

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2282 of 1999****Judgment reserved on 27.07.2018****Judgment delivered on 05.09.2018**

- Parwati Sahu, D/o Shyam Lal Sahu, aged about 19 years, R/o Village Budhar, Mandalpara, P.S. Patna, District Korea (M.P.) (Now Chhattisgarh)

---- Appellant**Versus**

- The State of Madhya Pradesh, Police Station Patna, District Korea (M.P.) (Now Chhattisgarh)

---- Respondent

For Appellant	:	Shri Vishnu Koshta, Advocate.
For Respondent/State	:	Shri Vaibhav Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya**CAV Judgment**

This appeal arises out of the judgment of conviction and order of sentence dated 13.08.1999 passed by Additional Sessions Judge, Baikunthpur, District Korea, Madhya Pradesh (now Chhattisgarh) in Sessions Trial No.127/1998 convicting the accused/appellant under Section 304 (ii) of the Indian Penal Code (in short 'IPC') and sentencing her to undergo rigorous imprisonment for three years alongwith fine of Rs.500/- and in default of payment of fine, to undergo rigorous imprisonment for two months in addition.

2. Prosecution case, in brief, is that on the date of incident i.e. 16.11.1997, the village Sarpanch, Ghanshyam vide Ex.P-1 through village Kotwar Karamchand Das informed the Station House Officer of the Police Station, Patna, District Sarguja, that one newly born child

was found near Jagdamba Talab (Tank) and on this written information, Ex.P-2 FIR No.189/1997 under Section 317 against unknown person was lodged. On the basis of the written information on the same date 16.11.1997 at Police Station, Baikunthpur by Dr. R. Chaturvedi regarding the seriousness of newly born child, an unnumbered FIR i.e. 0/97 (Ex.P-16) was also registered by Police Station, Baikunthpur. The said newly born child was handed over to Sister K.K.S. Khalkho for treatment and care. On the information given by Khuleshwar on 17.11.1997 M.M. Tiwari (PW-15) merged intimation (Ex.P-15) was lodged. The child was found abandoned and died during treatment. Inquest report of child was prepared vide Ex.P-13, postmortem report (Ex.P-17) was prepared by Dr. R.N. Rajoriya (PW-16) in which cause of death was shown to be due to respiratory arrest. During investigation it was found that the Appellant was pregnant before the incident. Appellant was examined by Dr. Rashmi Verma (PW-19) where she opined that accused/Appellant was physically and mentally healthy, breast was full of milk, womb was swelling and bleeding, and in the mouth of the womb, clots of blood were found indicating 18 weeks of pregnancy and recent delivery symptoms were found on the body of the accused/Appellant as per examination report (Ex.P-20A). After examination report was prepared by Dr. Rashmi Verma (PW-19), Dr. Kalawati Patel (PW-17) also examined accused/Appellant vide (Ex.P-6A). Spot map was also prepared vide Ex.P-7. After investigation, charge-sheet under Section 317 and 304(ii) of IPC was filed against the Appellant.

03. While trial Court framing charge against the accused/Appellant

charge framed under Section 317 and 304 (ii) of IPC so as the whole accused/Appellant guilty. The prosecution examined as many as 19 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C in which she denied the circumstances appearing against. She pleaded innocence and false implication. In her defence, no witnesses has been examined.

04. The trial Court after hearing counsel for the respective parties and considering the materials available on record, by the impugned judgment while convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- that the accused/appellant has been falsely implicated in this case merely on the basis of suspicion;
- on the date of 16.11.1997 a newly born child was found and there is no medical examination conducted by any medical expert no blood match or DNA test was conducted to hold that the child belonged to the Appellant.
- After the request of I.O. as per Ex.P-6 blood of child and concerned lady was not collected and no blood match was conducted by the medical expert. Therefore, prosecution has not proved that the accused/Appellant to be the mother of the child was found near the Jagdamba Talab (Tank). The learned trial Court wrongly appreciated evidence of prosecution there is no specific conclusive proof that the accused/Appellant was the mother of the child found near Jagdamba Talab (Tank). No eye-

witness no circumstantial evidence to connect the guilt of the Appellant.

06. Learned Panel Lawyer vehemently argued on that time of incident accused/Appellant was pregnant and in the medical report given by Doctor it is proved Appellant recently delivered the child and all symptoms of pregnant women were found. Medical examination report of Phuleshwari (PW-5) and Smt. K.K.S. Khalko (PW-7) also proved this fact that the accused/Appellant was found likewise newly delivered pregnant lady. Therefore, the impugned judgment keeping in view the entire evidence by prosecution by legal provisions as such there is no illegality.

07. Heard counsel for the respective parties and perused the material on record.

08. Lachan Dhari Dubey (PW-3) and Shuklal Sahu (PW-4) stated that newly born child found near tank and said child was handed over to Doctor for care. Karamchand (PW-1) through information given by village Sarpanch Ghanshyam, the information was submitted before Police and FIR was lodged. Karamchand (PW-1), Ram Kripal (PW-2), Lachan Dhari Dubey (PW-3), Shuklal Sahu (PW-4) and Puran Chand Paikra (PW-8) statement also not challenged in the cross examination. Smt. K.K.S. Khalko (PW-7) health worker also proved this fact one newly born child was brought in hospital after information of village Sarpanch. P.S. Dohre (PW-13), Mukteshwar Singh (PW-14), M.M. Tiwari (PW-15) Inspector proved the Ex.P-14 information received from Community Health Centre and merged intimation (Ex.P-15) and FIR 0/97

(Ex.P-16) was lodged. Dr. R.N. Rajoriya's (PW-16) postmortem report (Ex.P-17) clearly proved one newly born child was found near the Jagdamba Talab (Tank) and thereafter in hospital during his treatment and care child died. Dr. Kalawati Patel (PW-17) and Dr. Rashmi Verma (PW-19) who examined the accused/Appellant found she showed medical symptoms of recently delivered child. It is clearly proved from prosecution medical expert Dr. Kalawati Patel (PW-17) and Dr. Rashmi Verma (PW-19). The Appellant was pregnant before child was found near the Jagdamba Talab (Tank), this fact is also proved by Smt. K.K.S. Khalko (PW-7) and that evidence adduced by prosecution was not challenged in cross examination. Considering the facts and evidence available on record. It was proved by prosecution on the date of incident i.e. 16.11.1997 examination of Appellant as per Ex.P-6A as per examination Ex.P-20A Appellant was pregnant and had recently delivered. I.O. requested to lady surgeon of medical officer regarding blood test of child and women who delivered the child for conclusive proof of child belonging to whom, but in this case prosecution has not adduced any evidence regarding any match of the blood with the Appellant and child.

09. No blood test and DNA test was conducted, no direct evidence found against the Appellant. Prosecution story is based on circumstantial evidence it may be Appellant recently delivered the child but that child found near the Jagdamba Talab (Tank) was Appellant's and Appellant was mother of the said child is not proved before the Court. On the basis of complete evidence present before the trial Court suspicion can be go to Appellant but there is no conclusive proof that

child found near the Jagdamba Talab (Tank) was the Appellant's. Ram Kripal (PW-2) in his statement stated when Police Officer went to house of Appellant she was unable to walk. Sukhlal Sahu (PW-4) due to illness of prosecutrix he presumed may be child was left by the Appellant. Sukhlal Sahu (PW-4) declared hostile and he denied the statement of Ex.P-3 and specifically denied the child was left by the Appellant.

10. Phuleshwari (PW-5) was also admitted when she was went to house of Appellant she was unable to move and walk in this circumstance when Appellant was unable to move and she was ill. Appellant was left her child it cannot be proved. Only suspicion cannot be sufficient to guilt the Appellant. Therefore, I have to hold that the prosecution has failed to prove his case beyond reasonable doubt and it is also failed to prove with convincing evidence that child found near the Jagdamba Talab (Tank) was the child of the Appellant.

16. In the result, the appeal is hereby allowed. Judgment impugned is set aside and the accused/appellant is acquitted of the charge leveled against her. As the appellant is already on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

**Sd/-
(Gautam Chourdiya)
Judge**