

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 282 of 2001****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting	Yes	No

STATE OF GUJARAT

Versus

ABDULRAHIM ALIAS RIJU ABDUL REHMAN SHAIKH

Appearance:

MR. KRUTIK PARIKH, APP for the Appellant(s) No. 1

NOTICE SERVED for the Opponent(s)/Respondent(s) No. 1

CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**

and

HONOURABLE MR. JUSTICE R. T. VACHHANI**Date : 28/01/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 08.02.2001 passed by the learned Additional Sessions Judge, Ahmedabad in Sessions Case No. 204 of 2000 committed for offences punishable under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985, the appellant - State has preferred the present appeal under Section 378 of the Code of Criminal Procedure, 1973 ("the Code" for short).

2. The brief facts leading to the filing of the present appeal are

as under:

2.1. As per the prosecution case, on 03.03.2000 at about 23:30 hours near Ghodasar Railway Crossing, Ahmedabad city, the accused Abdul Rahim @ Raju Abdul Rahman Sheikh was found in possession of 1 kg 650 grams of charas in the dickey of his scooter bearing registration number GBN3436, without any valid pass, permit or license, in contravention of Section 8 and punishable under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The recovery was effected on the basis of secret information received by PSI R.G. Goswami of Vatva Police Station from a private informer that the accused was coming on the said scooter carrying illegal charas towards Vatva G.I.D.C. area via Ghodasar Railway Crossing. After recording the information and obtaining orders, two panch witnesses were called, the accused was intercepted at the spot, the charas was recovered from the open dickey of the scooter in the presence of panchas, and seizure panchnama was prepared.

2.2. Accordingly, the complaint came to be registered at Vatva Police Station and after completion of investigation, charge-sheet was filed before the learned Magistrate, and the case was committed to the Sessions Court, Ahmedabad City where it was registered as Prohibition Case No. 5041/2000.

3. On conclusion of evidence, the Sessions Court put various incriminating circumstances to the respondent-accused under Section 313 of the Code. The respondent-accused denied all allegations, claimed that no charas was recovered from him, asserted that the case was falsely foisted due to a quarrel with certain persons, and claimed to be innocent. After hearing both

sides, the learned Additional Sessions Judge acquitted the respondent-accused by giving benefit of doubt.

4. We have heard learned APP for the State and examined the oral and documentary evidence adduced before the Sessions Court.

5. Learned APP submits that the impugned order of acquittal is required to be set aside because the evidence of the investigating officer, panch witnesses, seizure panchnama, and recovery of substantial quantity of charas from the scooter in possession of the accused fully corroborate the prosecution case and prove conscious possession and contravention of the NDPS Act. He therefore prays for allowing the appeal.

6. The incident took place at night around 23:30 hours near Ghodasar Railway Crossing in an open area. The recovery was shown from the dicky of the scooter which was allegedly open at the time. The prosecution mainly relied on the testimony of the complainant PSI, panch witnesses, and documentary evidence including panchnama and FSL report. The panch witnesses did not fully support the prosecution, several contradictions emerged regarding custody of muddamal, timing of dispatch to FSL, absence of independent witnesses beyond police personnel, lack of proof of ownership of scooter, and no clear evidence of conscious possession or sale intention. The accused in his statement denied recovery and alleged false implication due to prior quarrel. No unbroken chain of evidence was held proved beyond reasonable doubt by the trial court.

7. The accused has not given any statement on oath. However, in his special statement recorded under Section 313 CrPC, he has

alleged that on 3rd March 2000 he had a quarrel with Nasirkhan Firozkhan and Alimkhan Firozkhan. They objected to him carrying on his scrap business in G.I.D.C., to which he replied that he would continue his business. According to him, at their instance, the police apprehended him in Vatva G.I.D.C. and falsely implicated him in this case by planting the narcotic substance.

8. In this incident, there is no specific clarity or proof as to whether the accused was coming on his scooter with the narcotic substance in his possession or whether the substance was in his conscious possession. There is no evidence whatsoever regarding the ownership of the scooter bearing number GBN 3436, and the police have not conducted any investigation in that regard. The narcotic substance (charas) was recovered from the dickey on the left side near the driver's seat, and there is evidence that the said dickey was open at the time. It would be excessive conjecture to assume that the accused had himself placed the muddamal in that dickey. Had he done so, he would have kept the dickey closed. It is highly improbable that the accused would openly roam around with narcotic substance kept in an open dickey in this manner.

9. Further, no impartial or independent witnesses other than police officers have supported the prosecution case, nor has the prosecution examined any such witnesses. The panch witnesses have not supported the prosecution and have failed to corroborate the recovery. In this way, the search conducted without the presence of independent witnesses is suspicious, and the defence counsel's argument finds support from the above circumstances.

10. Even the panch witnesses have turned hostile and have not

supported the prosecution's version of the recovery. No independent or impartial witnesses (beyond police personnel) have been examined to lend credence to the manner in which the accused was apprehended and the contravention allegedly committed. The muddamal (seized charas) was retained in the police station malkhana for a considerable period, and the contradictory evidence regarding the dates of its custody and dispatch to the FSL raises serious doubt about the unbroken chain of custody. In these circumstances, the possibility that the contraband might have been tampered with, substituted, or otherwise compromised cannot be ruled out.

11. Similarly, there is contradictory evidence regarding the custody and dispatch of the muddamal to the FSL. According to the testimony of witness No. 6 Police Constable Chandubhai Nayak at Exh. 33, the muddamal was not taken from the police station malkhana on 4th and 5th March, nor was it handed over to anyone else. Whereas, according to the testimonies of prosecution witnesses such as PSI Parmar and others, the muddamal was sent to the laboratory on the 5th March. In this way, the witnesses's testimonies are contradictory, unclear, and unreliable, and no credence can be placed upon them.

12. Moreover, the prosecution has not proved beyond reasonable doubt in an impartial manner that the accused was carrying narcotic substance in his above-mentioned scooter without pass or permit and thereby contravened the provisions of the NDPS Act. The investigation against the accused is suspicious, the secret information received against the accused is suspicious, and the evidence regarding the muddamal recovered from the accused's

possession and sent to FSL is also suspicious.

13. Taking all these circumstances into consideration, the prosecution has not proved its case against the accused beyond reasonable doubt, and therefore the benefit of doubt must go to the accused.

14. Thus, the only evidence against the accused is the testimony of the investigating officer and the seizure panchnama, which suffer from serious infirmities including absence of independent witnesses, open dickey raising doubt on conscious possession, lack of proof of scooter ownership, contradictory evidence on chain of custody of muddamal, suspicious nature of the secret information, and unreliable prosecution witnesses. In such circumstances the Sessions Court rightly held that it is not safe to convict the accused on the basis of such suspicious evidence. The quantity of charas recovered is proved, but the conscious possession of the accused and the contravention of the NDPS Act by him have not been established beyond reasonable doubt. In the absence of any reliable corroboration and in view of the glaring infirmities pointed out by the Sessions Court, the view taken by the learned Additional Sessions Judge is not only a possible view but the only reasonable view on the evidence on record.

15. It is settled law that in an appeal against acquittal there is a double presumption in favour of the accused. Unless the findings of the Sessions Court are shown to be perverse, the appellate Court will not interfere merely because another view is possible.

16. At this stage, this Court may refer to the decision of the

Hon'ble Apex Court in the case of **Rajesh Prasad v. State of Bihar and Another [(2022) 3 SCC 471]** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

"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, reappreciate 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."

17. In the case of ***H.D. Sundara & Ors. v. State of Karnataka [(2023) 9 SCC 581]*** the Hon'ble Apex Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

"8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

18. In the light of the above discussion and the settled legal position, the prosecution has failed to prove the guilt of the respondent-accused beyond reasonable doubt. The impugned judgment and order of acquittal dated 08.02.2001 passed by the learned Additional Sessions Judge, Ahmedabad City in Sessions Case No. 204 of 2000 does not call for any interference.

19. The appeal is devoid of merit and is accordingly dismissed. The judgment and order of acquittal is confirmed. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Kaushal Rathod