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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 761 of 2011**

Durga Prasad, aged about 35 years S/o Punau Ram, R/o Village Dev Sundara,
P.S. Palari, Distt. Raipur (C.G.)

----Appellant**Versus**

State of Chhattisgarh Through Police Station Palari, District Raipur (C.G.)

---- Respondent

For Appellant	:	Mr. Jitendra Gupta Advocate on behalf of Mr. Devershi Thakur, Advocate.
For Respondent/State	:	Mr. Roshan Dubey, P.L.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****12/02/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 26/09/2011 passed in Sessions Trial No. 81/2011 by learned 1st Additional Sessions Judge, Baloda Bazar, District-Raipur (C.G.) (now District Baloda Bazar-Bhatapara) C.G. whereby the Appellant has been convicted under Section 313 of the IPC and sentenced to undergo RI for 10 years and to pay fine of Rs. 500/-, with default stipulation.
2. Facts of the case are that Chitrlekha (PW-9) complainant/victim of the case had conceived and was pregnant for about 8 months. On the date of incident i.e. 02.08.2008, the complainant/victim was suffering from stomach pain. At around 8 PM, she went to the clinic of the Appellant

where Appellant gave her 5 tablets. Thereafter, she went back to her house and consumed those 5 tablets. Later on she started vomiting. Next day, husband of the complainant/victim Shyamratan (PW-1) took the victim to Raipur (C.G.) for better treatment. There, Doctors refused to give treatment to the victim. Thereafter, Shyamratan (PW-1) took his wife to her matrimonial home where at around 3-4:00 AM, she delivered a child and two hours later the child died. On 05.08.2008, Shyamratan (PW-1) lodged a report against the Appellant. On the basis of report lodged by Shyamratan (PW-1), FIR was registered against the Appellant. Chitralkha complainant/victim was medically examined by Dr. Mamta Thakur (PW-12). Rappers of the tablets, given by the Appellant to the victim, were seized from Shyamratan (PW-1) by the Police. Statement of the complainant as well as other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed charges under Section 312 of the IPC alternatively under Section 313 of the IPC alternatively under Section 315 of the IPC and alternatively under Section 304 (A) of the IPC. The prosecution has examined as many as 14 prosecution witnesses. One defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the Trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that according

to the case of prosecution, the Appellant gave 5 tablets to the Victim, but he did not advice her to take all those 5 tablets together. Negligently, the victim has taken all those five tablets together and due to that she started vomiting. The Counsel further submits that there is no evidence available on record which can show that due to said tablets given by the Appellant, the victim caused pre-mature delivery and due to same, new born baby has died, therefore, conviction of the Appellant is not sustainable.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the Trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the available record minutely. I have also perused the statements of the complainant and other witnesses minutely.
7. There is no dispute on the point that Chitrlekha (PW-9) complainant/victim of the case had conceived and was pregnant for about 8 months. There is also no dispute on the point that due to stomach pain, she went to the clinic of the Appellant and at that time, the Appellant gave her 4 tablets of 'Cytolog' and 1 tablet of 'Mifegest'. There is also no dispute on the point that Chitrlekha (PW-9) complainant/victim of the case was caused pre-matured delivery and after two hours of delivery, the new boy baby died.
8. In her Court statement Chitrlekha (PW-9) complainant/victim of the case has deposed that on 02.08.2008 at around 8 PM she went to the clinic of the Appellant because of stomach pain. The Appellant gave her 5 tablets and told her to take those medicines at home. She did the

same, and after one hour of consuming those tablets, she started vomiting and some problem occurred in her private part. Next morning her husband took her to Raipur where the Doctors denied to give her treatment. Later on, she along with her husband went to her father's home where she delivered a child and after two hours of delivery, the new born child died. According to the statement of this witness, she went to the clinic of the Appellant, where Appellant inserted some tablet in her private part, but said fact has not been mentioned in her case diary statement. It appears that, she has developed her statement on this point. In para 8 of her cross-examination, this witness stated that she did not know that in Raipur they went to which Doctor. Shyamratan (PW-1) husband of the victim also deposed as stated by his wife. He further stated that before they reached the clinic of the Appellant for treatment of his wife, her wife was already suffering from stomach pain. In paragraph 10 of cross-examination, this witness stated that he took his wife on bicycle from village Kesla to Amera for about 2 Kms and from Amera to Palari for about 3-4 Kms. In paragraph 12 of cross-examination, this witness stated that they traveled by bus from Raipur to Sargaon and walked on feet from Saragaon to village Khauna for about 3 Kms. Thereafter, his wife caused from pre-mature delivery.

9. Dr. Mamta Thakur (PW-12) has examined the seized rappers of the tablets which was allegedly consumed by the victim. She deposed that tablet 'Mifegest' 200 MG used to open vagina, emergency contraceptive and for abortion and tablet 'Cytolog' is used for taking relief of long duration pain. This tablet is kind of pain killer. According to this witness, these pills should not be taken by pregnant lady/breast feeding lady.

10. On minute examination of above evidence, it makes clear that the Appellant gave total 5 tablets to the victim without any prescription. It is not clear that the Appellant advised the victim to take all the given medicines together. For the sake of argument, if I assume that the Appellant has advised the victim to take all the given medicines together even then there is no material available on record which shows that the victim caused from pre-matured delivery and the new boy baby died due to consuming of those medicines which were given by the Appellant. From the statement of the victim and her husband, it appears that the victim was already suffering from stomach pain before they went to the clinic of the Appellant and it also appears that after consuming those tablets, victim who had conceived and was pregnant for about 8 months traveled on bicycle thereafter on bus to Raipur along with her husband. Later on, again they traveled from Raipur to Sarganv by bus and thereafter Sarganv to village Khauna they went on foot. Due to these movements, for a pregnant lady, there is a possibility of pre-matured delivery. There is no evidence available on record which shows that due to medicines given by the Appellant and by consuming those tablets, the victim suffered from pre-matured delivery and new born baby was died. In these circumstances, the Appellant is entitled to get benefit of doubt. Therefore, the conviction of the Appellant is not sustainable. Thus, the impugned order dated 26/09/2011 passed in Sessions Trial No. 81/2011 by learned 1st Additional Sessions Judge, Baloda Bazar, District-Raipur (C.G.) (now District Baloda Bazar-Bhatapara) C.G is set-aside.

11. Consequently, the Appeal is allowed. The Appellant is acquitted from the charges framed against him on the basis of benefit of doubt.

- 12.** Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge