

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.97 of 2017

Arising Out of PS.Case No. -16 Year- 2015 Thana -
BANIAPUR District- SARAN

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Dr. Umesh Kumar, son of Late Prabhunath Prasad, Resident of
Village- Mirjumila, P.S.- Bhagwanpur Hat, District- Siwan.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv Mr. Shashank Shekhar, Adv Ms. Swati Sinha, Adv
For the State	:	Mr. Zeyaul Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 02-05-2018

The appellant has been convicted under Sections 269, 313, 314 of the Indian Penal Code by judgment dated 6th of December, 2016 passed by the learned 9th Additional District & Sessions Judge, Saran at Chapra in connection with Sessions Trial No. 214 of 2016 (New 257 of 2016), arising out of Baniyapur P.S. Case No. 16 of 2015 and by order dated 14th of December, 2016, the appellant has been sentenced to undergo rigorous imprisonment for six months for the offence under Section 269 I.P.C and rigorous imprisonment for ten years each and fine of Rs. 5000/- each for the offences under Sections 313 and 314 I.P.C respectively.

2. The appellant owns and runs a hospital under the



name & style of Biswas Seva Sadan from the house of Uday Rai (P.W. 1). The deceased/Gudiya Kumari had been admitted in the aforesaid Biswas Seva Sadan on complaint of pain in her stomach and later, according to the allegation, she died during the course of treatment. The appellant is stated to be competent only for offering first-aid to the patients and without there being any requisite qualification to undertake dilation and curettage (D & C) of a pregnant woman, he had resorted to such misadventure.

3. The case of the prosecution is based on the written report of Shrawan Mahto (P.W. 7) who has alleged that on 26.01.2015, he along with his family members had brought his daughter Gudiya Kumari to Biswas Seva Sadan for treatment as she was complaining of pain. He was made to understand that his daughter/deceased was pregnant for two months and it was because of that pregnancy that she was suffering from pain. P.W. 7 is then alleged to have been advised that his daughter would have to undergo a dilation and curettage (D & C) procedure for cleaning the womb. On refusal of P.W. 7 to get his daughter operated upon, the doctor of Biswas Seva Sadan insisted upon him that such operation was necessary for removing the pain of his daughter. Shortly after the D & C procedure, the daughter of the informant/P.W. 7 was brought out of the OT dead. While P.W. 7 and other family members



were grieving on the death of the deceased, all the doctors of the hospital (Biswas Seva Sadan) managed to effect their escape. It was alleged that because of the negligence of the doctors of Biswas Seva Sadan, his daughter met her end.

4. On the basis of the aforesaid written report, a case vide Baniyapur P.S. Case No. 16 of 2015 dated 26.01.2015 was registered for investigation for the offences under Sections 269, 313 and 314 of the Indian Penal Code.

5. After investigation, the appellant and two others viz. Pintu Kumar and Seema Devi were chargesheeted and were put on trial. The investigation with respect to other doctors in the panel of Biswas Seva Sadan was kept pending.

6. The Trial Court, after examining nine witnesses on behalf of the prosecution, convicted the appellant as aforesaid but accorded benefits of doubt to the other two accused persons who were put on trial.

7. Uday Rai (P.W. 1) has testified to the fact that Biswas Seva Sadan is being run from his house which was given on rent to the appellant. Though the aforesaid witness has stated that no sooner had the deceased been brought to the hospital, she died without her being treated by the appellant; but such statement does not appear to be correct in view of the deposition of P.W. 7, the father of the deceased.

8. Meena Devi, Kalawati Devi, Sohan Rai, Parwati



Devi and Sabina Devi, who have been examined as P.W.s 2, 3, 4, 5 and 6, though have admitted that the deceased was pregnant and had been brought to Biswas Seva Sadan for treatment, but have unanimously stated that the appellant did not subject her to any treatment. The cause of death, as told by them, was pain in the stomach of the deceased. The aforesaid witnesses have been declared hostile.

9. Shrawan Mahto (P.W. 7), but stood the test of cross examination and has deposed before the Trial Court that he had brought his daughter to Biswas Seva Sadan. He was made to understand that after D & C process, his daughter would recover. The daughter of P.W. 7 was then taken inside the OT and the treatment was begun. Shortly thereafter, he was informed by the management of the hospital that the treatment had begun and it will take about an hour and half for his daughter to recover from unconsciousness. On hearing this, P.W. 7 came back home, only to be informed later that his daughter had died on the operation table. On such information, he came to the hospital where he found his daughter dead.

10. However in his statement before the Trial Court, he has clearly stated that no treatment had begun in his presence.

11. The Trial Court appears to have put P.W. 7 to certain questions viz. whether he had brought his daughter to



the hospital and had got her admitted and for how long did he stay in the hospital and whether any treatment had begun in his presence. In response to the aforesaid questions, P.W. 7 categorically stated that he had got his daughter admitted in the hospital and the treatment actually began in his presence.

12. The dead body of the deceased was put to the postmortem examination by Dr. Krishna Mohan Dubey (P.W. 8). He has deposed as follows:-

"On external examination-

No external finding over her dead pallor was present.

On dissection-Skull and cranel cavity was normal.

Neck and chest were normal, lungs were pale.

Abdomen was opened peritoneal cavity was filled with blood. Left fallopian tube was ruptured at the junction of 2/3rd and 1/3rd. Tube was thickened.

Uterus was empty. Urinary bladder was empty.

In my opinion-The caused of death was haemorrhage and shock. Caused by ruptured ectopic pregnancy and anemia most probably. Duration was within 16-18 hours since post-mortem report.

13. This Court is surprised at the manner in which P.W. 8, a qualified doctor, has deposed. He has not stated clearly as to whether the deceased was subjected to any gynecological treatment or was subjected to surgical interference. In a vague manner, he has stated that he did not find "any external finding" over the dead body. However, he found that the left fallopian tube was ruptured at the junction of 2/3rd and 1/3rd. The death, in his opinion was caused



because of rupture during ectopic pregnancy and anaemia.

14. "Ectopic pregnancy" is a condition in which a fertilized egg settles and grows in any location other than the inner lining of the uterus. The vast majority of ectopic pregnancies are tubal pregnancies because of the fertilization taking place in the fallopian tube. There are other instances of ectopic pregnancies when such fertilization occurs in other locations viz. ovary, cervix or abdominal cavity. There are chances of rupture of ectopic pregnancy which could lead to bleeding and death. Even today, ectopic pregnancy remains the leading cause of pregnancy-related death and that also in the first tri-mester of pregnancy.

15. If the deposition of P.W. 8 is accepted to be correct, there could be a possibility of death taking place because of the rupture of ectopic pregnancy.

16. Nonetheless, what transpires from the deposition of the witnesses and the records available before this Court is that the deceased was subjected to treatment by the appellant. The death may or may not have been caused because of any interference by the appellant but in the absence of any medical qualification of the appellant for undertaking such kind of operation/cleaning up process of a pregnant woman, this can only be taken as a mis-adventure on the part of the appellant.

17. The Trial Court, of his own, asked for relevant



documents from the appellant to know whether he had any qualification to treat any pregnant woman. In response to the aforesaid query, the appellant offered certain documents which made it obvious that neither he had any qualification nor was competent to run any hospital of any kind. The appellant only has the qualification of rendering first-aid services to any needy and nothing more. Taking this factor into account, the Trial Court was rightly of the view that the appellant had made himself liable for being prosecuted for the offences under Sections 269, 313 and 314 of the Indian Penal Code. If the appellant was not competent to terminate the pregnancy of the deceased by resorting to D & C procedure and the clinic/hospital did not have the approval of the government and it did not contain the basic facilities for putting a woman to abortion, the appellant has rightly been held guilty under Sections 313 and 314 of the Indian Penal Code.

18. Under such circumstances, this Court finds no ground to interfere with the judgment of conviction of the appellant under the aforesaid sections.

19. However, what has caught the attention of this Court is that the intention of the appellant was of relieving the deceased of her pain. Because of his lack of qualification, the appellant could not understand that it was not a usual case of pregnancy but it was an ectopic pregnancy where the



fertilization has taken place in the fallopian tube itself. Had the appellant known this fact, he would not have dared to put the deceased to any treatment. There is no evidence on record to suggest that any kind of pressure was exerted on P.W. 7 or for that matter on other persons for the treatment of the patient in the hospital/clinic run by the appellant. P.W. 7, of his own, had visited the Biswas Seva Sadan because his daughter was complaining of stomach pain. That the mother of the deceased also had stated that no treatment had begun, gives a clue to this Court that no pressure was exerted upon the family members of the deceased for getting her treated in Biswas Seva Sadan. All that the appellant had done was to undertake a surgical inference for which he was not competent. The intention was not only to extort money from the family members of the deceased but to afford relief to the deceased. There is no allegation in the F.I.R of any insistence for making any payment to the appellant for having started the treatment of the deceased. Thus, it can safely be presumed that the appellant had a benevolent intention and he behaved like a Samaritan and his efforts cannot squarely be dubbed as brazenly commercial.

20. In that view of the matter, this Court is of the view that the interest of justice would be sufficiently met, if the sentence of the appellant is reduced to the period of custody



which he has already undergone. The appellant is stated to be in custody since 27.01.2015.

21. The sentence to the appellant is modified and reduced accordingly.

22. In the result, though the appeal fails but the sentence of the appellant is reduced to the period of custody which he had already undergone.

23. The appellant is, therefore directed to be released from jail forthwith, if not wanted in any other case.

24. Let a copy of the judgment be transmitted to the Superintendent of concerned Jail for compliance and needful action.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09/05/2018
Transmission Date	09/05/2018

