

GAHC010246622012



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./233/2012

BICITRA SARMA @ BICHITRA SARMA
S/O LATE HAREN SARMA, R/O VILL. DAKHIN CHUBURI, P.O. and P.S.
SIPAJHAR, PIN 784145, DIST. DARRANG, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.B BHAGAWATI, MR. M SARANIA,MR. P P GOGOI,MR A SARANIA,MR.M CHOUDHURY,MR.A GOGOI

Advocate for the Respondent : , ,PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT & ORDER (ORAL)

Date : 29-08-2024

Heard Mr. M. Sarania, learned counsel for the appellant Sri Bicitra Sarma @ Bichitra Sarma (hereinafter will be referred to as the appellant) and Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam for the respondent State.

2. This appeal has been preferred challenging the judgment and order dated 29.09.2012 passed by the learned Sessions Judge, Darrang, Mangaldoi in Sessions Case No. 69 (DM)/2007 convicting the appellant under Section 304A of the Indian Penal Code, 1860 (the IPC for short) and sentencing him to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) with default stipulation.

3. The genesis of the case was that the appellant had a love relationship with the victim 'X' (also referred as the deceased) and he impregnated her. On 12.12.2004, the appellant took the victim to Reba Bhuyan's house at Kadamtali with an intent to terminate her pregnancy. On the morning of 14.12.2004 at about 8.00 AM, the victim gave birth to a girl child. The appellant abandoned the infant in a pond near Reba Bhuyan's house where the baby finally expired. Meanwhile, the victim was bleeding profusely and she was taken to the nearby doctor namely Dr. Pulak Kr. Deka for treatment. The doctor referred the victim to Mangaldoi Civil Hospital. The appellant took the victim from the nearby hospital to the Mangaldoi Civil Hospital but the victim died during treatment.

4. An ejahar regarding this incident was lodged by the SI of Police of Sipajhar Police Station, Sri Dipjyoti Dadhara and the ejahar (FIR) was registered as Sipajhar Police Station Case No. 214/2004 under Sections 376/302/201 of the IPC. Investigation commenced and the statements of the witnesses were recorded. The bodies of the victim and

the baby were forwarded for autopsy. On completion of investigation, the Investigating Officer (IO for short) submitted charge sheet against the appellant under Sections 376/302/201 of the IPC. This case was committed for trial. At the commencement of trial, a formal charge under Section 302 of IPC was framed, read over and explained to the appellant, to which he pleaded not guilty

and claimed to be tried. To substantiate its stance, the prosecution adduced evidence of 13 (Thirteen) witnesses including the Medical Officer (MO for short) and the IO.

5. The Trial Court delineated the following points to decide this case:

“3. Whether accused person did commit murder of ‘X’ and newly born baby intentionally causing the death by putting newly born baby under the water hyacinth in a government pond?”

6. It was held by the learned Trial Court that it has emerged from the robust evidence that the victim was impregnated by the appellant and it was the duty of the appellant to provide her with proper treatment while she was in such a perilous condition after delivery of the baby. The appellant did not take care of the victim despite the fact that the victim was bleeding profusely for ten days. It was also observed that the appellant concealed the fact if the baby was dead or alive. However, the learned Trial Court held that there was no evidence against the appellant under Section 302 of the IPC and he was not held guilty of offence of intentionally causing death of the victim and her baby. The appellant was held guilty with a lower offence under Section 304 (A) of the IPC and was sentenced to undergo RI for two years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) with default stipulation.

7. Learned counsel for the appellant laid stress in his argument that there is not even a scintilla of evidence that the appellant concealed the body of the baby under the water hyacinth in the nearby pond behind the house of PW-1 and PW-2. It is submitted that the learned Trial Court has correctly held that offence under Section 302 IPC has not been proved by the prosecution. The learned counsel for the appellant laid stress in his argument that the evidence of PW-1 and PW-2 clearly reveals that the appellant took the victim for treatment

immediately when he was informed that the victim was bleeding profusely and on the same day, the victim had passed away, but the learned Trial Court has misinterpreted the evidence and has erroneously held that the appellant kept neglecting the victim for ten days.

8. Learned counsel for the appellant has drawn the attention of this Court to the evidence of the MO, Dr. Pulak Kr. Deka who deposed as PW-4 that on 24.12.2004 he examined the victim X and found the following –

“The patient complained of profuse bleeding following delivery of baby in the early hours of the morning of 14.12.04, as stated by the patient. On examination, pulse was found feeble, Blood pressure : 70 .

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Pallor 2 ++. Chest clear. Per abdomen : soft.

Per vaginal examination : Bleeding found.

Intravenous drip with Haemacel joined.

Patient was referred to Mangaldoi Civil Hospital immediately.”

9. It is submitted that the learned Trial Court has misinterpreted the date recorded by the doctor as 24.12.2004 but in reality the victim had already passed away before 15.12.2004. Thus it is apparent that the victim died before 15.12.2004 and the appellant had taken the victim for treatment on 14.12.2004. It has surfaced from the evidence of PW-4 that the victim was taken for treatment on 14.12.2004. This goes to prove that there was no negligence on the part of the appellant. The remaining part of the argument submitted by the learned counsel for the appellant will be discussed at the appropriate stage.

10. It has been fairly submitted by the learned Additional Public Prosecutor that the evidence is relating to the incident that has surfaced from the statement of the appellant which led to the recovery of the body of the victim.

In reply the learned counsel for the appellant laid stress in his argument that this statement under Section 161 of the CrPC cannot be considered as a disclosure statement as per Section 27 of the Indian Evidence Act, 1872 (the Evidence Act for short).

11. Now the question that falls for consideration is that whether the learned Trial Court has erred in convicting the appellant under Section 304A of the IPC.

12. To decide this case in its proper prospective, the evidence is re-appreciated.

13. Smt. Babita Saikia Bhuyan deposed as PW-1 that one evening at about 7.00 PM in the year 2004, the appellant came with a young girl, aged 20 (Twenty) years, and introduced her as his niece and requested her (PW-1) to provide shelter to his niece. She and her husband were reluctant to provide shelter to the young girl but on persistent requests by the appellant they provided shelter to the girl, who introduced herself as 'X' and she also stated that she was from Buraha. She (PW-1) has also noticed that X's limbs were swollen. After leaving the girl in their house, the appellant did not come to their place on the following day and the girl stayed in their house for one more day. On the third day, the girl complained of severe stomachache. Then, her husband went to the appellant's house and summoned him. The appellant came and took the girl to the hospital. After four days, police came to their house and started interrogating them. The police recovered one dead body of an infant from the adjacent government drain. The baby was covered with a piece of cloth. The baby was seized in her presence and she affixed her signature on the seizure list. This witness proved her signature on the seizure list as Exhibit-1(1). The police held inquest over the dead body and

this witness has proved her signature on the inquest report as Exhibit-2(1). PW-1 was forwarded to the Magistrate who recorded her statement. This witness has proved her signatures on the statement as Exhibit-3(1), 3(2) and 3(3). She was also informed that the girl 'X' had passed away.

14. In her cross examination, she has deposed that her statement before the Magistrate is similar to her deposition in the Court.

15. The learned counsel for the appellant laid stress in his argument that the evidence of PW-1 exonerates the appellant because when the appellant heard that the victim was bleeding profusely, he immediately came and took her (X) for treatment. Her evidence is silent about birth of a baby who was abandoned in a drain or in a pond. There is not a whisper in the evidence as to how the victim gave birth to the baby and whether the baby was a stillborn baby.

16. Similarly PW-2 Sri Reba Bhuyan deposed as PW-2 that on the day of the incident at about 7:00-8:00 AM, the appellant accompanied by a young girl aged about 22/23 years came to their house and asked them to provide shelter to the young girl. Initially, they were reluctant to provide shelter to the young girl but on persistent requests by the appellant, they provided shelter to the young girl. On the following day, the appellant did not visit their house. Thereafter, on the third day at about 8.00 AM the young girl 'X' complained of severe stomachache and then he went to the appellant's house and called him. The appellant came and took the victim in an auto rickshaw to the Sipajhar Hospital. The young girl was from a place called Duni. After four days, his wife informed him that the police led by the appellant visited their house. The appellant led the police to the place where he kept the body of the newborn infant. The body was recovered amidst the water hyacinth in the drain. He was

forwarded to the Magistrate who recorded his statement. He has proved his statement before the Magistrate as Exhibit-4 and Exhibit-4(1) to 4(4) as his signatures.

17. In his cross examination PW-2 has stated that Duni and Buraha are interior villages. PW-2 further stated that the appellant stated that the appellant brought the victim for treatment as she was suffering from jaundice. He has also admitted in his cross examination that when the baby was recovered from the drain, the appellant was sitting in the courtyard. His wife also did not inform him whether she saw the appellant leading to the recovery of the baby.

18. A scrutiny of the evidence of PW-1 and PW-2 reveals that they were silent about the birth of an infant before the victim was taken for treatment to the Sipajhar Hospital. It has to be borne in mind that the FIR was lodged by a police personnel and the fact that PW-1 and PW-2 were also earlier considered as accused cannot be ignored but at the same time, a case has to be proved beyond a reasonable doubt. The allegation that a stillborn baby was abandoned by the appellant has not been stated or proved by the prosecution witnesses. Charge sheet was however not laid against PW-1 and PW-2.

19. Now reverting back to the evidence, Sri Bishnu Dutta Sharma deposed as PW-3 that on 21.12.2004 he was serving as Circle Officer-cum-Executive Magistrate at Sipajhar Circle. On that day, the O/C of Sipajhar Police Station made preparations for inquest of a dead body of an infant. The body was lifted by the appellant and brought towards Reba Bhuyan's house. The body was found within the water hyacinth and was covered with white cloth. He held inquest and he has proved his signature as Exhibit-2(1) on the inquest report.

20. Smt. Babita Saikia's (PW.1's) father Sri Khangidhar Saikia deposed as PW-

6 that at the time of the incident at about 8.00 AM, he went to visit his daughter when he noticed a gathering in front of her house. Police was also present amongst the public. He noticed the body of an infant covered with paper. The police seized the body and he has identified his signature as Exhibit-1(3) on the seizure list. This witness was declared as a hostile witness and the prosecution was allowed to cross examine its own witness. The cross examination of this witness is not noteworthy as the prosecution has failed to affirm the initial statement of this witness through the cross examination of the IO.

21. Thus, it can be held that the evidence of PW-1, PW-2 and PW-3 did not substantiate the allegation that a stillborn child was abandoned by the appellant. However, the body of the child was recovered from the nearby drain. The appellant was not held responsible for the child's death by the Trial Court.

22. Sri Dipjyoti Dadhara is the SI of Police and he deposed as PW-5 that on 15.12.2004, while he was serving as SI of Sipajhar Police Station, the O/C entrusted him with an investigation relating to a UD case. He embarked upon the enquiry and found that the appellant impregnated the victim 'X' after developing illicit relationship with her and the appellant brought 'X' to PW-1's house. On 14.12.2004, the victim gave birth to a female child but the appellant kept the child alive under water hyacinth in the nearby pond by wrapping the child with cloth (katha). On 21.12.2004, the appellant led to the place where he had concealed the child and the body of the child was recovered. He recorded the statement of the appellant and he has identified the statement of the appellant as Exhibit-6 and Exhibit-6(1) as his signatures.

23. PW-5 has further deposed that the statement of the appellant was recorded before the recovery of the body and thereafter, the appellant led him to the place of occurrence. He seized a piece of cloth wrapped around the body

of the child. He has proved the seizure list as Exhibit-1 and his signature as Exhibit-1(2). After preliminary investigation, he lodged the FIR which is marked as Exhibit-7. He has proved the signature on the FIR as Exhibit-7(1). PW-5 further deposed that he forwarded the body of the infant for autopsy. He found the body of the victim 'X' at Mangaldoi Civil Hospital and held inquest over the body. The body was sent for post autopsy at Mangaldoi Civil Hospital. He detained the appellant on 20.12.2004 for interrogation and subsequently, he was arrested by the IO Sri Pradip Baruah on 21.12.2004 at about 8.00 PM. The appellant led to the recovery of the body on 21.12.2004 at about 11.30 AM.

24. I find force in the argument of the learned counsel for the appellant that leading to discovery was not properly conducted as per Section 27 of the Evidence Act. The appellant was not arrested when he led to recovery of the dead infant. He led to recovery of the dead infant on 21.12.2004 at about 11.30 AM but the evidence of PW-5 clearly reveals that the appellant was arrested after recovery of the body i.e. on 21.12.2004 at about 8.00 PM.

25. Reverting back to the evidence, PW-5 deposed in his cross examination that the FIR of UD Case was lodged by the father of the deceased 'X'. It was alleged through the FIR that the victim died as she was suffering from jaundice.

26. Dr. Pulak Kr. Deka deposed as PW-4 that on 24.12.2004 he was serving as Medical and Health Officer at Sipajhar PHC and he examined the victim 'X' and found the following –

“The patient complained of profuse bleeding following delivery of baby in the early hours of the morning of 14.12.04, as stated by the patient. On examination, pulse was found feeble, Blood pressure : 70.

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Pallor 2 ++. Chest clear. Per abdomen : soft.

Per vaginal examination : Bleeding found.

Intravenous drip with Haemacel joined.

Patient was referred to Mangaldoi Civil Hospital immediately.”

27. He has proved the Medico Legal Report as Exhibit-5 and Exhibit-5(1) as his signature. He further deposed that police interrogated him regarding the occurrence. The aforesaid patient came to the hospital before 10.00 AM on the date of the examination (14.04.2004). The patient was accompanied by the appellant (Bichitra Sarmah). The patient was unable to speak normally. The appellant requested him to inform the condition of the patient to her family members and he immediately sent Diganta Bania to inform the family members of the patient. The patient informed him that the appellant Bichitra Sarmah was a relative.

28. This witness was declared a hostile witness by the prosecution and the prosecution was allowed to cross-examine this witness. However, the cross examination by the prosecution was not affirmed with the cross examination of the IO. Thus, the cross examination of this witness is not noteworthy.

29. I find substance in the argument of the learned counsel for the appellant that evidence of negligence is lacking. The evidence of PW-1 and PW-2 clearly depicts that the appellant was informed about the victim's condition and as soon as he was called to PW-2's house, the appellant went and then, he took the victim for treatment. The victim was provided treatment by PW-4 on 14.12.2004 and thereafter, PW-4 referred the victim to Mangaldoi Civil Hospital. The evidence of PW-5 clearly reveals that immediately on the next date, PW-5 was entrusted with the enquiry relating to the death of the victim 'X'.

30. It is further submitted by the learned counsel for the appellant that

Exhibit-5 clearly reflects that the victim was immediately brought to the hospital at 10.00 AM.

31. It is true that the evidence of PW-1 and PW-2 reflects that the appellant was summoned at about 8.00 AM to their house and then he immediately took the victim to the hospital at about 10.00 AM. Although PW-4 is declared a hostile witness, his evidence-in-chief depicts that the appellant asked the doctor PW-4 to inform the victim's family members about the victim's condition as by then the victim's condition had worsened.

32. Learned counsel for the appellant has relied on the decision of the Hon'ble Supreme Court in *Alister Anthony Pereira vs. State of Maharashtra* reported in (2012) 2 SCC 648 wherein it has been observed that :

“35. In Empress of India v. Idu Begl3 1881 (3) All 776, Straight J., explained the meaning of criminal rashness and criminal negligence in the following words: criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

36. The above meaning of criminal rashness and criminal negligence given by Straight J. has been adopted consistently by this Court.

37. Insofar as Section 304A IPC is concerned, it deals with death caused by doing any rash or negligent act where such death is caused neither intentionally nor with the knowledge that the act of the offender is likely to cause death. The applicability of Section 304A IPC is limited to rash or negligent acts which cause death but fall short of culpable homicide amounting to murder or culpable homicide not amounting to murder. An essential element to attract Section 304A IPC is death caused due to rash or negligent act. The three things which are required to be proved for an offence under Section 304A are : (1) death of human being; (2) the accused caused the death and (3) the death was caused by the

doing of a rash or negligent act, though it did not amount to culpable homicide of either description."

33. Learned counsel for the appellant has also relied on the decision of Hon'ble Supreme Court in *Syed Akbar vs. State of Karnataka reported in (1980) 1 SCC 30* wherein it has been observed and held that:

*"28. In our opinion, for reasons that follow, the first line of approach which tends to give the maxim a larger effect than that of a merely permissive inference, by laying down that the application of the maxim shifts or casts, even in the first instance, the burden on the defendant who in order to exculpate himself must rebut the presumption of negligence against him, cannot as such be invoked in the trial of criminal cases where the accused stands charged for causing injury or death by negligent or rash act. The primary reasons for non- application of this abstract doctrine of res ipsa loquitur to criminal trials are: Firstly, in a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused always rests on the prosecution, as every man is presumed to be innocent until the contrary is proved, and criminality is never to be presumed subject to statutory exception. No such statutory exception has been made by requiring the drawing of a mandatory presumption of negligence against the accused where the accident "tells its own story" of negligence of somebody. Secondly, there is a marked difference as to the effect of evidence, viz. the proof, in civil and criminal proceedings. In Civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt, but in Criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. As pointed out by Lord Atkin in *Andrews v. Director of Public Prosecution (1937) 2 All ER 552*, "simple lack of care such as will constitute civil liability, is not enough;" for liability under the Criminal Law "a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied, reckless most nearly covers the case."*

34. In the instant case, a benefit of doubt has to be extended to the

appellant. Until and unless the victim was bleeding profusely it was not discernable for the appellant that her life was under some sort of threat. As soon as he was informed about her condition, he immediately went and tried to provide whatever treatment possible to her. Both the appellant and the victim may not have been aware that a child birth would have ended in such a serious consequence. The evidence of other witnesses also does not substantiate the case of prosecution.

35. Section 304A IPC reads :-

“Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

36. I have relied on the decisions of the Hon’ble Supreme Court in Alister Anthony Pareira (supra) and Syed Akbar (supra). Out of the three things which are required to be proved in this case, death of human being has been proved. The death of the victim and her daughter has not been disputed. It has already been held by the learned Trial Court that the appellant was not responsible for death of the infant but the Trial Court held the appellant responsible for death of the victim which did not amount to culpable homicide. The appellant was blamed for rash and negligent act. In this case, the appellant does not have to exculpate himself for any negligent act. There is not a scintilla of evidence that the appellant was negligent. The prosecution failed to establish gross negligence. It could be discernable from the evidence that the negligence of the appellant was merely based on an error of judgment and his negligence cannot be considered to be culpable or gross negligence. I find substance in the argument of the learned counsel for the appellant.

37. PW-7 Sri Dithakananda Hazarika was the Revenue Circle Officer, Kalaigaon Revenue Circle who held inquest over the body of the deceased victim X. He deposed that on 15.12.2004 while he was serving as Executive Magistrate, he held inquest of the body of the deceased 'X' at Mangaldoi Civil Hospital at about 1.30 PM. He has proved his inquest report as Exhibit-8 and his signature as Exhibit-8(1).

38. Sri Pranab Saharia, Junior Assistant of the office of DDS, Mangaldoi deposed as PW-8 that on 21.12.2004 he accompanied Bishnu Dutta Sarmah, Circle Officer and the police personnel to Reba Bhuyan's house. The appellant was brought to the place of occurrence i.e. at Reba Bhuyan's house. The appellant brought out a body wrapped with cloth from a pond. The appellant stated nothing about the body. Police seized the body. He (PW-8) has proved his signature on the seizure list as Exhibit-1(4).

39. PW-9 Dr. Nirmal Chandra Sarmah held inquest on the body of the victim and PW-11 Dr. Tarun Kumar Das held inquest on the body of the infant. According to the opinion of the MO, death of the victim was due to shock as haemorrhage was retained (postpartum haemorrhage).

40. On a query by the Trial Court, PW-9 has deposed that "Placenta" is usually not attached to the muscles of the uterus. In case of "Placenta Acreta" the placenta is attached to the muscles of uterus. Normally, the Placenta comes out spontaneously after delivery of the baby. But in case of placenta acreta where Placenta is attached to the muscles of Uterus, the Placenta does not come out spontaneously and it requires intervention by a doctor. Without help of doctors Placenta acreta does not come out.

41. In his cross examination PW-9 has deposed that there is no definite cause

of the condition of placenta accreta. In pregnancy cases, there are remote chances of placenta accreta. The delivery process of the deceased was abnormal because of presence of placenta accreta. He could not affirm whether the baby was alive or dead at the time of delivery. The enlargement of the uterus is normal during pregnancy. The age of the foetus was 30 (Thirty) weeks at the time of delivery of the baby.

42. Thus the evidence of PW-9 indicates that the condition of the victim could have been taken care of by a doctor. The evidence clearly reflects that the appellant had brought the victim to the doctor but unfortunately the victim expired.

43. The evidence of PW-7 and PW-8 also does not substantiate the evidence of the prosecution.

44. Similarly, the evidence of PW-10 has also not supported the prosecution's case. PW-10 is a petition writer. Md. Badiur Rahman deposed as PW-10. His evidence reveals that he was present when the appellant was asked to give his blood sample. The appellant did not allow his blood sample to be taken. The evidence of PW-11 reflects that the weight of the foetus was 2.8 kgs. The body parts like cranium, spinal canal, scalp, skull and vertebrae, membrane, brain, spinal cord, liver, spleen, kidney, bladder etc. were all decomposed. Full term dead female foetus and cause of death could not be ascertained. PW-11 has proved his signature on the Post-Mortem report as Exhibit-10(1).

45. As the petitioner is not held guilty of offence under Section 302 IPC, the discussion relating to examination of foetus is not required to be dilated.

46. Sri Pradip Baruah deposed as PW-12 that on 21.12.2004 he was serving as O/C at Sipajhar Police Station. On that day, SI Dipjyoti Dadhora lodged an

ejahar. He has proved the ejahar (FIR) as Exhibit-7 and Exhibit-7(2) as his signature. PW-12 has further deposed that the SI Dipjyoti Dadhora (PW-5) proceeded along with the Circle Officer towards a pond near Kadamtoli and recovered the body of a female infant which was wrapped with a piece of cloth. He (PW-12) prepared a sketch map of the P.O and proved his signature on the sketch map as Exhibit-11(1). He has identified the inquest report of the infant as Exhibit-2. He arrested the appellant along with PW-1 and PW2. PW-12 further deposed that the appellant provided treatment to the infant's mother, who was referred from Sipajhar Hospital to Mangaldoi Civil Hospital but the victim died during treatment. Inquest was held and GD entry was registered and investigation commenced. He recorded the statement of some witnesses. Request was made for DNA profiling. He obtained the Medico Legal report relating to treatment of the victim. Meanwhile, he was transferred and he handed over the CD to the O/C.

47. The IO, Sri Jatindra Nath Saikia deposed as PW-13 that on 25.05.2006, he was serving as O/C at Sipajhar Police Station and he took up the investigation of this case. Samples were drawn from the infant for DNA profiling but the appellant was reluctant for any DNA test. After completion of investigation, he submitted charge sheet against the appellant.

48. Recapitulating the entire evidence, it is held that the evidence of the official witnesses reflect that they have conducted the investigation. The body of the infant was recovered from the pond behind PW-1 and PW-2's house but not a single witness has described how and in what manner, the body was abandoned in the pond or in the drain. There is not a whisper in the evidence as to how the infant was born. The statement of the appellant leading to the recovery of the body cannot be accepted as evidence under Section 27 of the

Evidence Act. As soon as the victim was profusely bleeding, the appellant was called and he immediately took the victim for treatment. Thus, it cannot be held that the appellant was negligent and he acted in a rash and negligent manner.

49. It is true that as the victim was at the advance stage of pregnancy, she needed immediate medical care, but she was taken to some neighbour's house. This cannot be considered as a rash and negligent act of the appellant. It has not been explained by the prosecution in what manner the victim was brought to the PW-1 and PW-2's house. There is no evidence if the appellant was the father of the victim's child. Both the appellant and the victim were very young at the time of the incident to fathom what would be the consequences at the advance stage of pregnancy. I would like to reiterate that the prosecution has failed to prove beyond a reasonable doubt that the appellant acted in a rash and negligent manner.

50. In view of my foregoing discussion, this appeal is allowed. The judgment and order dated 29.09.2012 passed by the learned Sessions Judge, Darrang, Mangaldoi in Sessions Case No. 69 (DM)/2007 is hereby set aside. The appellant is acquitted from the charges under Section 304A IPC on benefit of doubt and is set at liberty forthwith.

51. However, keeping in view the provisions of Section 437-A CrPC, the appellant Sri Bicitra Sarma @ Bichitra Sarma is directed to furnish personal bond in sum of Rs.30,000/- (Rupees Thirty Thousand) and assure the bond in the like amount before the learned Trial Court which shall be effective for a period of six months.

52. In terms of the above observations, this Criminal Appeal stands disposed of.

53. Send back the Trial Court Records along with a copy of this judgment and order.

JUDGE

Comparing Assistant