

**(2008) 03 GUJ CK 0047**

**In the Gujarat High Court**

**Case No :** Criminal Appeal No's. 1307 and 1598 of 2005

Faridabanu Shamsadali Ismail Shaikh and Another

APPELLANT

Vs

The State of Gujarat

RESPONDENT

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**Date of Decision :** 17-03-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 100, 102, 376, 377, 386  
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 22, 29, 32, 41

**Citation :** (2008) 03 GUJ CK 0047

**Hon'ble Judges :** C.K. Buch, J

**Bench :** Single Bench

**Advocate :** Joshi, for for P.R. Nanavati, No. 1 in Criminal Appeal No. 1307 of 2005 and Ruppal Patel, No. 3 in Criminal Appeal No. 1598 of 2005, for the Appellant; Bhate, Ld. Addl. Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

C.K. Buch, J.—Both these appeals are filed by the appellants- original accused Nos. 1 and 3 under the provisions of Section 374 read with Section 386 of the Code of Criminal Procedure, 1973, inter-alia challenging the judgment and order of conviction and sentence dated 29/03/2005 passed by the learned Additional Sessions Judge, Valsad in Special (N.D.P.S.) No. 2 of 2003. Total three accused persons were charge-sheeted and tried for the offence punishable under Sections 8(c), 22 and 29 of the Narcotics Drugs and Psychotropic Substance Act (hereinafter referred to as the "N.D.P.S. Act") wherein at the end of trial all the accused persons were sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs. 50,000/- each and in default of making payment of fine to undergo simple imprisonment for one year.

2. Criminal Appeal No. 1307 of 2005 is filed by the original accused No. 1; whereas Criminal Appeal No. 1598 of 2005 is filed by the original accused No. 3. The Court is informed by the learned Advocates appearing for the parties, that

original accused No. 2 has not preferred any appeal challenging the judgment and order of conviction and sentence.

3. According to prosecution Rs. 46,925/- had been recovered from the house of original accused No. 1 and it was ordered to return the said amount to accused No. 1 after expiry of the statutory period of filing an appeal. On the other hand, the respondent-State has not preferred the appeal under the provisions of Section 377 of the Code of Criminal Procedure for enhancement of sentence nor has submitted that cash recovered from the house of original accused No. 1 requires to be confiscated to the State.

4. I have heard Mr.Devang Joshi, learned Advocate appearing for Mr.P.R.Nanavati for the appellant of Criminal Appeal No. 1307 of 2005 and Ms.Ruppal Patel, learned Advocate appearing in Criminal Appeal No. 1598 of 2005, as well as, Mr.Bhate, learned Addl. Public Prosecutor for the respondent-State.

5. To appreciate the rival side contentions, it would be beneficial to state the basic facts of the case of prosecution in brief.

5.1 It is alleged that Police Inspector, Mr.V.J.Joshi of Vapi G.I.D.C. Police Station, Dist: Valsad was discharging his duty on 24/01/2003 and present at the police station. He was informed at about 3:30 p.m., by P.S.I., Mr.Prakash Kanojia serving in District Valsad about the secret information received by him that original accused No. 1-Faridabanu Sheikh, widow of Shamsad Ali Ismail Sheikh with her elder brother-in-law, Navsadalali Ismailali Sheikh called original accused No. 3-Ramesh Narayan-appellant of Criminal Appeal No. 1598 of 2005 for selling brown sugar and possessing stock of brown sugar and the residence of original accused No. 1 and that brown sugar has been sold from the residence of original accused No. 1. According to prosecution, upon receiving information, Mr.Joshi, Police Inspector, recorded the said information in writing in the Police Station Diary vide Entry No. 23 of 2003 and managed to send the copy of the same in a sealed envelope to the Deputy Superintendent of Police, Vapi in the form of report through Police Constable, Mr.Jinabhai Premabhai. That the information is with regard to narcotic drug and if the same is found then to carry out chemical analysis, it would be proper to call Scientific Officer and therefore one Mr.Patel, Scientific Officer was called telephonically in the evening at about 5:00 p.m. It is alleged that Mr.Patel had reached alongwith his examination kit and he was intimated about the information received. Two persons were selected as Panchas and therefore the house of the original accused No. 1 was raided by P.S.I., Mr.Kanojia and Mr.D.N.Barad, Sunil A. Mishra and Mr.Omprakash Rambahadur, Armed Constables, and a Woman Police Constable, Usha Ajibhai. The Panchas were intimated and inter se search of persons who were to participate in the proceedings of search and seizure was made. A preliminary Panchnama in this regard was drawn between 5:00 and 5:30 p.m. Thereafter, the raiding team raided the residential house of original accused No. 1. Initially, org. accused No. 1 was called out of her house by calling her name and in response org. accused No. 1 came out of her house. Thereafter, when she confirmed that she is

Faridabanu Sheikh, widow of Shamsad Ali Ismail Sheikh, Woman Police Constable-Ushaben who was present in the raiding party, immediately went to Faridabanu and thereafter the Raiding Party had entered into the house for inspection. When they entered into the house, as per information of prosecution, two other persons were present and on inquiry it was found that they are the persons whose names were in the information received i.e. Navsadali Sheikh resident of Vapi, Ramnagar Sheikh, Market Chal and the other was Ramesh Narayan Bentaiya resident of Rayan, Dhobighat, Rali No. 4, Hutment, Mumbai. Thereafter, Mr.Joshi, Police Inspector, introduced himself and other persons who were the members of the raiding party and all the three accused persons were informed about the information received by them orally as well as in writing. The accused persons were told that in view of the information received, they are required to be searched in person so if they desire to get themselves searched in presence of either a Gazetted Officer or Magistrate then they should express their desire. According to prosecution, the accused had insisted that they should be searched by any Gazetted Officer and in presence of the Magistrate. It is alleged that thereafter they were kept under Police surveillance and the Executive Magistrate (Mamlatdar), Pardi was requested to come to the spot i.e. residential house of org. accused No. 1 and Mamlatdar, Pardi in capacity of Executive Magistrate, Mr.M.A.Chaudhri reached to the spot and thereafter the personal search of all the three persons were carried out. Firstly, the org. accused No. 1 was searched and during that search with the help of Lady Constable, according to prosecution, the accused No. 1 took out about 20 small packets of brown sugar from left side of her blouse and during interrogation and asking her, she had produced 40 small packets from the secret chamber of the bad of her house. That 31 packets of similar type were found from the pocket of Safari Suit worn by org. accused No. 2-Navsadali. Thereafter, upon search of org. accused No. 3 about 785 packets were found lying in a green coloured plastic bag and it is alleged that this bag was in possession of org. accused No. 3. It is alleged that Mr.Joshi, P.I., and the other persons were prima-facie satisfied that substance found is brown sugar in powder form and the same was examined by the Scientific Officer, Mr.Patel. Upon carrying out test of chemical analysis by Mr.Patel, he opined that this powder was brown sugar and he prepared a report. Thereafter, the procedure of weighing of the muddamal brown sugar was carried out. The Police Constable present was asked to call a person with weighing scale etc., and one Ganeshbhai Bholaji Devasi, resident of L.R. Complex, Bazar Vapi of Marudhar Jewelers was asked to do the exercise of weighing the brown sugar found from the accused persons. According to prosecution, 91 packets found from the accused No. 1 was 16.06 Grams and 785 packets found from accused No. 3 was 133.97 Grams. A formal written certificate was obtained from the Gold Smith who was called to weigh the substance and different samples from the above packets were separated and sealed so that the same can be sent to F.S.L. for detailed examination and rest of the packets were sealed separately. It is alleged that according to prosecution the total value of the brown sugar was worth Rs. 35,040/- and the substance thus was seized. It is further alleged that

from the house of Faridabanu Sheikh, widow of Shamsadali Ismail Sheikh, cash of Rs. 46,925/- was recovered from the cupboard, which was in the sitting room of her house and it is alleged that this amount was nothing but a sale amount made by her and therefore the said amount was also seized by Police. It is also alleged that one railway ticket and plastic bag found from accused No. 3 and one telephone bill found from the residence of Faridabanu was recovered and seized alongwith the receipt of payment of telephone bill. Separate seizure memo of muddamal received from each of the accused was prepared and original was given to concerned accused person and on completion of this formality, second part of the Panchnama of carrying out the entire procedure was drawn. According to prosecution as all the three accused persons are found in commission of offence under a conspiracy, committed offence punishable under Sections 8C, 22 read with Section 29 of the N.D.P.S. Act by keeping illegally the stock of brown sugar in their possession for the purpose of sale and they were arrested at about 10:30 p.m. Thereafter, a detailed complaint came to be registered with Vapi G.I.D.C. Police Station. The F.S.L. opined that the Muddamal substance sent for analysis is a prohibited substance of a particular class falling in the category of brown sugar. So, on the basis of the above complaint, offence was registered and further investigation was taken over by Shri Joshi, P.I. In the meanwhile, the further investigation investigation was taken over by the then Dy. S.P., Shri Desai and at the end of investigation, on sufficient evidence found against the accused, the came to be charge-sheeted.

6. To prove the facts, the prosecution has examined 14 witnesses and has produced 26 documentary evidence. The details of the evidence led oral as well as documentary are reflected in paragraph 7 of the judgment and order under challenge. Of course, these details are also reflected in the memo of appeal and therefore it is not necessary to mention the details as to 14 witnesses examined.

7. The crucial documents which are required to be brought on record to bring home the charge, according to Mr.Bhate have been tendered in evidence and it would be beneficial to state the details of documents tendered as in evidence and to prove the case of prosecution.

Sr. No. Detail Exhibit 1. F.S.L. Visit to the scene of offence 16 2. Letter of PSI, Valsad of secret information. 19 3. Panchnama of scene of offence 22 4. Report of F.S.L., Ahmedabad 26 5. Letter of examination of FSL, AHmedabad 27 6. Original letter of P.I., Vapi to register Offence 35 7. Receipt of Muddamal received of F.S.L., Ahmedabad 40 8. Letter of Dy.S.P., Vapi for sending back Muddamal 41 9. Letter of Dy.S.P., Valsad for keeping Muddamal 43 10. F.S.L. forwarding Note/ Authority letter 51 11. Original Certificate of weighing off the muddamal given by witness Ganeshram Bholaji 54 12. Letter of seizure of Muddamal seized from accused Faridabanu. 55 13. Letter of seizure of Muddamal seized from accused Naushadali Ismailali. 56 14. Letter of seizure of Muddamal seized from accused Ramesh Narayan 57 15. Letter of search/frisk of accused Faridabanu Samshadali. 58 16. Letter of search/frisk of accused Naushadali Ismailali. 59 17.

Letter of search/frisk of accused Ramesh Narayan Pantaiya. 60 18. Extract of Vapi Udhyognagar Police Station Diary Entry No. 23/03. 61 19. Extract of Vapi Udhyognagar Police Station Diary Entry No. 25/03. 62 20. Original letter written to Dy.S.P., Vapi. 63 21. Original complaint 64 22. Letter given to Police Constable or FSL for Muddamal Sample and brown cover. 65 23. Letter of Reserve PSI, Police Head Quarters, Valsad. 66 24. Letter sent to FSL, Ahmedabad for examination of Muddamal 67 25. Telephone Bill in the name of husband of accused Faridabanu. 68 26. Receipt of payment of telephone bill 69

(Documents Exh.68 and Exh.69 recovered from the house of accused No. 1 establishing the occupancy of the house of having telephone facility)

8. On plain reading of the judgment and order under challenge, it is clear that the learned Advocate appearing for the original accused Nos. 1 and 2 were heard in detail. Id. Advocate appearing for the original accused No. 1 was heard on 15/03/2005 and on that day a written submission of accused No. 3 at Exh.77 was tendered. On 07/03/2005, Id. Advocate appearing for original accused No. 2 had made detail submissions. There is no dispute even today before this Court that learned trial Judge has faithfully recorded the each submissions made by the accused persons and learned trial Judge has attempted to deal with each legal as well as factual submissions.

9. According to Mr.Devang Joshi, learned Advocate for the appellant of Criminal Appeal No. 1307 of 2005, the learned trial Judge has committed serious error in evaluating the evidence and has ignored certain relevant legal aspects. Of course, he has taken me through the entire set of evidence oral as well as documentary led by the prosecution, more particularly the inconsistency or conflict in evidence of the witnesses examined. It is submitted that the learned trial Judge has not considered the scheme of Section 32 of the N.D.P.S. Act and no formality was carried out by Mr.Joshi, Police Inspector though he house of the accused No. 1 raided after sunset. It is submitted that prosecution has made false attempt to establish that the raid was carried out before the sunset but the circumstance speaks that raid was carried out after sunset. So, the entire process of search and seizure being not legal and should be viewed with doubt. Of course, in response to the query raised by the Court, Mr.Joshi has fairly accepted that the Police Officer heading the raiding party, was a Gazetted Officer and was authorized to carry out the search without issuance of warrant and on subjective satisfaction on the strength of the information received by him. The second point of submission of Mr.Joshi is that there is inconsistency as to weight of the brown sugar found from the accused Nos. 1, 2 and 3 and the figures stated by the prosecution does not tally exactly with the figure mentioned in the F.S.L. Report and this inconsistency makes the case of prosecution more doubtful as to recovery of the said muddamal from each of the accused persons and for that he has drawn the attention of the Court to following figures reflected in different documents viz.,Panchnama Exh.22, F.S.L. Report, Ahmedabad Exh.26 and Railway Ticket of 24/01/2003 bearing No. 45450903 from Boriwalli to Vapi

recovered during the raid relied upon by the prosecution. According to P.W. No. 1-Jayeshbhai Dhirubhai Patel, Scientific Officer, examined at Exh.15, 91 small packets were of 16.06 gms and other 785 small packets were of 133.98 gms. Whereas, in the form as to description of these packets, it is mentioned as 15 Milligrams at one place and at other two places it is mentioned as 17.5 Milligrams.

As per Prosecution Witness No. 5-Janmahmad Fakirbhai Mansuri, examined at Exh.25, weight of muddamal received for analysis by F.S.L., Ahmedabad / Gandhinagar for Sample A-1 was of 1.510 Grams and weight of Sample B-3 was 4.070 Gms and both these quantities were packed separately.

As per Prosecution Witness No. 12-Shri Mansinh Amarsinh Chaudhry, Mamlatdar, examined at Exh.48, on weighing 91 packets were of 16.06 gms and remaining 85 packets were of 133.98 gms.

As per the report of F.S.L., Ahmedabad (Exh.26), the weight of muddamal brown sugar was of 1.570 gms and in parcel B-III it was 4.070 gms.

The above figures according to Mr.Joshi, learned Advocate for the accused, were required to be considered when there is nothing on record to show that how and by whom the samples were separated from the entire stock. There is also ambiguity as to the total weight of the butter papers in which the brown sugar was alleged packed.

10. It is argued that on probabilities the story of the prosecution is not required to be accepted as true because it is difficult to believe that in the house of accused No. 1, accused No. 3 was permitted to carry a plastic bag in his hand till the Mamlatdar reached, as alleged by the prosecution. On the contrary, it appears that the Mamlatdar was asked to reach to the house of the accused No. 1 well in advance and therefore only he was available at the spot of search and seizure, otherwise there was no reason for the Mamlatdar to remain present in his office after office hours. It appears to be a stage managed show. It is very probable that original accused No. 3 might have been intercepted and on recovery of prohibited substance the Police may have arranged to falsely implicate the original accused Nos. 1 and 2 in the crime.

11. It is argued that provisions of Section 50 have been ignored which requires to be followed scrupulously. The entire recovery of muddamal during physical search of accused Nos. 1 and 2 appear to be cock and bull story. On the contrary, it is possible to infer that all the three accused persons were searched and as the Police found that their case may be destroyed because search was carried out in violation of Section 50 of the N.D.P.S. Act, the presence of Mamlatdar had been worked out. So from both the angles when it is possible to infer that presence of Mamlatdar was prearranged, the search and seizure becomes doubtful or if it is found that Mamlatdar might have been called after carrying out subsequent search and seizure then also the accused could have been given advantage on account of violation of scheme of Section 50 of the N.D.P.S. Act.

12. According to Mr.Joshi, it is settled legal position that scheme of Section 50 is a mandatory and if the prosecution is not in a position to establish that scheme of Section 50 of the N.D.P.S. Act was followed scrupulously, the advantage would go to the accused. Mr.Joshi has drawn attention to the inconsistency of the evidence of the prosecution witnesses and has pointed out as under: Prosecution Witness No. 1-Jayesh, Scientific Officer has received telephone call from Mr.Joshi, Police Inspector at about 15:30 hours and therefore he had reached to Vapi G.I.D.C. Police Station at 17:00 hours. The prosecution has not explained as to how an Independent Officer was made aware about the secret information at 15:30 hours.

The Prosecution Witness No. 12-Shri Mansinh Amarsinh Chaudhary, examined at Exh.48 has deposed that he had received telephonic message on 24/01/2003 from Mr.Joshi, Police Inspector of Vapi G.I.D.C. Police Station at about 5:45 p.m., and thereafter he had reached to the house of the accused No. 1 at about 6:30 hours. According to this witness, the search of the house and personal search of the accused was carried out in his presence, but when the signature of the Executive Magistrate is not found on Muddamal Articles No. 9, though the signature is found on Article "3, his presence at the spot at the time of carrying out the personal search emerges as doubtful and he has deposed that his signature is also not found at Muddamal Article No. 10.

According to Prosecution Witness No. 14-Mr.Joshi, Police Inspector, examined at Exh.53, members of the raiding party had reached to the house of accused No. 1 including the Scientific Officer. This appears to be physically not possible considering the distance between the Police Station and the residential house of the accused No. 1. Because the Station Diary shows that the raiding party had started for the destination at 17:30 hours and the secret information was received much prior to 17:30 hours. The Higher Officers were informed and signature of Dy. S.P. was also obtained on the report submitted to him and in that document time is mentioned as 15:30 hours. Hence, this creates impression that calling of Executive Magistrate at the spot looks like a formality as such the circumstance speaks that search of the house and personal search of the accused must have been carried out much earlier to the arrival of the Executive Magistrate. Surprisingly when there are no signature on seizure memos either of Panchas or the Executive Magistrate and there is no mentioned of time in the seizure memo, copy of which were allegedly given to the each accused is reflection of the material irregularity committed and this inconsistency has been ignored by the learned trial Judge is the backbone of the submission of Mr.Joshi while advancing the argument on the strength of scheme of Section 50 of the N.D.P.S. Act.

13. It is also argued that this Court should also consider the material improvements made by the Police Officers only with a view to get some more strength in the case relied upon by the prosecution. A witness who intends to improve should be scanned very closely. Ultimately, all the Police Officers

examined by the prosecution are partition witnesses and they were interested to resolve the case. It is accepted fact that in a cases under N.D.P.S. Act, if the catch is big, the Officer either gets appreciation from the Department or even price or reward from the Department. So, in the present case, maximum Officers of Vapi G.I.D.C. Police Station had attempted to encash the prestige and popularity.

14. Mr. Joshi has fairly accepted that the case placed by prosecution is serious but according to him evidence led by the prosecution appears to be very week and insufficient to link the accused with the crime in above speaking circumstances. The original accused No. 1 could have been given benefit of doubt especially when there was some more evidence against accused No. 3 only. When the prosecution has not established satisfactorily the inter se relationship between the accused Nos. 3 and 1 and when accused No. 2 has not preferred any appeal and has accepted the order of conviction and sentence at least this Court should give benefit of doubt to original accused No. 1.

15. It is submitted by Mr.Joshi that the accused persons have been convicted for the offence punishable u/s 29 of the Act and the accused were never given the opportunity to face the charge of the offence punishable u/s 21 of the Act. If the Court finds that the accused were really required to be charged for the offence punishable u/s 21 of the Act then the conviction should be held as bad and for this purpose the learned Judge ought to have considered the distinction made under the law between the "Drug" and "Psychotropic Substance".

16. It is also submitted by Mr.Joshi that the accused persons could have been given the benefit of observations made by the Supreme Court in the case of "State of Punjab Vs. Baldev Singh, etc. etc., and more particularly the observations made in paragraph 13 of the judgment. It would be beneficial to reproduce the relevant part of the judgment relied on by Mr.Joshi.

13. Vide Section 51, the provisions of the Code of Criminal Procedure, 1973, shall apply, insofar as they are not inconsistent with the provisions of the NDPS Act, to all warrants issued and arrests, searches and seizure made under the NDPS Act. Thus, the NDPS Act, 1985 after incorporating the broad principles regarding search, seizure and arrest etc. in Sections 41, 42, 43, 49 and 50 has laid down in Section 51 that the provisions of the Code of Criminal Procedure shall apply insofar as they are not inconsistent with the provisions of the NDPS Act. The expression "insofar as they are not inconsistent with the provisions of this Act" occurring in Section 51 of the NDPS Act is of significance. This expression implies that the provisions of the Code of Criminal Procedure relating to search, seizure or arrest apply to search, seizure and arrest under NDPS Act also except to the extent they are "inconsistent with the provisions of the Act". Thus, while conducting search and seizure, in addition to the safeguards provided under the Code of Criminal Procedure, the safeguards provided under the NDPS Act are also required to be followed. Section 50(4) of the NDPS Act lays down that no female shall be searched by anyone excepting a female. This provision is

similar to the one contained in Section 52 of the Code of Criminal Procedure, 1898 and Section 51(2) of the Code of Criminal Procedure, 1973 relating to search of females. Section 51(2) of the Code of Criminal Procedure, 1973 lays down that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency. The empowered officer must, therefore, act in the manner provided by Section 50(4) of the NDPS Act read with Section 51(2) of the Code of Criminal Procedure, 1973 whenever it is found necessary to cause a female to be searched. The document prepared by the Investigating Officer at the spot must invariably disclose that the search was conducted in the aforesaid manner and the name of the female official who carried out the personal search of the concerned female should also be disclosed. The personal search memo of the female concerned should indicate compliance with the aforesaid provisions. Failure to do so may not only affect the credibility of the prosecution case but may also be found as violative of the basic right of a female to be treated with decency and proper dignity.

17. He has also submitted that in the same way the accused persons were entitled for the benefit u/s narcoti of the Act, as there is no convincing evidence which would establish that the accused were in reality searched as per the desire expressed before the Officer, who had raided the premises. When it is the case of prosecution that a particular question with a view to see that scheme of provisions of Section narcoti of the Act are complied with, a question was asked to the accused persons and in response thereof, they had requested the Raiding Officer that personal search of the accused to be carried out in the presence of a Gazetted Officer. Though the Officer himself, who raided the premises, was a Gazetted Officer and is entitled to search the premises and a person individual as per the scheme of Section 42, the Executive Magistrate was requested to rush to the spot but the evidence of the Executive Magistrate viz., the Mamlatdar appears to be conflicted and therefore the learned trial Judge ought to have held that there is no sufficient evidence to show that personal search of accused persons was carried out in presence of the Executive Magistrate as per desire expressed by the accused. This provision being mandatory, accused persons require to be acquitted and he has placed reliance for this purpose on the observations made by the Apex Court in case of Saiyeed Mohmmmed v. State of Gujarat reported in 1995 3 SCC 310. He has taken this Court through the relevant paragraph 7, 8 and 9 of this judgment.

18. It is also one of the argument of Mr.Joshi that some of the prosecution witnesses though have not supported the case of prosecution substantially, they have not been declared hostile. If a witness declared hostile then his evidence can be sidelined, but this Court can still rely on such evidence and it should be read as legal piece of evidence and in support of this argument he has placed reliance on the decision in case of Rajaram v. State of Rajasthan reported in 2005 (5) SCC 272.

19. Mr.Joshi, learned Advocate for the appellants has also placed reliance in case

of The State of West Bengal and Others Vs. Babu Chakraborty, In this case it was submitted before the Apex Court that the house of the accused was raided on receipt of secret information and the prohibited substance was seized. On reading of the evidence it was found that there is non-compliance of the mandatory provisions of Section 42 relating to recording of information and ground of belief. One Independent mahazar witnesses also not examined. In this cited decision the premises was searched at 9:45 p.m., and there was no evidence of compliance of scheme of Section 42(2) of the N.D.P.S. Act and according to Mr.Joshi the entire exercise was carried out with a view to get credit by the Department.

20. Mr. Bhate, learned Addl. Public Prosecutor, appearing for the respondent-State in response of the argument advanced by Mr.Joshi, has submitted that the charge is very clear and accused persons were found involved in bringing the brown sugar to State of Gujarat from Bombay by collective act. The brown sugar found was to sell or distribute to the purchasers. There was no need to prove any social or any family relationship between the accused Nos. 3 and 1; there may be a professional relationship since long otherwise there is no sufficient explanation given by any of the accused as to why accused No. 3 was found present in the residential house of accused No. 1. The accused No. 3 was also found in conscious possession of prohibited substance of brown sugar. There is ample evidence to show that while carrying out the personal search of accused No. 1, she had handed over some small packets of particular number to the raiding party which were kept in her blouse and thereafter the substance in that small packets, was found to be a prohibited substance being brown sugar.

20.1 Mr. Bhate, learned A.P.P., has also taken this Court through relevant paragraphs 10 to 19 of the judgment under challenge and it is submitted that reasons assigned by the learned trial Judge to come to the conclusion for establishment of guilt are sound, logical and legal and there is no need to interfere with the finding arrived at by the learned trial Judge. According to Mr. Bhate, learned A.P.P., this Court does not require to give any fresh reasons for upholding the finding of the learned trial Judge, but can adopt the reasons assigned by the learned trial Judge and can observe that the finding recorded by the learned trial Judge is legal and logical and there is no element of perversity. Mr. Bhate, learned A.P.P., has submitted that when the Court finds that the accused are not entitled to get any technical defence then the finding of fact at the end of appreciation of evidence can be upheld by this Court without entering into a detailed discussion of the nature of evidence led during the course of trial.

20.2 According to Mr. Bhate, learned A.P.P., in the present case the house of the accused No. 1 was raided before the sunset. By pointing out the date and time of raid from the evidence, he has submitted that before some minutes of the sunset, the raiding party had entered into the house of the accused. True it is that entire procedure continued for long time and therefore the procedure may have concluded after some hours that to drawing of second part of the

Panchnama and sealing of muddamal etc., but the accused cannot entitle to get the advantage that his case be equated with the case of Babu Chakraborty (Supra), because in this case the Apex Court was dealing with the order of acquittal so the approach of the Court would be materially different. Here, the legality, validity and propriety of the order of conviction is under scrutiny. Merely because there are minor contradiction or some improvement as to the time of reaching of the raiding party at the residence of accused No. 1, it does not make the case of prosecution doubtful.

20.3 Mr. Bhate, learned A.P.P., has submitted that the Executive Magistrate, Mansinh Amarsinh Chaudhry, examined at Exh.48, has no reason to depose in favour of prosecution being an independent person. He has stated that at about 5:45 p.m. he had received telephonic information from Vapi G.I.D.C. Police Station and thereafter he had reached to the spot at about 6:30 p.m. For the sake of argument if it is accepted that this message might not have been received by the Executive Magistrate sharp at 5:45 p.m., but may have received such intimation at 6:00 or 6:15 p.m., this by itself is sufficient to come to the conclusion that the raiding party members must have entered into the house of the accused prior to and latest by 6:00 or 6:15 p.m. There was no reason for the trial Court to disbelieve this part of the evidence establishing that there is corroborative piece of evidence available on record like entry in the Police Station Diary and time is mentioned in the station diary about the receipt of secret information from PSI, Mr. Kanojia and names of all the three accused persons were given by P.W. No. 14-Mr. Joshi, (Exh.54) and he has deposed to that effect also in his deposition. Neither there is any reference of time in the seizure memo (Exh.55, 56 and 57) nor any reference of exact weight of brown sugar found from each of the accused and the seizure memo does not disclose the name of the persons who carried out the search of each accused persons, there is a reference of number of packets recovered from each of the accused and assess market value is also mentioned. In the same way, the cash amount recovered during the search from all the three accused is also specifically mentioned. So, the absence of mentioning of time or exact weight of brown sugar recovered from each of the accused person would not make the seizure memo doubtful or it does not appear to be a concocted document because the Panchnama drawn at the residence of the accused No. 1 and the evidence of the F.S.L. Officer and Executive Magistrate rules out this concoction. Mr. Bhate, learned A.P.P. has submitted that the conflict pointed out by Mr. Joshi in the evidence are minor in nature and the Court can ignore insignificant and minor conflict in the evidence. It was not possible for the prosecution to create the evidence like railway ticket seized from the accused No. 3. The seizure of railway ticket from accused No. 3 and his presence at the house of accused No. 1 makes the raid genuine and trustworthy.

20.4 Mr. Bhate, learned A.P.P., has submitted that the learned trial Judge has discussed evidence of the each of the witnesses. The report of the F.S.L. Officer initially given is an opinion of expert and the opinion expressed by the Officer

initially identifying the prohibited substance as brown sugar received confirmation by the subsequent report of analysis made by the F.S.L. So the procedure adopted as well as finding arrived at on the spot on the date of raid gets support from the second report of illicit trafficking of substance like brown sugar, which has been viewed seriously by the learned trial Judge and therefore the learned trial Judge has entered into each detail and argument advanced by defence side and has come to a logical finding.

20.5 Mr. Bhate, learned A.P.P., has submitted that there is no doubt as to the recovery of the muddamal from the residence of accused No. 1 and this Court should weigh the judgment under challenge keeping in mind the other facts and relevant scheme of the N.D.P.S. Act. He has submitted that as the house of accused No. 1 was raided before the sunset and the Officer who raided the house was himself a Gazetted Officer, it would not be possible to say that mandatory provisions of scheme of Section 42 was ever violated. On the contrary, the raiding party had proceeded to the house of accused No. 1 after recording the secret information in the station diary and there was no need to record any satisfaction to the effect that if the raid is not carried out immediately the muddamal is likely to disappear or otherwise destroyed. It is also submitted that departure time of the Executive Magistrate from his office and time of his arrival at the residence of accused No. 1 would not be a matter of much relevance. There may be a difference of fifteen to twenty minutes, but as such there is no conflict in the evidence which can be said to be a material in this regard and therefore the learned trial Judge cannot be said to have recorded a wrong finding that there is sufficient compliance of mandatory provisions of scheme of Section narcoti of the Act. It is submitted that some improvement made by the witnesses examined by the prosecution and certain conflict makes the depositions of each witnesses genuine and trustworthy and it is not necessary to lead evidence which can be termed as chanting like parrots because on certain occasions the evidence recorded in pattern have been viewed with doubt by the Court.

20.6 There is difference in the surname of Panch Witness No. 2 in the Panchnama at Exh.22. At one place, the surname of Panch Witness No. 2 is shown as Tailor and at other two places (Page 259 of the paper-book), the surname of Panch Witness No. 2 is shown to be "Patel". The very surname is mentioned at page 273 of the paper-book i.e. in the F.S.L. Report. According to F.S.L. Report, the parcel was received with intact seal and same was bearing and carrying seals and signatures of Panchas. Here, the surname of Panch Witness No. 2 is referred as Patel. Undisputedly, one Sureshbhai was remained as Panch Witness No. 2 and it would not be proper or legal for this Court to say that some third person had signed the slip which was found on the parcel received by the F.S.L. When the name of Panch Witness No. 2 and his father's name is found common at any of the place the Court should not view the entire seizure procedure as doubtful.

20.7 While reading paragraph "59 of the impugned judgment, it is submitted by

Mr.Bhate, learned A.P.P. that the learned trial Judge has also ascertained that whether any material conflict as to weight of the muddamal seized, sealed and sent for analysis to the F.S.L. The weight of brown sugar done at the spot obviously may not be with the electronic or very exact weighing machines; whereas the weighing machines available with the laboratory are well equipped and sensitive and there is no major difference in the weight. The muddamal sealed at the residence of accused No. 1 was found by laboratory as untampered and intact then it would not be proper for this Court to jump to a conclusion that difference in weight would give rise to the doubt that the muddamal might have been changed by the Officers of the raiding party because at two places the muddamal seized has been found as brown sugar upon making test.

20.8 Mr.Bhate, learned A.P.P., has submitted that for short there is no merit in the appeals and appeals, therefore, require to be dismissed.

21. Ms.Ruppal Patel, learned Advocate appearing for appellant-original accused No. 3 had adopted the argument advanced by Mr.Joshi, learned Advocate appearing for the org. accused No. 1. She has in nutshell submitted that appellant "org. accused No. 3 is made a scapegoat and has been falsely implicated and there is ample evidence to show of more than one witnesses including the Panch Witnesses examined as well as the Scientific Officer who was also one of the member of the raiding party and the Executive Magistrate.

22. On close consideration of the facts disclosed by the learned trial Judge in the judgment under challenge vis-a-vis, the relevant legal provisions of Sections 21, 22, 42, 50, 52, 57 or 58 of the N.D.P.S. Act, as well as, Sections 100, 102 and 165 of the Code of Criminal Procedure in the background of the oral submissions made herein above, this Court is of the opinion that the finding recorded by the learned trial Judge is based on detailed discussion of the facts emerging from the evidence led by prosecution, keeping in mind the entire charge framed against the accused persons.

23. The original accused No. 2 has not preferred the appeal challenging the judgment and order of conviction and sentence, however looking to the totality and appreciation of evidence it does not make the case of prosecution doubtful qua the appellants of both the appeals.

23.1 All the three accused persons were found in the very premises which was raided and there is no inconsistency or conflict in this regard. It appears that raid is genuine because the premises was raided by the Police on receiving information and it is not possible for this Court to accept the argument that to get a Departmental promotion and to show a big catch all the Officers including Dy.S.P., Mr.Joshi, Police Inspector and other Police Officers, etc., had attempted to implicate total three accused persons otherwise it is very likely that only one person who brought prohibited substance, brown sugar was caught and after interrogating him other formalities were completed at the residential house of the accused No. 1, but no circumstance of such a nature are emerging from the

evidence. No clear-cut suggestion of that nature was made even to the chief of raiding party i.e. Mr.Joshi, Police Inspector. Number of trains must be reaching to Vapi Railway Station from Bombay after 12:00 noon and when there is no element of animosity between local Police and org. accused No. 1, there was no reason for the local police to implicate org. accused No. 1 alongwith her brother-in-law in such a serious offence.

23.2 The house from which the org. accused No. 1 was found with muddamal substance is her residence and residing in the premises with her husband and therefore her presence at the house was natural and therefore it is not possible that org. accused No. 1 was called from somewhere else and trapped with that accused persons. The telephone bill and the receipt of payment thereof produced by the prosecution were recovered during the search and seizure which makes one thing clear that presence of org. accused No. 1 in the premises was natural. If the Police was interested in implicating the maximum members of the family then the Police could have linked all the major members of the family in this offence, because small packets of brown sugar recovered were more than 800 in number. As such maximum number of small packets of muddamal were found from the bag lying with one of the accused, so as per settled legal position 785 small packets cannot be said to have been recovered during the personal / individual search of the accused and therefore the scheme of provisions of Section narcoti would not help that accused. Total 20 packets were given by the org. accused No. 1 which were kept with her in her blouse as per evidence and there is no serious dispute as to the presence of a Lady Constable and no other serious allegations have been made against the Police as to conduct of the members of the Raiding Party with the lady accused. It appears that as the Lady Constable was found present and during personal search she had handed over those small packets to the raiding Officer and remaining packets were found packed under the secret chamber of the bad house of org. accused No. 1.

24. It is not legally necessary for prosecution to establish that the accused persons found present in one residential premises due to some social or other relationship; there may be a professional relationship and org. accused No. 3 who had reached to the residence of org. accused No. 1 at odd hours in the afternoon is indicative of a planned visit. Neither any suggestion nor any evidence is on record to show that brother-in-law of accused No. 1 was residing in that very house. It is possible to infer that as the person bringing brown sugar from Bombay was to reach at the house of accused No. 1, accused No. 2 being a male member viz., brother-in-law of accused No. 1 who arrested alongwith accused No. 1, was called. In this situation the presence of org. accused No. 2 cannot be presumed to be innocent.

25. The Court is dealing with the appeal preferred under the provisions of Section 374 read with Section 386 of the Code of Criminal Procedure and therefore the merit of the judgment under challenge has to be evaluated on the strength of the record available. This Court can rewrite the judgment and placed

its own finding vis-a-vis the finding recorded by the learned trial Judge, but in the present case no such exercise is required to be made as the learned trial Judge has discussed the evidence with great detail and this Court does not find either any perversity or illegality in appreciating the evidence.

26. The story placed by prosecution does not appear to be cock and bull story. It is very likely that some inquiry might have been made either by Dy.S.P. or Police Inspector, Mr.Joshi prior to carrying out the actual raid, but the fact remains that the Scientific Officer was informed at 15:30 hours. Meaning thereby the Police had determined to raid that particular house, which was occupied by org. accused No. 1. It is also relevant that reflection of names of the all three accused persons in the information recorded in the station diary does not make the case of prosecution doubtful and it would not be either legal or proper to infer that the Police must have arrested all the three accused first and thereafter the documents must have been created by the Investigating Agency. As per evidence, the Executive Magistrate was informed at about 17:30 hours and neither any suggestion nor evidence to show that the Executive Magistrate was aware that he has to go to a particular residential house prior to 17:30. The evidence of Panch Witness needs to be ignored for other good sound reasons.

27. The residential house of org. accused No. 1 was having telephone connection, so who made a telephone call and from where and how the Mamlatdar was informed, are the questions, but the evidence inspires confidence that the Executive Magistrate was requested to rush to a particular premises only with a view to comply with the scheme of Section narcoti of the N.D.P.S. Act, otherwise it was not impossible for the Police to refer denial as to the request or suggestion made to the accused in the Panchnama drawn. Like seizure memo, as alleged the Police could have obtained the signature on document that they are not interested in getting themselves searched in the presence of the Executive Magistrate or any other independent Gazetted Officer. On the contrary, after going through the evidence, it is clear that demand for the presence of Executive Magistrate was perhaps made by the persons accused anticipating that Police would not be able to arrange for the presence of the Executive Magistrate at a last minute, but on arrival of the Executive Magistrate the accused started to cooperate with the raiding team and handed over the muddamal, prohibited substance during the search and then these very articles were seized.

28. The first and second part of the Panchnama (Exh.22) have been drawn in detail. The first part of the Panchnama is found drawn at the Police Station between 17:00 and 17:30 hours and in couple of minutes the team might have reached to the raided premises. The difference in the mentioning of surname of Panch Witness No. 2 in the Panchnama does not make the entire Panchnama doubtful or created one, because his signature on the sealed articles have not remained under serious dispute or doubt. There is no fatal cross-examination on this aspect. There was no reason for this witness to help the Police in creating the document against the accused persons in such a serious case and there is no

evidence to show that any of these Panch Witnesses had any thick relationship with the Officers of the Vapi G.I.D.C. Police Station. There is no dispute as to the residential address of both these Panchas. They are the resident of Vapi and Panch Witness No. 2 appears to be a resident of very area where the accused No. 1 was residing, i.e., the premises raided because it is mentioned as "Vapi Udhyog Nagar Old, C-Type Block No. 3/33, Vapi", thus the Panchnama drawn at Exh.22 has been rightly appreciated by the learned trial Judge. True it is that the Panchnama was completed under the electricity light at 22:30 hours, but this timing is not by itself sufficient to conclude that the raiding party must have also reached after the sunset i.e., at the premises of org. accused No. 1. If the Police was interested in playing mischief to plant prohibited substance and to implicate all the three persons as accused, the Scientific Officer ought not to have been called in advance, because, the information was of possession and illegal trafficking of brown sugar and the Scientific Officer was therefore requested to remain present and some preliminary examination was thought to be carried out at the spot. Ultimately, as per evidence the opinion expressed by the Scientific Officer has been confirmed after the detail examination carried out by the F.S.L., Ahmedabad.

29. The samples from two portions of the muddamal seized were separated and there is no conflict as to the weight of the muddamal sealed for the purpose of sending it for analysis to F.S.L., Ahmedabad. One parcel sent to F.S.L., was containing 1.570 gms and other parcel was containing 4.070 gms. In the evidence there is no conflict as to the weight qua the sample collected and sent for analysis to F.S.L., Ahmedabad. The Scientist of Ahmedabad has also referred that even butter papers containing the powder were used to pack the muddamal brown sugar. The powder particles were found smeared on pieces of butter paper used for packing of the muddamal prohibited substance. From the document it is established that the parcels received by the F.S.L., Ahmedabad were found in a sealed condition and sealing process is not found doubtful. The signatures were also verified and compared by the Scientific Officer before analyzing the samples. These sealed sample were examined by applying five popular methods, viz., 1) Markwicks Test 2) Mayor Test 3) Mecnic Test 4) Jernix Test and 5) Thin layer Chromatography. The analyst had found that all the three samples of brown sugar received by the F.S.L. i.e. Mark A-I and B-III and parcel C-I/1 to C-I/4 is the Morafin, Dyoacitile Morafin, Herione, 6-Monoacitile Morafin having presence of narcotic. It is also opined that such a substance is normally known as brown sugar so it is not possible for the Court to accept the argument of Mr.Joshi that as there is no definition of brown sugar in the N.D.P.S. Act and when the report of the Scientific Officer (Exh.26) putting the muddamal substance in that category, the accused could have been convicted u/s 22 of the N.D.P.S. Act. Thus, the conviction recorded u/s 8C read with Section 22 of the N.D.P.S. Act is found to be legal.

30. It is not always necessary to refer the Section while framing the charge. There may be an error in mentioning the Section at the time of framing of the

charge. The Court should normally insist that by framing the charge, the accused is put on the guard that what type of case is being placed against him on the strength of the evidence collected and contemplated by the prosecuting agency and on what grounds or facts. The time and place of the commission of offence is specifically mentioned and the criminal wrong committed by the accused is also stated in clear and unambiguous terms so that the accused can carve out the defence. Of course, in the present case it is not possible for this Court to accept the argument that accused have been wrongly charged for the offence punishable u/s 22 of the N.D.P.S. Act and in reality the charge ought to have been framed for the offence punishable u/s 21 of the N.D.P.S. Act. The charge is basically in reference to Section 8C of the N.D.P.S. Act. The accused was put to the guard that they are found responsible for violating the scheme of Section 8C) of the N.D.P.S. Act and as per prosecuting agency all the accused persons were hand in glove in commissioning the offence.

31. The argument advanced by Mr.Bhate, learned A.P.P., obviously shall have to be accepted that the learned trial Judge has correctly discussed that there is no violation of scheme of either Sections 42 or Section narcoti of the N.D.P.S. Act. The provisions of Section 57 and 58 are directory as per the settled legal position. For the sake of argument if it is accepted that there was no direct compliance of scheme of Section 57 or 58 of the N.D.P.S. Act, even then the accused cannot get the clean acquittal or a benefit of doubt because there is sufficient evidence on record that the prohibited substance "brown sugar" was found from the conscious possession of the persons accused. The mandatory provisions of Sections 42 and 50 have been complied with so far as the accused No. 1 is concerned and there was no need for such compliance u/s 50 of the N.D.P.S. Act qua the accused No. 3 as the brown sugar was found in a bag which was there with him.

32. Mr.Joshi, learned Advocate for the org. accused No. 1 at one point of time has fairly accepted that if the Court is of the view that house of the accused No. 1 was raided and raiding party had reached before sunset then it would not be necessary to undergo any other formalities referred to u/s 42 of the N.D.P.S. Act, as the raiding Officer himself was a Gazetted Officer. One important aspect is that the F.S.L. expert was called and he was present since the entry was made in the house. So for the purpose of search of the house it is possible for this Court to observe that the search was carried out independently and there is no violation of any provisions of the N.D.P.S. Act. Of course, there is no evidence that the Scientific Officer, called was a Gazetted Officer, Class-II or Class-III but normally the Scientist in State of Gujarat are conferred with such a status of Gazetted. The Police had even then called the Executive Magistrate before carrying out the personal search of accused and the learned trial Judge has discussed this aspect in detail mainly in paragraph 24 and 25 of the impugned judgment and these reasons are found acceptable.

33. There is some confusion in the evidence of Prosecution Witness No. 4-

Sureshbhai Parshottambhai Tailor, who has been examined at Exh.21. He has deposed that when they had started to raid the house, the Mamlatdar was also with them and the Scientific Officer was also there. However, the evidence of this witness has rightly been appreciated by the learned trial Judge by observing that certain statements made by this witness in the cross-examination disproves his version of examination in chief. This witness is not treated as hostile witness nor has been confronted by learned A.P.P, but it is possible for this Court to ignore this part of the evidence of this witness especially when the Mamlatdar himself has stated that he had reached the house subsequently on receipt of telephonic call after 5:30 hours. Because more trustworthy version has to be accepted. There was no reason for the Executive Magistrate to go to Vapi G.I.D.C. Police Station, because a dignified Officer would not require to go to Police Station unless it is legally required. The Executive Magistrate was never called to the Police Station nor he had gone to the Police Station. These two set of evidence with circumstance are found on record. So the learned trial Judge has rightly ignored this part of the evidence of Panch Witness-Suresh during which he has attempted to oblige the accused to some extent. When this very Panch Witness has signed the Panchnama which does not refer the presence of Mamlatdar from the beginning i.e. from the time when first part of Panchnama was drawn at Vapi G.I.D.C. Police Station, the Court was entitled to separate the chaffs from grain and that exercise has been rightly observed by the learned trial Judge.

34. It is rightly observed that so far as 40 packets recovered from the secret chamber of the bad can be said to be a seizure of 40 packet from the conscious possession of the accused No. 1 and for that there was no need of compliance of Section 50 of the N.D.P.S. Act, like the container found with accused No. 3. The Scientific Officer examined has attempted to explain the error as to the weight mentioned in the document in his deposition. In the same way the Prosecution Witness No. 1-Jayeshbhai Ragubhai Patel, examined at Exh.15 and discussion in paragraph 26 of the impugned judgment (Page 673 of the paper-book) deals with this aspect. The learned trial Judge has rightly observed that while weighing the material, the Scientific Officer has firstly carried out the analysis of the muddamal and it was found to be a prohibited substance and thereafter it was found to be brown sugar and therefore some discrepancy as to the exactness of the weight does not make the prosecution case doubtful or created.

35. The cross-examination of the Scientific Officer, Prosecution Witness No. 5-Janmohammed Fakirbhai Mansuri, examined at Exh.25 adds enough strength in the case of prosecution. Mr.Joshi, Police Inspector has also explained as to how 20 packets of prohibited substance were recovered from the accused No. 1 and other 40 packets from the secret chamber of the bed lying in the house. These packets were put together. According to Mr.Joshi, Police Inspector total 91 packets were recovered from accused Nos. 1 and 2. Mr.Joshi, could have sealed 20 packets and 40 packets separately recovered from the conscious possession of accused No. 1 and other 31 packets recovered from accused No. 2. It is clarified by this Officer that from 91 packets recovered from the accused Nos. 1

and 2, 1.50 gms was separated so that the same can be sent for further analysis to F.S.L., Ahmedabad, otherwise 04 different samples would have been required to be collected and sent for analysis. Some of the pieces of butter papers were also sent for analysis. So the technical error of not collecting 04 different samples does not make the report of the Scientific Officer doubtful nor it was recovered or seized.

36. The deposition of the Executive Magistrate also supports the say of Mr.Joshi, Police Inspector. The discussion made in paragraph - 21 and 25 of the judgment is also based on the deposition of Executive Magistrate alongwith other two witnesses viz., the Panch Witness and Mr.Joshi, Police Inspector. In paragraph-59 of the judgment, the learned trial Judge has recorded the finding as to how and why he is ready and anxious to accept the evidence of the Scientific Officer, who analyzed the sample at Ahmedabad. The model test initially carried out by Mr.Jayesh Patel at the spot. Each packets were identified and considering the similarity of the powder contained in all packets, the samples were collected and sent for analysis, so as such there is no error which can be said to have been committed either by the Investigating Agency or the Officers who was asked to analyze the sample at the spot on 24/01/2003.

37. The cited judgments relied upon and referred to in paragraphs 16 to 19 are not found helpful to the appellants-accused, in view of the facts of the cited decisions. So, it is not necessary to discuss as to why the ratio of the cited decisions are not found relevant and the Court is of the view that when on facts as well as evidence the guilt of the accused is found to be proved, it is not necessary to refer any decisions to substantiate the reasons assigned while confirming the finding recorded by the learned trial Judge.

38. It is not necessary to reproduce or discuss the evidence of each witnesses examined by prosecution especially when the reasons assigned by the learned trial Judge are found sound and good for recording conviction, but when the matter has been argued placing all details from record, it becomes necessary to appreciate their contentions.

39. This Court does not find any merits in arguments advanced for the appellants. On the contrary the say of Mr.Bhate, learned A.P.P. is found acceptable. It is rightly submitted by Mr.Bhate that this Court, as per settled legal position may ignore the minor discrepancy and minor inconsistency in the evidence led by prosecution and if the evidence available is found sufficient to link the accused with the crime beyond doubt then the conviction should not be reversed. There is no apparent error either of fact or law in appreciating the evidence which can be said to have been committed by the learned trial Judge. The Court does not find any merits in both the appeals and therefore both the appeals require to be dismissed and are dismissed. The judgment and order of conviction and sentence dated 29/03/2005 passed by the learned Special Sessions Judge at Valsad in Special NDPS No. 2 of 2003 is hereby confirmed. Order and Direction accordingly.