IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 111 OF 2023

Surekha Shamlal Totla
Age 60 Years, Occupation Retired Medical Officer,
R/o. Marwadi Lane, Erandol, Taluka Erandol,
District Jalgaon. … Appellant

Versus

The State of Maharashtra … Respondent

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Ms. Rashmi Kulkarni a/w Ms. Namita Thole, Mr. Sarvesh Bhimale and Ms. Dhanashree Darakh, Advocates for the Appellant.
Mr. S. M. Ganachari, APP for the Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 16.10.2026
Pronounced on : 31.10.2026

JUDGMENT :

1. Appellant, a convict for offence under Sections 304(II), 312, 314, 315 of IPC and Sections 5(3) and 5(4) of the Medical Termination of Pregnancy Act, 1971 (for short, “MTP Act”), vide judgment and order dated 25.01.2023 passed by learned Additional Sessions Judge, Jalgaon in Sessions Case No. 182 of 2012, hereby challenges the said judgment and order of conviction.

PROSECUTION STORY IN BRIEF

2. Before trial court, case of prosecution was that, wife of PW7 Balasaheb, namely, Kusumbai, on account of stomach pain, was taken to the hospital of appellant. It is prosecution's case that, appellant, on examining Kusumbai, told PW7 that she was two and half month's pregnant, but the foetus was unwell and so advised need of abortion urgently to save life of Kusumbai. PW7 consented and made upfront payment of Rs.10,000/-. Around 4.30 pm, he was again approached by appellant appraising him about condition of his wife to be critical and the need to shift her in ambulance elsewhere. Kusumbai was taken to the hospital of PW1 Dr. Sangram Patil at around 5.00 pm, and PW1 declared her dead around 5.30 pm and accordingly intimated police.

PW9 Inspector Bankar visited the hospital and on behalf of State, he lodged complaint for commission of offence under Sections 304, 201 of IPC and Sections 5(3)(4) of the MTP Act. He investigated the said crime and chrgesheeted appellant, who was tried by learned Additional Sessions Judge, Jalgaon, who ultimately, on appreciation of the evidence, convicted the appellant for above Sections. Hence, the instant appeal.

BRIEF ACCOUNT OF THE EVIDENCE BEFORE TRIAL COURT

3. Prosecution seems to have adduced evidence of in all nine witnesses. Their role and status and the sum and substance of their evidence is as under :

4. **PW1** Dr. Sangram Patil at Exhibit 35 deposed that he has acquired M.D. in India, FRCA, FFTMRC qualification in UK and he ran hospital by name Baba Amte Rural Hospital at Erandol. According to him, on 22.06.2012, appellant referred one patient, namely Kusumbai Patil, on phone because of bleeding and for the purpose of resuscitation. According to him, within five to seven minutes of the call, patient came to his hospital. He examined her and found her condition to be critical in terms of cardio vascular status. He noted symptoms of drowsiness and there to be glasgow coma of scale five, and therefore initiated he both, basic as well as advance life support to the patient. Resuscitation was given for five to ten minutes, after which the patient stopped breathing and her heart had stopped and therefore, patient was put on advance life support which lasted for 30 minutes. As patient did not respond, she was declared dead and it was duly to both, husband as well as appellant. Police station was also reported vide letter Exhibit 36 and information was sent to Civil Surgeon vide letter Exhibit 37.

In para 5 he deposed that, condition of the patient was critical because of per vaginal bleeding resulting in hemorrhagic shock. He deposed that medical termination of pregnancy can lead to such type of bleeding. He further added that, while terminating pregnancy, it is a known complication that patient may suffer a hole on the uterus and said complication may occur irrespective of the fact that the procedure was carried out carefully or carelessly. He identified accused.

Witness has faced cross wherein he admitted that, as regards to Exhibit 36 is concerned, there is overwriting and that second date on Exhibit 36 is 23.06.2012. He denied name Kusumbai to be written by overwriting after writing Patil. He admitted that there are two types of abortions, one is induced while other is spontaneous abortion and that, induced one can be due to administration of drugs or use of surgical instruments. He admitted that discharge of fluid in case of spontaneous abortion can take place at any time. He admitted that, when he examined the patient because of severe shock, she was not bleeding. Then he is questioned on the types of hemorrhagic shock and quantity of blood loss, urine output, pulse rate. He admitted that respiratory system of the patient was clear and heart rate was 32 per

minute. In para 9, he answered that adrenaline was injected every three minutes for about 30 minutes. He admitted that, in Exhibit 36, time of admission is noted as 5.00 pm and even death is noted at 5.00 pm, but volunteered that it was not in his handwriting. He further admitted that. due to insertion of instrument, there may be injury to the cervix and expressed his inability to state whether, while inserting a tablet by means of instrument in vagina, there is possibility of injury to cervix. He expressed his opinion that, in case of spontaneous abortion, blood does not get accumulated in abdomen, rather it may accumulate in uterus. He answered that, he does not think that if a lady had cesarean and suffers abortion, then pressure of the blood may cause perforation. He answered that, since the patient was referred by accused, “he assumed” that accused performed medical termination of pregnancy. He denied that patient was not referred by appellant. He admitted knowing MLA Chimanrao Patil to be MLA of Erandol in 2012, denied knowing Gulabrao Patil to be Ex MLA of Dharangaon and Machindra Patil to be President of Zilla Parishad, Jalgaon, but admitted knowing Machindra Patil as he used to visit the hospital. He admitted that in his hospital, no foetus or its membrane was found. He answered that he cannot opine that no medical termination of pregnancy of Kusumbai was done.

5. **PW2** Nana Marathe, nephew of PW7 and deceased, claims that Kusumbai was her aunt and she was suffering pains in stomach and therefore his uncle and another aunt took her to the hospital of appellant, and he claims that around 6.00 pm, he learnt that Kusumbai expired at the hospital of Dr. Sangram Patil (PW1) and so he went there, saw the dead body and acted as a pancha to inquest panchanama. In para 3 of the examination-in-chief, he claims to have seen bleeding in between two legs. He identified panchanama Exhibit 46.

While under cross, he denied that no inquest panchanama was drawn in his presence and also denied that he never came to Erandol and that he falsely deposed about seeing bleeding between two legs of his aunt.

6. **PW3** acted as pancha to sealing and seizure panchanama of sonography machine Exhibit 70 at Nirmal Hospital of appellant. He identified attested copy of panchanama of the hospital Exhibit 71. He also acted as pancha to the seizure panchanama Exhibit 72, during which register of the appellant's hospital was seized and on going through the register, he identified name of Kusumbai at sr. no. 123.

The register was marked as Article-1 (trial court's record shows that said original register is destroyed).

While under cross, he admitted that in panchanama Exhibit 71, name of appellant is not mentioned. According to him, police, Tahsildar and media were present there and Havildar called him inside and there, Tahsildar madam showed instruments and rooms of the hospital. (Tahsildar unable to identify the instruments by name). He admitted that, in the panchanama it is not mentioned that Tahsildar showed instruments over there. Rest is denial.

7. **PW4** Tahsildar deposed at Exhibit 76 that on 23.06.2012, around 1.00 pm, she received phone call from Dr. Deepak Mahajan regarding abortion of a lady done in the hospital of appellant and said lady expired in the hospital of Dr. Sangram Patil (PW1). At the same time, according to her, she also received phone call about it from Police Inspector Bankar (PW9). Accordingly, she and Dr. Mahajan went to the hospital of Dr. Sangram Patil and on the table in a room of that hospital, they saw one lady lying dead and from there they went to the nursing home of Dr. Surekha Totla (appellant). She deposed that, Dr. Mahajan, herself and panchas checked all machines, documents, records and drew panchanama about discrepancies.

Statement of appellant was also recorded. All seized documents were kept in the custody of Dr. Mahajan as he had to submit report to Civil Surgeon. Sonography machine was sealed. She identified panchanama Exhibit 70.

While under cross, she gave her qualification and after admitting that license is necessary for running nursing home, she answered that she had preliminary knowledge of PCPNDT Act. She admitted that 17 to 18 days prior to 23.06.2012 she had been to the hospital of appellant for investigation. After denying that in the said investigation there were no discrepancies, she expressed her ignorance about chargesheet being filed against appellant in the court and whether there was acquittal of appellant. She admitted that she had not received complaint against accused. She answered that she does not remember at that time whether any proof was found to show that nursing home was being run in the name of accused-appellant. She admitted that, at that place she did not see any MTP kit and she answered that there were some instruments of surgery but she is unable to tell their names and to that extent, there to be no noting in the panchanama. Rest is denial.

8. **PW5** Kalpanabai was sister-in-law of PW7. She, at Exhibit 77 stated that on 22.06.2012 at 9.30 am, PW7 approached her and told that Kusum was having pain in stomach and so requested her to accompany him in the hospital and thereafter they went to the hospital of Dr. Surekha (appellant). According to her, appellant examined her and told that foetus was abnormal and that it will have to be aborted otherwise there was threat to life of Kusum. According to her, PW7 deposited Rs.10,000/- and Kusum was taken inside while this witness was waiting outside. At 4.30 pm, Dr. Surekha told that condition of patient had deteriorated and to call vehicle and accordingly they carried Kusum in rickshaw to the hospital of Dr. Patil. Accused was also present with them. In para 4 she deposed that, Dr. Sangram Patil checked her and told that she was dead. Then dead body was taken to Dhule for postmortem and on next day there was cremation. Police made inquiry with her and recorded her statement.

While under cross, she admitted that, receipt of payment of Rs.10,000/- was not taken. She is unable to tell number of rooms in the hospital and how many nurses and compounders were working there. She is unable to tell what examination of Kusum was done by Dr. Totla. Rest is all denial.

9. **PW6** is pancha to spot and seizure of clothes of deceased i.e. Exhibits 80 and 81. He did not support prosecution.

10. **PW7** husband of deceased Kusum testified at Exhibit 94 that, he knew accused as he had consulted her for his wife's treatment. In para 2 of examination-in-chief, he deposed that he took his wife to accused on 22.06.2012 as his wife complained of stomach ache. His sister-in-law Kalpanabai accompanied them. Accused examined his wife and told that she was two and half months pregnant but foetus was unwell and so advised abortion to save life of Kusumbai. In order to protect his wife's life, he claims that, he consented for the abortion, paid fees Rs.10,000/- which was settled. In para 3, he deposed that accused took his wife inside and asked them to wait outside. At 4.00 to 4.30 pm, accused told that his wife's condition was serious and to arrange for ambulance to shift her somewhere else. Then accused called auto rickshaw. He himself, his wife, sister-in-law and accused all proceeded to Dr. Sangram's hospital at Erandol where, according to him, Dr. Sangram examined his wife and declared her to be dead. Police sent the dead body for postmortem at Government Medical Hospital, Dhule after panchanama. His wife's body and her clothes were smeared with blood. After postmortem, last rituals were

conducted. He identified clothes of his wife. He deposed about lodging complaint with Consumer Dispute Redressal Forum, Jalgaon.

While under cross, he admitted that he was working as Up-sarpancha during 2000 to 2005, Sarpancha from 2010 to 2014 and also admitted that he is still active member of political party Shiv Sena. He admitted that in 2012, Chimanrao Patil represented Parola-Erandol Constituency and that he too belong to Shiv Sena. He admitted knowing Dashrath Mahajan, Councilor of Municipal Council Erandol. He pleaded ignorance about Dr. Sangram Patil to be also active in politics. In para 9 of cross, he admitted that prior to the last illness of his wife, he had not taken his wife for medical treatment with respect to uneven menstrual cycle. He admitted that Dr. Rajesh Mahajan is his family doctor, but denied Dr. Rajesh Mahajan treating his wife. He answered that prior to the incident, his wife did not complain of stomach ache. He answered that, when accused told him that his wife was pregnant, he got knowledge about it for the first time and that his wife had not disclosed to him prior to the incident that she was carrying. He answered that prior to the incident, no sonography was conducted of his wife.

In para 10, he answered that he reached the hospital of accused at around 10.00 to 10.30 am. Omissions are brought on the count that, accused examined his wife. He admitted that neither he nor his relatives lodged report to police station about incident dated 22.06.2012. He admitted that his statement was recorded by police on 25.06.2012. He answered that, as he was in grief due to demise of his wife, he did not state anything to police about execution of consent deed and receipt by accused. He admitted that, he did not state to the police about accused giving Cheque of Rs.9,00,000/- in pursuance to the consent deed. He identified death certificate of his wife. He admitted that, he did not deposit cheque of Rs.9,00,000/- for encashment. He admitted that, consumer forum allowed his complaint against which accused preferred appeal before the State Commission and he also caused appearance therein. He admitted that neither he himself, nor his relatives intimated police about his wife's death. He answered that accused had performed sonography of his wife on the day of incident. He claims to be unaware whether deceased was subjected to anesthesia in the hospital of either accused, or Dr. Sangram Patil. He answered that, deceased was not admitted in the ICU of Dr. Sangram Patil. In para 12, he is unable to state exactly what treatment Dr. Sangram gave to his wife.

Again in para 13, omission is brought on the point of paying Rs.10,000/- to accused. He denied that his wife required oxygen while she was admitted in the hospital of Dr. Sangram Patil (PW1). He admitted that his wife died in the hospital of Dr. Sangram Patil. Rest is all denial.

11. **PW8** Dr. Ajit Pathak is the autopsy surgeon, who, at Exhibit 106, after deposing regarding his post and acquired qualifications, deposed that on 23.06.2012 he, Dr. A.P. More, Dr. M. S. Vasaikar, Dr. M. N. Wankhede were along with him for performing postmortem. He deposed that in inquest, cause of death was reported to be due to vaginal bleeding but exact cause was not known. According to him, the dead body was of a female aged 35, wearing clothes having blood stains at places with two cotton gauze pieces socked in blood, and dried blood stains were present on both feet and soles as well as over palms. The old scar was suggestive of previous lower segment cesarean. Striae Gravidarum (stretch marks) present over lower part of abdomen suggesting pregnancy. There were no injuries to the external genitals.

In para 7, Doctor testified that on internal examination of abdomen, abdominal walls were intact but in peritoneum and its cavity there was about 1.5 liter of blood with blood clots. No foetus or part of placental tissues were found in the abdominal cavity. Small and large intestines to be intact. Cervix was intact. Rent (hole) of 2 cm X 2 cm at uterovesical pouch on right side with hematoma in broad ligament bilaterally. No foetus, no fetal parts, no placenta were found in uterine cavity. Evidence of few blood clots were seen in the uterine cavity. Both fallopian tubes and both ovaries were found intact. Viscera was preserved for chemical analysis. In para 11 he rendered opinion that, “as a result of internal damage as mentioned in column no. 21 of postmortem report, the deceased died”. They opined that ante-mortem injuries found on the body of deceased were sufficient in the ordinary course of nature to cause death and those injuries were even otherwise individually or collectively sufficient to cause death. Opinion about cause of death was “death due to post abortal hemorrhage and shock due to uterine perforation”. He identified postmortem report Exhibit 107.

In para 13, he deposed that histopathological examination and reporting was done by Dr. Vasaikar and it was noted that, all organs

were found pale and uterus from the site of rupture showed marked congestion and on microscopic examination, endomyometrium congestion was seen, which according to him, “was possible due to pregnancy”. According to him, organs were pale due to excess blood loss. He identified CA report as well as provisional postmortem report.

There is extensive cross wherein again this medical expert has admitted about abortion to be either spontaneous or induced and that, spontaneous one to be possible either due to accident or in any natural manner. Whereas, induced one is either by way of surgical intervention or medical means like abortive tablets. He admitted that in surgical intervention, cervix is first dilated and only thereupon foetus and placenta can be removed. He answered that, in order to dilate cervix, one has to retract anterior and posterior vaginal walls through retractor. He admitted that cervix is handled by instruments like tenaculum and vulsellum. He admitted that these instruments have teach like structure. He also admitted that cervix is comprising of soft tissues and further admitted that, as cervix is of soft tissues, injury may be possible on account of use of extractor, tenaculum and vulsellum. He admitted that, postmortem did not disclose any injury to cervix. There were no vaginal injuries and so it is not noted in the postmortem report. He admitted that, in case of incomplete abortion,

fetal and placental tissues/remains can be found in uterine cavity. He admitted that, he did not mention about change in size of fallopian tubes and ovaries in the postmortem report. He admitted that placenta develops towards uterus during the course of pregnancy and it is either on the top or to the side of the uterus and it is the link between foetus and mother. He admitted that it was noted in the postmortem report that placental site was not located. In para 18 he gave full form of H.C.G. as Human Chorionic Gonadotropin Hormone, which is an abbreviation Hormonal Test of Pregnancy and by said test, fact of pregnancy can be conclusively determined. He admitted that, H.C.G. develops when the placenta is attached to the uterus and placenta nourishes the foetus. He admitted that H.C.G. can be found within 11 days of conception. He also admitted that, there is urine pregnancy test to ascertain pregnancy. He admitted that, they did not send blood and urine sample of deceased for confirming pregnancy.

In para 19, he admitted that histopathological report is important as it gives broad view as to the cause of death. He denied that, said report does not disclose anything about factum of pregnancy of deceased. According to him, endomyometrium congestion is suggestive of pregnancy. He again admitted that no fetal or placental tissues were found in the congestion.

In para 21, he admitted that perforation can be by three ways, Iatrogenic, spontaneous and scar rupture. He answered that Iatrogenic perforation is possible by use of instrument, and scar rupture is possible in case of C-section. He admitted that, postmortem report does not specifically mention as to in which of the three ways perforation was seen.

In para 22 he admitted that, to ascertain whether foetus is alive or dead, sonography is necessary and that, before conducting sonography it is necessary to apply gel, but traces of gel were not found either on the clothes of the deceased or on the person of deceased. He answered that he did not noticed traces even of vaginal drugs for medical termination of pregnancy. They found no traces of anesthesia being administered to the deceased nor any traces of injected drugs.

In para 23, he answered that endomyometrium comprises of two terms i.e. endometrium and myometrium. He admitted that endomyometrium congestion is possible even otherwise than pregnancy. He admitted that for performing induced abortion by vaginal pills or otherwise, undergarments are required to be removed.

He admitted that, in postmortem distinct parts of treatment cannot be ascertained. He denied that postmortem does not suggest recent abortion of deceased. He admitted that postmortem does not say anything about medical negligence. Rest is all denial.

12. **PW9** is the Investigating Officer, who, in his evidence at Exhibit 128, claims that on 22.06.2012, one doctor from Baba Amte Hospital, namely, Dr. Sangram intimated that patient Kusumbai Patil had died during treatment and on the basis of said intimation Exhibit 36, at 5.00 pm a note of A.D. was taken which he identified to be at Exhibit 129 and claims to have carried out inquiry, prepared inquest Exhibit 46 and then claims to have visited Baba Amte Hospital and prepared spot panchanama, which he identified to be at Exhibit 130 and thereafter dead body being referred to Dhule Government Hospital for postmortem. He identified communication to said Hospital Exhibit 131, provisional death certificate Exhibit 110 and then deposed that he became firm that patient died due to post abortal hemorrhage and due to uterine perforation and so he filed complaint against accused on behalf of the State. In para 2 he deposed about visiting Nirmal Nursing Home, seizing sonography machine, seizing register, F form register and patient register by drawing panchanama Exhibit 71. He deposed about drawing panchanama of room no. 3 of Nirmal Nursing

Home where patient died and he identified panchanama Exhibit 72. On the same day he seized clothes of deceased vide panchanama Exhibit 134, deposited *muddemal* vide Exhibits 135 and 136. He then deposed about arresting accused, recording statements of witnesses and dispatching viscera for CA.

This witness is subjected to extensive cross. Relevant cross is only dealt here. He admitted that Exhibit 36 is silent about bleeding per vagina, and it is silent about name of accused and that there is no reference of abortion of patient. He admitted that handwriting of PW1 and handwriting of endorsement regarding admission at 5.00 pm and death at 5.00 pm are different from each other. He admitted that complaint Exhibit 132 is silent about name of the person who brought the memo and its timing. He admitted that Exhibit 129 is silent about name of accused and abortion of patient. In para 6 he is questioned about distance between hospitals and he admitted that there is facility of conducting postmortem at Civil Hospital, Jalgaon and that Civil Hospital, Jalgaon is 30 kms. away from Erandol, whereas Bhausaheb Hire Government Medical College is at a distance of 70 to 80 kms. He admitted that he received no written direction from superiors for sending corpse to Dhule. He admitted that in provisional postmortem report at Exhibit 110 there is no mention

about death due to abortion, nor there is mention about death due to medical negligence. He admitted that he stated in the complaint that deceased died at 5.40 pm. He admitted not making inquiry about qualification of accused and about not making inquiry with Civil Surgeon, Jalgaon as to whether PW1 had issued letter on 23.06.2012. He admitted not making inquiry with the committee members appointed by Civil Surgeon. He admitted that, in spot panchanama Exhibit 130, it is not mentioned that in Baba Amte Hospital whether ICU and operation theater are available or not. He admitted that during investigation, it did not transpire that in room no. 3, instruments required for giving shock to the deceased and oxygen cylinders were there. He admitted not seizing medical record and case papers of deceased Kusumbai from Baba Amte Hospital. He admitted not making inquiry or recording statements of Dr. Rahul Patil, Dr. Noopur Patil, Dr. Snehal Patil and Dr. Sachin Mahale working in Baba Amte Hospital and also he did not make inquiry, nor recorded statements of staff working in the hospital. He admitted that Kusumbai died during treatment in Baba Amte Hospital of Dr. Sangram Patil. He also admitted that he cannot state whether information of the incident given by Dr. Sangram Patil was correct or wrong. He admitted that, during investigation it did not transpire that Nana Marathe (PW2) along with Kusumbai and her husband had

been to Nirmal Nursing Home. He admitted that in his visit to Nirmal Nursing Home for preparing panchanama, he did not get any document signed by accused and while preparing Exhibits 70 and 72 he did not get any medicine or instruments required for abortion at Nirmal Nursing Home. He admitted not recording statement of other patients in Nirmal Nursing Home and also admitted that he did not notice any blood lying in the room of Nirmal Nursing Home, nor he noticed any piece of foetus after abortion lying in any room of Nirmal Nursing Home. He admitted not collecting document of ownership of Nirmal Nursing Home, nor did he get amount of Rs.10,000/- given by Balasaheb and that, he did not investigate as to from where the amount was brought. He also admitted not getting any document about hospital to be owned by accused Dr. Surekha Totla in Erandol city. That, he did not get information from rickshaw driver in whose rickshaw Balasaheb shifted his wife to the hospital of Dr. Sangram Patil. He admitted not giving letter to Tahsildar to come to the spot of incident. He admitted not obtaining permission of learned JMFC for arresting accused after 6.00 pm and before 6.00 am.

In para 13 he admitted that, at the time of incident, accused was working as Medical Officer at Rural hospital Erandol, but he did not make inquiry as to where accused was and what she was doing on

22.06.2012 and that, he did not call information from Medical Superintendent about duty hours of accused. He admitted that, during investigation it did not transpire that any written document about incident was executed between Balasaheb and accused and that Exhibit 70 does not bear his signature nor there is reference about his presence.

In para 14, he admitted that Balasaheb was Sarpancha of the village, Chimanrao Patil was MLA, Machhindra Patil was President of Zilla Parishad and admitted that Dr.Sangram Patil was active in politics and that, after the incident, all above persons had gathered outside Baba Amte Hospital. Thereafter there is denial.

SUBMISSIONS

On behalf of the Appellant-Convict :

13. Learned counsel for the appellant would submit that, apparently prosecution has failed to prove the charges and its case beyond reasonable doubt. At the outset she would strenuously submit that, here, factum of pregnancy of deceased is itself not proved beyond reasonable doubt by the prosecution. On this count, she took this Court through the evidence of PW8 autopsy surgeon wherein he has admitted that, no foetus or placental tissues were found during

autopsy. Learned counsel pointed out that, autopsy surgeon also admitted that there was no placental site itself found during microscopic examination of uterus. That, there was no blood test or urine test to ensure pregnancy of deceased. She pointed out that even corpus luteum was also not found to be visible to suggest pregnancy. That, Doctor admitted that fallopian tubes and ovaries were intact. That, microscopic examination of uterus merely showed endomyometrium congestion which is attributable to several other reasons.

14. She further pointed out that, no sonography reports were collected by the Investigating Officer and even autopsy surgeon admitted that there was no evidence of gel used, while conducting sonography, on either the person of deceased or to her clothes. It is pointed out that, though there are allegations of noting perforation, there was no visible or identifiable internal injury which could be attributed to termination of pregnancy by means of any surgical mode or even by use of any medication. According to her, there was no contemporaneous evidence about any surgical intervention. For above reasons, she raises serious doubt about conception or pregnancy of deceased.

15. Learned counsel would also submit that, there is weak or no evidence on the point of conducting any surgery on deceased as there is no *iota* of evidence in that regard. That, while drawing panchanama Exhibit 71, there was no seizure of any blood stained clothes, medical termination kit etc. and there is no distinct evidence about any procedure conducted by accused. She pointed out that, Investigating Officer has admitted that he did not collect any surgical instruments allegedly used at the time of procedure. She pointed out that, even A.D. report is silent about any termination of pregnancy, nor there is any reference of conducting abortion in the communication Exhibit 36 allegedly forwarded by PW1 to the police. Learned counsel emphatically submitted that, PW1 himself has admitted that he merely assumed that accused performed medical termination of pregnancy and as such, there was no concrete evidence on the point of termination of pregnancy.

16. Learned counsel also pointed out that, here, at the threshold, there is no evidence that the so called hospital was being run by accused. It is pointed out that, rather said hospital is standing in the name of her sister-in-law. That, appellant was in the employment of Government as Medical Officer in Erandol, and as there is ample documentary evidence to that extent, of which PW9 Investigating

Officer has categorically admitted in cross, very implication of appellant at the outset was without any foundation. It is pointed out that, though there is reference about seizure of register of the patients of Nirmal Nursing Home, name of the accused is not appearing therein and name of deceased is only reflected in attested copy of register extract, but original register is not finding place in the record and proceedings. She would submit that, there is no oral or documentary evidence that appellant was running the Nirmal Nursing Home where deceased allegedly underwent procedure of abortion. She would also submit that, though husband of deceased claimed that he paid Rs.10,000/- for abortion of his wife, there is no supportive documentary evidence.

17. Learned counsel raises serious doubt about the credibility and veracity of testimony of PW1. She pointed out that, though he claimed to have given life support to deceased for 30 minutes or so, the spot panchanama Exhibit 130 is silent about availability of any oxygen tank or any other advance life support system. She pointed out that, though this witness claims that there was referral on telephone, no call detail records are gathered by investigating machinery, nor there is any referral letter so as to accept his version that accused referred deceased to him. Pointing to the admission in

cross of this witness that, vitalities of the patient in Grade IV is not the same as was noted with regard to deceased, she questions credibility of his testimony where he asserted and classified deceased as Grade IV hemorrhagic shock. For such reasons, learned counsel expresses serious doubt about creditworthiness of this medical expert and she would add that, on the contrary, it has come on record that this witness belongs to such political party and had connections with such political faction, who had already prejudices against appellant.

18. Learned counsel also took serious exception to the testimony of very husband of deceased and would point out that, there is no evidence in support of his contention that his wife was being treated by appellant. Learned counsel pointed out that, moreover, he has no grievance and he has not filed any complaint, rather it is at the instance of police official. She pointed out that, this witness in this matter had expressed his ignorance about pregnancy of his wife, but opposite to it, he put forth a theory before Consumer Redressal Forum regarding he to be aware of his wife to be pregnant. There is also admission by this witness in cross that he did not state to the police about he paying fees of Rs.10,000/- for admission of his wife in appellant's hospital and as such, according to learned counsel, his testimony does not inspire confidence.

19. As regards to evidence of PW4 Tahsildar is concerned, it is pointed out that, she allegedly received information on 23.06.2012 even when alleged death had taken place in the early evening around 5.00 pm on 22.06.2012. Moreover, this witness has deposed about paying visit to the hospital concerned and causing seizure, however she is unable to name the surgical instruments which she allegedly seized. Learned counsel pointed out that, barely a fortnight prior to the incident in question, routine check of the hospital was conducted and no infirmities or discrepancies were noted. Learned counsel also pointed out that, this witness claims to have seen dead body of deceased lady during visit to hospital of PW1 on 23.06.2012. However, is is submitted that, in fact, autopsy of the deceased lady was already conducted at 11.30 am at Dhule and therefore, visit of this witness and noticing dead body at Erandol itself is rendered false. For such reasons, she urges to discard testimony of this witness.

20. Lastly, it is submitted that there is false and political motivated implication at the behest of one Mahajan who belong to the same political faction to which husband of deceased lady belong, and there is admission by the Investigating Officer that such politically motivated persons were present outside the hospital of PW1, who belong to the same faction to which PW7 belong.

On behalf of the Respondent-State :

21. In answer to above, learned APP would submit that there is ample and trustworthy evidence in the form of testimony of husband and relative of deceased lady that, she was taken to the hospital of appellant on account of pain in stomach. That, they both speak about appellant informing them about her pregnancy and abnormality of the foetus and necessity of termination of pregnancy to save life of the lady. That, believing her, husband paid required fees but, it is pointed out that, ultimately around 4.30 pm these two witnesses were informed by appellant that condition of the lady was critical. Learned APP submitted that, even when there was no evidence of pregnancy, it was falsely projected by appellant regarding pregnancy and some procedure was done in the hospital landing the lady in a critical stage. That, immediately after that, appellant had contacted PW1 for referral and this witness has categorically stated to that extent. Learned APP pointed out that, there is evidence in the form of Exhibit 72 which is a register recovered from the hospital carrying name of deceased lady at sr. no. 123 and learned trial court was pleased to mark said register as Article-1 which remained unchallenged. He pointed out that coupled with it, there is *muddemal* receipt got exhibited through

Investigating Officer. That, there is also statement of accused herself regarding seizure of sonography machine at the behest of PW4. Thus, learned APP submitted that there is clinching evidence about deceased lady being admitted in the hospital of appellant where procedure of abortion was undertaken, endangering the life of patient.

22. He further pointed out that, evidence of medical experts PW1 and PW8 clearly show that procedure of termination of pregnancy was undertaken by surgical mode. On internal examination, hole was noticed at uterovesical pouch which led to hematoma. That, a team of doctors including PW8 conducted autopsy and they unanimously opined that death was due to 'post abortal hemorrhage and shock due to uterine perforation'. That, while answering inquiry under Section 313 of CrPC, appellant has given evasive answers and flat denial without proper explanation. Resultantly, according to him, learned trial court committed no error in convicting the appellant.

ANALYSIS AND CONCLUSION

23. The instant appeal challenges the conviction on following grounds :

Firstly, there is false implication. There is no evidence that appellant owns or runs Nirmal Nursing Home so as to accept prosecution's case that she performed any procedure on deceased.

Secondly, there is no cogent and reliable evidence to show that deceased was brought to the appellant on 22.06.2012 on any complaint as there is no oral or documentary evidence in that regard.

Thirdly, there to be no evidence about very pregnancy of deceased and further, any procedure by appellant only.

Fourthly, implication is politically motivated.

Lastly, vital admissions by PW1, PW8 and Investigating Officer PW9.

EVIDENCE ON BEHALF OF PROSECUTION TO CONNECT APPELLANT WITH NIRMAL NURSING HOME

24. As stated above, the fundamental ground raised in this appeal is that, there is no convincing evidence at the first count to show that, appellant had any connection with Nirmal Nursing Home and that,

deceased lady was examined or treated by appellant. It is emphatically submitted that Nirmal Nursing Home is not owned by appellant and moreover, it is run by her sister-in-law and therefore, attempt is made to disown any connection with Nirmal Nursing Home.

25. On the other hand, learned APP would point out that, there is convincing and legally acceptable evidence in the form of testimonies of very husband of deceased, the lady who accompanied deceased and further, there is also evidence of PW1 to whom there was alleged referral by none other than the appellant.

26. Here, there is testimony of PW7 husband and even that of relative lady PW5 accompanying him. They both unanimously are found to be deposing about deceased being taken to the appellant on 22.06.2012 on account of stomach pain and appellant examining the deceased, informing about pregnancy and there to be abnormal growth of foetus and hence need for abortion. It is to be noted that, these two witnesses claim that they visited appellant at around 9.00 to 9.30 am. The disclosure about critical condition of deceased, according to husband PW7, is around 4.00 to 4.30 pm. Therefore, patient was in Nirmal Nursing Home for seven hours or so. True it is

that the Investigating Officer has been negligent in not recording statements of any of the nursing staff. However here, before the trial court, to connect appellant with the Nirmal Nursing Home, papers were put up by prosecution to demonstrate that, in a proceeding, i.e. in RCC No. 89/2012 instituted on complaint of one Dr. Dipak Mahajan, Medical Superintendent, Rural Hospital, Erandol for violation of PCPNDT Act, appellant had resisted the said complaint and sought discharge by merely challenging the competence of the authority to prosecute her. A specific stand seems to have been taken by relying on inspection report of an inspection which had allegedly taken place barely 17 days prior to the action in hand, but no irregularities were found in the record maintained by the accused and hence discharge was sought. The copy of complaint and order of trial court is also placed on record at Exhibit 157. It is pertinent to note that in such proceedings, while resisting the above action, appellant had not set up a case denying her connection with Nirmal Clinic at Erandol. Thus, when there is no specific denial of such proceedings and relief, it does not now lie in the mouth of appellant to disown any nexus or relation with Nirmal Nursing Home. Consequently, it cannot be said that there is no evidence to connect appellant with Nirmal Nursing Home/Clinic. There is nothing to disbelieve testimonies of PW5 and PW7 or to doubt its credibility.

27. Prosecution in trial court was also heavily banking on testimony of PW1. His testimony is that, on 22.06.2012 appellant referred deceased patient on phone because of bleeding and for the purpose of resuscitation, and within five to seven minutes patient reached his hospital and he found her condition to be critical in terms of cardio vascular status. He noted the symptoms like drowsiness, glasgow coma which was of scale five. He claims to have given resuscitation for five to ten minutes and thereafter, as patient stopped breathing and her heart had stopped pumping, patient was put on advanced life support for 30 minutes, but patient did not respond and therefore he declared her dead. He has not only informed husband of deceased, but has also reported police as well as Civil Surgeon vide communications Exhibit 36 and 37 respectively. In para 5 he had categorically deposed about noticing per vaginal bleeding resulting into hemorrhagic shock. While under cross, he is examined on the types of abortions, types of hemorrhagic shock and its consequences. He further admitted that, when he examined the patient, because of severe shock, she had stopped bleeding. He also answered that in Exhibit 36, time of admission is 5.00 pm and time of death is also noted as 5.00 pm and such noting to be not in his handwriting. He also candidly answered that since patient was referred by accused, he assumed that, accused performed Medical Termination of Pregnancy

(MTP). He also answered that, he is unable to opine that no MTP was done.

28. Referring to the above medical expert's evidence, it is attempted to put forth by learned counsel for the appellant that, evidence of this witness, more particularly his cross, shows that except the oral assertion that referral was on phone, there is no evidence about patient being referred by appellant. Learned counsel pointed out that no CDR is collected. Even the time of admission and time of death is pointed out to be same when, according to this witness, there was 30 minutes attempt of saving the victim by providing life support, but there is no evidence about availability of such life support.

29. Here, PW1 is also a medical expert. As stated above, he has deposed about appellant referring patient to him. The patient was brought in critical condition, is also explicitly stated by him. He is also categorical about, on phone being told about bleeding and need for resuscitation and after five to seven minutes patient reached his hospital, after which he attempted to save the patient. For what reason would this witness falsely depose. Though attempt is made to show that PW1 happens to be of the same political party to which

husband of deceased belonged to or to the party to which other Doctor and political heads are named, in the considered opinion of this Court, merely on such allegations, testimony of PW1 cannot be questioned. Moreover, he has taken steps of informing police as well as Civil Surgeon. This prompt written communication is part of record. Such type of evidence cannot be discarded only on the count of political connections between husband of deceased and this witness. Furthermore, while cross examining PW1, suggestion is put up that patient did not die because of severe shock. Therefore, here, only cause of death is tried to be asserted and there is no specific denial that patient was not at all brought to PW1. Mere overwriting over time of death on Exhibit 36 will not wash away the testimony of PW1 about patient being brought to him in critical condition for saving life. Here, not only PW1, but PW2, though a nephew of deceased, and his presence in the hospital being thus natural, has also categorically noted bleeding between two legs at the time of inquest. To connect appellant with Nirmal Nursing Home, prosecution also sought reliance on Exhibits 71 and 72 and independent pancha witness PW3 is examined on this count. This witness, after going through the register maintained by the Hospital, has identified the entry of deceased Kusumbai at Sr. No. 123. True it is that original register is not in the record and proceedings, but learned trial court

has undertaken the exercise of getting the documents exhibited after examining PW3. Such evidence cannot be overlooked or brushed aside merely because there was political motive.

30. Another peculiar feature of this case is that, in the record before learned trial court, there was consent deed Exhibit 97. Its voluntary execution is denied by learned counsel on the ground that it was under pressure and moreover, consent deed in original form was not on record. On going through such document, it is emerging that there is not only signature of the appellant, but there is also photograph affixed over said Exhibit 97 and by said document, not only liability is accepted but even cheque of Rs.9,00,000/- seems to have been handed over to PW7 towards compensation. No efforts were done to show that any complaint was filed for misuse of cheque, and no efforts were done to intimate bank to not to honour it and therefore, in absence of such circumstances, submissions of learned counsel for the appellant that the said consent deed was not voluntary and rather was under duress, has no force. On the contrary, before trial court, in deposition of PW7, he has stated that original was filed in the Consumer Forum and its certified true copy is obtained and the same is marked as Exhibit 97. It is to be noted that, there are thus reasons for not bringing on record original consent deed. Moreover, PW7 is

also a signatory and party to the consent deed which he vouches to be executed between him and appellant. Further, learned trial court also seems to have marked it as Exhibit.

31. Resultantly, there is indeed material to suggest appellant's nexus with the Nirmal Nursing Home. Though papers show that it is standing in the name of sister-in-law of appellant and though Investigating Officer's admission to that extent is relied on, what is important here is that, PW7 and PW5 are both unanimously deposing about approaching appellant on account of abdominal pain of deceased. As stated above, their evidence show that victim was in the said hospital for more than seven hours i.e. till being taken to the hospital of PW1 in a rickshaw. Failure of Investigating Officer to record statement of the rickshaw driver also cannot be given undue importance in the light of availability of husband's testimony.

EVIDENCE ABOUT PREGNANCY AND CAUSE OF DEATH

32. Prosecution case in trial court was that, after detection of pregnancy of Kusumbai, appellant had suggested termination of pregnancy and also undertook it and during it, deceased landed up in critical condition. That, appellant was negligent in performing the due medical procedure.

33. PW8 whose substantive evidence is also discussed above, before conducting autopsy, claims to have studied the inquest and examined the dead body over which clothes were blood stained with two cotton gauze pieces soaked in blood and dried blood stains were seen over both feet and soles as well as over palms. He has specifically deposed noticing 1.5 ltr. of blood in the peritoneum and its cavity. He has also noticed rent admeasuring 2 cm x 2 cm in uterovesical pouch on right side with hematoma in broad ligament bilaterally. No fetal parts or placenta were found in the uterine cavity though there was evidence of blood clots in the uterine cavity. In column no.11 of the PM report, remark is “as a result of internal damage as mentioned in column no.21 of postmortem report, deceased died, and that, antemortem injuries found on the deceased were sufficient in the ordinary course of nature to cause death. This medical expert has identified postmortem report and the final cause of death as, due to post abortal hemorrhage and shock due to uterine perforation. Indeed this witness has faced extensive and searching cross, but again, on kinds of abortion and that, during surgical intervention, cervix is required to be dilated and only thereupon there can be removal of foetus and placenta. He also admitted that cervix is handled by instruments and such instruments to be having teeth like structure and cervix

comprising of soft tissues and he has further admitted that postmortem does not disclose any injuries to cervix, and that there were no vaginal injuries. He further admitted that in an incomplete abortion, tissues and remains of foetus and placenta can be found and he also identified about location of placenta in the uterus and admitted that it was noted in the postmortem report that placental site was not located. He also admitted not sending blood or urine sample for confirmation of pregnancy.

34. Pointing to the above answers in cross, learned counsel for the appellant would question the very factum of pregnancy and there to be no evidence regarding any surgery being performed by accused. It is pointed out that, AD report Exhibit 129 is primarily silent on termination of pregnancy and there to be no complaint by husband or family member. It is pointed out that even in Exhibit 36, which was a communication by PW1 to police, there is no reference of abortion being conducted, and moreover, PW1 has merely assumed MTP. On the contrary, it is submitted that, no fetal or placental tissues were present. That, mere presence of stretch marks or endomyometrium congestion in uterine cavity merely suggests pregnancy but does not confirm pregnancy.

35. On minute scrutiny of evidence of PW8, whose testimony is already dealt and reproduced in aforesaid para, though he admitted that no fetal parts or placenta were found in the uterine cavity, he deposed about noticing blood clots in uterine cavity. It needs to be noted that this autopsy surgeon was accompanied by a team of other surgeons who are signatories to the postmortem report, and they all have unanimously opined that as a result of internal damage, of which notings are made in column no.21 of the postmortem report, the deceased had died and they are categorical that these antemortem injuries were sufficient in the ordinary course of nature to cause death and ultimately opinion is rendered that death was due to post abortal hemorrhage and shock due to uterine perforation. Such team opinion cannot be discarded outright for want of evidence of fetal or placental parts when there are other postmortem findings suggesting procedure being done at uterus. It needs also to be noted that, autopsy is done on 23.06.2012 around 11.00 a.m. Evidence shows that deceased was barely for half an hour in the hospital of PW1 and immediately inquest was drawn. On the contrary, it needs to be also noted that, deceased, as per her husband and relative, was in the hospital of appellant from 9.30 am to 4.30 pm i.e. for seven hours, and therefore, accused appellant owes an explanation which she failed to offer while answering inquiry under Section 313 of CrPC.

36. Evidence of PW8 also shows that, two cotton gauze pieces soaked with blood, clothes having blood stains and blood stains on both feet, soles and palms were also noted by this witness. There is evidence of blood clots in the uterine cavity and thereafter, taking note of such evidence, the team of experts including PW8 have rendered opinion that death was due to post abortal hemorrhage and shock due to uterine perforation. Consequently, evidence of PW1 and PW8 read conjointly, here, there is both, convincing and legally acceptable evidence on the point of pregnancy as well as cause of death of Kusumbai.

37. It is also a ground in appeal that, appellant has been targetted by a political group and she is falsely implicated in the crime. Thus, implication on political rivalry is put forth. It is tried to be submitted that, a politician namely, Mahajan also belong to the same political faction to which husband of deceased i.e. PW7 as well as PW1 belong to. It is pointed out that Investigating Officer has admitted regarding these persons to have assembled outside the hospital of PW1.

38. In the considered opinion of this Court, such ground has no force. Here, PW7, who was in company of PW5, has stepped into the witness box to depose taking deceased for treatment to appellant. For

reasons stated in aforesaid paragraph, this Court on complete appreciation of their evidence, has already come to a conclusion that their testimonies inspire confidence. Husband has no reason to falsely implicate appellant when he himself has taken his wife for treatment to the appellant by reposing confidence in her. Thus, merely because he happens to be of the same political faction to one which PW1 and said Mahajan, is no good ground to accept the above submissions. It is a serious matter of death of a lady and there is ample evidence which is discussed in aforesaid paragraphs that appellant had examined deceased lady and had reported her husband about her pregnancy and that the foetus to be abnormal and thereby a need for termination of pregnancy. Therefore, it is unsafe to readily attribute political angle for implication.

39. It is also submitted that, there are vital admissions in the evidence of PW1, PW8 as well as PW9 Investigating Officer, i.e. PW1 admitting that, when he examined the patient, she was in severe shock but there was no bleeding and that, he was not in a position to opine whether MTP was at all performed and that his opinion is mere assumption. Likewise, it is submitted that PW8 autopsy surgeon admitted that there was no injury to the cervix noticed upon postmortem and that, even placental site was not located, nor he

collected blood or urine sample to confirm pregnancy, and his admission that endomyometrium congestion is possible even otherwise than pregnancy.

40. As regards to Investigating Officer is concerned, it is submitted that there is admission that, Exhibit 36 is silent about bleeding per vagina, no reference of patient for abortion and that there was no seizure of medical record or case papers from the hospital of PW1 and that no document signed by accused or any medical instrument required for abortion being seized.

41. It is true that, PW1 has admitted that, when he examined the patient, at that time, there was no bleeding. However, this witness was admittedly not refererred for any procedure and rather he was approached only for resuscitation as patient was critical. Patient was not referred to him for any further procedure. Indeed he has assumed that accused performed MTP, but his such assumption is finding support from evidence of PW8. His inability to give concrete opinion that no MTP was done also is no good ground to directly draw adverse inference.

42. As regards to PW8 is concerned, as pointed out, he has indeed admitted that, there was no injury to cervix, placental site was not located and then he did not gather urine and blood sample to confirm pregnancy. However, there are other findings which are reflected in the opinion of this expert who was no all alone but was also accompanied by his fello surgeons. They all have opined about cause of death to be post abortal hemorragic shock due to uterine perforation. This medical expert has noted 1.5 ltr of blood and blood clots in the uterine cavity which is also a sign of procedure being undertaken. Admittedly when site of placenta could vary from person to person and his inability to locate the exact site does not rule out that any procedure was not conducted.

43. As regards to Investigating Officer is concern, indeed there are lapses on his part in not collecting surgical instruments, documents of hospital of appellant. However, no advantage would acrue to the appellant on his failure to collect above said material.

44. Further grounds raised by learned counsel for the appellant are dealt herewith.

It is tried to be submitted that Exhibit 36, on which police machinery took action, as well as the AD report, both are silent about

procedure of abortion being done. It needs to be noted that the AD is just an information about death and no detail notings are expected to be provided therein. Equally, though it is not mentioned in Exhibit 36 that there was abortion, PW1, after stepping into the witness box, stated that on 22.06.2012 appellant referred one patient, namely Kusumbai, by making telephonic contact about bleeding and for the purpose of resuscitation. Therefore, failure to specifically mention in Exhibit 36 regarding abortion procedure cannot be said to be fatal for prosecution.

Attempt is made to persuade this Court to discard the testimony of PW4 Tahsildar by submitting that after alleged information from Investigating Officer on 23.06.2012, this witness has claimed to have visited the hospital in question. It is pointed out that, though panchanama Exhibits 70 and 71 were drawn, nothing incriminating was laid hands on. She pointed out that, even the original register which allegedly carried name of deceased, is not before the court so as to even accept the version of PW3 pancha.

It is true that this witness seems to have visited hospital and drawn panchanama Exhibits 70 and 71 on 23.06.2012 i.e. on the next day. But PW3 has deposed before the trial court regarding he acting

as a pancha to seizure panchanama Exhibit 72 during which a register was seized in the hospital and he, before the court, identified name of deceased noted at sr. no. 123. However, when attempt is made by this Court to study the *muddemal*, unfortunately, record shows that, said register mentioned in panchanama Exhibit 72 is shown to be destroyed along with other *muddemal* being worthless. However, there is no reason to doubt oral testimony of PW7 husband. Name of deceased in the register of Nirmal Hospital fortifies testimony of PW7 and PW5 regarding deceased being taken to the hospital of appellant. PW7 husband, in the opening chief itself has stated that he knew accused as he had consulted her for his wife's treatment. There is no cross on this aspect.

It is also forcefully submitted that, husband claims to have paid Rs.10,000/- at the time of admission of his wife, but there is no recovery of the same and that the Investigating Officer has admitted to that extent. It needs to be borne in mind that, visit of PW7 with his wife to the hospital is at around 9.30 am. Deceased was declared dead in the hospital of PW1 in the early evening at around 5.00 to 5.30 pm after which Exhibits 36 and 37 were issued at the instance of PW1. Thereafter, police machinery swung in action and crime is shown to be registered in the same evening after which investigation

seems to have commenced i.e. at the dusk of the day. Therefore, mere failure of Investigating Officer to lay hands on documentary evidence in the form of receipt of payment of Rs.10,000/-, will not overshadow the other crucial aspects which are conspicuously emerging from the prosecution case like, evidence of PW1 treating Doctor, PW5 sister-in-law, PW7 husband and PW8 autopsy surgeon.

It is also tried to be impressed upon this Court that, learned trial court has lost sight of the settled law laid down by the Hon'ble Apex Court in the case of ***Jacob Mathew v. State of Punjab and another*** [(2005) 6 SCC 1] for attributing negligence thereby causing death. Once fundamental ground of appellant is that appellant had no connection with the hospital or with demise of Kusumbai, it would be a self contradictory stand to take recourse to and rely on the judgment in ***Jacob Mathew*** (supra).

45. To sum up, there is indeed evidence to show that appellant was approached by PW7 with his wife on account of abdominal pain. This witness PW7 was accompanied by PW5, a relative, who has also lent support to his assertions that Kusumbai was taken to the appellant on 22.06.2012 on account of stomach pain. They both unanimously speak that, after examining Kusumbai, they were told that she was

pregnant but her foetus was abnormal and consequently a dire need for termination of pregnancy. Further, they both speak that, around 4.30 pm appellant disclosed about critical condition of deceased and suggested shifting her elsewhere and she being further taken to the hospital of PW1, and this medical expert PW1, after making futile efforts to save deceased who was brought in critical condition, declared her dead and accordingly reported police as well as Civil Surgeon. His opinion finds support from PW8 on the point of cause of death.

46. Hence, trial court does not seem to have committed any error or illegality in accepting the case of prosecution to the extent of offence of 304(II), 312, 314, 315 of IPC and Sections 5(3) and 5(4) of the MTP Act. No good ground being made out, nor any patent perversity or illegality being demonstrated, appeal fails. Hence, following order :

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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