

(2011) 05 PAT CK 0095

In the Patna High Court

Case No : Govt. Appeal (SJ) No. 65 of 1990

The Matter of State

APPELLANT

Vs

Md. Wasimuddin, Sri Binda Prasad and Sri Mankeshwar Singh

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Citation : (2011) 05 PAT CK 0095

Judgement

Dharnidhar Jha, J.—The present appeal has been preferred by the State through Special Police Establishment, CBI, Patna to challenge the judgment of acquittal passed by learned 14th Additional Sessions Judge, Patna in a batch of Criminal Appeals bearing no; 301 of 1987, 307 of 1987 and 303 of 1987 on the 9th day of August, 1999 by which the judgment of conviction and order of sentence passed upon the three Respondents by Special Magistrate, C.B.I., Patna on 31.8.1987 in Trial No. 2 of 1987 arising out of RC 12 and 13 of 1981 was set aside and the three Respondents were acquitted of the charges under Sections 120B read with 326, 220 and 109 of the IPC.

2. On 24.7.1980 the Respondents along with one S. Hembram, who was on that day Dy. S.P., Nathnagar, Bhagalpur recorded their departure from Sabour police station at 12.15 hours in Station Diary Entry No. 408 dated 24.7.1980(Ext-2) showing the purpose of the departure to arrest the criminals. Ten persons were taken into custody from two different village, Lakshmipur and Khirjan; they were Lakhi Beldar(P.W.1), Shankar Tanti(P.W.2) Saldeo Tanti(not examined), Anirudha Tanti(P.W.7) all of village Laxmipur, Putul Tanti, Baldeo Tanti, Jagdish Mandal, Wakil Tanti(P.W.4), Dhanna Tanti(P.W.3) and Paran Tanti all of village Khirjan at or about 3 to 4 A.M. on 25.7.1980. They were brought to Simro Salpur School and were detained there for the whole day on 25.7.1980. Out of the above noted ten persons, Dhanna Tanti(P.W.3) and Paran Tanti(not examined) were let off from Simro Salpur School whereas the remaining eight persons were brought to Sabour police station. The arrival of eight arrested accused persons along with the Respondents was entered into Station Diary Entry No. 438 dated 26.7.1980 at 20 hours, i.e., 8 P.M.(Ext-2/1 and they were shown detained for two days. The

same entry Ext-2/1 indicated that Lakhi Beldar(P.W.1) and Shanker Tanti(P.W.2) and others were shown arrested in connection with Sabour P.S. Case No. 11(7) of 1980 under Sections 399, 402, etc IPC and 27 of the Arms Act by the police party consisting of the Respondents and other police personnel. The arrest was allegedly made somewhere at village-Alang Pargarhi. While Lakhi Beldar(P.W.1) and Shanker Tanti were in police custody, as per the prosecution case, Respondents Md. Wasimuddin and others caused grievous hurt to their eyes by piercing a sharp pointed weapon like Takua into them and by pouring some corrosive substance resulting in the permanent deprivation of their visions and also caused simple hurt to them. Lakhi Beldar(P.W.1) and Shankar Tanti(P.W.2) along with six others, as per the prosecution story, were wrongfully confined at Sabour police station by the accused police officers till 11 A.M. of 28.7.1980. Wakil Tanti(P.W.4) was let off from the police station at the intervention of a person whereas the other arrested persons, like, P.Ws. 1 and 2 were asked to pay bribe for being freed else, were threatened to be blinded in the manner as just stated. The story further states that P.Ws.1 and 2 were blinded one after the other by Respondent Md. Wasimuddin and other police officers and constables and they along with others were sent to Bhagalpur and by obtaining an illegal remand order, were sent to Bhagalpur jail. In order to cover up the wrongful confinement of seven arrested persons at the police station, Respondent Md. Wasimuddin and other police officials posted there, created record, thats Station Diary Entry (SDE for short) No. 450 dated 27.7.1980(Ext-2/2) at 18 hours which indicated as if the arrested persons had been sent to Bhagalpur from Sabour police station for being remanded in connection with above noted Sabour P.S. Case No. 11(7)80(Ext-11). In fact the investigation indicated that the illegally arrested and detained persons, like, P.Ws.1, 2 and others had been sent to Bhagalpur Civil Court and from there to Central Jail, Bhagalpur on 28.7.1980 at 11 A.M. and they were admitted to the said jail.

3. Some of the documentary and oral evidences indicate that on being admitted into the Bhagalpur jail, some injuries were noticed by the jail authorities in the eyes of P.Ws.1 and 2 and, as such, they were sent to jail hospital and were admitted there and were checked up by the jail doctor and injuries in their eyes were recorded as may appear from Ext-16 which is hospital register of the jail hospital and the entries in the above respect appears at serials No. 118/860 dated 28.7.1980 and 119/161 dated 28.7.1980.

4. It appears further from the record that the victims, like, P.Ws.1 and 2 sent their respective typed letters which were typed at the orders of the jail Superintendent by P.W.22 Sri Shankar Mishra who was employed in the Bhagalpur Central Jail as a Warden, who was doing typing works too. The applications of P.Ws.1 and 2 were addressed to the Sessions Judge, Bhagalpur and those indicated almost in same terms that the two witnesses had been arrested from their respective houses at villages-Lakshmipur and Khirjan situated in police Stations-Sanhaula and Jagdishpur respectively and had been kept under confinement for five days or so at Simro Salpur School and Sabour police station

by the officer-in-charge of that police station and the other Sub-Inspector of Police and, thereafter, their eyes were pierced with a sharp pointed instrument and acid was also poured into them. They were brought to Sabour police station and kept confined there and, thereafter, they were brought to the courts at Bhagalpur on 28.7.1980 and from there, they were sent to jail. They were pointing out to the Sessions Judge, Bhagalpur that there was no law entitling the police officers to blind any person and they were desirous to prosecute the erring police officers, but they could not do it on account of their poverty. They made a prayer to the Sessions Judge, Bhagalpur for providing an advocate at the state expense so that they could seek justice against the culprit police officers before a court of law.

5. From perusal of Exts-14 and 15 which are the two applications under the thumb impressions of P.Ws.1 and 2, it appears that the jail doctor was also certifying over it that the two persons had been seriously injured in their eyes and there was little chance of their eye sight being restored.

6. What appears further from the record is that the District & Sessions Judge, Bhagalpur sent the applications, probably, to the Superintendent of Police of the district and that resulted into institution of Sabour police station cases No. 11(11) of 80 and 12(11) of 80.

7. Subsequently, under notification No. 228/1/81-ABD dated 28.1.81 of the Govt. of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms, New Delhi which was in the form of an order u/s 5 of the Delhi Special Police Establishment Act issued with consent of the Govt. of Bihar, Home(Police Department), Patna, Sabour P.S. Cases No. 11 and 12 dated 27.11.80, were transferred to the Special Police Establishment for investigation and, accordingly, the C.B.I. took over the investigation of the case and after close of the investigation, submitted chargesheet sending up ten accused persons including the three Respondents for their trial for having committed the offences under Sections 120B, 323, 324, 326, 342/109 of the IPC. It appears that sanction to prosecute the Respondents and other accused persons was duly accorded by the State Government.

8. The case was sent to trial before the Special Judicial Magistrate, C.B.I., Patna by framing charges against Respondent No. 1 and other accused u/s 120B IPC. Respondent No. 1 Md. Wasimuddin was distinctly charged also under Sections 326 and 220 IPC. Likewise, the remaining accused persons were charged together u/s 120B and 220 read with 109 IPC. The prosecution examined a total number of 29 witnesses and brought on record huge number of documents in order to establish the charges and after considering the evidence, both oral and documentary, the learned trial Magistrate by judgment dated 31.8.87 acquitted accused S.M. Hembram, Dy. S.P., Nathnagar, Jairam Singh, Jainuddin, Arun Paswan, Ramesh Chandra Ram, Ramjee Singh and Ramjatan Yadav all constables while convicting the three Respondents. Respondent Md. Wasimuddin was convicted for committing offence under Sections 120B read with 326 and was

sentenced to rigorous imprisonment for two years. He was also found guilty u/s 326 IPC and a sentence of rigorous imprisonment for three years as also to pay a fine of Rs. 1,000/- in default of which and additional term of simple imprisonment for one year was inflicted upon him. He was also directed to suffer rigorous imprisonment for two years u/s 220 of the IPC. The sentences passed against Md. Wasimuddin were directed to run concurrently. The remaining two Respondents were convicted of the offence u/s 120B read with 326 IPC and each of the two was directed to suffer rigorous imprisonment for two years.

9. Respondent Md. Wasimuddin preferred Criminal Appeal No. 301 of 1987 whereas Respondent Binda Prasad presented Criminal Appeal No. 303 of 1987. The third Criminal Appeal bearing No. 306 of 1987 was preferred by Respondent Mankeshwar Singh. All appeals were heard together by the 14th Additional Sessions Judge, Patna and were allowed by the judgment under appeal.

10. The learned lower Appellate Court while allowing the three appeals was recording many findings. It was held as may appear from paragraph-9 of the judgment passed by the learned Additional Sessions Judge that the reports of P.W.15, namely, Dr. Karuna Sindhu Roy was not supporting the prosecution case that corrosive substance was poured in the eyes of Laxhi Mahto(P.W.1) and Shanker Tanti(P.W.2). It was further held that there was no mention in the report of P.W.15 that any corrosive substance had caused the injuries to the eyes of both P.Ws.1 and 2. After considering the evidence of other doctors, like, P.W.11 Dr. J.N. Rohtagi and P.W.29 Bharendra Pal Singh it was held that there was variance in the opinion of the doctors as regarded the injuries to the eyes so much so that there was no opinion coming from the initial examination of the injured that those could have been caused by any corrosive substance and also by piercing takua into the eyes of P.Ws.1 and 2. The next finding which appears recorded by the learned trial Judge was based on the two applications Exts-14 and 15 sent by the two victims P.Ws.1 and 2 to the District & Sessions Judge, Bhagalpur and it was held by the learned lower Appellate Court that as regards the dates of blinding of the two injured those were differing and the period of five days stated by one of them, was making the story improbably. Besides, there was no mention as to who had specifically done what act. It was, lastly, held that there was variance in the two documents Exts-14 and 15 as regards the arrest of P.Ws.1 and 2 along with others and keeping them at different places and that was also not stated in the two documents and that falsified the evidence of P.Ws.2 and 1 both as the prosecution case appears doubtful. It was held, lastly, that some spurious drugs might have been administered by some untrained hands causing blindness of the two persons as was suggested by one of the doctors, namely, P.W.8 Dr. Gopal Chand Prasad in paragraph-6 of his evidence. On these and other reasons, the learned Additional Sessions Judge went on to hold the charges not proved and as such allowed the appeals and thereby acquitted the three Respondents.

11. During hearing of the present appeal, I was taken through the evidence of

the witnesses and through the judgments of the two lower courts. It was contended by the Appellant, C.B.I. that the evidence on record duly established that P.Ws.1 and 2 along with others were picked up from different villages in the night intervening 24th and 25th of July, 1980 by the three Respondents and acquitted accused persons and from there they were brought to Simro Salpur School and were detained there on the whole day on 25.7.1980 from where Paran Tanti was released. Thereafter, the arrested persons were shifted to Sabour police station and were confined there from 26.7.1980 till the early hours of 28.7.1980 and false records were created so as to justifying their arrest. P.Ws.1 and 2 were blinded by piercing sharp cutting instruments in their eyes as also by pouring some substance, like, acid and were forwarded to the court after creating. Ext-11, i.e., FIR of Sabour P.S. Case No. 11(7)80. The opinions of doctors who were examined in the trial court definitely pointed out that the eyes of P.Ws.1 and 2 had been privated by external means aforesaid and they had completely been blinded. The evidence of different witnesses, it was contended, proved the illegal arrest and wrongful confinement of the eight persons including P.Ws.1 and 2 and they were blinded in that course. It was contended that the Additional Sessions Judge read the evidence in such a way as only to acquit the accused persons. There was no evidence brought on record that any spurious drug was administered to P.Ws.1 and 2 and as such there could not be any finding that the blinding could have been induced by administering some spurious drugs by untrained hands. There was clear evidence of damaging the eyelids of the two victims and again the learned Additional Judge was recording that there was no such injury indicating the damage to the eyes. It was contended that primarily, Exts-14 and 15, which were the basis of the case, were sent to the District & Sessions Judge, Bhagalpur with a view to initiating criminal proceedings. The learned Additional Judge if had read and considered the two documents correctly which were jail-petitions by two prisoners P.Ws.1 and 2, he could have found that those were applications seeking legal aid on account of their financial disability. The contents of the two documents might further have indicated that they were not sure that the barbaric acts which had been perpetrated upon them were illegal or legally prohibited act made punishable also, rather the very language indicates that the two victims were still labouring under an impression as if the police might have legal sanction to commit those brutal acts to any individual. It was contended that evidence was sufficient to indicate that the accused persons had participated in illegally arresting innocent persons and there was no evidence in initial records of the police that there was any injury on their persons. It was contended that the learned Additional Judge has simply recorded perverse findings which were not borne out of the record to acquit the Respondents. It was contended that the evidence which was produced before the learned trial Magistrate could not have led to any other views than those recorded by the learned trial Judge and it was a case in which the charges had been proved to the hilt.

12. Sri K.P. Singh and Sri S.N.P. Sinha both senior Advocates appearing on behalf

of Respondents No. 1 and 3 and Sri Om Prakash Pandey appearing as Amicus curiae on behalf of Respondent No. 2 were making submissions on various aspects of the case to justify the judgment of acquittal passed by the learned Additional Sessions Judge. It was submitted by Sri Sinha, the learned Counsel appearing for Respondent No. 1 that Exts-14 and 15 were not containing the details as to how the two witnesses P.Ws.1 and 2 were blinded and at what place. In this connection, it was contended by Sri K.P. Singh and Sri Om Prakash Pandey that the participation of Respondent Binda Prasad and Mankeshwar Singh was also not established satisfactorily as persons who had participated in any manner in blinding of P.Ws.1 and 2. The evidence of doctors examined in the case also indicated contrary views and those were not supportive of the time and date of occurrence when the acts could have been committed. The argument was also that there was variance in the statements in Exts-14 and 15, the two jail applications sent by P.Ws.1 and 2 to the District & Sessions Judge, Bhagalpur regarding the places where they had been brought or confined and also regarding the places where the act of blinding them by piercing an instrument into their eyes or by pouring acid into them. It was contended that they had properly been arrested in connection with a substantive criminal offence for which Sabour P.S. Case No. 11(7)80(Ext-11) was drawn up. They were remanded by proper judicial order and they were not complaining to the Magistrate remanding them about the acts of the accused persons.

13. It was contended both by Sri K.P. Singh and Sri Om Prakash Pandey appearing on behalf of Respondents No. 3 and 2 respectively that the identification of Binda Prasad and Mankeshwar Singh who were Sub-Inspector and Circle Inspectors respectively on the date of occurrence as participants in commission of the offence, has not satisfactorily been established and as such their acquittal appears proper.

14. The present is the appeal against a judgment of acquittal which was passed to set aside the judgment of conviction recorded by a Magistrate who carried out the trial proceedings. As regards the approach of an Appellate Court in such an appeal there was quite some controversy. This could be apparent from the following paragraph of the Supreme Court in the case of Sanwat Singh and Others Vs. State of Rajasthan, :

In recent years the words "compelling reasons" have become words of magic incantation in every appeal against acquittal. The words are so elastic that they are not capable of easy definition; with the result, their interpretation varied between two extreme views-one holding that if a trial court acquitted an accused, an appellate court shall not take a different view unless the finding is such that no reasonable person will come to that conclusion, and the other accepting only the conscience of the appellate court as the yardstick to ascertain whether there are reasons to compel its interference. In the circumstances we think it necessary to clarify the point.

15. The Supreme Court, thereafter, went on to consider the decision of the Privy

Council in Sheo Swarup and Others vs. King Emperor and other decision of the Supreme Court in subsequent paragraphs of the judgment and went on to lay down the final opinion of their Lordships as regards the approach to be adopted by an appellate court while considering the judgment of acquittal. I am tempted to reproduce the final opinion of the Apex Court which is contained in paragraph-9 of Sanwat Singh (Supra) which is as follows:

The foregoing discussion yields the following results:(1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2)the principles laid down in Sheo Swarup and Others vs. King Emperor (2) afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons, and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgments, which lead it to hold that the acquittal was not justified.

16. Thus, it was finally laid down that the appellate court is empowered in an appeal against acquittal to review the entire evidence against acquittal and to come to its own conclusion but while so doing, it must not only consider every matter on record having a bearing on the questions of facts but must also consider the reasons given by the trial court in support of its orders of acquittal in arriving at its conclusion on those facts, but should also express its own reasons in its judgment on those issues which laid it to hold that the acquittal was not justified.

17. Going by the above principles this Court is required to reconsider the evidence in the teeth of the findings recorded by the learned Additional Sessions Judge while passing the judgment of acquittal in the light of the contentions of the parties.

18. It is not disputed that P.Ws.1, 2 and 6 others were arrested from two different places, namely, Laxmipur and Khirjan Tantitola, as may appear from the evidence of P.Ws.1, 2, 3, 4, 5, 6, 7 and 10. These are witnesses who have stated that in the night intervening 24-25 of July, 1980 at about 3-4 A.M. a group of policemen picked them up either from their residences or from places they were at and took them to a particular place which has been pointed out as the basa of one Jagdish Chaudhary. P.W.1, namely, Lakhi Mahto @ Lakhi Beldar was stating that when he was objecting to his arrest and wanted to know the reason thereof he was commanded to keep silent else he would be shot dead. P.W.2 the other victim Shankar Tanti who was the resident of the village Khirjan under police station Jagdishpur which was quite outside the jurisdiction of the Respondents specially Respondents 1 and 2 was picked up from his house at 3 A.M. as per his

evidence by Respondent No. 1 and was brought to the same basa of Jagdish Choudhary where he found P.W.1 Lakhi Beldar of village Laxmipur, police station Sanhaula and others, similarly arrested persons which included P.W.3 Dhanna Tanti and others. Subsequently, Anirudha Tanti(P.W.7), Jagdish Mandal(not examined), Baldeo Tanti(not examined), Putul Tanti(not examined) and Wakil Tanti (P.W.4) were also brought there after being arrested from their respective houses. All the arrested persons, as may appear from the evidence of these witnesses, were beaten up and were asked as to where were their properties. They were brought to Simro Salpur School and were put in there after getting a room of the school opened. As may appear from the evidence of P.W.2 Shankar Tanti he and others of his co-villagers were brought to police station and on the 3rd day, P.W.2 Shankar Tanti and P.W.7 Anirudh Tanti were brought to their place of residence at Khirjan and their houses were searched. Nothing was recovered from the houses of P.Ws.2 and 7 as may appear from the respective evidence of the two witnesses but Respondent No. 1 was demanding as per the evidence of P.W.1 Rs. 500/- for releasing him which was not paid by P.W.1 stating that he was a poor fellow and he could not pay that amount upon which Respondent 1 stated told him that if he paid the amount, he will be let off, else his eyes would be privated. P.W.2 stated that he did not pay but the wife of P.W.7 Anirudh Tanti paid Rs. 150/- but in spite of that he was not released and was produced in court as may appear from the evidence of P.Ws.1 and 7 which is supported by the evidence of other witnesses, like, P.W.1 Lakhi Beldar.

19. While considering the evidence of P.W.1 Lakhi Beldar, specially the evidence in cross-examination part in paragraphs-19 and 20, it appeared that the police was not denying that it had not arrested P.Ws.1 and 2, rather it was attempting to justify the arrest as lawful inasmuch as they were criminal characters who had indulged in various cases and who could be roaming around to commit offences. The fact that the eight persons were arrested is admitted by the police also from the Station Diary Entry No. 438 dated 26.7.80 which was marked Ext-2/1 by the trial court. It is indicated by it that the eight persons including P.Ws.1, 2, 3, 4 and 7 were brought by Respondents No. 1 and 2 along with constables to the police station on account of having been arrested in connection with offences u/s 399, 402, 307, 411/412 and Sections 25, 26, 27 Arms Act and Sections 3 and 4 of the Explosive Substances Act. That the Respondents along with acquitted Dy. S.P. had left the police station to conduct raids as also to arrest accused persons who were absconding in different cases is also admitted by the police document, like, Ext-2 which is yet another Station Diary Entry Bearing No. 408 dated 24.7.1980. It indicates that the departure of the Respondents and other persons from the police station was shown at 12.15 hours. No evidence or the above two documents established that any of the eight persons including P.Ws.1, 2, 3, 4 or 7 were absconders in any case, rather they were shown arrested in connection with a substantive offence which was registered on 26.7.1980 as per Ext-11 as also as appears indicated by ext-2/1, i.e., Station Diary Entry No. 438 dated 26.7.1980. Thus, there could not be any dispute in it that the police had taken

into custody the witnesses along with some others who have not been examined and had kept them at Sabour police station in the lock up as appears from Ext-2/1 from the Station Diary Entry bearing No. 438 dated 26.7.1980.

20. As regards the injuries which might have been present on the persons of P.Ws.1, 2 and 6 it is important to point out that Ext-2/1 which is first document showing the arrest of the two victims and others and putting them into the lock up does not indicate that there was any injury on the persons of either of the two or on any one who had been brought to the police station rather the statement which is contained in Ext-2/1 (Station Diary Entry No. 438) indicates that the accused persons who had been brought to the police station were not complaining against any of the accompanying constables during transit and as such they were put into the lock up. It is true that Ext-11 the FIR in connection with which the two victims and others were shown arrested did contain a statement that the accused persons arrested by the police were having some injuries on account of having fallen down as also on account of having received some beating from the villagers who had been attracted to the place of their arrest. But the other unimpeachable documents of the three Respondents, like, Ext-5 series, their personal diaries, indicate other state of facts and simply demolish the claim of the police officers that P.Ws.1 2 and others were arrested in connection with Ext-11, the FIR which is claimed drawn up by Respondents in connection with certain offences said to be committed by them in the night intervening 25th and 26th of July, 1980 at about 12.30 A.M.

21. Ext-11 indicates that the place where the P.Ws were arrested was a place known as Tirpan Bahiyar situated west of village- Alang Pargarhi. This is evidently clear from relevant column of Ext-11 in respect of "place of occurrence and distance and direction from police station". The arrest is said to be made at 12.30 A.M. as indicated above on 26.7.1980 which could roughly be said to be in the night intervening the 25th and 26th of July, 1980. The contemporaneous documents in respect of the above arrest could be like the command issued to the four constables under the leadership of constable No. 1285 Bishwanath Yadav. This document has to be maintained under the Bihar Police Manual, 1978 and it is a document indicating the purpose of departure of the police force deputed at the police station and the purpose there for. It is indicated by the column in respect of the place to which the officer and the contingent of constables was to go that the destinations were villages Khirjan, Simro, Chhoti Jamin, etc and the purpose as indicated in it, was for conducting raids and patrolling duties along with the officer-in-charge, i.e., Respondent No. 1 Md. Wasimuddin. The date of issue of this command is 24.7.1980 and the time of departure is 12.15 A.M. and the date and time of coming back to the police station after performing their above duties was 10 A.M. on 26.7.1980. This command is contemporaneous to Station Diary Entry No. 408 dated 24.7.1980 recorded at 12.15 A.M. which has been marked Ext-2 by the court below which indicates that the officer-in-charge along with Respondent No. 1 2 and 3 as also the acquitted Dy. S.P. had left the police station for the purposes which are

mentioned in the command, I have just referred to. The other connected Station Diary Entry which is relevant for the purpose is that No. 438 dated 26.7.1980 which as per the claim of the police was made at 20 hours, i.e., 8 P.M. in the evening. This is completely contrary to the time of arrival mentioned in command which is appearing at page-70 of the lower Court record which contains the bunch of exhibited documents and which is the basis for charging travelling allowances by the constables. T.A. bills have been marked Ext-12 after being produced by P.Ws.17 and 18 who were the accounts clerks working in the office of S.P., Bhagalpur and which appears marked Ext-12 and the signatures of the S.P., i.e., the sanctioning authority, have been marked Exts-12 and 12/1. It may appear from the entries of one of the T.A. bills appearing at page-69 of the exhibited documents that the constables along with the officers left Sabour police station at 12.15 hours on 24.7.1980 and reached Simro at 15 hours and from Simro they went to Khirjan to reach there at 23 hours and stayed there and from there they started at 2 A.M. and came to Chhoti Jamin and from there they came to Jogia and stayed there. These entries are also not correct and they are all fabricated which may further appear from the facts likely to be discussed hereafter by me. But, one thing is clear that the time of departure and arrival at the police station does not appear matching as regards the entries in that behalf shown in command which appears at page-70 of exhibited documents for the prosecution. The command shows that the Respondents and the police force arrived at the police station on 26.7.80 at 10 A.M. whereas the relevant entry Ext-2/1 indicates as if they had arrived on 26.7.1980 at 20 hours.

22. In fact the officers were fabricating records in order to cover up their misdeeds and while so doing, they were leaving the trail of their criminality. This could be appreciated only when I refer to the other exhibits which are the very personal documents of the three Respondents like Ext-5 series. Ext-5 series are the copies of personal diaries which were prepared by the three Respondents themselves in respect of their tours or official duties performed by each of them on 24.7.80, 25.7.80, 26.7.80 and 27.7.80. As regards the time of arrest of the witnesses of the case Respondent No. 1 Md. Wasimuddin was making an entry on 25.7.1980 (Ext-5/1) stating that he received an information about the assemblage of some dacoits for the purpose of committing dacoity and, accordingly, he along with the two Respondents and the acquitted Dy. S.P. along with the armed forces left for Pargarhi for taking proper action. This entry is shown made at 21 hours i.e., at 9 P.M. on 25.7.80 but on perusal of the Station Diary Entry dated 25.7.80 there is no entry timed at 21 hours, i.e., 9 P.M. In fact the Station Diary entries from 24.7.80 from 12.15 P.M. to 26.7.80 at 20 hours do not indicate that the Respondent No. 1 Md. Wasimuddin and other Respondents had come back to the police station after their departure on 24.7.80 at 12.15 P.M. Accordingly, the personal diary dated 26.7.80 of Respondent No. 1 Md. Wasimuddin contains an entry at 00 A.M. indicating that seven culprits were arrested at Alang Pargarhi from the boring house of Tetar Sah and they were brought to the police station at 12 A.M. This time of arrest is contrary to the time

of arrest shown in Ext-11, the FIR of the concerned case. As regards the personal diary of Respondent Mankeshwar Singh he had shown his departure for Jagdishpur on 25.7.80 and arrival at Bhagalpur at 25.7.80 at 23 hours. These entries have been marked as 5/5. He has not shown his presence anywhere with the two Respondents on 26.7.80 which is indicated by Ext-5/5, the personal diary of Respondent Mankeshwar Singh, but when one peruses the personal diary of Mankeshwar Singh dated 27.7.80 one finds that as per his records the witnesses were arrested under the allegation of having assembled after preparing themselves to commit dacoity at 1.15 A.M. on 27.7.80 and he reached Bhagalpur on 27.7.80 at 23.30 hours. The personal diaries of Respondent No. 2 Binda Prasad have also been brought on record and as per Ext-5/10 which is the personal diary dated 26.7.80 the accused persons were arrested at 1 A.M. on 26.7.80 which is contrary to all records maintained by the police in connection with the arrest of P.Ws.1, 2 and others under the accusation of committing certain offences. What I further find is that the personal diaries entries are shown dispatched on different dates, i.e., on 26.7.80, 27.7.80 and 28.7.80 but those were received by the office of the Circle Inspector, Bhagalpur on 1.9.80, i.e., after more than a month of the date of dispatch shown by them. It was probably created only to support the defence which the officers were likely to set up in their defence of the act perpetrated by them against the witnesses specially P.Ws.1 and 2. Thus, the police records also indicate that the whole exercise of showing the accused persons arrested in connection with an offence was completely a hoax and there was no substance in it. The Respondents were creating their documents so as to setting up a defence and that was done probably after their acts were brought to light by the jail authorities and during the medical examination of witnesses. At any rate, this is quite established that P.Ws.1, 2 and others were illegally arrested by the police on flimsy grounds and they were illegally confined in the police lock up.

23. I have already mentioned in the earlier part of the judgment that there was no mention in the relevant Station Diary Entry Ext-2/1 that any of the witnesses specially P.Ws.1 and 2 were having any injury, rather it was specifically mentioned that they were not complaining against the escorting constables about any misbehaviour towards them. The police, probably, started creating documents subsequently on 28th or in the night of 27th of July, 1980. This I infer from many documents. It is true that the forwarding report, a photo copy of which appears at page-40 of the exhibited documents mentioned that the accused persons, i.e., the witnesses of this case had received injuries due to resistance and chase while being arrested and as such injury reports were attached therewith. However, injury reports which have been marked Ext-4 series by the trial Magistrate indicates that in spite of having forwarded the injury certificates of the arrested persons on 27.7.1980, the same was received on 30th of July, 1980 which date appears with serial number at the top left corner of each document of Ext-4 series. In addition to the above the claim of Respondents that the arrested persons were forwarded to Chief Judicial

Magistrate, Bhagalpur in the evening of 27.7.1980 is itself doubtful. Sabour is part of Bhagalpur and the distance between police station, Sabour and the Civil Courts, Bhagalpur could be travelled even on foot in 15 minutes. The two places are well connected by pitch road. In spite of being dispatched for their remand on 27.7.1980 at 18 hours, i.e., 6 P.M, the evidence indicates that none of the arrested persons could reach the Civil Courts by next morning at about 11 A.M. Station Diary Entry No. 450 dated 27.7.80 indicates the dispatch with the arrested accused persons for remand purposes at 6 P.M.(18 hours) but there is no mention as to what was the reason for the accused persons not being remanded to the judicial custody on 27.7.1980. The very entry is false inasmuch as the jails could never accept any accused after sun set (Rule 456 Bihar Jail Manual). The two jail applications Exts-14 and 15, indicate that P.Ws.1 and 2 were admitted in jail on 28.7.1980. Further the entries No. 2683 and 2693(Exts 21 and 21/2)of Jail Admission Register show that P.Ws.1 and 2 were admitted in Bhagalpur Central Jail by the order of the Chief Judicial Magistrate on 28.7.1980. Station Diary No. 450 dated 27.7.1980(Ext-2/2) appears created falsely and with a purpose of creating defence. This is the reason that all witnesses who were forwarded to court have stated that they were taken to the courts in between 10 and 11 A.M. on 28.7.80 and they were never produced before the Chief Judicial Magistrate, Bhagalpur and a clerk in his office, obtained their thumb impressions and they were taken to Bhagalpur jail by a Tonga. There is no reason for me not to believe the evidence of the witnesses on the date and time when they were taken to the court for remand and the time when they reached the courts and the manner in which they were remanded. Some of the documents like the order showing the receipt of the FIR of Sabour P.S. Case No. 7(11)80(Ext-11) could have been of great assistance, but I still could say that the FIR was created subsequently only after the blinding had been completed of P.Ws.1 and 2 by the Respondents in the police station.

24. These were the evidence which were completely overlooked by the learned appellate court while acquitting the Respondents of the charges for which they have been convicted by the learned trial Magistrate.

25. A controversy was mooted during the hearing of the present appeal regarding the contents of Exts-14 and 15 the two jail applications of P.Ws.1 and 2 forwarded by the Jail Superintendent with certificate of the doctor that the two witnesses were bearing injuries in their eyes to the District & Sessions Judge, Bhagalpur. The learned Additional Sessions Judge had also read many things in the two documents to doubt the very veracity of the prosecution version regarding arrest of the witnesses and other persons, of course also on the date(s) when the two witnesses were blinded and the manner of blinding as also the participation of the Respondents.

26. It may be profitably pointed out that the two applications, if perused and considered dispassionately, could never give an inkling that they had been sent to the District & Sessions Judge, Bhagalpur with a view to initiating criminal

action against the erring police officers. The document, sent by P.W.1 Lakhi Mahto states as under in its English translation:

I am resident of village-Laxmipur(P.S. Sanhaula) at (village)Khirjan. It is the 6th day since that I was arrested. After being arrested I was brought to Salpur village. I was kept in a school by the officer-in-charge of Sabour police station and the officer-in-charge pierced a Takua in both my eyes to private me of my vision. I was brought to Sabour from there. The officer-in-charge of Sabour police station put acid in both my eyes and kept me in the police station for two days. He forwarded me to the curt on 28.7.80 from where I was brought to jail.

There was no provision in the Code of Criminal Procedure empowering any police officer to blind any person.

My week financial condition prohibits me to initiate prosecution against police officers.

I, therefore, request that an Advocate at the state cost may kindly be made available to me so that I could place the atrocious acts of the police before the court of law for adjudication.

27. The other petition by Shankar Tanti(P.W.2) on being translated in English reads as under:

I am a resident of (village)Khirjan(police station-Jagdishpur) I was apprehended by the officer-in-charge of Sabour police station 5 days ago at village-Khirjan. I was brought to Sabour from there in the night of 27.7.1980, the officer-in-charge of Sabour police station pierced Takua(sharp pointed weapon used to create whole in papers for tagging) into both of my eyes and also poured acid into them. I was taken to the court a day before yesterday(i.e., 28.7.80, as the application is dated 30.7.80) and from there I was shifted to the jail.

There is no provision in the Code of Criminal Procedure empowering any police officer to deprive any person of vision of his eyes.

I am not able due to week financial condition to file case against the police officers.

I, therefore, request you to kindly provide an Advocate at the state cost so that I could file the case against the police officers and present the atrocities of police before the court of law.

28. Thus, what may appear from Exts-14 and 15 is that the applications were not sent to the District & Sessions Judge, Bhagalpur with a view to initiating criminal prosecution rather they were simple applications from P.Ws.1 and 2 seeking legal assistance at state cost. As such, the contention which was raised by the learned senior counsel for the Respondents, specially Sri S.N.P. Sinha and the finding which was recorded on that basis by the learned Additional Sessions Judge while allowing the three criminal appeals that the two documents were devoid of many important statements and factual data creating a doubt in the prosecution case,

to me, appears simply fit to be rejected. It has come in the evidence of P.Ws.1 and 2 both that when they were admitted into the jail, the authorities could find out the injuries and as such they were shifted to jail hospital for treatment. This evidence has come from P.W.10 Dr. Md. Ibrahim who stated that he saw P.Ws.1 and 2 on 29.7.1980 who were bearing injuries in their eyes and as such he created the bed head tickets after admitting them and referred them to the only surgeon Dr. R.K.P. Sinha(P.W.24)for treatment as he thought that they were the cases to be taken care of by him. The bed head tickets have been marked Exts-6 and 6/1. It further appears from the evidence of P.Ws.1 and 2 that they were also seen by the Superintendent of Central Jail, Bhagalpur, namely, Sri B.L. Das who got the two applications drafted and typed by P.W.22 Sri Shankar Mishra and forwarded the same to the District & Sessions Judge, Bhagalpur. The two injured victims P.Ws.1 and 2 were illiterate persons. They had been mutilated, humiliated and assaulted so brutally as could be gathered from the evidence of the two witnesses as also from the records made by different doctors who examined them for their injuries. It was an incident taking place in 1980, when there was not even a whisper of violation of Human Rights, the fundamental rights might have been treated to be violated as per the provisions of Article-21 of the Constitution. In addition to that, they were persons who were belonging to most backward class. The very language of the two applications indicate as if they were labouring under an impression that the law of the land might be approving of such police actions against them or any other Indian citizen. The ignorance which was prevailing or which still prevails in our society, specially in the lowest stratum of it, could itself explain the lack of informations which were not there. Above all, even at the cost of petition, I want to reiterate that the two applications Exts-14 and 15 addressed to the District & Sessions Judge were never meant to initiate any criminal prosecution through them; those were simply addressed and sent to the District & Sessions Judge, Bhagalpur with a view to getting state assistance in getting an Advocate for an indigent persons so as to venting his grievance before the court of law.

29. Besides, the trauma experienced by them on account of the brutal acts committed by the police officers must have created a complete vacuum in their minds. They were already unaware of the legal implications of such an act and the course to be adopted by them. The best which could be thought by one of their family members, i.e., P.W.20 Upendra Mahto who was the brother of P.W.1 was to bring the Advocate, Sri Jain, to P.W.1 after being informed as to how P.W.1 had been brutalized by the police officers and how he and others had been implicated falsely in criminal charge. P.W.20 would say that Sri Jain, the Advocate was likely to draft the application for bail on behalf of P.W.1 and others, he was also not advising upon the implication of the police action and the prosecution in law in that behalf. As such, the so-called lack of information in Exts-14 and 15 as regards the details of the commission of the offence, to me, appears of no consequence and the evidence of the victims along with that of others could be sufficient to act in such cases so as to judging the proof of charges.

30. Moreover, the Respondents also claimed having arrested the accused persons on a flimsy ground of their indulging in commission of certain offences. I have already doubted the veracity of the story and have shown from the records maintained by the police that the story which was propounded by the Respondents was simply false and fabricated. I have also noted at some earlier place by reference to Station Diary Entry No. 438 dated 26.7.1980 (Ext-2/1) that there was no mention in it about the presence of any injury on any of the eight persons, brought to the police station. As soon as they were being remanded, the police was recording in its forwarding report as also through its injury certificate issued to the doctor that there were injuries on the persons of the witnesses and other persons. This is a case in which the police had to explain as to how during the period when the witnesses were at the police station in the police lock up, they happened to have the injuries. This case to me appears a case of special knowledge u/s 106 of the Evidence Act and in absence of any explanation from them, it has to be presumed that it were the police officers who had inflicted the injuries upon P.Ws.1, 2 and others. Besides, the witnesses, like, P.Ws.1, 2 and others have categorically stated as to how they were brought out of the police lock up and how the sharp pointed instrument was pierced into their eyes and how the corrosive substance was poured therein.

31. It was submitted by Sri K.P. Singh and Sri Om Prakash Pandey that the identity of Respondents No. 2 and 3 was not established beyond doubt. One must, first, keep in ones mind that the witnesses who could have given evidence on identification of the accused had completely lost their visions. In spite of that they were asked to point out the identifying features of the Respondents and that appears stated by P.W.1 in paragraph-14 and by P.W.2 in paragraph-12. There was not even a suggestion thrown at either of them that the features pointed by both of them were completely wrong and they did not tally with the features of the Respondents. Moreover, P.W.1 was put a specific question by the court in paragraph-15 who replied that he had remained with the accused persons for five days and four nights and the constables were calling each other by their names and further that he had seen them while they were catching hold of his legs and further that Respondent No. 1 had pointed out his name as Md. Wasimuddin. His claim of identifying Respondent No. 2 by his voice was clarified by the trial court by putting certain questions as appears from paragraphs-16, 17 and 18 and it is indicated that he had good reasons for identifying the two Respondents. These are the evidence on identification of Respondent Nos. 1 and 2. As regards the identification of the 3rd Respondent Mankeshwar Singh it is true that the witnesses, namely, P.Ws.1 and 2 have not named him specifically nor has stated that he was also there at the time of blinding as such his case could be one in which the benefit of doubt may accrue to him.

32. The prosecution story is that ten persons were arrested out of whom two, i.e., Paran Tanti and Putul Tanti were let off by the police either on account of being paid some bribe or account of being influenced by some one who has been named by some of the witnesses as Dr. Kameshwar Thakur. The evidence on

arrest of the accused persons from two different places, like, village-Laxmipur under P.S. Sanhaula and village Khirjan under P.S. Jagdishpur in three different batches has been stated not only by P.Ws.1 and 2 but also by witnesses, like, P.W.3 Dhanna Tanti who was resident of village-Khirjan. His evidence gets support from P.W.4 Wakil Tanti and also from P.Ws.5 and 6 Balchi Tanti and Sidho Tanti. Anirudh Tanti, one of the similarly arrested persons, has also stated to the same and similar manner of picking up innocent persons from different places and assembling them at a particular place, i.e., at the Basa of Jagdish Chaudhary from where they were brought to Simro Salpur School in the night and all the witnesses stated that they were kept there for the day on 25.7.1980 and in the morning on 26th of July, 1980 they were shifted to Sabour police station. The arrest was illegal and was not in connection with any offence has been attempted to be proved by the prosecution and in that connection a few witnesses except the above arrested persons were also examined. One such witness, P.W.16 Nakul Prasad, was on the relevant date the Revenue Karmchari in the Development Block, Sabour and he was producing the revenue records before the court and was stating that the records did not indicate that there was any orchard or bushes on the lands from where the police claimed arresting the accused persons vide Ext-11. The I.O. of the case, namely, J.P. Verma(P.W.26) asked P.W.25 to go to the place of occurrence of Sabour Police station case No. 11(7)80, Ext-11, for inspecting it and to make a report. Accordingly, he went on 8.4.1981 to Alangpargarhi, the place of occurrence of the FIR marked Ext-11, and has stated in his evidence as may appear from paragraph-4 of P.W.26 that he went near the boring of Tetar Sah and inspected the surrounding places. He did not find during such inspection any orchard or any spiny bushes. He simply could find out a few plants of Kataiya and accordingly seized them by preparing the seizure memo. The other witness P.W.14 S.K. Banerjee also went to Alangpargarhi and prepared the site plan of the place of occurrence as per FIR Ext-11 and his site plan Ext-10 does not indicate that there was any orchard or thorny bushes around the boring of Tetar Sah. Thus, the site from where the Respondents claimed to have arrested the eight persons appears not found by the prosecution witnesses who were examined in the case.

33. Moreover, Ext-2/1 which is Station Diary Entry No. 438 dated 26.7.1980 in respect of the arrival of the Respondents along with the arrested persons at the police station indicates that Wakil Tanti (P.W.4) was also brought for being questioned by the police along with seven others who are named in Ext-2/1. He was not arrested in connection with FIR Ext-11. On perusal of the subsequent entries of Station Diary of Sabour Police Station from 26.6.1980 right from 8 P.M. till the entries bearing No. 450 dated 27.7.1980 said to be recorded at 18 hours(i.e., 6 P.M.)the name of Wakil Tanti does not figure anywhere as the person who was also remanded to custody. Wakil Tanti has been examined as P.W.4 in this case and he has stated in paragraph-10 of his evidence that he was released after Kameshwar Thakur had come to the police station to get him released. How this witness P.W.4 was released after being brought to the police

station which is recorded in Ext-2/1 is completely absent from the police record. Thus, raising a very strong circumstance not only about the illegal arrest of persons but also their release on consideration extraneous and without following law. The law was not followed could be appreciated by this fact also that no police officer could arrest any person unless he had informed the officer-in-charge of the police station in whose jurisdiction the wanted person was residing. This I record due to the provision of Section 48 Code of Criminal Procedure which empowers a police officer to arrest any person without warrant by pursuing him any where in India, provided the officer is authorized to arrest. Further, Section-79 Code of Criminal Procedure prohibits any police officer to execute warrant of arrest against a person who was residing out side his jurisdiction, without getting an endorsement, inter alia, from the officer-in-charge of such police station. The two villages Jagdishpur and Khirjan were located outside the local area jurisdiction of Sabour police station and the arrested persons were neither absconding nor were to be arrested in connection with any case in which warrant for their arrest had been issued by a Court. There was no record produced that the officers-in-charge of Sanhaura and Jagdishpur police stations were informed or were taken with them by the Respondents so as to affecting the arrest and conducting the search of the houses of the witnesses. This also indicates that the defence story of arresting the witnesses and others in connection with Ext-11 was completely an after thought, probably created after the acts of blinding had been done.

34. The public witnesses, namely, P.Ws.3, 4, 5, 6 and 7 have supported the story that the police brought out P.Ws.1 and 2 one after the other from the lock up and took them to different places for blinding them. Most of them, like, Wakil Tanti and Anirudh Tanti were told by the two victims about the atrocious acts of the police officers perpetrated upon them.

35. Thus, I find that it was proved by the evidence of witnesses as also from the police record that the two victims as also other persons some of whom were examined as witnesses were illegally arrested, and detained. Two of them, i.e., P.Ws.1 and 2 were blinded by piercing a sharp pointed instruments as also by pouring acid in their eyes.

36. The above evidence on the proof of charges was completely overlooked by the learned lower appellate court while allowing the three appeals. They were simple inferences which could come out automatically from the materials available on the trial record and no court could have gone on to acquit the two Respondents, namely, Md. Wasimuddin and Binda Prasad.

37. The learned Additional Sessions Judge while allowing the three appeals has very heavily relied upon the medical evidence specially one line of P.W.8 Dr. Gopalnandan Prasad who was one of the members of the medical board formed by the Civil Surgeon, Bhagalpur and who examined the two victims, namely, P.Ws.1 and 2 on 2nd of December, 1980 and other 16 under-trial prisoners lodged in jail. The witness stated in paragraph-5 that it was very difficult to say

about the exact cause of injuries of both the injured persons after lapse of so many months and further that the members of the board did not get any trace of acid. It was stated further that the perforations which were causing the deprivation of the eye sight of the two victims was on account of perforation of cornea might probably be caused by some sharp pointed weapon or by corrosive substance or by both (P.W.8 paragraph-2). In cross-examination in paragraph-5, P.W.8 stated that perforation of cornea can also occur after there was a ulcer in the cornea and infection was to be followed thereafter. In paragraph-6 the witness stated that any irritant including the so-called spurious drug may cause infection later on.

38. P.W.11 Dr. J.N. Rohtagi had examined the two injured persons at the request of the Government of Bihar. He stated that the injuries could be on account of the pouring of corrosive substance as the eye-balls were shrunken. The witness also stated that the injuries might have also been caused on account of mechanical process such as by any instrument as appears stated by P.W.11 in paragraph-4.

39. The learned Additional Sessions Judge was pointing out that there was no loss of eye-leads. This finding recorded by the learned Appellate Court appears completely ignoring the evidence of witnesses, like, Dr. J.N. Rohtagi(P.W.11) and Dr. Karuna Sindhu Roy(P.W.15). P.W.15 had examined the two injured on 31st of July, 1980, i.e., within a week of the injuries being inflicted upon the two injured. The evidence of doctors, like, P.Ws.11 and 15 and P.W.29 Dr. Bharendra Pal Singh who had examined the two injured in the All India Institute of Medical Sciences, New Delhi consistently indicates that there was loss of eye-lids in case of both the injured and only rudiments thereof was seen. Those parts of eyes were damaged on account of pouring of corrosive substance into the eye-shockets of P.Ws.1 and 2 Thus, the finding of the learned Appellate Court that there was no loss of eye lead is completely erroneous and against the evidence.

40. As regards his finding that the two injured persons might have lost their eyes on account of administration of "spurious drugs by some untrained hands", it appears recorded without any basis. It was simply an opinion which was not based on any acceptable evidence as regards the two injured persons and it was simply speculative on the part of P.W.8 to make such statements. The record of the trial court indicates that the two injured were firstly seen by Dr. Md. Ibrahim(P.W.10) who found them bearing injuries on their eyes and, accordingly, he prepared the bed-head tickets Ext-6 and 6/1 and referred the patients to Dr. R.K.P. Sinha(P.W.24) who was the attending surgeon available in the jail hospital. The bed-head tickets Ext-6 and 6/1 were available at the time of cross-examination of both P.Ws.10 and 24, but no attempt was made by the defence to draw the attention of the two witnesses to any part of the two documents and thereby bring on record as to which of the medicines which had been prescribed by Dr. R.K.P. Sinha to either of the injured or both of them, could have caused any such damage to their eyes. Unless the defence had done that by cross-

examining P.Ws.10 and 24 by putting those questions, it could not have legitimately asked any court to utilize one line of opinion which was very general and un-categorical to use it for dismissing the case of the prosecution. Not only that the same line of defence by cross-examining other important witnesses and experts, like, P.Ws.11, 15 or 29 could have been entitled the defence to bring on record the fact and thus argue that any spurious drugs were administered by some one to the eyes of the two injured as a result of which there was a probability that their eyes were shrunk. In fact after considering the evidence of the seven doctors, some of whom were specialists in the field, I find that no such attempt was made by the defence to create the foundational facts, so as to justifying such argument and finding. The learned Additional Sessions Judge, I simply want to note, was reading something which was never available to him in evidence and it was with the only purpose probably of acquitting the real culprits of a very sordid act.

41. The above are the reasons which I find after considering the plethora of evidence which was led by the prosecution during trial which convince me to hold that the learned Additional Sessions Judge was passing a perverse judgment of acquittal in respect of at least two Respondents, namely, Md. Wasimuddin and Sri Binda Prasad. I have already held in paragraph-30 that the evidence regarding the complicity of Respondent Mankeshwar Singh was not of that quality as to confirm his participation beyond doubt in blinding of the two witnesses. His acquittal, as such, appears properly passed. The acquittal of Respondents Md. Wasimuddin and Binda Prasad was not only perverse but appears not supported by the evidence and the reasons assigned by the learned Additional Sessions Judge appears not only perverse but also based on conjectures and surmises and miss-appreciation of the evidence so as to raising inferences which could never be emerging from the evidence.

42. In the result, the appeal succeeds and the same is allowed in part as indicated above. The acquittal of Respondent Md. Wasimuddin and Sri Binda Prasad is hereby set aside. The judgment of conviction and the order of sentence passed upon Md. Wasimuddin and Binda Prasad by the trial Magistrate is restored. Both Md. Wasimuddin and Binda Prasad are on bail. They shall submit themselves to the custody of the trial court so as to be remanded to jail custody for serving out their respective sentences which was passed against them by the trial Magistrate.

43. Before I part, I want to express my views on the sentence which was passed against the Respondents by the learned trial court. It is true that the trial court was a court of Magistrate of Ist Class and it inflicted the maximum sentence it could have. But the trial court ought to have consulted the provisions of Section 325 Code of Criminal Procedure considering the blatant abuse of the personal liberties of innocent Indians in the garb of exercising the powers of police officers to arrest a person even on mere suspicion of committing some non-bailable cognizable offences or even suspecting any one to have prepared to commit such

offences so as to preventing the commission of such an offence. In the instant situation the police were found transgressing not only the limits of their powers but were misusing it with impunity so as to making it dangerous for-the two, thats, P.Ws.1 and 2 to survive. It would have been a fit case in which either the learned trial Magistrate should have exercised his option for committing the case in the light of the provisions of Section 323 Code of Criminal Procedure as the case was such, irrespective of the offences with which the accused persons had been charged, which required to be tried by the court of Sessions. Even if he had not done that, he ought to have considered the seriousness of the abuse of the powers by the police officers and thereby infliction of humiliation and dangerous injuries to innocent persons and should have referred the matter for inflicting appropriate sentences against the erring police officers as is advised to be done by Section 325 Code of Criminal Procedure This Court has limitation as it does not have any appeal before it for enhancing the sentence. It has simply been asked to enquire into the propriety and correctness of the order of acquittal passed by the learned Additional Sessions Judge and ones there is no appeal for enhancement of the sentence, this Court cannot go beyond the jurisdiction of a Magistrate on punishment.