

Dr. Akhil Kumar Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Oct-11-1991

Reported in : 1992CriLJ2029

Judge : K.M. Agarwal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 312 and 511

Appeal No. : Crl. Appeal No. 1082 of 1985

Appellant : Dr. Akhil Kumar

Respondent : The State of M.P.

Advocate for Def. : S.S. Tiwari, Govt. Adv.

Advocate for Pet/Ap. : S.L. Kochar, Adv.

Judgement :

K.M. Agarwal, J.

1. Aggrieved by his conviction for an offence Section 312, read with Section 511, I.P.C. and sentence of R.I. for one year and fine of Rs. 5,000/-, the appellant has preferred this criminal appeal.

2. The appellant was holding a decree of B.A.M.S. from the Mahaloshal Board of Ayurvedic and Unani System of Medicine and was running his dispensary at

Nagpur, district Shahdol. It was alleged that the deceased Maiti Baiga was living separately from her husband for about a period of 3 to 4 years. While so living, she conceived a child as a result of her illicit relations with one of her distant cousins. She wanted to get rid of the child in her womb and for that purpose went to the hospital of the appellant on 8-9-1982 in the company of her mother Baijanti (P.W. 1) and brother-in-law Dhanu (P.W. 10). The appellant settled and realised his fee of Rs. 160/- from Dhanu, gave one injection of Menstrogen Forte to the deceased and asked her to come again on the next day. On 9-9-1982 she again went to the hospital of appellant at about 11.30 a.m. along with her another and the said brother-in-law. While sitting on a bench, suddenly fell down. The appellant came and gave 2 injections to her, but she died. The appellant went to Dr. B. N. Sharma (PW 9) and told him about the death of Maiti baiga in his hospital. Dr. Sharma went to the hospital of the appellant, found Mst. Maiti dead and accordingly lodged his written report (Ex. P-7) with Manpur police. After usual investigation and postmortem of the dead body, the appellant was prosecuted for the said offence. The appellant denied his guilt, but was found guilty and accordingly convicted and sentenced as aforesaid.

3. Having heard the learned counsel for the parties, I am of the view that the conviction of the appellant for the said offence is well founded and calls for no interference. In paragraph 1 of her deposition, Baijanti (PW 1) specifically stated that her daughter Maiti had developed illicit relation with Ramdin Baiga, who was distantly related cousin of the deceased. She also stated that because of her illicit relations, she had become pregnant. She disclosed this fact to her son-in-law Dhanu. In the next paragraph, she stated that on Sunday (i.e. 8-9-1982) Dhanu took deceased Maiti to the hospital of Dr. Shrivastava, i.e. the appellant. She also went to the hospital of Dr. Shrivastava along with Dhanu and the deceased. She proved that on 8-9-1982 one injunction was given to the deceased by the appellant and on the next day her daughter fell down and the appellant gave her 2 injunctions but she died. This evidence of Baijanti cannot be rejected merely because in her cross-examination, as contained in paragraph 4, she stated that she was not told by her daughter about her pregnancy and only complained of stoppage of menstruation. After all she was a lady and she could very well detect pregnancy of her daughter, which was well developed. The evidence of Baijanti

finds support from the evidence of her son-in-law Dhanu (PW 10), as also from that of Dr. B. N. Sharma (PW 9). It was further proved by Dr. B. N. Sharma, Rambhagat (PW 8), the owner of Ajay Medical Stores, and Dr. Bhanu Prakash Dubey (PW 14) that the appellant had given the deceased an injection of Menstrogen Forte, which was likely to result in miscarriage of the child. The evidence of Rambhagat (PW 8) could not be rejected merely because the boy who had purchased Menstrogen Forte for the appellant was not examined. Only because Phool Chand (PW 7), witness to seizure memo Ex. P-4, was declared hostile, the seizure made under Ex. P-4 cannot be disbelieved because Rambhagat (PW 8) admitted seizure of various documents mentioned in Ex. P-4 from him. The evidence of Nandu (PW 5) may be discarded on the ground that it was hearsay evidence, but the evidence of Baijanti and Dhanu is sufficient to hold that the deceased had gone to the appellant on 8-9-1982 for the purpose of terminating her pregnancy. The evidence of Rambhagat (PW 8) establishes that an ampul of Menstrogen Forte was sent for by the appellant through a boy and that he had sold ampul to the appellant through the said boy as per his cash memo No. 3573 dated 8-9-1982. Dr. B. N. Sharma (PW 9) specifically stated that the appellant had disclosed to him the fact that he had given one injection of Menstrogen Forte to the deceased. The same thing was written in his police report (Ex. P-7). There is absolutely nothing to show that there was any bad motive on the part of Dr. Sharma for making any false allegations or for implicating the appellant. The report (Ex. P-7) was spontaneous and sent immediately after attending the deceased at the hospital of the appellant. In paragraph 5(6) of his deposition, Dr. Sharma specifically stated that the pregnancy was of 24 weeks (i.e. 5 months and 18 days). The appellant, therefore, can get no benefit from the evidence of Dr. Sharma as contained in paragraph 10 of his deposition that Menstrogen injection is also used for determination of pregnancy of any woman, because that may be in the case of the initial stage of suspected pregnancy and not in a case of well developed pregnancy of 24 weeks. Dr. Bhanu Prakash Dubey (PW 14) also proves that Menstrogen injection is not given in the case of a lady having pregnancy of 20 or 22 weeks and above.

4. The learned counsel for the appellant argued that there was no miscarriage as a result of the injection administered by the appellant. On 9-9-82, the injections that

were given were that of Coramine and Wymesone, which were life saving medicines. The argument deserves to be rejected. The literature accompanying Menstrogen Forte medicine has been filed and proved as Ex. P-25. It contains contra-indications, warnings and precautions. Under sub-head 'Warnings and Precautions', following specific instructions are given :--

(1) There is some evidence to show that hormonal preparation when used during pregnancy may lead to foetal abnormalities and as such these should not be used during pregnancy or for pregnancy diagnosis.

(2) Before administering Menstrogen Forte injection to women, pregnancy should be excluded.

(3) This preparation should neither be used for the diagnosis of pregnancy nor for the management of threatened or habitual abortion.

Disregarding these instructions, the appellant administered Menstrogen Forte to the deceased on 8-9-82. He might or might not have administered this medicine on 9-9-1982, but the offence of making an attempt of causing miscarriage is made out as the prosecution was successful in proving that on 6-9-1982 at least the said medicine was administered to the deceased by the appellant. It was in all probabilities to result in miscarriage of the child as indicated by the literature accompanying the medicine and as deposed by Dr. B. N. Sharma (PW 9) and Dr. Bhanu Prakash Dubey (PW 14). The word 'voluntary' used in Section 312 is defined in Section 39 of the Indian Penal Code. It says that 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. When the appellant used Menstrogen Forte he must be presumed to know the effect of the medicine as revealed from the literature issued by the manufacturer of Menstrogen Forte that such use of the medicine was likely to result in miscarriage. Since there was no actual miscarriage, the appellant was charged and tried for an attempt to cause miscarriage and, therefore, the argument has no substance that as per evidence of Dr. B. N. Sharma there was no miscarriage and, therefore, no offence was made out against the appellant. For all these reasons, the conviction of the

appellant for the aforesaid offence deserves to be maintained.

5. So far as sentence is concerned, the learned counsel submitted that past and future record of the appellant was clear. The offence Under Section 312 did not make any mandatory provision for jail sentence and, therefore, for an offence to make an attempt to commit offence Under Section 312, I.P.C., the sentence of imprisonment appears to be excessive in the facts and circumstances of the case. According to the learned counsel, it would meet the ends of justice if the sentence of fine imposed on the appellant is enhanced and the sentence of imprisonment is set aside. The argument appeals to reason and is accepted.

6. In the result, this appeal partly succeeds and it is hereby partly allowed. The conviction of the appellant for an offence under Section 312, read with Section 511, I.P.C. is maintained, but his sentence of imprisonment is set aside and instead the sentence of fine is enhanced from Rs. 5,000/- to Rs. 15,000/-. In default of payment of fine herein imposed, the appellant shall undergo rigorous imprisonment for a period of 4 months. Out of the fine amount so realised, a sum of Rs. 10,000/- (ten thousand) shall be paid to the mother of the deceased, i.e. Baijanti (PW 1) so as to enable her to properly maintain the children of the deceased who were shown to be living with her. As soon as the amount of fine is paid, the Chief Judicial Magistrate concerned shall notice Baijanti to appear and receive the amount of compensations when she appears to receive the amount of compensation, it shall be paid to her after due verification about her identity.

7. The appellant is on bail. His bail bonds shall stand discharged.