

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.85 of 2020

Arising Out of PS. Case No.-22 Year-2018 Thana- BALIYA District- Begusarai

RAJU KUMAR @ RAJU DAS Son of Sakindra Das Resident of Village-
Babhangama, P.S.- Reega, Distt- Sitamarhi.

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 13 of 2020

Arising Out of PS. Case No.-22 Year-2018 Thana- BALIYA District- Begusarai

NEERAJ KUMAR @ NIRAJ KUMAR Son of Kailash Rai @ Kalash Ray
Resident of Village - Jagdishpur, Tarbana, P.S.- Muffasil (Lakho O.P.), Distt.-
Begusarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 101 of 2020

Arising Out of PS. Case No.-22 Year-2018 Thana- BALIYA District- Begusarai

RAKTU DAS Son of Badri Das Resident of Village - Babhangama, P.S.-
Riga, Distt - Sitamarhi.

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 85 of 2020)

For the Appellant/s : Mr. Aruni Singh, Adv.
Mr. Manoj Kumar Singh, Adv.
Mr. Krishna Murari, Adv.

For the Respondent/s : Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 13 of 2020)

For the Appellant/s : Mr. Aruni Singh, Adv.
Mr. Sandip Kumar Gautam, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 101 of 2020)

For the Appellant/s : Mr. Aruni Singh, Adv.
Mr. R.P.N. Tiwari, Adv.

For the Respondent/s : Km. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY



ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 05-07-2023

All these three appeals have been preferred under Section 374(2) of the CrPC against the same judgment of conviction dated 16.11.2019 and the order of sentence dated 21.11.2019 passed by the learned Additional Sessions Judge-Ist-cum-Special Judge, N.D.P.S. Act, Begusarai, in N.D.P.S. Case No. 04 of 2018, arising out of Balia P.S. Case No. 22 of 2018 and accordingly they have been heard together and are being disposed of by the present common judgment and order.

2. By the impugned judgment and order, the appellants have been convicted and sentenced as under: -

Cr. Appeal (D.B.) No. 85 of 2020				
	Convicted under Sections	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Raju Kumar @ Raju Das	20(b)(ii)(C) of the N.D.P.S. Act, 1985	R.I for fifteen years	1,50,000/-	S.I. for three years
Cr. Appeal (D.B.) No. 13 of 2020				
Neeraj Kumar @ Niraj Kumar	20(b)(ii)(C) of the N.D.P.S. Act, 1985	R.I for fifteen years	1,50,000/-	S.I. for three years
Cr. Appeal (D.B.) No. 101 of 2020				
Raktu Das	20(b)(ii)(C) of the N.D.P.S. Act, 1985	R.I for fifteen years	1,50,000/-	S.I. for three years

3. Heard Mr. Aruni Singh, learned counsel appearing on behalf of the appellants in all appeals and Ms. Shashi Bala Verma and Mr. Sujit Kumar Singh, learned Additional Public Prosecutors representing the State.



4. An Assistant Sub-Inspector of Police of Balia Police Station in the district of Begusarai, namely, Vidya Nand Mishra (PW-2), is the informant of the concerned Balia P.S. Case No. 22 of 2018, registered on 31.01.2018 at 11:30 A.M. According to him, he received an information from the Officer-in-Charge of the said Police Station that Raktu Das (Appellant), Raju Kumar @ Raju Das (Appellant), Megh Raj, Kamal and Neeraj Kumar @ Niraj Kumar (Appellant) were carrying huge quantity of ganja in a truck bearing registration No. NL03A-7249 from Assam towards Begusarai via NH-31. As directed, a special raiding team proceeded to inspect the vehicle, led by the informant (PW 2), Ropan Oraon, an Assistant Sub-Inspector of Police (PW-3), Dinesh Prasad, Assistant Sub-Inspector of Police (not examined), Havildar Noor Rahim (not examined), Brajesh Kumar, Haridas Murmu, Amit Kumar all BMP Constables (not examined). They left the police station at 6:20 A.M. and when they reached Shivam Line Hotel near NH-31, they noticed a truck suddenly speeding away on seeing the police jeep. The police party chased the truck. The driver of the truck, after pulling over the truck near Shivam Line Hotel, attempted to flee. The police party saw three persons alighting from the truck and fleeing away towards the railway line. They were, however, apprehended, who disclosed their names to



police party and are the appellants herein. Noticing the police action, some persons, present nearby, gathered, but they declined the request of the police team to become witness(es) of the intended search and seizure, to be conducted by the police. The police officials, namely, Ropan Oraon (PW-3) and Dinesh Prasad (not examined) expressed their willingness to become independent eye witness and, thus, in the presence of the two police officials, namely, Ropan Oraon (PW-3) and Dinesh Prasad (not examined), the appellants were searched. Upon personal search of these appellants, no incriminating material was recovered. Thereafter, the raiding team disclosed to the appellants about the information they had received regarding transportation of ganja in the truck in relation to which search of the truck was required and that they (the appellants) had the right of the truck being searched in the presence of a Gazetted officer or a Magistrate. The appellants, it is the prosecution's case, requested the police officials to carry out the search in presence of a Gazetted officer or a Magistrate. Accordingly, an information was given to the senior officials, whereupon, Block Development Officer, Balia, Manoj Paswan (PW-1), was deputed to be present at time of search of the truck. In the presence of the two seizure list witnesses, the Block Development Officer conducted search of the said truck, leading to



recovery of certain documents including a national permit bearing the name of one Sunny Shankar Singh and his PAN card. Further, during the course of search, 10 packets, each containing 10.2 kg of ganja, were recovered from the cabin box of driver. Furthermore, 84 packets, each containing 16.4 kg (1377.6 Kg), and 8 packets, each containing 15.3 kg (total 122.4 kg), i.e., total of 1602 kg of ganja was recovered from the truck. The informant is said to have marked all 102 packets of ganja by S-01 to S-102 and prepared three groups of the said packets one from S-01 to S-40 marked as L-01 group; S-41 to S-80 marked L-02 group and S-81 to S-102 marked as L-03 group. From all the three packets, small quantities of ganja were taken out which were mixed from group L-1. Samples were prepared in the same manner from the other groups of packers, i.e., L-02 and L-03. The packets, so seized, were thereafter sealed. Signatures of these appellants were obtained on the sealed packets. A seizure List was prepared, displaying seizure of ganja and other articles, on which signatures of the witnesses were obtained. The Block Development Officer (PW-1) and the informant also put their signatures on the seizure list at the place of occurrence itself. One copy each of the seizure memos was handed over to these appellants. The appellants, according to the informant, put their signatures on the seizure list acknowledging



the receipt of the copy of the same. They were arrested and brought to the police station. Based on the aforesaid narration in the written report of the informant, addressed to the Officer-In-Charge of the police station, the abovenoted Balia P.S. Case No. 22 of 2018 came to be registered. The investigation of the case was handed over to PW-4. The lower court's records suggest that the investigating officer filed a petition to the learned Sessions Judge, Begusarai, seeking permission to send the samples of ganja to the Forensic Science Laboratory, Patna and Kolkata for chemical examination, which was allowed and, thus, the Investigating Officer was permitted to send the samples of seized ganja to Forensic Science Laboratory, Patna and Kolkata, after sealing and certification.

5. After completion of investigation, charge sheet was submitted against these appellants for commission of the offences, punishable under Section 8, 20(b)(ii)(C), 25, 29 of the N.D.P.S. Act, whereupon cognizance was taken by the learned court below on 23.04.2018. Subsequently, these appellants were charged of commission of the offences punishable under section 20(b)(ii)(C) of the N.D.P.S. Act.

6. The appellants pleaded innocence and claimed to be tried and accordingly they were put to trial. At the trial, the



prosecution examined five witnesses, namely, Manoj Paswan, the Block Development Officer (PW-1), in whose presence the search was conducted, Vidya Nand Mishra, Informant (PW-2), Ropon Oraon, Assistant Sub-Inspector of Police, who was a member of the raiding team (PW-3), Bipin Singh, the Investigating Officer (PW-4) and Ashwani Kumar Singh, a member of the raiding team and a seizure list witness. In addition thereto, the prosecution got exhibited documentary evidence, which included Forensic Science Laboratory report (exhibit-5), formal FIR (exhibit-4), signature of Dinesh Prasad, a member of the raiding team and seizure list witness (exhibit 1/3), seizure list (exhibit 1/3), signature of Manoj Paswan in the seizure list (exhibit-1). The prosecution also produced 102 packets of ganja said to have been seized from the possession of the appellants as material exhibits M-1 to M-102. After closure of the evidence of prosecution's witnesses, the appellants were questioned by the trial court under Section 313 of the CrPC by giving them the opportunity to explain the circumstances emerging against them based on the evidence of the prosecution's witnesses. The appellants answered all those questions in negative. The trial court, after having appreciated the evidence adduced at the trial, has reached a conclusion that the prosecution succeeded to prove the charge against the appellants



for commission of the offences punishable under Section 20(b)(ii) (C) of the N.D.P.S. Act, and accordingly, sentenced them to imprisonment and fine, as has been noted at the outset.

7. Mr. Aruni Singh, learned counsel appearing on behalf of the appellants, has submitted that there are major contradictions in the evidence of the prosecution's witnesses, which creates serious doubt over the manner in which the seizure of the goods were effected. There has been violation of mandatory statutory requirements of various provisions of the N.D.P.S. Act and the standing order 1/88 and 1/89, issued by the Government of India, Ministry of Finance, Department of Revenue.

8. He has argued that it is evident from the deposition of the prosecution's witnesses that the appellants were not apprehended from the truck, which was intercepted by the raiding team, rather from a place which was 500 meters away from the truck. The seizure list does not bear the signatures of these appellants and no seizure memo was ever supplied to them, as claimed by the prosecution's witnesses, which is visible from the exhibit 1/1.

9. He has argued that on one hand the prosecution claims that these appellants attempted to flee away from the truck and were apprehended nearly 500 meters away from the truck, the



Block Development Officer (PW-1), who had come later, deposed that he had seen these appellants sitting in the truck. He has also argued that though, according to the prosecution's case, 102 packets of the recovered material were classified in three groups, only one sample was sent for forensic examination as is evident from exhibit -5 (Forensic Science Laboratory report). He has further submitted that though it is the prosecution's case that contraband article were seized on 31.01.2018, it appears from the FSL report that the sample was received in the Forensic Science Laboratory much belatedly on 17.04.2018. There is no explanation on record for delay in delivery of the sample to the Forensic Science Laboratory. Further, there is no evidence on record to show as to how and where the samples were stored from date of seizure till one of the samples was sent to the Forensic Science Laboratory on 17.04.2018. He has further submitted that it is evident from the record that the samples of the seized contraband were not drawn in the presence of a Magistrate, as contemplated under Section 52-A(2)(b) of the N.D.P.S. Act nor an inventory was prepared in accordance with the requirements under Section 52-A(2)(a) of the Act. He has argued that the manner in which a computer typed written report was prepared by the informant, said to have been done soon after the seizure in a private shop, and the



seizure list was prepared in the absence of any independent witness, casts serious doubt over the credibility of seizure itself. The seizure list, he contends, is apparently a manufactured document which does not mention about drawing of any sample. He has also argued that though, according to the prosecution's case, as disclosed in the FIR, weight of each sample, said to have been drawn by the informant, was 30 grams, the weight of the sample, received by the FSL, has been found to be more, i.e., 41.2 grams, which creates a reasonable doubt as to whether the sample, which was sent to the Forensic Science Laboratory, was the one which was drawn after seizure.

10. Ms. Shashi Bala Verma, learned Additional Public Prosecutor appearing on behalf of the State, on the other hand, has submitted that a huge quantity of ganja weighing 16.2 quintals was recovered by the police. The appellants were apprehended by the police as they were seen fleeing away from the truck. The recovery of ganja, which was found concealed in different cabins of the truck, was made in the presence of Block Development Officer, a gazetted officer. The appellants were given the option of truck being searched in the presence of a gazetted officer or a magistrate, and according to the option exercised by them, the Block Development Officer was called and the search was carried



out and seizure was made in his presence. She submits that the sample, drawn from the recovered contraband, was sent to the Forensic Science Laboratory, which, upon chemical examination, has been found to be ganja. She contends that minor deviation in the depositions of the prosecution's witnesses are immaterial for this Court to take a different view than what has been taken by the trial court. She has submitted that the evidence of the prosecution's witnesses cannot be disbelieved only on the ground that all of them were members of the raiding team.

11. We have perused the judgment of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions made on behalf of the parties, as noted above.

12. In order to address the submissions advanced on behalf of the appellants and the State, we consider it apt to take up the evidence of the informant (PW-2) first. He deposed in his examination-in-chief that based on a secret information to the effect that a truck bearing registration No. NL03A-7249 had entered in the territory of the State of Bihar and was to pass through the territorial jurisdiction of his police station, he constituted a team with Dinesh Prasad Singh, Ropon Oraon (PW-3) driver Ritesh Kumar, two Havildars and eight Constables. They



left the police station at 6:20 AM and reached near Shivam Hotel, when they noticed the truck bearing the said registration approaching towards them. They intercepted the vehicle. The three appellants fled away, but were later apprehended. Personal searches of the appellants were conducted, for which Block Development Officer, Balia, was called and search of the truck was conducted, leading to the recovery of 1602 kg of ganja. According to him, the seizure list was prepared by him in his own handwriting. He further deposed in examination-in-chief that thereafter, for further action, the recovered ganja, seized articles and the accused persons were brought to the police station. For storage of the seized ganja in malkhana, he got an application typed, which was handed over to the Officer-In-Charge of the police station under his signature. The said application was marked exhibit-2, which was the basis for registration of the formal FIR. Further, after having given the typed written report to the Officer-In-Charge of the police station, the packets of ganja were sealed and for the purpose of their identification they were marked from serial No. S-1 to S-102. As has been noted above, the said 102 packets of ganja were marked as material exhibit M-1 to M-102 at the trial. In his cross examination, he deposed that he had got the FIR typed in a typist's shop near NH-31. He had reached at the



typist's shop at 8 AM with the entire police team, the accused and the seized materials. After it was typed, they had reached the police station at 9:15 to 9:30 AM. After reaching the police station, he had put his signature on the typed written report. The Block Development Officer had accompanied him to the police station, who had put his signature on seizure memo before reaching the police station. He further deposed that none of the 102 packets of ganja, produced before the trial court, were bearing either MR (Malkhana Registration) number or case number nor the same bore the signature of any witnesses or that of the Magistrate. He further deposed that these appellants were apprehended from the flank of the road adjacent to Shivam Hotel. He had neither mentioned the police station case number on the seizure list nor he had obtained the signature of these appellants over the same. He had not sealed the recovered packets containing ganja. The mobile phone and certain documents, said to have been recovered from the possession of these appellants, were not brought before the court by way of evidence as is clear from the deposition of PW-2.

13. We need to take up next the evidence of the Block Development Officer, Manoj Paswan (PW-1). According to him, he had reached the place of occurrence at 7:20 and had found the said truck, bearing registration No. NL03A-7249; Ropon Oraon



(PW-3), Vidya Nand Mishra (PW-2), Dinesh Prasad, and other police officials were present near the truck. There were some persons present, who declined to become seizure list witnesses despite request having been made to them by the police officials. He supported the prosecution's case of recovery of 1602 kg of ganja from the truck. He also deposed that from these appellants, mobile phones, Aadhar cards, ATM cards and a driving license were recovered. The seizure list was prepared by Vidya Nand Mishra (PW-2) under his direction. He proved his signature over the seizure list. In his cross-examination, he deposed that when he had reached the place of occurrence, the police officials were inside the truck. He further deposed that Shivam Line Hotel, situated adjacent to NH-31, was a busy place. Significantly, he deposed that one copy each of the seizure list was handed over to the accused persons (appellants herein) and signatures of these appellants were obtained in token of receipt of the said seizure list. He also deposed that it took about three hours in preparation of the seizure list. According to his evidence, he was there at the place of occurrence till 10:20 AM.

14. PW-3, one of the members of the raiding team, in his examination-in-chief, deposed that the persons occupying the truck had started fleeing away after seeing the police force towards



railway line, whereafter they were apprehended. From the possession of appellant Raktu Das, a mobile phone was recovered, whereas from the possession of appellant Neeraj Kumar, one Aadhar Card and a mobile phone was recovered. Significantly, PW-3 deposed that the packets of ganja, so recovered, were marked by the Investigating Officer. It is noticeable that in the present case, PW-4 is the IO and no witness has deposed at the trial that PW-4 was present at the place where the search was conducted and the and seizure was made. On the point of the place, from where these appellants were apprehended by the police, PW-3 deposed that they were apprehended from the 'railway line' near Shivam Hotel and that the railway line was nearly 500 meters away from the hotel. According to him, he had returned to police station at 9:15 AM, whereafter the informant (PW-2) got prepared the typed written report and the seizure list. According to him, the seized articles were brought to the police station at 9:15 AM.

15. According to the Investigating Officer (PW-4), the sampling of ganja was done under the orders of the District and Sessions Judge, Begusarai, which was sent to Forensic Science Laboratory, Patna and Kolkata. He admitted in his deposition that he had not mentioned in the case diary about drawing of the



samples of the recovered ganja nor had he mentioned as to how many samples were produced before the court after seizure. In response to a specific query as to where were the samples stored for 18 days before the same was sent to the Forensic Science Laboratory, he deposed that he had not mentioned about the same in his case diary.

16. PW-5 Ashwani Kumar Singh, proved the signature of Dinesh Prasad on the seizure list.

17. After having perused deposition of the prosecution's witnesses, the documentary evidence as well as the material exhibits on record, we find that evidently no sample of the seized contraband was drawn in the presence of a Magistrate, which is a mandatory requirement under Section 52-A(2) of the N.D.P.S. Act. We find substance in the submission made on behalf of the appellants that seizure of contraband must be followed by an application for drawing of the samples and certifications, as contemplated under the NDPS Act. Failure to draw the samples of the contraband in the presence of a Magistrate is a serious lacuna in the prosecution's case as the correctness of the sample sent for forensic examination itself comes under cloud. We further find from the evidence of the prosecution's witnesses themselves that no procedure was followed for ensuring safe storage of samples,



said to have been taken by the informant himself, as he expressed his inability to say where the samples were kept after they were drawn. In case of ***Union of India v. Mohanlal***, reported in (2016) 3 SCC 379, decided on 28.01.2016, after having discussed the provision of the N.D.P.S. Act including Section 52-A thereof, the Supreme Court has laid down that no sooner the narcotic drugs, psychotropic substances, controlled substances or conveyances are detected, the same should be forwarded to the Officer-In-Charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned is thereafter required to approach the Magistrate through an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be, as required under sub-section (3) of Section 52-A of the Act. The court emphasized that the sampling must be done under the supervision of the Magistrate in the manner discussed in paragraph Nos. 15 to 19 of the said order. Paragraph Nos. 15 to 19 of the decision referred to in paragraph 31.1 of the decision in case of ***Mohanlal*** (supra) read as under: -

“15. It is manifest from Section 52-A(2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a)



certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

18. Be that as it may, a conflict between the statutory provision governing taking of samples and the Standing Order issued by the Central Government is evident when the two are placed in



juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to re-examine the matter and take suitable steps in the above direction.

19. Mr. Sinha, learned Amicus Curiae, argues that if an amendment of the Act stipulating that the samples be taken at the time of seizure is not possible, the least that ought to be done is to make it obligatory for the officer conducting the seizure to apply to the Magistrate for drawing of samples and certification, etc. without any loss of time. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application to the superior officer in writing so that there is a certain amount of accountability in the entire exercise, which as at present gets neglected for a variety of reasons. There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time-frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or



procrastination as is mandated by sub-section (3) of Section 52-A (supra). We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions.”

18. In the present case, we find that there has been no compliance with the statutory safeguards under the N.D.P.S. Act, as laid down by the Supreme Court in case of **Mohanlal** (supra), wherein the Court has emphasized that the process of drawing of sample has to be in the presence and under the supervision of a Magistrate and the entire exercise has to be certified by him to be correct. There are other patent illegalities, in securing safe storage of the contraband, said to have been seized by the police. It is evident from the depositions of the witnesses that the material exhibits, in the form of ganja in various packets, produced before the trial court, did not bear the case number nor malkhana registration number. There was no signature of any police official over the packets certifying that the articles were the same which were seized by police personnel from the truck. Further, it is not the case of the prosecution that the appellants were apprehended



from the truck, rather, according to them, they were fleeing away from the truck and were subsequently apprehended from a place merely 500 meters away from the truck. From the evidence of the Block Development Officer (PW-1), it transpires that when he came, he found these appellants and the police officials inside the truck. The police, during the personal search of the appellants, are said to have recovered mobile phone and certain other documents in the nature Aadhar card and driving licence. These articles were not produced at the trial so as to connect them with the truck, which was apprehended by the police, from which the huge quantity of contraband was recovered. The absence of the signatures of these appellants on the seizure memo in the background of the prosecution's case that copies of the same were handed over to them also, assumes significance in the background of the submission advanced on behalf of the appellants that the said seizure list appears to be manufactured and in any case prepared behind the back of these appellants. In the wake of the aforesaid circumstances, added with the fact that there is no independent witness to prove the seizure and all the witnesses are members of the police party, we do not consider it safe to sustain conviction of these appellants recorded by the trial court in its



judgment of conviction dated 16.11.2019. The impugned judgment of conviction and the order of sentence deserve interference.

19. Accordingly, the impugned judgment of conviction dated 16.11.2019 and the order of sentence dated 21.11.2019 passed by the learned Additional Sessions Judge-Ist-cum-Special Judge, N.D.P.S. Act, Begusarai, in N.D.P.S. Case No. 04 of 2018, arising out of the same Balia P.S. Case No. 22 of 2018 are set aside. The appellants stand acquitted by giving them benefit of doubt.

20. These appeals are accordingly allowed.

21. The appellants are in custody. Let them be released forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Pawan-Sudha

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.08.2023.
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