

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1856 of 1999**

- Smt. Sundarmati, W/o Malik Ram Minj, by Caste Oraon Tribal, aged 38 years, R/o village Jatra (Khekripara), P.S. Lelunga, District Raigarh.

----Appellant

Versus

- State of Madhya Pradesh, Through District Magistrate, Raigarh (Now C.G.)

---- Respondent

CRA No. 1962 of 1999

- Smt. Punni Bai Yadav, W/o Shri Hileshwar Prasad Paikra, aged about 30 years, A.N.M. Health Department, Katakli, Police Station Lelunga, District Raigarh, M.P. (Now C.G.)

---Appellant

Versus

- State of M.P., Through District Magistrate, Raigarh (Now C.G.)

---- Respondent

For Appellants	Ms. Pushpa Diwedi, Advocate.
For Respondent/State	Mr. Vikash Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****13/09/2019**

1. No one appeared on behalf of the appellants, when the matter is called. In these circumstances, this Court is left with no other option but to appoint a counsel through the High Court Legal Services Committee on behalf of the appellants.
2. Ms. Pushpa Diwedi, Advocate, present in the Court, empanelled

Lawyer of High Court Legal Services Committee, on being asked by this Court, is ready to argue the matter. Therefore, this Court has appointed Ms. Pushpa Diwedi, Advocate to argue the matter on behalf of the appellants. Registry is directed to inform the High Court Legal Aid Services Committee in this regard for doing the needful.

3. Since both these appeals filed under Section 374(2) of Cr.P.C. arise out of the common judgment of conviction and order of sentence dated 8th July, 1999 passed by the First Additional Sessions Judge, Raigarh, C.G. in ST No.221/97 convicting each of the appellants under Section 314/34 of Indian Penal Code (IPC) and sentencing them to undergo R.I. for 2 years, they are being disposed of by this common judgment.
4. Case of the prosecution in brief is that PW-2 Bhadur Kujur, complainant, is the husband of deceased Jagni Bai. Their marriage was solemnized in the month of April, 1997. On 17th June, 1997 PW-2 Bhadur Kujur took his wife/deceased to her parental house and thereafter came back to his village. On 05.07.1997, PW-2 Bhadur Kujur was informed by his maternal uncle Bhakul and Vachan Tirkey that his wife/deceased is running high fever, on which PW-2 went to his in-law's house where he found his wife dead. Thereafter, a meeting was convened in the parental house of the deceased to ascertain the cause of death of the deceased where Baldev Ram PW-4, Dhansai PW-5, and Gurbaran PW-7 disclosed that the deceased was carrying

pregnancy from accused Itwar Sai prior to her marriage. It was further disclosed that 2-3 days prior to death of the deceased, accused Sundarmati, mother of the deceased, had taken the deceased to the house of her brother where accused Punni Bai (Nurse) caused miscarriage of the deceased and had destroyed the fetus. In the said meeting, the accused Itwar Sai also admitted that the deceased was made pregnant by him and that she died due to miscarriage.

5. On report Ex.P-2 being lodged by PW-2 Bhadur Kujur, investigation was commenced by PW-15 Y.P. Patel, inquest was prepared vide Ex.P-7 and thereafter the body was sent for postmortem which was conducted by PW-14 Dr. R.S. Upadhyay vide Ex.P-14. In the opinion of the Autopsy Surgeon, the death was due to hemorrhage and sepsis caused by abortion (incomplete). During investigation, the fetus buried in the kitchen garden of Panik Ram Uraon was exhumed vide Ex.P-9 in presence of witnesses and the same was sent for postmortem. PW-13 Dr. S.N. Upadhyay conducted the postmortem of the said fetus and gave his report Ex.P-13. Statements of the witnesses were recorded and after completion of investigation charge sheet was filed against the accused persons namely Smt. Sundarmati, Smt. Punni Bai and Itwar Sai under Sections 314/34 of IPC followed by framing of charge by the trial Court accordingly. The accused persons denied the charge and prayed for trial.

6. In order to prove its case, the prosecution examined as many as

15 witnesses i.e. PW-1 RamKunwar, PW-2 Bhadur Kujur, PW-3 Budhwar, PW-4 Balderam, PW-5 Dhansai, PW-6 Sukhruram, PW-7 Gurbarun, PW-8 Baldevram, PW-9 K.S. Mandavi, PW-10 Dhansai, PW-11 Sadhram, PW-12 Bhayalal, PW-13 Dr. S.N. Upadhay, PW-14 Dr. R. Upadhay & PW-15 Y.P. Patel. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence they examined one Anat Ram as DW-1.

7. Learned trial Court after considering the over all material available on record by the impugned judgment while acquitting the accused Itwar Sai of the charge under Section 314/34 of IPC, convicted and sentenced the accused/appellants as mentioned above.
8. Learned counsel for the appellants submits that the trial Court has wrongly convicted the appellants merely on the basis of suspicion in absence of any clinching evidence. In this case, most of the prosecution witnesses have not supported the prosecution case and been declared hostile. She further submits that neither there is direct evidence or circumstantial evidence proving the guilt of the accused/appellants and in these circumstances conviction of the appellants under Section 314/34 is not sustainable.
9. On the other hand, supporting the impugned judgment learned

counsel for the State submits that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

10. I have heard learned counsel for the parties and perused the material available on record.

11. It is not in dispute that Jagni Bai died due to hemorrhage and sepsis resulted from incomplete abortion as has been opined by the Autopsy Surgeon, PW-14 R. Upadhyay. It is also not in dispute that fetus was recovered from the kitchen garden of Panik Ram Uraon vide Ex.P-13.

12. PW-1 Ramkunwar has stated that accused Sundarmati and deceased Jagni Bai had come to her house, she offered them food and that Jagni Bai was carrying pregnancy of 1-2 months. She has further stated that Jagni Bai woke up in the night for attending the call of nature and in the morning Jagni Bai informed that she has suffered miscarriage, on which a nurse was called who treated Jagni Bai through injections and advised for taking her to the Doctor and after that the deceased was taken to her house. She states that 2-3 days after miscarriage Jagni Bai died. This witness has been declared hostile by the prosecution.

13. PW-2 Bhadur Kujur, husband of the deceased is a hearsay witnesses as he was informed about the incident by Dhan Sai, Baldev and Gurbarun. However, PW-4 Baldev Ram, PW-5 Dhansai, PW-7 Gurbarun and PW-8 Dabalsai have not supported the prosecution case and been declared hostile.

14. PW-3 Budhwar and PW-8 Dabalsai have not stated anything against the appellants. PW-11 Sadhram & PW-12 Bhayalal state that they do not know anything about the incident.
15. PW-10 Dheer Sai states that after the death of Jagni Bai, a meeting was convened in the village. He further states that prior to her death Jagni Bai had informed that she was made pregnant by Itwar Sai before her marriage, she has suffered miscarriage and, therefore, has fallen ill and likely to die. He further states that on being enquired from Itwar Sai, he admitted to having relation with Jagni Bai prior to her marriage. In Para-2 he states that the fetus in question was buried by accused Sundarmati and Ram Kumari which was subsequently exhumed in his presence. In cross-examination, this witness states that he is disclosing these facts for the first time.
16. From close scrutiny of the evidence adduced by the prosecution, it is seen that none of the prosecution witnesses have stated anything against the appellants that they caused miscarriage of the deceased intentionally which resulted in her death. There is no evidence to show that the accused Punni Bai treated the deceased for the purpose of her miscarriage and likewise, there is absolutely no evidence that the accused Sundarmati got miscarriage of the deceased through accused Punni Bai. All the important prosecution witnesses have not supported the prosecution case.
17. True it is that it has come in the evidence of the prosecution witnesses that the deceased was having physical relationship with acquitted accused Itwar Sai prior to her marriage on account of which she got pregnant and the cause of her death was incomplete

miscarriage resulting into sepsis and hemorrhage and the circumstances appearing in this case go to show that accused Punni Bai had treated the deceased through injections prior to her death but it has also come in the evidence that prior to such treatment by the accused/Punni Bai deceased had suffered miscarriage. Therefore, the prosecution has utterly failed to prove that the accused/appellants intentionally caused miscarriage of the deceased which resulted in her death. For bringing home the charge levelled against the accused, the prosecution is required to prove the same by adducing cogent and reliable evidence, direct or circumstantial, beyond all reasonable doubt. However, in the instant case no such cogent and reliable evidence is present which could unerringly point towards the guilt of the accused/appellants. Being so, this Court is of the opinion that the trial Court has fallen into error by recording a finding of guilt against the accused/appellants convicting them under Section 314/34 of IPC and they deserve to be acquitted of the said charge by extending them benefit of the doubt.

18. In the result, both the appeals are allowed. The accused/appellants are acquitted of the charge under Section 314/34 of IPC. The appellants are reported to be on bail, therefore, their bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge