

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 11.12.2019

Delivered on 12.02.2020

Criminal Appeal No.289 of 1999

Dr. Smt. GB Subba Rao, D/o. Shri GVL Narsimham, aged about 72 years, R/o. Bastar Bada, Jail Road, Raipur (MP) (Now CG)

---- Appellant

Versus

The State of Madhya Pradesh (Now Chhattisgarh), through Police Station Ganj, Raipur District Raipur (MP) (Now CG)

---Respondent

For the appellant : Shri Bhaskar Payashi, Advocate
For the respondent/State : Shri Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. The appeal is directed against judgment dated 30.01.1999 passed by 7th Additional Sessions Judge, Raipur, (MP) (Now Chhattisgarh) in Session Trial No. 48/1997 wherein the said Court convicted the appellant for commission of offence under Section 313 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for 5 years and to pay fine of Rs.5000/- with default stipulation.

2. As per the version of the prosecution, complainant namely Rini Vyapari (PW-3) filed a complaint on 17.3.1990 in Police Station Kondagaon that she was subjected to forcible sexual intercourse from time to time by Executive Engineer namely AL Asati and Sub-Engineer namely Ashish Chore and she got

conceived due to rape on her. It is further alleged that said Rini Vyapari was forcibly brought to Raipur along with her sister namely Mona (PW-4) and thereafter admitted in the nursing home of the appellant, who is a medical practitioner. It is alleged that the appellant caused miscarriage of the complainant without her consent. The matter was reported and investigated. The appellant was charge sheeted and after completion of the trial, she was convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Written report by complainant Rini Vyapari is Ex-P/3 but in the said report she has not mentioned that she did not give consent for miscarriage. Said Rini Vyapari presented application for leave of three days from 05.3.1992 to 08.3.1992 and she came to the nursing home of the appellant with an attender who is her sister Mona Vyapari, therefore, it cannot be said that she was not consented for miscarriage.

(ii) Admittedly, the complainant got conceived due to rape on her and as per Section 3(Explanation -1) of the Medical Termination of Pregnancy Act, 1971 (for short 'the Act 1971') where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. As per Section 3(2)(i) of the above Act, 1971, the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or

mental health, then termination of pregnancy is not an offence under the Indian Penal Code as per Section 3 of the Act 1971.

(iii) As per Section 4 of the Act, 1971 when a woman is a major i.e. above the age of 18 years, then her consent is not required for miscarriage if it is done as per the provisions of the Act, 1971. Therefore, no offence is made out against the appellant in the present case.

(iv) Hospital of the appellant is in front of Ganj Police Station, Raipur and the prosecutrix was having an attender, who was her sister. At the time of the miscarriage if anything is done which is criminal act, then the complainant or her sister could have lodged report in the police station situated in front of the nursing home.

(v) As per the version of the prosecutrix, she has not told the appellant that she is not willing to terminate the pregnancy.

(vi) Report was lodged after 12-13 days after termination of pregnancy and the delay is not explained, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the judgment impugned.

6. Complainant Rini Vyapari (PW-3) deposed before the trial Court that she was posted as Copyist in the Office of Public Works Department, Kondagaon since 1985. One Ashish Chore posted as Sub-Engineer on the promise of marriage maintained physical relationship with her due to which she got conceived. When the pregnancy attained to the period of 2 ½ months, she narrated the said fact to said Ashish Chore and in the month of March 1990 one person came to her and informed her that Ashish Chore is calling her. When she reached Kondagaon – Raipur road, one person made her to sit in a vehicle along with her sister and advised her for miscarriage. Thereafter she came to the nursing home of the appellant and miscarriage was done. She admitted (para 9) that she did not state to the appellant that she is not willing for miscarriage. She further deposed that one Executive Engineer namely Asati also made physical relation with her and both officers namely Asati and Ashish Chore raped her due to which she got conceived. Mona Vyapari (PW-4) also deposed on same line.

7. From the evidence of Dr. RK Pandey (DW-1) and documents (Ex-D/1 to D/11), it is established that the appellant is a registered medical practitioner and she had gone for training in Gynecology and Obstetrics. Version of this witness and documents are not rebutted, therefore, there is nothing on record to say that the appellant is not a registered medical practitioner.

8. As per Section 3 of the Act, 1971, pregnancy may be terminated by registered medical practitioner and the practitioner

shall not be guilty under the Indian Penal Code if any pregnancy is terminated by him in accordance with the provisions of the Act, 1971. As per Section 3(2) of the Act, 1971, subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner if continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health. In Explanation (1) of the said section of the Act, it is mentioned that where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. From the provisions of the Act 1971, it is clear that pregnancy out of rape caused grave injury to the mental health of the pregnant woman. In the present case, admittedly, the complainant got conceived out of rape, therefore, such pregnancy shall constitute grave injury to mental health of her.

9. Admittedly, complainant Rini Vypari (PW-3) is aged about 32 years and she was major on the date of termination of the pregnancy. In Section 3(2)(a) of the Act, 1971, where the length of the pregnancy does not exceed twelve weeks, then the pregnancy can be terminated by a medical practitioner, but for exceeding pregnancy of more than 12 weeks, consent of the pregnant woman is required. In the present case, from the statement of the complainant (para 1), her pregnancy was 2 ½ months i.e. 10 weeks, therefore, act of the appellant cannot be termed as criminal act.

10. On overall assessment of the evidence and taking into consideration of the factual matrix and legal aspects of the matter, finding arrived at by the trial Court is not sustainable.

11. Accordingly, the appeal is allowed. Conviction and sentence imposed by the trial court is hereby set aside. The appellant is acquitted of the charges framed against her. The appellant is reported to be on bail. Her bail bonds shall continue for further period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

JUDGE