

IN THE COURT OF THE SPECIAL JUDGE, NALBARI

Present: **Smti S. Bhuyan**
Special Judge
Nalbari.

NDPS Case No : 02/08

u/s-20(b)(ii)(B) of the NDPS Act.

State of Assam

-Vs-

1. Bimala Barman

C/o- Lt. Rabindra Barman

2. Mira Deuri @ Dewry

C/o- Kartik Deury

Both are R/o- Vill- Udalguri

P.S- Udalguri, Dist- Darang

3. Bipul Haloi

S/O-Late Kamaleswar Haloi

R/O- Vill-Barsarkuchi

PS and District-Nalbari.....Accused persons

Appearance :-

For the prosecution : Mr. Dharendra Nath Barman,
learned PP

For the defence : 1. Mr. Mukunda Barman,
Advocate

2. Smti Dalimi Barman, Advocate

3. Smti. Deepali Baruah, Advocate.

Date of Argument : 19/04/2021

Judgment Delivered : 03/05/2021
Sentence hearing : 05/05/2021
Sentence Pronounced : 05/05/2021

J U D G M E N T

1. This prosecution case has been started based on the GD Entry No. 588 dated 27/10/07 of Ghograpar Police Station. The fact leading to this case is that on 27/10/07 while police of Gograpar Police Station with CRPF party are on duty at Naka Checking in front of the Bilpar petrol depot, UBC 125 Satya Barman over phone informed that the bus coming from Rangia towards Nalbari bearing Registration No. AS-01 AC4359, when checked, two ladies passenger are found carrying ganja in a bag (carrying two bags each total four) and each carried 10 kg of ganja. Accordingly, O/C Ghograpar PS after informing higher official sent SI A.C. Nath to the spot and senior officer CI (Tamulpur) reached the place of occurrence and CI Tamulpur issued authorities slip to take steps on the recovered ganja and accordingly the ganja were seized, weighted and took 8 no's of sample each 24 gram from the seized four bags, prepared inventory and during investigation the ladies namely the present accused Bimola Barman and Mira Deuri submit that the owner of the ganja is Bipul Haloi who engage them to carry the ganja. Samples of the seized ganja

were sent to FSL for examination and FSL submit report in affirmative and on this incident SI Bhupen Bora lodged written ejahar on receipt of FSL report.

2. During trial after furnishing necessary copies to the accused and going through the material on record and after hearing learned counsel for accused and learned PP for the State, my learned predecessor framed charge u/s-20(b)(ii)(B) of the NDPS Act against the accused persons namely Bimala Barman, Mira Deuri and Bipul Haloi and same was read over and explained to the accused persons to which accused Bimala Barman, Mira Deuri and Bipul Haloi pleaded not guilty and stood for trial.

3. In order to prove the charge prosecution adduced evidence of 9 no's of witness including informant and I/O of the case and exhibited 8 no's of documents. PW-1 Balen Baishya; PW-2 Sarif Ali; PW-3 Sayub Ali; PW-4 Bhupen Bora; PW-5 Satya Barman (Constable 125); PW-6 Kanak Ch. Das (I/O); PW-7 Gajendra Nath Deka (expert); PW-8 Majib Ali and PW-9 Arun Ch. Nath. Ext-1 is the seizure list of tarazu; Ext-2 seizure list of bus; Ext-3 seizure list of ganja; Ext-4 extract copy of GD entry No. 588 dated 27/10/07; Ext-5 is the FIR; Ext-6 is the charge sheet; Ext-7 FSL report; Ext-8 is the forwarding letter to SP Nalbari S. Gogoi. After closure of the prosecution

evidence statement of the accused persons recorded u/s-313 CrPC.

Argument

4. It has been argued by the learned counsel for the accused Bipul Haloi that independent witness not supported the case of the prosecution section 100 of CrPC not complied with during search. At the time of seizure no gazetted officer were present and same is stated by PW-5. Learned counsel further submitted that accused Bipul is not involved. He was not found in possession of the seized contraband items and only based on the statement of other two accused person, accused Bipul Haloi cannot be held guilty of possessing contraband item u/s 25 of the Evidence Act. Prosecution did not comply with the provisions of the section 42 and 50 of the NDPS Act and therefore, prosecution case does not stand and accused Bipul Haloi is entitled acquittal.

5. It it has been argued by the learned counsel for accused Bimala and Mira that prosecution failed to comply with the provisions of section 42 and 50 of the NDPS Act and no gazetted officer was present at that time of search and seizure, therefore, prosecution case against the accused persons does not stand.

6. Learned counsel further submitted that independent witness does not state a single statement implicating accused persons carrying the ganja and PW-2 and PW-3 deposed their signatures taken by police on white paper and therefore, their evidence is not sufficient piece of evidence to hold accused guilty. The statement of prosecution witnesses does not point from whom the seized items were actually seized. PW-6 does not visit the place of occurrence and therefore, the prosecution case against the accused Bimala and Mira is liable to be dismissed and accused persons entitled acquittal.

7. **POINTS OF DETERMINATIONS:**

i) Whether the accused Bimala Barman and Mira Deuri @ Dewry on 27/10/07 at about 10 am at Bilpar under Ghograpar PS found in possession of 20 kg each 10 kg of ganja in contravention of the provisions of NDPS Act and owner of the same is accused Bipul Haloi who engaged them to bring the same?

DISCUSSION, DECISION AND REASON THEREOF:

8. PW-1 Balen Baishya stated he is having a tea stall at Bilpar Chowk and on the date of occurrence

police checking vehicle at the place of occurrence at Nakasaki duty and police came to his shop seized his balance and weight machine and he saw one vehicle was detained by the police and vehicle was seized by the police. Ext-1 is the seizure list of balance and weight machine and Ext-2 is the seizure list of vehicle and Ext-1(1) and Ext-2(1) are his signature. In cross stated balance and weight was taken and seized for the purpose of weighting ganja.

9. PW-2 Sarif Ali stated on the date of incident police was checking vehicle at Bilpar and at that time he was present at his grocery shop present at Bilpar. Police, CRPF DSP were present who called him. He was informed that ganja was recovered in a vehicle and ganja was seized Ext-3 is the seizure list of ganja and Ext-3(1) is his signature and he put three signatures. Weight was seized from Balen, Ext-1 is the said seizure list Ext-1(2) is his signature. In cross by accused Bimala Barman and Mira Deuri, he stated police took his signature on white paper. He did not know the reasons for calling him by the police. In cross by accused Bipul Haloi, he stated he did not know accused Bipul.

10. PW-3 Sayub Ali stated he saw some bundles of ganja carried by some person at Bilpar. However, he forgot the faces of the persons who carried the

ganja. On the day of recovery he saw police personnel at Bilpar Chowk and they have recovered ganja on that day. His further statement is that police took weighting balance from shop of Balen Baishya and he saw weighting of ganja by the police personnel in his presence. He stated police may take Rs.1 coin from him and Ext-3 is the seizure list and Rs.1 coin is taken for the purpose of weighing of seized article. In cross he stated police took his signature on a white paper and did not know the content of the exhibit.

11. PW-4 Bhupen Borah stated that he was O/C Ghograpar PS on 27/10/07 to 01/12/07 and he made GD entry on 27/10/07 with regard to the incident of present case. On 27/10/07 he sent UBC Constable 125 Satya Barman along with CRPF party for Nakachaki at Bilpar Petrol Depot to check the vehicle and UBC 125 Satya Barman informed him that while they were checking, they stopped a bus bearing Registration No. AS-01 AC-4359 coming from Rangia towards Nalbari, they recovered two bags each, total four containing ganja from two women passengers of the bus and he immediately sent SI A. C. Nath to take necessary action, informed his higher authority, after entering GD entry. Ext-4 is the extract copy of the GD entry No. 588 dated 27/10/07. SI A.C. Nath seized ganja, he sent the ganja to FSL for examination, arrest the

accused and thereafter, PW-4 lodged written ejahar vide Ext-5. In cross he stated that he was not present at the place of occurrence at that time and lodged the FIR on the basis of General Dairy Entry. I/O did not record his statement.

12. PW-5 Constable 125 Satya Barman deposed on 27/10/07 he was posted at Ghograpar PS and O/C Ghograpar PS Bhupen Bora on that day put him at Naka checking duty with CRPF Personnel at Bilpar Chowk and during the period of checking when bus bearing Registration No. AS-01 AC-4359 was intercepted and they conduct routine checking, they found the accused Bimala and Mira who were present in the court on the day of recording his statement, were found carrying two bags each total four bags of ganja. Thus, he informed O/C Ghograpar PS over phone. They apprehended the lady with the bags, in the meantime SI Arun Ch. Nath arrived and arrested the accused Bimola Barman and Mira Deuri along with bags. For accused Bipul Haloi cross examination is declined for this witness. At the time of cross by other two accused the witness stated in cross by accused Bimala and Mira that there are about 40/50 passengers in the bus and bags were found under the seat of the vehicle. About 10 womens were in the bus, they also apprehended some other bodo ladies on suspicion but forget the name of those

and he also forget if any inspector level officer present or not at the time of arrest of accused persons. He did not find any Gazetted officer at the time of occurrence, he denied that ganja were not recovered from the possession of the accused persons (Bimala and Mira).

13. PW-6 Kanak Ch. Das stated that on 16/12/07 he was posted at Ghograpar PS and he received a CD of this case from O/C Ghograpar PS and upon perusal of the case party, he found investigation completed and finding material he submitted charge-sheet against Bimola Barman, Mira Deuri and Bipul Haloi u/s 20(B) NDPS Act. Ext-6 is the charge sheet and Ext-6(1) is his signature.

14. PW-7 Gajendra Nath Deka is an FSL expert. His evidence is that on 30/10/07 he was Senior Scientific Officer at DND, FSL, Assam. He received a parcel through the director of DFSL in connection with Ghograpar PS GDE No. 588 dated 27/10/07. Parcel received by Director on 30/10/07. The parcel consisted four sealed envelopes having four closed polythene packets containing about 24gms dry plant materials in each marked as S/A, S/B, S/C & S/D respectively. These samples were again marked as DN-447/2007(a) to DN-447/2007(d) respectively. Results of examination are:- Ext. DN-447/2007(a) to DN-447/2007(d) gave positive test for cannabis

(ganja), then report was forwarded to SP, Nalbari by the then Director FSL R. Gogoi. Ext-7 is the report, Ext-7(1) is his signature and Ext-8 is the forwarding letter to SP, Nalbari R. Gogoi.

15. The statement of PW-8 pointed he did not state any fact and his evidence is that he has no knowledge about the seizure of the ganja.

16. PW-9 Inspector (retd), Arun Ch. Nath IO of the case. He deposed on 27/10/07, he was working as 2nd officer at Ghograpar PS and Bhupen Bora was the O/C of Ghograpar PS. At the time of routine checking at Bilpar NH-31, police constable 125 Satya Barman and one CRPF Personnel found two female passenger in a bus coming from Rangia side carrying 4 bags of ganja each two bags. After apprehension, the police constable informed O/C Ghograpar PS and accordingly O/C, Ghograpar PS made GD Entry vide GD Entry No. 588 dated 27/10/07 and sent him at the PO and also informed Gajen Saikia C/I, Tamulpur. When he reached PO he found two ladies and 4 bags of ganja. He weighed the ganja and found 20kgs, each bag weighs 5kg of ganja. He took two samples of ganja from each bag and sent it to FSL for forensic examination. And as he was transferred he handed over the CD to the then O/C, Ghograpar PS.

17. On scanning of the Ext-5 written ejahar and Ext-4 GD Entry dated 27/10/07 it is revealed that on 27/10/07 while UBI 125 Satya Barman (PW-5) was on Nakasaki Checking duty with CRPF Personnel at Bilpar Petrol Depot near Bilpar Chowk, when intercepted bus coming from Rangia to Nalbari bearing Registration No. AS-01 AC-4359 and on routine checking they find accused Bimala Barman and Mira Deuri carrying ganja in four bags each two bags. PW-5 immediately informed O/C Ghograpar PS, who in turn informed CI Tamulpur and sent PW-9 to place of occurrence. Ext-4 GD Entry dated 27/10/07, Ext-5 Ejahar, statement of PW-5, statement of PW-9 and statement of PW-4 pointed this very fact. When PW-5 informed PW-4, who was O/C at that time, he sent PW-9 to the place of occurrence and also inform superior officer and Gajen Saikia then CI issued authority letter. The prosecution allegation is that contraband item ganja are being carried by the accused Bimola Barman and Mira Deuri in a bus in which they are traveling. PW-1, PW-2 and PW-3 are the seizure witness. Their in chief pointed that incident took place at Nakasaki checking point and near the checking point PW-1 has his tea stall and PW-2 has his grocery shop and police after seizure of the contraband item ganja weighted the same by the weight machine instrument of PW-1 and this fact has been disclosed by PW-1, PW-2 and PW-3 in their evidence. In the

case in hand the contraband item ganja was found carrying by the accused person in a bus while they are traveling by the said bus. They carried the contraband item ganja in a bag two bags each total four no's of bags.

18. The learned defence counsel for accused Mira Deuri and Bimala Barman submitted that PW-1, PW-2 and PW-3 in cross express their ignorance about the seizure of ganja. The statement in cross of PW-1 stated that weight machine was seized from his shop for weighting ganja but he did not denied that ganja was not seized or not recovered from the possession of accused persons. His evidence pointed at Nakasaki checking point i.e. at the place of occurrence police seized ganja and weighted the same by his weight machine and police detained the vehicle and seized the said vehicle. The statement of PW-2 pointed that CRPF, Police and DSP was present who called him and he came to know that ganja was recovered and police seized the same and police also seized weight measure instrument from Balen and PW-1 is Balen and weight of 500gm and 100gm and weighted the ganja. The statement of PW-3 when carefully read also pointed that place of occurrence is at nakasaki checking point of Bilpar where ganja were seized which were carried by persons and he forget the face of the persons. PW-3 may forget the face of the

person because he is a day labourer and accused person may not be known to him prior to the incident but he deposed ganja were recovered and seized on that day and weighted by the weight machine of PW-1 Balen. When he see accused persons for one day he may forget their but his evidence show one thing that on that day ganja seized and same weighted at the place of occurrence and he also not denied the fact of police taking Rs.1 coin from him. The facsimile of the seal pack sent to FSL is one rupee coin. PW-1, PW-2 and PW-3 are all independent witness and place of occurrence is at the Nakasaki checking point which is in front of the petrol pump. At that place the Panchayat Secretary, Village President, Secretary, Panchayat President may not be available at that time but the shopkeeper PW-1, PW-2 and PW-3 who are present at the place of occurrence clearly pointed in their presence, weight measure instrument to weight the ganja which is seized on that day at naka checking point and seized contraband item ganja are also seized and on this point no dual point comes from their testimonies.

19. PW-5 was present at the place of occurrence and it was he with other CRPF Personnel identified the persons with ganja in the bus which were carried by the accused persons and he immediately informed the O/C, Ghograpar PS. Ganja were carried

by the accused persons namely Bimola Barman and Mira Deuri whom he identified before the court at the time of adducing his evidence. PW-5 deposed both the accused carried two bags each total four bags. Statement of PW_4 and PW-5 pointed PW-4 sent PW-9 at the place of occurrence and informed Circle Inspector, Tamulpur. Statement of PW-9 pointed CI Tamulpur arrived, gave authority slip and he seized contraband items in presence of CI, Tamulpur. The statement of PW-9 is that he seized four bags of ganja each bag containing 5kg total 20 kg and he took samples of ganja from each of the bag and sent the sample to FSL for forensic examination. Ext-3 is the seizure list. Ext-3 shows seizure on 27/10/07, place of seizure is at Bilpar NH-31 and seized 4 bags of ganja each containing 5 kg total 20kg and vide Ext-2 seizure list seized the vehicle with its documents in which accused persons were traveling. Vide Ext-1 police seized weight measure instrument. PW-7 is the FSL expert. His evidence pointed, he received four sealed envelope having four closed parcel and on opening found 24gms of dry plants. PW-9 stated he took samples of all the 4 seized bags and PW-7 FSL expert also received 4 sample each containing 24gm dry plants. CD revealed taking out of samples of 24 gms each. Thus, established that seized items and FSL examined contraband items are same and one. The statement of PW-7 experts

pointed that examined contraband item were in connection with Ghograpar GD Entry No. 588 dated 27/10/07 which gave positive tests for ganja.

20. Statement of PW-5 pointed, he immediately inform higher police officer O/C, Ghograpar PS who in turn informed C.I., Tamulpur on recovery of contraband items ganja in possession of accused Bimala and Mira, which they carried in four bags, two each and travelled by the bus which was checked by PW-5, CRPF and other police personnel at Naka checking put at Bilpar. O/C, Ghograpar PS deputed SI Arun Ch Nath to the place of occurrence and SI Arun Ch Nath (PW-9) with C.I, Tamulpur Sri Gajen Saikia arrived at the place of occurrence and C.I. who is considered as gazetted officer authorized PW-9 to seize the contraband items. Thus, satisfy the condition enumerated in section 50 of the NDPS Act.

21. The seized contraband items ganja were carried by accused Bimala and Mira and they carried contraband item ganja in a plastic bag. During search and seizure, no physical body search was made as accused Bimala and Mira carried contraband items in plastic bag. Here, body search not conducted and seizure was made in compliance of section 50 of the NDPS Act.

22. In state of Himachal Pradesh vs Pawan Kumar decided on 8th April 2005 in Appeal (Cri) 222 of 1997 in para 9, 10,11 stated what does word person mean u/s-50 of NDPS Act. "9. Therefore, the most appropriate meaning of the word "person" appears to be "the body of a human being as presented to public view usually with its appropriate coverings and clothings". In a civilized society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.

"10. A bag, briefcase or any such article or container, etc. can, under no circumstances, be

treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being.”

“11. An incriminating article can be kept concealed in the body or clothings or coverings in different manner or in the footwear. While making a search of such type of articles, which have been kept so concealed, it will certainly come within the ambit of the word "search of person".”.

23. Carrying of the contraband item ganja by the accused persons namely Bimala Barman and Mira Deuri @ Dewry on 27/10/2007 while traveling by bus with four plastic bags containing ganja has been established beyond all reasonable doubt and accused Bimala and Mira failed to rebut the evidence of the prosecution. Both the accused persons carried 10 kg of ganja each and they carried two bags and weight of each bag is 5 kg total 10 kg each and grand total recovery of ganja from both the accused persons namely Bimala and Mira is 20 kg. Possession of the ganja, cannabis by the accused Bimala and Mira show the culpable state of mind of the accused person and prosecution beyond all reasonable doubt clearly able to bring home the prosecution charge of section 20(b)(ii)(B) NDPS Act against the accused Bimala Barman and Mira Deuri @ Dewry and I hold

accused Bimala Barma and Mira Deuri @ Dewry guilty of committing offence punishable u/s-20(b)(ii) (B) of the NDPS Act and accordingly accused Bimala Barman and Mira Deuri @ Dewry are convicted for committing offence punishable u/s-20(b)ii(B) of the NDPS Act. Their bail stands cancelled.

24. The convicted accused persons will be heard on the point of sentence on 05/05/2021.

25. Prosecution allegation against accused Bipul Haloi is that accused Bimala and Mira carried the contraband items ganja for accused Bipul Haloi and Bipul Haloi is the owner of the ganja and this fact was disclosed by accused Bimala and Mira. PW-4 in his ejahar made their statement in his ejahar Ext-5. But while adducing evidence he did not disclose a single word connecting accused Bimala and Mira with accused Bipul Haloi. PW-5 who first detected ganaj in possession of accused Bimala and Mira is totally silent on this point. PW-9 the I/O of the case does not throw light on this facts and his evidence is totally silent on this subject. The statement of PW-4, PW-5, PW_9 and other PWs does not pointed recovery of ganja in possession of accused Bipul. The evidence of PW-4, PW-5 and PW-9 does not bring any chain of connection bwteen accused Bimala, Mira with accused Bipul. Accused Bimala and Mira in their statement recorded u/s313 CrPC

denied that they disclose before police that owner of the ganja is accused Bipul Haloi. Prosecution failed to bring home any reliable, believable piece of evidence to connect seized ganaj and accused Bipul and testimonies of PW-4, PW-5 and PW-9 is totally dark and silent on this point. Therefore, I am constrained to hold that prosecution failed to bring home the charge of section 20(b)(ii)(B) of the NDPS Act against accused Bipul Haloi beyond all reasonable doubt and he entitled benefit of doubt and I hold that accused Bipul Haloi is not found guilty u/s-20(b)(ii)(B) of the NDPS Act and he is acquitted from the charge and is set at liberty. However, his bail bonds shall remain stand till next six months u/s-437(A) CrPC.

26. Considering the nature of the offence which accused person Bimala Barman and Mira Deuri @ Dewry have committed does not entitle them benefit of the benevolent provision of section 360 Cr.P.C and Probation of Offender Act and accordingly they are not considered under the said provision of law.

27. I have heard convicted accused Bimala Barman and Mira Deuri @ Dewry on the point of sentence and learned counsel for both sides through virtual court. Convicted accused Bimala Barman and Mira Deuri @ Dewry are heard on the

point of sentence and their plea of sentence is reduced into writing in a separate sheet and keep with case record. Accused pleaded mercy and prays for considering leniently.

28. After hearing learned counsel for both sides and accused on the point of sentence, going through the material on record and considering the nature of the offence committed by the accused persons namely Bimala Barman and Mira Deuri @ Dewry, I sentenced accused Bimala Barman and Mira Deuri @ Dewry to undergo Rigorous imprisonment for 7 years and to pay fine of Rs. 70,000/- each in default, Simple Imprisonment for one year each u/s-20(b)(ii)(B) of the NDPS Act. Considering the nature of offence committed by the accused, they are not entitled the benefit of section 428 CrPC.

29. Let furnish free copy of judgment to the convicted accused persons.

30. The convicted accused persons has the right to prefer appeal against the judgment and order of conviction and sentence before the Hon'ble High Court of their own, through jail or through the legal aid counsel.

31. Seized contraband articles ganja be destroyed in accordance with law.

32. Send copy of judgment to learned District Magistrate Nalbari u/s 365 Cr.P.C.

Given under my hand and seal of this court on this the 5th day of May, 2021.

(Smti S. Bhuyan)
Special Judge, Nalbari

Dictated & corrected by me

(Smti S. Bhuyan)
Special Judge, Nalbari

Typed by:
Biswajit Bhattacharjya,
U.D.Asstt.

APPENDIX

A. Prosecution witnesses

PW-1 Balen Baishya;
PW-2 Sarif Ali;
PW-3 Sayub Ali;
PW-4 Bhupen Bora;
PW-5 Satya Barman (Constable 125);
PW-6 Kanak Ch. Das (I/O);
PW-7 Gajendra Nath Deka;
PW-8 Majib Ali and
PW-9 Arun Ch. Nath.

B. Defence witness

NIL

C. Prosecution Exhibits

Ext-1 is the seizure list of tarazu;
Ext-2 seizure list of bus;
Ext-3 seizure list of ganja;
Ext-4 extract copy of GD entry No. 588
dated 27/10/07;
Ext-5 is the FIR; Ext-6 is the charge sheet;
Ext-7 is the FSL report;
Ext-8 is the forwarding letter to SP Nalbari
S. Gogoi.

D. Defence Exhibit

Nil.

(Smti S. Bhuyan)
Special Judge, Nalbari