

**CAUSE TITLE****Special (NDPS) Case No.3/2018.**

Informant : Sri Dibyendu Bhoumik.  
Senior Intelligence Officer,  
Directorate of Revenue Intelligence,  
Chandmari, Guwahati.

Accused : 1. Tayum Tangom.  
S/O Tayum Tungdang.  
R/O Yupia, Doimukh Circle.  
P.S. Sagalee.  
Dist. Papumpare.  
Arunachal Pradesh.

**ADVOCATES :**

For the State : Mr. Jogeswar Gogoi, the learned Special Public Prosecutor.

For the Defence : Mr. Manik Ch. Hazarika, Advocate.

**Judgment referred to in chronological order :**

1) Mukesh Singh -vs- State ( Narcotic Branch of Delhi ), 2020 SCC Online SC 700, decided on 31.08.2020.

2) Rajesh Dhiman -vs- State of Himachal Pradesh in Criminal Appeal No.1032 of 2013, decided on 26.10.2020.

**IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR :  
AT NORTH LAKHIMPUR.**

**P R E S E N T** - S.P. Khaund, (MA Economics, LLB),  
Special Judge,  
Lakhimpur, North Lakhimpur.

**Special (NDPS) Case No.3/2018.**

State of Assam.

-versus-

Tayum Tangom.

Charges : Under Sections 20(b)(ii)(c) of the N.D.P.S. Act.

Date of evidence. : 23.02.2019, 13.03.2019, 11.06.2019,  
09.07.2019, 01.10.2019 and 27.09.2019.

Date of argument. : 13.02.2020.

Date of Judgment. : 12.01.2021.

**J U D G M E N T**

1) An excerpt of the prosecution case depicts that Tayum Tangom ( hereinafter the accused ) was found to be in possession of prohibited substances. The accused was obligated to refute the presumption against him as per Section 54 and Section 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ( NDPS Act for short ). On 15.03.2018 at about 7.30 pm at Doimukh - Harmutty PWD road near Railway line under Laluk Police Station, a search operation was conducted by the Directorate of Revenue Intelligence, Guwahati, in collaboration with the Assam Police on

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a tip off, and during the search operation, the accused persons, Gollo Talar and Tayum Tangom were apprehended while they were approaching from Arunachal Pradesh towards Harmutty at about 7.30 pm in a vehicle of TATA DI make and the number displayed on the truck was AR.01.H.92, but there was no number plate on the front side of the truck. The operation was conducted under order and direction of the Asstt. Director, Directorate of Revenue Intelligence ( DRI for short ), Guwahati Regional unit. The Officers of the DRI proceeded to Lakhimpur and with the assistance of local police a naka-checking was held on the road side near Railway line at Doimukh - Harmutty road. After apprehending the truck, the tarpaulin covering 'Ganja' was removed and several bags of 'Ganja' were found hidden under the tarpaulin in the truck. The truck was taken away from the place of interception, which was not conducive for proper investigation.

2) Summonses were issued to the driver and the other persons occupying the truck and they were directed to accompany the officers along with the truck to Laluk Police Station. Individual witnesses also followed the truck, and the entire raid party reached the Police Station at 8.15 pm on 15.03.2018. The driver and other persons were asked to remove the tarpaulin and several plastic bags containing 'Ganja' were exposed. The bags were thoroughly examined and weighed. A total amount of 763.600 kgs of 'Ganja' was packed inside 37 bags separately. The samples were drawn with the help of electronic weighing scale.

3) The relevant documents of the truck were seized and the driver informed them that the registration number of the truck is AR.01.H.9292. Both the accused persons, Gollo Talar and Tayum

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Tangom opted to be searched in the presence of a gazetted officer of the DRI, but nothing could be found after frisking and body search. Gollo Talar and Tayum Tangom ( here-in-after the accused persons ) acted in violation of Section 8 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ( NDPS Act for short ) by transporting 'Ganja' through different states, and a case being No.31/ CL/ NDPS/ DRI/ GAU. 17- 18 . dtd. 15.03.2018 was registered.

4) The samples were forwarded for chemical examination after seizure in presence of witnesses.

5) The accused persons were arrested as per Sections 41/ 42 of the N.D.P.S. Act, on 16.03.2018 at about 1.30 pm and produced before the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur. The 'Ganja', truck and other materials were seized and inventory was prepared u/s 52 (A) (2) of the N.D.P.S. Act. After completion of investigation, Offence Report under Sections 20(b)(ii)(C), 23(c), 27-A and 29 of the N.D.P.S. Act, was laid against both the accused persons.

6) After hearing both sides, a formal charge u/s 20(b)(ii)(C) of the N.D.P.S. Act was framed, which was read over and explained to the accused persons. Both the accused persons abjured their guilt and claimed innocence.

7) To substantiate its stance, the prosecution adduced the evidence of seven witnesses including the I.O. Various documents were exhibited by the prosecution. To refute the charges, the defence cross-examined the witnesses in extenso.

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8) It is pertinent to mention at this juncture, that as soon as trial commenced, the accused Gollo Talar escaped from custody while he was undergoing treatment in the hospital. The abscondance of the accused was informed to the court vide letter No.NLJ.104/2018/ 52/ 1645 dtd. 26.10.2018. Warrants were issued against the accused, but as the accused failed to appear, this case against accused, Gollo Talar was split up and separated vide order dtd. 11.01.2019 and a supplementary record was prepared.

9) After closure of prosecution evidence, the statement of the accused, Tayum Tangom was recorded u/s 313 CrPC. He stated that he was innocent and he was not in the truck. He did not know that the truck was carrying 'Ganja'. He came to have a look at the person, who was inside the truck because he came to know that the person was from Arunachal Pradesh. When the truck was intercepted, his friend showed him the truck and he was arrested by 3 / 4 men and he was tortured. He was a student of class-XII at that time, and he was innocent.

**Contentions of parties :**

10) The learned P.P. laid stress in his argument that this is an open and shut case. The accused was caught red handed with the truck load of 'Ganja'.

11) On the other hand, the learned defence counsel laid stress in his argument that the seizure list is doubtful and it is a computer typed seizure list. Even before the seizure list was prepared, the accused persons were already in the lock up. No forwarding letter is to be found in the record. Each and every sample drawn from the seized 'Ganja' was not separately and specifically described, and the samples were cumulatively identified and opined.

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No photographs were taken. The sketch map was not prepared. It is also contended that the notices of arrest were not independently issued. The memory card of digital pictures were not submitted and the images are blurred. The witnesses were re-examined by the learned P.P. to fill up lacunae. It is submitted that the evidence of PW.3 is not reliable and appears to be a coached narrative. The details of preparation of sample is lacking. There is no written order of authorisation of the officials for search operation or naka-checking. The 'Ganja' was not seized in the place of occurrence, but was seized in the Police Station. The remaining part of the argument will be discussed at the appropriate stage.

**POINTS FOR DETERMINATION :**

12) The following points are apposite for proper adjudication of this case.

i) Whether on 15.03.2018 at Doimukh - Harmutty PWD road, the accused persons, Gollo Talar and Tayum Tangom acted in contravention of Section 8 of the N.D.P.S Act or other provisions of the Act and Rule, and they were caught red handed while they were transporting 763.600 kgs 'Ganja' in a TATA DI make vehicle bearing registration No.AR.01.H/ 9292 ( here-in-after, the offending vehicle ) from Arunachal Pradesh towards Lakhimpur.

**Decision thereon and the reasons for the decision :**

**EVIDENCE :**

13) To decide this case in its proper perspective, it is necessary to delve into the evidence.

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14) Mohammad Ali, a teacher of No.2 Kehutoli L.P. School has testified as PW.1 that he is the member of the Citizen Forum under Laluk P.S. and he frequently visits Laluk PS. On 15.03.2018 at about 7 pm, he went to Laluk PS on being called by the police. He saw one six wheeler truck in the Police Station carrying plastic bags containing 'Ganja' ( cannabis ) and two accused persons were in the truck. He did not recognise the accused persons present in the dock. Thereafter, the officers came from Guwahati and unloaded the cannabis from the truck and weighed the bags, which contained a total of 763.600 kgs of cannabis. The officers prepared seizure list and took his signature. Ext.1 is the seizure list and Ext.1(1) is his signature. In his cross-examination, he testified that Ext.1 is a computer typed seizure list. He has also admitted that he is unable to identify cannabis like an expert. He did not know the names of the officers who prepared the seizure list.

15) Mr. Gajendra Nath Deka, who is the Director of Directorate of Forensic Science, Assam ( DFS for short ) testified as PW.2 that on 20.03.2018, he was working as Joint Director at DFS. On that day, he received a sealed parcel in connection with DRI Case No.31/ CL / NDPS / Ganja/ DRI/ Gau/ 2017-18 dtd. 15.03.2018. The parcel contained 37 (Thirty Seven) exhibits enclosed in a carton with sealed cloth cover. The facsimile of the seal was found to be "Directorate of Revenue Intelligence".

Description of articles :

37 (Thirty seven) nos. of sealed envelopes, which were marked as S-0 / 17 ( 1-37) / Ganja/ 17-18" with 37 nos. of closed polythene packets (one packet in each envelope) containing 24 gms dry plant materials in each. Those samples were again marked by him as DN-122/ 2018 (a1) to DN-122/ 2018 (a37) respectively.

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16) PW.2 further testified that he examined all the samples as per United Nations Drug Testing Laboratory manual, and found the following :

Ext.DN-122/2018 (a1) to DN-122/2018 (a37) tested positive for cannabis and this report was submitted to the Sr. Intelligence Officer, DRI, Guwahati-3 by the then Director, Directorate of Forensic Science, Assam, Sri K.C. Sarma. Ext.2 is the Report and Ext.2(1) is his signature. Ext.3 is forwarding letter of his Report and Ext.3(1) is the signature of Sri K.C. Sarma, with which he is acquainted. In his cross-examination, he testified that the original Forwarding letter is in his office. He did not verify any signature of Magistrate on the samples. He had given a collective report by examining each and every sample separately, but this is not mentioned in his report. The remnants of the samples were not produced in the court. The remaining part of his cross-examination will be discussed at the appropriate stage.

17) Sri Dibyendu Bhowmik and Sri Probin Kumar Das testified as PW.3 and PW.4 respectively that on 14.03.2018, he was serving as Sr. Intelligence Officer at DRI, Guwahati. On that day, the Asstt. Director, Sri Nibhas Ranjan Das directed them to proceed to Laluk, as he had received some specific information about transportation of 'Ganja' on 15.03.2018. Accordingly, they reached Laluk P.S on 15.03.2018 at about 2 pm / 4 pm. Then, they solicited help and co-operation from police under Lakhimpur district jurisdiction. They along with the police team proceeded to Harmutty-Doimukh road, and created barrier for naka-checking. At about 7.30 pm, they noticed a truck approaching from Arunachal towards Harmutty. They signalled the truck to stop. The driver stopped the truck, which was of TATA DI make, and the number of the truck was AR.01.H.92. There was no number plate on the front side of the offending vehicle. There

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were two persons inside the truck. The person on the driver's seat introduced himself as Gollo Talar and the other was Tayum Tangom, and they are residents of Arunachal Pradesh. On being confronted, they informed them that they were carrying 'Ganja' (Bhang). Search operation was conducted in presence of two persons, Uday Basumatary and Mohammad Ali. As the place of occurrence was dark and not conducive and safe to continue searching the vehicle, summonses were issued to both the accused persons and the accused went to Laluk Police Station along with the truckload of 'Ganja' and they followed the accused persons up to Laluk P.S. Thereafter, the accused persons removed the tarpaulin covering the goods in the truck. Several bags containing dry leafy materials believed to be 'Ganja' were revealed. The plastic sacks were unloaded from the truck and weighed separately. There were 37 sacks of suspected 'Ganja', collectively weighing 763.600 kgs. The truck was searched thoroughly and the R.C. of the truck was found and the registration number of the truck was AR.01.H.9292. Some documents like Adhar card, Driving License, Insurance policy of the vehicle, were seized.

18) PW.3 and PW.4 further testified that 48 gms of 'Ganja' from each 37 bags were apportioned to prepare two samples from each packet and each sample contained 24 gms of 'Ganja'. The samples were duly sealed in presence of independent witnesses and the accused persons. The accused persons and the witnesses affixed their signatures on two samples drawn from 37 bags. The original samples were marked as "S-O/ 17(1-37) / Ganja / 17-18" and duplicate samples were marked as "S-D/ 17 (1-37) / Ganja / 17-18". Thereafter, Panch-nama describing in detail the entire incident of interception, weightment of samples etc. was prepared by Sri P.K. Das (PW.4). The copies of inventory

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were handed over to both the accused persons. Statement of accused, Gollo Talar was recorded by PW.3. Statement of accused, Tayum Tangom was recorded by PW.4.

19) PW.3 further testified that there was prima facie case against the accused persons u/s 41 RW Sec.42 of the N.D.P.S. Act, 1985 and they were arrested after being informed of the grounds of arrest. PW.3 and PW.4 also testified that the accused persons were produced before the learned C.J.M., Lakhimpur, who forwarded the case to the learned Addl. CJM, Lakhimpur. The seized articles and the accused persons were produced before the learned Addl. CJM, Lakhimpur, who again weighed the seized 'Ganja' and certified the inventory u/s 52(A)(2) of the NDPS Act. Then, both the accused persons were remanded to judicial custody by the learned Addl. CJM, Lakhimpur, and the seized goods and articles were deposited in the court Malkhana, and on 16.03.2018, the learned Addl. CJM, Lakhimpur, handed 37 nos. of samples of 'Ganja' over to them ( officers of the DRI ).

20) The evidence of PW.3 further proceeds that a report u/s 57 of the NDPS Act was submitted to the higher authority on 17.03.2018, and a report u/s 42 of the Act was submitted on 16.03.2018. The Form-F was submitted on 19.03.2018. Ext.4 is the written direction given by Sri Nibhas Ranjan Das, and Ext.4(1) is his signature, with which he is acquainted. Ext.5 is the summonses to the accused persons to appear before the Laluk P.S. along with the loaded truck and Ext.5(1) is his signature. Ext.1 is the Seizure List relating to 37 pouches of 'Ganja' and Ext.1(2) is his signature. Ext.6 is the Weighment sheet and Ext.6(1) is his signature. Ext.7 is the Seizure List of the documents of the seized truck No.AR.10.H/ 9292 and Ext.7(1) is his signature. He identified the accused, Tayung Tangom, who

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was present in the dock. He produced both the accused persons with a forwarding letter addressed to the Chief Judicial Magistrate, Lakhimpur. Ext.9 is the forwarding letter. Ext.9(1), 9(2), 9(3), 9(4), 9(5) and 9(6) are his signatures. In order to avoid prolixity, PW.3's cross-examination will be discussed at the appropriate stage. It would be needless to mention that this witness was cross-examined in extenso. He was also re-examined by the prosecution.

21) On his re-examination, PW.3 further testified that 37 bags of sample of seized 'Ganja' were produced before the learned Addl. Chief Judicial Magistrate, Lakhimpur, on 16.03.2018 along with an application of certification of correctness of the inventory and photographs of the seized 'Ganja' and samples, which were 'seen' by the learned Addl. CJM. The photographs were taken by an authorised police photographer of North Lakhimpur in presence of the learned Addl. CJM, who certified that the photographs were properly taken. The TATA DI truck and the weighing scale were produced before the learned Addl. CJM. The photographs of the TATA DI truck and the weighing scale were taken in presence of the learned Addl. CJM, who certified the photographs.

22) The exhibits, which were proved by PW.3 are tabulated hereinbelow :-

Exhibit Nos.	Exhibited items.
Ext.10, Ext.11, Ext.12, Ext.13, Ext.14, Ext.15, Ext.16, Ext.17, Ext.18 and Ext.19.	Photographs of the seized 'Ganja'.
Ext.10(1), Ext.11(1), Ext.12(1), Ext.13(1), Ext.14(1), Ext.15(1), Ext.16(1), Ext.17(1), Ext.18(1)	Signatures of the learned Addl. CJM, Lakhimpur.

and Ext.19(1).	
Ext.20, Ext.21, Ext.22, Ext.23 and Ext.24.	Photographs of the samples of the seized 'Ganja'.
Ext.20(1), Ext.21(1), Ext.22(1), Ext.23(1) and Ext.24(1).	Signatures of the learned Addl. CJM.
Ext.25, Ext.26, Ext.27 and Ext.28.	Photographs of the weighing scale
Ext.25(1), Ext.26(1), Ext.27(1) and Ext.28(1).	Signatures of the learned Addl. CJM.
Ext.29.	Photograph of the TATA DI truck loaded with seized 'Ganja' along with the photograph of the accused persons, Tayum Tangom and Gollo Talar.
Ext.29(1).	Signature of the learned Addl. CJM.
Ext.30 and Ext.31.	Photographs of the accused persons, Gollo Talar and Tayum Tangom
Ext.30(1) and Ext.31(1)	Signatures of the learned Addl. CJM.

23) The evidence of PW.4 further proceeds that on 19.03.2018, the samples drawn from 37 bags were all forwarded to the Directorate of Forensic Science, Guwahati, for chemical examination (by PW.3). They received the forensic analysis report that the samples tested positive for 'Ganja'. Thereafter, he completed the remaining part of the investigation and submitted the Offence Report against the accused, Tayum Tangom and Gollo Talar u/s 8(c), 20(b), 20(c), 27(A) and 29 of the NDPS Act, before the Special Judge, Lakhimpur. Ext.8 is the Complaint Petition and Ext.8(1), Ext.8(2), Ext.8(3), Ext.8(4), Ext.8(5), Ext.8(6), Ext.8(7),

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Ext.8(8), Ext.8(9), Ext.8(10), Ext.8(11), Ext.8(12) and Ext.8(13) are his signatures. The accused, Tayum Tangom was identified by PW.4. In order to avoid prolixity, cross-examination of this witness will be discussed at the appropriate stage.

24) Sri Uday Basumatary is a farmer and he is an independent witness. He testified as PW.5 that the incident occurred on the evening of 15.03.2018 when he was in his house at Narayanpur. A Muslim man from Jonai informed him in the evening over phone that, he had to go to Laluk P.S. So, he along with this Muslim man and a Mising man from Gogamukh went to Laluk P.S. and reached the Police Station at about 12.30 pm, and met the Officer-in-charge, and at about 2 pm, the Officer-in-charge along with the Officers of DRI and other police personnel went towards Banderdewa side in a TATA mobile vehicle and stopped after crossing Harmutty. A TATA mobile vehicle came towards Laluk from Banderdewa side. The O.C. of Laluk P.S. and the Officers of DRI stopped the TATA mobile vehicle and checked it. After removing the tarpaulin, they recovered sacks of plastic, which were loaded with 'Ganja'. Two persons were seated in the TATA mobile vehicle. One of them is present in the court. The witness identified the accused, Tayum Tangom.

25) The evidence of PW.5 further proceeds that the truck was taken to the Laluk P.S. along with both the accused persons, and they followed them. The police confined both the accused persons. The sacks of 'Ganja' were unloaded from the TATA mobile vehicle with the help of labourers. There were around 40 bags of 'Ganja'. All the bags were weighed and around 760 kgs of 'Ganja' were found. He affixed his signature on the weighment sheet, Ext.6, wherein Ext.6(2) is his signature. Thereafter, the 'Ganja', the TATA mobile vehicle and the mobile phones were

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seized by the Officers of DRI by preparing a Seizure List, Ext.1, wherein, Ext.1(3) is his signature. The documents of the TATA mobile vehicle were seized vide Ext.7, wherein Ext.7(2) is his signature. Thereafter, the seized 'Ganja', seized TATA mobile vehicle and the accused persons were taken to North Lakhimpur court. The seized 'Ganja' was produced before the Magistrate, which were again weighed. Then, he returned home as it was already night time. His cross-examination will be discussed at the appropriate stage.

26) Sri Tapan Lahan is the ASI of police at Boginadi P.S. He testified as PW.6 that on 15.03.2018, he was serving as ASI of police at Laluk P.S. On that day, three Officers from DRI came to the Laluk P.S. He did not know the names of the officers. The O.C. of Laluk P.S. asked him to accompany the DRI officers and the battalion staff to the place, where they were about to go. Then, he accompanied them in a vehicle to Kulajuli, Harmutty - Doimukh road. They reached Kulajuli at about 6.45 pm, and he noticed one white coloured TATA DI truck approaching from the side of railway crossing and was about to enter into Kulajuli. Then, the officers of DRI stopped the truck. There were two persons inside the DI truck. The officers of the DRI asked him to arrest both the accused persons, who were inside the truck. The officers informed him that the truck was loaded with 'Ganja'. Thereafter, he along with the battalion staff caught the occupants of the DI truck and the truck was taken to Laluk P.S. by the officer of DRI, who drove the truck. He followed the DI truck. Both the accused persons were from Arunachal Pradesh. PW.6 identified the accused, Tayum Tangom, who was present in the court. Thereafter, they reached Laluk P.S. and on being directed by the DRI officers, the accused persons were taken to the Lock-up of the Laluk P.S. He had to leave the Police Station as he was

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entrusted with some other work. He did not know what had been recovered at Laluk P.S. from the aforesaid TATA DI truck. He did not know anything regarding this case. The cross-examination of PW.6 will be discussed at the appropriate stage.

27) SI Ajit Kumar Bhuyan testified as PW.7 that on 15.03.2018, he was serving as the Officer-in-charge of Laluk P.S. On that day, the S.P., Lakhimpur, called him over phone and informed him about the team from the DRI and advised him to assist the team, who would be on duty at Laluk. That evening, a team of 3 or 4 officers of the DRI arrived from Guwahati. He could not recall the names of the officers. He entrusted ASI Tapan Lahan to assist the DRI team with the investigation. He did not accompany the team from DRI in the search operation. He, later, learnt that the team went towards Harmutty, on the night of 15.03.2018 and came back to Laluk P.S. after the search operation. The team took the truckload of 'Ganja' along with them to Laluk P.S. He witnessed unloading and weighing of the 'Ganja' by the team. He could not recall the amount of 'Ganja' seized by the officers of DRI. He did not affix his signature on any seizure list in connection with this case. He could not recognise the accused, who was present in the dock as he failed to recall the appearance of the accused, who were apprehended by the officers of the DRI. On the following morning, the DRI officers took the seized 'Ganja' along with the truck and the accused persons to the CJM's court at Lakhimpur. He could not recall the total number of accused persons apprehended in connection with this case. His cross-examination also will be discussed at the appropriate stage.

**ANALYSIS OF EVIDENCE :**

28) For a ready reference, the names of the witnesses examined by the prosecution side is given below :

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Witness No.	Name & address of the witness.	Occupation
PW.1	Mohammad Ali.	Teacher at No.2 Kehutoli L.P. School.
PW.2	Mr. Gajendra Nath Deka.	Director, Directorate of Forensic Science, Assam.
PW.3	Sri Dibyendu Bhoumik.	Senior Intelligence Officer, Directorate of Revenue Intelligence, Chandmari, Guwahati.
PW.4	Sri Probir Kumar Das.	-do-
PW.5	Sri Uday Basumatary. Narayanpur, Lakhimpur.	Farmer.
PW.6	Sri Tapan Lahan.	ASI of Police, Boginadi Police Station.
PW.7	Sri Ajit Kumar Bhuyan.	O.C., Helem Police Station.

29) The evidence of PW.7 depicts that he registered a General Diary entry, after he received a call from the S.P., Lakhimpur, who directed him to assist the team of DRI officers. The evidence of PW.3 and PW.4 clearly reveals that Sri Nibhas Ranjan Das, who received an information of transfer and transportation of 'Ganja' on 15.03.2018, directed them to proceed to the place of occurrence. Both PW.3 and PW.4 arrived at Laluk P.S. at about 2 pm / 4 pm respectively. The evidence of PW.3 and PW.7 depicts that the S.P., Lakhimpur, directed PW.7 to assist the DRI team with their search operation by providing them work force from Laluk P.S. The evidence of PW.3, PW.4, PW.6 and PW.7 clearly depicts that PW.7 provided a team of police personnel from Laluk P.S. and PW.6 accompanied PW.3 and PW.4 along with other police staff. The evidence of PW.3 and PW.4 depicts that PW.3 and PW.4 laid a check point (naka) at Harmutty - Doimukh road.

30) PW.3, PW.4 and PW.6 testified that at about 6.45 pm / 7.30 pm, they saw a truck approaching from Arunachal side towards

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Gulajuli, Harmutty - Doimukh road. PW.6 testified that the colour of the truck was white and was approaching from railway crossing side and was about to enter Gulajuli, Harmutty - Doimukh road.

31) Thus, the evidence of PW.6 corroborates the evidence of PW.3 and PW.4. The evidence of PW.3, PW.4 and PW.6 depicts that PW.3 and PW.4 signalled the truck driver to stop. The vehicle was of TATA DI make. There were two occupants in the truck. The person, who was in the driver's seat introduced himself as Gollo Talar and the other person as Tayung Tangom, and they were from Arunachal Pradesh. When asked by the investigating team, the miscreants admitted that they were carrying 'Ganja' in the truck.

32) PW.6 testified that PW.3 and PW.4 asked him to arrest the accused persons because they were carrying 'Ganja' inside the truck. Both the PW.3 and PW.4 testified that as the place of occurrence was very dark and not conducive for proper investigation, the accused persons were summoned to be present at Laluk P.S. along with the truckload of 'Ganja', and thereafter, they proceeded to Laluk P.S. and took the accused persons, and reached Laluk P.S. The accused, Gollo Talar was asked to remove the tarpaulin covering 'Ganja'. On removal of tarpaulin, they found that the truck was loaded with plastic bags containing dry leafy plant materials believed to be 'Ganja'. There were 37 bags inside the truck weighing around 763.600 kgs and the weighment sheet was prepared. The evidence of PW.6 and PW.7 clearly depicts that the police team followed the team from DRI, Guwahati, who followed the accused persons and they reached Laluk P.S. at night along with the truckload of 'Ganja' The evidence of PW.3, PW.4 and PW.7 depicts that the 'Ganja'

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bags were unloaded from the truck and weighed. However, PW.7 could not recall the amount of 'Ganja' seized and weighed. The evidence of PW.3 and PW.4 clearly depicts that the samples were drawn following proper procedure. Two samples containing 24 gms of 'Ganja' were drawn from each bag and were properly packed and sealed by PW.4 to be forwarded for forensic examination. A Panch-Nama was prepared with details of entire investigation, from inception, inspection, weighment upto sampling. The Panch-Nama was prepared by PW.4 and copies of the inventory were handed over to both the accused persons. The statements of the accused persons were recorded and PW.3 arrested them.

33) The evidence of PW.3, PW.4 and PW.7 depicts that after being arrested, the accused persons were produced before the learned CJM, Lakhimpur, by the team of DRI officials. PW.3 and PW.4 testified that the case was forwarded to the learned Addl. CJM, Lakhimpur, and the 'Ganja' was seized and samples were drawn following proper procedure. Thereafter, inventory was prepared u/s 52(A)(2) of the NDPS Act, 1985, and photographs were taken. The samples were handed over to them as they would carry the samples for forensic examination. The original samples were, thus, forwarded to the Directorate of Forensic Science, Guwahati, by PW.3. PW.4 submitted a report u/s 57 of the NDPS Act to the higher authority on 17.03.2018. The samples tested positive for 'Ganja'. PW.4 further testified that thereafter, he completed the remaining part of investigation and submitted the Offence Report against the accused persons. Both PW.3 and PW.4 identified the accused, Tayum Tangom. The other accused person was absconding, so he could not be identified.

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34) After careful scrutiny of the documentary evidence, it came to light that Ext.8 is actually the offence report and not the complaint as testified by PW.4.

35) At this juncture, I would like to revert to the evidence of PW.2. His evidence reveals that the two samples weighing 24 gms each, which sums up to 48 gms, which were drawn from 37 bags of suspected 'Ganja', were forwarded to him for examination. He examined the samples as per United Nations Drug Testing Laboratory manual, and he found that the samples tested positive for cannabis. He has proved his report as Ext.2. He has proved the forwarding letter as Ext.3. His evidence could not be refuted. He has admitted in his cross-examination that he had given a collective report regarding the 'Ganja' in an inclusive manner. His evidence clearly reveals that all the 37 bags contained 'cannabis' and nothing else. Cannabis is commonly referred to as 'Ganja' in the local dialect.

36) There are two independent witnesses in this case. PW.1 failed to identify the accused persons, but his evidence depicts that he saw a six wheeler truck in Laluk PS. He also met the officers, who came from Guwahati and recovered 763.600 Kgs of 'Ganja'. He affixed his signature as Ext.1(1). The evidence of PW.5 depicts that he went to Laluk PS with a person from 'Mishing' community at about 12.30 pm on 15.03.2018. Thereafter, at about 2 pm, he went towards Banderdewa. The truck was intercepted by the police and DRI officials, and 'Ganja' was found in the truck. PW.5 identified the accused. They also came to the Laluk P.S. and 40 bags containing 'Ganja' were unloaded. He affixed his signature on Ext.2, weighment sheet after the 'Ganja' was weighed. He also proved his signature on the Seizure List, Ext.1, after the police seized the truck, 'Ganja', mobile phones and some other

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articles and documents. He also proved the other Seizure List, Ext.7, wherein he affixed his signature as Ext.7(2). The PW.5's evidence depicts that after the formalities, the accused persons were forwarded to the Chief Judicial Magistrate, where the seized 'Ganja' was again weighed.

37) The learned defence counsel tried to impeach the credibility of this witness by highlighting that this witness (PW.5) was a surrendered NDFB member, and he was working as a police informer helping the police to detect smuggling of 'Ganja', opium etc. PW.5 was cross-examined in extenso. Through his cross-examination, the learned defence counsel tried to project that the entire search operation was scripted and crafted by the DRI in collusion with PW.5 and the police officials of the Laluk P.S.

38) At this juncture, I would like to gainfully refer the decision of Hon'ble the Supreme Court in *Rajesh Dhiman -vs- State of Himachal Pradesh in Criminal Appeal No.1032 of 2013*, decided on 26.10.2020, wherein it has been observed that :- **"Para 18. As correctly appreciated by the High Court in detail, non-examination of independent witnesses would not ipso facto entitle one to seek acquittal. Though a heightened standard of care is imposed on the court in such instances but there is nothing to suggest that the High Court was not cognizant of this duty. Rather, the consequence of upholding the trial Court's reasoning would amount to compulsory examination of each and every witness attached to the formation of a document. Not only is the imposition of such a standard of proof unsupported by statute but it is also unreasonably onerous in our opinion. The High Court has rightly relied upon the testimonies of the government officials having**

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**found them to be impeccable after detailed re-appreciation of the entire evidence. We see no reason to disagree with such finding(s)."**

39) Reverting back to the instant case, it is held that the evidence of the independent witnesses supports the evidence of the official witnesses. Although, PW.1 failed to identify the accused person, he saw a six wheeler truck in the Laluk P.S. PW.5, may have a scarred past, but he has mingled into the main stream and he is working as an informer with the police, he cannot be branded as a police witness or a stock witness. He has correctly identified the accused. His evidence depicts interception of the truck loaded with 'Ganja'. He also identified the accused. So, this case is not sans independent witness. I would also like to reiterate that Rajesh Dhiman (Supra) was convicted under NDPS Act to undergo ten years of imprisonment.

40) The poignant point, relied upon heavily by the learned defence counsel was that the Investigating Officer ( I.O. in short ) was also the complainant in this case. This vitiates the entire procedure of investigation and is against the tenets of our Constitution, which also includes within its fold "fair investigation". A careful scrutiny of the documentary evidence reveals that Ext.9 proved by PW.3 as the forwarding letter is the Complaint -cum- forwarding letter. PW.3 lodged the complaint and PW.4 submitted the Offence report. In my opinion, it is true that PW.4 was present during the investigation and it cannot be held that the complainant and the I.O. is the same person. PW.3 is the complainant, who effected seizure of 'Ganja', vehicles and other articles and arrested the accused persons and filed the complaint as per provision of Section 42 of the NDPS Act. The

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PW.4 submitted the Offence report as per Section 53 of the NDPS Act. Ext.8 is the Offence Report. Thus, it can be safely held that the same person is not the complainant and the investigator as well. It is true that PW.3 and PW.4 were both present at the time of interception of the truck and they were also present when the accused persons were apprehended.

41) At this juncture, I would like to refer the decision of Hon'ble the Supreme Court in ***Mukesh Singh -vs- State ( Narcotic Branch of Delhi ), 2020 SCC Online SC 700.***

42) This decision of Hon'ble the Supreme Court was in connection with a reference, and it has been ruled that -

**“102. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:**

**I. That the observations of this Court in the cases of Bhagwan Singh v. State of Rajasthan, (1976) 1 SCC 15; Megha Singh v. State of Haryana, (1996) 11 SCC 709; and State by inspector of Police, NIB, Tamil Nadu v. Rajangam, (2010) 15 SCC 369 and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal.**

**II. In a case where the informant himself is the investigator, by that itself cannot be said that the**

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**investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of Mohan Lal v. State of Punjab, (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled."**

43) In the instant case, the accused was caught red handed with the truckload of 'Ganja' weighing almost a quintal. I decipher no bias by the revenue officers. This is not a scripted and convoluted investigation. It has to be borne in mind that the accused person was present in the truck carrying, not a few grams of narcotic or psychotropic substance, but he was carrying a truckload of 'Ganja'. It is not possible for the Investigating Agency to plant such a huge consignment of 'Ganja' with flick of their fingers. The defence propounded by the accused appears to be sketchy. Why will the officials be prejudiced against him to come down from Guwahati and plant a truckload of 'Ganja' ? From where will they procure such a huge consignment of 'Ganja' ?

44) PW.2 has denied in his cross-examination that he has not properly examined the samples as he had given a collective report of each and every sample. It is true that PW.2 has given a

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collective report regarding the samples seized from the each and every sack containing 'Ganja'. But, the evidence of PW.3 and PW.4 is clear that the samples were drawn from each and every bag of 'Ganja' and out of 37 bags, two samples of 24 gms each of 'Ganja' were drawn from each bag. The samples drawn from the sacks were nothing but cannabis as affirmed by PW.2. In his cross-examination, PW.3 has categorically denied that the written direction by Nibhas Ranjan Das, Ext.4, is a manipulated document. PW.3 has admitted in his cross-examination that he did not prepare the sketch map. It is true that the vehicle number was not mentioned in the summonses issued to the accused persons to appear before Laluk P.S. and it has been admitted by PW.3 in his cross-examination. Ext.5 is the summons. The cross-examination of PW.3 also depicts that the photographs were not exhibited by the prosecution when his evidence was recorded on an earlier date. The learned defence counsel tried to portray that the prosecution tried to fill up the lacunae on a later date by re-examination of PW.3. It was also admitted that the memory of the photographs have not been submitted to the court and the photographer's name and the case number was not recorded. It can be held that the accused failed to prove that he has been prejudiced. It has already been held in my foregoing discussions, that the investigation was conducted in seriatim. Absence of a sketch map does not indicate that the investigation was a botched up investigation.

45) I have carefully perused the photographs. Ext.30 and Ext.31 are the photographs of the accused persons. I would like to reiterate that although the defence tried to project that the accused was not found in the truck carrying 'Ganja' yet the statement of the accused person u/s 313 CrPC clearly reveals that he was found in the truck.

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46) After closure of prosecution evidence, the statement of the accused, Tayum Tangom was recorded u/s 313 CrPC. He stated that he was innocent and he was not in the truck. He did not know that the truck was carrying 'Ganja'. He came to have a look at the person, who was inside the truck because he heard that the person was from Arunachal Pradesh. When the truck was intercepted, his friend showed him the truck and he was hounded by 3 / 4 men. He was a student of class-XII at that time, and he was innocent.

47) The statement of the accused u/s 313 (1)(b) CrPC clearly depicts that he was with the other accused, who was apprehended by the revenue officials. His statement appears to be too far fetched and sketchy. It is not plausible that he will have the courage to go near the person, who was apprehended jointly by the police and revenue officials to such a close proximity that he will also be apprehended in connection with the same case, which he has not committed and which happens to be a grave offence. The defence took a very weak plea.

48) The cross-examination of PW.1 depicts that the Seizure list was computerised. The learned defence counsel laid stress in his argument that the accused persons were already in the police custody when the seizure list was prepared. This argument of the learned defence counsel can be safely brushed aside. The evidence of PW.3, PW.4 and PW.7 clearly depicts that the truck was intercepted on national highway at about 7.30 pm. As it was dark and inconvenient to unload the truck right in the middle of the highway, summonses were issued immediately to the accused persons and the accused persons were informed of their rights to be searched in presence of a Gazetted officer. When they were taken to the Police Station, they were kept confined in

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a secured place sans flight risk. It is not that the seizure list was prepared and then the accused persons were apprehended. The evidence is loud and clear that the seizure list was prepared after the truck was unloaded. A computerised seizure list does not thwart the evidence.

49) The I.O. was also cross-examined in extenso. He has admitted that he has not mentioned about the complaint (Ext.9) in his Offence Report (Ext.8). The offence report was submitted in the court of Special Judge by their appointed lawyer (Retainer). He has not mentioned about the photographs of the sacks or gunny bags in his offence report. PW.6 has also admitted that the details of the preparation of samples has not been mentioned in the offence report. He did not know the name of the place, where the truck was intercepted. He has vehemently denied that the accused, Tayum Tangom was not in the truck when the same was intercepted.

50) The remaining part of his cross-examination is not noteworthy. He has denied all the suggestions put forward by the learned defence counsel.

51) It is true that no sketch map was prepared, but at the same time, it is also true that the photographs are not blurred. The photographs clearly reveal that a huge consignment of 'Ganja' was seized, samples were drawn, packed, sealed and then produced before the learned Addl. CJM. Ext.10 to Ext.31 are the photographs. The photographs were duly signed and sealed by the learned Addl. CJM. Ext.1 is the inventory of the goods seized, which has been signed and sealed by the learned Addl. CJM after the goods were produced and the inventory was prepared in

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presence of the learned Addl. CJM. It can be safely held **u/s 52(A)(4) of the NDPS Act** that the aforementioned photographs and the inventory can be considered as primary evidence relating to this offence. Regarding the lack of sketch map, the place has been described by all the witnesses with clarity. The accused persons were apprehended at the check point near the railway line at Doimukh - Harmuttu road.

52) After carefully scrutinising the evidence, it is held that the accused failed to refute the presumption u/s 54 of the NDPS Act. He has also failed to refute that he had no culpable mental state, through the cross-examination of the witnesses or through his statement u/s 313 CrPC. He cannot be exonerated as an innocent person taking a ride in a truck carrying almost a quintal of 'Ganja'. The evidence is held to be impeccable. I would like to reiterate that the investigation, right from the inception was conducted in a meticulous manner in a seriatim, by the Investigating Agency.

53) In view of my foregoing discussions, it is thereby held that the prosecution could prove beyond reasonable doubt that the accused, Tayum Tangom is guilty of offence u/s 20(b)(ii)(C) of the NDPS Act. The accused failed to reflect that he was prejudiced by the investigation. There is no instance of prejudice to the accused by the investigation conducted by the Investigating Agency. The accused could not portray that the investigation by the complainant, who himself is a witness was tainted. It cannot be held that the revenue officials acted maliciously and extraneously. The recovery and possession was proved to the hilt as the accused failed to rebut the same even on the touchstone of preponderance of probability.

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54) I have heard the accused on the point of sentence. The accused is a young lad of 21 years. He has prayed for leniency. I have heard both the sides on the point of sentence.

55) It is true that the accused is held guilty of serious offence, but at the same time, it is also true that the accused was remorseful. It appears that there is scope of reformation and room for improvement. Considering his age, it is clear that he was misguided by his peers. The accused is repentant. Although the accused has committed a serious offence, yet it appears that he is not a threat to the society.

56) The learned P.P. has submitted that the accused had no earlier criminal antecedents. Suffice it to mention that a period of imprisonment for 10 years will meet the ends of justice. The punishment is exemplary as well as deterrent. The menace of drug peddling has to be dealt with strictly.

### **SENTENCE**

57) The accused, Tayum Tangom is convicted u/s 20(b)(ii)(C) of the NDPS Act, and he is sentenced to undergo Rigorous Imprisonment ( RI for short ) for 10 (ten) years and to pay a fine of Rs.1,00,000/- ( Rupees One Lac ), and in default of payment of fine, to undergo RI for 6 (six) months.

58) The period of detention of the accused during the investigation and trial is set off with his custodial sentence.

59) The seized cannabis is to be destroyed as per due course of Law.

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Judgment is signed, sealed and delivered in the open Court on the 12<sup>th</sup> day of January, 2021.

( S.P. Khaund )  
Special Judge,  
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

( S.P. Khaund )  
Special Judge,  
Lakhimpur, North Lakhimpur.

**APPENDIX****Special (NDPS) Case No.3/2018.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Md. Mohammad Ali.
2. PW.2 - Sri Gajendra Nath Deka.
3. PW.3 - Sri Dibyendu Bhounmik.
4. PW.4 - Sri Prabir Kumar Das.
5. PW.5 - Sri Uday Basumatary.
6. PW.6 - ASI Tapan Lahan.
7. PW.7 - SI Ajit Kumar Bhuyan.

**LIST OF EXHIBITS FOR PROSECUTION :**

1. Ext.1 - Inventory.
2. Ext.2 - FSL Report.
3. Ext.3 - Forwarding letter of the FSL Report.
4. Ext.4 - Written direction of Asstt. Director of DRI, Guwahati.
5. Ext.5 - Summon.
6. Ext.6 - Weighment sheet.
7. Ext.7 - Seizure List.
8. Ext.8 - Complaint Petition.
9. Ext.9 - Forwarding letter.
10. Ext.10 to Ext.31 - Photographs of the seized 'Ganja', weighing scale, accused persons and the truck.

**LIST OF MATERIAL EXHIBITS FOR PROSECUTION :**

Photographs as per inventory.

**LIST OF WITNESSES FOR DEFENCE :**

Nil.

**LIST OF EXHIBITS FOR DEFENCE :**

Nil.

( S.P. Khaund )  
Special Judge,  
Lakhimpur, North Lakhimpur.

Transcribed and typed by :  
Sri Satyabrata Kshattray, Stenographer.