

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 456 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Approved for Reporting		
	Yes	No

STATE OF GUJARAT
Versus
ASHRAFKHAN AJABKHAN PATHAN

Appearance:
MS SHRUTI PATHAK, APP for the Appellant - State
MR MA SAIYAD(5598) for the Opponent(s)/Respondent(s) No. 1
MS BENAZIR M HAKIM(5166) for the Opponent(s)/Respondent(s) No. 1

CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 06/02/2026****ORAL JUDGMENT**

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 25.11.2009, passed by the learned Additional Sessions Judge, Court No.16, Ahmedabad City in Sessions Case No.294 of 2008, punishable under Section 8(c), 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS' Act), Sections 42, 43 and 45(12) of the Jail Act and Section 188 of the Indian Penal Code, the appellant – State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (for short, “the Code”).

2. The prosecution case as unfolded during the trial before the Sessions Court is that on 03.07.2008 before 16:40 hours, though accused – respondent was not given any appointment for visiting visitors, inspite of that, he illegally entered into the visiting room at Central Jail, Sabarmati and obtained muddamal contraband - *Charas* to the extent of 33.400 gms. From his colleague; and that search of the accused was carried out and during the search, the accused was found in conscious possession of said contraband – *Charas*; and thereby committed an offence, as alleged. Therefore, the case was registered against the respondents/accused.

3. After investigation, sufficient *prima facie* evidence was found against the accused person/s and therefore charge-sheet was filed in the competent criminal Court. Since the offence alleged against the accused person/s was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court, where it came to be registered as Sessions Case No.294 of 2008. The charge was framed against the accused person/s. The accused pleaded not guilty and came to be tried.

4. In order to bring home the charge, the prosecution

has examined 18 witnesses and also produced 12 documentary evidence before the trial Court, which are described in the impugned judgment.

5. After hearing both the parties and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the accused for the offences for which the charge was framed, by holding that the prosecution has failed to prove the case beyond reasonable doubt.

6. Learned APP for the appellant – State has pointed out the facts of the case and having taken this Court through both, oral and documentary evidence, recorded before the learned trial Court, would submit that the learned trial Court has failed to appreciate the evidence in true sense and perspective; and that the trial Court has committed error in acquitting the accused. It is submitted that the learned trial Court ought not to have given much emphasis to the contradictions and/or omissions appearing in the evidence and ought to have given weightage to the dots that connect the accused with the offence in question. It is submitted that the learned trial Court has erroneously come to the conclusion that the prosecution has failed to prove its case. It is also submitted that the learned Judge ought to have seen that the evidence produced on record is reliable and

believable and it was proved beyond reasonable doubt that the accused had committed an offence in question. It is, therefore, submitted that this Court may allow this appeal by appreciating the evidence led before the learned trial Court.

7. As against that, learned advocate for the respondent/s would support the impugned judgment passed by the learned trial Court and has submitted that the learned trial Court has not committed any error in acquitting the accused. The trial Court has taken possible view as the prosecution has failed to prove its case beyond reasonable doubt. Therefore, it is prayed to dismiss the present appeal by confirming the impugned judgment and order passed by the learned trial Court.

8. In the aforesaid background, considering the oral as well as documentary evidence on record, independently and dispassionately and considering the impugned judgment and order of the trial Court, the following aspects weighed with the Court :

8.1 As per the case of the prosecution, the accused was an under-trial prisoner and when he was in the jail premises, the contraband article was found in his possession.

8.2 The prosecution has examined P.W.1 - Pravinbhai Ramanbhai Damor, vide Exh.6, who is the panch witness of the panchnama which is produced at Exh.7 and have examined Bachubhai Somabhai Bhagora as P.W.2, vide Exh.11. In his deposition, he has stated that he is not aware from whom the contraband was found.

The prosecution has examined Abdulgafur Ilaahibax Shaikh as P.W.3, vide Exh.12, who was the Jailor at the time of offence and according to his deposition, he has stated that he had instructed Hawaldar – Bhikhankhan Kadukhan Bahelim to take search of the accused and it is at that point of time, the accused had said that he had come to the visitor's room as he had a visitor.

Thereafter, the prosecution has examined as P.W.4 – Jayendrasinh Mangalsinh Jadeja, who is a Senior Jailor, vide Exh.14.

The prosecution has examined Bhikhankhan Kadukhan Bahelim as P.W.5, vide Exh.15, who was the officer who was instructed by the Jailor – Abdulgafur Ilaahibax Shaikh to take search of the accused and in his search, he found a plastic bag in the fist of the accused.

The supervisor of the jail – Bijalbhai Shamjibhai Solanki has been examined as P.W.6, vide Exh.16 and the said witness – Bijalbhai, in his deposition, has stated that he has noted in his register; and that on the date of the

offence, the accused had come to him to take leave to go and consult a doctor for his treatment and the said fact was noted in the register. He has also stated that his duty is from 6:00 a.m. to 8:30 a.m. and from 12:30 p.m. to 16:30 p.m. The incident has taken place at 16:40 hours. In his cross-examination, he has stated that in the evening, the accused was not given permission to go outside from the 'chhota chakkar' barrack.

The person who has weighed the contraband – Laxmichand Babulal Soni has been examined as P.W.7, vide Exh.17.

Vide Exh.19, the Police Constable – Narendrasinh Sadhusinh Rana has been examined as P.W.8. He was at the Sabarmati Police Station and he was given the duty to hand over the sample to the Forensic Science Laboratory.

The crime writer – Vajubhai Girdharbhai Kharchariya, Head Constable, has been examined as P.W.9, vide Exh.20 and he gave the sample to P.W.8 – Narendrasinh to forward to the Forensic Science Laboratory.

The PSO at Sabarmati Police Station – Bhupatdan Bhikhudan Gadhvi, who has taken the *vardhi*, has been examined as P.W.10, vide Exh.20. The copy of the *vardhi* has been produced at Exh.23 and station diary at Exh.24.

The another PSO at Sabarmati Police Station viz., Kishorchandra Navnitlal Pandya has been examined as

P.W.11, vide Exh.26.

The writer at Sabarmati Police Station viz., Yogendrasingh Yashvantsinh Chauhan has been examined as P.W.12, vide Exh.28.

The Wireless Operator viz., Shartubhai Dhatariyabhai Vasava, when the *vardhi* was sent, has been examined as P.W.13, vide Exh.29.

The PSI at Sabarmati Police Station – Gambhirsinh Juthaji Jadeja has been examined as P.W.14, vide Exh.30.

The officer of the FSL viz., Amrutlal Vashrambhai Hingalajiya, who has taken the sample, has been examined as P.W.15, vide Exh.32.

The other officer of the FSL viz., Hemantkumar Bhalchandra Bhatt has been examined as P.W.16, vide Exh.35.

The reports of the FSL, which are produced vide Exhs.36, 37 and 38, have been proved by the evidence of P.W.16 – Hemantkumar Bhalchandra Bhatt (P.W.16).

8.3 The Investigating Officer – Kirtikumar Mulshankar Joshi has been examined as P.W.17, vide Exh.40. He has stated that it has come up on 03.07.2008 i.e. the date of offence as per his record, there is no note that anybody has come to meet the accused. According to him, if anybody

comes to meet the accused at the jail, there is a register and the said register shows that nobody had come to meet the accused. Moreover, he has also stated that he has not taken the print of CCTV which was available in the visitors' room.

8.4 The prosecution has also examined P.W.18 – Dr.Arvindkumar Chandreshwarprasad Varma, vide Exh.45, who has treated the accused at the hospital. He has stated that the accused had come for his treatment on 03.07.2008 and as per his statement, when he had examined the accused, he did not find any objectionable item with the accused.

8.5 The prosecution has also produced the jail register for the date 03.07.2008, vide Exh.43. The said jail register gives details of all the visitors, who had come to meet the prisoners and the said jail register does not give the name of the accused. Therefore, the prosecution has failed to prove that anyone had come to meet the prisoner on the said date.

8.6 If the evidence of the Jailor - Abdulgafur Ilaahibax Shaikh (P.W.3), who has been examined vide Exh.12, is taken into consideration, he has categorically stated that the police officer is present inside the visitor's room; and that the

camera have been installed in the said room, where the photograph of the accused and the visitor can easily be taken. He has also stated that if the accused is part of any gang and if he is an accused of the offence under the POTA or if he is a special prisoner, then the discussion of the accused with the said visitor is required to be noted by an officer of the police department. He has also stated in his cross-examination that only those prisoners, who have visitors, are allowed to enter the said visiting room and the name and details of the person, who comes to visit the prisoner, have to be filled up in a form; and that if any lawyer comes to meet any prisoner, there is a separate register for the same.

8.7 If the entire case of the prosecution is taken into consideration, it transpires that if the prisoner has to leave his barrack and reach at the visiting room, it is geographically difficult for him to reach at the same directly. The fact remains that from the jail register, it has been established that there was no visitor who had come to meet the accused and even according to the case of the prosecution, it would be difficult for the accused to hide and come to the visiting room directly. The fact also remains that only those persons, who had visitors, were permitted inside the visiting room and it is the case of the prosecution that

the accused was searched when he was about to leave the visiting room. Therefore, the prosecution has not been able to prove that the accused was inside the visiting room; and that the contraband was found in his fist during the said search. The fact also remains that the accused had taken permission to go for his medical treatment and even according to the prosecution's witness, it was difficult for the accused to reach the visiting room in the guise of going for his medical treatment.

8.8 If the evidence of P.W.14 - Gambhisingh Juthaji Jadeja, who has been examined vide Exh.30, is taken into consideration, he has stated that P.W.3 – Abdulgafur Ilaahibax Shaikh had given the complaint in his presence, but has also admitted that it has not happened that before reaching Sabarmati Central Jail, the complaint was given. Therefore, the Sessions Court has also taken into consideration that at what time, and in whose presence, the said complaint is given, is also not proved by the prosecution. The constable – Bhikhankhan Kadukhan Bahelim, who had taken the search of the accused, has been examined vide Exh.15 and in his deposition, he has stated that he has not seen the accused going inside the said visitor room. Though the said FSL report has not been challenged by the accused, but the fact remains that the prosecution has not been able to prove that

how the said contraband was found in the fist of the accused.

9. Further, learned APP is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In above view of the matter, I am of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

10. Considering the impugned judgment, the trial Court has recorded that there was no direct evidence connecting the accused with the incident and there are contradictions in the depositions of the prosecution witnesses. In absence of the direct evidence, it cannot be proved that the accused are involved in the offence. Further, the motive of the accused behind the incident is not established. The trial Court has rightly considered all the evidence on record and passed the impugned judgment. The trial Court has rightly evaluated the facts and the evidence on record.

11. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the

judgment or to give fresh reasoning, when the reasons assigned by the Court below are found to be just and proper. Such principle is down by the Apex Court in the case of **State of Karnataka Vs. Hemareddy**, reported in **AIR 1981 SC 1417** wherein it is held as under:

“... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) 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.”

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

13. In the case of **Ram Kumar v. State of Haryana**, reported in **AIR 1995 SC 280**, Supreme Court has held as

under:

“The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished,

the High Court should not disturb the order of acquittal."

14. As observed by the Hon'ble Supreme Court in the case of *Rajesh Singh & Others vs. State of Uttar Pradesh* reported in (2011) 11 SCC 444 and in the case of *Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh* reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High Court's interference in such appeal is somewhat circumscribed and if the view taken by the trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

15. In the case of *Chandrappa v. State of Karnataka*, reported in (2007) 4 SCC 415, the Hon'ble Apex Court has observed as under:

"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 Criminal Procedure Code, 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.”

16. The Hon'ble Apex Court, in a recent decision, in the case of ***Constable 907 Surendra Singh and Another V/s State of Uttarakhand reported in (2025) 5 SCC 433***, has held in paragraph 24 as under:

“24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

17. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, 1973 no case is made out to interfere with the impugned judgment and order of acquittal.

18. In view of above facts and circumstances of the case, on my careful re-appreciation of the entire evidence, I found that there is no infirmity or irregularity in the findings of fact recorded by learned trial Court and under the circumstances, the learned trial Court has rightly

acquitted the respondent/s - accused for the elaborate reasons stated in the impugned judgment and I also endorse the view/finding of the learned trial Court leading to the acquittal.

19. In view of the above and for the reasons stated above, the present Criminal Appeal fails to prove its case and the same deserves to be dismissed and is *dismissed*, accordingly. Record & Proceedings be remitted to the concerned trial Court forthwith.

M.H. DAVE

(SANJEEV J.THAKER,J)