Present:

Mr. Justice Raziuddin Ahmed

Criminal Appeal No. 2314 of 2005

Md. Zahedul Huq @ Helal

-------- Appellant

-Vs-

The State, represented by the Deputy Commissioner, Bogra

---- Opposite Party

No one appears

----For the Appellant

Mr. Md. Asad Uddin, D.A.G with

Mr. Md. Habibur Rahman Sarker, A.A.G and

Mr. Kazi Mohammad Moniruzzaman, A.A.G

---- For the State

Heard on 30.04.2026, 07.05.2026 and Judgment on 17.05.2026

This appeal, preferred under section 410 of the Code of Criminal Procedure, 1898, is directed against the judgment and order of conviction and sentence dated 30.05.2005 passed by the learned Special Sessions Judge, Bogra, in Special Sessions Case No. 36 of 2004, whereby the accused-appellant was found guilty under section 19(1), serial No. 7(ka) of the Table to the Narcotics Control Act, 1990, and sentenced to suffer rigorous imprisonment for 1 (one) year.

The prosecution case, in short, is that on 28.11.2001 at about 22:45 hours, Md. Rafiqul Islam, Deputy Director, Department of Narcotics Control, Sadar Circle, Bogra, lodged an FIR stating, inter alia, that on the basis of secret information, he along with departmental staff and police force went to the house of the accused-appellant at about 13:00 hours on the same day. They surrounded the house and, in presence of witnesses, allegedly recovered 250 grams of dry ganja kept in a polythene bag, along with 4 bowls of hookah/kalki and 1 piece of wood, from the bedroom of the accused-appellant. A seizure list was prepared at the place of occurrence and signatures of the witnesses were obtained thereon. The accused-appellant was arrested from the place of occurrence. A sample of the recovered ganja was sent for chemical examination. The estimated value of the seized ganja was Tk. 2,000.

After investigation, the investigating officer submitted charge sheet No. 326 dated 29.05.2002 against the accused-appellant under section 19(1), serial No. 7(ka) of the Table to the Narcotics Control Act, 1990.

The learned Special Sessions Judge framed charge against the accused-appellant under the aforesaid provision of law. The charge was read over and explained to him, whereupon he pleaded not guilty and claimed to be tried.

At the trial, the prosecution examined 4 witnesses, while the defence examined none.

Upon conclusion of trial, the learned Special Sessions Judge, Bogra by the impugned judgment and order dated 30.05.2005, convicted the accused-appellant under section 19(1), serial No. 7(ka) of the Table to the Narcotics Control Act, 1990, and sentenced him to suffer rigorous imprisonment for 1 (one) year.

Being aggrieved by and dissatisfied with the said judgment and order of conviction and sentence, the accused-appellant preferred the instant appeal, which was admitted on 27.06.2005.

At the time of hearing, none appeared on behalf of the accused-appellant. Since this is an old criminal appeal and the lower court records are before this Court, the appeal is taken up for disposal on merit.

Mr. Md. Habibur Rahman Sarker, learned Assistant Attorney General appearing for the State, submits that the prosecution has been able to prove the charge against the accused-appellant beyond reasonable doubt. He further submits that the learned trial Court, upon proper appreciation of the evidence on record, rightly convicted and sentenced the accused-appellant, and therefore, the impugned judgment and order calls for no interference by this Court.

I have heard the learned Assistant Attorney General for the State, perused the impugned judgment and order, the evidence on record, the FIR, seizure list, charge sheet and other materials available in the lower court records.

The only point for determination in this appeal is whether the prosecution has been able to prove beyond reasonable doubt that the alleged ganja and other incriminating articles were recovered from the conscious and exclusive possession or control of the accused-appellant.

It is a settled principle of criminal jurisprudence that the burden lies squarely upon the prosecution to prove its case beyond reasonable doubt. Such burden never shifts upon the accused. The accused is entitled to the benefit of every reasonable doubt arising from the evidence and circumstances of the case.

In a case under the Narcotics Control Act, 1990 recovery from the conscious and exclusive possession or control of the accused is a vital ingredient. Mere production of a seizure list or proof that an article is narcotic in nature is not sufficient unless the prosecution proves, by reliable and trustworthy evidence, that the recovered article was in fact seized from the possession or control of the accused.

PW 1 Md. Rafiqul Islam, the informant, stated in his deposition that on 28.11.2001 at about 13:00 hours, he along with his force went to the house of the accused-appellant at Brindaban Para and recovered 250 grams of ganja kept in a polythene bag from the bedroom of the accused-appellant. He stated that he prepared the seizure list at the place of occurrence in presence of witnesses and sent a sample of the seized ganja for chemical examination. He also stated that the accused-appellant was arrested from the place of occurrence.

However, in cross-examination, PW 1 admitted that the seizure-list witnesses were residents of different villages. He further admitted that he did not ask the local people about the accused-appellant. He also admitted that there was a shop in front of the room of the accused-appellant and that many people were present in front of that shop. Despite the presence of local people, no respectable local person, neighbour or shopkeeper was made a seizure-list witness.

PW 2 Dewan Abdus Sattar, Assistant Sub-Inspector, Department of Narcotics Control, stated that he accompanied the raiding party and that a polythene bag containing 250 grams of ganja, 4 bowls of hookah/kalki and 1 piece of wood were recovered. But in cross-examination he stated that he did not put his signature

on the seizure list. More importantly, he stated that PW 1 entered into the house of the accused-appellant and, after about half an hour, came out with the ganja. This statement creates serious doubt as to whether PW 2 himself saw the actual recovery from inside the house or from the possession or control of the accused-appellant.

PW 3 Mohammad Abu Sayed is the only examined seizure-list witness. He stated in examination-in-chief that the Narcotics Control Department and police went to the house of the accused-appellant, searched the house, recovered 250 grams of ganja along with 4 kalkis, prepared a seizure list and obtained his signature.

But his cross-examination materially shakes the prosecution case. He stated that the police caught the accused-appellant from the bridge near Mohila College. He further stated that he did not know the house of the accused-appellant. He also stated that he was cutting his hair in a salon near the bridge of Mohila College when police took him to the place of occurrence and obtained his signature on the seizure list. These statements make it unsafe to rely upon him as a genuine witness to recovery. His evidence does not establish that the alleged ganja and other articles were recovered from the conscious and exclusive possession of the accused-appellant in his presence.

PW 4 Mohammad Mosharraf Hossain, the investigating officer, stated that he took up the investigation on 24.04.2002,

visited the place of occurrence, prepared a sketch map and index, examined witnesses, recorded their statements under section 161 of the Code of Criminal Procedure, perused the chemical examination report and submitted charge sheet. In cross-examination, he admitted that there was a shop in front of the house of the accused-appellant.

Thus, from the evidence of PW 1, PW 2, PW 3 and PW 4, it appears that the prosecution case suffers from serious infirmities. The seizure-list witness examined by the prosecution does not inspire confidence. He does not clearly support recovery from the accused-appellant's possession or control. Rather, his cross-examination suggests that he was brought from a salon near Mohila College bridge and his signature was obtained later. PW 2 also does not clearly prove that he saw the recovery being made from the accused-appellant's bedroom. The non-examination of the other seizure-list witnesses, namely Mohammad Siddique Hossain and Jahangir Alam, further weakens the prosecution case, particularly when the only examined seizure-list witness has not supported the recovery in a reliable manner.

It is true that the evidence of official witnesses cannot be discarded merely because they are official witnesses. However, where the evidence of such witnesses is not corroborated by reliable independent evidence, and where the sole examined seizure-list

witness creates serious doubt about the manner of recovery, the Court must examine the prosecution case with caution.

In the present case, although PW 1 admitted that many persons were present in front of the shop situated near the house of the accused-appellant, none of those local persons was made a witness. No neighbour or respectable local inhabitant was examined to prove that the room searched was in the exclusive possession or control of the accused-appellant. The prosecution has also failed to remove the doubt created by PW 3's statement that the accused-appellant was caught from the bridge near Mohila College.

The chemical examination report, even if accepted, may prove the nature of the seized article, but it cannot by itself prove recovery from the conscious and exclusive possession of the accused-appellant. The foundational fact of recovery from the accused-appellant's possession or control must first be proved by cogent and reliable evidence. In the present case, that foundational fact has not been proved beyond reasonable doubt.

In the case of *Saiful Islam Md. and another vs. The State*, reported in 10 MLR (HC) 308, it was held that the legal burden of proof always remains upon the prosecution and that in criminal cases the prosecution must prove the guilt of the accused beyond reasonable doubt. It was further held that presumption, conjecture

and surmise cannot take the place of legal evidence, and conviction on the basis of shaky and unreliable evidence is not proper or lawful.

Applying the above principle to the facts and circumstances of the present case, I am of the view that the evidence on record is not sufficient to sustain the conviction of the accused-appellant. The prosecution has failed to prove beyond reasonable doubt that the alleged 250 grams of ganja and 4 bowls of kalki were recovered from the conscious and exclusive possession or control of the accused-appellant.

The learned trial Court failed to properly consider the material contradictions, infirmities and doubtful circumstances in the prosecution case and wrongly convicted and sentenced the accused-appellant.

Accordingly, the appeal is allowed.

The judgment and order of conviction and sentence dated 30.05.2005 passed by the learned Special Sessions Judge, Bogra, in Special Sessions Case No. 36 of 2004, convicting the accused-appellant under section 19(1), serial No. 7(ka) of the Table to the Narcotics Control Act, 1990, and sentencing him to suffer rigorous imprisonment for 1 (one) year, is hereby set aside.

The accused-appellant is acquitted of the charge levelled against him.

He is discharged from his bail bond.

Send down the lower court records at once along with a copy of this judgment.

S.Naher/ABO