

Patna High Court

Telanga Munda vs State Of Bihar on 31 July, 2000

Equivalent citations: 2001 (49) BLJR 383, 2001 CriLJ 3094

Author: I P Singh

Bench: I P Singh

ORDER Indu Prabha Singh, J.

1. The sole appellant has been convicted under Section 314 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs. 1,000/- and in default of payment to further undergo rigorous imprisonment for six months.

2. The prosecution was lodged on the basis of the fardbayan of the informant who is the father of the deceased lady and it has been alleged that there was love affair in between the deceased and the appellant and in that connection they had also developed physical relationship. It has been further alleged that due to his physical relationship the deceased became pregnant. It has been alleged that she used to occasionally visit the appellant at his house and stayed there for a couple of days. On 6-7-1992 the informant returned to his house from Maranghada market and was told by his wife that their daughter Suggi (deceased) had died in the house of the appellant at about 3 p.m. It has been further alleged that the deceased had gone to the house of the appellant on the night in between 31-5-1992 and 1-6-1992 and it is alleged that the appellant had administered her Herbal medicine for the purpose of abortion of her pregnancy. As a result of the said medicine the deceased had been vomiting and was having loose motion and she died on 6-6-1992 at about 3 p.m. It has been alleged that on 8-6-1992 the police came to the village where the statement of the informant i.e. the father of the deceased was recorded and on the basis of which F.I.R. was drawn up. After completion of investigation the police submitted charge sheet against the appellant. Accordingly, the cognizance was taken and the trial concluded with the result as indicated above.

3. The appellant pleaded not guilty and has stated that he has been falsely implicated in this case due to enmity.

4. Learned counsel for the appellant has submitted that the death was not caused due to administration of medicine but due to abortion stick which was used for abortion. He has further submitted that the doctor has clearly stated in her evidence that the death was caused due to rupture of big vessel and not by infection or poisoning. He has relied on a decision reported in 1993 Cri LJ 702 (Vatchhalabai Maruti Kshirsar v. The State of Maharashtra) in which it has been held that nexus between acts done by accused and death of woman must be direct.

5. The prosecution to prove its case has examined altogether 9 witnesses including the informant (P.W.5) father of the deceased. In this case D.W. 1 the medical expert is the most important witness who has conducted the post-mortem examination. According to her death was caused due to rupture of big vessel by the use of abortion stick which she had found in the uterus. She had found the abortion stick in the uterus and stated that the death was probable by mechanical violence causing rupture of big vessel and not by infection and poisoning.

6. All the witnesses consistently and corroborately proved that the deceased was in love affair with the appellant and they were having physical relationship for quite some time and due to their physical relationship the deceased got pregnancy. It has come in the evidence that both the deceased and the appellant were cousins and they were of same Gotra as such the marriage between them was not possible. It has been stated that the deceased went to the house of the appellant, Telanga Munda, where the abortion was alleged to have been done and during abortion she died. It appears from the record that after her death the appellant did not care to inform the police. Although there is no direct evidence but from the circumstances it is cogently established that the victim girl died due to abortion in the house of the appellant under whose guidance abortion was done.

7. P.W. 2, mother of the deceased has stated that her daughter informed her that appellant administered medicine for abortion to her. She has further stated that her stomach was upset due to administration of medicine and she was having loose motion and vomiting. She has also stated that when she visited the place of her daughter she found her ill and in a couple of days she died. According to the doctor cause of death was mechanical violence causing rupture of big vessel and the doctor has also found abortion stick in her internal part. As the deceased was in the house of the appellant with the sole purpose to get pregnancy terminated. It can be firmly and definitely infer that the appellant was fully responsible for termination of her pregnancy. In such a case no eye-witness can be expected to witness the administration of means of abortion. It was also contended on behalf of the learned counsel for the appellant that there was no sign of pregnancy but the Court below has rightly opined that if there was no pregnancy why abortion stick was found in the uterus of the deceased by the doctor (P.W.1). As the post-mortem was done after three days of her death and possibly the administration of medicine/Herbal medicine could not be detected by the doctor.

8. The decision cited by the counsel for the appellant. It is not applicable in this case. The facts of the case in hand is different. In that case the deceased along with her sister went to consult the doctor for termination of pregnancy. Since the doctor was not available, the accused (Nurse) volunteered her help for such a smaller fees and she gave an injection to the deceased. She also administered intravenous saline and since the abortion had not taken place, the accused attempted to induce an abortion by using forcep and a tube. Thereafter one person who was self styled doctor administered certain mechanical treatment for about two hours as a result of which the abortion finally resulted and she came to the house and stayed there for six days. But she was shifted to the Cottage Hospital and thereafter to the District Hospital as her condition had become serious and died after three days due to septicaemia on account of rupture and tears in her internal parts as such the Court held that accused nurse cannot be held solely responsible for rupture and tear which caused septicaemia to the victim and thus held that there was no direct nexus between the death of victim with act of accused. In the present case there is no evidence that any other person had terminated the pregnancy rather from the evidence it is clear that the deceased was taken to the house of the appellant and he administered medicine for abortion as stated by the deceased herself and eventually she died of injury caused by rupture of vessel which was caused by crude abortion stick at the house of appellant who did not dare to inform the police. In view of the above there is direct nexus between the death of deceased with the act done by the appellant.

9. In the facts and circumstances of the case it could be conclusively held that the appellant with the consent of the deceased administered or got administered crude mechanical means to induce an abortion which resulted in rupture of big vessels causing death of the deceased, as opined by the Doctor (P.W.1). The Court below has rightly convicted the appellant for the offence punishable under Section 314 of the Indian Penal Code.

10. However, keeping in view the facts and circumstances of the case I am of the considered view that ends of justice would be met if the sentence awarded to the appellant is reduced to 5 years from 8 years. The amount of fine imposed by the Court below is maintained.

11. With the aforesaid modification in the sentence this appeal is dismissed.