

---

**(2009) 09 GUJ CK 0041**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 853 of 1988**

State of Guj.

APPELLANT

Vs

Narayanbhai Himmatbhai Rana

RESPONDENT

---

**Date of Decision :** 24-09-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378  
Prevention of Food Adulteration Act, 1954 — Section 16(1), 7

**Citation :** (2009) 09 GUJ CK 0041

**Hon'ble Judges :** Z.K. Saiyed, J;K.S. Jhaveri, J

**Bench :** Division Bench

**Advocate :** R.C. Kodekar, app, for the Appellant; N.D. Buch, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

K.S. Jhaveri, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgement and order of

acquittal dated 02.07.1988 passed by the Sessions Judge, Baroda in Criminal Appeal No. 53 of 1986, whereby the accused has been acquitted

of the charges leveled against him.

2. The brief facts of the prosecution case are that the complainant, upon information, visited the shop of the accused herein and after introducing

himself as a Food Inspector to accused, purchased sample of milk in the presence of panch witness and in compliance of provisions under the

PFA Act. According to the report of Public Analyst, the muddamal sample was found adulterated.

2.1 Therefore a complaint with respect to the aforesaid offence was filed against the respondent. Necessary investigation was carried out and

statements of several witnesses were recorded. During the course of

investigation, respondent was arrested and, ultimately, charge-sheet was filed against him. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court.

2.2 The trial was initiated against the respondent and during the course of trial the prosecution examined witnesses as oral evidences The

prosecution also exhibited the following documentary evidences. At the end of trial, after recording the statement of the accused u/s 313 of

Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge convicted the respondent for the offence u/s

7 r/w 16(1) of Prevention of Food Adulteration Act. Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the

Sessions Court the respondent preferred the appeal before the Sessions Court. The Sessions Court acquitted the respondent of the charges

levelled against him vide judgement and order dated 27.08.1986. Hence the present appeal.

3. It was contended by Mr. Kodekar, learned APP that the judgement and order of the Sessions Court is against the provisions of law; the

Sessions Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the

prosecution has proved the whole ingredients of the evidence against the present respondent. Learned APP has also taken this court through the

oral as well as the entire documentary evidence.

3.1 Learned advocate for the respondents has submitted that the trial court has gone through the evidence in detail and has rightly acquitted the

respondent-accused. Learned advocate has submitted that the judgement and order of the trial court is just and proper and does not call for

interference by this court.

4. At the outset it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court against an order

of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. In the case of M.S.

Narayana Menon @ Mani Vs. State of Kerala and Another, the Apex Court has narrated about the powers of the High Court in appeal against

the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:

54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction.

Even while exercising an appellate power against a judgement of acquittal, the High Court should have borne in mind the well-settled principles of

law that where two views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

4.1 Further, in the case of *Chandrappa and Others Vs. State of Karnataka*, the Apex Court laid down the following principles:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with

an appeal against an order of acquittal emerge:

[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 emphasise 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.

4.2 Thus, it is a settled principle that while exercising appellate power, even 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.

4.3 Even in a recent decision of the Apex Court in the case of State of Goa v. Sanjay Thakran and Anr. Reported in (2007)3 SCC 75, the Court

has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Court has observed as under:

16. From the aforesaid decisions, it is apparent that 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 judgement 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 any of the accused is

connected with the commission of the crime he is charged with.

4.4 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh and Ors. reported in AIR

2007 SCW 5553 and in Girja Prasad (Dead) by LRs v. State of M.P. reported in AIR 2007 SCW 5589. Thus, the powers which this Court may

exercise against an order of acquittal are well settled.

4.5 It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgement or to give fresh reasonings,

when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of State

of Karnataka Vs. Hemareddy Alias Vemareddy and Another, wherein it is held as under:

This court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain

Choudhury, that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

4.6 Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence is not necessary.

5. We have gone through the judgement and order passed by the trial court. We have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned Advocate for the appellant. The trial court has gone through the evidence in detail and has observed that the consent or the sanction at Ex. 14 is not a legal and valid sanction. The sanctioning authority has not recorded his reasons as to why the launching of the prosecution against the offender was necessary in public interest. The Sessions court has clearly recorded a finding that there is a clear breach of mandatory provision and therefore the entire procedure is vitiated.

6. In the above view of the matter, we are of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him. We find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. We are, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed.

7. The judgement and order dated 02.07.1988 passed by the Sessions Judge, Baroda in Criminal Appeal No. 53 of 1986 acquitting the respondent-accused is hereby confirmed. Bail bonds, if any, shall stand cancelled.