

(2016) 08 GUJ CK 0029

GUJARAT HIGH COURT

Case No: Criminal Appeal No. 837 of 2005.

B.H. Patel Food Inspector -  
Appellants @HASH Laxmandas  
Sevaram and Others -  
Opponents/Respondents

APPELLANT

Vs

RESPONDENT

**Date of Decision:** Aug. 9, 2016

**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 13(2B)

**Citation:** (2016) CriLJ 4886 : (2017) 1 Crimes 441 : (2017) 1 RCRCriminal 432

**Hon'ble Judges:** R.P. Dholaria, J.

**Bench:** Single Bench

**Advocate:** Ms. Jirga D Jhaveri, Advocate, for the Appellants No. 1 Notice Served; Mr. R.K. Mishra, Advocate, for the Opponents/Respondents No. 1; Mr. S. M. Gohil, Advocate, for the Opponents/Respondents No. 2; Mr. Md Modi, Advocate, for the Opponents/Respondents No.

**Final Decision:** Dismissed

### Judgement

**Mr. R.P.Dholaria, J. (Oral)** - The appellant original complainant Food Inspector has preferred the present appeal under section 378(4) of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 26.9.2003 rendered by learned Metropolitan Magistrate, Court No.6, Ahmedabad in Criminal Case No.42 of 1993.

2. The short facts giving rise to the present appeal are that accused No.1 is doing the business of selling packed tins of edible oil, accused No.2 is doing the business of packed tins of edible oil in wholesale and accused No.3 is an institution who is packing Bindal brand groundnut oil. It is alleged that on 26.11.1991 at about 10.15 hours in the morning, obtained sample of groundnut oil weighing 400 gms after

breaking open the packed tin. It is alleged that after having three equal parts, it were sealed and packed and drawn the panchnama and paid the amount for the same. It is alleged that on getting analysis of the same, it was found to be adulterated and hence, after following necessary procedure, the complaint came to be lodged against the respondents accused.

3. In pursuance of the complaint, learned trial Court issued the process. In pursuance of the said process, the accused remained present before learned trial Court. The charge was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

3.1 In order to bring home the guilt, the prosecution has examined 2 witnesses and also produced several documentary evidences.

3.2 At the end of the trial, after recording the statements of the accused under section 313 of the CrPC and hearing the arguments on behalf of the prosecution and the defence, learned trial Court delivered the judgment and order, as stated above.

4. Being aggrieved by the same, the complainant has preferred the aforesaid Criminal Appeal before this Court.

5. By way of preferring the present appeal, the appellant has mainly contended that learned trial Court has failed to appreciate the evidence on record and wrongly recorded the order of acquittal. It is further contended that learned trial Judge has not appreciated the evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of acquittal is required to be reversed, as such.

5.1 Ms. Jhaveri, learned advocate appearing for the appellant has reiterated and urged the grounds mentioned in the memo of appeal. Ms. Jhaveri, learned advocate as well as Mr. Dabhi, learned APP both have taken this Court through the paper-book and evidence on record and argued that learned trial Court has taken very hyper technical view while acquitting the respondents. It is submitted that learned trial Court has acquitted the respondents accused holding that the report of the Public Analyst Mr. K.A. Patel is not in accordance with the notification issued and he was not authorised to give any report so far as municipal limits of Ahmedabad is concerned and the sample drawn while inspecting the shop of the respondent is not in the nature of representative capacity simply because while taking the sample, indisputably, the Food Inspector has not stirred the sample to the same in representative capacity. It is, therefore, requested that the judgment and order of learned trial Court is required to be reversed and the respondents as required to be convicted, as such for the reason that as per the report of the Public Analyst as well as the Central Food Laboratory, the sample is not confirming the standard and edible oil was found to be light yellow in appearance, free from sediments and separated water and the sample also shows presence of castor oil. In support of her

submissions, Ms.Jhaveri, learned advocate for the appellant ♦ original complainant has placed reliance on the decision of this Court in the case of **State of Gujarat v. Haiderali Rasulbhai Momin, reported in 2000 (1) GLR 572**. It is, therefore, submitted that learned trial Court ought to have convicted the accused and hence, learned trial Court has failed to appreciate the evidence on record and wrongly recorded the judgment of acquittal which is required to be reversed and the respondents are required to be convicted, as such.

6. On the other-hand, Mr. D.K. Modi, learned Advocate for the respondents accused has taken this Court through the entire evidence on record and submitted that the impugned judgment and order passed by the learned trial Judge is just and proper. Mr. Modi further submitted that there is no iota of evidence to link the accused with the crime. He submitted that there are series of judgments wherein this Court has consistently taken the view that while drawing sample, the said sample should be in representative nature and homogeneous in character. He submitted that, admittedly, Food Inspector PW-1 in his cross examination at page 107 of the paper-book has clearly and categorically admitted that while drawing the sample, he has not stirred edible oil and, therefore, the sample is not homogeneous in character. In support of his submission, Mr.Modi has placed reliance upon the decision dated 23.4.2015 in Criminal Revision Application No.593 of 2005 with Criminal Revision Application No.594 of 2005. Paragraph 6.4 of the said decision reads as under.

"In the present case on going through the entire evidence of the Food Inspector, it is nowhere revealed that he stirred the edible oil so as to ensure that the sample collected was homogeneous in character."

Mr.Modi also placed reliance on paragraph 5 of the decision dated 18.2.2016 in Criminal Revision Application No.324 of 2006 which reads as under.

"5. Considering the aforesaid rival submissions and having regard to the facts and circumstances of the present case, it appears that in Paragraph-30 of the judgment, while discussing the oral evidence given by the complainant vide Exh:7, it has been admitted that the container was not cleaned on the spot and the said aspect was admitted by the said witness. On perusal of Paragraph- 48, it appears that the learned Trial Court presumed the fact that requisite procedure has been followed by the complainant and accordingly, on the basis of the statement made by the complainant, all three bottles were kept in clean and right position was believed by the learned Courts-below. On perusal of the deposition given by the complainant at Exh:7, it has been specifically admitted by the said witness that the container was not cleaned by himself as no such necessity was felt by him. Moreover, the said container was also not cleaned and kept in right position before it is put to use on the spot. Thus, it appears that the mandatory requirement of Rule 14 of the said Rules has not been complied with in the instant case. In such eventuality, the aforesaid decisions/judgments cited by learned counsel for the petitioner referred

here in above are applicable to the instant case. The relevant extracts of the said decisions are incorporated for ready reference as under:

(I) In **Kiritkumar Narandas Datani v. State of Gujarat** (supra), this Court has held in Paragraphs-6.1 to 6.4 as under:

6.1 The sample of food stuff taken from the bulk quantities, in other words, must represent the whole in its character. In **Food Inspector, Municipal Corporation v. Madanlal Ramlal Sharma (AIR 1983 SC 176)**, the Apex Court particularly held,

"Our attention was not drawn to any provision in the Act or the Rules making it obligatory that churning should be done with some machine so as to make a sample homogeneous and representative sample. We are conscious of the fact that in milk and milk preparations including curd, it is distinctly possible that the fat settles on the top and in order to find out whether the milk or its preparation such as curd has prescribed content, the sample must be homogeneous and representative so that the analysis can furnish reliable proof of nature and content of the article of food under analysis. For this purpose churning is one of the methods of making the sample homogeneous and representative. But having said this, there is nothing in the Act or the Rules which prescribes that churning must be done by some instrument and that churning done by hand would not provide a homogeneous and representative sample. Common sense dictates that articles of food like milk and curd when churned with hand would properly mix-up from top to bottom. More so when the quantity is either 600 grams which was the quantity purchased out of 2 ♦ Kgs. which was the quantity in the container. There was evidence that the churning was done by spoon. But even if the High Court found that evidence unreliable and evidence of defence witness Devsibhai Ramjibhai so much reliable that it was prepared to act upon it disagreeing with the other evidence, the evidence of Devsibhai Ramjibhai was that churning was done with hand and he did not say that the churning was not effective."

6.2 Relying on the above decision, this Court in **Harshadbhai M. Dhutt v. Gramodygo Kendra being Criminal Appeal No. 37 of 1990 decided on 08.11.2009**, reiterated,

"The above quoted observations make it clear that before purchasing sample for analysis it should be made homogeneous and representative in character. Further in **K. Harikumar v. Food Inspector, Punaloor Municipality, 1995 Supple.(3) SCC 405**, the Supreme Court has held that stirring and churning of curds before taking of sample is necessary and if possible, curds must be given a vertical cut. What is emphasised therein is that in order to attain homogeneity in curds, stirring/churning, as the case may be, becomes necessary for the ingredients of milk solid non-fat and milk solid fat getting a uniform consistency in order to determine the percentage in their completeness. Thus, the law on the point is that if possible, the sample purchased for analysis should be made homogeneous and

representative in character. It is an admitted position that the sample purchased by the Food Inspector in this case was not made homogeneous at all and, therefore, the learned Magistrate has rightly given the benefit of doubt to the respondents no.1 to 3 because in order to preserve turmeric powder, some preservative might have been added by the vendor."

6.3 In *Ashwin H. Charya*(supra), this Court dealt with the above issue with reference to the sample of edible oil itself observing and holding as under,

"Moreover, considering the entire deposition of Food Inspector Mr.Acharya and the witnesses examined by the prosecution in this case, together with the panchnama about the seizure of the sample, there is nothing that before the sample was collected, the content of the tin, the groundnut oil was duly stirred. In the case of **State of Gujarat v. Laljibhai Ishwarbhai Zala decided by this Court on dated 15.2.2007 in Criminal Appeal No.841 of 2003**, almost identical was the situation, wherein the sample of groundnut oil was collected by the Food Inspector. There was no dispute that before collecting the sample, the contents of the tin, from which the sample was collected, was not only duly stirred and churned. This Court observed that before collecting the sample, it was required to be made homogeneous and for that purpose, the entire content of the tin was required to be stirred. In the result, the order of acquittal recorded by the learned trial Court was confirmed and the appeal of the State was dismissed. (para 6.2)

6.4 In the present case on going through the entire evidence of the Food Inspector, it is nowhere revealed that he stirred the edible oil so as to ensure that the sample collected was homogeneous in character."

(II) In **State of Gujarat v. Rajeshbhai Jagjivandas Thakkar** (supra), this Court has held in Paragraph-8 as under:

"8. This Court heard learned advocates for the parties and perused record & proceedings and the paper book containing relevant documents. Aforesaid 3 lacuna enlisted by Shri Modi are evident from record & proceedings as well as the findings of the court recording acquittal. It is required to be noted that though the complainant Food Inspector had mentioned in his complaint that the container containing entire quantity of oil was shaken properly, but there does not seem to be any evidence with regard to stirring entire quantity of oil and making it homogeneous before the sample was taken therefrom. This serious lacuna on the part of prosecution deserves to be accepted and it has been rightly accepted by the trial court...."

(III) In **Pinalkumar Dineshchandra Parikh v. State of Gujarat** (supra), this Court has held in Paragraphs-9 to 11 as under:

"9. As regards spoon the witness deposed that his helper Mr.Damor cleaned the spoon on the previous day but the prosecution did not examine Mr. Damor to prove

that the spoon was cleaned and dried.

10. In the decision of State of **Gujarat v. Bhupendra M. Mehta** (supra) this Court in paragraph 9 observed as under:

"Mr. Vora submitted that a specific question was put about the cleaning of the bottles, but there is no answer by the witness and what is stated is that the bottles were lying in his custody for eight days. Therefore, the bottles were cleaned or not, is not established by the prosecution. He further submitted that the Food Inspector has not stated that he himself has cleaned it or under his supervision the bottles were cleaned and thereafter, the bottles were properly kept. It is required to be noted that duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the Court by leading evidence at the Trial Court that the bottles used were clean and dry. In the case of **M.B. Risaldar v. Radheshyam reported in 21(2) GLR 136**, this Court has observed as under:

"Even I feel that when a witness testifies to the effect that the glass bottles were cleaned and dried, a mere visual appearance to the naked eye may not be sufficient sometimes. If no questions might have been put to him as to how he can say that the glass bottles were cleaned and dried, probably the matter would have ended there. But he has given out that the peon had cleaned and dried the bottles and put them into the cupboard. In this state of evidence, it was the duty of the prosecution to examine that peon to show that the bottles were properly cleaned and dried and they were put into the cupboard and properly closed."

(IV) In **State of Gujarat v. Laghadhirbhai Vaghjibhai Prajapati** (supra), this Court has held in Paragraphs-7 to 10 as under:

"7. However, on behalf of the respondent-accused, Id.counsel Mr. Modi submitted that in the instant case, there is violation of Rule 14 of the Rules. Rule 14 pertains to manner of sending sample for analysis. It reads as under:-

14. Manner of sending samples for analysis:- Sample 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"

Now, considering the provisions contained in Rule 14 and appreciating the evidence on record, in the present case, it becomes clear that neither the Food Inspector Mr. Trivedi nor the panch Sanjay and nor the Sanitary Superintendent Kantilal Hargovinddas in their depositions clarified as to when, how and who cleaned the bottles, wherein the sample of groundnut oil was alleged to have been collected. It was submitted that mere oral statement of Food Inspector that the sample was collected in clean, dry bottles will not be termed as sufficient compliance of the mandatory requirements laid down under the Rules. In support thereof, the reliance

has been placed upon a case of **State of Gujarat v. Babu Lavji Jalia reported in 1997(2) FAC 26**, wherein this High Court held that Rule 14 of the Rules lays down mandatory requirements and it is the duty of the prosecution to prove by leading positive evidence that bottles were cleaned and dried before the sample was taken by the Food Inspector. Reliance was also placed upon the judgment delivered by this court in the case of **State of Gujarat v. Sohanlal Trikamchand Shah reported in 2002(2) FAC 156**, wherein almost identical principle was laid down as laid down in the above referred case. Reliance was also placed upon the case of **State of Gujarat v. B.P. Prajapati reported in 2007(2) FAC 310**, wherein referring to Rule 14 of the Rules in para-9 of said judgment, it was observed that "in fact Rule 14 makes it mandatory upon the prosecution to prove its due compliance by leading cogent and positive evidence. This Court is unable to agree with the submissions of Shri Patel that when the Food Inspector has given his evidence that cleaned bottles were used, that itself is sufficient for establishing due compliance with provisions of Rule 14. Mere statement with regard to using clean bottles for collecting sample is not sufficient, as this court has held time and again". Under such circumstances, even mere statement of the Food Inspector that the sample was collected in clean and dry bottle, would not amount to sufficient compliance of Rule 14. It should be proved by leading cogent and positive evidence.

8. Ld.counsel Mr. Modi for the respondent accused further submitted that perusing the evidence on record, it becomes clear that at the time of visiting the shop of the accused, the Food Inspector had carried with him the utensil called tapeli, and the sample of groundnut oil from a tin containing the oil was collected with the help of "pali" an aluminium container or small utensil, which normally is used to take out loose edible oil from main container. It is submitted that even so far as the said "tapeli" and "pali" are concerned, there is no oral evidence worth the name that the same were clean or dry, much less any positive evidence in this respect. Considering the deposition of Food Inspector Mr. Sumanchandra Trivedi and Sanitary Superintendent Kantilal Hargovinddas, so far as "tapeli" and "pali" are concerned, there is no oral evidence adduced by them that the said utensils were clean and dry. Reliance was placed upon the case of **Khengar Dhana Rabari v. State of Gujarat decided on 8.2.1979 in Criminal Revision Application No.447 of 1978** by this Court, wherein the sample of milk was collected by the Food Inspector and before dividing the sample into 3 different bottles, the milk was collected in a tumbler and this Court observed that the Food Inspector in his entire deposition, nowhere mentioned that the container i.e., tumbler in which the sample was taken, was clean and dry. Reliance was placed upon the case of **State of Gujarat v. Laljibhai Ishwarbhai Zala decided on 15.2.2007 in Criminal Appeal No.841 of 2003**, wherein the sample of edible oil was collected by the Food Inspector with the help of tapeli, and it was observed that there was no evidence whatsoever that the same was clean, prior to taking out the sample from the main container. The 1d.counsel Mr. Modi for the respondent-accused relied upon the case of **State of Maharashtra**

**v. Vinayak Mahadeorao Waze reported in 2005 Cri.L.J. 2100**, wherein the sample of groundnut oil was collected by the Food Inspector and was divided into 3 glass bottles. Bombay High Court observing that the bottles in which the samples were collected, were not cleaned and dried in presence of accused and panch witnesses and held that the sample cannot be said to have been properly collected.

9. Considering the principles laid down in the above referred Rulings, and the evidence on record, in our case, it becomes clear that the requirements laid down in Rule 14 of the Rules are held to be mandatory and non-compliance of the same would amount to acquittal of the accused from the offence charged under the Act. In the case on hand, the noncompliance of the requirements laid down under Rule 14 of the Rules is clear.

10. Ld.counsel Mr. Modi for the respondent accused submitted that before collecting the sample of groundnut oil, the Food Inspector was required to stir the contents of the tin containing the groundnut oil, so as to make the sample a homogeneous one. That in the instant case, so far as the deposition of Food Inspector is concerned, he nowhere stated that before collecting the sample of groundnut oil, the contents of the tin containing the oil were stirred. However, in his cross-examination, he stated that he had shaken the tin itself containing the oil. It was submitted that the requirements were to stir the contents of the tin i.e. the groundnut oil. In this respect, the reliance was placed upon the case of **State of Gujarat v. Gamnaji Bhuraji Prajapati decided on 4.7.2007 in Criminal Appeal No.1883 of 2004**, perusing the facts of the said case, in that case the Food Inspector had collected the sample of groundnut oil from the shop of the accused. In paragraph 10 of the said judgment, this court observed that nowhere it is stated either by the Food Inspector or by other witnesses that the sample which was taken was properly stirred and was representing the entire quantity. In the case of **Food Inspector v. Padakanti Bhupathi reported in 2005(1) FAC 16**, the Andhra Pradesh High Court in the case, wherein the Food Inspector had collected the sample of groundnut oil observed that during the course of deposition of Food Inspector, he has not deposed that the oil contained in the tin was thoroughly stirred before taking samples and in absence of stirring, the oil contained in the tin before taking samples, the very manner in which the samples had been taken had caused prejudice to the accused. Identical principles were laid down by Punjab and Haryana High Court in the case of **Suresh Kumar v. State of Haryana reported in 1991(2)FAC 98.**"

(V) In **State of Gujarat v. Laljibhai Ishwarbhai Zala** (supra), this Court has held in Paragraphs-4 & 5 as under:

"4. The 1d. Trial Judge, while appreciating the evidence, has concluded that this is a case of breach of mandatory provisions of Rule 14 of the Rules framed under the Act and, therefore, the ratio of the decision reported in 1995(2) GLH 722 and 1996(2) GLH 137 would help the accused. The Id. Trial Judge while recording the acquittal

has observed that (i) after receipt of the report from the Public Analyst, the prosecution is instituted after about 1½ months and accused was not intimated about the date of analysis made; (ii) there is no opinion of the nature in which it is possible to infer that the substance is injurious to health or otherwise hazardous which found and recovered from the shop, (iii) there is no evidence to show that the aluminium container referred to as "Pavali" (tube type container) was cleaned prior to collecting the sample and/or the evidence to show that the "Pali" aluminium container - small utensil which normally is used to take out loose edible oil from main container, was cleaned prior to taking out the samples from the main container.

5. It is also in evidence that "Pali" was also used simultaneously for taking out edible oil of different quality and nature that were being sold at the shop of the accused. It is a known fact that like the ground-nut oil, the coconut oil, castor oil and other edible oils are being sold by the shop-keepers and are available on grocery shop practically in all villages of the country. So, in this background of the facts, the 1d. Trial Judge has decided to acquit the accused persons saying that there is violation of Rule-14 which is held to be mandatory in nature and would go to the root of the sustainability of the prosecution. It is also necessary to observe that the 1d. Trial Judge has considered one more aspect that the complainant was supposed to collect the sample by churning the entire lot of groundnut oil and thereafter the same was required to be divided into three major parts and representative sample was to be drawn from one of such part. There is no reference of total quantity of the oil lying in aluminium container from which the sample was drawn."

Mr. Modi has drawn attention of this Court to the report at page 151 produced vide Exh.16 which is alleged to have been given by Public Analyst Mr. K.A.Patel on 20.12.1991 whereas the sample was sent on 26.11.1991. Mr. Modi also drawn attention of this Court to the notification issued by the Health and Family Welfare Department, Government of Gujarat dated 24.9.1991 in exercise of the powers conferred by section 8 of the Prevention of Food Adulteration Act, 1954 ("the Act" for short) amending the notification of the Health and Family Welfare Department dated 12.5.1988. In the schedule appended to the said notification, for the entry at serial No.7, the said entry has been substituted. In his submission, therefore, in view of the evidence on record, it cannot be said that the learned trial Judge has committed any error in passing the impugned order acquitting the accused, and therefore, the present appeal deserves to be dismissed.

7. This Court has heard Ms. Jhaveri, learned advocate for the appellant, Mr. D.K. Modi, learned advocate for the respondents accused and Mr. L.B. Dabhi, learned APP for the respondent State.

8. This Court has minutely gone through the impugned judgment rendered by learned trial Court as well as the evidence on record in the nature of paper book. Ms. Jhaveri, learned advocate for the appellant has drawn attention of this Court

that vide entry No.7 of the notification dated 1.8.1991, Mr. K.A. Patel, Junior Scientific Assistant was empowered and assigned the areas within the limits of Ahmedabad Municipal Corporation. It is the contention of Ms. Jhaveri that Mr. K.A. Patel was authorised officer as per the notification dated 1.8.1991, whereas it is the contention of Mr. Modi that in view of the amended notification dated 24.9.1991, Mr. K.A. Patel was no more authorised as in his place Mr.B.R. Desai was substituted for whole of the State of Gujarat. On perusal of both the aforesaid notifications, the contention raised by Mr. Modi appears to be acceptable and the same was also accepted by learned trial Court as on the date of receiving the sample and issuance of report on 20.12.1991, Mr. K.A. Patel was no more authorised as Public Analyst for the areas within the limits of Ahmedabad Municipal Corporation.

8.1 It is also the contention of Mr. Modi that the report of the analysis issued by the Central Food Laboratory at Exh.4 at page 81 of the paper-book is in violation of mandatory provisions of section 13 (2B) of the Act as the Central Food Laboratory was obliged to issue the report within a period of one month from the date of receipt of part of the sample specifying the result of its analysis. Whereas, in the present case, the Central Food Laboratory received part of sample on 26.7.1993 and the report was issued on 17.9.1993, that is beyond the period of one month and, therefore also taking into consideration the provisions of section 13(2B) of the Act, conviction cannot be based upon.

8.2 In order to appreciate the controversy raised in the present appeal, it is necessary to look at the provisions of section 13(2B) of the Act which read as under.

"Section 13. Report of public analyst.-

xxx xxx xxx

(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2A), the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis."

A bare perusal of the provisions of section 13(2B) of the Act clearly indicates that it is mandatory so far as sending of certificate to the Court in the prescribed form within one month from the date of receipt of part of the sample specifying result of analysis is concerned.

8.3 So far as the contention of Ms. Jhaveri as regards to taking the sample as representative in nature is concerned, while drawing the sample from the packed tin, in order to extract the sample as representative in nature, stirring is essential

procedure which is required to be followed, as such. Under the circumstances, this Court is of the considered opinion that learned trial Court has rightly not believed the case of the prosecution and rightly given the benefit of doubt which does not call for any interference by this Court.

9. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper.

10. In above view of the matter, this Court is of the considered opinion that learned trial court was completely justified in acquitting the respondents of the charges levelled against him. This Court finds that the findings recorded by learned trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. This Court is, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by learned court below and hence finds no reasons to interfere with the same.

11. In the result, this appeal fails and accordingly, it is dismissed. Bail bond, if any, stands cancelled. R & P to be sent back to the trial Court, forthwith.