

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 276 OF 2018
WITH
CRIMINAL APPLICATION NO. 1033 OF 2018
IN
CRIMINAL APPEAL NO. 276 OF 2018**

Dr. Shivaji Raosaheb Sanap
Age: 47 years, Occu.: Medical Practitioner,
R/o Sanap Hospital, Barshi Road,
Beed, Tq. & Dist. Beed.

..APPELLANT/APPLICANT

VERSUS

State of Maharashtra
Through Police Inspector,
Shivaji Nagar Police Station,
Beed, Tq. & Dist. Beed

..RESPONDENT

....
Mr. S.S. Thombre, Advocate for appellant/applicant
Mr. S.P. Sonpawale, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT, J.
DATED : 11th MARCH, 2022**

ORAL JUDGMENT :

1. This is an appeal against conviction. The appellant has been convicted of offence punishable under Section 3 read with Section 5 of the Medical Termination of Pregnancy Act ('M.T.P. Act'), and therefore, sentenced to suffer rigorous imprisonment for three years.

2. The appellant, along with seventeen others, was prosecuted for the offences punishable under Sections 302, 312, 313, 315, 316, 318, 201 and 304 read with Section 34 of the Indian Penal Code, under Sections 5, 6, 22, 23 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and under Sections 3, 4 read with Section 5 of the M.T.P. Act. It was Sessions Case No. 170 of 2012. The learned Additional Sessions Judge, vide her judgment and order dated 22nd March, 2018, acquitted the appellant and all others of all the offences they were charged with except the appellant to have been convicted for the offence punishable under Section 3 read with Section 5 of the M.T.P. Act.

3. Heard.

4. Learned counsel for the appellant would submit that Section 5 of the M.T.P. Act is an exception to Sections 3 and 4 of the very Act. According to learned counsel, the petitioner terminated the pregnancy as it was/were necessary to save the life of the pregnant women. Such was done by him in good faith. The medical papers of the concerned patients in that regard have been placed on record. Learned counsel, therefore, urged for allowing the appeal.

5. Learned A.P.P. would, on the other hand, supports the impugned judgment of conviction and resultant order of sentence.

6. Considered the submission advanced. Perused the evidence relied on. The reasons given by the trial Court for convicting the appellant are as follows :-

“66] It is the case of prosecution that the accused in furtherance of their common intention, terminated the pregnancy which was of 8 months, 5 months and 8 months respectively. As discussed above there is doubt about both the fetus which are of 8 months. The recovery of the fetus of child in conflict with law is doubtful. Fetus of Deepali was not brought on record. Rekha was carrying pregnancy of 5 months, it means of 20 weeks. As per provisions of Section 3(2)(b) of MTP Act, pregnancy of 20 weeks can be terminated by not less than 2 registered medical Practitioner which was to be carried in good faith with intention that continuance of the said pregnancy would involve risk to the life of pregnant woman. Section 3 of the MTP act runs as follows:

3. When Pregnancies may be terminated by registered medical practitioners :

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are Of opinion, formed in good faith, that,-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-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.

Explanation 2.-Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in C1.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.

67] Accused no.1 in his written defense statement contended that he alone has terminated the pregnancy. Thus taking into consideration the aforesaid provisions of Sec. 3 of MTP, in my opinion accused no.1 is found guilty U/sec. 3 of MTP Act.

Hence I hold that prosecution has proved the aforesaid offence against accused no.1 only. It is needless to say that all other accused are not concern with this offence. Hence, I answer point no.11, accordingly.”

7. It appears that learned trial Judge ignored the fact that Section 5 is an exception to Sections 3 and 4 of the M.T.P. Act. In response to the questions put to the appellant under Section 313 of the Code of Criminal Procedure, he offered the following explanation which has been reiterated by the trial Court in paragraph nos. 39, 40 and 41 of the impugned judgment :-

“39] In the statement U/sec. 313 of Cr.P.C, incriminating substance was put to accused to seek their explanation regarding it. In that context accused no. 1, has answered Question No.102 that he is filing written statement. In his written statement he has contended that on 30-5-2012, accused Deepali Pawar came to his hospital along with her mother. She was pregnant for first time. Due to bleeding and pain in abdomen, she was admitted in the hospital. He started treatment, but bleeding was not stopped. It causes danger to her fetus as well as to the life of mother. Hence, on 31-5-2012, at about 8.00 a.m., he performed Cesarean section, in which one girl-baby begotten. As it was premature and having low weight, it was died. The dead fetus was hand over to the father of patient for further ritual.

40] The accused no.1 in his written statement further contended that on 31-5-2012, the child in conflict with law was admitted in his hospital. For the first time she was carrying

pregnancy. Due to bleeding and pain in abdomen, she was admitted in the hospital. He started treatment, but bleeding was not stopped. It causes danger, to her fetus as well as to life to mother. Hence, he performed Cesarean section in which one girl-baby begotten. It died immediately. The dead fetus was hand over to the relatives of patient for further ritual.

41] *The accused no.1 in his written statement further contended that on 01-06-2012, accused Rekha Harale was admitted in his hospital. For the third time she was carrying pregnancy. Due to bleeding, white discharge and pains in abdomen, she was admitted in the hospital. To save her life, he performed Cesarean section in which one dead girl-baby begotten. After surgery her family planning operation was performed.”*

Moreover, the medical papers of these patients have also been placed on record.

8. The Hon’ble Apex Court in the case of ***X Vs. Union of India (UOI) and Others*** in ***Writ Petition (C) No. 593 of 2016*** decided on 25th July, 2016 has observed as under :

“A perusal of provisions of Section 3 of the M.T.P. Act reveals, that the provision deal with termination of pregnancies of different durations, and the procedure contemplated therefor. Section 3 leaves no room for doubt, that it is not permissible to terminate a pregnancy, after 20 weeks. However, Section 5 of the Act lays down exceptions to Section3.”

It has also been observed that perusal of Section 5 of the M.T.P. Act reveals that termination of pregnancy, which is necessary to save the life of the pregnant woman, is permissible.

9. True, it is for the accused to prove that his case falls within Section 5 of the M.T.P. Act. As stated above, the appellant had offered his explanation as adverted to by the trial Court in paragraph nos.39, 40 and 41 of the impugned judgment. The medical papers of the concerned women have also been placed on record. It needs no mention that the burden of proof that lies on the appellant that his case comes under Section 5 of the M.T.P. Act is not as rigorous as that of the prosecution to prove an offence beyond reasonable doubt. Since the appellant has offered a reasonable explanation and placed on record the medical papers to point out that the pregnancies were terminated since he was of the opinion, formed in good faith, that such termination/s was/were immediately necessary to save life/lives of the pregnant women. The trial Court has not adverted to this aspect of the matter. It found that there ought to have been an opinion given by not less than two doctors in this regard. The same appears to be inconsistent with the terminology of Section 5 of the M.T.P. Act. The appeal, therefore, deserves to be allowed.

10. Criminal appeal is allowed. Impugned order dated 22nd March, 2022, convicting the appellant for the offences punishable under Section 3

read with Section 5 of the M.T.P. Act is hereby quashed and set aside. The appellant is acquitted of the offences punishable under Section 3 read with Section 5 of the M.T.P. Act. Pending criminal application stands disposed of accordingly.

(R.G. AVACHAT, J.)

SSD