

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

RESERVED ON : February 19, 2014

DECIDED ON : February 21, 2014

+ CRL.A. 1343/2012 & CrI.M.B.No.406/2014

DALIP

..... Appellant

Through : Mr.Sandeep Thakur, Advocate.

VERSUS

STATE GNCT OF DELHI

..... Respondent

**Through : Mr.Lovkesh Sawhney, APP for the
State.**

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 2.11.2012 of learned Additional Sessions Judge in Sessions Case No.40/11 arising out of FIR No.134/11 registered at Police Station Nabi Karim by which the appellant-Dalip was held guilty for committing offences under Sections 315/323 IPC and awarded rigorous imprisonment for five years under Section 315 and rigorous imprisonment for six months under Section 323 IPC. Both the sentences were to operate concurrently.

2. The prosecution case, as projected in the charge-sheet, was that in a quarrel on 04.08.2011, Dalip hit a leg blow on the stomach of his

sister-in-law Reena with an intention to prevent the child from being born alive. He also caused injuries to her husband Parveen. During the course of investigation, statements of witnesses conversant with the facts were recorded. MLC of the victim was collected. The accused was arrested and charge-sheeted. In 313 statement, he denied his complicity in the crime and examined his mother DW-1 (Munni Devi) in defence. The trial resulted in his conviction for the offences mentioned aforesaid. Being aggrieved and dissatisfied, the appellant has filed the appeal.

3. I have heard the counsel for the parties and have examined the record. The appellant and the victim are closely related to each other. Reena-complainant is the wife of Praveen (appellant's brother). They all lived at House No.523, Gali No.1, Krishna Basti, Amar Puri, Nabi Karim on the day of incident. The top floor was in the occupation of the complainant and her family. The accused and his parents lived on the third floor. On a trivial issue, an altercation took place between Praveen and Dalip and his parents when Praveen while under the influence of liquor intended to go upstairs with shoes smeared in mud. It is alleged that in the said scuffle, Dalip hit on the nose of Praveen and he started bleeding. The complainant-Reena came down-stairs on hearing the commotion and intervened to rescue her husband. It is alleged that the

appellant gave a leg blow on her abdomen. The facts further reveal that no complaint was lodged for the said incident with the police. The complainant took her husband Praveen to Lady Harding Medical College at around 11.40 P.M. where he was medically examined vide MLC (Ex.PW-1/A) by PW-1 (Dr.Shakuntla). The nature of injuries was ascertained 'simple caused by blunt object.' It appears that on the night intervening 4/5-8-2011, complainant-Reena developed some complications and started bleeding. She was taken to Lady Harding Medical College by her husband-Praveen on 05.08.2011 at around 07.00 p.m. and was medically examined vide MLC (Ex.PW-2/A) by Dr.Seema. On examination, she found that there were no external injury but bleeding per vagina was there. PW-4 (Dr.Richa Aggarwal) examined her on 06.08.2011. Ultrasound report was suggestive of incomplete abortion with retained product of conception. On 06.08.2011 after recording Reena's statement (Ex.PW-5/A), the investigating officer lodged First Information Report by sending rukka (Ex.PW-12/B) at 10.10.p.m. In the complaint, she disclosed that leg blow on her stomach was given by the appellant with an intention to cause miscarriage.

4. The crucial aspect to be ascertained is whether there was any nexus between the leg blow inflicted on the abdomen of the victim and the

consequent abortion. The prosecution could not establish that ingredients of Section 315 IPC were made out or proved. Nothing has come on record to show as to what was the exact duration of pregnancy of the complainant or that this fact was known to the appellant. It is on record that relations between the parties were hostile and they had lodged complaints against each other. Earlier the victim with her family was residing in a rented accommodation. After the accident of her husband, she shifted to the premises in question on 10.02.2011. The relations became more strained after her shifting in the said accommodation. The complainant lodged complaint (Ex.PW-5/DB) on 11.05.2011 against the appellant and her in-laws. She alleged disconnection of electricity and water connection by them. She alleged that her brother-in-law gave her leg blow on her abdomen and as a result of which she suffered abortion. No action was taken by the police on the said complaint and no FIR against the appellant or his parents was registered. Complainant could not establish that prior to 11.05.2011 she had suffered any abortion due to the leg blow given by the appellant. The occurrence dated 04.08.2011 happened subsequent to that and again the complainant leveled similar allegations against him for causing abortion. It has come on record that the complainant had given birth to a still born child earlier in 2008 and she

has cesarean deliveries at the time of birth of two children. PW-3 (Dr.Seema) categorically stated that she did not notice any external injury on the body of the complainant in MLC (Ex.PW2/A). She did not give any specific opinion if the abortion was the result of the leg blow given to the complainant. The record reveals that the Investigating Officer had specifically sought opinion from the doctor if there was any connection between the abortion and the leg blow but no such definite opinion was given. There was no swelling or scratch mark on the abdomen. The complainant was hale and hearty at the time of occurrence and had taken her husband Praveen to the hospital. She did not lodge any complaint with the police on that day or on 05.08.2011. The delay in lodging the report on 06.08.2011 in the evening has not been explained.

5. Intention is, one of the major ingredients of Section 315. To attract and prove Section 315 IPC, the act of the accused must have been done with the intent of causing the miscarriage of a woman with a child. The criminal liability envisaged by this Section will not extend to a case where the abortion/miscarriage was caused by totally extraneous factors or ones which were not directly connected with it. The prosecution is required to prove beyond reasonable doubt that it was that very act which ultimately caused the miscarriage, that is, nexus between acts done by the

accused and the miscarriage must be direct. The accused must be in the know of the fact that the lady was in the family way having pregnancy. In the instant case, nothing emerged if the appellant, who was the brother-in-law of the victim, was aware of the pregnancy of the victim. The relations were strained and there was least possibility of complainant and her husband to share this development with him specifically when the duration of pregnancy was very short. The occurrence had taken place all of a sudden when appellant's mother objected to her son Praveen going upstairs with dirty shoes. Arrival of the complainant at the spot to intervene was not anticipated. In the scuffle she allegedly suffered a leg blow on her intervention. It did not cause any immediate pain or bleeding to the complainant. The prosecution was unable to establish that the abortion was the result of leg blow or that the criminal act of assault was done intentionally or deliberately to prevent the child from being born alive. The conviction of the appellant under Section 315 IPC was not permissible and cannot be sustained.

6. Nominal roll dated 12.03.2013 reveals that the appellant has suffered detention for eight months and seventy seven days besides earning remission for one month and twenty days as on 16.03.2013. He is not involved in any criminal case and has clean antecedents. Appellant's

counsel has produced on record Annexure P-1 to show that the matter has been settled with the complainant whereby they had agreed to resolve the property dispute and to share the sale proceeds after selling the house in question. Since the appellant has already served substantial period of substantive sentence awarded to him by the trial court for committing offence under Section 315 IPC, for which he was not legally liable to be prosecuted, no further sentence is required to be awarded to him for causing 'simple hurt by blunt object' to the complainant and her husband-Praveen.

7. In the light of the above discussion, the appellant-Dalip is ordered to be released forthwith, if not required to be detained in any other case. The appeal stands disposed of in the above terms. Trial Court record along with the copy of this order be sent back. Copy of the order be sent to Superintendent Jail for intimation. Crl.M.B.406/2014 also stands disposed of.

(S.P.GARG)
JUDGE

FEBRUARY 21, 2014
sa