

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. A. 218 /2001**

% Reserved on: 15th December, 2010

Decided on: 28th February, 2011

VIJAY LAXMI

..... Petitioner

Through: Mr. Mohit Mathur, Mr. Abhilash
Mathur and Mr. Shardul Singh,
Advocates

versus

..... Respondents

STATE

Through: Mr. Pawan Bahl, APP for the State

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Not necessary
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MUKTA GUPTA, J.

By this appeal, the Appellant lays a challenge to the conviction for offence punishable under Section 314 IPC and the order on sentence whereby she has been directed to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹20,000/- and in default of payment of fine to

undergo further rigorous imprisonment for six months in case FIR 605/1997 registered at P.S. Mangolpuri.

2. Briefly the prosecution case is that an information was received at P.S. Mangolpuri on 23rd June, 1997 vide DD No. 46B that a woman had died during an operation in a clinic near Sanjay Gandhi Hospital. The information was marked to ASI Rama Nand PW10 who went to the spot along with Constable Raja Ram PW7 where a clinic in the name of Saar Chikitsalya was being run. Dead body of a woman was found lying on the floor in that clinic and one plastic bucket containing some pieces of flesh was also found lying there. On the spot PW10 ASI Rama Nand met Sh. Raj Dev PW6, husband of the deceased and recorded his statement who stated that the deceased Jarawati was his wife and from the wedlock they had four children, two sons and two daughters. His wife was six month pregnant and since they did not want another child, she expressed her desire to get an abortion so he had brought his wife to Saar Chikitsalya where the Appellant was practicing as a doctor. They conveyed to the Appellant about the pregnancy and their desire for an abortion to which the Appellant told them that she was an expert in abortion and demanded ₹500/- which Raj Dev paid to her. His wife Jarawati was taken inside the clinic for operation at about 2 p.m. and he was made to wait outside. At about 4:00 p.m., when he enquired about his wife, the Appellant

informed that she has died during the process of abortion and the dead body was lying at the table in the clinic. On the statement of PW 6 Raj Dev Ex.PW6/A, PW10 ASI Rama Nand made an endorsement Ex.PW10/A and sent the ruqqa through PW7 Constable Raja Ram. On the basis of this information the above mentioned FIR was registered. A lady Const. Sudesh PW1 was called telephonically and a photographer Raj Kumar PW4 was summoned to take the photographs of the scene. The dead body and the bucket containing blood and pieces of flesh were sent to the mortuary. After completion of investigation, charge-sheet was filed against the Appellant. After recording the prosecution evidence and the statement of the Appellant under Section 313 Cr. P.C., the impugned judgment convicting and sentencing the Appellant as already mentioned was passed.

3. Learned counsel for the Appellant challenging the conviction urged that the Appellant was not qualified to perform abortion and she had asked PW6 Raj Dev to take his wife i.e. the deceased away to a hospital as her condition was serious. However, as he did not take her, she died in her clinic. The Investigating Officer has not seized any surgical equipment nor there was any other equipment available at the spot to show that the Appellant conducted the surgery resulting in the death of the deceased. Allegedly ₹500/- were given to the Appellant by PW 6 and as per the prosecution case, the Appellant had not

gone out anywhere but after her arrest, on her personal search only ₹300/- were recovered which falsify the version of PW6. The Appellant never portrait that she was a qualified doctor who performed surgeries and on the board outside her clinic her degree was shown as GAMS i.e. an Ayurvedic Doctor. The Investigating Officer has not seized any clothes of the Appellant or apron which was blood-stained, thus showing that the Appellant had conducted this abortion. There are material contradictions in the statement of PW6 Raj Dev and PW 10 ASI Rama Nand. It is pointed out that PW6 in his testimony has stated that he was taken to the police station along with the dead body where his statement was recorded. Whereas PW 10 has deposed that he met PW 6 at the spot and his statement was recorded at the spot itself. Even PW 7 Const. Raja Ram stated that all proceedings were conducted at the police station which fact is contradicted by PW 10 who has stated that all the inquest papers were prepared and proceedings were conducted at the spot. Learned counsel has further contended that no seizure memo was prepared of the bucket which had been recovered from the spot nor was the blood on the floor as alleged lifted. Even, the arrest memo of the Appellant was not prepared. Since, the link evidence is missing there is nothing to connect the Appellant with the flesh found in the bucket or the blood. The Appellant cannot be convicted of the offence. Therefore, the impugned judgment is

perverse, illegal and contrary to the facts on record. The learned Trial Court comes to the conclusion that though there is no direct evidence, however, four circumstances have been proved against the Appellant and thus holds her guilty. It is contended that from the evidence adduced, except the first circumstance that the Appellant was running a clinic in the name and style of Saar Chikitsalya in Mangolpuri, rest three circumstances i.e. deceased was carrying six months pregnancy and was brought by her husband to the clinic of the accused for an abortion; the appellant took the deceased inside the clinic for performing the operation where she died and her dead body was recovered from inside the clinic and the medical evidence recording the cause of death have not been proved by the prosecution and thus, the appellant is liable to be acquitted of the charge framed. In the alternate, it is prayed that the incident is of the year 1997, the Appellant has already undergone a sentence of five months and 10 days. Thus, she be released either for a sentence for the period already undergone or on probation. Reliance is placed on *State vs. Meera Kumari @ Rajrani, 1986(2) Crimes 630*.

4. Learned APP for the State contends that there is sufficient material on record adduced by the prosecution to prove the guilt of the Appellant. PW 6 Raj Dev has deposed about the six months pregnancy of his wife and the fact that he had brought her for abortion to the clinic of the Appellant where it was

represented that the Appellant was competent to perform the abortion and charged ₹500/- for the same. The wife of PW 6 died inside the clinic and when the Appellant asked PW6 to take away the dead body of his wife somebody from the street rang up the police which reached at the spot. The fact that the Appellant was not a qualified doctor and thus not qualified to perform an abortion has been admitted by her. Learned APP states that the factum of performance of an abortion stands proved from the post-mortem report Ex. PW9/A which opines that the flesh brought by the police in a bucket was the material of conception and it is immaterial whether the flesh material was of two months or six months conception. Minor contradictions sought to be brought in the testimony of the witnesses in regard to the proceedings conducted at the spot or at the police station do not go to the root of the matter. Furthermore, PW 9 Dr. K. Goel has clearly opined the cause of death to be injury caused during an attempt to evacuate the contents of gestation. Hence, the appeal is liable to be dismissed being devoid of merit.

5. I have heard learned counsel for the parties and perused the records. PW6 Raj Dev, the complainant/husband of the deceased has deposed about the factum of taking his wife with six months pregnancy to the clinic of the Appellant where the Appellant stated that she could safely abort the child as she has been doing it earlier also for which she would charge ₹500/-. He has

further deposed that his wife was taken inside the clinic in operation room at about 2 p.m. and at about 4:00 p.m. he enquired about his wife when he was told by the Appellant that she died during the process of abortion. He went inside the clinic and saw the dead body of his wife. The Appellant asked him to take away the body from there. At that time somebody from the street informed the police and the police came at the spot. This version of PW 6 is corroborated by the photographs Ex. PW4/1 to PW 4/10(wherein Ex.PW4/1 to Ex.PW 4/5 are the negatives).

6. Moreover, the defence taken by the Appellant is that she had informed PW6 Raj Dev that she was not doing abortions and then he requested that she may check up the lady otherwise, and her husband left saying that he will come after one hour. She checked and found that her condition was serious and suggested that she should be taken to a competent doctor. The appellant waited for her husband for more than 2 hours but he did not turn up and in the meantime that lady expired. Thus, the defence of the appellant is that it was not an attempt to abortion but because the condition of the deceased was serious she died. However, this is not supported by post mortem evidence. As per opinion of PW 9, Dr. K. Goel, "Injuries to the vagina and uterus were ante-mortem in nature caused by other party. Injury has been caused during an attempt to evacuate the contents of gestation. The cause of death was

opined to be “hemorrhagic shock and obstetric shock as a result of injuries to uterus”. In the cross-examination of PW 9 Dr. K. Goel no suggestion has been given that this abortion and the injuries resulted from the serious condition of the deceased and not because of evacuation. The only cross-examination conducted was with regard to the time as to when the injuries might have been inflicted which PW 9 in his cross-examination has clarified that these injuries could have been affected half an hour or one hour prior to the death. The post-mortem on the person of deceased was conducted on 24th June, 1997 and time since death as opined by the doctor was about 24 hours which coincides with the version given by the husband of deceased. PW9 in his cross-examination has also clarified that the death in this case could have taken place between 1.30 to 4.30 p.m. on 23rd June, 1997.

7. I also do not find any merit in the defence of the Appellant that even as per PW 6 the Appellant had not gone out of the clinic and that PW 6 had given ₹500/- to the Appellant for performing the abortion. However, when her personal search was conducted only ₹300/- were found from her thus belying the version that PW 6 gave her ₹500/-. Merely because ₹200/- less were found in the pocket of the Appellant, it would not be a ground to disbelieve PW 6 that he gave her ₹500/- for performing the operation.

8. The next contention raised by the learned counsel for the Appellant also deserves to be ignored that the prosecution has failed to prove that it was a six months old foetus. The requirement of Section 314 IPC is, “whoever with an intent to cause miscarriage of a woman with child does an act which causes the death of such woman”. The age of foetus or the gestation period is not essential to be determined for the applicability of the Section. The provision of Section 314 IPC is clearly attracted in the present case and the age of foetus or the doctor not opining the period of gestation, would not be fatal to the prosecution case. Suffice would it be to state that PW 9 Dr. K. Goyal has opined that the material in the bucket brought by the police was anatomically consistent of placenta and umbilical cord with blood clots thus proving that there was a foetus which was aborted by the Appellant and the same was put in a bucket.

9. Failure of the police to seize any surgical equipment or surgical material or bloodstained cloths of the Appellant would not belie the prosecution version of PW 6 Raj Dev duly supported by the testimony of PW4, PW7 and PW10. No seizure of equipments or blood-stained clothes of the Appellant would not be sufficient to discard the entire case of the prosecution. Similarly, the contradiction between the version of PW 7 Raja Ram and PW 10 SI Rama Nand regarding the preparation of inquest papers

and other proceedings being conducted at the police station or at the spot do not hit at the root of the matter that the deceased died during an attempt to evacuate the gestation material and that umbilical cord was found in a bucket which was recovered at the spot. Also no explanation has been rendered by the Appellant in response to the question put to her relating to recovery of a bucket with flesh in it during her examination under Section 313 Cr.P.C. except denying that there were no pieces of flesh in her clinic and nothing was recovered by the police. This fact is belied by the testimony of PW 10 ASI Raja Nand and PW 6 Raj Dev that in the clinic, they found a dead body lying, blood on the floor and bucket having flesh in it. This fact is also proved by the photographs Ex. PW4/6 to PW4/10 which show that there was a bucket recovered at the spot. A false explanation is an additional link in the chain of circumstances against the accused. Law on this aspect has been settled by the Hon'ble Supreme Court in a catena of decisions as in *Aftab Ahmad Ansari vs. State of Uttranchal*, (2010) 2 SCC 583.

10. As regards the non-preparation of the seizure memo of the bucket, which contained the gestation material i.e., a dead foetus, PW10 has stated that the bucket in which the flesh was contained and the dead body were taken into possession vide inquest papers Ex.PW10/B and were sent to the hospital. There is no cross-examination of PW10 that the deadbody and the bucket with

the flesh was not sent to the hospital. This version of PW10 is corroborated by PW9 Dr. K. Goyal who stated that the dead body along with a plastic bucket consisting of product of conception was brought by police on 24th June, 1997 at 12.05 a.m. PW9 has also not been cross-examined on this aspect and thus his testimony has also gone unchallenged on this count. Moreover vide Ex. PW 3/A the copy of the register of the Malkhana it has been proved that the sealed case property received in 3 pulanda from the hospital was deposited in the Malkhana. After the samples and the products were received from the hospital PW 3 Constable Naresh has proved vide his testimony in the Court that there was no tempering with case property till it remained in his custody. Hence, in view of the evidence placed on record, I find no merit in the contentions of the learned counsel for the Appellant. There is no infirmity in the judgment convicting the Appellant for the offence punishable under Section 314 IPC.

11. As regards the quantum of sentence, the Hon'ble Supreme Court in *Jacob George vs. State of Kerala 1994 CrL.J. 3851* in similar circumstances while upholding conviction, modified the sentence of imprisonment to the period already undergone and enhanced the fine. Though the loss suffered by PW6 Raj Dev and his four children cannot be countenanced in monetary terms but for the betterment of their future and in the interest of justice, in my

opinion, it would be appropriate that if the sentence of imprisonment is modified to the period already undergone and the fine is enhanced to ₹1 lac; the same would meet the ends of justice. Thus, the order on sentence dated 26th February, 2001 is modified by reducing the period of imprisonment to the period already undergone and directing the Appellant to pay a fine of ₹1 lac and in default of payment of fine, to undergo simple imprisonment for a period of one year. The fine will be deposited by the Appellant with the learned Trial Court within 12 weeks from today. In case the fine amount is realized, ₹90,000/- out of it would be paid to PW6 Raj Dev, husband of the deceased and her four children in equal proportions by the learned Trial Court.

12. The appeal is accordingly disposed of maintaining the conviction of the Appellant for offence punishable under Sec. 314 IPC, however modifying the sentence as above.

FEBRUARY 28, 2011/dk

**(MUKTA GUPTA)
JUDGE**