

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 421 of 2017

Ravi Namdev, S/o Shivkumar Namdev, aged about 25 years, R/o Bazar Chowk Sarsinva, P.S.- Sarsinva, District- Balodabazar-Bhatapara (C.G.)
---- Appellant

Versus

State of Chhattisgarh, through S.H.O.- Sarsinva, District-Balodabazar- Bhatapara (C.G.)
---- Respondent

For Appellant : Mr. Hemant Gupta, Advocate.
For State/respondent : Mr. Ishwar Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

16/01/2020

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 27.02.2017 passed by Additional District and Sessions Judge (F.T.C.), Balodabazar (C.G.) in Session Trial No. 56/2014, wherein the said court convicted the appellant for commission of offence under Section 313 of IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 1000/- with further default stipulations.
2. As per version of the prosecution, on 11.11.2011, the appellant and the prosecutrix (PW-1) went to Jammu from Village- Sarsinva and stayed there. They stayed together and earned livelihood by working as labour where the prosecutrix carried pregnancy about 5 months and thereafter, they came to Katghora and Korba. During their stay at Korba, the appellant caused miscarriage of pregnancy of the prosecutrix. The matter was reported, the appellant was charge-sheeted

and after completion of trial, the trial court convicted as mentioned as above.

3. Learned counsel for the appellant submits as under:-
 - (i) There is no evidence regarding miscarriage on the part of the appellant and there is every possibility that due to any gynecological problem for which the prosecutrix was under treatment, natural miscarriage was caused.
 - (ii) The trial court has not evaluated the evidence properly because no medical expert deposed regarding miscarriage, therefore, the finding arrived at by the trial court is liable to be set aside.
4. I have heard learned counsel for the parties and perused the records.
5. The question for consideration before this Court is whether the appellant caused miscarriage of the prosecutrix without her consent. The prosecutrix (PW-1) deposed before the trial court (Para 3) that when she was not feeling well, the appellant took her to hospital for medicine. As per version of this witness, he took her to a Nurse who injected her and thereafter, she delivered a dead child. The Nurse who administered medicine or injection is not examined before the trial court. What kind of injection was given to the prosecutrix is not clear and from evidence of the prosecutrix, it is also not clear whether the miscarriage was forced or it was natural miscarriage.
6. Dr. Pramila Toppo (PW-3) who examined the prosecutrix opined (Para 4) that she delivered a child. This witness has

not administered any medicine, therefore, her version is advisory in nature. From her entire evidence, it is not clear that the miscarriage is caused by the appellant. The prosecution is under obligation to establish that the appellant did some act to cause miscarriage voluntarily as a result of which, the miscarriage was caused and the same was not done in good-faith without consent of the prosecutrix.

7. In the present case, the total evidence adduced by the prosecution is that the appellant took the prosecutrix for treatment where she delivered a dead child. Whether the delivery is caused by any medicine or injection by the said Nurse as alleged by the prosecutrix, is not clearly established, therefore, it is not a case where the miscarriage is caused by act of the appellant. There is possibility of natural miscarriage or delivery of dead child by the prosecutrix and shaky evidence in this regard is not sufficient to establish guilt against the present appellant, therefore, the finding arrived at by the trial court is not sustainable.
8. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial court is set aside. The appellant is acquitted of the charge under Section 313 of IPC. The appellant is reported to be in jail. He be set at liberty forthwith if not required in any other case. The fine amount, if paid, shall be refunded to the appellant.

Sd/-
(Ram Prasanna Sharma)
Judge