

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CRIMINAL APPEAL No. 683 of 2004
With
CRIMINAL APPEAL No. 1319 of 2004**

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE J.C.UPADHYAYA

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

GULAM MOHAMMAD MALIK - Appellant(s)

Versus

SHAILENDRA LODHA & 1 - Opponent(s)

=====

Appearance :

MS SM AHUJA for Appellant(s) : 1,
MR SHAKEEL A QURESHI for Opponent(s) : 1,
MR UR BHATT, APP for Opponent(s) : 2,

=====

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE J.C.UPADHYAYA

Date : 24/10/2008

CAV COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.C.UPADHYAYA)

Both these appeals arise out of the judgment and order rendered by the Ld. Addl. Sessions Judge, 4th Fast Track Court, Sabarkantha at Himatnagar, [for short 'the Ld. Trial Judge'] on 9/3/2004 in NDPS Case No. 1 of 2002. By virtue of the impugned judgment and order dated 9/3/2004, the Ld. Trial Judge was pleased to convict original accused – Gulam Mohammad Malik for the commission of offence punishable under section 20(B) and section 29 read with section 8[C] of the Narcotic Drugs and Psychotropic Substances Act [for short 'NDPS Act'] and the accused was sentenced to undergo rigorous imprisonment [RI] for 10 years and fine of Rs. 1 lac, in default of payment of fine, to further undergo RI for one year. Being aggrieved and dissatisfied with the impugned judgment and order recording conviction for the aforesaid offences, the original accused Gulam Mohammad Malik preferred Criminal Appeal No. 683 of 2004 challenging the legality and validity of the impugned judgment. The Criminal Appeal No. 1319 of 2004 came to be preferred by the State of Gujarat under section 377 of the Code of Criminal Procedure [for short 'Cr. P.C.'] for enhancement of sentence. As both these appeals arise out of the common judgment and order rendered by the Ld. Trial Judge and common arguments were advanced on behalf of both the parties in connection with both these appeals, these appeals

are being disposed of by the common judgment.

2. The prosecution case, in nutshell, is as under :-

2.1. Mr. Shailendra Lodha, Intelligence Officer, Narcotic Control Bureau, Ahmedabad [for short 'NCB'], received a secret information that, “one truck bearing Registration No. JK-02-G-795 is carrying on huge quantity of Charas [Hashish] secreted in the driver's cabin. The said truck is destined for Mumbai. The said truck will pass from Shamlaji border at around 7.00 pm to 8.00 pm on 12/1/2002. This truck originated from Kashmir and the Charas is loaded for Mumbai.” The said information was reduced in writing and afterwards, it was brought to the knowledge of the superior officer i.e. Zonal Director, NCB, Ahmedabad. Thereafter, a joint team comprising of NCB Officers, staff and officers of Anti-Terrorist Squad, Gujarat, was formed. Two witnesses were called as panch witnesses. Thereafter, on 12/1/2002 at about 5.15 pm the team members including 2 panchas in 3 different vehicles left for Shamlaji border from Ahmedabad office. When they were about to reach Shamlaji border, near the Government Circuit House, one truck was spotted having the same Registration No. JK-02-G-795. At once this truck was signaled by hand to stop, but instead of stopping, the driver of the truck drove away the truck on the road heading towards Modasa. As the truck did not

stop even after giving signals, the team members, who were in 3 different vehicles, chased the truck. When the truck reached near a milestone having mark "*Titoi – 5 Kms*", they found the said truck parked. The doors of the truck were found open and none of the persons were found in the truck. With the help of torch light and head lights of the vehicles, search was conducted in the driver's cabin of the truck. From the dashboard of the truck, one file was found. Further search was conducted inside the driver's cabin and from the upper portion of the cabin of the truck, one secret chamber was located and opening the door of the secret chamber, as per the case of the prosecution, Charas weighing 143 Kgs., and 220 Grams were found. R C Book of the truck and one visiting card was found. Since it was completely dark out there, the entire process of seizure, sampling, packing, etc., of the contraband article Charas was not possible to be conducted there and, therefore, it was decided to complete the process after reaching NCB office at Ahmedabad. All team members along with both the panchas reached NCB office at Ahmedabad along with the said truck. In NCB office, Ahmedabad, seizure, sampling and packing proceedings were conducted in presence of panchas and the seizure panchnama was drawn. It is the case of the prosecution that the visiting card which was seized from the truck revealed certain information regarding telephone numbers of Mumbai. On the basis of the

said telephone numbers, further investigation was commenced. Responsible NCB Officer was sent to Mumbai. It was revealed that the present appellant accused, who was involved in another offence in Mumbai, was to receive the Charas in Mumbai from the truck. By transfer warrant, the accused was brought to NCB office, Ahmedabad. His statement under section 67 of the NDPS Act was recorded. The statement of witnesses who were members of the raiding party were recorded and after completion of the investigation, Mr. Shailendra Lodha, Intelligence Officer, NCB Ahmedabad, filed complaint against the accused – Gulam Mohammad in the Court of the Sessions Judge, Sabarkantha at Himatnagar, which was registered as NDPS Case No. 1 of 2002.

2.2. The Ld. Trial Judge framed charge against the accused at exh. 12. Since the accused did not plead guilty and claimed to be tried, the prosecution adduced its oral and documentary evidence. After the completion of the evidence, further statement of the accused under section 313 of the Cr. P.C was recorded. In his further statement, generally the accused denied all the allegations levelled against him and further submitted that he was falsely implicated in this case.

2.3. After appreciating the evidence on record and after hearing arguments advanced on behalf of both the parties, the Ld. Trial Judge

delivered the impugned judgment and order and he was pleased to record conviction of the accused for the offences charged against him and awarded sentence as stated hereinabove.

3. In connection with Criminal Appeal No. 683 of 2004 preferred by the convict accused, learned advocate Ms. S M Ahuja submitted that the impugned judgment and order delivered by the Ld. Trial Judge convicting the accused for the offences charged against him, is contrary to law and facts on record. It was vehemently submitted that except so called confessional statement of the accused recorded under sec. 67 of the NDPS Act, there is no evidence worth the name to connect the accused with the crime. That no contraband article was seized from the possession of the accused nor such substance was seized at his instance. That even in connection with whatever alleged to have been stated by the accused in his confessional statement, the prosecution agency did not investigate on that line. Neither owner nor the driver of the truck was arrested in connection with this offence. Persons whose names the accused alleged to have referred in his statement, were not arrested. That in the so called seizure panchnama, simply it is stated that one visiting card was seized, but the telephone numbers and other particulars said to have been mentioned in the visiting card are not recorded in the seizure panchnama. That the mandatory requirements provided under the NDPS

Act regarding search, seizure, packing and sampling of the contraband substance have not been complied with. That the NCB Officer Mr. Bhalla in his deposition though stated that he had forwarded information which he received, to his superior officer, the sealed cover in which said information is said to have been forwarded, is not produced by him. Only forwarding letter is produced. That the complainant filed private complaint in the Sessions Court. Before framing charge, the Ld. Trial Judge did not record any evidence for the purpose of framing charge and straightway charge was framed. Thus, proper procedure of trial is not followed. That on the packets containing samples of the contraband substance, slips containing signatures of the panch have not been affixed. That it is alleged that on 14-15/1/2002 the accused had contacted his counter parts in Jammu and Kashmir by telephone, but the fact is that from 14th morning the accused was arrested in connection with the offence in Mumbai and was in custody of NCB Mumbai. Therefore, he did not use his phone, but someone else used the phone. No investigation is carried out on that line. Learned advocate Ms. Ahuja submitted that, however, it is true that the accused did not retract his confessional statement, but it was not safe to convict the accused for such serious offence solely relying upon the confessional statement. Nothing corroborative evidence was collected by the prosecution to support the

confessional statement. That only on the basis of presumption and assumption the accused came to be implicated in this case. That no investigation was carried out even to know as to whether whatever stated by the accused in his so called confessional statement was true or not. Therefore, it is submitted that the appeal may be allowed and the impugned judgment and order rendered by the Ld. Trial Judge be set aside and appellant – accused be acquitted.

3.1. In connection with the State appeal for enhancement of sentence bearing Criminal Appeal No. 1319/2004, learned advocate Ms. Ahuja submitted that as the prosecution did not adduce any cogent and convincing evidence against the accused and the accused deserves acquittal, the Criminal Appeal preferred by the State for enhancement of sentence may not survive. Therefore, it is submitted that said appeal be dismissed.

3.2. On behalf of the respondents in Criminal Appeal No. 683/2004 and on behalf of appellant in Criminal Appeal No. 1319/2004, learned advocate Mr. SA Qureshi and Ld. APP Mr. UR Bhatt fully supported the impugned judgment and order rendered by the Ld. Trial Judge. It is submitted that the Ld. Trial Judge rightly came to the conclusion that the prosecution was successful in proving its case beyond

any reasonable doubt against the accused. It is submitted that the Ld. Trial Judge was justified in relying upon the confessional statement recorded by the competent officer u/s. 67 of the NDPS Act and to base the conviction solely upon the statement. That on the basis of the information contained in the visiting card, during the course of investigation, the accused could be apprehended. That the confessional statement was not subsequently retracted by the accused. That there is nothing that the confessional statement was recorded by exercising any duress, coercion or inducement upon the accused. That all the mandatory requirements contemplated under the Act regarding sending of information to immediate superior and regarding conducting search, seizure and packing of the samples were duly complied with. That even during the course of entire trial, the accused failed to show any mandatory provision said to have been violated by the prosecution agency. Therefore, it is submitted that the Criminal Appeal No. 683/2004 preferred by the convict accused be dismissed.

3.3. In connection with Criminal Appeal No. 1319/2004, on behalf of the appellant – State, it was submitted that the huge quantity of Charas weighing 143 Kgs and 220 Grams came to be seized. The involvement of the accused in this offence is proved beyond any reasonable doubt. Under such circumstances, considering the large

quantity of contraband substance seized, the Ld. Trial Judge should have awarded the maximum sentence. Thus, the Ld. Trial Judge erred in awarding only the minimum sentence prescribed under the Act. Therefore, it is submitted that the appeal be allowed and sentence be enhanced in accordance with law.

4. Considering the submissions made on behalf of both the parties and considering the record and proceedings of the case, it clearly transpires that the entire case of the prosecution centers round the statement of the accused recorded u/S. 67 of the NDPS Act produced at exh. 55. The statement appears to have been recorded on 2/3/2002 by the Zonal Director, NCB, Ahmedabad Mr. Pawansinh Tomar, whose evidence is recorded at exh. 50. Considering the deposition of Mr. Pawansinh Tomar exh. 50 about the confessional statement exh. 55, he stated that on the basis of the visiting card which was recovered from the truck, investigation was conducted. In the card telephone numbers were mentioned. The telephone numbers were of Mumbai. That in the card 2 names were written like Farooq and Gulam Mohammad. Before the name of Gulam Mohammad, 12 packets was written. The information which was collected from the visiting card, was sent by fax to the Bombay office of NCB. On 15/2/2002 Bombay office sent information that the present

accused Gulam Mohammad, who was arrested in connection with one offence committed in Bombay and in said case 150 Kgs of Charas was seized from this accused. Thereupon, by virtue of transfer warrant, the accused was brought from Bombay to Ahmedabad NCB on 2/3/2002 during morning hours. Witness Pawan Tomar served summons to the accused before recording the statement u/s. 67 of the Act. He deposed that before recording the statement of the accused, the accused was apprised with the fact that there was no compulsion to make any statement, but if he makes any statement, that may be used against him. Thereafter, this witness Mr. Pawan Tomar started recording the statement of the accused, which is produced at exh. 55. In nutshell, according to the statement exh. 55, the accused used to purchase Charas from Kashmir at the rate of Rs.6,000/- to Rs.7,000/- per Kg and was selling it in Bombay at the rate of Rs.11,000/- to Rs.12,000/- per Kg. That he was to receive 12 packets of Charas which were found in the truck. He further stated that the remaining quantity of Charas was to be distributed in Bombay as per his instruction. That they had received an information that the truck was intercepted and the Charas was seized. Each page of his statement bears his signature. Witness Mr. Pawan Tomar deposed that the statement was recorded in his presence and it also bears his signature.

4.1. Considering the statement exh. 55, it further transpires that in the statement the accused provided information regarding his family background, about his parents, brothers, sisters, etc. The statement also contains personal family history like his wife, sons, daughters by their names and age. It is also stated in the statement itself that the statement may be used against him.

5. The confessional statement was assailed on behalf of the appellant accused on various grounds. It is submitted that the statement was not voluntary. However, perusing the entire record of the trial Court, there is nothing that at any point of time the accused retracted the confession. There is nothing to come to the conclusion that the statement was outcome of any coercion, threat or promise. It is submitted that in the statement, the accused referred names of other persons with whom he was alleged to have dealings regarding Charas, but none of such persons came to be arrested by the prosecution. It is true that in the statement, the accused referred names of such persons and it further transpires that the present complaint was filed involving only the accused. However, what is material is to see whether involvement of the accused is justified or not. There is nothing that the NCB officers have finally dropped taking any action against the persons named in the statement exh. 55. In the statement it is clearly stated that the Charas which was seized by the NCB

Officers was to be supplied to the accused and he was to get 12 packets of Charas, but the remaining quantity of Charas was to be distributed in Mumbai as per his instruction. Thus, the nexus between the accused and Charas is established.

5.1. Learned advocate Ms. Ahuja submitted that it is alleged that on 14-15/1/2002, the accused contacted his counter-part in Jammu and Kashmir on telephone, but as a matter of fact, the accused was arrested right from 14th morning in connection with the offence committed in Mumbai and he was in custody and therefore, could not have used his telephone/mobile phone while in custody. It is submitted that during the course of the trial, the concerned Court of Mumbai had not delivered the judgment and therefore the accused could not raise this defence during trial but now the Mumbai Court has delivered its judgment. Now considering this argument, the fact reveals from the record that the said information about telephonic talk on 14-15/1/2002 was supplied to the NCB Officer by the accused himself in his statement under section 67 of the NDPS Act. So this was one of the parts of the information supplied to the concerned officer by the accused in his above statement. Now the question is if this part of the statement is excluded from his statement, then whether the entire statement shall have to be discarded? We are of the considered opinion that even if the statement regarding telephonic talk

by the accused with his counterpart at Jammu and Kashmir on 14-15/1/2002 is excluded from the evidence, it will not cause any adverse effect on his overall statement under section 67 of the NDPS Act.

6. It would be necessary to consider the case of Kanhaiyalal v/s. Union of India reported in 2008 (1) SCALE p.165. In said case before the Hon'ble Apex Court, the question of appreciation of evidence in form of confessional statement recorded u/s. 67 of the NDPS Act was in issue. After considering relevant provisions of the Act, the Hon'ble Apex Court held that the statement recorded u/s. 67 of the Act made to an Officer within the meaning of section 42 of the Act can be treated as a confessional statement. It was further held that since an officer for the purpose of section 67 of the NDPS Act read with section 42 thereof, is not a police officer, the bar under sections 24 and 27 of the Evidence Act cannot be attracted and the statement made by a person directed to appear before the officer concerned may be relied upon as a confessional statement against such person. It was further held that conviction can be maintained solely on the basis of a confessional statement under section 67 of the NDPS Act.

7. In light of the above, the confessional statement can be solely relied upon to base the conviction. As discussed above, the confessional

statement was never retracted by the accused. There is nothing on record to come to the conclusion that the confessional statement was outcome of any threat, duress, coercion or undue influence caused to the accused by any NCB Officer. The statement contains certain personal information regarding the family members of the accused. The information is such which only the accused can provide. Under such circumstances, there is no reason to presume that the statement was recorded by the concerned NCB Officer on his own and subsequently only the signature of the accused was obtained in the statement.

8. Further more, considering the deposition of Zonal Director, Ahmedabad, witness Mr. Pawansinh Tomar, exh. 50, it clearly transpires that he was empowered officer empowered under sec. 42 of the NDPS Act for the purpose of recording statement u/s. 67 of the NDPS Act. Considering his entire cross-examination on behalf of the accused, nothing emerges that he had no authority to record the statement. Even the empowerment of the concerned NCB Officer to record the statement u/s. 67 of the NDPS Act was not seriously challenged by the accused. Therefore, the statement was recorded by the empowered officer.

9. The prosecution examine Panch witness Naresh Mohandas exh. 25 in connection with the seizure panchnama exh. 26. The panch witness fully supported the entire contents of panchnama. It is true that

the full details contained in the visiting card are not reproduced in the panchnama, but the seizure of the visiting card is clearly mentioned in the panchnama. Therefore, merely because the entire contents of the visiting card are not reproduced in the panchnama, thereby the evidence regarding the visiting card and the contents thereof cannot be doubted. It has come in evidence that on the basis of certain information gathered from the visiting card, NCB counter part in Mumbai was contacted and the information was received that the present accused was involved in connection with one offence regarding 150 Kgs of Charas and thereupon, after obtaining transfer warrant, the accused came to be brought to the NCB Office, Ahmedabad.

10. The prosecution examined other NCB Officers, who were members of the raiding party like Krishna Vinaykumar Chobey at exh. 36, Sahjanand Sachidanand Sinh at exh. 42, Monish Harbanslal Bhalla at exh. 48 and complainant Shailendra Lodha at exh. 65. We have gone through the depositions of the NCB Officers. It is true that the Charas was found from the unattended and abandoned truck. ON behalf of the appellant accused, a grievance was ventilated that the place where the truck was found, at that place the seizure panchnama was not drawn and the procedure of seizure, sealing and packing of samples, etc., was not conducted, but the said procedure was conducted in NCB Office at

Ahmedabad. However, it is true that the truck was found abandoned. With the help of torch light and head lights of the vehicles, initial search was conducted in the cabin of the truck and contraband article Charas, visiting card, R C Book of the truck, etc., were found out from the cabin of the truck. The NCB Officers, who were members of the raiding party including the panch Naresh Mohandas stated in their depositions that because of the darkness, it was not possible to carry out the required process at the place where the truck was found and therefore, it was decided that the remaining process would be conducted in Ahmedabad in NCB Office. Under such circumstances, merely because the entire search, seizure and packing procedure was not conducted at the place where the truck was found, thereby it cannot be said that the prosecution case becomes doubtful. As a matter of fact, so far as the nexus between the Charas found from the truck and the accused, is clearly established by the confessional statement made by the accused, exh. 55. The samples drawn from entire bulk of Charas were sent to Forensic Science Laboratory [FSL] for analysis and the FSL report revealed the substance to be the Charas.

11. It is submitted that mandatory provisions contained in section 42 of the NDPS Act have not been fully and truly complied with, in the

sense that the NCB Officer Monish Harbanslal Bhalla though received the secret information and according to him, the information was reduced into writing by him and the same was forwarded to his immediate superior – witness Pawansinh Tomar, Zonal Director, NCB Ahmedabad, but the sealed cover in which the information was said to have been forwarded by NCB Officer Mr. Bhalla to his superior officer Mr. Tomar, has not been produced. However, considering sub-section (2) of section 42 of the NDPS Act, the requirement is to send the copy containing the secret information reduced in writing to the superior officer within 72 hours. Considering the deposition of witness Monish Bhalla exh. 48, he stated that he had received secret information regarding the truck which he reduced into writing and was forwarded to his superior officer Zonal Director Mr. Pawansinh Tomar. Considering the deposition of Mr. Pawansinh Tomar exh. 50, he admitted that he received the letter in a sealed cover from Intelligence Officer Mr. Bhalla containing the secret information. Office copy of said letter is produced at exh. 49 and in token of receipt of the sealed cover, he has put his signature in the office copy exh. 49. Considering exh. 49, it is the office copy of the information reduced into writing by Intelligence Officer Mr. Bhalla and forwarded to the Zonal Director on 12/1/2002 and it also bears signature of Zonal Director Mr. Tomar dated 12/1/2002 in token of the receipt of the same.

Considering the deposition of Monish Harbanslal Bhalla exh. 48, he has received the secret information at about 2.45 pm and considering the forwarding letter exh. 49, the same was forwarded to his superior officer at 3.00 pm. Thus, soon after the receipt of the information, the same was forwarded to the superior officer. The statutory time limit is 72 hours, but in the instant case, the same was almost immediately forwarded to the superior officer. Therefore, there does not appear any breach in the mandatory provisions contained in section 42 of the NDPS Act.

12. ON behalf of the appellant – accused it was submitted that on the outer cover of the packets containing the samples and the remaining part of the Charas, the slips containing the signatures of the panchas have not been affixed. However, in this connection, considering the deposition of panch witness Naresh Mohandas exh. 25, he clearly deposed that on the outer covers of the packet containing samples and the remaining part of Charas, his signature and signature of 2nd panch Mr. Joseph were taken. Considering the seizure panchnama exh. 26, it is stated that on the outer cover of the packets both the panchas signed and the seals were affixed. It is further stated that the packets were also signed by NCB Officer Ms. Krishna Chobey. Moreover, again, as stated above, by virtue of the confessional statement exh. 55, the nexus between the contraband Charas

seized by the NCB Officers and the accused is clearly established. Under such circumstances, we do not find any mandatory provision contained in the NDPS Act regarding sealing and packing of samples can be said to have been violated.

13. On behalf of the appellant – accused, it is submitted that the complainant NCB Officer filed private complaint in the Court of Ld. Sessions Judge, Himatnagar and, therefore, before framing charge, the trial Court should have recorded the evidence of the prosecution witnesses and thereafter the charge should have been framed complying with the procedure laid down in the Cr. P.C regarding a warrant triable case arising from private complaint. In this respect, considering the record of the case, it transpires that at exh. 2 an application came to be filed by the complainant containing the details referred in the complaint pertaining to framing of the charge. The Ld. Trial Judge passed detailed order dated 17/12/2002 below the application exh. 2 wherein the submissions made on behalf of the accused to the effect that before framing charge “pre-charge evidence” may be recorded and thereafter, if prima-facie case is made out by the complainant, then only charge may be framed, were considered and such submissions made on behalf of the accused came to be rejected by the Ld. Trial Judge by order dated 17/12/2002 by referring relevant provisions contained in the NDPS Act

and came to the conclusion that the charge to be framed against the accused. Ld. Advocate Ms. Ahuja for the appellant – accused submitted that said order dated 17/12/2002 was not challenged before the higher forum by the accused. Therefore, said order dated 17/12/2002 has attained finality. Moreover, nothing is shown to us that in the instant case, the defence of the accused was adversely affected or that it was prejudiced by virtue of the order passed by the Ld. Trial Judge dated 17/12/2002. The complainant is a public servant. Under such circumstances, when the order dated 17/12/2002 passed by the Ld. Trial Judge has attained finality and the fact that citing relevant provisions under the NDPS Act, said order came to be passed by the Ld. Trial Judge and further the fact that in the instant case, nothing is shown to us that thereby the defence of the accused was any way adversely affected or that the same was jeopardized, the argument advanced on behalf of the appellant accused does not require any consideration.

14. Under such circumstances, the Ld. Trial Judge did not commit any illegality or any irregularity in coming to the conclusion that the prosecution proved its case beyond any reasonable doubt. We do not find any reason to interfere with the impugned judgment and order recording conviction of the appellant – accused rendered by the Ld. Trial Judge. Therefore, the appeal preferred by the accused challenging his

conviction deserves to be dismissed.

15. By preferring Criminal Appeal No. 1319/2004 under sec. 377 of the Cr. P.C, on behalf of the appellant – State a grievance is ventilated that the sentence awarded by the trial Court is too lenient and quite inadequate. The Ld. Trial Judge awarded sentence of RI for 10 years and fine of Rs.1 lac. It is true that this is the minimum sentence prescribed for the offence punishable under section 20 read with sec. 29 of the NDPS Act. However, the learned advocate Ms. Ahuja for the respondent – accused here in this appeal, submitted that by transfer warrant, the accused came to be arrested in connection with this offence since 2/3/2002. That thus since 2002 till date the accused is in jail. Minimum sentence prescribed under the NDPS Act has been awarded to the accused, which is even otherwise adequate. In this connection, considering the impugned judgment and order delivered by the Ld. Trial Judge, he has recorded the reasons as to why he was awarding the minimum sentence prescribed under the NDPS Act to the accused. We do not find that the discretion exercised by the learned trial Judge is an arbitrary exercise of his discretionary powers in fixing the quantum of punishment. Under such circumstances, the sentence awarded by the trial Court to the accused to undergo RI for 10 years and to pay fine of Rs.1

lac and in default to undergo further RI for one year cannot be said to be either too lenient or too harsh. In the result, the appeal preferred by the State for the enhancement of the sentence deserves to be dismissed.

For the foregoing reasons, both the appeals stand dismissed.

(A. L. DAVE, J.)

(J .C. UPADHYAYA, J.)

*Pansala.