

CRIMINAL APPEAL NO.8 OF 2001

Vikram Reddy,
presently lodged at
Central Jail, Aguada,
Singerim, Bardez, Goa.

... Appellant.

versus

State of Goa,
as represented by
Officer-In-Charge
A.N.C. Police Station,
Police Headquarters,
Panaji, Goa.

... Respondent.

Mr. Lalit Chari, Senior Advocate with Mr. Francis Saldanha
and Mr. J.P.D'Souza, Advocates for the Appellant.

Mrs. Winnie Coutinho, Additional Public Prosecutor for the
State.

CORAM: P. V. HARDAS, J.

DATED: 25TH JANUARY, 2002.

ORAL JUDGMENT

The Appellant, who stands convicted for an offence punishable under Sections 20(b)(ii) and 22 of the N.D.P.S. Act, 1985, and is sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/-, in default to undergo Simple Imprisonment for one year on each count, has filed the present Appeal challenging his aforesaid conviction and sentence as recorded by the Special Judge, N.D.P.S. Court, Mapusa, by Judgment dated 26th December, 2000, in Special Criminal Case No.10 of 2000.

2. The facts necessary for the decision of the Appeal are set out hereunder:-

On 20th December, 1999, at about 5.00 p.m., two panch witnesses P.W.3, Ashok Bhosle and one Shivnath Naik, both Government servants from the Office of the Director of Agriculture were called to the Anti Narcotic Cell Police Station by P.W.6, P.I. Lavu Mamledar, by his letter dated 20th December, 1999 addressed to the Director of Agriculture, Panaji, Goa. The said two panch witnesses were introduced by P.W.6, P.I. Lavu Mamledar to P.W.4, P.S.I. Uday Naik. P.W.4, P.S.I. Uday Naik, informed the two panchas that they were called to the Anti Narcotic Cell Police Station, Panaji, to accompany P.W.4, P.S.I. Uday Naik and the other members of the raiding party for a raid. At about 9.55 p.m., P.W.4, P.S.I. Uday Naik, introduced the panchas to the members of the raiding party which comprised of Superintendent of Police, CID Karnail Singh, Superintendent of Police Shrivastav, Deputy Superintendent of Police Shri Shirish Thorat, P.W.6. P.I. Lavu Mamledar, Police Constables Devidas Gawas, Chandrashekhar Amonkar and Sandeep Shirvaikar. Thereafter, at about 10.00 p.m., the raiding party consisting of the Police Officers and the panch went to the Anjuna and Vagator area. P.W.4, P.S.I. Uday Naik, carried with him the seal of Anti Narcotic Cell Panaji, Goa 2 with Ashoka emblem. Police Constable Devidas Gawas carried with him a kit box containing packing, weighing and sealing material and flash lights. Police Constable

Chandrashekhar Amonkar carried a typewriter. The raiding party which had gone in two jeeps reached Anjuna at about 10.30 p.m.. They went near the Prim Rose Bar and Restaurant at about 1.15 a.m. in the morning of 21st December, 1999. They parked their vehicles and alighted and at about 1.25 a.m., they saw two persons near the gate of Prim Rose Bar and Restaurant whom they suspected of having drugs in their possession. P.W.4, P.S.I. Uday Naik, therefore, told the other members of the raiding party that the search of the two persons should be taken. The members of the raiding party rushed towards them and surrounded them. P.W.4, P.S.I. Uday Naik, identified himself as a P.S.I. of Anti Narcotic Cell Police Station(hereinafter referred to as ANCPS for the sake of brevity) and also introduced the other members of the raiding party including the panchas. P.W.4, P.S.I. Uday Naik, then told the said two persons that he wanted to take their search for drugs as he suspected that they were possessing drugs. P.W.4, P.S.I. Uday Naik, asked their names. The first person disclosed his name as "Vikram Reddy, resident of Mumbai and presently staying at Anjuna, Goa". P.W.4, P.S.I. Uday Naik, then asked the name of the other person who disclosed his name as "Ameet Dhurandhar of Bombay presently staying at Anjuna, Goa". The Appellant was carrying a shoulder bag on his left shoulder. Before taking the personal search of the Appellant and the other person, P.W.4, P.S.I. Uday Naik,

informed the said two persons that they have a right to be searched in the presence of either a Magistrate or a Gazetted Officer but the Appellant and the other person declined the offer. P.W.4, P.S.I. Uday Naik, also informed them that they had a right to search the members of the raiding party including the panchas but even this offer was declined. The Appellant agreed to be searched in the presence of the members of the raiding party. It was at 1.35 a.m. in the morning of 21st December, 1999, that the search of the Appellant commenced. On instructions of P.W.4, P.S.I. Uday Naik, the Appellant handed over the shoulder bag to him and the search of the shoulder bag revealed a black colour substance. The said black colour substance was in different sizes and shapes attached to each other and was partly wrapped in a polethene paper. P.W.4, P.S.I. Uday Naik, informed that the black colour substance was suspected to be charas and on weighing, it was found to weigh 107 grams. The black colour substance was then packed by putting it in an envelope and sealed with the seal of Anti Narcotic Cell Panaji, Goa 2 with Ashoka emblem. The envelope was signed by P.W.4, P.S.I. Uday Naik, the two panchas, the Appellant and Dy.S.P. Shri Shirish Thorat. The said envelope was marked as sample no.1. Further search of the hand bag revealed some tablets wrapped in polethene paper. The tablets were of creamish colour and these tablets were put in an envelope packed, sealed and signed by following

the same procedure as was followed in respect of the packing and sealing of 107 grams of charas. The envelope containing these tablets was marked as sample no.2. Indian Currency of 2600 and currency of 100 U.S. Dollars and a driving licence of the Appellant was also found in the hand bag. These were replaced in the hand bag and the said bag was put in an envelope, packed and sealed. Thereafter, the search of the other Accused Ameet Dhurandhar was taken. From the evidence, it transpires that a separate charge-sheet was filed and the Accused Ameet Dhurandhar was convicted in the said case.

3. P.W.4, P.S.I. Uday Naik, then informed the Accused that possessing drugs without having documents was an offence and they were taken into custody and were explained the grounds of arrest. A panchanama of the entire sequence of events was drawn which is at Exh.P.W.3/A which is signed by the said two panchas and by P.W.4, P.S.I. Uday Naik. The panchanama commenced at 1.35 a.m. and concluded at 5.35 a.m. on 21st December, 1999. Thereafter, P.W.4, P.S.I. Uday Naik, prepared a document at Exh.P.W.1/B, which is the forwarding note. After preparing the document at Exh.P.W.1/B, P.W.4, P.S.I. Uday Naik, prepared a document at Exh.P.W.4/B which is a letter handing over muddemal. Both these documents were prepared at the spot and thereafter, the raiding party returned to the Police Station. On reaching the Police

Station, P.W.4, P.S.I. Uday Naik, registered the crime at 9.30 a.m. vide Crime No.14/99 under Sections 20(b)(ii) and 22 of the N.D.P.S. Act, 1985, by filing a complaint which is at Exh.P.W.4/A. Thereafter, the specimen seal and the muddemal property was handed over to P.W.6, P.I. Lavu Mamledar along with the specimen seal letter. After receipt of the report from the Central Forensic Science Laboratory, Hyderabad, which is at Exh.P.W.1/C, a charge-sheet came to be filed in the Court.

4. The learned Special Judge, N.D.P.S., Court, Mapusa, vide Exh.3 framed a charge against the Appellant for an offence punishable under Sections 20(b)(ii) and 22 of the N.D.P.S. Act, 1985. The Appellant denied his guilt and claimed to be tried. The prosecution in support of its case examined P.W.1, Sanath Kumar Mukhopadhyaya, Assistant Director working in the Central Forensic Science Laboratory at Hyderabad who has proved his report at P.W.1/C. As per the report, the black colour substance gave positive test for charas while the cream colour tablets gave positive test for 3-4 Methylene dioxymphetamine HCl. Prosecution has examined P.W.2, Manohar D. Joshi, who was working as Scientific Assistant in the Crime Branch, Panaji, to prove that he had received the samples on 21st December, 1999 with a forwarding note. He had given his acknowledgement of having received the charas and the ecstasy tablets vide P.W.2/A. After

receipt of the samples, he had forwarded the same to the Director of Central Forensic Science Laboratory at Hyderabad on 26th December, 1999 and had received the examination report and the balance quantity of the Narcotic substance on 17th February, 2000. Vide Exh.P.W.2/B, he had forwarded the report and the balance quantity to the A.N.C.P.S.. P.W.3, is panch witness Ashok Bhosle. P.W.4, is P.S.I. Uday Naik. P.W.5 is Dy.S.P. Shri Shirish Thorat to whom an intimation under Section 57 vide Exh.P.W.4/C was forwarded and P.W.6 is P.I. Lavu Mamledar, who is the Officer in-charge of N.D.P.S..

5. Mr. Lalit Chari, the learned Senior Advocate appearing for the Appellant has urged before me (1) that P.W.4, P.S.I. Uday Naik, in the face of the evidence, cannot be held to be a reliable witness and, therefore, the veracity of the prosecution case is affected as ultimately, the factum of search and seizure is also affected. (2) There is discrepancy in the number of seals that were put on the envelope and the number of seals that were noticed in the Court and thus, an inference could not be ruled out that the samples had been tampered with. (3) There is a total non-compliance of Section 50 of the N.D.P.S. Act, 1985. Thus, according to him, the Appellant is entitled to the benefit of doubt.

6. Mrs. Winnie Coutinho, the learned Additional

Public Prosecutor appearing for the State has urged before me (1) that despite the discrepancy in Exh.P.W.1/B, the prosecution case cannot be jettisoned on this count alone. (2). According to her, there is hardly any discrepancy as regards the seal. (3). According to her, there is a compliance with Section 50 of the N.D.P.S. Act, 1985. She, therefore, submits that the Appeal be dismissed.

7. Adverting to the first submission of Mr. Lalit Chari, the learned Senior Advocate appearing for the Appellant, it will be useful to make a reference to the document at Exh.P.W.1/B. This document at Exh.P.W.1/B is a document which P.W.4, P.S.I. Uday Naik, solemnly states that it was prepared at the spot. In the examination-in-chief, P.W.4, P.S.I. Uday Naik, states as under:-

"Thereafter we all came to the P.S.. I say prior to that we had prepared a letter which is specimen seal letter to send to Food and Drugs Admn."

8. In the cross-examination, P.W.4, P.S.I. Uday Naik, states as under:

"After the seizure report I have to prepare a letter exhibit PW.1/B and letter to the C.F.S.L.. I say I had to make one more letter to P.I. ANCPS, Exhibit PW4/B. The typing was done in the jeep and writing work was done by holding the paper on the kit box on the

road. One P.C. Chandrashekhar Amonkar made the typing work of Exhibit PW.1/B. After exhibit PW.1/B was typed I affixed the specimen seal at point 'Y'.

9. Again, he states in the cross-examination "I say that after seizure report, Exh.P.W.1/B and Exh. P.W.4/B were prepared". Again, in cross-examination, P.W.4, P.S.I. Uday Naik, states as under:-

"On Exhibit PW.1/B it was typed in my presence that the offence vide ANCPS Crime No.14/99 under Sec.20(b)(ii) and 22 of the NDPS Act, 1985 registered against them on 21.12.99 at 9.30 hours. In Exhibit PW.4/A nothing is said about Exh.PW.4/A or Exhibit PW.1/B. Since there was guideline of Hon'ble High Court that letters should be prepared on that spot I prepared Exhibit PW.1/B and Exhibit PW.4/B on the spot. I deny the sugg. that a false case has been initiated against the acc."

10. At this juncture, it will be useful to make a reference to what he states in the cross-examination and that is that the offence was registered at 9.30 a.m. on 21st December, 1999 and this time was given only after registering the offence.

11. Adverting to this evidence, it is urged by Mr. Lalit Chari, the learned Senior Advocate appearing for the Appellant that the portion at "A" to "A" in Exh.P.W.1/B, refers to the Crime number and the registration of the

offence at 9.30 hours on 21st December, 1999. Thus, according to the learned Senior Advocate appearing for the Appellant, since the offence was registered at 9.30 hours on 21st December, 1999, this should not have found place in Exh.P.W.1/B which is said to have been scribed at the spot before the raiding party went to the Police Station. The offence admittedly was registered after the raiding party returned the Police Station.

12. The learned Senior Advocate appearing for the Appellant then made a reference to the answer given by P.W.4, P.S.I. Uday Naik, in response to the question put by the Trial Court. The answer of P.W.4, P.S.I. Uday Naik, is reproduced below:-

"I say the two lines which read 'The offence vide ANCPS Crime no.14/99 u/s 20(b)(ii) and 22 of the NDPS Act, 1985 registered against them on 21.12.1999 at 9.30 hours' were typed at the P.S. Only the proforma was typed on the spot".

13. P.W.4, P.S.I. Uday Naik, then gave another admission in response to the cross-examination on behalf of the Accused when he says "I say that except portion 'A' to 'A' on Exhibit P.W.1/B the entire proforma was typed on the spot". Again, "I do not remember when portion 'B' to 'B' on Exhibit P.W.1/B was typed". It would be useful to make a reference to the portion marked 'B' to 'B' on

Exhibit P.W.1/B which reads as under:-

Sex.	Dt.	& Time	of	Arrest
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'B' Male.

On 21.12.99 at 09.30 hrs. near
the entrance of Prim Rose Bar &
Rest., Vagator. 'B'

14. It is apparent that Exh.P.W.1/B could not have been scribed at the scene of the offence as stated by P.W.4, P.S.I. Uday Naik. Firstly. in Exh.P.W.1/B, there is a reference to the Crime number and the registration of the offence at 9.30 hours. Admittedly, the offence was registered after the raiding party comprising of P.W.4, P.S.I. Uday Naik, returned back to the Police Station. The explanation given by P.W.4, P.S.I. Uday Naik, that the portion 'A' to 'A' in Exh.P.W.1/B was typed in the Police Station was in response to the question put to him by the Court. Such an explanation is not forthcoming either in the examination-in-chief or in the cross-examination. Even otherwise, the said explanation according to me does not appear to be true. The portion at 'A' to 'A' in Exh.P.W.1/B forms an integral part of the document P.W.1/B. It is a typed document comprising of two pages and it does not appear that the portion at 'A' to 'A' was subsequently typed. This is not a printed proforma where certain sentences could be written subsequently. Moreover, P.W.4, P.S.I. Uday Naik, is

unable to offer any explanation as to when the portion 'B' to 'B' in Exh.P.W.1/B was typed. The portion at 'B' to 'B' in Exh.P.W.1/B again refers to the arrest of the Appellant on 21st December, 1999 at 9.30 hours near the entrance of Prim Rose Bar and Restaurant at Vagator. At 9.30 hours, P.W.4, P.S.I. Uday Naik, was in the Police Station when the offence was registered. As if this circumstance is not enough, there is another circumstance which has been brought to my notice by the learned Senior Advocate appearing for the Appellant. According to him, at page 2 of P.W.1/B in the column "Full name" it is scribed "Mr.Vikram s/o Raghu Reddy, r/o 15 Mayfair Veer Nariman Rd., Cburchgate, Mumbai". According to P.W.4, P.S.I. Uday Naik, except what was stated in the panchanama, he was not knowing any personal information of the Appellant till they reached the Police Station at 9,30 a.m. on 21st December, 1999. In the panchanama, Exh.P.W.3/A, it is stated that on questioning, the first person disclosed his name as "Vikram, s/o Raghu Reddy, r/o Mumbai, presently staying at Anjuna, Goa. Thus, the details which are referred to in P.W.1/B were not known to P.W.4, P.S.I. Uday Naik, when Exh.P.W.1/B was typed at the scene of the offence. This is further evident when he admits in the cross-examination "I did not interrogate the Accused till I reached the Police Station at 9.30 a.m. on 21st December, 1999. However, I had taken down his personal details only at the time of writing the arrest

card and arrest register at the Police Station". Thus, it is quite clear that this document P.W.1/B was typed subsequently in the Police Station.

15. According to P.W.4, P.S.I. Uday Naik, he admits to have typed another document and that is document Exh.P.W.4/B at the scene of the offence. Exh.P.W.4/B is a letter handing over muddemal to the Officer in-charge of the Police Station. Again, in this document, there is a reference to the Crime number which admittedly, according to P.W.4, P.S.I. Uday Naik, was registered only after his arrival at the Police Station.

16. A witness who states a falsehood allows himself to be clothed with the cloak of an untruthful witness. Minor errors, which do not go to the core of the case or affect his veracity, do not render the evidence of a witness unreliable. But a witness who is shown to have stated a falsehood to prove a part of the prosecution story, cannot be relied upon. He not only renders his testimony unworthy of acceptance but casts a shadow of doubt on the entire prosecution case. The vain attempt on the part of P.W.4, Uday B. Naik, to wriggle out of the situation by stating another falsehood ought to have put the learned Trial Court on its guard. The Courts should never accept the testimony of a witness who is shown to have stated a falsehood. A dissection cannot be done to

separate the truthful version from the falsehood. The testimony as a whole has to be discarded. In this case, a Police Officer has made a false statement that the document at Exh.P.W.1/B was typed at the scene of the offence. The contents of the document have exposed him to be an untruthful witness. His explanation in response to the Court question that the portion at 'A' to 'A' was typed in the Police Station cannot be believed. He is further exposed by the document at Exh.P.W.4/B. P.W.6, Lavu Mamledar, has admitted in the cross-examination that the specimen sealed letter Exh.P.W.1/B was prepared on the spot. He ofcourse, denied the suggestion that Exh.P.W.1/B was prepared and sealing was done at the Police Station itself.

17. The letter like Exh.P.W.1/B which contains the specimen seal impressions is vital piece of evidence. This letter is sent to the Chemical Analyser for comparing the specimen seal impressions with the seals affixed on the samples sent to him for examination. If, the seals tally, there is a guarantee that the samples have not been tampered with. If, in the event, the Chemical Analyser finds a discrepancy between the specimen seal and the seals affixed on the samples, the report of analysis loses its importance. Conversely, if a cloud of suspicion hovers on the preparation of the letter of specimen seal impression the mere tallying of the seals by the Chemical

Analysed would not be any guarantee that the samples had not been tampered with. In the present case, it is established from the evidence that Exh.P.W.1/B was not prepared at the scene of the offence as claimed by the prosecution. It appears to have been prepared in the Police Station subsequent to the registration of the offence. P.W.4, P.S.I. Uday Naik, has rendered himself to be an untruthful witness, - a witness whose evidence cannot be implicitly relied upon. If, the evidence of P.W.4, P.S.I. Uday Naik, stands discredited, it not only affects the credibility of the Officers conducting the search but also affects the basic fabric of the prosecution case. The only irresistible conclusion that can be drawn from the evidence is that the contraband was neither seized nor the seal affixed at the scene of the offence as claimed by the prosecution.

18. Mrs. Winnie Coutinho, the learned Additional Public Prosecutor appearing for the State has urged before me that even if the evidence of P.W.4, P.S.I. Uday Naik, is left aside, the evidence of P.W.3, Ashok Bhosle, the panch witness is sufficient to establish the offence against the Appellant beyond reasonable doubt. According to her, P.W.3, Ashok Bhosle, is an independent witness on whose testimony the conviction can be based. The evidence of P.W.3, Ashok Bhosle, is on the same lines as that of P.W.4, P.S.I. Uday Naik, in respect of search and

seizure. In the cross-examination, he admits that the Police had sent a letter to the department and the department had directed him to go to the Police Station. He states that the Administrative Officer Shri Charles D'Souza, had directed him to go to the Police Station. The other panch namely Shivnath Naik was also an employee of the same Office where P.W.3, Ashok Bhosle, was working. He says that he does not know how the Police suggested his name to his department and he also did not ask his superiors as to why he was directed and chosen to go to the Police Station. Curiously, the prosecution has not proved the letter by which the services of these two panchas were requisitioned from his department. He further admits in the cross-examination that he and the other panch Shivnath Naik were scared to go to the Police Station but did not ask as to why they were called at the Police Station. On reaching the Police Station, P.W.6, P.I. Lavu Mamledar, told them to sit down and even then they did not question the P.I. as to why they were called at the Police Station. In the cross-examination, this witness has given the following answer which is reproduced below:-

"I was at the Police Station upto 10.00 o'clock on 21.12.99. I did not go to my Office on 21.12.99. I went to my Office on the next day i.e. on 22.12.99 at 9.30 a.m.. The Police relieved me on 22.12.99 at 9.30"

19. He further admits in the cross-examination:

"I was in the Police Station from 10.00 a.m. on 21.12.99 to 7.00 p.m. on 21st December. From 5.00 p.m. on 20.12.99 till 7.00 p.m. on 21st December I was in ANCPS".

20. Thus, this panch witness was in the company of the Police from 5.00 p.m. on 20th December, 1999 till 7.00 p.m. on 21st December, 1999. Admittedly, the offence was registered at 9.30 a.m. on 21st December, 1999. There was no earthly reason for detaining the panch witnesses from 9.30 a.m. till 7.00 p.m. in the evening on 21st December, 1999. According to this witness, he was just sitting in the Police Station and was not doing anything. According to this witness, they left the scene of the offence at 5.30 a.m. on 21st December, 1999. P.W.4, P.S.I. Uday Naik, states in his evidence "the panchas had come along with us after the raid but thereafter they dispersed". P.W.6, P.I. Lavu Mamledar, states that he had seen the panchas at about 9.45 a.m. when they had come to collect certificate. He further states that he had seen them thereafter they were taking

rest in the Police Station. They were just relaxing on the chair.

21. According to the learned Senior Advocate appearing for the Appellant, the admission of the panch witnesses that they were in the Police Station till 7.00 p.m. on 21st December, 1999, when they had no reason to remain in the Police Station, fortifies his submission that the entire process of sealing was carried out in the Police Station and not at the scene of the offence. According to him, if P.W.1/B is said to have been prepared in the Police Station, it logically follows that the sealing of the samples was done in the Police Station. It is true that the prosecution has not advanced any explanation, at least no effort was made in that behalf to justify the presence of the panch witnesses in the Police Station after 9.30 a.m. on 21st December, 1999. I have already held that the preparation of Exh.P.W.1/B is shrouded in suspicious circumstances. The fact that the panch witnesses were detained in the Police Station till 7.00 p.m. on 21st December, 1999 is a sure indicator of the fact that the contraband articles were seized in the Police Station. These circumstances do create a doubt as to whether the contraband articles were sealed at the scene of the offence. Even if a slightest doubt is created in the mind of the Court, in that behalf, it is then hazardous to convict the Accused on the basis of this

evidence and hold that the Accused was found in possession of drugs. If the contraband articles found in the possession of the Accused have been sealed at the spot itself, then it lends some assurance to the Court that the articles found in the possession of the Accused have not been tampered with in the Police Station. I am afraid in this case looking to the nature of the evidence, it is difficult to come to a conclusion that what was found in the possession of the Appellant was sealed at the scene of the offence itself.

22. There is one more discrepancy in the prosecution evidence and that has been highlighted by the learned Senior Advocate appearing for the Appellant. According to him, the envelopes were sealed with the seven seals of Anti Narcotic Cell 2 Panaji, Goa with Ashoka emblem. The report of the Chemical Analyser at Exh.P.W.1/C also refers to the seven seals of ANCPS Goa 2 with Ashoka emblem. The learned Trial Court has recorded the following portion in the evidence of P.W.1, Sanath K.Mukhopadhyaya, which is hereunder:-

"The witness also identified his initials on the polythene paper alongwith the ecstasy tablets. The witness stated that the seal packet received from the police were cut at one end so that three seals affixed by the police are detached from the envelopes which are retained by him and the envelopes were

repacked by affixing four seals of the laboratory at points 'A', 'B', 'C' and 'D' on both the envelopes. According to him, the other seals on the said envelope are of the police. The witness identifies the rubber stamps and initials at point 'X' on both".

23. In the cross-examination, P.W.1, Sanath K. Mukhopadhyaya, has admitted that the said seals were removed without cutting the envelope. He also admits that before removing the seals he had removed the cellotape affixed over the said seals and thereafter, he had cut the envelope to remove the contents. He says that he could remove the seals without damaging the envelopes and had followed this procedure in both the envelopes. In the cross-examination, he has further admitted "the file with me carry all documentation of present case excepting the said seals". The mystery of disappearance of the three seals is not cleared from the evidence of this witness, the mystery, if any, deepens further. If, the three seals had been removed by this witness to facilitate the opening of the envelope, it was incumbent for P.W.1, Sanath K. Mukhopadhyaya, to return back those seals while sending the remaining quantity of the contraband drugs. Obviously, the envelopes before the Court contained only the four seals and not the seven seals as contended by the prosecution. According to the learned Senior Advocate appearing for the Appellant, this is an additional

circumstance which casts a doubt on the veracity of the prosecution case itself.

24. From the evidence tendered by the prosecution, it is apparent that the prosecution has not been able to establish that the contraband which was seized from the Accused was seized at the spot and thus, there is no guarantee that what was subsequently sealed was the substance that was seized from the possession of the Appellant. If, this is so, I am afraid, the Appellant will have to be given the benefit of doubt and be acquitted.

25. In the result, therefore, Criminal Appeal No.8 of 2001 is allowed. The conviction and sentence of the Appellant for an offence punishable under Sections 20(b)(ii) and 22 of the N.D.P.S. Act, 1985 recorded by the Special Judge, N.D.P.S. Court, Mapusa, in Special Criminal Case No.10 of 2000 is hereby quashed and set aside and the Appellant is acquitted of the aforesaid offence. The Appellant be released forthwith if not wanted in any other case.

(P. V. HARDAS)
JUDGE