

---

**(2009) 08 BOM CK 0174**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 43 of 2008**

|                                            |            |
|--------------------------------------------|------------|
| Amar Pun, Presently Lodged in Central Jail | APPELLANT  |
| Vs                                         |            |
| State of Goa                               | RESPONDENT |

---

**Date of Decision :** 28-08-2009

**Acts Referred:**

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 35, 42, 43, 50

**Citation :** (2009) 08 BOM CK 0174

**Hon'ble Judges :** N.A. Britto, J

**Bench :** Single Bench

**Advocate :** C. Collasso, for the Appellant; W. Coutinho, Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

N.A. Britto, J.—The appellant herein is the accused, who takes exception to Judgment dated 12.8.2008 of the Learned Special Judge, Mapusa, convicting and sentencing him u/s 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The accused was charged and tried with allegation that when a raid was conducted on 24.4.2007 at about 12.00 hours on the basis of prior information, the accused was found in illegal possession of 1.555 grams of charas. The case of the accused is that he was falsely implicated.

2. To prove the charge against the accused prosecution has examined eight witnesses, out of which five were police witnesses, including the officer who conducted the raid, and two were panch witnesses. The second pancha witness was examined presumably because the first pancha witness did not support the panchanama with reference to all the details mentioned therein. The raid was conducted by P.S.I. Sandhya Gupta/Pw8 in presence of P.I. Shri Ashish Shirodkar/Pw7.

3. The Learned Special Judge, after considering the evidence produced by the prosecution came to the conclusion that the oral as well as documentary

evidence produced by the prosecution proved that the accused was found in illegal possession of commercial quantity of charas. The Learned Special Judge further held that the contemporaneous documents produced by the prosecution supported the entire process of raid, search and seizure and the prosecution had also taken sufficient steps to rule out the possibility of tampering with the sealed article. The Learned Special Judge concluded that the substance found in possession of the accused when tested in the laboratory was found to contain charas and once the prosecution had proved that the accused was found in possession of the seized articles, presumption u/s 54 read with Section 35 of the said Act followed and thus it was for the accused to rebut with sufficient material the said presumption which the accused had failed to, and, as such the Learned Special Judge proceeded to hold the accused guilty u/s 20(b)(ii)(c) of the said Act and sentenced him to undergo R.I. for ten years and pay a fine of Rs. 1,00,000/- in default to undergo R.I. for six months.

4. The defences taken on behalf of the accused, to contend that the prosecution had failed to prove its case beyond reasonable doubt against the accused, could be examined under three aspects.

5. The first, in relation to non compliance of Section 50 of the Act. The second, in relation to non compliance of Section 42 of the Act, and, the third in relation to the place from which the accused was arrested.

6. Ms. Collasso, the Learned Counsel appearing on behalf of the accused submits that there is no cogent and independent evidence to corroborate the versions given by the police witnesses in as much as both the pancha witnesses examined by the prosecution have not corroborated the police versions on material particulars. Learned Counsel further points out that there are improvements made by the prosecution on material aspects which goes to the root of the matter and as such it could not be concluded that what was received and analyzed by the chemical analyst, namely Pw1 Mahesh Kaisare, is what was seized from the possession of the accused.

7. Before we consider the submissions made, it is necessary to refer to the narration of facts, as found in the evidence of Pw8 PSI Sandhya Gupta who was at the relevant time attached to ANC Police Station, Panaji, where Pw7 P.I. Shri Ashish Shirodkar was also working. As stated by her, on 24.4.07 she had received specific and reliable information at about 10.05 hours that one Nepali person by name Amar with description, as narrated by her, would come to deliver drugs i.e. charas to his prospective customers from Nogoia side road at St. Alex Church Circle at Calangute between 11.45 to 12.00, hours on the same day and she reduced the said information into writing and forwarded a copy of it, alongwith a covering letter to Pw3 Dy.SP. Shri Dinraj Govekar and produced a copy of the same at Exhibit 25. She further stated that thereafter she secured presence of Pw4 Deepak Korgaonkar and Pw5 Hanumant Naik and told them about the information she had received and a copy of it was forwarded to the said Dy.S.P. and requested them to act as panch witnesses, to which they

agreed, and thereafter she introduced them to the other members of the raiding party consisting of Pw7 P.I. Shri Ashish Shirodkar and others including Pw6 constable Narayan Morajkar and she carried with her, the seal of Anti Narcotic Cell, Panaji Goa 03 with Ashoka Emblem, while constable Shyam Parab carried with him the typewriter and the said constable Narayan Morajkar carried with him the kit box containing weighing, packing and sealing material and thereafter they proceeded to the spot of the raid in their police jeep bearing No. GA-01-G-1328 driven by Police Inspector Shri Ashish Shirodkar and constable Ramchandra Kankonkar followed the jeep on his private motorcycle and they reached St. Alex Church circle at about 11.55 hours and they parked their jeep and the motorcycle at a distance of about 100 metres away, and, they alighted from the jeep and the motorcycle, and concealed their presence, when at about 11.55 hours they saw the said Nepali person, of the stated description, come from Nagoa side road towards St. Alex Church on foot and who was carrying with him one blue coloured polythene bag in his right hand, carrying something in it, and after informing the panchas and the members of the raiding party, they surrounded him and she introduced herself as P.S.I, ANC Police Station to the said person and then she introduced the members of the raiding party to him and so also the panch witnesses and on asking his name, the accused gave it as Amar Pun, age 34 years, resident of Nepal and residing in a room of Royal Village Resort at Calangute and thereafter she told the accused about the information she had received that he was in possession of charas for which his personal search was required to be taken and the search of the bag he was carrying, and, she further informed the accused that his search would be taken by Pw7 P.I. Shirodkar and she requested P.I. Shirodkar to inform the accused about his rights whereupon P.I. Shirodkar told the accused that he had a right to be searched in the presence of a Gazetted Officer or a Magistrate of his choice but he declined the offer and P.I. Shirodkar further told the accused that he had also right to search the members of the raiding party including the panchas which the accused declined and thereafter she asked the accused to handover the polythene bag to her and accordingly the accused did handover the said bag to her and on verification of the contents of the polythene bag, she found it to contain one white coloured bag self knotted and when she opened the knot she found that there were two bundles wrapped in brown coloured tape and on minute observation she found it containing brown coloured sticky substance suspected to be charas which when weighed was found to be 1.552 kgs and the said two bundles were put back in white coloured polythene bag and self knotted and then were placed in the said blue coloured polythene bag which was then folded and wrapped in white cloth, tied with jute thread and sealed at seven places with the seal carried by her and the details of the contents were written on a piece of paper and signed by the panchas, herself, P.I. Shirodkar and the accused and the same was pasted on the cloth parcel. She further stated that as per her request, P.I. Shirodkar conducted personal search of the accused from which he found one I-card in the name of the accused having coloured photograph issued by the Home Ministry, Nepal, which was attached under

panchanama for further investigations. She stated that the clothes worn by the accused were allowed to remain on his person and she asked the accused whether he had any documents to support his possession and as the accused did not have any, the accused was placed under arrest and was taken in police custody alongwith the seized property. She further stated that the weighing, packing and sealing was done by constable Narayan Morajkar as per her directions on the spot. She stated that the panchanama concluded at about 15.30 hours and the seizure report was prepared on the spot and copy of it alongwith the panchanama were handed over to the accused. She further stated that she prepared a letter addressed to the Director of Food and Drugs Administration through constable Shyam Parab and the seal was affixed on the said letter and after the completion of sealing formalities the said seal alongwith the covering letter was sent to Dy.S.P. through constable Narayan Morajkar at his office for safe custody and the said constable Morajkar had left the spot on a private motorcycle which was brought there by constable Ramchandra Kankonkar. In cross examination she stated that the contents of the panchanama were written as per the events which took place at the spot and were in her handwriting. Her attention was drawn to the panchanama and the complaint to show that she had not mentioned in the panchanama and the complaint that personal search of the accused would be conducted by P.I. Shirodkar. In her further cross examination she stated that some members were near the compound of the Church and the others were near the compound of the hotel where they had remained hidden. She further stated that the jeep and the motorcycle were parked on the road which proceeds towards Calangute market from the junction. She further stated that the signatures of the panchas were obtained only on the panchanama, the seizure report and the attached property. As regards the 'property seizure report memo', she stated that it was filled by her at the police station, and, if she remembered correctly, the same was forwarded to the concerned authority on the same day. In further cross examination she stated that the panchanama and the complaint did not disclose the details of the motorcycle used for the raid and she denied the suggestion that her statement that constable Kankonkar had followed the police jeep of the raiding party on his private motorcycle was false or that constable Morajkar had returned on the said motorcycle was also false.

8. As regards the first aspect, i.e. non compliance of Section 50 of the said Act, learned Counsel on behalf of the accused submits that there is no cogent and reliable evidence to corroborate the version of Pw8 P.S.I. Gupta that the accused was told about his right to be searched in the presence of a Gazetted Officer or a Magistrate of his choice and the accused had declined the offer made to him. Learned Counsel submits that there is serious lacunae in this aspect in the evidence of panch witnesses and therefore it cannot be said that the requirements of Section 50 of the Act were met by the prosecution. Learned Counsel has placed reliance on the case of Hamidkhan Vs. State of Maharashtra, and K. Mohanan v. State of Kerala 2000 SCC (Cri) 1228.

9. In the first case it was observed by the Division Bench of this Court that failure on the part of the police officer to give an option to the accused to be searched before the Magistrate could result in conviction being vitiated. The Learned Division Bench referred to the case of (Balbirsingh 1994 (1) Crimes 1753) and observed that compliance of Section 50 was held to be mandatory and therefore strict compliance of the conditions mentioned in Section 50 of the Act was necessary. It may be stated that the investigating officer in that case namely Pw9 PSI Sitikar had not mentioned before the Court about the word 'Magistrate' and had also not mentioned about the said word in the panchanama or seizure report which were otherwise held not to be substantive pieces of evidence and in that context the Learned Division Bench had observed that a person of the status of P.S.I. Shri Sitikar was expected to know the requirements of Section 50 and interpret them correctly to the accused and the Learned Division Bench therefore held that there was no strict compliance of Section 50 of the Act.

10. In the case of K. Mohanan 2000 SCC Crimes 1228 the Apex Court has held that before subjecting a person to search, the officer concerned must inform him of his right to be searched before a Gazetted Officer or a Magistrate and failure to do so would cause prejudice to the said person and that before conducting the search the police officer concerned merely asking the accused/appellant whether he was required to be produced before a Gazetted Officer or a Magistrate for the purpose of the search but not informing him about his right in that behalf under the law, it was held that the requirement of Section 50 was not satisfied and the Apex Court held that in view of non compliance of Section 50 evidence of the police officer cannot be acted upon in the absence of any other independent evidence to show that the appellant was in possession of the contraband article.

11. The above cases were decided on the basis of their own facts. The facts stated by the witnesses in this case are entirely different. As far as the law on compliance of Section 50 of the Act is concerned, it is well settled. It was stated in State of Punjab v. Baldev Singh (1996) 6 SCC 172 as follows:

24. There is, thus, unanimity of judicial pronouncements to the effect that it is an obligation of the empowered officer and his duty before conducting the search of the person of a suspect, on the basis of prior information, to inform the suspect that he has the right to require his search being conducted in the presence of a gazetted officer or a Magistrate and that the failure to so inform the suspect of his right, would render the search illegal because the suspect would not be able to avail of the protection which is inbuilt in Section 50. Similarly, if the person concerned requires, on being so informed by the empowered officer or otherwise, that his search be conducted in the presence of a gazetted officer or a Magistrate, the empowered officer is obliged to do so and failure on his part to do so would also render the search illegal and the conviction and sentence of the accused bad.

25. To be searched before a gazetted officer or a Magistrate, if the suspect so requires, is an extremely valuable right which the legislature has given to the

person concerned having regard to the grave consequences that may entail the possession of illicit articles under the NDPS Act. It appears to have incorporated in the Act keeping in view the severity of the punishment. The rationale behind the provision is even otherwise manifest. The search before a gazetted officer or a Magistrate would impart much more authenticity and creditworthiness to the search and seizure proceeding. It would also verily strengthen the prosecution case. There is, thus, no justification for the empowered officer, who goes to search the person, on prior information, to effect the search, of not informing the person concerned of the existence of his right to have his search conducted before a gazetted officer or a Magistrate, so as to enable him to avail of that right. It is, however, not necessary to give the information to the person to be searched about his right in writing. It is sufficient if such information is communicated to the person concerned orally and as far as possible in the presence of some independent and respectable persons witnessing the arrest and search. The prosecution must, however, at the trial, establish that the empowered officer had conveyed the information to the person concerned of his right of being searched in the presence of a Magistrate or a gazetted officer, at the time of the intended search. Courts have to be satisfied at the trial of the case about due compliance with the requirements provided in Section 50. No presumption u/s 54 of the Act can be raised against an accused, unless the prosecution establishes it to the satisfaction of the court, that the requirements of Section 50 were duly complied with.

12. When Section 50 of the Act can be said to have been complied with has been explained by the Apex Court in *Prabha Shankar Dubey v. State of Madhya Pradesh* 2003 AIR SCW 6592 wherein it has been stated that there is no specific form prescribed or intended for conveying the information required to be given u/s 50 of the Act and what is necessary is that the accused (suspect) should be made aware of the existence of his right to be searched in presence of one of the officers named in the Section itself. Since no specific mode or manner is prescribed or intended, the Court has to see the substance and not the form of intimation. Whether the requirements of Section 50 has been met is a question which is to be decided on the facts of each case and there cannot be any sweeping generalization and/or strait-jacket formula. The Apex Court further observed that the provisions of Section 50 of the Act is required to protect the rights of an accused (suspect) with a view that at a later stage the accused (suspect) does not take a plea that the articles were planted on him or that those were not recovered from him or to put it differently, fair play and transparency in the process of search. Again, the Apex Court in *Smt. Krishna Kanwar @ Thakuraeen Vs. State of Rajasthan*, has held that Section 50 is only a procedure required to protect the rights of an accused and there is no specific form prescribed or intended for conveying the information required to be given u/s 50 and what is necessary is that the accused (suspect) should be made aware of the existence of his right to be searched in the presence of one of the officers named in the section itself. The Apex Court has observed further that Section 50 in

reality provides for additional safeguards which are not specifically provided by the statute. The stress is on the adoption of a reasonable, fair and just procedure and no specific words are necessary to be used to convey existence of the right and whether the requirement of Section 50 has been met is question to be decided on the facts of each case and there cannot be any sweeping generalization and/or a straitjacket formula.

13. In the case at hand, it has been stated by Pw8 PSI Gupta that she had told P.I. Shirodkar to tell the accused about his right to be searched in the presence of a Gazetted Officer or a Magistrate and the accused was told about it by him. This statement of PSI Gupta is substantiated by contemporaneous record of the panchanama and the complaint and is further substantially corroborated by Pw7 P.I. Shirodkar as well as Pw6 constable Morajkar. Firstly, it requires to be reiterated and this can be done by relying upon the observations of the Apex Court in *Karamjit Singh Vs. State (Delhi Administration)*, that there is no principle of law that without corroboration by independent witnesses, the testimony of police personnel cannot be relied upon. The Apex Court has held that the testimony of police personnel should be treated in the same manner as the testimony of any other witnesses and there is no principle of law that without corroboration by independent witnesses, their testimony cannot be relied upon. The presumption that a person acts honestly is as much in favour of a police personnel as to other persons and it is not proper judicial approach to distrust and suspect them without good grounds. The Apex Court also observed that the ground realities cannot be lost sight of that even in normal circumstances members of public are very reluctant to accompany a police party which is going to arrest a criminal or is embarking upon search of some premises. This Court in *B. Chandramohan v. State of Goa*, unreported Judgment dated 24.3.2006 in Criminal Appeal No. 53 of 2004 on which reliance has been placed by the learned Counsel on behalf of the accused had relied to the case of *Aspaq N. Ahmed v. State of Goa* 2006 (2) Bom R 111 wherein it was observed that corroboration by independent witnesses is not a rule of law but one of the caution and prudence. It gives assurance as to whether the version given by the police officers is true or not. This is a case where such an assurance is available in the evidence of Pw4 Deepak Korgaonkar as well as Pw5 Hanumant Naik who have been able to corroborate the police versions in all material particulars and there is no reason, which has been assigned on behalf of the defence, as to why both of them have deposed in favour of the prosecution and against the accused. Pw4 Deepak Korgaonkar was an ordinary salesman in one of the shops and Pw5 Hanumant Naik was an ordinary rickshaw driver. That the accused was informed of his right to be searched in the presence of Gazetted Officer or a Magistrate is a fact which has been recorded in the panchanama-Exhibit 34 as well as the complaint of P.S.I. Gupta-Exhibit 43 and has been deposed to by her in her evidence before the Court as already stated. True, Pw4 Deepak Korgaonkar stated that the officer Sandhya Gupta had requested Ashish Shirdokar to inform the accused regarding his right and accordingly the accused was told that he had a right to be searched

in the presence of a Gazetted Officer or any other witness but the accused declined the said offer. He was unable to reproduce the exact words but on that count he can't be disbelieved. Learned Counsel on behalf of the accused submits that ?any other officer? would not be sufficient compliance with the provisions of Section 50 of the Act. It may be so, but the evidence has got to be read as a whole. Pw5 Hanumant Naik when he was permitted to ask certain questions in the nature of cross examination had confirmed that it was recorded in the panchanama that the accused was told that he had a right to conduct his search in the presence of Gazetted Officer or a Magistrate and such offer was given to the accused at the spot. He further stated that the offer was given by a lady officer (P.S.I) Gupta and also by a male officer (P.I. Shri Shirodkar). The Learned Special Judge, observed, and in my view rightly, that only because Pw4 Deepak Korgaonkar had referred to an officer instead of a Magistrate, case of the prosecution could not be affected as that would also depend on memory as well as his capacity to understand the manner of the conversation between the officer and the accused. In my view, the evidence of Pw7 PSI Gupta was amply and substantially corroborated not only by Pw7 P.I. Shirodkar and Pw6 constable Morajkar but also by Pw5 Hanumant Naik. There was no reason good enough not to accept their evidence. The contention that Section 50 was not complied with therefore needs to be rejected.

14. As regards second aspect that there is non compliance of Section 42 of the Act, in that the sealing had to be done by the authorised officer personally, Learned Counsel has placed reliance on Rolf Michael Timerick v. State of Goa (unreported Judgment dated 6.11.1997 in Criminal Appeal No.9 of 1997) wherein the Division Bench of this Court had held that search by Head Constable Mayenkar was unauthorized since he was not empowered to conduct the search u/s 42 of the said Act and consequently it was illegal and as it was illegal, the trial was vitiated and the conviction passed in such a trial cannot be sustained. However, the Learned Division Bench does not appear to have considered in that case the search by the Head Constable was done at the instance of PSI Sunita Sawant who was otherwise an authorized officer and it was done pursuant to her direction and in her presence. The Learned Division Bench also does not appear to have considered that when search is carried out in violation of the provisions of law, it would have a bearing only on the credibility of the evidence of official witnesses which is required to be considered on the facts of each case (See 2007 (1) SCC (Cri) 377). Be that as it may, the said Judgment is not at all applicable to the facts of this case. The Learned Special Judge has come to the conclusion that provisions of Section 42 of the Act are not attracted to the case at hand and what was attracted is Section 43 of the Act. The information received was regarding the arrival of the accused at a public place. The panchanama ? Exhibit 34 and the complaint ? Exhibit 43 show that the seized article was put back in the said blue a coloured polythene bag, folded properly, wrapped to a white cloth, tied, with thread and sealed at seven places with the seal of ANC Panaji Goa 03 with Ashoka emblem. True, the panchanama/complaint did not mention

the name of the person who actually used the seal for sealing the seized article but Pw8 PSI Gupta has categorically stated that the seized article was sealed at seven places by the seal carried by her and she is supported both by Pw6 Constable Morajkar as well as Pw4 Deepak Korgaonkar, which leave no room for doubt that the seized article was properly sealed and this has been confirmed by Pw1 Kaisare when he stated that the seals were in tact and tallied with the specimen seal impression separately sent.

15. The third aspect of the case is as regards the place of raid. As stated by Pw8 PSI Gupta, as per information received by her the accused was to come from Nagoa side towards St. Alex Church at Calangute and they parked the jeep away from the said church and concealed their presence. She further stated that the accused was found coming from Mapusa side road and she found him to be the same person who fitted the description. Pw7 P.I. Shirodkar also stated that they had parked their vehicles in one lane towards Calangute side and were waiting near the church and the accused person came from Nagoa side towards the church. Likewise, Pw4 Deepak Korgaonkar also stated that the accused came from Nagoa side towards the church on foot with the said blue coloured bag and so did Pw5 Hanumant Naik who stated that they saw the accused coming to the Calangute church towards Mapusa side. Whether it is Baga or Nagoa or Mapusa, judicial notice could be taken that all these places are towards the same side i.e. northern side and this shows that there is no discrepancy at all in the evidence given by the witnesses as regards the direction in which the accused came from, and, therefore the unreported Judgment of this Court dated 24.3.2006 in the case of B. Chandramohan in Criminal Appeal No.53 of 2004 is of no assistance to the case of the accused. Pw4 Deepak stated that they had concealed their presence near the trees on the right side of the church i.e. towards Candolim and that is in conformity with what Pw7 Ashish Shirodkar and Pw8 PSI Gupta stated that the jeep was parked towards the road which proceeds towards Calangute market from the junction. There is no material difference to that aspect in the evidence of Pw5 Hanumant Naik as well, when he stated that the jeep was parked about half a kilometre away from the church. There is therefore substantial corroboration in the evidence of police witnesses as well as panch witnesses as to the place where they had parked the jeep, the place where they concealed themselves and the direction from which the accused came before he was surrounded and the search was taken. No doubt, Pw4 Deepak Korgaonkar stated that they were standing near the road which comes from Saligao side but at the same time he also stated that the accused was found near the church and about 20 metres away from the place where they were hiding. That solitary statement, if incorrect, cannot be taken to throw over board his entire deposition. He also stated that there was one more junction at Saligao road which was around 200 to 300 metres away from the Calangute church and one of the roads at that junction come from Nagoa side and the other comes from Saligao and proceeds towards Calangute church. Therefore, there is uniformity in the versions given by the prosecution witness that the accused was caught as he

came from the northern side and in front of the church. The description of the place of the three roads near the church has been correctly given by Pw4 Deepak Korgaonkar who stated that there are three roads at that place, one coming towards the church from Saligao, the other from Candolim and the third from Calangute and the accused was found about 20 metres away from the place where from where they were hiding.

16. Lastly, Learned Counsel on behalf of the accused has tried to pick holes in the evidence by trying to enlarge minor discrepancies as to details given by prosecution witnesses. Learned Counsel has submitted that there is lacuna in the evidence of the panch witnesses. Lacuna means a hiatus, blank, or gap or missing portion or empty page, as per Concise Oxford Dictionary, and, in my view there is no such lacuna in the case of the prosecution. If at all, there are slight discrepancies as regards minor details in their evidence which as common knowledge goes appear in all cases and that can happen even if witnesses are tutored and on that count their evidence cannot be rejected. The discrepancies which have been highlighted on behalf of the accused in the evidence of Pw4 Deepak is that Pw4 Deepak stated that there was one more white coloured bag inside the self knotted bag when it was not the case of the prosecution that there was any such bag. Secondly, it is submitted that this witnesses stated that after completion of the panchanama they had gone alongwith the accused walking towards the jeep when otherwise it is the case of the prosecution that once the accused was arrested the jeep was called at that place. Similarly it is pointed out that Pw4 Deepak stated that he could not give the description of the seal and that he had stated that the kit box was carried by Ashish Shirodkar when it was the case of the prosecution that the kit box was carried by Pw7 constable Morajkar. Some discrepancies are also pointed out in the evidence of Pw5 Hanumant Naik and it is submitted that he could not have stated that the paper slip was filled in his presence when some of the contents of the paper slips were made in red ink containing the muddemal entry number which could have been done only at the police station. However, the fact remains that Pw5 Hanumant Naik himself had stated that he was unable to read English and as such he could not read the paper slip which was attached to the cloth parcel and only because he stated that it was written in his presence when some of the contents were written at the police station, his evidence on that count could not be discarded. However, what is important to be noted is that the aforesaid discrepancies notwithstanding, their evidence shows that they are truthful witnesses and were present at the time of the raid and their evidence corroborates the versions given by the police witnesses on all material particulars. The mistakes made by them can only be attributed to their powers of observation, retention and reproduction. It is not uncommon for witnesses to mix up facts as well. The evidence of Pw4 Deepak Korgaonkar and Pw5 Hanumant Naik shows that there is an air of truth in them, slight mistakes have been made by them, notwithstanding. The Apex Court in State of U.P. Vs. M.K. Anthony, has held that a Court while appreciating the evidence of a witness must see whether the evidence read as a whole

appears to have a ring of truth; once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence, more particularly keeping in view the deficiencies; drawbacks and infirmities pointed out in the evidence as a whole and evaluating them to find out whether they are against the general tenor of the evidence and whether the earlier evaluation is shaken as to render it unworthy of belief; minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there, attaching importance to some technical error committed by the Investigating Officer not going to the root of the matter would not or ordinarily permit rejection of the evidence as a whole; even honest and truthful witnesses may differ in some details unrelated to the main incident; the power of observation, retention and reproduction differs from individual to individual and cross-examination is an unequal duel between a rustic and a refined lawyer. It is also to be noted that a person's ability to speak the truth depends upon his knowledge and power of expression; his knowledge depends partly on his accuracy in observation, partly on his memory and partly on his presence of mind; his power of expression depends upon infinite circumstances and to an extent it also depends upon his background, his education, his character, his sense of duty, his relation to the particular facts he is to testify and so many other circumstances. Both the said witnesses are ordinary persons and persons without much education and there is nothing in their evidence even to remotely suggest that they were not present at the time of the search and seizure of the contraband articles from the accused. As already stated, their evidence is convicting and can be acted upon, on the main facts stated by them as regards the said search of the accused and the seizure of the contraband article from him.

17. It appears that the tape was placed on the seals of the seized article though there is no mention of it in the panchanama or in the evidence as to who had placed it. It must have been done in the process of forwarding the seized article to the laboratory. Only because a tape was placed on the seals is not enough to raise a suspicion that the seals were sought to be tampered with, but on the contrary it shows that an effort was made, so that the seals would not be tampered with, and or destroyed.

18. Considering the evidence led by the prosecution, in my view, the Learned Special Judge could not be faulted in convicting and sentencing the accused as aforesaid.

19. I find that there is no merit in this appeal and consequently the same is hereby dismissed with no order as to costs.