

GAHC030005402023



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH
(Aizawl Bench)

Criminal Appeal No. 38 of 2023

1. Smt. Zosangzuali
D/o Siamliana (L),
R/o Khuangpuilam,
Kolasib, Mizoram.

Appellant

-Versus-

1. The State of Mizoram
Represented by the Secretary to the Govt. of
Mizoram, Home Department.
2. Shri Lalduhzuala Ngente, S.I. Excise and
Narcotics Station, Kolasib, Mizoram

Respondents

For Appellant : Mr. Benjamin Lalthlamuana, Advocate

For Respondent(s) : Ms. Mary Lalruatkimi Khiangte,
Additional Public Prosecutor.

Date of Judgment : 29.04.2024

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT**

- 1.** Heard Mr. Benjamin Lalthlamuana, learned counsel for the appellant. Also heard Ms. Mary Lalruatkimi Khiangte, learned Additional Public Prosecutor for the State of Mizoram.
- 2.** This appeal under Section 374 of the Code of Criminal Procedure, 1973, has been filed by the appellant Smt. Zosangzuali, impugning the judgment dated 18.04.2023 and order dated 24.04.2023, passed by learned Additional Sessions Judge-cum-Judge, Fast Track Court, Kolasib, Mizoram whereby the present appellant was convicted under Section 21(b) of the NDPS Act, 1985 and was sentenced to undergo rigorous imprisonment for a term of 5 years and to pay a fine of Rs. 20,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months. The period of detention already undergone was directed to be set aside against the term of sentence imposed.
- 3.** The facts relevant for consideration of the instant appeal, in brief, are as follows:
 - i.** That on 28.01.2020, the Court of learned Additional Sessions Judge-cum-Judge, Fast Track Court, Kolasib, Mizoram received a complaint, filed by the complainant, Joseph C. Lalhmangiahzuala, Sub-Inspector of Excise and

Narcotic, Kolasib, *inter-alia*, alleging that, on 27.09.2019, at about 7.30 AM, Sub-Inspector Lalduhzuala Ngente raided the residence of the present appellant at Khungpuilam, Kolasib and recovered 21.28 grams of yellowish powder suspected to be heroin, kept in 600 small plastic phials, from the almirah in the bedroom of the house of the appellant.

- ii. The recovered contraband was immediately seized and the appellant was arrested on the same day.
- iii. The Seizing Officer had also submitted a report of seizure and arrest to the Officer-in-Charge of Excise and Narcotic Stations, Kolasib and a case bearing No. EX-KLB/95/19 dated 27.09.2019 under Section 21(b) of the NDPS Act, 1985 was registered. The complainant, Joseph C. Lalmangiahzuala was entrusted to investigate the case. The complainant took steps for preparation of inventory of the seized contraband and drawal of sample from the same before the learned Chief Judicial Magistrate, Kalasib. He also took steps for sending the sample of the contraband to the Forensic Science Laboratory (FSL), Aizawl for chemical analysis. It was also found that at the time of arrest, the appellant had mentioned her name wrongly as Lalsungzuali instead of Zosangzuali. The complainant collected the Chemical Analysis Report from Forensic Laboratory, Aizawl which gave positive test for

heroin in the samples with purity of about 77%. It is also stated in complaint that during interrogation, the appellant admitted being involved in illegal possession and selling of banned drugs.

- iv.** On receipt of the said complaint, SC(K) No. 3 of 2020 was registered under Section 21(b) of the NDPS Act, 1985.
- v.** The appellant faced the trial, remaining in judicial custody, as she was not enlarged on bail during the trial.
- vi.** On 05.02.2020, the Trial Court framed charge under Section 21(b) of the NDPS Act, 1985 against the appellant. When the said charge was read over and explained to the appellant, she pleaded not guilty and claimed to be tried.
- vii.** The prosecution side examined five (05) prosecution witnesses to bring home the charge against the present appellant.
- viii.** The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 during which, she denied the truthfulness of the testimony of the prosecution witnesses and pleaded her innocence. She also adduced evidence of one defence witness in her defence.
- ix.** However, ultimately by the judgment and order which are impugned in this appeal, the appellant was convicted and sentenced in the manner as described in Paragraph No. 2 hereinabove.

4. Before considering the rival submissions of learned counsel for both the sides, let us go through the evidence available on record.

5. PW-1, Shri A. C. Vanlalhuma, who is a teacher by profession, has deposed that on 27.09.2019, at about 7.30 AM, the personnel of Excise and SRS, Aizawl, suspecting the appellant of possessing contraband, wanted to conduct search of the residence of the appellant. Accordingly, he was called to be a witness to the search inside the residence. He has further deposed that during search of the residence of the appellant, 21.28 grams of suspected heroin packed in 6 polythene packets, each packet containing 100 small plastic vials were recovered from the steel almirah inside the bedroom of the appellant. He has further deposed that the Excise Officer had arrested the appellant and seized the contraband items in his presence. He has exhibited his signature on the seizure list as Exhibit-P-1(b).

6. During cross examination, PW-1 has deposed that he is not aware as to whether the Seizing Officer had obtained search warrant from the Competent Authority or not. He is also not aware as to whether any Gazetted Officer was present at the time of search. He has also deposed that he did not count the seized articles.

7. PW-2, Shri F. Aithuama, has also deposed exactly similar to the deposition of PW-1. He has exhibited his signature on the seizure list as Exhibit-P-1(a). His cross-examination was also on the similar line to that of PW-1. He has also deposed during his cross-examination

that he does not know the exact quantity of seized article as he did not personally count the seized item.

8. The witness listed as PW-3 in the complaint, namely, Lalmuanawma, Assistant Director, FSL, Aizawl was not examined by the prosecution side.

9. PW-4, Joseph C. Lalhmangiahzuala, who is the complainant of the case has deposed that on 27.09.2019, at about 7.30 AM, Sub-Inspector, Lalduhzuala Ngente had search the residence of the present appellant at Khungpuilam, Kolasib and recovered 21.28 grams of yellowish powder suspected to be heroin, kept in 600 small plastic phials, from the almirah in the bedroom of the house of the appellant. He has submitted that the Seizing Officer has submitted the report of seizure and arrest to the Officer-in-Charge of Excise and Narcotic Station, Kolasib and Case No. EX-KLB/95/19 dated 27.09.2019 under Section 21(b) of the NDPS Act, 1985 was registered and he was endorsed to investigate the case. PW-4 has further deposed that during the course of investigation, he visited the place of occurrence and found that the name of the appellant is Zosangzuali and not Lalsangzuali. He has also deposed that the seized article were produced before the learned Chief Judicial Magistrate, Kolasib and scaling an inventory of the same was prepared before him on 27.09.2019. He has also deposed that the sample of the seized articles was sent to Forensic Laboratory, Aizawl for chemical examination and the result of examination gave positive test of heroin with 77% purity. He has also deposed that he

examined all the available witnesses including the appellant, who has stated during interrogation that she used to sell Government banned drugs from the year 2016 and have been procuring the same from Aizawl and Cachar. He exhibited the complaint as Exhibit P-III; his signatures as Exhibit-P-III(a); the certificate of correctness of inventory as Exhibit P-IV; his signatures thereon as Exhibit-P-IV(a); Memo of drawal of representative samples as Exhibit-P-V and his signatures thereon as Exhibit-P-V(a); envelope containing five photographs as Exhibit-P-VI; the photographs of inventory/seized articles as Exhibit-P-VI(1) to Exhibit-P-VI(4) and the photograph of the appellant as Exhibit-P-VII.

10. During cross-examination, PW-4 has deposed that no search warrant was obtained before making the search and arrest from the Competent Authority and no Gazetted Officer was present at the time of search.

11. PW-5, Lalduhzuala Ngente, who had seized the contraband in this case, has deposed that on, 27.09.2019, at about 7.30 AM, he seized 21.28 gram of yellowish powder, suspected to be heroin, kept in 600 small plastic phials inside the residence of Lalsangzuali. The articles were recovered from the steel almirah kept in her bedroom. He has also deposed that in connection with the said case, PW-5 had also arrested the owner, Lalsangzuali in presence of civilian witnesses and the intimation of the arrest was given to her daughter Lalruatfeli. He has also deposed that he had submitted the report of seizure and arrest before the Officer-in-Charge of Excise and Narcotic Department,

Kolasib Station and prayed for registering a case. The PW-5 exhibited the seizure and arrest memo as Exhibit-P-I and his signature as Exhibit-P-I(c). He has also exhibited the report of seizure and arrest submitted by him as Exhibit-P-II and his signature as Exhibit-P-II (a).

12. During cross-examination, PW-5 has deposed that he did not obtained search warrant from the Competent Authority before making search, as it was not necessary.

13. PW-6, Dr. Rlawmzuali, Junior Scientific Officer, FSL, Aizawl has deposed that on 04.10.2019, he received sample of suspected heroin weighing about 94 mg in connection with EX-KLB/95/19 dated 27.09.2019 under Section 21(b) of the NDPS Act, 1985. He has deposed that the sample was packed and sealed in a polythene and enclosed in a paper envelope sealed with wax. PW-6 has further deposed that he conducted the examination of sample under the supervision of Lalmuanawma, Assistant Director, FSL, Aizawl and the examination revealed that the sample contained heroin with 77% purity at the time of examination. He has exhibited the examination report as Exhibit-P-IV (*sic*), *[Exhibit-P-IV has already been marked and exhibited by PW-4 regarding correctness of certificate of inventory]*.

14. During cross-examination, PW-6 has deposed that he received the sample on 04.10.2019, however, he is not aware about the date of seizure. He has also deposed that though, he jointly examined the Exhibit with Lalmuanawma, Assistant Director, FSL, Aizawl, however,

he was not included as a witness in the list prepared by the Investigating Officer.

15. During his examination under Section 313 of the Code of Criminal Procedure, 1973, the appellant admitted that the seized articles were recovered from the steel almirah, which was kept inside the bedroom of her residence, however, she had stated that the almirah does not belong to her, neither the seized article belong to her. She has stated that the almirah belong to her late husband and she was not having any knowledge about the seized article. She also stated that she would like to adduce evidence in her defence.

16. DW-1, Lalmalsawmi, who is the daughter-in-law of the appellant has deposed that that she was living along with the appellant in the same house. She has deposed that she was married to the son of the appellant in the year 2018, and she never saw the appellant possessing or selling the contraband articles. She has also deposed that at the time of seizure, the appellant was living with her boyfriend, namely, Jhon Lalfakzuala, who was addicted to heroin and he might have kept the heroin in the house of the appellant. She has also deposed that at the time of seizure the appellant was not present in her residence.

17. During cross-examination, DW-1 has deposed that the deceased Jhon Lalfakzuala did not bring the steel almirah into the house. She has also deposed that in the morning of 27.09.2019, the appellant was at Diakkawn.

18. Mr. Benjamin Lalthlamuana, learned counsel for the appellant has submitted that though the NDPS Act, 1985 provides for a reverse burden on the appellant under Section 35 and 54 of the said Act, however, the prosecution side has initial burden to prove foundational facts implicating her for the offence alleged in the complaint petition, however, in the instant case, the prosecution side has failed to do so.

19. The appellant has assailed limited ground for appeal in her Memo of Appeal. Learned counsel for the appellant has submitted that PW-4, who is the complainant in this case, in his application dated 27.09.2019 under Section 52A(2), while praying for certifying the correctness of the inventory, certifying the correctness of the photographs and allowing the draw representative samples of drugs has quoted wrong provision of law therein, i.e., 53A(3). Learned counsel for the petitioner has submitted that there is no Sub-Section (3) in Section 53A of the NDPS Act, 1985.

20. Learned counsel for the appellant has also submitted that there has been violation of the provisions of Section 55 of the NDPS Act, 1985 in this case, as though the seizure was made on 27.09.2019, however, it appears that the same was sent to Forensic Laboratory on 30.09.2019 and there is no evidence on record to show as to where the sample was kept for these three days. Learned counsel for the appellant has also cited a ruling of the Apex Court in the case of **"Mohan Lal Vs. State of Punjab"** reported in **(2018) 17 SCC 627**, wherein it was observed that a plain reading of the provision

(Section 55 of the NDPS Act, 1985) makes it manifest that it is the duty of the Police Officer to deposit the seized material in the Police Station Malkhana. Learned counsel for the appellant has submitted that no evidence like Malkhana register has been adduced by the prosecution side to show the compliance of Section 55 of the NDPS Act, 1985.

21. Learned counsel for the appellant has also submitted that though the PW-4 has stated in his deposition that he had sent the sample of the seized articles to FSL, Aizawl for chemical analysis, however, he has failed to mention the date on which the samples were sent to FSL, Aizawl. It is also submitted by learned counsel for the appellant no forwarding letter regarding sending of sample to the FSL, Aizawl has been exhibited by the prosecution side to show as to what was sent to the FSL, Aizawl by the complainant, i.e., PW-4

22. Learned counsel for the appellant has also submitted that though from Exhibit-P-V(Memo of representative samples), only one representative sample weighing about 200 mg and marked as "R-1" was drawn in presence of the learned Chief Judicial Magistrate, Kolasib on 27.09.2019, however, from the testimony of PW-6 as well as FSL report examined by him as Exhibit-P-IV, it appears that the sample, which was received by the Forensic Laboratory and examined by it was marked as "J-1" and weighed about 94 mg. Learned counsel for the appellant has submitted that this discrepancy and inconsistency between the sample which was drawn before the learned Magistrate and the sample which was examined at the

Forensic Laboratory is a fatal discrepancy and it demolish the entire prosecution case as due to such discrepancy, the prosecution side has failed even to establish the foundational facts required to show that the contraband recovered from the residence of the appellant was heroin.

23. Learned counsel for the appellant has also submitted that in the instant case, though the total weight of seizure suspected heroin was 21.28 gm, however, only one sample weighing about 200 mg was drawn there from in violation of the guidelines for drawing of samples as provided in Standing Order No. 01/89 and Notification dated 13.06.1989 issued by Ministry of Finance, Department of Revenue, Government of India as well as Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 published in the Gazette of India on 23.12.2022. Learned counsel for the appellant has submitted that as per the aforesaid Notifications/Rules, samples in duplicate with each sample weighing not less than 5 gm should have been drawn from the seized contraband, however, in the instant case, there has been violation of the said guidelines and only 200 mg of the sample was drawn.

24. Learned counsel for the appellant has also submitted that though, one Lalmuanawma, Assistant Director, FSL, Aizawl was listed as witness in the complaint, however, he was not examined, whereas PW-6, Dr. Rlawmzuali, Junior Scientific Officer, FSL, Aizawl, who was not listed as a witness was examined without any authorization from

the Assistant Director, FSL, Aizawl under Section 293 (3) of the Code of Criminal Procedure, 1973.

25. Learned counsel for the appellant has thus submitted that the prosecution side has failed to prove the foundational facts beyond all reasonable doubt, hence, she is liable to be acquitted and has prayed for setting aside the impugned judgment and for acquitting the appellant.

26. On the other hand, Ms. Mary Lalruatkimi Khiangte, learned Additional Public Prosecutor has submitted that the prosecution side has been able to establish the *prima facie* case against the appellant, and the appellant has failed to relieve the burden cast on her by Section 35 as well as Section 54 of the NDPS Act, 1985 to prove herself innocent.

27. Regarding the plea taken by learned counsel for the appellant regarding wrong quoting of provisions of law in the application under Section 52A filed by the complainant, learned Additional Public Prosecutor has submitted that mere making a wrong reference in the application by the complainant or for that matter, quoting a wrong provision of law, by itself does not vitiate the exercise of power by the Court, so long as such power exist and can be traced to a source available in law. In support of her submission, learned Additional Public Prosecutor has cited a ruling of the Apex Court in the case of **"N. Moni Vs. Sangeetha Theatre and Others"** reported in **(2004) 12 SCC 278**. She has submitted that in the instant case, the learned Chief Judicial Magistrate, Kolasib who had allowed the petition filed

by the complainant for certification of inventories and drawal of sample from the contraband was legally empowered to do so, hence, mere wrong quotation of legal provision in the application filed by the complainant has not affected the case of the prosecution adversely and has not vitiated the trial.

28. Learned Additional Public Prosecutor has also submitted that the testimony of prosecution witnesses shows that the seized contraband was recovered from the bedroom of the present appellant. Even the appellant has also confessed the same in her statement which was recorded by PW-4, who is the complainant of the case.

29. Learned Additional Public Prosecutor has also submitted that the appellant has not been able to show as to how she was prejudice by non-production of Malkhana register by the prosecution witness as the testimony of PW-4 and PW-5 shows that the sample of the seized contraband was received by the FSL, Aizawl in seal condition and there is no material to show that there was any tampering of the sample sent to FSL Laboratory.

30. Learned Additional Public Prosecutor has also submitted that though the Standing Order dated 01/89 and Notification dated 13.06.1989 as well as Notification No. G.S.R. 899(E) dated 23.12.2022 issued by Ministry of Finance, Department of Revenue, Government of India provides for a procedure to draw the sample from contraband, however, same is not mandatory, but only directory

in nature and merely not following the procedure for drawing the sample as laid down in the said Notifications would not vitiate the trial, if the appellant has not been otherwise prejudiced.

31. Learned Additional Prosecutor has also submitted that in the Forensic Laboratory, the samples were weighed by using state of the art equipments in a control environment, whereas, when the said samples were weighed at the time of drawal before the learned Magistrate, it was not under any control environment, and same was done by using ordinary weighing machine over which the elements of nature also has its impact, therefore, the discrepancy in the weight of the samples mentioned in the Exhibit-V (Memo of Representative Samples drawn before the learned Magistrate) and weight mentioned in Exhibit-IV (FSL report dated 19.11.2019) should be ignored.

32. Learned Additional Prosecutor has also submitted that the prosecution side has been able to prove the foundational facts necessary for shifting the burden under Section 35 as well as Section 54 of the NDPS Act, 1985 to the appellant for proving his innocence. She has also submitted that the appellant failed to relieve the said burden, hence, the impugned judgment is not liable to be interfered with and the present appeal may be dismissed.

33. I have considered the submission made by learned counsel for both the sides and have carefully perused the materials available on record.

34. Though, the appellant has taken several grounds in his Memo of Appeal for assailing the impugned judgment, however, the main

grounds seems to be of not following the procedure for drawing of samples by the Seizing Officer, as well as regarding the discrepancy between the sample of the seized contraband, which was drawn before the learned Magistrate, and the sample of which the chemical analysis was conducted at the Forensic Laboratory, Aizawl, which in the considered opinion of this Court, if sustained, goes into the root of the prosecution's case. Let us examine the said grounds taken by the appellant.

35. The Standing Order No. 01/89 and Notification dated 13.06.1989 issued by the Ministry of Finance, Department of Revenue, Government of India, as well as Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 published in the Gazette of India on 23.12.2022 has prescribed general procedure for sampling of Narcotic Drugs and Psychotropic Substances after their seizure. Relevant rules of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 which prescribe the procedure for drawing of samples as well as quantity to be drawn for sampling are quoted herein below:

"10. Drawing the samples. –

(1) One sample, in duplicate, shall be drawn from each package and container seized.

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively

indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn: Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

11. Quantity to be drawn for sampling. –

(1) Except in cases of opium, ganja and charas (hashish), where a quantity of not less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample.

(2) The seized substances in the packages or containers shall be well mixed to make it homogeneous and representative before the sample, in duplicate, is drawn.

(3) In case where seized quantities is less than that required for sampling, the whole of the seized quantity may be sent.”

12. Storage of samples. –

(1) Each sample shall be kept in heat-sealed plastic bags or heat-resistant glass bottle or apparatus, which shall be kept in a paper envelope, sealed

properly and marked as original or duplicate, as the case may be.

(2) The paper envelope shall also bear the respective serial number of the package or container from which the sample had been drawn.

(3) The envelope containing the duplicate sample shall also have reference of the test memo and shall be kept in another envelope, sealed and marked 'Secret-drug sample / Test memo', to be sent to the designated laboratory for chemical analysis.

13. Despatch of sample for testing. –

(1) The samples after being certified by the Magistrate shall be sent directly to any one of the jurisdictional laboratories of Central Revenue Control Laboratory, Central Forensic Science Laboratory or State Forensic Science Laboratory, as the case may be, for chemical analysis without any delay.

(2) The samples of seized drugs or substances shall be despatched to the jurisdictional laboratories under the cover of the Test Memo, which shall be prepared in triplicate, in Form-6.

(3) The original and duplicate of the Test Memo shall be sent to the jurisdictional laboratory alongwith the samples and the triplicate shall be retained in the case file of the seizing officer.

The Standing Order No. 01/89 also provides for similar provisions prescribing the procedure to be adopted for drawing up of sample from the seized contraband.

36. In the instant case, it appears that the Seizing Officer has not followed the procedure prescribed for drawing up of the seized contraband, though, the drawal of sample was done before the learned Magistrate. In the instant case, though 21.28 grams of

suspected heroin was seized, however, only 200 mg of sample was drawn as against the required minimum quantity of 5 (five) grams. It also appears that though, when the seizure was made, the suspected heroin was found in 600 small plastic phials, however, there is nothing on record to show that before drawing of samples from the said phials, bunching of such plastic phials were done as prescribed in the above mentioned Standing Order/Rules. Moreover, there is nothing on record to show that the sample, in duplicate, was drawn from each container. In fact, there is nothing on record to suggest as to in what manner, the samples were drawn from 600 phials where the suspected heroin was found.

37. Moreover, on perusal of the Exhibit-P-V, which is the Memo of Representative sample exhibited by PW-4, Joseph C. Lalmangiahzuala, who is the complainant in this case, it appears that the representative sample weighed about 200 mgs and was marked as "R-1". However, on perusal of Exhibit-P-IV, which is the FSL Report, it appears that the sample received by the Forensic Laboratory, Aizawl was marked as "J-1" and weighed about 94 mgs. This discrepancy in the weight as well as the marking of sample sent to the FSL, Aizawl as well as sample received by the FSL, Aizawl could not be properly explained by the learned Additional Public Prosecutor. Learned Additional Public Prosecutor tried to impress upon this Court by explaining that as the samples were weighed at FSL, Aizawl in control environment, whereas, in the Court where the samples were drawn before the learned Magistrate, no such control

environment was available at the time of weighing the samples, hence, the same has resulted into the discrepancy in the weight of the samples is not found to be acceptable, as the weight of sample analyzed by FSL, Aizawl was found to be less than half of the weight of the sample which was sent to it for examination and the justification for the same, offered by learned Additional Public Prosecutor does not appear to be plausible.

38. Moreover, the learned Additional Public Prosecutor has failed to give any explanation regarding the discrepancy of marking in the sample which was analyzed by the FSL, Aizawl and the sample which was drawn before the learned Magistrate.

39. The only conclusion, which may be arrived at after perusal of Exhibit-P-IV and Exhibit-P-V is that the sample which was analyzed by the FSL, Aizawl which gave positive report for heroin with 77% of purity, was not the sample which was drawn before the learned Magistrate. This is a serious discrepancy, which remained unexplained and it goes into the root of the prosecution case demolishing the prosecution stand that the contraband seized from the present appellant was found to be heroin in Forensic Laboratory Examination. This aspect was not considered by the learned Additional Sessions Judge-cum-Judge, Fast Track Court, Kolasib, in the impugned judgment, while arriving at the finding of guilt of the present appellant. Had the Trial Court had considered this discrepancy of marking and weight of the sample as discussed herein

above, it would not have reached the finding of guilt of the present appellant in this case.

40. This Court is of the considered opinion that as the punishment prescribed by the various provisions of NDPS Act, 1985 are very stringent, the burden on the prosecution side to prove the foundational facts would be more onerous. It has to prove the foundational facts beyond all reasonable doubts. However, in the instant case, by failing to prove that the report of the FSL, Aizawl, which has been exhibited as Exhibit-P-IV was in respect of the sample drawn before the learned Magistrate as mentioned in the Memo of Representative Sample, i.e., Exhibit-P-V, the prosecution side has failed to show that the contraband seized from the possession of the present appellant contained heroin. Thus, the prosecution side has miserably failed to establish the most essential foundation fact, i.e., as to whether the seized contraband contained heroin or not.

41. In view of above discussion and finding, the other grounds taken by the appellant for assailing the impugned judgment are not discussed in detail, as this Court has already arrived at a finding that the impugned judgment is not sustainable.

42. In view of the discussion made above, the prosecution side has failed to prove beyond reasonable doubt that the contraband seized from the possession of the appellant contained heroin, therefore, the appellant is entitled to get benefit of doubt in this case, which this Court gives to her. The impugned judgment is, therefore, set aside.

The appellant is directed to set at liberty forthwith, if not required to be detained in connection with any other case.

43. This appeal is accordingly, allowed.

44. Send back the Trial Court record along with a copy of this judgment to the Trial Court.

JUDGE

Comparing Assistant