

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.627 OF 2015

Ms. Sonal Rohidas Gote,
Age: 18 years, Occu: Education,
Residing at Kondhava Khurd,
Maruti Ali, Swapnapurti Building,
Pune.

..Applicant.

V/s.

1. Atul Suresh Javalkar,
Age 26 years, Occu: Nil,
Residing at 57/7, More Chawl
Near Ganpati Temple,
Khondhava Khurd, Pune.

2. The State of Maharashtra
through Kondva police station,
Pune City.

..Respondents.

Mr.Avinash B. Patil for the applicant.

None for respondent No.1.

Mrs.M.M. Deshmukh, APP for the respondent-State.

CORAM : NARESH H.PATIL AND A.M.BADAR, JJ.

RESERVED ON : 16TH APRIL, 2016

PRONOUNCED ON : 27TH APRIL, 2016

JUDGMENT (PER A.M. BADAR, J.)

1. This application is filed by informant Sonal Rohidas Gote seeking leave to challenge the judgment and order dated 10th March, 2015 passed by the learned Additional Sessions Judge, Pune in Sessions Case No.542/2014 thereby acquitting respondent No.1 / accused of the offences punishable under sections 307, 328, 506 (1) of the Indian Penal Code.

2. Brief facts leading to the institution of the present application can be summarized thus:-

(a) According to the prosecution case, as reflected from the F.I.R. lodged by the applicant / informant Sonal, respondent No.1 / accused Atul is her neighbour and they were having love affair. Informant Sonal and accused Atul were meeting regularly. Fifteen days prior to the alleged incident, accused Atul questioned the informant Sonal by alleging that she has an affair with a boy named Kishore Nikam. According to the prosecution case on 17th February,

2014, accused Atul met informant Sonal near her college and informed her that because of informant Sonal, his image is maligned and, therefore, they both should commit suicide. Thereafter, on 18th February, 2014 at about 8.00 p.m. after finishing her tuition class, informant Sonal gave a miss-call to the accused. Accused then called her and informed her to meet at the parking slot of cable office of Sainath Babar. Accordingly, informant Sonal met accused Atul at that place. According to the prosecution case, the accused then showed a bottle of insecticide to informant Sonal and threatened her if she refused to consume that insecticide, he will kill her. Then accused forcibly administered poison to informant Sonal.

(b) According to the prosecution case, after the consumption of insecticide, informant Sonal went to her house and started studying on the third floor of her house. After fifteen to twenty minutes, she started vomiting. Then, her parents took her to Satyananda Hospital, Pune. Subsequently, she was admitted to Inamdar Hospital, Pune and thereafter to the K.E.M. Hospital, Pune. She was discharged on 4th March, 2014 and then on 5th March, 2014 applicant Sonal lodged report against the accused resulting in registration of offence

punishable under section 307, 328, 506(1) against him. On completion of investigation, the charge-sheet came to be filed against the accused and ultimately after trial, he came to be acquitted by the impugned judgment and order by the learned Additional Sessions Judge, Pune.

4. Heard the learned counsel appearing for applicant / informant Sonal. He vehemently argued that the learned trial Court has failed to consider the evidence of parents of informant Sonal. He further argued that there is a perverse appreciation of evidence on record by the learned trial Court. According to the learned counsel for the applicant, evidence of PW4 Thakkar – shop-keeper, goes to show that the accused had purchased the insecticide and the evidence of informant PW3 Sonal shows that the accused had administered that insecticide to her forcibly. The learned counsel for the applicant further argued that medical evidence on record goes to show that informant Sonal was admitted in several hospitals for treatment for poison. Evidence of informant Sonal is further corroborated by evidence of her parents. Hence, according to the learned counsel for the applicant, the prosecution has proved the motive so also the preparation by

the accused and ultimately the commission of offence by the accused.

5. We have heard the learned APP for the State.

6. With the assistance of the learned counsel appearing for the parties, we have carefully perused the evidence adduced by the prosecution in support of the charge for the offences punishable under section 307, 328, 506(1) of the Indian Penal Code levelled against the accused. We have also perused the impugned judgment and order of acquittal of the accused.

7. At the outset, the parameters for exercising the jurisdiction of this Court in dealing with an appeal against acquittal needs to be placed on record. In the matter of **¹State of UP. V/s. Babu & Ors.**, it is observed by the Hon'ble Supreme Court as under:-

"10. Recently in State of Punjab V/s. Karnial Singh (2003 AIR SCW 4065) it was observed that there is no embargo on the Appellate Court reviewing the evidence upon

¹ 2013 All MR 2356 (SC.)

which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs *through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See Bhagwan Singh and others v. State of Madhya Pradesh (2002 (3) JT (SC) 387) : [2003 All MR (Cri) 564 (S.C)]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only*

when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and another V/s. State of Maharashtra (1973 (2) SCC 793), Ramesh Babulal Doshi V/s. State of Gujarat (1996 (9) SCC 225) and Jaswant Singh V/s. State of Haryana (2000 (4) JT (SC) 114)."

8. Now, let us consider whether there are compelling and substantial reasons for interfering with the order of acquittal and whether the admissible evidence is ignored by the learned trial Court by adopting perverse approach. We will also have to consider whether the view expressed by the learned trial Court is a probable view based on appreciation of evidence in the instant case.

9. In order to bring home the guilt to the accused, the prosecution has examined as many as 11 witnesses including informant Sonal, her parents, shop-keeper, doctors who had treated the informant Sonal and the Investigating Officer. It is seen from the evidence on record that the alleged incident

took place on 18th February, 2014 in the parking Slot of cable office of Sainath Babar at Pune. The evidence on record shows that parents of informant Sonal namely Rohidas Gote (PW1) and Jyoti Gote (PW2) had immediately taken her to Satyananda Hospital, Pune. From there, informant Sonal was shifted to Inamdar Multi Speciality Hospital, Pune on the very same day. She was then taken to K.E.M. Hospital, Pune. Evidence on record shows that on 19th February, 2014 at Satyananda Hospital, history in respect of admission of informant Sonal is shown as consumption of insecticide. It is pertinent to note that evidence on record particularly coming from the mouth of Dr.Munaf Inamdar (PW5) of the Inamdar Hospital goes to show that apart from informant Sonal Gote, accused Atul Jawalkar was also admitted to that hospital on 18th February, 2014 as a case of poisoning. As seen from the evidence of Dr.Tushar Kate (PW6) earlier accused Atul was initially admitted in Satyananda Hospital, Pune with history of consumption of poison. Thereafter, as seen from the evidence of Dr.Tushar Kate (PW6), informant Sonal Gote was brought to the said Satyananda hospital as a case of poisoning. Dr.Deepak Kolhekar (PW8) of Inamdar Hospital has also vouched that both the informant as well as the accused were

brought to Inamdar Hospital by their relatives on 18th February, 2014 as case of poisoning and their relatives stated that they had consumed medicine. Thus, the evidence on record unerringly points out that both i.e. the applicant as well as the accused had suffered from consumption of poison on 18th February, 2014 at about the same point of time and they were brought to Satyananda Hospital simultaneously.

10. Now, let us examine whether it was the accused who administered the poison to informant Sonal forcibly. As seen from evidence of PW1 Rohidas (father of informant Sonal) and PW2 Jyoti (mother of informant Sonal) that on 18th February, 2014, at Satyananda Hospital itself where informant P.W3 Sonal was taken for treatment initially, she had disclosed that the accused had administered poison to her. Similar is the version of informant PW3 Sonal. This evidence, as such indicates that soon after the incident PW1 Rohidas and PW2 Jyoti were aware that it was accused Atul Javalkar who had administered the poison to their daughter. If really the accused had administered the poison to their daughter, in normal course, PW1 Rohidas and PW2 Jyoti ought to have reported the matter to the police. This did not happen. On the

contrary, it is seen from the evidence on record that though police had visited the hospital where the informant PW3 Sonal was taking treatment, no report against the accused was filed soon after the incident or rather upto 5th March, 2014.

11. Though alleged incident in question happened on 18th February, 2014, the F.I.R. in respect of the same came to be filed on 5th March, 2014 by informant Sonal. The explanation which is sought to be given for this belated F.I.R. is that till 4th March, 2014, informant Sonal was admitted in the hospital. However, it is seen from the evidence of the prosecution that her parents were allegedly aware of the incident in question and as such, they could have filed the F.I.R. against the accused. This inordinate delay in lodging the F.I.R. makes the prosecution case suspect. The possibility of adding embellishments to the prosecution case for implicating the accused as such, cannot be ruled out. This is particularly so because the history of admission of PW3 Sonal is recorded in the Satyananda Hospital as case of consumption of medicine. Evidence of Dr.Tushar Kate (PW6) of Satyananda Hospital do show that PW3 Sonal was admitted there as a case of poisoning and history is shown as consumption of

some poison. Even from the cross-examination of Dr. Deepak Kolekar (PW8) of Inamdar Hospital, it is brought on record that relatives of PW3 Sonal have stated the history that she had consumed some medicine meaning thereby some poison. On the backdrop of this evidence, the learned Additional Sessions Judge took a view that the case of the prosecution regarding forcible administration of poison to PW3 Sonal by the accused is not free from doubt. Such view is certainly a probable view based on the evidence on record.

12. The learned trial Court has considered that the complaint lodged by PW3 Sonal to the Commissioner of Police, Pune does not disclose that accused Atul forcibly administered poison to PW3 Sonal. The evidence on record as discussed in the foregoing paras do show that both the informant as well as the accused were deeply in love and it was PW3 Sonal who had given a miss-call prior to the incident and then thereafter they met at the parking slot of the cable office where the incident happened. This conduct of the informant / PW3 Sonal was also considered by the trial Court to doubt the prosecution case of forcible administration of poison. Testimony of informant Sonal shows that even though she

alleged that the accused administered poison to her forcibly in the parking slot of the cable office, her subsequent conduct raises doubt on her version. Her evidence shows that she went to her house and started studying at the third floor without making any complaint about the incident to her parents. She did not make any hue and cry for taking her to hospital. Considering the evidence on record, it cannot be said that the learned trial Court has come to erroneous conclusion.

13. If really the accused had administered organo phosphorous poison to informant PW3 Sonal forcibly, then her clothes should have been stained with such poison. The evidence on record shows that after consumption of poison, PW3 Sonal had been to her house and started studying in the room situated at the third floor. At that point of time, she had not disclosed the alleged incident to her parents though they were available. She never asked for their help. Thereafter, she was admitted to the hospital. Her clothes were not seized by the police in order to find out whether they were having traces of poison on them. The theory of forcible administration of poison by the accused could have gained some corroboration if the clothes of informant Sonal were seized by

police and if such seized clothes were subjected to chemical analysis. This did not happen. As such, it cannot be said that the prosecution has proved the guilt of the accused for the alleged offence beyond reasonable doubt. Therefore, no fault can be found with the impugned judgment and order giving benefit of doubt to the accused and acquitting him of the alleged offence. The view taken by the learned Additional Sessions Judge is a probable view based on the evidence on record and there are no compelling reasons to interfere with the same. Hence the order:-

- (i) The application for leave to appeal is rejected.

(A.M. BADAR, J.)

(NARESH H.PATIL, J.)