,
Ext.8(1)	= Signature of PW10,
Ext.9	= FIR,
Ext.9(1)	= Signature of O/C Pankaj Das,
Ext.10	= Charge-sheet,
Ext.10(1)	= Signature of PW10,

(C) **Defence witnesses:** Nil.

(D) **Defence Exhibits:** Nil.

(E) **Court witnesses:** Nil

(F) **Court Exhibits:** Nil.

Sd/-

Special Judge, Barpeta.