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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1244 of 1998**

- Tilak Ram Sinha, son of Johan Ram Sinha, aged about 46 years, resident of Risaipara, Town and Tahsil Dhamtari, District- Raipur M.P.

---- Appellant

Versus

- State of Madhya Pradesh through Police Station-Dhamtari.

---- Respondent

For Appellant	:	Mr. Roop Naik, Advocate
For Respondent/State	:	Ms. Madhunisha Singh, P. L.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****11/07/2019**

The appellant stands convicted under Section 314 of Indian Penal Code (henceforth "IPC") for the death of deceased- Basantibai and sentenced to undergo rigorous imprisonment for two years with fine of Rs. 2,000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months vide judgment of conviction and order of sentence dated 06.05.1998 passed in Sessions Trial No. 39/1998 by Additional Sessions Judge, Dhamtari (C.G.).

02. Allegation against the appellant is that in the month of August, 1997 on account of illness of one Basantibai, she was taken for treatment to the hospital of Dr. Mortin by her brothers namely Basant, Jawahar & father- Ganeshram. On advice of the doctor, she was shifted to the Christian Hospital, Dhamtari, where she stated that she

was treated by accused- Tilakram Sinha with intent to cause miscarriage and, thereafter she was shifted to Medical College, Raipur, where she died on 19.08.1997 during treatment. The FIR (Ex.P/6) was lodged by Assistant Sub-Inspector- Shri M. L. Pandey and after lodging of report, offence under Section 314 of IPC was registered against the accused/appellant. After completion of usual investigation, charge sheet was filed against the accused under Section 314 of Indian Penal Code.

03. During trial, charge under Section 314 of IPC was framed against the accused, who denied the charge leveled against him and pleaded innocence. In support of its case, the prosecution examined 09 witnesses whereas statement of accused person was recorded under Section 313 of Cr.P.C., in which he denied the incriminating circumstances appearing against him in the prosecution case and pleaded innocence. However, no witness was examined by him in defence.

04. Learned counsel appearing for the appellant submits that the trial Court has wrongly convicted the appellant/accused by not properly appreciating the oral and documentary evidence adduced by the prosecution. He also submits that in the instant case, no any direct evidence adduced by the prosecution regarding the treatment given to the deceased by the appellant/accused. Only on the basis of hear-say evidence, accused was convicted under Section 314 of IPC. He also submits that oral dying declaration given by the deceased is not connected the accused with the crime in question. No any direct statement given by the deceased before her brothers & father regarding involvement of the accused in the crime in question, therefore, oral dying declaration given by the deceased was not trustworthy and, therefore, the impugned judgment of conviction and order of sentence be set aside acquitting the accused/appellant.

05. On the other hand, learned counsel for the respondents/State opposing the contention of the appellant's counsel submits that as per statements of Basantlal Kaushik (PW-1), Jawahar Kaushik (PW-2) &

Ganeshram (PW-3), who are brothers and father, respectively of the deceased about the treatment given by the appellant to deceased and the dying declaration regarding the death of deceased and there is no contrary evidence and there is no reason to disbelieve the evidence of brothers & father of the deceased. No explanation given by the accused himself about his qualification, therefore, learned Tribunal has rightly convicted and sentenced the accused/appellant for the aforesaid offence; further considering the age of the appellant and every aspect of the matter, the learned Sessions Judge has taken a lenient view while sentencing him i.e. only for two years of RI and minimum fine of Rs. 2,000/-. The findings so recorded by the trial Court are based on proper appreciation of the evidence available on record, which need no interference by this Court.

06. Heard learned counsel for the parties and perused the material available on record.

07. At this stage, it would be appropriate to notice Section 314 of the IPC, which states as under :-

“ 314. Death caused by act done with intent to cause miscarriage whoever, with intent to cause the miscarriage of woman with child does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.”

08. From the record, as per PM report (Ex.P-3) given by Dr. Ullhas Gonnade (PW-4), the death of deceased was due to septicemic shock caused by peritonitis and septicemia and he also found that she was pregnant and symptoms of miscarriage on the body of the deceased. Basantibai treated by appellant/accused it is proved by the brothers & father of the deceased and there is no contrary evidence regarding the statements of them and there is no reason to disbelieve the evidence of the aforementioned witnesses. It is not in dispute that as per evidence adduced by the prosecution, prior to death of deceased she was taking treatment from Tilakram (accused) and this fact is admitted

by her before her brothers Basantlal Kaushik (PW-1), Jawahar Kaushik (PW-2) & father- Ganeshram (PW-3), at the time, when she became serious and shifted to the higher Center for treatment. She also stated that she suffered miscarriage by treatment & pills given to her by Dr. Tilakram (accused). The aforesaid facts mentioned in the evidence of the aforesaid witnesses which is supported by the postmortem report.

09. Thus, looking to the evidence adduced by the prosecution and that statements of the prosecution witnesses were uncontroverted and unchallenged at the time of cross-examination. The postmortem report was also supported the statements of the prosecution witnesses. No any specific defence has been taken by the accused/appellant with regard to the fact that he is not a qualified person to conduct the Dilation and curettage (D&C) for saving the life of the treating person. The prosecution has proved its case beyond reasonable doubt under Section 314 of Cr.P.C. and the learned Sessions Judge has rightly convicted and sentenced the accused of the aforesaid offence.

10. Resultantly, the appeal preferred by the appellant being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-

(Gautam Chourdiya)
Judge

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