

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.403 OF 2009

JUDGMENT:

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.'), is filed by the appellant-accused questioning the judgment dated 06.03.2009, passed in Sessions Case No.300 of 2002 by the Assistant Sessions Judge, Asifabad, Adilabad District (for brevity, 'the trial Court'), whereby the trial Court convicted the accused under Section 235(2) Cr.P.C. and sentenced him to undergo rigorous imprisonment for a period of Five (5) years and to pay fine of Rs.500/- (Rupees five hundred only), in default, to suffer simple imprisonment for Two (2) months for the offence under Section 316 of the Indian Penal Code, 1860 (for brevity, 'I.P.C.');

rigorous imprisonment a period of Three (3) years and to pay fine of Rs.500/- (Rupees five hundred only), in default, to suffer simple imprisonment for Two (2) months for the offence under Section 420 I.P.C.; and rigorous imprisonment for a period of One year for the offence under Section 15(2)(B) of the Indian Medical Council Act, with a direction that all the sentences shall run concurrently.

2. Heard the learned counsel for the appellant-accused, learned Additional Public Prosecutor appearing for the respondent-State and perused the material available on record.

3. Learned counsel for the appellant-accused would contend that the findings of the trial Court are contrary to law and facts of the case; the accused is not responsible for the death of the unborn baby; the death occurred due to delay caused by P.Ws.1 and 2; the investigation is faulty; there is no evidence to believe that the accused has committed the offence under Section 316 I.P.C.; on the advice of the accused, the victim was taken to a hospital for treatment; the accused is no way responsible for the charges framed against him; and ultimately, prayed to set aside the conviction and sentence recorded by the accused by allowing the appeal.

4. On the other hand, learned Additional Public Prosecutor would contend that the prosecution examined P.Ws.1 to 10 and got marked Exs.P.1 to P.8; there is ample evidence to show that the accused caused the death of unborn baby; the accused without holding requisite qualification, attended the victim; therefore, the trial Court had rightly convicted and sentenced the accused; and ultimately, prayed to dismiss the appeal.

5. In view of the contentions putforth by both sides, the point for determination is, whether the conviction and sentence recorded against the accused is sustainable?

6. The case of the prosecution is as follows:

On 20.04.2002 at about 1-00 p.m., P.W.2-Vagadi Mayabai was suffering from delivery pains. They approached one L.W.5-

Chandramma, who is a mid-wife. Chandramma disclosed that she knew the accused who is an RMP doctor and the accused was brought there from Kaghaznagar. The accused gave P.W.2 injection for delivery. Then P.W.2 raised cries due to delivery pains. Then the accused said that he would do small operation for due delivery and he did small operation. Thereafter, the condition of the victim-P.W.2 became serious. Later, P.W.2 was shifted to Kaghaznagar and admitted in B:alaji Nursing Home, where P.W.6-Dr. A.Satyanarayana Reddy conducted operation and removed the unborn child on 21.04.2002. It is also alleged that the accused is responsible for the death of the unborn dead child. On a report given by P.W.1-Borkut Prabhaker, the police registered a case in Crime No.29 of 2002 for the offences under Sections 316 and 420 I.P.C. and Section 15(2)(B) of the Indian Medical Council Act and investigated. Ultimately, the accused was charge sheeted for the above offences and tried.

7. The evidence of P.W.1 reveals that he took his daughter-P.W.2 for delivery when she was suffering from delivery pains to the house of L.W.5-Chandramma; she brought the accused and the accused gave injection to his daughter for delivery, but it was of no use; then his daughter was taken to P.W.6-Dr. A.Satyanarayana Reddy to conduct operation; the baby died before the operation was performed by P.W.6-doctor. P.W.1 lodged a report with the police under Ex.P.1. In the cross-examination by the Additional Public Prosecutor, P.W.1 stated that he gave a report to the police stating that due to the acts of

the accused, the baby died. The evidence of P.W.2 reveals that she is the victim in this case; on that day at about 5-00 p.m., she started suffering delivery pains; her father brought L.W.5-Chandramma; thereafter, the accused came there, gave injection to her and performed a minor operation with blade; even then the birth of the baby did not take place; thereafter, she was shifted to Kaghaznagar to the hospital of P.W.6-Dr. A.Satyanarayana Reddy, who performed major operation and took out the dead baby; she was hospitalized for one month. P.W.2 has specifically stated that the baby died due to the minor operation performed by the accused without giving anesthesia. In the cross-examination, P.W.2 reiterated the same and denied that she was deposing false. P.W.3-mother of P.W.2 corroborated the evidence of P.Ws.1 and 2. P.W.3 also spoke about the accused performing small operation with a blade and also stated that P.W.6-Dr. A.Satyanarayana Reddy conducted operation in his hospital. P.W.4-brother of the victim-P.W.2 also corroborated the circumstances of the case. P.W.5 is another relative of P.W.1 and she is a circumstantial witness. P.W.5 deposed about the circumstances which lead to the death of the unborn baby, etc. The other witnesses P.Ws.7 and 8 also corroborated the case of prosecution. The evidence of P.W.6-Dr. A. Satyanarayana Reddy reveals that on 20.04.2002 at about 10-00 p.m., P.W.2 was brought to his hospital with delivery pains; he admitted her in his hospital; as per the information given to him, delivery pains were started from morning and an unqualified

doctor gave injection and did small operation with a blade over the private parts of the victim at 4-00 p.m. on 20.04.2002; therefore, the bleeding started from the vagina of P.W.2. P.W.6 found P.W.2 in shock and there was dead baby inside; the patient was also in hemorrhage shock from the vagina; after reviving the patient, he examined thoroughly; the perineum means around anus, posterior vagina wall on the back and rectum was cut upto a level of 2 to 3 inches; another injury is there, i.e., cut injury over the urethra and bladder to an area of one inch diameter; the cut is towards anterior i.e., front of vaginal wall; baby got struck-up in the vagina; immediately, he performed operation and removed dead baby by cesarean and repaired the rectum and perineum; bladder cannot be repaired as it is technically difficult. P.W.6-doctor also spoke about the conduct of operation and the treatment given to P.W.2. The evidence of P.W.6-doctor and Ex.P.2-history and treatment sheet reveals the same. P.W.6 also issued Ex.P.3-discharge summary and Ex.P.8-medical certificate. In the cross-examination, P.W.6 reiterated the treatment given to P.W.2. As per the evidence of P.W.6-doctor, a minor operation with sharp edge object like blade, was performed which ought not have been performed, particularly, by the unqualified persons/doctors. There is also evidence of the investigating officers against the accused. The contention of the learned counsel for the accused is that the accused did not perform operation and he did not use the blade. There is clear evidence of the doctor-P.W.6 the

manner in which the subject injuries were caused and those injuries are possible with a blade. It is not the contention of the accused that he is a qualified person and he has rightly gave injection to P.W.2 for delivery. There is no record to establish the same. As seen from the entire evidence on record, there are no omissions and contradictions in the prosecution witnesses. There is consistent and cogent evidence of the prosecution witnesses about the manner in which, the accused attended P.W.2. The evidence of P.W.6-doctor is that the baby was struck-up in the vagina of P.W.2. Had the operation was not performed by the accused, the baby would not struck-up in the vagina. The struck-up of the baby in the vagina resolved the death. The trial Court while dealing with the subject matter, had elaborately held all the points raised by the accused and ultimately, held that the accused is guilty of the offences punishable under Sections 316 and 420 I.P.C. and Section 15(2)(B) of the Indian Medical Council Act and consequently, convicted and sentenced the accused for the said offences. Viewing from any angle, there is no infirmity in the impugned judgment. The maximum sentence punishable for the offence under Section 316 I.P.C. to suffer ten years. The trial Court convicted and sentenced the accused for the offence under Section 316 I.P.C. is rigorous imprisonment for five years with fine of Rs.500/-. For the other offences also, the sentence imposed appears to be minimum. Under these circumstances,

there is nothing to take a different view. The appeal is devoid of merits and is liable to be dismissed.

8. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence recorded by the trial Court against the accused for the offences under Sections 316 and 420 I.P.C. and Section 15(2)(B) of the Indian Medical Council Act, in Sessions Case No.300 of 2002, dated 06.03.2009.

9. As a sequel, miscellaneous petitions, if any pending in this Criminal Appeal, shall also stand dismissed.

Date: 29-11-2017

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Dr. SHAMEEM AKTHER, J



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