Devidas and Others Vs. State of Maharashtra

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Court : Mumbai

Decided On : Mar-26-1981

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Judge : Sharad Manohar, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 395 and 411; Evidence Act - Sections 8, 24 and 27

Appeal No. : Criminal Appeal No. 476 of 1978

Appellant : Devidas and Others

Respondent : State of Maharashtra

Judgement :

1. This is an appeal by the original accused Nos. 1 to 5 who have been convicted by the learned Sessions Judge, Parbhani of the offence under S. 395 of the Penal Code. Since I am allowing the appeal, it is not necessary to state the sentences imposed on each of the accused.

2. The prosecution case was as follows :-

Baburao Ganpatrao Gaikwad, P.W. 1, is the resident of the village Walur where weekly bazar is held. He claims to be quite affluent person. He has a joint Hindu family and lives with his brother. Both the brothers are married. Paternal aunt of

the said P.W. 1 is also residing with him.

On the night of 17th December 1976, at about 1.00 a.m. about 15 to 16 unknown persons committed dacoity in the house of P.W. 1. They broke open the house and smashed the electric bulbs. Upon the noise P.W. 1 and his brother rushed out from he upper floor where he was sleeping. He was mercilessly beaten by the dacoits and, likewise, other members in the family were also beaten. The dacoits looted the house by helping themselves with various articles such as utensils, jewellery, etc. and cash of Rs. 3500/-. After the dacoits took to their heels, P.W. 1, lodged a report at the Police Station, Manwat, which is just a few miles away from Walur, the next day i.e. on 18-12-1976. It is the case of the prosecution, that while the dacoits made their escape, at the outskirts of the village, they left certain articles such as empty bags and utensils etc. After the FIR was registered the Police visited the place of offence and also saw the spot near about the outskirts of the village where the said articles were lying. The police ordered that those articles should not be touched by anyone else and brought into service Dogs' Squad on 20-12-1976, The dog took the police to the hut accused No. 3 on the very day. Thereafter the hut of accused No. 3 which were taken into their possession by the Police under panchnama Exhibit 16. On 25-12-1976, the houses of accused Nos. 1 and 2 were also searched and certain articles were recovered from their houses. Panchnama in respect of articles found in the house of accused No. 1 is at Exhibit 17 and panchnama in respect of the articles found in the house of accused No. 2, is at Exhibit 18.

It is the further contention of the prosecution that all the accuse were arrested on 28-12-1976 and on that very day all the accused agreed to show the place where they had concealed certain articles. The prosecution wants the Court to believe that all the accuse done after the other, made statements before two celebrated panchas. The first was P.W. 8 and the other was P.W. 10. The contention was that each of the accused, one after the other, made statements before the Panchas that he would point out the places where he had concealed the articles. The police took each of the accused, one after the other, in the company of the same panchas to the spot to which the relevant accused directed them. The contention of the prosecution is :-

(a) That accused No. 1 took the Police party and the panchas to his house and that behind the house, below a tree, he dug up and took out certain articles which were taken into their possession by the Police under the panchnama Ex. 30.

(b) That accused No. 2 took the Police Party and the panchas in the Police jeep to his own field and that he dug up a portion below Bel tree in the field and took out certain articles which were taken by the Police in their possession under the Panchnama Exhibit 32.

(c) That accused No. 3 followed suit. He took the Police party and the panchas to his hut in his field and dug out a portion in the hut and took out certain articles which were taken by the Police in their possession under the panchnama Exhibit 28.

(d) That accused No. 4 followed similar suit. He took them to his field, dug out under a Bel tree and took out certain articles which the Police took in possession under the panchnama Exhibit 22.

(e) That accused No. 5 similarly took the entire Police Party and Panchas to the field of accused No. 4 and he dug up below a Palas tree and took out certain articles which the Police took in possession under the Panchnama Exhibit 20. The investigating Police thereafter practically put a full-stop to the investigation with an evident sense of fulfilment. In due season the charge-sheet was framed against all the accused and that is how all the accused faced the music of the trial of the offence mentioned above.

3. The defence of the accused was one of total denial. They denied that they took part in the dacoity. They denied that any articles were discovered by them alleged by the prosecution. They contended that all of them were arrested by the Police on 20-12-1976. They stated that they had gone to village Bori for marketing purposes. After their purchases were over, they were coming back by a bus when the P.S.I made them to get down and they were detained in the Police Station. Accused Nos. 1 and 2 are brothers. Accused Nos. 3, 4 and 5 just happened to be travelling with them. All of them were detained at the Police Station and were mercilessly beaten. They denied having pointed out any property and denied any concern with

the incriminating articles. Some of the articles such as Dhoti etc, were claimed by them to be of their own but articles such as jewellery, utensils etc., were wholly disowned by them and they denied that they had discovered the same as contemplated by the Evidence Act. Accused no. 1 also alleged that a sum of Rupees 3000/- was demanded from him and that amount was in fact paid by accused No. 1's uncle to the Police. They contend that they have been falsely implicated.

4. It may be stated here that so far as the evidence led by the prosecution is concerned, it was entirely of circumstantial character. In the first information report itself the star witness, P.W. 1 has stated in so may words that he could not see the faces of the dacoits because all the dacoits had covered their faces with pieces of cloth. In his evidence also he stated in so many words that he could not identify any of the dacoits. He no doubt stated that he knew all the accused. But he did not utter a word to the effect that he had seen any of the accused on the date of the occurrence while committing the dacoity. No other witness was examined by the prosecution to state that he had seen any of the accused committing the offence of dacoity at the particular time. In this view of the matter the prosecution had to rely exclusively upon the so-called discovery made by each of the accused. The articles of jewellery and utensils discovery by the accused were identified by the complainant and the members of his family to be their own. From the identification marks of certain articles, it could not be denied that those articles did belong to the complainant or his family. The other articles of jewellery and utensils etc. were identified by the complainant and there was no serious quarrel on behalf of the accused as regards the correctness of the identification of the said articles. The only question that therefore, remained was as to whether those articles of jewellery and utensils were in fact found in the possession of any of the accused and if they were so found in his possession, as to what offence could be imputed to them.

5. Evidently the prosecution could prove the possession of the accused in respect of incriminating articles only by independent evidence. It is only if the accused were found in possession was conclusively proved by the prosecution that some kind of offence could be imputed to them. The investigating agency, therefore,

naturally followed the usual procedure of persuading the accused to 'discover' the incriminating articles. For this purpose they employed the assistance of two panchas. Everything would, therefore, depend upon the evidence of the Panchas and the genuineness of the Panchnama in respect of the statement made by each of the accused in the presence of the Panchas and in respect of the discovery made by each of the accused. As one sifts the evidence one finds that this is where the Police in the instant case, earned for themselves the dubious distinction of having run amok and of engineering actions which cannot but be described as shady and suspect, thus vitiating the entire investigation and the prosecution in this case, I will refer to that aspect of the evidence presently.

6. The learned Sessions Judge was, however, impressed by the fact that the accused had discovered incriminating articles. He believed the various panchanamas in respect of the discoveries made by various accused and on the basis of this circumstantial piece of evidence he held that the offence had been fully brought home against each of a the accused. He, therefore, passed an order of conviction and sentence as mentioned above.

7. Before discussing the prosecution evidence in this case and reliability of the same one aspect of the evidence may be clarified. In the present case, there is no eye witness who could identify and of these accused in the act of the commission of the offence. The complainant himself stated in the F.I.R. that the dacoits had concealed their faces with a piece of cloth. Even in his oral evidence before the Court he has stated in so many words that he could not identify any of the accused as those nocturnal dacoits. Even the learned Public Prosecutor Mr. Deshmukh has clearly stated before me that it is not he case of the prosecution that the charge could be substantiated on the basis of any evidence of eye-witness. He frankly stated that the evidence against all the accused is purely circumstantial, the incriminating circumstances being the discovery of the articles which were the subject matter of the theft by the concerned accused. It therefore follows that if the evidence relating to these various discoveries at the hands of the various accused is of any week or suspicious or unconvincing character and if on the basis of such evidence it is not possible to come to a definite conclusion that the accused had themselves concealed the said articles at the particular place, then the prosecution

could not be said to have brought home any offence against any of the accused. But it can be stated further that even if it was proved that the accused themselves were possession of these stolen articles and had kept them concealed at the particular place and had discovered them all by themselves later on, then the further question would arise as to whether the offence of dacoity under S. 395 of the Penal Code could be attributed to them or not or as to whether thy could be let off with conviction of offence under S. 411 for having received stolen property knowing that the same was stolen. The entire evidence has got to be scanned and examined to find out the above position only. There is no dispute about this legal position before me.

8. Coming then to the question of the said circumstantial evidence against each of the accused, I will first deal with the case of accused No. 4 who has been convicted by the learned Sessions Judge along with other accused, though, as I will presently point out, the evidence against him of having discovered any stolen article is 'nil'.

It can be hardly doubted that unless,

(a) the accused had stated that he would point out the relevant articles himself, and

(b) he had actually discovered the article meaning thereby that he had pointed out the articles from a place not readily accessible to anyone else, the alleged offence could not be imputed to him at all.

For showing both the above positions, it is not enough that the Police should say that he made any such statement before them and that he discovered the articles before them. The evidence as a normal rule must be of independent persons. That is precisely the reason why the Police requisitioned the help of the Panchas and the accused in question was required to discover the article in the presence of such Panchas. In the instant case as far as accused No. 4 is concerned, the panch in question is Sk. Ameer. What the witness has stated vis-a-vis his statement before the Panchas and vis-a-vis the articles discovered by him is something astonishing. It is to be noted that so a far as this accused No. 4 is

concerned, according to the Police, he was arrested on 20th of Dec, 1976. Further it is to be noted that the house of this accused was never searched. The prosecution wants the Court to believe that the accused was arrested on 20th December 1976 and that on the very day he volunteered to make a discovery in respect of certain relevant articles and that he made a statement to that effect before the Panchas. P.W. 8 is the relevant panch. But, he says in so may words that accused No. 4, made no such statement before him at any time at all. This is what he has stated in para 5 of his deposition :-

'On the same day, in my presence, Parashram accused No. 4 was not interrogated by the police, nor he gave the information about the articles. Memorandum is signed by me. (Exhibit 21). Contents are not correct. Accused No. 4 did not give information as mentioned therein.'

In para 9, he states as follows :-

'The driver stopped the vehicle near the field. P.S.I asked him what tree is this Accused No. 4 said that it is a Bel tree. We saw one stone. P.S.I. asked him to remove the stone. Parashram accused No. 4 removed the stone. Parashram accused No. 4 voluntarily started digging and removing the earth by this hands. Panchanama (Exh. 21) was made in the Gram Panchayat at Walur.'

The above evidence is extremely of a tell-tale character. The above evidence clearly shows that so far as accused No. 4 is concerned, he himself never indicated that he would point out the place where the articles were concealed. He on his own accord did not go to that place. He did everything as was directed by the Police. Such an act of digging out the articles in this manner and in these circumstances to be described as an act of 'discovery' within the meaning of S. 27 of the Evidence Act is nothing but travesty of the said expression. I am surprised that the learned Judge ignored this basic aspect of the evidence. Even Mr. Deshmukh, the learned Public Prosecutor, had to make a frank statement that the conviction of this accused on the basis of such evidence could not be sustained. He stated that no doubt the Police Officer had tried to give evidence regarding the 'discovery' made by accused. No. 4 But he frankly state that the conviction could not be based upon the evidence of the Police Officer when the evidence of the

Panch, P.W. 8, militated against the evidence of Police Office. The order of conviction and sentence passed against accused No. 4, therefore, has got to be set aside.

8A. Coming to the evidence against accused No. 5, the position may not be as bad but the evidence given by the Panch against even that accused must be held to be wholly unacceptable if not inadequate. Even as regards this accused No. 5, the panch is the same. Even as regards this accused, the Panch has stated the same thing so far as the statement alleged to have been made by the accused before him, expressing his intention to discover, was concerned. This is what P.W. 8 has stated in relation to the alleged statement made by accused No. 5 while showing his willingness to point out the incriminating articles.

'On 28-12-1976, I and Jankiram were called as panchas by the police. Ambu accused No. 5 was in custody of police. I know Ambu-accused No. 5. In my presence, Ambu-accused No. 5 was not interrogated. He did not give me any information about the articles.'

In the last portion of the same para 4 has has further stated as follows :-

'The accused No. 5 did not give information in may presence as stated by me. The memorandum (Ex. 19). The Panchanama is at Exhibit 20.'

No doubt, the witness states later on, as follows :-

'I and other panch Jankiram, policemen and Ambu-accused No. 5 went by police vehicle. The spot was about 2 1/2 miles away from Walur village. It was within the limits of Rawa village. We all got down from the vehicle and while going by the way Ambu-accused No. 5 pointed out a Palas tree. Ambu-accused No. 5, himself removed the earth from the spot and took out one brass lota, one steel glass, one steel wati, one gold, 'tops'; and one gold Panadi. These articles were buried in the ground. Ambu-accused No. 5 himself took them out and produced before the police the above articles. The act of pointing out Palas tree, the act of removing the earth from the particular spot and the act of taking out the articles are no doubt imputed to accused No. 5 directly by P.W. 8. But as one refers to the mandatory

character of the provisions of Sections 24 to 27 of the Evidence Act, it will be seen that it is not enough that the discovery should have been made by the accused. What is necessary is the discovery must have been made 'in consequence of information received from a person accused of any offence.'

It is the statement giving information leading to the discovery which is admissible in evidence. The mere discovery by the accused cannot be said to be of any legal consequence, if it is not preceded by the informative statement on the part of the accused. It is the informative statement which is evidence. The discovery by the accused in the absence of such informative statement is for all practical purposes barren and Court would hardly be able to draw any inference from the mere discovery. Mr. Agrawal urged this aspect of the evidence quite strenuously and to my mind with quite some force and justification. Mr. Agrawal invited my attention to the judgment of the Supreme Court in Babboo v. State of Madhya Pradesh reported in : 1979 CriLJ908 wherein it has been held that mere discovery by the accused would be of no evidentiary value. It has been held that mere discovery unaccompanied by a statement by the accused person, pursuant to which alone discovery could have been made, was no legal evidence.

In Bahadul v. State of Orissa reported in : 1979 CriLJ1075 , it has been held by the Supreme Court that mere discovery by the accused of a weapon from a place accessible to all is of no evidentiary value for proving the offence of the accused. This is what the Supreme Court in para 4 of its judgment held in this behalf.

'In these circumstances, therefore, we are not in a position to rely on the judicial confession. As regards the production of the tangia by the accused before the police, the High Court seems to have relied on it as admissible under S. 8 of the Evidence Act. As there is nothing to show that the appellant had made any statement under S. 27 of the Evidence Act relating to the recovery of this weapon hence the factum of recovery thereof cannot be admissible under S. 27 of the Evidence Act. Moreover what the accused had done was merely to take out the axe from beneath his cot. There is nothing to show that the accused had concealed it at a place which was known to him alone and not one else other than the accused had knowledge of it. In these circumstances the mere production of

the tangia would not be sufficient to convict the appellant.'

The above observations apply with equal force to the facts of the present case.

Thirdly Mr. Agrawal relied upon the judgments of the Supreme Court in Pohalya Motya Valvi v. State of Maharashtra reported in : 1979 CriLJ1310 . In that case the recovery of the incriminating weapon was made at the instance of the accused. Even then the Supreme Court held as follows :-

'But where two accused are charged for murder and the information given by one leading to the discovery of murder weapon is capable of two constructions the one beneficial to the accused will have to be adopted.'

In other words it was held that if the discovery was not made necessarily in pursuance of the information given by the accused the fact of discovery by itself could not be said to be an incriminating circumstance.

To may mind, having regard to the above authorities it can be safely stated that there existed no legal evidence on the strength of which accused Nos. 4 and 5 could be convicted of the offence with which they were charged. It thus follows that so far as the informative statement by the accused is concerned, there is no evidence worth the name that can be said to have been led by the prosecution. All the same on this point, Mr. Deshmukh was rather emphatic in contending that though the Panch witness had denied any such informative statement having been made be accused No. 5, the Police Officer P.W. 12 had stated before the Court that the accused had made such statement in the presence of Panchas. Mr. Deshmukh wanted me to believe the P.S.I. in this case and not the Panch P.W. 8. I find myself wholly unable to do so. Normally this will be so in all cases when he Police Officer stated that the accused mad the incriminating statement before the Panch but the Panch himself states that no such statement was made in his presence by the accused. The Court will be slow to rely upon the evidence of the Police Officer in preference to the evidence given by the Panchas. But this would be particularly so in the present case. Firstly the noteworthy aspect of this case is that the Panch witness has given a most revolting evidence against modus operandi resorted to by the prosecution and in spite of that fact the prosecution

has not even made an attempt to make an application to the Court for declaring the witness to be a hostile witness and for permission to cross-examine the said witness. Evidently everything that was stated by this Panch witness, P.W. 8, has been accepted by the prosecution to be true and correct. If that was so, then the evidence given by P.W. 12, which runs counter to the evidence of P.W. 8, must be held to be wholly unacceptable.

Secondly, the outstanding fact that strikes the eye in the instant case is the unholy enthusiasm shown by the investigating agency in bringing home the conviction against the accused and the manner in which the statements, which turned out to be patently false statements, have been made by the Investigating P.S.I. before the Court. The entire evidence of the P.S.I. turns out to be a tainted piece of evidence unworthy of any credence. I will have more to say about this aspect of the prosecution evidence a little later.

It, therefore, follows that there is absolutely no evidence regarding any informative statement being made by accused No. 5, on the strength of which the discovery of the incriminating articles accused No. 5. The prosecution case against accused No. 5 must fail on this ground itself.

However, even assuming that the mere discovery by the accused was a circumstance enough to prove the offence on the part of the accused, still in the context of the evidence in the instant case even that part of evidence relating to a the actual discovery is very much suspect. Mr. Agarwal in this connection contended that the common evidence for proving this discovery at the hands of the accused No. 5, was the evidence of Panch P.W. 8. He contended that there were a number of circumstances which indicated that suspicious character of the evidence given by this panch. In the first place, it is to be noted that even according to this witness the spot from where the articles were discovered cannot be said to have been pointed out by accused No. 5. In the cross-examination he has stated that the driver stopped the vehicle near the field. It is not stated that the accused asked the driver to stop there. We do not know as to what the accused was informed previously but he police when he was in the police custody for nearly 8 days. The P.S.I. wanted the Court to believe that accused No. 5 was arrested on

28-12-1976. But what has come out by virtue of the evidence of prosecution's own witness No. 8, is that all the accused were arrested on 20-12-1976. There is every possibility that to the knowledge of the police the articles concerned were either lying or planted in the spot. It is quite likely that while in Police custody accused No. 5 was properly informed and briefed as to what he was to do when the jeep stopped at a particular place near a Palas tree. In the light of the evidence that has been revealed anything was possible at the hands of the police. This has made the entire evidence relating to discovery also by accused No. 5 extremely suspect.

9. This takes me to the accused Nos. 1, 2 and 3. The evidence against these accused is of two fold character. Firstly, it is contended that the house of accused No. 3, was searched on 20-12-1976. Likewise the houses of accused Nos. 1 and 2 were searched on 25-12-1976. Remarkably enough, the prosecution would want the enough, the prosecution would want the Court to believe that the accused were at that time at large and that the searches were made while they were absconding and even there nothing incriminating was found in the said searches. But there is something more in this act of searches of the houses of accused Nos. 1 and 2 and of the hut of accused No. 3 than what meets the eye. The prosecution would want the Court to believe that the houses of these accused were searched when they were at large. The point is that in fact the accused were under police custody at that time. The prosecution has concealed this fact from the Court even after a statement to that effect has been made by P.W. 8 in so many words in his cross-examination. It is admitted that nothing incriminating was found in those searches. But the further point is that the search was alleged to have been made in the presence of Panchas. P.W. 8 is one of the Panchas and he has made a clean breast of the fact that no search was made in his presence at all. It thus becomes an extremely intriguing and mystifying a matter as to why the police should have indulged in the said search in the first instance, and should try to given air of verisimilitude, when no search was made in the presence of the panchas at all and nothing incirminating was alleged to have been found in the search at all. But the more important circumstance alleged against accused Nos. 1, 2 and 3 are the discoveries alleged to have been made by each of them on 28th December 1976. This fact has to be considered in the light of the other fact that the accused were already in custody from 20-12-1976. The prosecution wants the

Court to believe that on 28-12-1976, all the five accused volunteered to make discovery of some incriminating articles concealed by themselves separately. The prosecution would want the Court to believe that from the Gram Panchayat Office, each of the accused started in the company of the Panchas and Police Officer and went to the spot and discovered the articles. The allegation is that so far as accused No. 1 was concerned, he had discovered some of the incirminating articles for his own house. The house of the accused was already searched on 25-12-1976 and the police had not established that anything incriminating was buried in any portion of the house at that time. On 28-12-1976, on the other hand, according to the prosecution, accused No. 1 took the party of the police and Panchas to his own house and he took out the incirminating articles buried in a corner of the house. The evidence of P.W. 10 is that on 28th December 1976, accused No. 1 stated in his presence that he had buried the incriminating articles such as jewellery and brass glass in his field and that he was willing to produce them. P.W. 10 has also state that accused No. 1 led them to a field near a hut in the field and he took them to a place about 10 to 15 ft. away from the hut. Thereafter he dug out earth and took out jewellery and utensils etc. from that place. In the cross-examination, further, he admitted that while the accused, the Police personnel and the panch were being driven in the jeep towards the place of concealment, the driver of the jeep was asked not by the accused but by the Police Officer to stop at the particular place. This means that the Police were already in the know of the place where the articles were allegedly lying concealed. Moreover the place was in open space accessible to anybody else.

10. The position about the discovery of articles by accused No. 3 is in no way different. He is alleged to way different. He is alleged to have made before the Panch P.W. 10 the informative statement as regards the concealment made by him. But while the accused was being driven to the place of the concealment, it was the P.S.I. who gave instructions to stop jeep at the particular place, not accused. As to how the P.S.I. knew about the whereabouts of the place is a matter enveloped in mystery. The hut of accused No. 3 was searched previously on 20-12-1976. The incirminating articles are alleged to have been discovered by accused No. 3 in an open piece of land behind that hut accessible to all persons in the world.

11. So far as accused No. 2, is concerned, it is not elicited from the cross-examination that Jeep was stopped by the driver at the place of concealment at the instance of the P.S.I. So far as accused No. 2, is concerned, of the evidence of the Panch witness P.W. 10, is to be believed, the discovery could be said to have been made in pursuance of the information given by accused and it could perhaps be said that accused No. 2 himself led Police party to the place of concealment.

But Mr. Agrawal advanced serious arguments against the entire evidence of this Panch witness P.W. 10 and it must be said that his objections to the evidence of the said Panch witness have got to be accepted and the evidence of the said Panch witness shall have to be rejected even in connection with the evidence of accused No. 2. Mr. Agrawal's first contention in this behalf is that on his own showing this Panch witness is a chance witness. Admittedly he is a resident of Manwath. He says that the came to this village. It is not explained that circumstances, he happened to be in the that village for the purpose of acting as Panch. Surprisingly enough one and the same Panch is used by the Police for witnessing the discovery made by accused Nos. 1 to 3. So far as accused No. 3 was concerned; this witness initially stated that accused No. 3 was not interrogated about the articles in the office of Gram Panchayat. He stated that accused No. 3 gave no information about the article in the office of Gram Panchayat. He admits that all the accused were taken for the purpose of discovery from the office of the Gram Panchayat. Mr. Agrawal contends that in the context of all these facts and especially of the matter, it is extremely unsafe to convict the accused on the sworn testimony of such Panch witness.

12. I am of the view that Mr. Agrawal's contention is well founded. To my mind, the initial statement of the witness in para 1 of his deposition, stating that accused No. 3 was not interrogated about the articles in the office of the Gram Panchayat and that he did not give any information in that behalf in the office of the Gram Panchayat cannot be reconciled with his subsequent statement the accused No. 3 had given the information as mentioned in the memorandum Exhibit 27. This patent contradiction is not even explained by prosecution in any manner. This fact coupled with the fact that he is a chance witness makes his evidence extremely suspect, The witness has admitted that he had given evidence on behalf on the

police in another case as well. No doubt, he denied that he was a customary police witness. To my mind in the light of the facts of the case, his evidence cannot be said to be so reliable that on the basis of the evidence the accused could be convicted of such a serious offence as of dacoity. To my mind his evidence is not seven sufficient for the purpose of conviction for the offence under section 411 of the I.P.C. This is particularly so in the context of the fact that the evidence of the prosecution relation to investigation and to the discovery allegedly made by the accused is of extremely tainted and suspicious character. In the first place, the Police had arrested all the accused on 20-12-1976. But by following the illegal and unconstitutional procedures, all the accused were detained for a period of 9 precious days in the Police custody. It was on 29th that the accused were produced before the Magistrate and while so producing them it was represented to the Magistrate that the accused were detained not on 20th but 28th of that month. The search of the house of the accused Nos. 1, 2 and 3 was made while the accused were in Police custody. The search was not made under any Panchnama at all. Still a false panchnama was prepared by the Police relating to the search. Panch witness, P.W. 8, who was examined, has bluntly deposed to this falsehood practised by the prosecution and even then not a word is uttered in protest against the said panch witness. All the statements made by the said panch witness P.W. 8 put the prosecution itself in the dock. Lastly all the accused are taken on one and the same day namely 28th Decmeber, 1981 and they were taken to various place one after of the other, one in the presence of a chance witness and the other two, in the presence of a witness who has candidly revealed the machinations of the police. The entire investigation is a tainted piece of investigation and the evidence led by the prosecution in this behalf cannot be accepted at all. For all these reasons mentioned above, it is impossible for me to sustain the conviction against any of the accused.

13. The appeal is therefore allowed. All the accused are acquitted of the offence with which they are charged.

The bail bond stands cancelled.

The fine paid, if any, should be refunded.

14. Appeal allowed.