

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

CRL.A.No. 2292 of 2006 ()

**AGAINST THE JUDGMENT IN SC 18/2003 OF SESSIONS COURT, WAYANAD, KALPETTA
DATED 28-10-2006**

APPELLANT/ACCUSED:

**UMMER,
S/O.KHADER, THAZHEKKALATHIL HOUSE, NAGAMA
ARANAPPARA, THIRUNELLY AMSOM.**

BY ADV. SRI.LALJI P.THOMAS

RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. GITHESH R.

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16.2.2015 ,
THE COURT ON 25.2.2015 DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A. No.2292 of 2006

Dated this the 25th day of February, 2015

J U D G M E N T

One Seetha who belonged to a scheduled tribe died on 10.01.1995 following abortion of her pregnancy. She was a widow. The prosecution alleged that she had illicit relationship with the appellant who is a Muslim, which resulted in her pregnancy. At the instance of the appellant the co-accused aborted the pregnancy two days before her death. The appellant was tried for the offences under Section 314 of IPC and Section 3(1) (xii) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The trial court found the co-accused not guilty of the offences and accordingly acquitted her of all the offence. But it convicted the appellant of the offence under Section 109 r/w. Section 312 of IPC and sentenced him to undergo rigorous imprisonment for six months and directed him to pay a compensation of Rs.25,000/- with a default clause. He was acquitted of the other offences.

2. Seetha who had been a widow for four years became pregnant. The testimony of PW15 Doctor Joseph T. John who conducted the postmortem and Ext.P16 postmortem certificate and Ext.P16(a) final opinion prove that it is abortion that resulted in the death of Seetha. These facts are not disputed. There is also no dispute that the abortion was illegal. Seetha was guilty of the offence under Section 312 IPC.

3. The prosecution relied on the evidence of PW5 and PW16 to prove that the appellant was responsible for the pregnancy of Seetha. They are children of deceased Seetha. Their house had only two rooms and a kitchen. PW16 Anil Kumar deposed that his mother Seetha and the appellant were living like husband and wife after the death of her husband. He added that the appellant used to stay with Seetha during night in her house and she became pregnant. This evidence of PW16 stands unchallenged in the cross-examination for all practical purposes. His evidence has received corroboration from the testimony of

his sister PW5 Rajani. The Sessions Court was fully justified in holding that the appellant was the father of the child in the womb of Seetha.

4. The only question which remains to be considered is whether the appellant abetted miscarriage. The allegation is that he instigated Seetha to abort pregnancy.

5. According to the prosecution two days before her death Seetha went to Kudak along with one Kunjumol. Seetha came back in the evening. The next day she was found lying in a pool of blood in her house. Kunjumol was summoned. She nursed Seetha, who slept in the night. In the wee hours she was found shivering. She was not able to walk. She went out to answer the call of nature. When she stood up her daughter PW5 found some flesh like matter, where she was sitting. She also found MO2 rubber tube on her mat. Seetha refused to go to hospital. But Kunjumol took her to a nearby hospital, from where she was shifted to District Government Hospital, where she died.

6. PW16 Anil Kumar gave evidence to the effect that

when Seetha left Kudak with Kunjumol the appellant was with her. This was not called into question in the cross-examination. It came out in the evidence of PW5 Rajani that on the previous day of Seetha's going to Kudak the appellant came to her house. PW5 heard him saying to Seetha that she should go to Kudak to abort the pregnancy. It was suggested to PW5 that her testimony on this point was false and was given for the purpose of the case. Except this suggestion no question was put to her to show that her evidence is not reliable. I find no reason to reject her evidence. Her testimony proves that the appellant wanted Seetha to abort her pregnancy.

7. Seetha was a member of a scheduled tribe. The appellant was living with her though they were not married and belonged to different religions. He had a motive to ask Seetha to abort the pregnancy. The irresistible conclusion is that it was at his instance Seetha committed the offence. The learned Sessions Judge rightly came to the conclusion that he is guilty of abetting the offence punishable under

Section 312 IPC. His conviction is only to be upheld.

8. The sentenced imposed on the appellant is only rigorous imprisonment for six months. This cannot be said to be excessive. He has been directed to pay Rs.25,000/- (Rupees twenty five thousand only) as compensation to PW5 and PW16, children of Seetha. This direction also cannot be said to be unreasonable. The order that the appellant should undergo rigorous imprisonment for six months if he does not pay the compensation also is legal.

In the result, this appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

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P.A. TO JUDGE

shg/