

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 31 of 2004

Abdul Karim Ansary

-Vs-

The State of West Bengal

For the Appellant : Mr. Aritra Bhattacharya

For the State : Mr. Avishek Sinha

Heard on : 29.08.2023, 11.12.2023

Judgment on : 14.12.2023

Ananya Bandyopadhyay, J.:-

1. This instant criminal appeal is preferred against the order of conviction dated 23.12.03 passed by the Learned Additional District and Sessions Judge, F.T.C. No. 4, Raghunathpur, Purulia in Sessions Trial No. 21/2000 arising out of Sessions Case No. 61 of 2000 under Section 314 of the Indian Penal code, sentencing the appellant to suffer rigorous imprisonment for 5 years and further to pay fine of Rs. 2,000/- in default to suffer simple imprisonment for one year.
2. The prosecution case precisely stated that on 27.09.1987 at 9:45 hrs the complainant Alam Ansary of Gopinathpur called at the P.S. and lodged a written complaint to the effect that his second daughter Madina was living in his house for a year and used to work in the house of co-villager Abdul

Karim Ansary son of Sadiollah. The complainant was a Fakir who learnt her daughter Madina to have expired on 21.9.1987. He brought the dead body of Madina Bibi and graved in the ground as per “Muslim Custom”. It was further stated specifically that his daughter Madina Bibi was pregnant for 5/6 months out of co-habitation with the said Abdul Karim Ansary and with due terminate the pregnancy, he administered poison with the connivance of Bandu Ansary. Sk. Hasim and Ayesa Bibi of Bhakatpara and thereby caused death of his daughter.

3. On the basis of the aforesaid written complaint the Raghunathpur P.S. Case No. 9 dated 27.09.1987 under Sections 314/34/109 of the Indian Penal Code was registered. On completion of investigation Charge-Sheet No. 38 dated 18.08.1988 under Section 313, 314, 493 of the Indian Penal Code was submitted against the accused persons to stand trial. Charges were framed to which the accused persons pleaded not guilty and claimed to be tried
4. The prosecution examined as many as 12 witnesses, and exhibited certain documents.
5. Learned Advocate for the petitioner submitted that –
 - i. The Learned Court below erred in holding that “this is a case of criminal abortion that is to say, miscarriage of pregnancy of deceased Madina caused by the accused Abdul Karim Ansary” and thereafter wrongly held that “having regard to the facts and circumstances as the instant case I hold that the Abdul Karim Ansary had co-habitation with Madina Bibi his domestic help and she got pregnant by him and he the accused caused the miscarriage of her pregnancy by means of criminal abortion

notwithstanding his knowledge of consequences leading to her death”. Whereas the evidence adduced by the prosecution together with P.M. report go to show the said Madina Bibi was not at all pregnant and as such the question of miscarriage of her pregnancy does not arise.

- ii. The Learned Court below erred in holding that “thus the evidence actually let in by the prosecution and the circumstances attending the case unfold the crime of criminal abortion attributed by the accused Abdul Karim Ansary beyond reasonable shadow of doubt. However I do not find much conclusive evidence against the rest of the accused persons. In the circumstances, if the charges under Section 314 and 34 of the Indian Penal Code are not proved in case of two accused person out of three, the third accused person namely the Abdul Karim Ansary cannot be held guilty under Section 314 when the evidence adduced on behalf of the prosecution failed to disclose any ingredients under Section 314 of IPC.
- iii. The Learned Court below failed to appreciate that all the relevant witnesses did not give any direct evidence implicating the accused Abdul Karim Ansary in any way whatsoever. But the Learned Court relied on the hearsay evidence of some of the interest witnesses namely close relatives of the Madina Bibi without any corroboration at all.
- iv. The Learned Court below erred in holding that “in view of ocular testimony of the witness as discussed above it would be unsafe to pass a judgment purely on the basis of opinion given by the Dr. A. K. Pakrasi in his P.M. report without substantial corroboration is a rule of prudence”

when admittedly the court relied on evidence without any corroboration as to pregnancy of Madina Bibi for 5/6 months and the cause of death took place at the time of delivery whereas as per evidence the cause of death of Madina Bibi was due to natural cause but the prosecution proceeded on the basis of pregnancy of Madina Bibi for 5/6 months and the investigation proceeded on the basis of unnatural death and as such there are error in law as well as in facts and such errors are apparent on face of it.

- v. The Learned Court below erred in holding that *“circumstantial evidence is something from which facts in issue are to be inferred. So relying on all there principles I come to the finding that witnesses have made a direct evidence having heard that Madina was pregnant and it was Abdul Ansary who took Madina to Purulia for check up. It is also a direct evidence that Madina was working as the domestic help in the house of Adbul Karim Ansary”*.
- vi. The Learned Court below erred in holding that *“thus I find that ocular testimony of PW-3 and PW-4 finds corroboration with each other from that of the written complaint in so far as the factum of deceased Madina working in the house of Abdul Karim Ansary as domestic help and hr put in the house of accused Karim and further pregnant thereby.”* But only the interested witnesses and close relatives of Madina did speak in line with each other and not a single independent witness made any statement in support of them.

- vii. The Learned Court below erred in holding that “thus in consideration of the total impact of the evidence of Hanif Ansary (PW-3), Budu Ansary (PW-4), Nepura (PW-6), Anjana Bibi (PW-7), I find their oral testimony corroborative the prosecution case. Ujir Ansary (PW-8) know Madina who used to work in the house of Karim. He heard that Madina died in Purulia but he cannot say the cause of her death.” On cross-examination PW-8 said, who used to work in the house of Karim that he did not hear about anything relating to relationship of Madina and Karim. As such it is clear that the prosecution failed to prove its case. Moreover it is crystal clear that Madina was not pregnant for 5/6 months and as such the question of her being abortion does not arise.
- viii. The Learned Court below failed to appreciate that there are full of contradictions in prosecution witnesses namely all the witnesses stated that Madina was pregnant for 5/6 months and she died in Purulia Hospital at the time of her delivery but the inquest report and P.M. report do prove otherwise. As such on the basis of such evidence the appellant cannot be held guilty under Section 314 of the Indian Penal Code.
- ix. The Learned Court below failed to appreciate the evidence adduced and committed error in law and facts of the case and particularly when P.M. report clearly indicates she was neither pregnant nor her death was in any way unnatural.
- x. The conviction and sentences complained of is otherwise bad in law and as such it is liable to be set aside.

6. The Learned Advocate for the State submitted that the medical report did not support the victim's pregnancy and left it to the discretion of the Court.

7. A circumspection of the prosecution witnesses revealed as follows:

- a. PW-1 mentioned that he was 20 years old and clarified that he had no acquaintance with the victim and no awareness of the incident.
- b. PW-2, assigned as the M.O. Surgeon at Sadar Hospital Purulia on 20.9.87, conducted a post mortem examination on the victim, aged 35, at 11:30 am on the stated date. The report issued by PW-2 detailed:

"On P.M. examination, I found decomposition on the dead body and there were P.M. blebs and maggots over the body.

Right pleura was adherent to chest wall and there was a cavitation about 2' diameter in right upper zone. The heart empty of both sides and the stomach was also empty. Uterus was normal in size and the dead body was not pregnant.

Death in my opinion was due to natural cause.

The following points are to be noted also.

Cause of death maybe most likely –

1) due to Pulmonary tuberculosis.

2) Time of death was more than 60 hours from the time of P.M. examination."

- c. PW-3, the victim's elder brother-in-law, confirmed her demise. She worked as a domestic help in the appellant's household and was promised marriage by him, which did not materialize. She traveled to Purulia with the appellant, where she passed away. PW-3,

unaware of her death until later, had heard rumors of her pregnancy leading to her demise, information not disclosed by the appellant. In cross-examination, PW-3 revealed that the victim worked in the appellant's fields, growing and harvesting paddy. She was unmarried. PW-3 stated that, 15 days prior to her death, the appellant informed him about his plan to marry the victim. Subsequently, PW-3 advised the victim to consider marriage with the appellant. Later, PW-3 inquired about the victim's marriage with the complainant. Days after, PW-3 discovered she had been taken to Purulia by the appellant. Adiran Bibi was the wife of the appellant. PW-3 was informed about the victim's pregnancy post her demise by his wife.

- d. PW-4, the victim's youngest brother-in-law, revealed that she worked as a domestic help for the appellant, who had promised marriage but failed to fulfill it. He obtained this information from the victim's brother. The appellant took the victim to Purulia, where PW-4 also learned about the death of the appellant's second wife at Purulia Hospital. However, during cross-examination, PW-4 mentioned that the victim was previously married to someone from Burnpur who had abandoned her. He came to know about the appellant taking the victim to Purulia from her brother.
- e. PW-5 stated that he had no acquaintance with the victim and no awareness of the incident.

- f. PW-6 stated that the victim was employed as a domestic help in the house of the appellant. Thereafter, learning from police that the appellant's second wife had passed away, PW-6 discovered conflicting information among villagers regarding the victim's status as the appellant's second wife. The victim had informed PW-6 about going to Purulia for treatment.
- g. PW-7, the victim's sister, confirmed the victim's employment at the appellant's house and mentioned that the appellant had taken her to Purulia for a checkup due to pregnancy.
- h. During cross-examination, PW-7 admitted unawareness of the victim's marriage in Burnpur.
- i. PW-8 acknowledged the victim's employment in the appellant's house and her demise in Purulia. However, during cross-examination, despite his 30 years of service at the appellant's house, PW-8 lacked knowledge about the relationship between the victim and the appellant. He mentioned that the victim was previously married to a person in Asansol.
- j. PW-9, a neighbor of the appellant, cited the incident date as 21.9.87, stating the victim's employment as a domestic help in the appellant's house and hearing about her demise during childbirth. He stated that the victim was not married.
- k. During cross-examination, PW-9 mentioned that the appellant lived with his mother, wife and children in his dwelling. He further

mentioned that he was unable to identify the individual responsible for the victim's pregnancy.

- l. PW-10, identifying herself as the victim's sister, affirmed the victim's employment at the appellant's house and recounted the appellant taking the victim to Purulia Hospital where she passed away. Prior to this, the victim informed PW-10 about her pregnancy and expressed the expectation of marriage with the appellant upon her return from the hospital.
- m. PW-11, serving as the O.C. of Raghunathpur police station on 27.9.87, confirmed receiving a written complaint from the victim's father on that date at 9:45 am. The F.I.R. was marked as Ext. 2, with his signature on the F.I.R. marked as Ext. 3. However, during cross-examination, PW-11 clarified his non-involvement in the subsequent investigation.
- n. PW-12, serving as the O.C. of Purulia (T) P.S. on 19.9.87, indicated Aditya Singha Mahapatra, deceased, as an A.S.I. attached to Purulia (T) P.S. during PW-12's tenure. On the mentioned date, A.S.I. Aditya Singha Mahapatra conducted an inquest over the victim's body at Hossemi Mahalla, Sk. Hanim's house. The inquest report was marked as Ext. 4.
- o. A U.D. Case No. 81/19.9.87 of Purulia (T) P.S. was initiated concerning the victim's body, leading to the inquest. The body was transported to Purulia Morgue for a Post Mortem examination via a challan prepared by Aditya Singha Mahapatra. The challan was

marked as Ext. 5. However, during cross-examination, PW-12 clarified his absence during the inquest and affirmed his non-participation in the subsequent investigation related to the case.

8. As it appears from evidence adduced by the prosecution that the evidence of P.W.-1, who stated that he does not know any incident is of no help to the prosecution.

- a) Hanif Ansary (P.W.-3) is the brother-in-law of deceased Madina Bibi who stated that Madina used to work in the house of Karim as domestic help. He further stated that Karim had promised her to marry but he did not marry. She had gone to Purulia along with Karim. He further said that he heard Madina was pregnant and at the time of delivery she expired. In cross-examination P.W. – 3 also stated that Madina used to work in the field of Karim in growing and harvesting paddy. He further stated that he heard that Madina was taken to Purulia by Karim.
- b) Budhu Ansary (P.W. – 4) is the youngest brother-in-law of Madina. He said Madina was domestic help of Karim who promised her to marry. Karim took Madina to Purulia but P.W. did not know where she was taken.
- c) Sk. Kamal uddin (P.W. – 5) is the neighbor of Sk. Hasim but he was stated about his ignorance as to whether any woman called Madina was taken to the house of Sk. Hasim for treatment. In spite of aforesaid, it is a definite case of the prosecution that Karim took her to the said house of Sk. Hasim for miscarriage of her pregnancy and the Learned Court relied on the same.

d) Nepura Bibi (P.W. – 6) Madina was her sister stated that Madina was the domestic help in the house of Karim. He further stated that Madina was taken to Purulia by Karim but reasons was not known to her. She stated that Madina was married but she was deserted but in cross-examination she stated that Madina was not married and when Madina used to go the house of Karim, his wife sons (4), daughters (5) and mother used to live in the house. She stated categorically Madina used to work in the field of Karim.

e) Anjana Bibi (P.W. – 7), Sister of Madina, stated that Madina used to work in the house of Karim and Karim took her to Purulia as she was pregnant.

9. The witnesses adduced on behalf of the prosecution have stated that the Madina Bibi was the domestic help in the house of Karim the accused/appellant and other group of witnesses who were not related to Madina did say that she used to work in the field of Karim. Moreover all the witnesses have said that the Madina was pregnant for 5/6 months and Karim took her to Purulia for abortion but the expert opinion as well as P.M. report did disclose that Madina was neither pregnant not any attempt and/or acts done on her to miscarriage and/or terminate the pregnancy. It is also the definite statement of the doctor that the cause of her death was natural and there was no indication of application of any extraneous drugs on her. In the premises the prosecution has miserably failed to prove the case.

10. The prosecution neither proved the ingredients of Section 314 of the Indian Penal Code nor the ingredients of Section 34 of the Indian Penal code since all other accused person except the appellant were found not guilty they were released. As such the impugned order of conviction and sentence is liable to be set aside and quashed.
11. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.
12. In view of the above discussions the order of conviction dated 23.12.03 passed by the Learned Additional District and Sessions Judge, F.T.C. No. 4, Raghunathpur, Purulia in Sessions Trial No. 21/2000 arising out of Sessions Case No. 61 of 2000 under Section 314 of the Indian Penal code and sentencing the appellant to suffer rigorous imprisonment for 5 years and further to pay fine of Rs. 2,000/- in default to simple imprisonment for one year is set aside.
13. Accordingly, the instant criminal appeal being CRA 31 of 2004 stands disposed of.
14. There is no order as to cost.
15. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)