

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 598 of 2002

Sonmati @ Sono W/o. Tulsiram, Aged 20 years, Occupation Agriculture, R/o. Village Baghanpal, P.S. Lohandiguda, District Bastar, Jagdalpur (Chhattisgarh)

---- Appellant

Versus

State of Chhattisgarh through Police Station Lohandiguda District Bastar Jagdalpur (Chhattisgarh)

---- Respondent

For Appellant : Mr. Subhash Yadav, Advocate.

For Respondent : Mr. Ishan Verma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

06.11.2019

1. The present appeal has been preferred by the appellant assailing the judgment dated 02.05.2002 passed by the Additional Sessions Judge/Special Judge (Scheduled Caste and Scheduled Tribe(Prevention of Atrocities Act) 1989, Jagdalpur in Sessions Trial No. 563 of 2001, whereby the appellant has been convicted under 317 IPC and sentenced to undergo R.I. for 2 years and six months with fine of Rs.500/- plus default stipulation.
2. Facts of the case in short are that, on 13.11.2001 complainant Laikhan (PW-6) heard the voice of an abandoned newly born child emanating from the haystack of his Kothar and he informed his neighbour Ludru about the same thereafter Ludru took the child

from haystack and kept with him so that he cannot be mauled by any animals. Subsequently Laikhan (PW-6) lodged the FIR (Ex.P-6) in Police Station Lohandiguda where Crime No. 38 of 2001 was registered. During the investigation, it was found that the appellant was not residing with her husband after a long time and she was pregnant before the incident. The appellant was examined by Dr. A Chandra (PW-7) where she opined that accused/appellant was physically and mentally healthy, breast was full of milk indicating 7 to 14 days of pregnancy and recent delivery symptoms were found on the body of the accused/appellant as per examination report (Ex.P-3A). Spot map was prepared vide Ex.P-9. After completion of investigation charge sheet was filed under Sections 304 and 317 IPC followed by framing of charge accordingly.

3. Learned court below by its judgment dated 02.05.2002 passed in Sessions Trial No. 563/2001 acquitted the appellant under Section 304 IPC but convicted him under Section 317 IPC and sentenced to undergo RI for two years and six months. Hence, this appeal.
4. Learned counsel for the appellant submits that the appellant is not challenging her conviction but confines his argument to the sentence part of the judgment impugned only with a prayer for reducing of the jail sentence to the period already undergone.
5. On the other hand, learned State counsel supported the impugned judgment of conviction and sentence and opposed the arguments advanced by learned counsel for the appellants.
6. Having considered the rival contentions put forth by the counsel for both the parties and the evidence on record, it emerges that it is

the accused/appellant alone who has committed the crime in question. The record clearly suggests that before the incident she was pregnant and after the child was recovered from the haystack her pregnancy had vanished. Even the medical evidence states that her breasts were lactating which is normally seen after delivery of the child by a woman as in the present case. The record also shows that the husband of the appellant had also deserted her and they never had any physical relations. Being so, the possibility of the accused carrying the child through some other male member and in order to hide the consequences in the form of birth of illicit child she threw it in the haystack not to bear any stigma on her forehead. Laihan (PW-6) and Ludru (PW-8) have also supported the case of the prosecution. Thus, overall evidence of the witnesses suggests the involvement of the accused/appellant in the crime in question and therefore, her conviction under Section 317 IPC cannot be said to be wrong. It is hereby maintained as such.

7. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 18 years ago and that the appellant has already remained in jail for 15 days, in my opinion, no useful purpose is going to be served in again sending her to jail. Accordingly, her jail sentence is reduced to the period already undergone. With the above, the appeal stands allowed in part.

Sd/-
(Vimla Singh Kapoor)
 JUDGE