

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Revision 1364 of 2008
Date of Decision : January 31, 2017

Bimla Devi

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J. (Oral)

The petitioner was tried for committing the offence punishable under Section 304-A IPC. Vide judgment and order dated 21/23.1.2008, learned Judicial Magistrate 1st Class, Karnal convicted her for the said offence and sentenced her to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-. The fine imposed was deposited by her there and then.

Aggrieved of her conviction and sentence, the petitioner preferred an appeal but remained unsuccessful as it came to be dismissed by learned Sessions Judge, Karnal vide judgment dated 10.7.2008. Still not satisfied, the petitioner preferred the present revision which was admitted on 10.9.2008 and simultaneously, her substantive sentence of imprisonment

was suspended.

According to the prosecution, Bimla Devi-petitioner and her husband Harish Kumar are residents of village Faridpur, District Karnal. The due date for delivery of the child by Rekha Devi, wife of the complainant was 22.6.2001. The petitioner and her husband deceived them by claiming that they were qualified Dais (midwife). The petitioner came to the complainant and his wife for the purpose of her delivery. Later on, the complainant came to know that they were not qualified persons. The petitioner tried to forcibly expel the foetus from the womb of Rekha Devi but when she remained unsuccessful, she called her husband Harish Kumar. Both of them again made an attempt to forcibly expel the foetus but failed. Though the complainant told them not to do so in that manner but they did not desist. As a result, the condition of the complainant's wife became serious and in the process the foetus in the womb of Rekha Devi lost its life. The complainant brought his wife Rekha Devi to Jatinder Hospital, Panipat where the doctor made her to deliver still born child after an operation.

Learned counsel for the petitioner has not challenged the impugned judgments passed by the learned Courts below while convicting her under Section 304-A IPC. However, he has submitted that the petitioner is facing the agony of criminal prosecution for the last about 16 years. When she was heard by the learned trial Court on the quantum of sentence, she had

pleaded that she was a poor lady and having small children to look after. Further, she was diabetic and had no source of income. Her husband generally remained ill. It is also submitted that she is on bail for the last more than eight years. Out of the sentence of one year imposed upon her, she has already undergone a period of more than two months. Prayer has, accordingly, been for setting aside her remaining sentence of imprisonment.

Learned State counsel has vehemently opposed the prayer made on behalf of the petitioner by submitting that on account of the petitioner carrying out forced delivery on the wife of the complainant, her condition had become critical. So much so that the foetus while it was still in the womb of the complainant's wife died as the petitioner was not a qualified midwife. Later on, the services of a qualified doctor at Jatinder Hospital, Panipat were availed, who forced her to deliver dead foetus.

As per the custody certificate dated 2.11.2016 already brought on record by the learned State counsel, the petitioner has undergone a total sentence of two months and three days. She is not shown to be either involved or convicted in any other case.

After hearing learned counsel for the parties and taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the petitioner behind the bars, once again, for

undergoing her remaining sentence of imprisonment. Ends of justice shall be suitably met, if her substantive sentence of imprisonment is reduced to the one already undergone by her. At the same time, the fine imposed upon her can be suitably enhanced so as to compensate complainant-Raju and his wife Rekha Devi.

Resultantly, the conviction of the petitioner under Section 304-A IPC is upheld. The substantive sentence of imprisonment imposed upon her is reduced to the one already undergone by her. However, the fine of Rs. 1,000/- is enhanced to Rs. 20,000/-. The enhanced amount of fine shall be deposited by her before the learned Chief Judicial Magistrate, Karnal within three months from today failing which she shall be required to undergo simple imprisonment for six months. The enhanced amount of fine, if deposited by her, be disbursed in favour of Rekha Devi, as compensation.

The revision is, accordingly, disposed of.

January 31, 2017
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No