

FORM A

IN THE COURT OF SPECIAL JUDGE, SONITPUR,
TEZPUR

Present: **Sri SK Ghosh, AJS,
Special Judge,
Sonitpur, Tezpur.**

[Date of the Judgment]
14-06-2022

[Spl (NDPS) Case No 05 /2005]

(Details of FIR/ Crime and Police Station)

Complainant :	STATE OF ASSAM OR Mr. Dhruvajyoti Sarma, Intelligence Officer, Directorate of Revenue Intelligence, Guwahati.
REPRESENTED BY	Learned Special P.P. Mr. M.R. Das & Mr.P.K. Sarmah.
ACCUSED PERSONS	1. Samsul Haque Talukdar @ Pakhi Miya. Son of- Lt. Md Asraf Ali. Resident of Vill- Borsagar. P.S.-Muraijar. District- Hojai, 2. Anjay Kr Singh. S/o – Sri Mrityunjay Kumar Singh. Resident of Harjikehata, PS – Navada, District – Arah, Bhojpur, Bihar.

REPRESENTED BY	Mr S.E Alom, Learned Senior Advocate & Mr. A. Bhuyan, Learned Advocate.
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FORM B

Date of Offence	05-09-2005
Date of FIR.	05.09.2005.
Date of Offence Report	12-08-2006
Date of Framing of Charges	20-08-2015
Date of commencement of evidence	18-02-2008
Date on which judgment is reserved	NIL
Date of the Judgment	14-06-2022
Date of the Sentencing Order, if any	NIL

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438,Cr.P.C.
Cultivator	Samsul Haque Talukdar	23.05.2008	04.09.2008	20(b)(ii) (c) of NDPS Act	Acquitted	Nil	3 months 11 days
Dependent	Anjay Kr Singh	31.03.2008	19.06.2008.	20(b)(ii) (c) of NDPS Act	Acquitted	Nil	2 months 18 days

Form C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Sri Monoj Kr Das	Other witness.
PW2	Sri Kashi Nath Saha	Other Witness.
PW3	Sri Dhrubajyoti Sarma	Other Witness.
PW4	Sri Arun Kr Baruah	Other Witness.
PW5	Sri Gautam Das	Other Witness
PW6	Sri Uma Shankar Kashyap	Investigating Officer.
PW7	Sri Subir Das	Other Witness

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No	Exhibit Number	Description
1	P.Ext -1,2 & 6/PW1-PW4	Inventory.
2	P.Ext-3 & 4/PW1-PW3	Seizure lists.
3	P.Ext-5/PW1-PW3	Panchnama
4	P.Ext-7/PW3	Ejhar
5	P.Ext-8/PW3	Seizure list of arms and ammunitions
6	P.Ext.9/PW3	FSL Report
7	P.Ext.10/PW3	Forwarding Letter
8	P.Ext.11/PW3	Complaint

B. Defence:

Sr. No	Exhibit Number	Description
NIL	NIL	Nil

C. Court Exhibits

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects:

Sr. No	Material Object Number	Description
1	M.O.1	12nos of live cartridge
2	M.O.2	AK Series Rifles
3	M.O.3	Extra Magazines
4	M.O.4(1) to 4(4)	Duplicate sample packets
5	M.O.5	Sample packet received back from FSL
6	M.O.6(1) to 6(12)	Army coloured pants
7	M.O.7(1) to 7(12)	Army coloured shirt
8	M.O.8(1) to 8(10)	Leather shoes
9	M.O.9(1) to 9(2)	Canvas shoes
10	M.O.10(1) to 10(4)	Driving License
11	M.O.11	Identity Card

J U D G M E N T

1. The prosecution's case as appears was that acting on specific information the Directorate of Revenue Intelligence (in short DRI) officers of Guwahati with assistance of Assam Police Personnel on 05.09.2005 at 9 p.m intercepted three numbers of Tata Truck at southern end of Kaliabhomra bridge on Brahmaputra river, Assam. The registration numbers of the truck were DL-6D/8935, DL-6D/3597 and DL-6D/2483. On search of the said trucks resulted in recovery of (1) 479 packets of Manipuri Ganja totally weighing 9208.6 Kgs {229 packets (4436.8 Kgs.) from truck bearing Regd. No. DL-6D/3597 and 250 packets (4771.8 Kgs) from Truck bearing regd. No. DL-6D/8935} (2) eight number of AK series rifles, (3) 12 rounds of 7.62 mm x 39" live ammunitions and (4) ten numbers of extra magazine. In this connection (i) S. Allen Kom Naga (ii) Bryan Rarsom (iii) Sanjay kr. Singh (iv) Ravi Sing (v) Umesh Singh (vi) Borjen Singh (vii) Jai Prakash Singh (viii) Bhagwan Mahato (ix) Kuljeevan Jha (x) Kamson Kabui (xi) Chingthing Komba and (xii) Ravi Chandra Singh were caught red handed and produced before the then learned CJM, Sonitpur, Tezpur along with seized vehicles, contraband preparing Inventory. Thereafter four numbers of samples each weighing 25 grams taken were sent to the forensic Science Laboratory, Kahilipara, Guwahati for chemical examination vide Letter dated 07.09.2005. The Arms and Ammunitions as mentioned above were handed over to the O/C, Tezpur P.S for initiating action under the relevant provisions of Arms Act. The said twelve persons were clad in fake Army Uniforms and after production before the learned CJM, Sonitpur, they were taken into the custody of DRI for ten days moving the Court of learned CJM, Sonitpur, Tezpur and on interrogation

thirteen more persons namely (I) Nanda Kishore Singh (II) Ito Ksh. Singh (III) H. Rajen (IV) Herojit Singh (V) Md. Samsul Haque Choudhury @ Munna Bhai @ Pakhi Miya (VI) Hyder Ali (VII) Shiv Sagar Rai (VIII) Anjay Singh @ Datol Singh (IX) Sri Sree Singh @ Mukhia and (X) Paksha Tankhul @ Joseph Naga (XI) Nurul Haque Siddique @ Karim Bhai @ Karim Khan (XII) Ram Chandra Jaiswal and (XIII) Surrinder Singh were found involved in the trafficking of the seized contraband.

2. In respect of the said incident DRI registering a case vide DRI Case No.2/NARC/GANJA/DRI/GAU/2005-06 dated 05.09.2005 investigated the case and during the course of investigation, examined the witnesses and collected chemical examination reports of the contrabands which gave positive results of cannabis. In course of investigation the actual owners of the vehicles could not identified and no person came forward to claim ownership. The vehicles have been given fake numbers and fake Army look to hoodwink the law enforcing agencies. On communication with the DIG, BSF, Shillong about the Identity Card recovered from accused Allen Kom Naga, it had been reported that no such Identity Card was issued from their office. On verification, the address of accused Sanjay Kr. Singh and Kuljeean Jha were found fake.

3. After completion of the investigation, prima facie case punishable u/s.20 NDPS Act had been found against seventeen number of accused persons. As such offence report was submitted against those seventeen accused persons namely 1. Allen Kom Naga, 2. Brojen Singh, 3. Kuljeevan Jha, 4. Chinthing Komba, 5. Ravi Ch Singh, 6. Joy Prakash Singh, 7. Ravi Singh, 8. Sanjay Kr Singh, 9. Brayon Parsom, 10.Kamsum Kabui, 11. Umesh Singh,

12. Siv Sagar Rai, 13. Samsul Haque, 14. Haider Ali, 15. Anjoy Singh, 16. Sri Singh @ Mukhiya and 17. Bhagaban Mahato for facing trial under Section 20(b) of NDPS Act showing accused Samsul Haque, Haider Ali, Anjoy Singh, Sri Singh @ Mukhiya and Bhagaban Mahato as absconder before the Court of learned sessions Judge directly being the Court of Sessions Judge is specially empowered to try the NDPS Act Cases. Thereafter this case was made over to this Court for trial. Hence, this case.

4. On issuance of process against the named 17 (seventeen) accused persons in the offence report, some of the absconder accused appeared and some did not. Again during trial some of the accused person remained absent and one accused was reported to be dead. However, it was found that 11 numbers of accused persons remained absent for long time inspite of several NBWA issued against them. Five accused person remained present all along before the Court. Considering the above facts and circumstances, case against those 11 (eleven) accused persons including the reported dead accused has been split up vide order dated 20.08.2015 for the interest of proceeding with the case.

5. Thereafter copies has been furnished to the present accused persons in compliance with the provision laid down u/s.208 Cr.P.C. Subsequent thereto the complainant side led evidence before charge and examined as many as seven witnesses out of the nine enlisted witnesses of the offence report. Defence opted not to cross examine the witnesses at that stage.

6. On consideration of the materials on record, evidence led by the complainant and hearing the learned counsel for both sides charge was framed against the five accused persons namely 1.Md Samsul Haque @ Pakhimiya, 2.Haidor Ali, 3.Shri

Singh @ Mukhiya, 4.Anjoy Singh and 5. Bhagaban Mahato under Section 20(b)(ii)C of the NDPS Act and the charge so framed was read over and explained to the accused persons by my learned predecessor to which they pleaded not guilty and claimed to be tried.

7. Against the order of framing charge, accused Haidor Ali and Shri Singh @ Mukhiya moved the Hon'ble High Court challenging the said order and the Hon'ble Gauhati High Court vide order dated 25-04-2017 passed in CrI. Petition No. 765/15 and CrI. Petition No. 57/16 quashed the proceeding against accused Haidar Ali and Shri Singh @ Mukhiya. As such the case proceeded against three accused persons namely 1.Md Samsul Haque @ Pakhi Miya, 2. Anjoy Singh and 3. Bhagaban Mahato only.

8. To substantiate the charge, the complainant side/prosecution already examined as many as 7(seven) PWs viz. 1.Sri Monoj Kr Das(PW1), 2.Sri Kashi Nath Saha(PW2), 3.Sri Dhrubajyoti Sarma(PW3), 4.Sri Arun Kr Baruah(PW4), 5.Sri Gautam Das(PW5), 6.Sri Uma Shankar Kashyap(PW6) and 7.Sri Subir Das(PW7). The witnesses were duly cross-examined by the defence after charge.

9. After completion of complainant's/prosecution evidence, accused were examined under Section 313 Cr.P.C. The defence plea is of total denial and they declined to adduce any evidence.

POINTS FOR DETERMINATION

(1) Whether on 05.09.2005 at about 9 p.m DRI Official along with Assam Police personnel intercepted three nos. of trucks at Kaliabhomora, Tezpur and recovered Manipuri Ganja (cannabis) which the accused persons possessed and transported for the purpose of sale and thereby committed the offense punishable u/s 20(b)(ii) C of the NDPS Act?

DECISION AND REASONS FOR THE DECISION :

10. I have heard argument advanced by the learned counsel for both sides at length and also have meticulously gone through the evidence on record both ocular as well documentary including other materials.

11. Learned Additional P.P submitted his written argument contending that accused (i) S. Allen Kom Naga (ii) Bryan Rarsom (iii) Sanjay Kr. Singh (iv) Ravi Sing (v) Umesh Singh (vi) Borjen Singh (vii) Jai Prakash Singh (viii) Bhagwan Maahto (ix) Kuljeevan Jha (x) Kamson Kabui (xi) Chingthing Komba and (xii) Ravi Chandra Singh were caught red handed. The said 12 persons were clad in fake army uniforms and on interrogation the apprehended persons confessed their guilt and involvement in the said trafficking of ganja and were arrested on 6.9.2005 and produced before the learned CJM, Tezpur, Sonitpur on 07.09.2005 along with samples of the seized Ganja, Fake Army Fatigues, seized Arms and Ammunition, Photographs of the

arrested accused and the accused person specifically admitted before the DRI Official that they have committed the offence. The confession made before the DRI Official is fully admissible in law, though the DRI Official is act like a police official, so far as arrest, seizure of the accused person are concerned but the statement which made before the DRI Official by the accused person are fully admissible in law. In this case as many as six witnesses specially stated that offence was committed by the accused person. Hence, prosecutor has proved the case beyond all reasonable doubts.

12. Countering the submission of the learned Special P.P, learned Senior Counsel representing the accused Samsul Hoque Choudhury submitted that there is no iota of substantive evidence against the present accused and the confession of co-accused is not substantive piece of evidence and as such same cannot be the basis of conviction of the accused. Learned counsel representing accused Anjay Singh seconded the submission made by the learned Sr. Counsel representing the accused Samsul Hoque Talukdar. Hence, they have prayed for acquittal of the accused persons. In support of the submissions of the learned counsel for the defence, the following decisions are relied upon:

- i. Surinder Kr. Khanna-Vs- Intelligence Officer, Directorate of Revenue Intelligence reported in (2018) 8 SCC 271.
- ii. Kishan Chand-Vs- State of Haryana reported in 2013 STPL 3390 SC.

- iii. Chanain Ranjit Meitel-Vs- Union of India reported in 2010 (3) GLT 361.
- iv. Bhagwan Singh and others-Vs- State of M.P reported in 2003 Cri.L.J 1262, and
- v. State of Delhi-Vs- Ram Avtar @ Rama reported in AIR 2011 SC 2699.

13. I have meticulously gone through the decisions relied upon by the learned Counsel for defence.

P O I N T No. 1.

14. Sri Monoj Kr Das (PW-1) deposed that on 05-09-2005 the Director of Revenue Intelligence, Tezpur along with two Customs Officers, one of which was one Sen Deka, came to shop of Kashi Nath Saha, situated at Tezpur Chawk Bazar. They gave their identity that one is Director of Revenue Intelligence and the other two persons are Customs Officers. They told them that they want some witnesses as they are going to detect some persons and they were asked to go towards Bhomoraguri Bridge and they went along with them at about 5:30 PM in the evening towards Bhomoraguri Bridge and arrived at other side of the Bhomoraguri Bridge at about 6:00 PM. They went along with the officers in the same vehicle. There were police personnel also. They waited there for the vehicle to come. At about 9:15 PM three trucks were coming from Kaliabor side one of which was 407 truck. The colour of the Trucks were also exactly like Army vehicle. Before reaching the Bridge, the officers gave signal to them to stop the vehicles. But the vehicles did not stop, rather became fast. The police intercepted the vehicles. The officers

told the occupants of the vehicle to come down from the vehicle. But for about 15 minutes they did not get down from the vehicle. After about 15 minutes one person in Army uniform with two stars with gun got down from the vehicle. The Revenue Intelligence Officer asked him to surrender the arms. The person surrendered the arms. The officer asked the person in Army uniform to ask the other person to surrender their arms. The occupants of the other Truck also were in Army uniform and arms. They surrendered their arms. The officers asked them what were there in the Trucks and they told that there are ganja. In the big Trucks there were ganja and the 407 vehicle was used like escort. In every vehicle, there were four persons, in total 12 persons in the Trucks. He identified the accused persons as the persons found in the Truck on that day. From the 407 vehicle accused Allen Kom Naga got down first who was in Army uniform with two stars. The vehicles and the persons were brought to the police station along with Arms and ammunitions and with other articles. In Tezpur Police Station they were asked to undress the uniform. The ganja were packed in some polythene packets. In total 479 packets were there. The packets were weighed and lists were prepared in presence of him. A separate list was prepared for 250 packets and other list was prepared for remaining packets. All the packets were weighed one by one. At that time over and above the Director of Revenue Intelligence personnel and Customs personnel, police, Kashinath Saha, himself and the accused persons were present.

15. Ext. 1 is the Inventory of 250 packets of ganja. From Ext. 1 (1) to Ext. 1 (4) are his signature. Kashinath Saha also put his signature in the Inventory (Ext. 2). S. Allen Kom Naga also put his signature in the Inventory (Ext. 2). The weight of the ganja

was found more than 9000 kgs. There were 8 rifles which were seized. The rifles were A.K. Series. The rifles were loaded with magazines. 10 extra magazines were found in 407 vehicle. Live ammunitions were also found. Mat. Ext. 1 are the 12 live cartridges (ammunitions). Mat. Ext. 2 (1) to Ext 2 (8) are the AK Series rifles with magazine. Mat. Exts. 3 (1) to 3 (10) are the extra magazines. All the articles were seized in his presence and in presence of Kashinath Saha. Accused S. Allen Kom Naga also put his signature in the seizure list and inventory. The seizing Officer prepared those inventories in their presence. Ext. 3 is another seizure list regarding arms and ammunitions. Ext. 3 (1) is his signature. Accused Allen Kom Naga also put his signature in Ext. 3 in his presence. The Seizing Officer prepared all the lists. Ext. 4 is another seizure list regarding Army dress etc., driving licence, Identity Card and three vehicles. Ext. 4 (1) is his signature. Kashinath Saha and S. Allen Kom Naga also put their signatures in Ext. 4. The Seizing Officer prepared this Ext. 4 in their presence. Four samples of the ganja in duplicate were taken from all those ganja weighing 25 gms.in each packet. Samples were sealed in their presence where PW1 and Kashinath Saha put their signatures. Ext. 5 is the Panchnama. The contents of Panchnama were read over to them and they put their signatures in panchnama finding those to be correct. Ext. 5 (1) to Ext. 5 (6) are his signatures. Kashinath Saha also put his signature on the Panchnama. S. Allen Kom Naga also put his signature in the Panchnama. The Panchnama was prepared by DRI officials. Ext. 6 is the another inventory. Ext. 6 (1) is his signature. The Seizing Officer also put his signature in the Inventory (Ext. 6). Accused S. Allen Kom Naga also put his signature in Ext.6.

16. During cross examination he has stated that he does not remember the date of occurrence. At the time of occurrence, he was having wholesale business of fish in Chowk Bazar and as such he came to Chowk Bazar, Tezpur. Bhomoraguri Bridge is about 10 KM from Chowk Bazar, Tezpur. There is a forest beat near the Bhomoraguri Bridge. Near the bridge, there are two dhabas. On the other side of the bridge also there are dhabas. There is a Mandir near the toll gate on the other side of the bridge. The revenue officer Sen Deka was known to him prior to the occurrence, as his brother was his friend. Kashinath Saha was having a shop near his shop in Chowk Bazar. Kashinath Saha asked him to accompany him to Kolia Bhomora stating that some people with army dress were apprehended near the Kolia Bhomora Bridge. Then he along with Kashinath Saha went to Kolia Bhomora Bridge with his motorcycle. No any other person accompanied them in his motorcycle. They went to the forest beat gate on the Tezpur side of the bridge. He has seen one army colour truck like vehicle along with the apprehended person at the side of the bridge on the Tezpur side. The customs officers took his signature on paper. He has seen 2 numbers of original AK-47 arms along with 7 numbers of duplicate AK-47 arms. There were some cartons in the vehicle but he does not know about the contents of those cartons. He has denied all the suggestions thrown by defence.

17. Kashinath Saha (PW2) stated in his evidence that he has a grocery shop at Chawk Bazar, Tezpur Town. On 5-9-2005 he was in his grocery shop. On that day at about 5:00 PM in the evening he was in his grocery shop and at that time the Director

of Revenue Intelligence and Customs Officers of Tezpur came to him and told him that two persons are required as a witness. They showed him their identity cards. He asked Monoj Kr. Das and he expressed his willingness to go with them. Inspectors of Directors of Revenue Intelligence and Customs Officials and police took them to other side of the Bhomoraguri Bridge to the Southern part of the River Bridge. They were taken in their vehicle and they arrived there at about 6:00 PM in the evening. In the Southern side of the Bridge, they were standing along with those officers. At about 9:00 PM three vehicles one being 407 and the other two were big vehicles arrived there. Those vehicles look like army vehicles. The Director of Revenue Intelligence Officials asked the driver of the vehicles to stop there, but they did not stop the vehicles and police advanced and intercepted the vehicles. The DRI asked the inmates of the vehicles to get down from the vehicle, but they did not. After 5/6 minutes, they got down from the vehicles. The person coming in small vehicle got down, and he was in Army dress and having two stars in his dress. He had AK 47 rifles with him. The first person told them in their own language and then only other persons got down from the vehicles. All persons were wearing Army dress. In each vehicle there were four persons – in total there were 12 persons. There were arms with 8 persons. He also identified the persons present in the court, were the persons who were apprehended by Revenue intelligence Officials. The name of one person of them was some 'Naga'. He does not know the names of other accused persons. In the first vehicle there were 10 magazines. In the other two vehicles there were ganja. The officers brought those persons along with the vehicles and articles to the Tezpur Police Station. In Tezpur Police Station,

those packets of ganja were unloaded. There were 479 packets wrapped by black polythene papers. Those packets were weighed. He weighed the articles in their presence. The officers prepared a list of packets. In one Inventory there were 250 packets. In other inventory there were mentioned of packets from Sl. No. 251 to 479. Ext. 1 is the Inventory of 250 packets of ganja. Ext. 1 (5) to 1 (8) are his signatures. Monoj Kr. Das and one of the accused 'Naga' by title put their signatures in the Inventory. The Inspector, who prepared the Inventory, also put his signature. Ext. 2 is another Inventory of Sl. No. 251 to 479. Exts. 2 (5) to 2 (8) are his signature. Monoj Kr. Das, accused persons and who prepared the Inventory put their signatures on the Inventory (Ext. 2).

18. All the packets were weighed one by one. 8 samples (four samples in duplicate) were taken from some of the packets. Each packet containing 25 gms. The sample packets were sealed and signatures of himself, Monoj Kr. Das and the officers were obtained. Mat. Ext. 1 are 12 bullets found from the accused persons. 10 extra magazines were also found from the small vehicle. In AK Series rifles also 8 magazine were fitted there. Exts. 2 (1) to 2 (8) are AK Series rifles with magazines. Mat. Ext. 3(1) to Mat. Ext. 3 (1) are the magazines. In the seizure list, he and Monoj Kr. Das put their signatures. Ext. 3 is the seizure list by which arms and ammunitions were seized. Ext. 3 (2) is his signature. Monoj Kr. Das, the Seizing Officer and one of the accused by title 'Naga' also put signature in Ext. 3. Ext. 4 is another seizure list regarding the dress, uniform, vehicles and other articles which were seized. He put signature in the said seizure list. Ext. 4 (2) is his signature. Monoj Kr. Das, the seizing

Officer and one of the accused by title 'Naga' also put their signatures on the Ext. 4. Panchnama was prepared and read over to him and he put his signature. Exts. 5 (7) to Ext. 5 (12) are his signatures. Monoj Das, Seizing Officer and the officer who prepared the Panchnama put their signatures in the Panchnama (Ext. 5). One of the accused by title 'Naga' also put his signature in the Panchnama. Ext. 6 is the Inventory. Ext. 6 (2) is his signature. Monoj Kr. Das, Seizing Inspector and one of the accused by title 'Naga' also put their signatures in Ext. 6.

19. During cross examination he has stated that at the time of occurrence he was having grocery shop at Tezpur Chowk Bazar. On that day he went to Laokhowa, the house of his sister. Laokhowa is on the other side of Brahmaputra River. While he returned from his sister's house, he saw one military truck standing on the side of Bhomoraguri River towards Nagaon side. Police and other officers asked him to stop. Police had showed him some arms, rifles. Police also brought him to police station and on the next day weighed some ganja etc. and took his signatures on papers. He does not know any other things. He does not remember the person who were apprehended by police. Police had taken his signatures on many papers. He does not know on what papers his signature were taken. He does not know how to read English except putting his signature. He does not know the contents of Ext.1 to Ext.6. He does not know the customs officers prior to the occurrence. He has denied all the suggestions of defence.

20. Dhruvajyoti Sarma (PW-3), the intelligence officer, stated that since 1998 he was serving as Intelligence Officer,

Directorate of Revenue Intelligence. On 5-9-2005 in the morning, he was in Guwahati, but on receiving some secret information, he along with other officers came towards Tezpur. They were divided in two groups; one group came to Tezpur and other group kept for surveillance at Kaliabor Tiniali. He was in the group who were at Kaliabor Tiniali. In the Tezpur group, there were Mr. K.C. Mahanta (now expired), Mr. Subir Das, Senior Intelligence Officer, Mr. Gautam Das, Sr. Intelligence Officer (SIO), Mr. A.K. Baruah, Intelligence Officer (I.O.) and Mr. U.S. Kashyap, Intelligence Officer (I.O.). Tezpur group took two witnesses and they went towards Southern end of Kalia Bhomora Bridge along with police personnel. They found three Trucks coming from Jakhalabandha side towards Tezpur side and they followed the vehicles and informed the other group about the vehicles. They tried to stop the vehicles at Southern part of Kalia Bhomora Bridge. But they did not soip. Then the vehicle of police party blocked the road. Then three vehicles stopped. Occupants of the Trucks were asked to surrender, but they did not surrender for a period of 10 minutes. After 10 minutes, one person in Army dress having two Stars on his uniform, came down with arms and surrendered. His name was Allen Kom Naga, who is present in the dock. He confessed that there were ganja in the two Trucks. The Registration Number of the Trucks were DL 6D/8935 and DL 6D/3597. He asked the other occupants of the Truck to surrender and then all the 12 accused persons including Allen Kom Naga, surrendered with their arms. They had 8 numbers of A.K. Series Rifles. There were 12 live ammunition and 10 extra magazines. The magazines were fitted in the arms. They searched the Trucks and found packets wrapped in polythenes that contained ganja. They brought the 12 persons

along with ganja, arms and Trucks to the Tezpur Police Station. In Tezpur Police Station, they counted the packets. About 479 packets of ganja were found. These packets were weighed. Total weights were found 9208.6 kgs. They seized the articles preparing Panchnama and Inventory. They prepared separate weighment sheets. Ext. 1 is the Inventory prepared by them. They mentioned in the list mentioning the weight of each packets. In Ext. 1 list, total weight of ganja were 4771.8 Kgs. Ext. 1 (8) to Ext. 1 (12) are his signature. In Ext. 1 they obtained the signature of Allen Kom Naga also. Ext. 2 is another Inventory of 229 packets of ganja total weight being 4436.8 kgs. Ext. 2 (9) to Ext. 2 (12) are his signatures. Sri A.K. Baruah, Intelligence Officer and Sri Ajay Sen Deka, Inspector, Central Excise, Tezpur also took the weights of the ganja. Ext. 2 (13) is the signature of Ajay Sen Deka, which is known to him. Ext. 2 (14) is the signature of Sri. A.K. Baruah, (I.O), which is known to him. Ext. 6 is the main Inventory and Ext. 1 and Ext. 2 are it's part. Ext. 6 (3) is his signature. They also obtained signatures of Allen Kom Naga and witnesses Kashinath and Monoj Das in Ext. 6. Vide Ext. 3, Arms and ammunitions were seized. Witnesses Kashi Nath Saha and Monoj Das also put their signatures in Ext. 3 as witnesses. Ext. 3 (3) is his signature. Accused Allen Kom Naga also put his signatures in Ext. 3. 12 pairs of army uniform, 12 pairs of shoes, 4 numbers of driving licenses, one identity card of Allen Kom Naga and 3 numbers of vehicles were seized vide Ext. 4. They prepared a panchnama which is Ext. 5. They obtained the signatures of Kashi Nath Saha and Monoj Das in Ext. 5. Ext. 5 was prepared by Sri A.K. Baruah, (I.O.) Ext. 5 (13) to Ext. 5 (18) are his signatures. All the documents were produced before the learned Chief Judicial Magistrate, Sonitpur, Tezpur. All the 12

accused persons were arrested and produced before the Learned Chief Judicial Magistrate, Tezpur. They handed over the arms and ammunitions to O.C., Tezpur Police Station for taking a case under Arms Act. Ext. 7 is the ejahar filed by PW-3 to O.C., Tezpur Police Station regarding arms and ammunitions. Ext. 7 (1) is his signature. Ext. 8 is the seizure list of arms and ammunitions prepared by police in connection with G.R. Case No. 1536/05. Ext. 8 (1) is his signature. Four samples of the ganja were taken in duplicate. Four samples in duplicate were sent to Forensic Science Laboratory for chemical analysis. Reports from FSL was received which shows that sample gave positive tests for cannabis (ganja). Sample packets were closed and sealed in presence of witnesses. Mat. Exts. 4 (1) to 4 (4) are the duplicate sample packets. Mat. Ext. 5 is the sample packets received back from the FSL along with the reports. Ext. 9 is the report of Forensic Science Laboratory. Ext. 10 is the forwarding letter issue by the F.S.L. to the Intelligence Officer. Ext. 6 (1) to Ext. 6 (4) are the photographers of the accused persons along with the ganja, arms and ammunitions etc (under objections). Material Exhibits 1, 2 and 3 are arms and ammunitions which were seized by him. Mat. Exts. 6 (1) to 6 (12) are the army coloured pants. Mat. Ext. 7 (1) to 7 (12) are the army coloured shirts. Mat. Exts. 8 (1) to 8 (10) are leather shoes. Mat. Exts. 9 (1) to 9 (2) are the Canvas shoes. Mat. Exts. 10 (1) to 10 (4) are the driving license. Mat. Ext. 11 is the Identity Card. Mat. Exts. 1, 2 and 3 are arms and ammunitions which were seized vide seizure list (Ext. 3). Mat. Exts. 6 to 11 are articles seized vide Ext. 4. The seized vehicles are not in running condition. These are damaged lying in Guwahati, which cannot be brought to this court. Ext. 11 is the Complaint given by him to the learned Chief Judicial

Magistrate, Sonitpur, Tezpur after arrest of the accused persons and seizure of articles. Ext. 11 (1) is the Annexure. Ext. 11 (2) and Ext. 11 (3) are his signatures.

21. Arun Kumar Baruah (PW-4) stated that on 05-09-2005 he was working as Intelligence Officer, DRI, Guwahati. On that day, he along with his colleague officers namely Sri K.C Mahanta, Assistant Director, Sri Tarun Kumar Dutta, Intelligence Officer, Sri Subir Das, Senior Intelligence Officer, DRI, Sri Gautam Das, Sr. Intelligence Officer, DRI, Sri Dhrubajyoti Sarmah, Intelligence Officer, DRI and Sri Uma Sankar Kashyap, Intelligence Officer, DRI came to Tezpur. Before coming to Tezpur they formed two groups, in one group Sri Tarun Kr Dutta and Sri Dhrubajyoti Sarmah were there along with driver and they were in Surveillance duty at Kaliabhomora Bridge and they were here in Tezpur in other group. They along with other officers of the other groups proceeded to Tezpur. One of their colleagues had some special information that three truck would be coming along with contraband articles. So, they took the help of police from Tezpur police station. They also took two independent witnesses. Then, they proceeded towards Southern end of the Kaliabhomora Bridge and they reached there at about 6.30 PM. On the same day, they were waiting there till 9.00 PM. The three trucks came from Southern side towards Tezpur. They gave stop signal to the truck, the first truck tried to flee away, but, the police personnel blocked the road and ultimately, the trucks were stopped there. They asked the occupants of the trucks to get down from the trucks. They found the person of the first truck having AK Series rifles. The first person in the first truck namely Allen Kom Naga was holding one arm. They asked the said

person to ask other persons of the other trucks to get down and lay down their arms and to surrender. Said Allen Kom Naga confessed that out of the three trucks, two trucks were loaded with Manipuri Ganja and there were about 450 packets in the truck. There were all total 12 persons in the truck and there were eight numbers of AK series rifles fitted with magazines, 10 extra magazines, and total 12 rounds of live ammunitions were recovered. All the three trucks were brought to Tezpur Police Station along with loaded ganja and arms and ammunitions at about 10 PM. The Ganja packets were unloaded and there were total 479 packets of ganja found. Weighment of all these packets was taken in presence of independent witnesses and in presence of the accused persons. After weighing there were total 9208.6 kgs (net) of ganja found. They prepared two weighment sheets mentioning the quantity of articles in each packet. Ext.1 & Ext.2 are the said list and Ext. 2(14) is his signature. He supervised the weighment of the articles. All the articles including ganja, arms and ammunitions, dresses of accused persons were seized. Inventory was prepared. From the seized ganja 4 samples of ganja containing 25 gms.each were taken from different packets in duplicate. The ganja samples packets were sealed in presence of accused persons and the independent witnesses. M.Ext.4(1) to M.Ext.4(4) are the duplicate samples. 4 samples were sent to FSL, Guwahati for chemical analysis. The 12 accused persons were arrested and produced before the learned CJM, Sonitpur, Tezpur along with the seized articles. He prepared the Panchnama (Ext.5) as directed by his Assistant Director. Ext.5(19) is his signature. He read over the contents of the Panchnama to the 'Panchas' and they put their signatures in every page of the Panchnama.

22. In his cross examination, he has stated that he came to know the name of one of the accused namely Allen Kom Naga. He does not know the names of other accused. He was not the seizing officer. The accused person and the seized articles were produced before the Court on 07.09.2005. The seized articles are not in the Court today. He has also denied the suggestions thrown by the defence.

23. Gautam Das (PW-5) deposed that on 05-09-2005 he was serving as Sr. Intelligence Officer, Directorate of Revenue Intelligence, Guwahati. On that day, their officer received secret information that three trucks moved out from Imphal along with ganja and will be reaching Kaliabor on that day. Immediately, they all officers were divided into two groups. Intelligence officer were there along with police staff of Jakhalabandha police Station and they were waiting in the Southern end of Kalia Bhomora Bridge and the other group were waiting at the Kaliabor Tiniali along with police staff of Jakhalabandha police station. There were two independent witnesses, namely Monoj Das and Kashinath Saha in their team. They reached Kaliabhomora Bridge at 6.30 PM and waiting there. At about 9.00 PM, three truck in olive green colour were proceeding from Kaliabor Tiniali towards Tezpur and reached the spot where they were waiting. Immediately they asked them to stop the vehicle, but, the first truck tried to flee away and police staff immediately blocked the road and all the three vehicles stopped there. The other groups also arrived there following the trucks. They found the inmates of the trucks in army dresses having AK Series rifles in their hands. They asked them to get down from the vehicle

and after 10 minutes one person who identified himself to be Allen Kom Naga got down from the truck who was having army dress and laid down the arms and he surrendered. On enquiry he confessed that there was ganja in the vehicle. Then, they asked the said persons to instruct other inmates of the truck to get down from the vehicles and to lay down their arms and accordingly, they all got down from the vehicles and laid down their arms. There were total eight nos. of AK Series rifles fitted with magazines and 12 rounds of live ammunitions found. Ganja blocks were wrapped with polythene papers were found inside the trucks and 10 nos. of extra magazines and were also found in the trucks. One identify card of Allen Kom Naga was also found. They brought the trucks and those 12 persons along with Ganja and arms and ammunitions to Tezpur police station and there Ganjas were unloaded from the trucks and found 469 packets of ganja in total. The ganjas were weighed and found 9208.6 kgs of ganjas in total. Thereafter, Sri Dhrubajyoti Sarmah seized the recovered Ganja, arms and ammunitions, trucks, dresses, 10 pairs of boots, 12 pairs of army uniform, one identity card of Allen Kom Naga, 4 driving license in presence of the independent witnesses, accused persons and the police personnel. From the seized ganja 4 sample packets in duplicate of 25 gms. each were taken for analysis by FSL. They handed over the arms and ammunitions to Tezpur PS for registering a case under Arms Act. All the 12 accused persons were arrested and produced in the Court of learned Chief Judicial Magistrate, Sonitpur, Tezpur. After weighment of the articles, inventories were prepared by their officer Sri AK Baruah and Sri D.J Sarmah and some other officers. Ext.1 & Ext.2 are the inventory list of seized articles.

24. During cross-examination he has denied that they have not arrested 12 persons in connection with this case and they have not found any contraband and arms and ammunition from the possession of the accused persons.

25. Sri Uma Sankar Kashyap (PW-6) stated that out of the accused persons, accused Allen Kom Naga was the group leader of the team. On the date of detection, Allen Kom Naga was wearing fake army uniform and carrying AK series rifle which was having six round of ammunition loaded in it. On 05-09-2005, he along with other officers led by the then Assistant Director Late Kiron Chandra Mohon and other officers came to Tezpur via Nagaon with split into two teams. Their Assistant Director and other officers contacted the local police of Tezpur for help. They also talked to two independent witnesses namely Monoj Das and Khashi Nath Saha. After that at around 5.00 PM, they along with police and the independent witnesses moved towards Kaliabhomora bridge and on the Southern end, they stopped and waiting for development. At around 9.00 PM, three army coloured trucks were coming and they signalled the trucks to stop, but, the foremost truck tried to break the signal but, the police personnel from Tezpur blocked the road with one of their 407 small trucks. After that they shouted from a little distance asking them to come down and surrender. After ten minutes the door of the foremost truck was opened and one man having two stars on his uniform came down and surrendered before them. The person identified himself as Allen Kom Naga. Thereafter, other 11 accused persons came down from the vehicle and surrendered and they laid down their arms (in total eight nos of

AK series rifle). They also laid down 10 extra magazine and 12 rounds of live ammunitions. Then the trucks were checked and found the trucks were loaded with ganja. Thereafter, the trucks were brought along with the accused, arms and the ganjas to Tezpur Sadar police station. Each of the packets were weighed and weighment sheets were prepared for tabulating the total quantity. In total 479 packets were recovered and total weight of the ganja was 9.200 kgs plus. Then all the goods were seized including the arms and ammunition which was handed over to police for filing case under the relevant Acts. The goods were produced before the learned Chief Judicial Magistrate, Sonitpur and the accused persons were remanded to DRI custody by the learned CJM, Sonitpur, Tezpur for ten days. Thereafter, Tarun Kumar Dutta(expired), the IO of this case, had filed the final complaint. After the death of Tarun Kumar Dutta, PW6 was appointed as the IO of this case as per direction of the Senior Intelligence Officer. The team leader (Allem Kom Naga) stated during interrogation that the goods were brought from one place called Sana Gaithal in Akhrul district of Manipur and goods were to go to UP, Bihar boarder. The sellers of the goods were one Nanda Kishore Singh, Ito Singh and one Rajan. During the course of interrogation, they also mentioned that one Pakhi Mia @ Samsul Haque @ Munna Bhai and another Hydar Ali and Nurul Haque Siddique were also owners of Arms and trucks and they were to receive the goods somewhere at Rongia. The group leader also stated that those goods, arms and ammunitions were brought from the house of one Paksha Tankhul @ Joseph Naga. He identified the seized rifles before the Court.

26. During cross examination he has stated that he was not investigating officer of this case. Due to death of earlier investigating officer Tarun Kumar Dutta, he was investigating the case and he used to deal with the matter regarding the correspondence received with the case. He has not seized any item in connection with this case He has denied the suggestions thrown by the defence.

27. Sri Subir Das (PW-7) deposed in his evidence that on 05-09-2005 he was posted as Senior Intelligence Officer in the Directorate of Revenue Intelligence, Guwahati. On that day, he received secret information that some people would be carrying some ganja with arms and ammunitions to Tezpur. Then, they the DRI officials of Guwahati with the help of Assam Police made an ambush on the Southern end of Kaliabhomora Bridge. Another team of their officials were also waiting at Kaliabor Tiniali. The DRI officials stationed at Kalibor Tinalli informed them that three trucks defied their signals and they were proceeding towards Tezpur via Kaliabhomora Bridge. At around 9.50 PM, the trucks approached the Southern end of the Kaliabhomora Bridge and they along with the police officials stopped the said three trucks. After ten minutes, one person named Allen Kom Naga came down from the truck and surrendered before them with 12 persons. During search of the trucks 8 nos. of AK Series rifles, 12 round of live ammunitions were recovered from the occupants of the truck and also found in total 479 packets of ganja weighing about 9208.6 kgs in total from the said trucks. The trucks along with the ganja, arms and ammunitions, the accused persons were brought to Tezpur P.S for further formal official formalities. The inventories of the

goods were prepared and they seized the same. The accused persons were arrested and produced before the learned Chief Judicial Magistrate, Sonitpur, Tezpur. The accused persons were taken for 12 days custody by them from the learned CJM, Sonitpur, Tezpur for further interrogation. On interrogation, Allen Kom Naga stated that the ganja along with the arms were loaded at Samakhati of Ukhrul district of Manipur from the residence of one Josheph Naga. Mr Allen Kom Naga had further stated during interrogation that ganja were to be taken to Rangia where some other people will take over the goods for further transportation to Bihar. The arms and ammunitions were seized and handed over to the State police for initiating action under Arms Act. PW7 identified the arms and ammunitions as M.Exts. 1,2& 3.

28. During cross examination he has stated that durng search and seizure he did not personally prepared the seizure list or search list nor he put signature in those papers. The accused were apprehended on the southern end (Koliabor end) of Koliabhomora Bridge. He has denied all the suggestions thrown by the defence.

29. Although Offence report has been submitted herein this case against as many as seventeen accused persons but case has been split up for eleven accused persons for the want of their appearance whereas one accused has died. So the case proceeded against five accused persons only and after framing of charge, two accused persons moved the Hon'ble High Court challenging the order of framing charge and the Hon'ble High Court has been pleased to quash the proceeding against those

two accused persons namely Haidor Ali and Shri Singh @ Mukhiya. As such the case proceeded against three accused persons but subsequently another accused namely Bhagaban Mahato also remained absent and the case against the said accused has been filed. Consequently, now the matter for adjudication before this Court is relating to two accused only viz. Samsul Hoque Talukdar and Anjay Singh.

30. Before marshalling the evidence so far the present accused are concerned, let us first have a look on the foundational facts of the Offence Report against these accused, which is reproduced below:

31. In Para-54 of the offence report it is mentioned that Md. Samsul Haque Talukdar has been made accused in this case as he was one of the owners and main Gang leaders behind the loading transporting and trafficking of the seized 479 packets of Manipuri Ganja weighing 9208.6 Kgs, 08 Nos. of AK series rifles and 12 rounds of live ammunition and 10 nos. of extra magazines as revealed from the statements given by the arrested accused. In para-56 also same thing has been repeated viz. Anjay Singh has been made accused in this case as he was one of the owners and main Gang leaders behind the loading transporting and trafficking of the seized 479 packets of Manipur Ganja weighing 9208.6 Kgs, 08 Nos. of AK series rifles and 12 rounds of live ammunition and 10 nos. of extra magazines as revealed from the statements given by the arrested accused. PW-6 being subsequent I/O of this case in his evidence stated that the team leader (Allem Kom Naga) stated during interrogation that the goods were brought from one place called

Sana Gaithal in Akhrul district of Manipur and goods were to go to UP, Bihar boarder. The sellers of the goods were one Nanda Kishore Singh, Ito Singh and one Rajan. During the course of interrogation, they also mentioned that one Pakhi Mia @ Samsul Haque @ Munna Bhai and another Hydar Ali and Nurul Haque Siddique were also owners of Arms and trucks and they were to receive the goods somewhere at Rongia.

32. Now moving to the evidence of the PWs, it appears that none of the PWs have whispered mentioning the names of the accused Samsul Hoque Talukdar and Anjay Singh that they were caught red handed with the truck on the date of occurrence. However, from the above piece of evidence of PW-6 it appears that accused Allem Kim Naga stated before him that accused Samsul Hoque Talukdar was one of the owners of the Arms and Trucks and supposed to receive the goods somewhere at Rangia. But independently there is no substantive piece of evidence implicating the accused Samsul Hoque Talukdar and Anjay Singh.

33. In the case of Surinder Kumar Khanna –Vs- Intelligence Officer, Directorate of Revenue Intelligence reported in (2018) 8 SCC 271, the Hon'ble Apex Court held that:

"13. In the present case it is accepted that apart from the aforesaid statements of co-accused there is material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court, such a confessional statement of a co-accused cannot by itself be taken as a

substantive piece of evidence against another co-accused and can at best be used or utilised in order to lend assurance to the Court.

14. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused.....”

34. Herein this case also there is no independent substantive piece of evidence is forthcoming from the witnesses examined by the prosecuting agency but merely a confessional statements of a co-accused is on record speaking involvement of the present accused Samsul Haque Talukdar, which cannot be considered as evidence warranting conviction of the accused persons before this Court in the light of the decision referred to above.

35. From the above discussion, it follows that there is no direct substantive piece of evidence implicating the accused Samsul Hoque Talukdar and Anjay Singh for commission of the alleged offences of the case in hand apart from confession statements of co-accused. So, a reasonable doubt is left which goes in favour of the accused persons.

36. For the reasons discussed herein above, I am of the considered opinion that the accused Samsul Haque Talukdar and Anjay Singh deserves acquittal awarding benefit of doubts so far this case is concerned.

37. Accordingly the accused are acquitted awarding benefit of doubts from the charge of this case and set them at liberty forthwith.

38. Bail bonds extended for six months.

39. Seized Trucks be confiscated to the State, seized articles be destroyed in due course of law following due procedure.

40. Judgment is pronounced and delivered in the open Court preparing on separate sheets and the same is tagged with the case record.

41. Given under my hand and seal of this Court on this 14th day of June,2022 at Sonitpur, Tezpur.

(S.K. Ghosh)

Special Judge, Sonitpur, Tezpur.