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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.33 of 2003

{Arising out of judgment dated 23-12-2002 in Special Case No.128/2001  
of the Special Judge, Rajnandgaon}

Judgment reserved on: 10/01/2024

Judgment delivered on: 16/01/2024

Rajesh Kumar, S/o Pandurang Raghorte, aged about 26 years, R/o  
Kumbhar Para, Dongargarh, P.S. Dongargarh, Distt. Rajnandgaon  
---- Appellant

Versus

State of C.G.

---- Respondent

Criminal Appeal No.1301 of 2002

Jaswinder Singh Bhatia alias Grety, S/o Jogendra Singh Bhatia, Aged  
about 32 years, Delhi Hotel, Devri, Distt. Gondia (Maharashtra)  
---- Appellant

Versus

State of Chhattisgarh, Through Station House Officer, P.S. Dongargarh,  
Distt. Rajnandgaon (C.G.)

---- Respondent

Criminal Appeal No.1298 of 2002

Indrajeet Singh Kakkad, S/o Surendra Singh Kakkad, Aged about 25  
years, R/o Anupam Nagar, Rajnandgaon (C.G.)  
---- Appellant

Versus

State of Chhattisgarh, Through Station House Officer, P.S. Dongargarh,  
Distt. Rajnandgaon (C.G.)

---- Respondent

AND

Criminal Appeal No.1297 of 2002

Surendera Pal Singh alias Pappi Bhatia, S/o Sardar K.S. Bhatia, aged  
about 35 years, R/o Basantpur, P/S Basantpur, District Rajnandgaon  
(C.G.)

---- Appellant





Versus

State of Chhattisgarh acting through District Magistrate, Rajnandgaon  
---- Respondent

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For Appellant Rajesh Kumar (A-1) Mr. Gurmit Singh Ahluwalia, Advocate.  
in Cr.A.No.33/2003:

For Appellants Jaswinder Singh Mr. Surendra Singh, Senior Advocate  
Bhatia alias Greta (A-2) & Indrajeet with Mr. Pragalbha Sharma, Advocate.  
Singh Kakkad (A-3) in Cr.A.  
Nos.1301/2002 & 1298/2002,  
respectively:

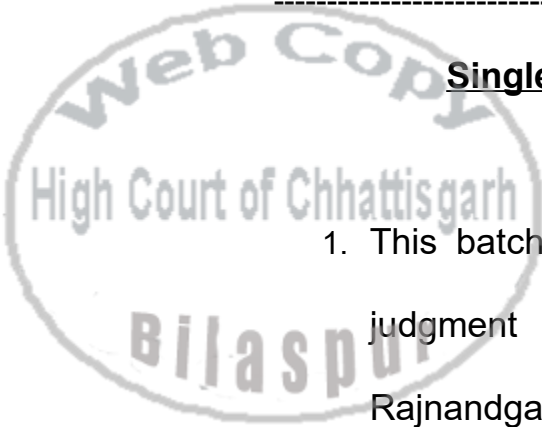
For Appellant Surendera Pal Singh Mr. K.A. Ansari, Senior Advocate with  
alias Pappi Bhatia (A-4) in Cr.A. Mrs. Meera Ansari and Mr. Aman  
No.1297/2002: Ansari, Advocates.

For Respondent / State: Mr. Sudeep Verma, Deputy  
Government Advocate.

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**Single Bench: Hon'ble Shri Sanjay K. Agrawal, J.**

C.A.V. Judgment

1. This batch of criminal appeals is directed against the impugned judgment dated 23-12-2002 passed by the Special Judge, Rajnandgaon in Special Case No.128/20001, by which the learned Special Judge while acquitting the four appellants herein of the charge under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, has convicted appellant Rajesh Kumar (A-1) under Section 314 of the IPC and sentenced him to undergo rigorous imprisonment for ten years & pay fine of ₹ 10,000/-, in default, to further undergo additional rigorous imprisonment for one year, and also convicted appellants Jaswinder Singh Bhatia alias Greta (A-2), Indrajeet Singh Kakkad (A-3) & Surendera Pal Singh alias Pappi Bhatia (A-4) under Section 314 with the aid of Section 109 of the IPC and sentenced them to undergo rigorous imprisonment for ten years &





pay fine of ₹ 10,000/- each, in default, to further undergo additional rigorous imprisonment for one year.

2. Since all the four criminal appeals have arisen out of one and same judgment dated 23-12-2002 passed by the Special Judge, Rajnandgaon in Special Case No.128/20001 and since common question of fact and law is involved in all the four appeals, they have been clubbed together, heard together and are being disposed of by this common judgment.
3. Case of the prosecution, in a nutshell, is that on 26-5-2001, appellant Rajesh Kumar (A-1) claiming to be a doctor caused miscarriage of Shakun Bai, widow of Madan Lal Gond, aged about 40 years, which has also resulted in her death and appellants Jaswinder Singh Bhatia alias Greta (A-2), Indrajeet Singh Kakkad (A-3) & Surendera Pal Singh alias Pappi Bhatia (A-4) along with co-accused Jasmit Singh, who was tried by the jurisdictional Juvenile Justice Court being juvenile, abetted the commission of offence under Section 314 of the IPC. Further case of the prosecution is that deceased Shakun Bai was working in the house of juvenile Jasmit Singh as a maid and she had developed relationship outside of marriage with Jasmit Singh and Jasmit Singh used to come in motorcycle to the house of deceased Shakun Bai and after staying for one-two hours, he used to leave the house, in the mean time, Jasmit Singh has taken deceased Shakun Bai, her daughters Saraswati & Sadhana and son Raju to Nagpur and meanwhile, 4-5 Sardars came to the house of the father of the deceased namely, Tularam (PW-3) and threatened him saying that his daughter has





eloped with Jasmit Singh and taken him to other place. Police persons searched for Shakun Bai, but they could not find her and after 4-5 months, they were found in a hut at Nagpur and those unidentified Sardars asked her and children to board in the jeep and they came to Rajnandgaon and near Devri Dhaba, they had given ₹ 1,500/- to Tularam (PW-3) and asked him to get his daughter Shakun Bai aborted, as she was having pregnancy of five months and threatened him to kill if the incident is disclosed to anyone. Thereafter, appellant Rajesh Kumar (A-1) treated Shakun Bai by asking the other accused/appellants to go out and thereafter, she became unconscious and blood started oozing from her mouth as he has administered injection on her hand. Next day, her health became deteriorated and Rajesh Kumar (A-1) asked her father to take her to higher centre at Rajnandgaon and while escorting her to hospital at Rajnandgaon, she died on the way in between Kopedih & Tumdibod. Vehicle was seized and postmortem was conducted by a team of three doctors namely, Dr. (Smt.) Madhuri Khunte (PW-12), Dr. B.L. Kurre, Dr. V.K. Damle jointly vide Ex.P-12 in which they found that in womb there was dead fetus of 24 weeks and there was no external injury, and even in the FSL report Ex.P-26, alkaloid was found and viscera was also preserved as cause of death could not be ascertained. As per FSL report Ex.P-26, only organic substance (alkaloid) was found in Articles B & C – viscera and no poisonous chemical was found in Article D – liquid sample.

4. The investigating officer after completion of investigation, charge-sheeted the accused persons before the jurisdictional criminal court



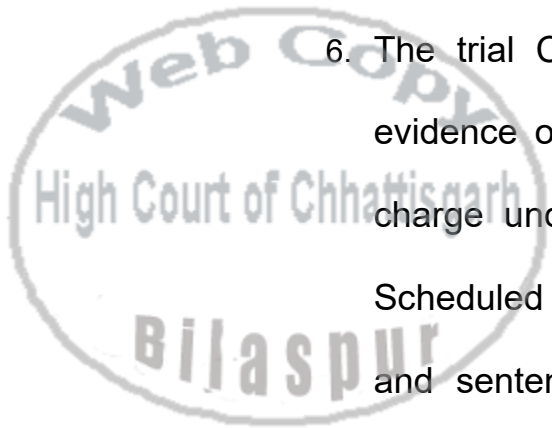


who committed the case to the Court of Sessions, Rajnandgaon from where the learned Special Judge received the case on transfer for trial.

5. The prosecution, in order to bring home the offence, has examined as many as 26 witnesses and exhibited 42 documents Exs.P-1 to P-42. The accused persons abjured the guilt and entered into defence by stating that they have not committed the offence and they have been falsely implicated. They have examined none, however, exhibited four documents Exs.D-1 to D-4 in support of their defence.

6. The trial Court after appreciating ocular, oral and documentary evidence on record, while acquitting the appellants herein of the charge under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, convicted and sentenced them in the manner mentioned in the opening paragraph of this judgment against which these four appeals have been preferred.

7. Mr. Gurmit Singh Ahluwalia, learned counsel appearing for appellant Rajesh Kumar (A-1) in Cr.A.No.33/2003, would submit that the prosecution has failed to prove the offence under Section 314 of the IPC against the present appellant, as foetus was found inside the womb of deceased Shakun Bai and as such, there was no miscarriage in terms of Section 314 of the IPC and there is no evidence that Rajesh Kumar (A-1) had administered some medicine by which she died. In that view of the matter, conviction of A-1 is unsustainable in law.





8. Mr. Surendra Singh, learned Senior Counsel appearing for appellants Jaswinder Singh Bhatia alias Greta (A-2) & Indrajeet Singh Kakkad (A-3) in Cr.A.Nos.1301/2002 & 1298/2002, respectively, and Mr. K.A. Ansari, learned Senior Counsel appearing for appellant Surendera Pal Singh alias Pappi Bhatia (A-4) in Cr.A.No.1297/2002, would submit that since the principal offence of Section 314 of the IPC is not established, the present appellants A-2 to A-4 cannot be convicted under Section 109 of the IPC. They relied upon the decision of the Supreme Court in the matter of **Madan Raj Bhandari v. State of Rajasthan**<sup>1</sup> to buttress their submission.

9. Mr. Sudeep Verma, learned Deputy Government Advocate appearing for the State/respondent, would submit that the prosecution has been able to bring home the offences against the appellants beyond reasonable doubt, therefore, the appellants have rightly been convicted and their conviction is strictly in accordance with law, as such, their appeals deserve to be dismissed.

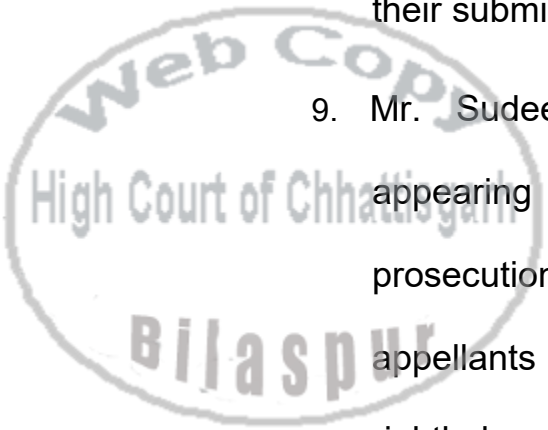
10. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

11. Considering the evidence available on record, I will first consider the case of appellant Rajesh Kumar (A-1), as he has been convicted under Section 314 of the IPC.

**Appeal of appellant Rajesh Kumar (A-1)**

12. On the report dated 15-6-2001, offences punishable under Sections

1 (1969) 2 SCC 385





314, 376 & 109 of the IPC; Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; and Section 3/7 of the Medical Termination of Pregnancy Act, 1971, have been registered against Jasmit Singh and five other persons and thereafter, the dead body of deceased Shakun Bai was subjected to postmortem and postmortem report is Ex.P-12 in which cause of death was stated to be due to shock, but, no definite opinion was given regarding cause of death, however, Dr. (Smt.) Madhuri Khunte (PW-12) – one of the doctors who conducted postmortem vide Ex.P-12, has been examined and she has clearly stated that in the womb of the deceased, foetus of 24 weeks was present and she has further stated that no definite opinion can be given with regard to attempt to abortion or cause of death, however, viscera was preserved and sent for chemical analysis to FSL, Sagar from where report Ex.P-26 was received in which it has been stated that only organic substance (alkaloid) was found in Articles B & C – viscera, and no poisonous chemical was found in Article D – liquid sample. As such, a careful perusal of the evidence of (Smt.) Madhuri Khunte (PW-12) would show that foetus of 24 weeks was present in the body / womb of the deceased. Paragraph 3 of the statement of (Smt.) Madhuri Khunte (PW-12) before the Court states as under: -

(3) शव को खोलने पर उसकी आंतरिक स्थिति निम्नानुसार पायी गयी। उसके फेफड़े के दोनों लंग्स पीले हो गये उसकी झिल्ली फेफड़े से छिपकी हुई थी उसमें जो द्यूवल फ्लोसिस का निशान था। उसका हृदय का दाहिना चेम्बर खून से भरा हुआ था तथा बायां चेम्बर खाली थी। पेट की नालियां खाली गैस भरी हुई थी छोटी आंते भी खाली लेकिन गैस भरी थी। बड़ी आंते भी खाली थी लेकिन गैस भरी हुई थी विकृत प्लीहा गुर्दा और मुत्राशय में पीलापन था। भीतरी और बाहरी जनेन्द्रीय में गर्भाशय में युट्रस लगभग 24 सप्ताह का आकार का गर्भ



था। उसमें कोई खून के थक्के नहीं थे उसके अंदर एननियोटिक द्रव्य भरा था। एक नियोटिक केयोनिटी के अंदर जो फ्लू भरा था। गर्भाशय में भ्रूण मृत्यु थी जो लगभग 24 सप्ताह के बराबर था। उसमें प्लिजेंटा और झिल्लियां मौजूद थी कोई बाह्य चोट के निशान जनेन्द्रीय पर नहीं थे तथा गर्भाशय का मूंह बंद था। उसके शरीर के बिसरा चार बाटलों में प्रिजेमेटिक् डालकर सुरक्षित रखे गये थे। उसके शरीर पर मैं जब जब पोस्टमार्टम के समय गयी थी कोई वस्तुत नहीं थी।

13. Now, the question would be, whether the trial Court is justified in convicting Rajesh Kumar (A-1) for offence under Section 314 of the IPC causing miscarriage to Shakun Bai which resulted in her death?
14. Section 312 is an offence of causing miscarriage. Section 312 of the IPC provides punishment for causing miscarriage. The ingredients of the offence under Section 312 are that the accused voluntarily does some act to cause a woman with a child or quick with a child to miscarry and that he did not cause the miscarriage in good faith in order to save mother's life. The term "miscarriage" used in Section 312 as well as 314 of the IPC is not defined in the Code. It is synonymous with an abortion. It consists expulsion of embryo or foetus that is termination of pregnancy before the period of viability. A woman quick with a child, simply means stage of pregnancy where the quickening takes place. It is perception by the mother of the movement of foetus. Section 312 of the IPC can even apply to a pregnant woman herself, who causes her own miscarriage. Good faith by itself is not enough. It has to be good faith for the purpose of saving the life of the mother or the child and not otherwise. The expression "voluntarily" is defined in Section 39 of the IPC. It reads thus:

**"39. "Voluntarily".**—A person is said to cause an effect "voluntarily" when he causes it by means whereby he





intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.”

15. Section 312 of the IPC implicitly lays down the principle that a man is presumed to intend the probable consequences of his act. Section 313 of the IPC is an aggravated form of offence defined under Section 312 of the IPC. It provides for severer punishment if the offence defined under Section 312 of the IPC is committed without the consent of the woman whose miscarriage is caused.

Further, Section 314 of the IPC reads as under: -

**“314. Death caused by act done with intent to cause miscarriage.**—Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

**If act done without woman’s consent.**—And if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

*Explanation.*—It is not essential to this offence that the offender should know that the act is likely to cause death.”

16. A careful perusal of Section 314 of the IPC would show that in order to convict a person for offence under Section 314, firstly, it must be established that woman was with child; secondly, the accused did an act to cause miscarriage; thirdly, he did so with such intention; fourthly, such act caused the death of the woman; and fifthly, act was done without woman’s consent.
17. Now, what remains for decision making is, whether Shakun Bai died as a result of criminal miscarriage caused by Rajesh Kumar





(A-1)?

18. A careful perusal of the postmortem report Ex.P-12 would show that as noticed herein, the dead body of Shakun Bai was having foetus of 24 weeks and it was safe in the womb of the deceased.

19. Where the child in the womb is full grown the accused cannot be convicted of causing "miscarriage" under Section 312 of the IPC. The reason is that this section only contemplates expulsion of the child from the mother's womb before the period of gestation is completed. But in such cases, the accused could be convicted of an attempt to cause miscarriage under this section read with Section 511 of the IPC. [See The Queen v. Arunja Bewa and another<sup>2</sup> {also see Footnote (8), Volume 38, page 645 of The AIR Manual Civil and Criminal (6<sup>th</sup> Edition)}.]

20. In the instant case also, as per the postmortem report Ex.P-12, foetus of 24 weeks was in the womb of the deceased though it was safe and dead and as such, there was no expulsion of child from the mother's womb before the period of gestation is completed which has been proved by (Smt.) Madhuri Khunte (PW-12) in her statement before the Court while proving postmortem report Ex.P-12 and even no definite opinion has been given with regard to cause of death and that during the attempt of abortion, the death has taken place. As such, it is established on the date of offence that Shakun Bai was having foetus of 24 weeks in her womb and since there was no expulsion of the embryo or foetus, the act, if any, of appellant Rajesh Kumar (A-1) would not come within the

<sup>2</sup> (1873) 19 Suth WR (Cr Rul) 32 (1)



meaning of Section 314 of the IPC to cause miscarriage and even it could not be proved that since there was no expulsion of embryo or foetus which is one of the main ingredients of Section 314 of the IPC, the prosecution has failed to prove that such an act has caused the death of Shakun Bai and A-1 caused miscarriage with an intention to cause her death. Since miscarriage itself has not been proved beyond doubt, the other ingredients that A-1 did that act with such intention and the miscarriage caused the death of woman and without the consent of woman are absolutely missing. In that view of the matter, conviction of A-1 for offence under Section 314 of the IPC is set aside and he is acquitted of the said charge.

**Appeals of appellants Jaswinder Singh Bhatia alias Grety (A-2), Indrajeet Singh Kakkad (A-3) & Surendera Pal Singh alias Pappi Bhatia (A-4)**

21. It is the submission of Mr. Surendra Singh & Mr. K.A. Ansari, learned Senior Counsel, that since the principal offence under Section 314 of the IPC is not established, conviction of appellants A-2, A-3 & A-4 for offence under Section 314 read with Section 109 of the IPC cannot be sustained and is liable to be set aside.
22. The Supreme Court in **Madan Raj Bhandari** (supra) relying upon the decision of the Calcutta High Court in the matter of **Umadasi Dasi v. Emperor**<sup>3</sup>, has held that as a general rule, a charge of abetment fails when the substantive offence is not established against the principal offender, and observed as under: -

“11. ... As observed by Calcutta High Court in *Umadasi Dasi v Emperor*<sup>3</sup> that as a general rule, a

3 ILR 52 Cal 112



charge of abetment fails when the substantive offence is not established against the principal but there may be exceptions. *Gallu case* was one such exception.”

23. Since in the instant case, offence under Section 314 of the IPC against Rajesh Kumar (A-1), who is said to have caused miscarriage, is set aside and is acquitted of the said charge in the preceding paragraph, and since substantive offence is not established against A-1, therefore, in light of the decision of the Supreme Court in **Madan Raj Bhandari** (supra), charge of abetment under Section 314 of the IPC against the present appellants – A-2, A-3 & A-4 fails and their conviction under Section 314 read with Section 109 of the IPC is hereby set aside, and they are acquitted of the said charge.

24. In the result, all the criminal appeals are allowed. The impugned judgment dated 23-12-2002 passed in Special Case No.128/2001 by the Special Judge, Rajnandgaon is hereby set aside. The appellants are acquitted of all the charges alleged against them. They are on bail. They need not surrender. However, their bail bonds shall remain in force for a period of six months in view of the provision contained in Section 437A of the CrPC.

25. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned for necessary information and action, if any. A certified copy of the judgment may also be sent to the concerned Jail Superintendent forthwith.

Sd/-  
(Sanjay K. Agrawal)  
Judge