

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 918 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

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Approved for Reporting	Yes	No

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STATE OF GUJARAT

Versus

CHIMANBHAI BHANUBHAI CHAUDHARI & ANR.

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Appearance:

MS JIRGA JHAVERI ADDITIONAL PUBLIC PROSECUTOR for the

Appellant(s) No. 1

MR. ASHOK A PUROHIT(6267) for the Opponent(s)/Respondent(s) No. 1,2

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**CORAM: HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK****Date : 17/06/2026****JUDGMENT**

1. The present appeal is filed by the appellant-State of Gujarat under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order dated 06.11.2007 passed by the Additional Sessions Judge, Surat at Vyara (hereinafter referred to as "the appellate Court") in Criminal Appeal no. 1/2006 whereby, the appellate Court acquitted the respondents - accused.

2. Short facts of the prosecution case are that on 09.03.1995 at about 10.30 hours, complainant-Food Inspector, Mr. B.N. Chaudhari, while discharging his duties as a Food Inspector has visited place of respondent running under the name and style of M/S. Bharat Sweets



and Farsan Mart, at Shop no. 6, J.B. and S.A. Shopping Centre, Vyara, Dist. Surat. That, the complainant-Food Inspector, after giving intimation in Form no. 6 purchased muddamal sample of "Kajukatri" (silver foiled) in the presence of panch witnesses paying cost of Rs.96/- and sent the same to Public Analyst, Bhuj for the purpose of analysis. That, the sample which was purchased by complainant came be analysed and examined by office of the Public Analyst, Bhuj and after analysing the same, the Public Analyst arrived at the conclusion that material which was purchased by complainant-Food Inspector was not with the provisions under the Prevention of Food Adulteration Act and Rules. That, on receipt of report from Public Analyst, Bhuj, the complainant-Food Inspector obtained permission to prosecute against respondents and after receiving sanction from competent authority i.e. Local Health Authority, complaint was filed before the court of learned Judicial Magistrate, First class, Vyara with a proposal to try the respondents-accused for the offences punishable under sec.2(1-A) (A), 2(1-A) (C), and 2(1-A) (M) of Prevention of Food Adulteration Act, 1954 and numbered as Criminal Case No. 1709/1995. That, the learned Judicial Magistrate, First Class, Vyara had taken the cognizance of the offence, issued process against accused persons and intimated to respondents with a copy of report of public analyst and the respondents appeared before the trial court, and applied for re-analysis of muddamal "Kajukatri" (Silver foiled) by Central Food Laboratory, Gaziabad. That, the Central Food Laboratory, Gaziabad, by its letter vide Exh. 16, submitted report of Central Food Laboratory, which was also found substandard, a charge sheet was filed against respondents.

2.1 The charges against the accused came to be framed by the trial Court for the offences. On being explained it to them, the



accused have denied having committed any offence. The accused pleaded not guilty to the charges and pleaded for trial.

3. It appears from the records that to prove the case, the prosecution has examined the witnesses and produced documentary evidences.

4. After closure of the evidence, the statements of the accused under section 313 of the Criminal Procedure Code, 1973 have been recorded wherein he denied of having committed any offence and has stated that he is innocent.

5. The learned Magistrate, Vyara, after hearing parties from both sides and considering the evidence on record, convicted respondents by judgment and order dated 24.11.2006 for the alleged offences under sec. 2(1-A) (A), 2(1-A)(C), and 2(1-A) (M) of Prevention of Food Adulteration Act, 1954 and ordered to undergo simple imprisonment for a period of three years and fine of Rs.5000/- i/d. further simple imprisonment for a period of six months. Thereafter, against the order of conviction, the accused has preferred criminal appeal before the appellate Court whereby the appellate Court, after considering the submissions and hearing the respective parties and considering the oral as well as documentary evidence, has acquitted the accused from all the charges levelled against them.

6. Being aggrieved and dissatisfied with the aforesaid judgment and order of acquittal, the appellant has preferred this Appeal.

7. Heard Ms. Jirga Jhaveri, learned Additional Public Prosecutor for

the appellant and Mr. Ashok Purohit, learned counsel for the respondents at length.

8. Ms. Jhaveri, learned Additional Public Prosecutor appearing for the appellant - State of Gujarat has submitted that the impugned judgment and order of acquittal passed by the appellate Court is contrary to law and evidence on record and against the principles of justice, and therefore, the same deserves to be quashed and set aside. She has submitted that the appellate Court has failed to appreciate deposition of complainant Food Inspector at Exh. 39, wherein he has clearly deposed in his deposition regarding cleaning of vessels and when said fact gets corroboration from panchnama at Exh. 45 then in that case it can not be said that there is breach of provision of sec. 14 of the Act. She has submitted that the appellate Court has not appreciated the fact that looking to report of Public Analyst as well as Central Food Laboratory, it is clear that presence of aluminium foil was found in stead of silver foil. Learned APP has further submitted that the impugned judgment of acquittal is contrary to the evidence on record, based on erroneous appreciation of material evidence, and has resulted in a miscarriage of justice. She has submitted that the findings recorded by the learned appellate Court are perverse and unsustainable in law, thereby calling for interference by this Court in the exercise of its appellate jurisdiction. She has further submitted that the learned appellate Court has materially erred in holding that the prosecution has failed to prove its case beyond reasonable doubt and the findings recorded by the appellate Court were therefore perverse, illegal, and contrary to the evidence on record. She has submitted that the learned appellate Court has erred both on facts and in law in recording the order of



acquittal, having failed to properly appreciate the oral and documentary evidence available on record. She urges before the Court that present appeal may be allowed and the impugned judgment and order of acquittal may be quashed and set aside.

9. On the other hand, Mr.Purohit, learned counsel for the respondents has submitted that the appellate Court has rightly passed the impugned judgment and order of acquittal and there is no any illegality or any infirmity in the impugned judgment and order and, therefore, no interference is required to be called for. He has supported the reasonings stated by the appellate Court and submitted that the respondents have been falsely roped in the alleged offence. He has submitted that the prosecution has failed to prove the charges levelled against the respondents before the appellate Court by leading cogent and material evidence and therefore, the appeal being meritless deserves to be dismissed and the judgment and order of acquittal deserves to be confirmed.

10. I have heard the learned counsel appearing for the respective parties and perused the material placed on record. It appears that the findings recorded by the trial Court was not justified and it was not in consonance with the facts of the present case though there was a legal principle as enunciated by the Hon'ble Apex Court which was brought to the notice of the trial court, the trial Court has recorded the conviction against the respondents which was rightly reversed by the Appellate Court by passing the impugned judgment and order of acquittal. At this juncture, it would be appropriate to refer to the decision of this Court in the case of **State of Gujarat Vs. Rasiklal Shah and Anr.** reported in **1994 Cr.L.R. (Guj) 94**, the case of **Iqbal**



Musabhai Hunani Vs. State of Gujarat and Anr. in Criminal Revision Application No. 173 of 1984 and the case of **Vimal B Chauhan Vs. Kalubhai Ambalal Jesani & 1** reported in **2011 Lawsuit(Guj) 1943** wherein this Court has decided similarly situated issue of food adulteration. It appears that the report of the Public Analyst confirms that the aluminium foil was found on kaju katri collected from the shop of the respondents then, the important question arises whether this aluminium foil found on the article i.e. kaju katri is hazardous to the health of people; whether the article found to be coated with the aluminium foil and in absence of any evidence on record to the effect that aluminium foil is injurious to health and is unfit for human consumption, the mere use of such foil for coating kaju katri would not make that article of food adulterated. Such principle has been consistently laid down and reiterated by this Court in the aforesaid decisions. So far as non-compliance of Rule 14 of the Prevention of Food Adulteration Rules, 1955 is concerned, the evidence of the Food Inspector-B.N.Chaudhari i.e. PW 1 at exhibit 39 clearly reveals that, after collecting the sample, he kept it in a glass bottle and further admitted that the bottles were not cleaned as required under the Rules. It appears that in his cross examination, PW1 has also admitted that there was no any statutory part and he was not having any documentary evidence to the effect that the aluminium foil is injurious to human health or that its use is prohibited under the Act or the Rules. It appears that PW 1 has also admitted that he did not register any complaint for misbranding but he filed the complaint for adulteration and in view of the clear admission on the part of PW 1-Food Inspector, the Trial Court has completely misread the provisions of the Prevention of Food Adulteration Act and the Rules while passing the conviction order against the present



respondents which was rightly reversed by the appellate Court.

10.1 Rule 14 of the Prevention of Food Adulteration Rules, 1955 reads as under:

14. Manner of sending samples for analysis.

- Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed.

In the case of State of Gujarat Vs. Punabhai Ramabhai Machhi reported in 2005 FAJ 376, this Court has observed non compliance with Rule 14 appeal against the acquittal. No positive evidence on record to show that the sample bottles were cleaned. In the said decision, this Court has referred and relied upon the earlier decision of this Court and has made relevant discussion/observation in para-11 onwards. In the present case, a positive evidence has been recorded by the trial court that the officer has in clear terms stated that he has not cleaned the bottle before taking samples. In view of that, I am in complete agreement with the impugned judgment and order passed by the appellate Court, more particularly, the reasoning given by the appellate Court in paragraph 11 of the impugned judgment and order with regard to the compliance of the provisions of Rule 14 framed under the Act. It appears that the appellate Court has specifically observed that the learned trial Court failed to consider this submission and the mandatory provision of Rule 14 and therefore, in light of the decision of this Court, the appellate Court has rightly passed the impugned order of acquittal. Even with regard to the food article - Kaju katri which was found coated with the aluminium foil, the appellate court has considered the decisions of this Court as well as of



other High Courts which is referred and relied upon in paragraphs 19 and 20 of the impugned order and after considering the same, the appellate Court has rightly passed the impugned order of acquittal.

10.2 On perusal of the report of Central Food Laboratory, Gaziabad at Exh. 16, it appears that the Laboratory has analysed the sample and result of such analysis reads as under:

"PHYSICAL APPEARANCE: *The sample of Kaju Katri was brown in colour, free from fungal growth, insect infestation and rodent contamination.*

ANALYTICAL DATA:

- 1. Baudouin's test of extracted fat: Positive*
- 2. B.R. Reading of Extracted fat at 40°C: 56.3*
- 3. Test for mineral oil: Negative*
- 4. Test for starch: Positive*
- 5. Test for sucrose: Positive*
- 6. Test for silver foil: Negative*
- 7. Test for aluminium foil : Positive*
- 8. Added colouring matter: Absent*

OPINION: *The sample shows presence of aluminium foil. The sample is thus adulterated."*

11. It is well settled by catena of decisions that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption



of their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

12. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which he is charged.

13. The scope and principles are enunciated by the Hon'ble Apex Court in case of **Chandrappa and others Vs. State of Karnataka** reported in **(2007) 4 SCC 415**, more particularly **paragraph Nos. 42 and 43**, which was subsequently re-affirmed by the Hon'ble Apex Court in **Rajesh Prasad Vs. State of Bihar and another**, reported in **[2022] 3 SCC 471**, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more



particularly in **paragraph No. 26** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149**, the Hon'ble Apex Court has dealt with the similar issue, more particularly, in **paragraph Nos. 37 to 40**. Hence, we are in complete agreement with the findings recorded by the trial Court.

14. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of **Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169**, wherein the Hon'ble Supreme Court has held and observed in paras-20 and 21 as under:-

"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

"42. (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own



conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

15. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record.



16. On perusal of the impugned judgment and order, it clearly transpires that the appellate Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against them. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the appellate Court is sustainable and the present appeal is liable to be dismissed.

17. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order of acquittal passed by the appellate Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

(HEMANT M. PRACHCHHAK,J)

ANUSRI