

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1254 of 2014

Lalchand S/o Shri Mulku Ram, Aged About 42 Years, R/o Village -
Pandari Pateripara, P.S. Raghunathnagar, District Balrampur –
Ramanujganj, Civil District Sarguja (Ambikapur) (Chhattisgarh)

---- Appellant

Versus

State Of Chhattisgarh, Through - The Police Of Police Station
Raghunathnagar, District Balrampur – Ramanujganj, Civil District
Sarguja (Ambikapur) (Chhattisgarh)

---- Respondent

For appellant - Shri Sandeep Dubey, Advocate.
For Respondent/State –Shri Suryakant Mishra, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

07/04/2018

Heard.

1. Instant appeal is against the judgement and conviction dated 23/08/2014 passed by the Additional Judge to Additional Sessions Judge, Ramanujganj, District Sarguja (Ambikapur) in Sessions Case No.235/2012 whereby the appellant has been convicted under section 314 of IPC and has been sentenced to RI for 10 years and fine of Rs.1000/-, in default of payment of fine, to undergo additional RI for 2 months.
2. Case of the prosecution, in brief, is that deceased Sudama Bai resident of village Pandri developed illicit relation with the appellant whereby she became pregnant. On 24/09/2010 when the deceased Sudama Bai and her daughter Anita were in their home, the appellant came there and on the ground that if the child is born he would be maligned in the society and in order to avoid the same he forcefully gave some herbs to the deceased and after consumption of that she suffered abortion and also lost her conscious. After the deceased became unconscious the daughter of the deceased Anita went to the house of the

appellant and informed this fact to him. The appellant then came and took Sudama Bai to the Wadrafnagar hospital wherein she was declared dead. Police after investigation and postmortem report found that because of the herbal medicine administered to the deceased for abortion she suffered abortion which caused excessive blood loss thereby she died. The police after investigation filed the charge sheet. During the course of trial, the appellant abjured his guilt and claimed to be tried. Prosecution on their behalf had examined as many as 11 witnesses and primarily relied on the statement of daughter PW-1 and doctor PW-7 who had affirmed the fact because of the abortion caused death resulted.

3. Learned court below after evaluating the entire evidence convicted the accused/appellant as aforesaid. Hence this appeal.

4. Learned counsel for the appellant would submit that there no nexus has been established by the prosecution to show that abortion itself has caused death. He further submits that in order to establish that due to abortion death is caused there has to be reliable evidence which the prosecution failed to produce and postmortem was carried out after three days of the incident thereby it cannot be remotely attached with the death. Learned counsel further without prejudice to his submission would refer to a case law in between **Surendra Chauhan Vs. State of M.P.** reported in **(2000) 4 SCC 110** and would submit under the circumstances the sentence awarded is on the higher side which may be reduced.

5. Learned State counsel opposes the argument and would submit that order passed by the learned court below is well merited which do not call for any interference.

6. Perused the record of the court below and statement of the witnesses. Death panchnama of deceased Sudama Bai is Ex.P-10 and death panchanama of the child is proved by the prosecution as Ex.P-11.

Dr. R.B. Prajapati PW-7 had examined both the bodies of deceased Sudama Bai and infant child. While postmortem was carried out it was found that child was partly inside the uterus and partly inside the vagina. Inside the uterus child was found to be separated from the amical cord. On internal examination blood clots were found in uterus. According to the doctor death of Sudama Bai was caused because of excessive blood loss because of such part delivery. Perusal of the postmortem report Ex.P-6-A, the cause of death is shown as uterine bleeding and anaemia which is corroborated by Dr. PW-7. Thereby prosecution was able to establish that because of the abortion and excessive bleeding deceased Sudama Bai died.

7. Now coming to the other evidence whether it was caused because of the act committed by the appellant, statement of PW-1 Anita daughter of the deceased is examined. She has stated that at the time of the incident while her mother was alive she was in her home and appellant came there. She further stated that at that time her mother was pregnant, appellant told her that if the child is delivered then his honour would be tarnished in the village and he forcefully administered some herbal medicine to her mother. She further stated that immediately after herbal medicine was administered her mother started wiggling in pain and one dead child was delivered in the morning and her mother became unconscious. Thereafter, when she went to the house of the appellant and informed this fact that her mother became unconscious appellant arranged for the vehicle and took her to the hospital wherein she was declared dead. Illicit relation of the deceased Sudama Bai is further corroborated by witness PW-3 Ramjit and he stated that the appellant used to visit the house of the deceased and at the time of death Sudama Bai was pregnant.

8. No plausible explanation has been given by the appellant to disbelieve the statement given by the prosecution. Evaluating the statement of PW-1 daughter she has categorically stated that after herbal medicine was administered deceased suffered pain and thereafter dead child was delivered and she became unconscious. Factum of presence of dead child and excessive blood loss has been further corroborated by Dr. PW-7. Therefore, taking statement of PW-1 daughter reading it alongwith the statement of PW-7 the doctor, I am of the opinion that conviction so made by the court below is well justified.

9. Now coming to the question of sentence. Learned trial court has awarded maximum sentence of 10 years and fine of Rs.1000/-. Appellant appears to be in jail from 28/06/2012. Till date almost 5 years and 9 months have passed. Under the circumstances and facts of this case, it appears that conviction of the jail sentence is on the higher side. Therefore, it is modified to be undergone. Further fine of Rs.1000/- as has been awarded shall remain unchanged. In the event of default of payment of fine, further RI for 2 months as has been awarded shall remain as it is.

10. With such modification in the sentence, appeal is partly allowed. Appellant is in jail. He be released forthwith if not required in any other case.

Sd/-

(Goutam Bhaduri)

JUDGE