

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 653 of 2010**

1. Awadhesh Yadav S/o Shyamlal Yadav, R/o Bhathapara Saja, PS Saja, Durg (CG)

**---- Appellant  
(In Jail)**

**Versus**

1. State Of Chhattisgarh, through the Police Station Saja, District Durg (CG)

**---- Respondent**

**And**

**CRA No. 138 Of 2011**

1. Ramkali Bai, W/o Rajkumar, aged 41 years, R/o Baigapara, Saja, P.S. Saja, District Durg (CG)

**---- Appellant  
(In Jail)**

**Vs**

1. State Of Chhattisgarh, through the Police Station Saja, District Durg (CG)

**---- Respondent**

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For Appellant:

Shri P.P. Sahu, Advocate for appellant in  
Criminal Appeal No.653/10.  
Shri Devershi Thakur, Advocate for the  
appellant in Criminal Appeal No.138/2011.

For Respondent:

Shri Ashish Surana, P.L. for the State.

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**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice Inder Singh Uboweja**

**Judgement on Board by Justice Pritinker Diwaker**

**15/02/2016**

1. Since the aforesaid two criminal appeals arise out of the same judgment dated 6.9.2010 passed by the Additional Sessions Judge, Bemetara in S.T. No.41/09, they are being disposed of by this common judgment.
2. By the impugned judgment appellant Ramkali Bai has been convicted under Sections 302, 218, 201 read with Section 34 of the Indian Penal

Code ((for short 'the IPC') and sentenced to undergo R.I. for life & fine of Rs.500/-; R.I. for 3 years & fine of Rs.200/- & R.I. for 1 year, plus default stipulations. Whereas, appellant Awadhesh Yadav has been convicted under Sections 201/34 & 318 of IPC and sentenced to undergo R.I. for 3 years & fine of Rs.200/-, in default additional R.I. for 1 month and R.I. for 1 year respectively.

3. Brief facts of the case are that appellant-Ramkali was having illicit relation with appellant Awadhesh as a result of which she became pregnant and delivered a female child on 20.3.2009. Appellant Ramkali to hide the fact of her delivery had killed the said infant and thereafter the body was thrown by appellant Awadhesh in an open place i.e. at under construction Bus Stand. Merg Intimation (Ex.P-1) was lodged at the instance of one Manoj Singh (PW-1) on 21.3.2009. Inquest was performed on the dead body vide Ex.P-4. Dead body was sent for post-mortem examination which was conducted on 22.3.2009 by Dr. S.N. Manjhi (PW-11) vide Ex.P-25 and he opined that the child was born alive and death was due to cardio-respiratory failure as a result of head injury caused by hard and blunt object. FIR (Ex.P-16) was registered on 23.3.2009 under Section 318 IPC against unknown persons. During the course of investigation, memorandum statement (Ex.P-24) of accused/appellant Awadhesh was recorded and it has been discovered that it is accused/appellant Ramkali who gave birth to the said infant. Deoxyribonucleic Acid test (DNA) of the appellants and said infant was performed and as per report (Ex.P-27), bone of the said infant matches with the bloodstains of the appellants and they are biological father & mother of the said infant. Appellant Ramkali was medically examined by Dr. (Smt.) M. Shrivastava (PW-4) and gave her report Ex.P-7 opining therein on the basis of the Sonography report of appellant Ramkali that she might have delivered a child. Dr. Jyoti Dhruv had also medically examined appellant Ramkali vide Ex.P-7 and noticed

pregnancy marks on her body. Dr. Badri Narayan Dewangan (PW-13) has also medically examined appellant Ramkali and noticed the symptoms of pregnancy.

4. After completion of investigation, charge sheet was filed against the accused persons under Sections 302/34, 318/34 & 201/34 IPC and accordingly the charges were framed against them by the trial Court. The prosecution in order to substantiate its stand, examined 13 witnesses and exhibited a number of documents. Statements of the accused persons were recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication in the crime in question.
5. After hearing counsel for the parties the trial Court has convicted & sentenced the accused/appellants for the offences as mentioned above.
6. Learned counsel for the accused/appellants submits that;
  - there is absolutely no material to connect the appellants in any manner with the murder of the deceased infant and therefore the court below has erred in convicting the appellants.
  - the possibility that deceased infant being born dead and under the apprehension the body was thrown by the appellants cannot be ruled out and therefore the appellants can be at best convicted under Section 201/34 IPC only.
  - even if the entire prosecution case is taken as it is, at best the accused/appellant Ramkali can be held guilty under Section 304 Part-1 of the IPC and not under Section 302 of the IPC as has been done by the trial Court and since she is in jail since 23.3.2009 i.e. for last about seven years, after converting her conviction into Section 304 Part-1 IPC, she may be sentenced to the period of detention already undergone by her.

- Considering the act attributed to appellant Awadhesh by the prosecution, the fact that he remained in jail for more than 1½ years and is on bail during pendency of this appeal, no useful purpose would be served in again sending him to jail and therefore the sentence imposed on him under Section 201/34 of IPC may be reduced to the period already undergone by him.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that once it is established that the appellants are the biological parents of the infant deceased, it is their bounden duty to explain as to how the infant died but they failed to do so.
  8. Manoj Singh (PW-1) is the person at whose instance merged intimation Ex.P-1 was recorded. He is also the witness of spot map (Ex.P-2) and inquest (Ex.P-4).
  9. Tumanlal Devhare (PW-2) is the Patwari who prepared spot map (Ex.P-5).
  10. Dr. (Smt.) M. Shrivastava is the person who medically examined appellant Ramkali vide Ex.P-7 and found that her breasts were full of milk. Based on the Sonography report of appellant Ramkali, this witness has opined that she would have delivered a child.
  11. Ishwari Kumar Nirmalkar (PW-5) is the witness of seizure memos Ex.P-9 & P-10 and memorandum (Ex.P-8) of appellant Awadhesh. Though this witness has turned hostile but admitted his signatures over the aforesaid documents.
  12. Prahlad Sahu (PW-6) is also the witness of seizure memo (Ex.P-9) and memorandum (Ex.P-8), but he too has not supported the prosecution case and turned hostile. However, he has admitted his signatures over the

aforesaid documents.

13. Dr. Jyoti Dhruw (PW-9) is the person who along with two other doctors had taken samples of the appellants for DNA test and also filled the identification forms of Ex.P-12 & Ex.P-13. In the cross-examination this witness has stated that developments noticed in the body of appellant Ramkali are found only after delivery of child.
14. Deendayal Kausley (PW-11) is the investigating officer and he has duly supported the prosecution case.
15. Dr. S.N. Manjhi (PW-12) is the doctor who conducted post-mortem examination on the body of deceased infant vide Ex.P-25 and noticed that body of female foetus was in early stage of decomposition. He opined the cause of death to be cardio respiratory failure as a result of head injury caused by hard and blunt object. According to this witness, the hydrostatic test was conducted to determine whether or not the infant was stillborn and in the test the pieces of lung started floating in the water which would have only happened after the infant had taken a breath.
16. Dr. Badri Narayan Dewangan (PW-13) is the person who conducted sonography of appellant Ramkali vide Ex.P-26 and opined that uterus of appellant Ramkali was a bit large and clotted blood was present in it, which indicates recent delivery of child.
17. Minute examination of the evidence makes it clear that on the Merg (Ex.P-1) lodged at the instance of one Manoj Singh (PW-1) regarding discovery of dead body of the infant, the investigation was commenced and during investigation it was unfolded that accused/appellant Ramkali, who became pregnant as a result of illicit relation with appellant Awadhesh and delivered a female child, with intent to conceal the birth of her illegitimate child committed her murder by causing injuries with hard & blunt object and thereafter to save herself from the legal punishment gave her to appellant Awadhesh to dispose it of secretly and who, in turn, threw it in a pit at the

under-construction site and covered it with *murom* and thereby helped her in concealing the body. The fact that accused/appellant Ramkali was pregnant in recent past gets corroboration from the evidence of the doctors (PW-4, PW-9 & PW-13), who have stated that upon examination of appellant Ramkali they noticed the symptoms which are normally found in the woman after recent delivery of a child. To ascertain parenthood of the infant deceased, samples of accused/ appellants were taken and sent to the laboratory of DNA and the report (Ex.P-27) of DNA Test conducted at Centre for DNA Fingerprinting and Diagnostics, Hyderabad states that it is the accused/appellants who are the biological parents of the deceased.

According to autopsy surgeon, the infant deceased was born alive and died due to cardio respiratory failure as a result of head injury caused by hard and blunt object. The infant deceased was not stillborn further finds support from the hydrostatic test conducted in which the lungs started floating in the water and as per medical jurisprudence, a lung that floats means born alive and a lung that sinks means stillborn. Thus once it is proved that the child was born alive and his death was homicidal in nature, the accused/appellant-Ramkali was under obligation to come forward with a plausible explanation as to how it occurred, but no reasonably convincing explanation has been offered by her except making bald denial of all the incriminating circumstances in her statement recorded under Section 313 of Cr.P.C. This facet also raises an accusing finger leading to the involvement of accused/appellants in crime in question.

We find no substance in the argument of counsel for the accused/appellant Ramkali that in the facts and circumstances of case she is liable to be held guilty under Section 304 Part-I of the IPC for the reason that the evidence available on record clearly suggests that she intended to kill the infant deceased as she wanted to conceal the birth of her illegitimate child in order to prevent any reflection being cast on her honour

and with that intention assaulted the infant on her head and had every knowledge that such injury would result in her instantaneous death.

As regards the conviction of accused/appellant Awadhesh under Section 201 of IPC, the ingredients to bring home a charge under Section 201 is that the accused knew or had reason to believe the commission of such offence and with such knowledge or belief he caused any evidence of the commission of that offence to disappear and he did so with the intention to screening the offender from legal punishment. From the evidence available on record it is clear that accused/appellant-Ramkali gave birth to his illegitimate child, it is he who threw the dead body of infant deceased in a pit at the under construction site and covered it with murom and according to medical evidence, the death of infant was due to cardio respiratory failure as a result of head injury caused by hard and blunt object and the death was homicidal in nature. In these circumstances, it cannot be said that he does not have knowledge or reason to believe that the deceased had died as a result of an assault by accused/appellant Ramkali and being so his conviction under Section 201/34 of IPC is justified.

18. For the foregoing reasons, this Court is of the considered opinion that the findings recorded by the trial Court are based on proper appreciation of the entire evidence available on record. That being so, the judgment impugned does not call for any interference. Accordingly, both the appeals being without substance are liable to be dismissed and they are dismissed as such. Appellant- Awadhesh Yadav is reported to be on bail. His bail stands cancelled. He be arrested and sent to jail forthwith to serve out the remaining part of the sentence imposed on him.

Sd/-

(Pritinker Diwaker)  
Judge

roshan/-

Sd/-

(I.S. Uboweja)  
Judge