

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 383 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE S.V. PINTO

Sd/-

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
NARANBHAI RUDABHAI SOLANKI & ANR.

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Appearance:

MR KRUTIK A PARIKH, APP for the Appellant(s) No. 1
ADVOCATE NOTICE SERVED for the Opponent(s)/Respondent(s) No. 1,2
BAILABLE WARRANT SERVED for the Opponent(s)/Respondent(s) No. 1
BAILABLE WARRANT UNSERVED for the Opponent(s)/Respondent(s) No. 2

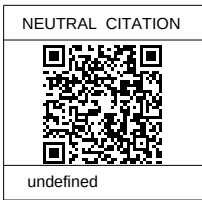
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CORAM: HONOURABLE MS. JUSTICE S.V. PINTO

Date : 26/10/2026

ORAL JUDGMENT

1. The appeal is filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 against the judgement and order of acquittal passed by the learned 7th (Ad-hoc) Additional Sessions Judge, Veraval, District - Junagadh (hereinafter referred to as

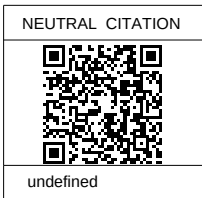


“the learned Trial Court”) in Sessions Case No.15 of 2014 on 24.11.2015, whereby, the learned Trial Court has acquitted the respondents for the offence punishable under Sections 328 read with Section 114 of Indian Penal Code, 1860.

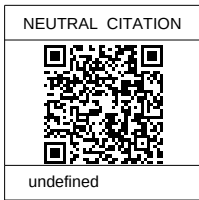
1.1 The respondents are hereinafter referred to as “the accused” in the rank and file as they stood in the original case for the sake of convenience, clarity and brevity.

2. The brief facts that emerge from the record of the case are as under:

2.1 It is the case of the prosecution that the complainant was allegedly having an affair with accused No.2. On 11.04.2014, at about 12:00 noon, the complainant was proceeding to switch on the electric motor for the purpose of irrigating the maize crop in her agricultural field. While she was proceeding towards her residential house, she came across both the accused, who



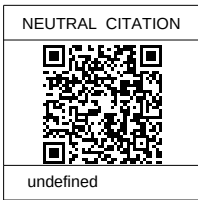
were also present in the field. The complainant thereupon telephoned accused No.2 from his mobile phone, which was in her possession. At that juncture, both the accused approached her, and accused No.1 allegedly instigated her to elope with accused No.2. Upon the complainant refusing to do so, both the accused, in furtherance of their common intention, allegedly compelled her to consume one capful of some poisonous substance, as a result of which she immediately began vomiting. On noticing her condition, her mother rushed to her assistance and took her to a private medical practitioner in the village for treatment. However, as her condition deteriorated, she was subsequently shifted to the Government Hospital at Veraval for further treatment. It is the further case of the prosecution that both the accused, in collusion with each other, committed the offences punishable under Sections 328 and 114 of the Indian Penal Code. In this regard, the complainant lodged



a complaint at Sutrapada Police Station, which came to be registered as I-C.R. No. 25 of 2014 on 12.04. 2014 at 10:35 a.m.

2.2 The Investigating Officer recorded the statements of the connected witnesses and seized the necessary documents and after completion of investigation, a charge-sheet came to be filed before the Court of the Judicial Magistrate First Class, Sutrapada and as the said offences against the accused were exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Veraval at Junagadh as per the provisions of Section 209 of Code of Criminal Procedure and the case was registered as Sessions Case No.15 of 2014.

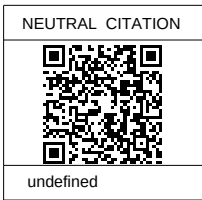
2.3 The accused were duly served with the summons and the accused appeared before the learned Trial Court and it was verified whether the copies of all the police papers were provided to the accused as per the provisions of Section 207 of the Code. A charge at Exh.20



was framed against the accused and the statements of the accused were recorded at Exhs.21 and 22 wherein, the accused denied the contents of the charge and the entire evidence of the prosecution was taken on record.

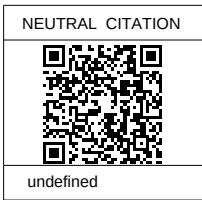
2.4 The prosecution examined 17 witnesses and produced 14 documentary evidences on record in support of their case and after the learned Additional Public Prosecutor filed the closing pursis, the further statements of the accused under Section 313 of the Code of Criminal Procedure, 1973 were recorded. After the arguments of the learned Additional Public Prosecutor and the learned advocate for the accused were heard, the learned Trial Court by the impugned judgement and order was pleased to acquit both the accused from the charges levelled against them.

3. Being aggrieved and dissatisfied with the said judgment and order of acquittal, the appellant - State has filed the present appeal mainly stating that the impugned judgment and order of acquittal passed by the learned Trial Court is contrary to law and evidence on record and



the learned Trial Court has not appreciated the fact that all the witnesses have supported the case of the prosecution and during the cross-examination, nothing adverse has been elicited in favor of the respondents. The case has been proved beyond reasonable doubt and the prosecution has successfully established the case against the respondents and the judgment and order of acquittal is unwarranted, illegal, and without any basis in the eyes of the law and the reasons stated while acquitting the respondents are improper, perverse and bad in law. Hence the impugned judgment and order passed by the learned Trial Court deserves to be quashed and set aside.

4. Heard learned APP Mr. Krutik A. Parikh for the appellant State. Though the bailable warrants were served, the respondent Nos.1 and 2, have not appeared either in person or through an advocate to make any submissions in the matter. Perused the impugned judgement and order of acquittal and have reappreciated the entire evidence of the prosecution on record of the case.

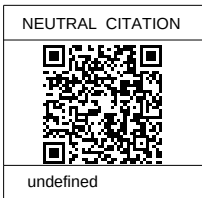


5. Learned APP Mr. Krutik A. Parikh has taken this Court through the entire evidence of the prosecution on record of the case and submitted that the complainant has fully supported the facts of his complaint. The impugned judgement and order is perverse and learned APP has urged this Court to quash and set aside the same and find the respondents guilty for the offences.

6. At the outset, before discussing the facts of the present case, it would be appropriate to refer to the observations of the Apex Court regarding the scope of interference in acquittal appeals in the case of **Chandrappa & Ors. Vs. State of Karnataka** reported in **2007 (4) SCC 415**, wherein, the Apex Court has observed as under:

Recently, in Kallu Vs. State of M.P. (2006) 10 SCC 313, this Court stated:

"While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by



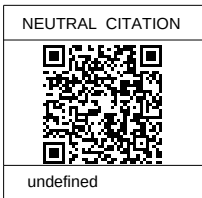
an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court".

From the above decisions, in our considered view, the following general principles regarding powers of 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 emphasize

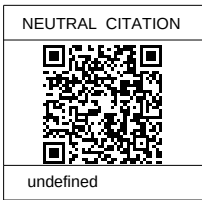


the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(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 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.

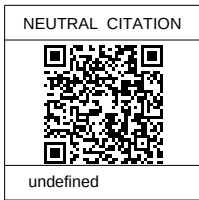
(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

7. The law with regard to acquittal appeals is well crystallized and in acquittal appeals, there is presumption of innocence in favour of the accused and it has finally culminated when a case ends in an acquittal. The learned Trial Court has appreciated all the evidence and when the learned Trial Court has come to a



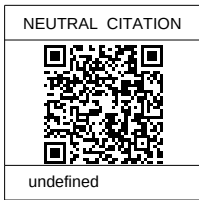
conclusion that the prosecution has not proved the case beyond reasonable doubts, the presumption of innocence in favour of the accused gets strengthened. There is no inhibition to reappraise the evidence by the Appellate Court but if after reappraisal, the view taken by the learned Trial Court was a possible view, there is no reason for the Appellate Court to interfere in the same.

8. In light of the above settled principle of law, the evidence of the prosecution is dissected and the prosecution has examined PW-1 Tapubhai Mandabhai Vaja, examined at Exh.24, and PW-2 Panchabhai Parbatbhai Bambhania, examined at Exh.26, were examined as panch witnesses to the panchnama of the scene of offence, which was produced at Exh.25. Both these witnesses did not support the case of the prosecution and were declared hostile. Despite their cross-examination by the learned Additional Public Prosecutor, nothing material eliciting support for the



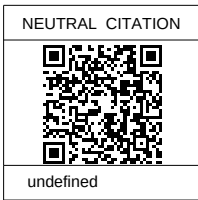
prosecution case could be brought on record through their depositions.

8.1 PW-3 Daxaben Kanabhai Khuntad, examined at Exh.27, is the complainant herself. She deposed that on 11.04.2014, between 12:00 noon and 1:00 p.m., she was proceeding to switch on the electric motor for irrigating the maize crop in her agricultural field. According to her testimony, both the accused were present in the field and asked her to elope with accused No.2. Upon her refusal, accused No.1 allegedly caught hold of her, while accused No.2 gave her some poisonous substance to drink, which emitted a foul smell. She further stated that, after freeing herself from the hold of accused No.1, she ran away from the place of occurrence, whereupon her mother and brother arrived and took her to the Government Hospital at Veraval and, thereafter, to the Government Hospital at Junagadh for further treatment. The complainant lodged the complaint, which has been produced at Exh.28. In



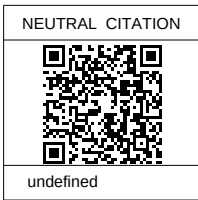
her cross-examination, the complainant stated that the police had written the complaint and asked her to sign it, whereupon she affixed her signature. She admitted that the maize crop in the field was approximately as high as a person's head. She further admitted that she had not stated in her complaint that the accused had asked her to elope with accused No.2. She had also not stated therein that accused No.1 had caught hold of her, that accused No.2 had made her consume poison, or that she had freed herself from their clutches and fled from the place of occurrence. The witness further admitted that accused No.2 was employed by her father and that several cases under the prohibition law had been instituted against her father.

8.2 PW-4 Kuraiben Kanabhai Khuntad, examined at Exh.30, is the mother of the complainant. She deposed that, at the time of the incident, she and her son were present in the field, while her daughter had gone to



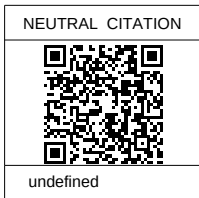
switch on the electric motor. She stated that, upon hearing her daughter shouting, she and her son Nagesh proceeded towards the place from where the cries had emanated. On reaching there, they found the accused present and observed that her daughter was vomiting. She brought her daughter home, and upon her husband arriving, he called a doctor from the village. As the doctor advised them to take the complainant to a hospital, she was transported in a 108 ambulance to the Government Hospital at Veraval, where she received preliminary treatment, and was thereafter shifted to the Government Hospital at Junagadh for further treatment. According to the witness, the complainant remained admitted at the latter hospital for four days. The witness identified the accused before the Court.

In her cross-examination, she stated that her daughter was engaged to a person residing at Bhojade village. She further admitted that, at the relevant time,



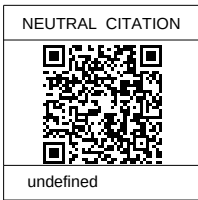
the maize crop in the field was approximately as high as a person's head and that the water motor was situated on one side of the field. She acknowledged that a person moving within the maize field could not be seen from outside. The witness categorically admitted that she had not witnessed the incident herself and had identified the accused in her police statement because they belonged to the same village. She further admitted that she had not stated in her police statement that she had heard her daughter shouting and had proceeded towards the place of occurrence. According to her deposition, when she reached the spot, her daughter was unconscious.

8.3 PW-5 Osmanbhai Fathubhai, examined at Exh.31, and PW-11 Rambhai Parbatbhai Barad, examined at Exh.44, were examined as panch witnesses to the panchnama produced at Exh.33, whereby an aluminium bottle without a label, containing some liquid, was allegedly recovered at the instance of accused No.1. The



panchnama in that regard was drawn during the course of investigation. However, both the witnesses did not support the case of the prosecution and were declared hostile. Despite their cross-examination by the learned Additional Public Prosecutor, nothing material supporting the prosecution case could be elicited from their depositions.

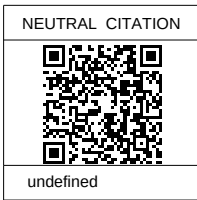
8.4 PW-6 Nagesh Kanabhai, examined at Exh.33, is the brother of the complainant and, according to the prosecution, was present at the agricultural field at the time of the incident. The witness deposed that he and his mother were present in the field, while his sister had gone to switch on the electric motor. He stated that his sister informed him that the accused had given her poison to drink and that she thereafter began shouting. Upon hearing her cries, he and his mother rushed towards her. He further stated that he had seen the



accused at the scene of occurrence and that his sister was vomiting.

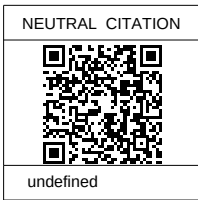
In his cross-examination, however, the witness stated that their house was situated on one side of the agricultural field and that, at the time of the incident, he and his mother were inside the house. He admitted that the maize crop in the field was approximately as high as a person's head and that it was not possible to see whether anyone was standing inside the field. He further stated that, upon hearing his sister shouting, he and his mother went to see her. He categorically admitted that he had not seen anyone administering poison to his sister. Although he stated that his sister was conscious at that time, he admitted that she had not informed him as to who had given her the poison to drink.

8.5 PW-7 Dr. Kishorebhai Raghuvirdas Haryani, examined at Exh.34, is the Medical Officer who was on



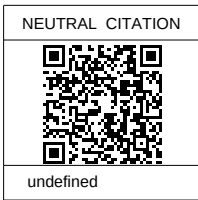
duty at the Government Hospital, Veraval, on 11.04.2014.

He deposed that the complainant was brought to the hospital at approximately 11:00 p.m. by her grandfather, Kishanbhai Bhikhabhai, in a 108 ambulance. According to the history recorded at the time of admission, two persons, namely, Naranbhai Rudabhai Solanki and Ramesh, had allegedly given the complainant some substance to drink. The witness stated that the patient was conscious, that no smell emanated from her breath, and that her condition was normal. He further stated that, in the absence of complications, she was expected to recover within approximately fourteen days and that she was referred to a higher medical centre for further treatment. The witness produced the medical certificate at Exh.35, the pre-hospital care record of the 108 ambulance service at Exh.36, and the referral document at Exh.37.



In his cross-examination by the learned advocate for the accused, the witness reiterated that the patient was conscious when she was brought to the hospital. He further stated that the effect of any medicinal or poisonous substance would depend upon the quantity consumed. He also stated that, if a person had consumed a substance which ordinarily produced a characteristic smell, such smell might be detectable in the person's breath. However, he specifically admitted that no smell was emanating from the complainant's breath.

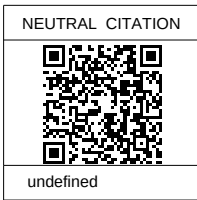
8.6 PW-8 Dr. Shailesh Mohanbhai Jadhav, examined at Exh.39, is the Medical Officer who was on duty at Trimurti Hospital, Junagadh on 12.04. 2014, when the complainant was brought there for treatment. He deposed that the complainant was brought to the hospital at approximately 3:15 a.m., along with the referral document produced at Exh.40. At the time of her arrival,



the complainant was conscious, froth was present at her mouth, and her pupils were semi-dilated. She was admitted as an indoor patient until 13 April 2014 and was discharged at approximately 5:00 p.m. The witness produced the medical certificate at Exh.41.

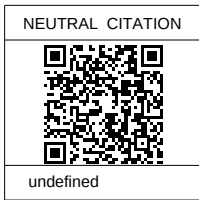
In his cross-examination by the learned advocate for the accused, the witness stated that, as recorded in the medical history, the complainant had allegedly ingested poison administered by unknown persons while working in the agricultural field at approximately 12:00 noon on 11.04.2014. He admitted that no smell was emanating from her breath, that she was fully conscious, and that her condition was not serious.

8.7 PW-9 Kadvabhai Ugabhai Khuntad, examined at Exh.42 is the uncle of the complainant, whereas PW-10 Valiben Kadvabhai Khuntad, examined at Exh.43, is her



aunt. PW-13 Babubhai Rambhai Parmar, examined at Exh.46, PW-14 Dasabhai Karsanbhai Bamaniya, examined at Exh.47, and PW-15 Karsanbhai Mesurbhai Khuntad, examined at Exh.48, are residents of the same village as the complainant. These witnesses deposed that they had been informed by the complainant's mother that the accused had made her daughter consume poison and that she had consequently been taken to the hospital for treatment. However, none of these witnesses supported the prosecution case and all of them were declared hostile. Nothing material adverse to the accused, or otherwise lending support to the prosecution case, could be elicited from their depositions.

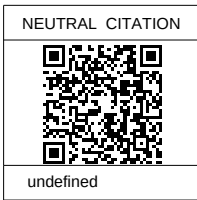
8.8 PW-12 Dasabhai Ugabhai Khuntad, examined at Exh.45, is also an uncle of the complainant. He deposed that he was present in his agricultural field at the time of the incident and that, upon hearing the complainant shouting, he rushed towards the place from



where the cries had emanated. On reaching there, he found the complainant unconscious. He further stated that he came to know from the family members of the complainant that the accused had made her consume poison.

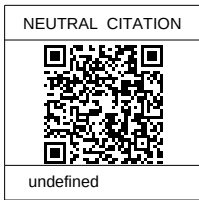
In his cross-examination, the witness categorically admitted that he had not personally witnessed anyone administering poison to the complainant. He further stated that, as the complainant was unconscious when he reached the spot, he had no conversation with her. He also admitted that he had not gone to the hospital and was unaware of the events that transpired thereafter.

8.9 PW-16 Sunilsinh Surubha Zala, examined at Exh.49, is the PSO, Sutrapada Police Station who registered the complaint, whereas PW-17 Ravirajsinh Ashoksinh Jadeja, examined at Exh.52, is the



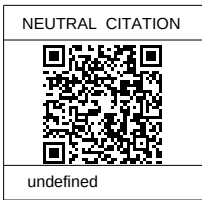
Investigating Officer. The latter narrated the various steps undertaken by him during the course of the investigation.

In his cross-examination, the Investigating Officer admitted that, in his statement, the complainant had stated that she had been in a love affair with accused No.2 for the preceding three years. He further admitted that no muddamal article had been seized from the scene of occurrence and that no muddamal article had been sent to the Forensic Science Laboratory for examination and analysis. He also stated that he had recorded the statements of all the near relatives of the complainant. The Investigating Officer further admitted that the complainant's father was engaged in the illicit liquor business and that several cases under the prohibition law had been instituted against him. He also acknowledged that an order had been passed by a competent authority

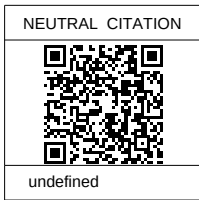


restraining the complainant's father from entering Gorakhmadhi village.

9. Upon an overall appreciation of the oral and documentary evidence on record, this Court is of the considered view that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. The testimony of the complainant, though alleging that accused No.1 had caught hold of her and accused No.2 had administered a poisonous substance to her, suffers from material omissions and improvements when compared with her original complaint. The material particulars concerning the alleged exhortation to elope, the act of catching hold of her, the administration of poison, and her alleged escape from the clutches of the accused do not find mention in the complaint. The evidence of the complainant's mother and brother does not establish the actual administration of any poisonous substance by either of the accused, as neither of them

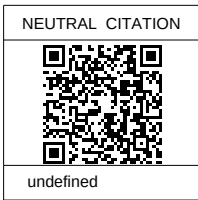


witnessed the alleged act. On the contrary, the brother of the complainant categorically admitted that he had not seen anyone administering poison to his sister and that she had not informed him as to who had allegedly given her the substance. Further, a material discrepancy emerges from the evidence of the complainant's mother and brother regarding the circumstances in which they reached the place of occurrence and the condition of the complainant at that time. While the mother stated that, upon reaching the spot, she found the complainant unconscious, the brother stated that the complainant was conscious. Their respective testimonies, therefore, do not provide a consistent account of the events immediately following the alleged incident. Moreover, the mother admitted that the maize crop was approximately as high as a person's head and that a person moving within the field could not be seen. In these circumstances, her testimony does not establish that she had actually seen



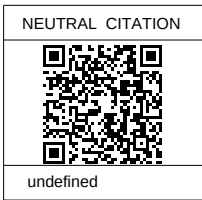
the accused at the place of occurrence or witnessed their participation in the alleged offence.

9.1 The medical evidence, though indicative of the complainant having received medical treatment, does not independently establish that any poisonous substance was administered to her by the accused. Significantly, although an aluminium bottle containing some liquid was allegedly seized by the Investigating Officer, the said bottle was not forwarded to the Forensic Science Laboratory for chemical analysis. Consequently, neither the nature nor the composition of the substance allegedly contained therein has been scientifically established. Furthermore, the report of the FSL Mobile Investigation Unit does not indicate the discovery of any suspicious article or material evidence indicative of the commission of the alleged offence in the vicinity of the place of occurrence. There is also no evidence on record establishing that the complainant had vomited at the



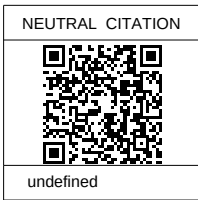
place of occurrence, which could otherwise have provided some corroborative material in support of the prosecution version. These circumstances assume significance when considered cumulatively with the absence of any scientific examination of the seized bottle.

9.2 Another material circumstance requiring consideration is the discrepancy concerning the identity of the persons allegedly responsible for administering the poisonous substance. The medical history recorded at the Government Hospital at Junagadh refers to the administration of poison by unknown persons, rather than identifying the accused by name. This circumstance, when considered alongside the material omissions in the complaint and the inconsistencies in the testimony of the complainant's mother and brother, further weakens the prosecution case concerning the identity and involvement of the accused. The remaining witnesses are either hearsay witnesses or panch witnesses who have



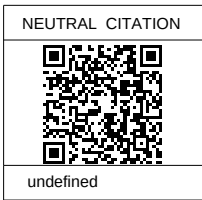
not supported the prosecution case. The Investigating Officer has also admitted that no muddamal article was sent for forensic examination and that several cases under the prohibition law had been instituted against the complainant's father. Though the latter circumstance cannot, by itself, determine the merits of the prosecution case, the evidence as a whole must be scrutinised with due regard to the material deficiencies and inconsistencies emerging on record.

10. The prosecution has, therefore, failed to establish the essential ingredients of the offences punishable under Sections 328 and 114 of the Indian Penal Code, particularly the administration of a poisonous or harmful substance by the accused and their participation in the commission of the alleged offence. The deficiencies in the prosecution evidence cannot be supplied by conjectures or presumptions, nor can the accused be convicted merely on the basis of suspicion,



however strong it may be. The learned Trial Court, having considered the evidence on record and extended the benefit of doubt to the accused, has arrived at a conclusion which cannot be said to be perverse, illegal, or contrary to the evidence on record. It is well settled that, in an appeal against acquittal, interference is warranted only where the findings recorded by the trial Court suffer from a manifest illegality, perversity, or a demonstrable misappreciation of the evidence. In the present case, no such infirmity is discernible in the impugned judgment. Accordingly, this Court finds no cogent or compelling reason to interfere with the judgment and order of acquittal passed by the learned Trial Court.

11. Consequently, the appeal stands dismissed and the impugned judgement and order of acquittal passed by the learned 7th (Ad-hoc) Additional Sessions Judge,



Veraval, District - Junagadh in Sessions Case No. 15 of 2014 on 24.11.2015, is hereby confirmed.

12. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

ROHAN SONI

Sd/-
(S. V. PINTO,J)