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which fall into the exclusive allotment of his co-sharer who granted the lease, and it is only just that the lands which fall to him in entirety should be lands unencumbered, as was his share, when the lands were joint. The grantee of such a tenure cannot justly complain of such transfer, because he took the tenure subject to the right of the other co-sharer to a just and equitable partition. I have no hesitation, therefore, in following the case of *Joy Sankari v. Bharat* (1) and I, therefore, answer the question referred to the Full Bench in the negative.

CHATTERJEA A. C. J. The result is that the appeal is allowed, and the decree of the Court of first instance restored.

B. M. S.

*Appeal allowed.*

(1) (1899) I. L. R. 26 Cal. 434.

## APPELLATE CRIMINAL.

*Before C. C. Ghose and Duval JJ.*

BATASI MONI DASI

v.

EMPEROR.\*

*Evidence—Admissibility—Cocaine dealing without license—Statements of accused persons to Excise Officers after arrest and detention in the Excise barracks—Opinion of witness as to an accused being a reputed dealer in cocaine—Propriety of examining search witnesses at the trial—Consideration of extraneous matters in determining sentence—Improper conduct of the prosecution—Excise Act (V of 1909), s. 46.*

Statements by the accused to Excise officers, made at the Excise barracks after arrest and detention, held inadmissible as not being voluntary.

\*Criminal Appeal No. 759 of 1925, against the order of Mr. E. Keays, Additional Chief Presidency Magistrate, Calcutta, dated Nov. 10, 1925.

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The opinion of an Excise officer that an accused, charged with the illicit sale and possession of cocaine, had the reputation of being a dealer in cocaine on a very large scale, is inadmissible, and should not influence the judgment of the trial Magistrate.

Where a witness, whose evidence was open to some doubt, was the only witness of the search examined at the trial; it was *held* that the Magistrate should have insisted on the production of some of the other search witnesses.

The Magistrate should not be influenced in adjudging the measure of punishment by extraneous matters, especially when they are not proved by any evidence before him.

The prosecution, in cocaine as in other cases, ought to be conducted fairly to the accused, so as to give him no cause to complain of its mode of conduct.

The facts of the case were as follows. In January S. N. Roy, an Excise Superintendent, received information that cocaine was being sold by the appellant, without license, at her house in 28, Amherst Street. On the 26th January, he gave one Ram Lakshman Rs. 180 in currency notes, with instructions to purchase cocaine from her. Ram Lakshman went to her house, purchased 3 oz. of cocaine from her and paid the notes. Thereafter the premises were raided by a large number of Excise officers and others. A number of packets were found in the appellant's kitchen, and the scrapings of the floor were taken. She later on produced a pair of scales from an iron chest in her bed-room. The packets, scrapings and the scales were found by the Chemical Examiner for Customs and Excise to contain cocaine.

The appellant alleged, in a statement made by her, that she was locked up in the bed-room with the search witnesses while the search was going on elsewhere, that after the search was over some articles were brought into the bed-room, and the search list signed by them and by one K. N. Bose and herself. Thereafter, on receipt of certain information, the

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Excise Superintendent went to the shop of Pran Ballabh Shaw, at 27, Amherst Street, and recovered some of the notes given to Ram Lakshman.

The appellant and Pran Ballabh were arrested by the Excise officers, and taken to the Excise barracks where they made certain statements to an Excise officer while under detention.

They were placed for trial before Mr. Keays, Additional Chief Presidency Magistrate: the appellant being charged, in separate counts, with illicit sale and possession of cocaine under section 46 of Bengal Act V of 1909, and Pran Ballabh with abetment. The latter was discharged, but the appellant was convicted and sentenced, on the 10th November 1925, to consecutive terms of rigorous imprisonment for one year on each charge. She appealed to the High Court.

*Sir B. C. Mitter, Mr. S. K. Sen, Babu Prabodh Chunder Chatterji and Babu Suraj Kumar Dutt*, for the appellant.

*The Advocate-General (Mr. B. L. Mitter), and Mr. J. C. Guha*, for the Crown

GHOSE AND DUVAL JJ. The appellant before us, Srimati Batasi Moni Dasi, has been convicted by the learned Additional Chief Presidency Magistrate of Calcutta under section 46 of the Bengal Excise Act (V of 1909), for having sold cocaine and for being in possession of cocaine without a pass or license, and has been sentenced to undergo rigorous imprisonment for a period of one year under each of the said two charges, the sentences to run consecutively.

The trial commenced on the 5th February 1925, and did not terminate till the 10th November 1925. On the day the trial commenced, the case against the present appellant was split up into two parts, viz,

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one charge in respect of the sale of 3 oz. of cocaine, and the other in respect of possession of cocaine. The case relating to the sale of cocaine was ordered to be proceeded with, and on the 3rd March 1925 the Magistrate passed an order to the effect that the case in respect of possession of cocaine would be taken up after the disposal of the case in respect of the sale of cocaine. This was done apparently because, as the Magistrate himself said later on, he had no idea that the second charge against the accused related to a case of possession of cocaine on the same day as that on which it was alleged she sold the 3 oz. of cocaine. This Court having been moved by the accused against the order for adjournment of the hearing of the second charge, the Chief Justice and Mr. Justice Panton directed, on the 27th May 1925, that the two charges, viz., for sale and for possession of cocaine, against the accused should be proceeded with in one and the same trial. This was accordingly done, and, as stated above, the trial came to an end on the 10th November 1925, the delay in disposal being partly due to the accused's illness.

In passing sentence upon the accused, the Magistrate observed as follows :—"The evidence shows that "the accused was carrying on cocaine dealing in a very "large way. It has been elicited in cross-examina- "tion that her reputation for years has been that of "one of the most notorious of cocaine dealers. In the "course of his speech for the defence, Babu Kristo "Lal Dutt stated that she possessed some of the finest "equipages in Calcutta and three motor-cars; and "exemplary punishment is necessary. I sentence the "accused to one year's rigorous imprisonment under "each charge, the sentences to run consecutively."

In view of the order which we propose to make, the extract from the judgment of the Magistrate set

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out above requires separate consideration. But before we advert to it, it will be desirable to state shortly the facts giving rise to the present prosecution. It appears that some time in January 1925 information was received by the Superintendent of Excise, Mr. S. N. Roy, that cocaine was being sold by the accused in contravention of the provisions of section 46 of the Bengal Excise Act. Mr. Roy thereupon arranged with one Ram Lakshman Singh to purchase cocaine from the accused. On the 26th January 1925 he gave Ram Lakshman Rs. 180 in currency notes, the numbers of which had been previously taken down by him on a piece of paper (Exhibit 2 in the case). Ram Lakshman, who was accompanied by two other persons, named T. Ali and Inspector B. K. Bose, was thereupon sent with orders to purchase cocaine from the accused. Ram Lakshman went into the accused's premises, while the others waited a short distance away. This was about 3 P.M. in the afternoon. It is alleged that Ram Lakshman purchased 3 oz. of cocaine from the accused for a sum of Rs. 180, and that payment was made to the accused in notes, the numbers of which, as stated above, had been taken down (Exhibit 2).

Mr. Roy, on receipt of information of the purchase of cocaine, raided the premises of the accused, that is, premises No. 28, Amherst Street. The raiding party went in ten taxi cabs, and scaling ladders were used for the purpose of getting into the accused's premises. Ram Lakshman said in the presence of the accused that he had purchased 3 oz. of cocaine from the accused, but the latter denied that she had sold any cocaine to Ram Lakshman. The premises were thereupon searched, and a large number of packets of cocaine were discovered in the kitchen: scrapings from the floor were also taken, and, as will be seen later,

they also contained cocaine. A search list was prepared, being Exhibit 3/1, and it appears that the articles which were suspected to contain cocaine were sealed in the presence of the accused, she also sealing the same. Some of the packets of cocaine were intact and some were half burnt, and it was alleged that the accused and two other women being her maid-servants were putting some packets in the fire in the kitchen at the time when they were surprised by the raiding party. Meanwhile, the Superintendent, Mr. Roy, having received information that the money which had been given by him to Ram Lakshman had found its way into a shop at premises No. 27, Amherst Street, these premises being also owned by the accused, proceeded to the shop in question and recovered certain of the currency notes to the value of Rs. 98, mentioned in Exhibit 2, from one Pran Ballabh Shaw, who was in charge of the shop in question. In consequence of a statement made by Pran Ballabh (who was an accused in the case, but has been discharged) early next morning Rs. 70 more of these notes were recovered from a rice shop at Tollygunge. Besides the articles found in the kitchen, there was also found in the bed-room of the accused, in an iron chest, a pair of scales. The suspected packets of cocaine, as also the scales, certain empty tins, some water and other articles were sent to the Chemical Examiner for Customs and Excise, and it was discovered that there was cocaine in the packets referred to above, in the scrapings from the floor which had been taken and also on the scales. Thereafter the present prosecution was started, with the result indicated above.

The accused alleged that, on some date previous to the search, there had been a quarrel between her and the Superintendent of Excise, Mr. Roy, over a debt due to the shop at No. 27, Amherst Street, by a

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deceased connection of Mr. Roy, and that, as a result thereof, her premises were raided out of pure revenge by the Excise people. She alleged that the search of her premises was conducted in a spirit of vindictiveness, and went on to state as follows:—

“That nearly 70 men, Excise and Police officers, “rushed pell mell into the house, some rushing up the “staircase, some scaling over ladders, and the Excise “men overran the whole house, wantonly breaking “doors, panels, glasses, almirahs and boxes, tearing up “bolsters and pillows, and doing various other acts of “wanton mischief: that immediately the raiding party “reached the first floor, I was seized by two Excise “orderlies, under orders of Inspector S. C. Mozumdar, “in my bed-room, and threatened to be dishonoured if “I made the slightest attempt at movement: that I “protested against the wanton destruction of my “properties and wanted permission to send for a “Magistrate, but no heed was paid to my request, and “they proceeded with the search of the whole house “indiscriminately while I was in that position: that “after ransacking the house for more than 3 hours “some articles were brought into the bed-room, where “the search witnesses were waiting all the time, and a “list of them was made out, and I was asked to put my “seals on some of the articles: I was also asked to put “my thumb impression on the search list, which I de- “clined to do as I did not understand English, but which “I had to do for fear of molestation: that I was kept “in custody in my house till 1 o’clock in the morning “and then taken without food and even drink of water, “and without being allowed to answer calls of nature: “that thereafter I was removed to the Excise barracks “where I was kept in the same condition, and was “compelled to put my thumb impression on a piece of “paper: that it was the next morning at 6 o’clock

“when I was taken to the Sukea Street thana that I got  
 “my first drink of water after 14 hours of physical  
 “worry and harrassment: that it was absolutely untrue  
 “that I sold 3 oz. or any cocaine to Ram Lakshman,  
 “as falsely alleged by him, or that I ever possessed any  
 “cocaine in the house.” It appears that during the  
 examination and cross-examination of the witnesses  
 the manner in which the search was conducted was  
 gone into. The accused complained to the Magistrate  
 that a full note had not been taken down in recording  
 the evidence of the fact that the Superintendent of  
 Excise, Mr. S. N. Roy, admitted that 16 or 17 bolsters  
 or pillows were torn open during the search, and that  
 the witness, Bhubaneswar Shaw, had said that  
 Mr. Roy told the accused “that he would give her a  
 “shoe-beating and turn her out of the house.” (See in  
 this connection the petition of the accused filed on  
 the 6th November 1925, and the Magistrate’s remarks  
 thereon.)

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Turning now to the evidence on record, at the  
 outset we must express our regret that various  
 matters which ought never to have been allowed to  
 get on to the record have been so allowed by the  
 Magistrate. In our opinion the statements which had  
 been obtained from Pran Ballabh Shaw and the accused  
 are not such as should have been received in evidence  
 at all. They were taken by the Excise officers after  
 they had taken the accused and Pran Ballabh to the  
 Excise barracks, and while they were in custody,  
 and they, *i.e.*, the statements, in our opinion, cannot  
 be considered voluntary statements, and it is  
 surprising that these should have been made exhibits  
 in the case. It is equally surprising that the  
 Magistrate should have asked the Superintendent of  
 Excise, Mr. Roy, what reputation the accused had, and  
 that he should have allowed Mr. Roy’s opinion of the



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accused's reputation as being a dealer in cocaine on a very large scale to be admitted in evidence and to influence him in his decision. Further, in our opinion, the Magistrate should have insisted on the production in Court of the search witnesses who were present at the search of the accused's premises. We are not unmindful of the fact that K. N. Bose, who was present at the search, has been examined, but some, at least, of the other search witnesses referred to by Mr. Roy in the course of his evidence, should have been examined before the Magistrate. K. N. Bose is obviously a person who stands well with the Excise authorities. It is admitted that he is a neighbour of the Superintendent of Excise, and that he has often been out on cocaine raids with the Superintendent, and that he expects a reward on conviction of the accused. These and other matters have led us to scrutinise the evidence in this case with some degree of suspicion, and what we have done is to eliminate from our consideration such parts of the evidence, both oral and documentary, to which exception can justly be taken. But having done so, we are bound to state that the residuum of the evidence on record and the accused's statements in Court are sufficient to justify the conviction of the accused. There is, in our opinion, abundant evidence that cocaine was found on the premises of the accused at the time of the search; whether there were as many as 500 packets of cocaine or not is a circumstance into which we need not enter. The fact that cocaine was found in the premises of the accused cannot be denied. There is no substance in the contention that the accused had nothing to do with the cocaine which was found at the search, and that it was the maid-servants who had brought the cocaine in question into the premises. The suspected packets, as stated above,

were sealed at the time of the search, one of the seals being the accused's. They were examined by the Chemical Examiner for Customs and Excise, and it is noteworthy that traces of cocaine were found on the pair of scales belonging to the accused which were in an iron safe in the accused's bed-room of which the accused produced the key. There is also in our opinion sufficient evidence on record to justify the conclusion that the accused had sold cocaine to Ram Lakshman Singh. Ram Lakshman Singh's evidence has been subjected to minute and vigorous criticism. It is said that there is evidence that Ram Lakshman will get a reward of as much as Rs. 500 on conviction of the accused, and that indications are not wanting on the record to show that Ram Lakshman is a man who is more or less in what is called the pocket of Excise authorities. A great deal of criticism has also been levelled at the evidence by which it has been sought to connect the find of the currency notes, of which the numbers had been taken down previously, in the shop where Pran Ballabh Shaw is employed, with the accused. We are free to admit that the evidence on this last point is not particularly satisfactory. After we have eliminated from our consideration Exhibits 4 and 9, being the statements made to the Excise officers, but making all allowance in favour of the accused, we do not see that there is any escape from the conclusion that she did sell 3 oz. of cocaine to Ram Lakshman Singh, and that the notes paid therefor did pass to her tenant's shop and some of them therefrom to Tollygunge. At the time when the accused's premises were raided, the quantity of cocaine which it was alleged she had sold to Ram Lakshman was produced before her. No doubt, she denied that she had sold the cocaine to Ram Lakshman; we do not see what else she could do under the circumstances; but the evidence of Inspector

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B. K. Bose, Inspectors S. C. Mazumdar, and T. Ali, corroborating Superintendent Roy, on this point, must be accepted. The result, therefore, as indicated above, is that in our opinion there is sufficient evidence on the record to justify the conviction of the accused on the two charges mentioned above.

There now remains for us to consider the question of the sentence to be inflicted on the accused. It is apparent from the judgment of the Magistrate in this case that extraneous matters have been allowed to influence him in determining the sentence which he passed on the accused. There is in our opinion no evidence to show that the accused was carrying on cocaine-dealing in a very large way. We have already commented on the fact how evidence of repute was extracted by the Magistrate during the cross-examination of Mr. S. N. Roy. There is also no evidence on the record that the accused possessed some of the finest equipages in Calcutta and three motor-cars. What the possession of equipages and motor-cars by the accused had got to do with the question of the sentence to be passed on the accused passes our comprehension. The learned Advocate General very properly expressed his deep regret on behalf of the Crown that these and other irrelevant matters should have been referred to by the Magistrate in his judgment, and at the way in which the case had been conducted in the Police Court. There may be exaggerations in the complaint made by the accused about the manner in which her premises were searched and the way she was treated; but indications are not wanting on the record to show that the search was conducted and the accused detained in an inconsiderate manner. The prosecution, in cases of this nature or for the matter of that in every case, ought to be conducted fairly and squarely, and nothing

should be done so as to give grounds for complaints on the part of the accused such as have been made in this case. We trust it will not be necessary for us to repeat the observations we have just made in future.

The sentence inflicted on the accused, namely, one year's rigorous imprisonment on each of the two charges, the sentences to run consecutively, is, in our opinion, if not outrageous, extraordinarily severe and quite uncalled for. After full and careful consideration of the entire record, we have come to the conclusion that the ends of justice would be sufficiently met if we sentenced the accused to undergo rigorous imprisonment for a period of one month and to pay a fine of Rs. 500 and, in default, to undergo rigorous imprisonment for one month more, on each of the two charges, the sentences to run consecutively. We accordingly modify the sentences in manner indicated above, and with this modification we dismiss the appeal. The appellant who is on bail must surrender to her bail bond, and serve out the remainder of the modified sentences.

E. H. M.

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