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Surendra Chauhan Vs. State of M.P.

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Court : Supreme Court of India

Decided On : Mar-27-2000

Reported in : AIR2000SC1436; 2000(1)ALD(Cri)869; 2000CriLJ1789; JT2000(3)SC507; 2000(2)MPHT421; RLW2000(2)SC340; 2000(2)SCALE513; (2000)4SCC110; [2000]2SCR515; 2000(2)LC898(SC)

Judge : D.P. Wadhwa and; Ruma Pal, JJ.

Acts : Indian Penal Code (IPC) - Sections 34 and 314; Indian Medical Council Act, 1956 - Sections 2; Constitution of India - Article 136; Medical Termination of Pregnancy Act, 1971 - Sections 3 and 4; Medical Termination of Pregnancy Rules, 1975 - Rule 4; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl.A. No. 342 of 1998

Appellant : Surendra Chauhan

Respondent : State of M.P.

Advocate for Def. : Kamakshi S. Mehlwal, ; V. Dias and ; Uma Nath Singh, Adv

Advocate for Pet/Ap. : Ranjit Kumar and; Anu Mohla, Advs

Prior history : From the Judgment and Order Dated January 7, 1998 of the Madhya Pradesh High Court in Crl. No. 1656 of 1997

Judgement :

D.P. Wadhwa, J.

1. Appellant Surendra Chauhan (Chauhan) has been convicted for ah offence under Sections 314/34, Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for seven years and a fine of Rs. 10.000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of two years. Chauhan and Dr. Ravindra Kumar Sharma (Sharma) were tried together. While Sharma was tried under Section 314, IPC Chauhan was tried under Sections 314/34, IPC. Sharma had also been convicted under Section 314, IPC and similarly sentenced as Chauhan by the trial Court. Both filed appeal in the Madhya Pradesh High Court. Their conviction and sentence were upheld and their appeal dismissed by judgment dated January 7, 1998. Both sought leave to appeal from this Court under Article 136 of the Constitution against the judgment of the High Court. Sharma was refused leave. Chauhan was granted leave and that is how the matter is now before us.

2. Alpana, a young girl of 24 years of age, was living with her mother Lalita Soni, a teacher, along with her younger sister 18 years of age. Alpana was not married. On March 23, 1993 Alpana told her mother that she was feeling unwell and would herself go to the hospital. Next day in the morning when her mother was sitting in 'pooja', Alpana told her that she was going to the hospital. She also told her mother that she along with Chauhan would be going to Sharma for her treatment. As noted above, Sharma stands convicted and sentenced. Same day at about 2 or 3 p.m. while Lalita was resting in her home both Sharma and Chauhan came to her and told her that Alpana was in a serious condition. Sharma told Alpana was under treatment in his hospital. Chauhan said that condition of Alpana was serious. Lalita told them that her husband was not in the house and when he would come they would both go to the hospital. Both the accused, i.e., Sharma and Chauhan said that the condition of Alpana was very serious and insisted Lalita to accompany them. On this Lalita immediately went along with them. In the hospital of Sharma she saw her daughter Alpana lying on the table inside the clinic. Lalita found that her daughter was dead. She asked what was the reason of the treatment and death of her daughter. On that Chauhan told her that he was having illicit relations with Alpana as a result of which she was carrying pregnancy

of two to three months. He also told Lalita that he got Alpana admitted in the hospital for her abortion and during the treatment the condition of Alpana became serious causing her death. Lalita then went to inform her husband Mohan Lal and again went to the hospital of Sharma by which time police had also arrived and there was crowd standing outside the hospital.

3. Dr. D. C. Jain is the professor of Forensic Medicines in Medical College, Raipur. In his deposition he said that in his opinion Alpana was carrying the pregnancy of three months. He did not find any injury in uterus or vagina. He said it was possible that the abortion was caused without applying the anaesthesia to the deceased causing her death or her death could be due to fear. He found that the uterus was enlarged containing blood clots. He gave his opinion as under:

Deceased was pregnant fetus should be in uterus. fetus age is 3 months. No injury to uterus or vagina detected. It is possible that the deceased died of vagal inhibition due to the effect of abortion without anaesthesia or due to fear.' In his cross-examination he said that shock also takes place during the fear. Dr. H. K. Josh performed post-mortem on the dead body of Alpana. According to him cause of death was shock.

4. There have been concurrent findings that Chauhan was having illicit relations with Alpana with the result that she became pregnant. He accompanied her to the clinic of Sharma for her abortion. It has also come on record that Sharma was having degree of Bachelor of Medicines in Electro Homoeopathy from the Board of Electro Homoeopathic Systems of Medicines, Jabalpur (M.P.). This entitled him to practice in Electro Homoeopathic systems of medicines. He also possessed a Diploma of Bachelor of Medicines and Surgery in Ayurvedic. Alpana met her death in the clinic of Sharma either due to shock or without applying anaesthesia while she was being aborted. Sharma is not a medical practitioner, who possesses any recognised medical qualification as defined in Clause (h) of Section 2 of the Indian Medical Council Act, 1956, whose name has been entered in a State Medical Register and who has any experience or training in gynaecology and obstetrics.

5. Section 314, IPC is asunder:

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.

From the record it is apparent that Sharma and Chauhan had intent to cause miscarriage of Alpana, who was pregnant, and death was caused to Alpana by Sharma while conducting abortion. Two questions .have been raised before us for our consideration :(1) It was the extra judicial confession of Chauhan made to Lalita that he was having illicit relations with Alpana due to which she got pregnant and both he and Alpana wanted to have the abortion and for that purpose Chauhan had got her admitted to the clinic of Sharma. Confession could not be solely made basis for conviction, and (2) Chauhan did not share any common intention with Sharma to cause the death of Alpana.

6. As far back in 1954 this Court in Dinabandhu Sahu v. Jadumoni Mangaral : [1955]1SCR140 said that Supreme Court does not, when hearing appeals under Article 136 of the Constitution, sit as a Court of further appeals on facts, and does not interfere with findings given on a consideration of evidence, unless they are perverse or based on no evidence.

7. During the course of investigation police also recovered some instruments from the dicky of the scooter of Sharma allegedly used for causing abortion. One Hindi book containing the literature on abortion, contraceptives and one Hindi book containing an illustrative abortion guide were seized from the clinic of Sharma. When the Investigating Officer Y. K. Shukla (PW-9) stated that he recovered the instruments from the dicky of the scooter of Sharma on his disclosure statement,

he had not been cross-examined. There is no reason for us not to take into consideration the extra Judicial confession of Chauhan made to Lalita, mother of Alpana to base his conviction. It was quite natural in the circumstances. It was Chauhan who took Alpana to the clinic of Sharma, who was not a qualified doctor to cause abortion. Chauhan was known to Alpana and had illicit relations with her. It is not possible to believe the defence version that Alpana just died lying on the table in the clinic of Sharma. She was a normal girl. No explanation is forthcoming either from Sharma or Chauhan as to in what circumstances Alpana died. It was something within their knowledge. Court in normal circumstance does accept the explanation of the accused consistent with his innocence even though he has not been able to prove his defence by positive evidence. But when the explanation offered by the accused or the defence set up by him which is not only inconsistent with his conduct but is palpably false, it cannot be worth consideration. When examined under Section 313 of the Cr PC Chauhan was asked if he wanted to say anything in his defence. He gave the answer as under:

I am a driver. In connection with my work I use to visit Kusumkasa. So I know the parents of the deceased. On the day of incident I was going to motor stand. Then I saw Dr. Sharma standing outside his hospital. He called me there and took me inside the hospital where the deceased was lying and asked me whether I recognised her. I said that I knew her. Then we both wont to Kusumkasa inform the mother of the deceased by one scooter and after informing brought her to the hospital. At that time there was lot of crowd and police was also present. Mother of the deceased found that her daughter was dead and she along with the police people went to the police station.

Prosecution version that I had illicit relations with the deceased is a wrong version. This is also not true that I took the deceased to the hospital of Dr. Sharma for abortion. This is also not true that she came to my house when she visited Rajhara (where clinic of Sharma is situated).

Witnesses speak lies to get the persons involved.

8. We may also note the defence set up by Sharma. In answer to the question if he wanted to say something he said:

After opening my hospital I was examining the patients and prescribing them medicines. After some time deceased came there and sat with the patients. When I was examining the patients the deceased said that she was not feeling well. I told her that she could lay down on the dressing table and after examining the patients on her turn I went to her and asked about the problem she had. She did not reply and after examining I found that she was dead. Then I came out of my hospital. Incidentally, Surender alias Bunty met me there. I took him to that girl and asked whether he knew the deceased. He said that he knew the deceased. Then I asked Surender alias Bunty to inform the parents of the deceased about the incident. Then I asked somebody to go to police station and lodge the report and I along with Surender alias Bunty went to inform the parents of the deceased. We asked her mother that the deceased was serious and brought her to the hospital where police was already present and lot of persons gathered. Mother of deceased found that her daughter was dead. Thereafter she along with police personnel went to the police station.

I had not given any treatment to the deceased and 1 did not know why she had come to the hospital.

Prosecution version that I was trying to do the abortion of the deceased due to which she died is false. I am innocent and I have been wrongly involved.

9. In the circumstances of the case the defence set up either by Sharma or Chauhan could not be true and had to be rejected.

10. It is contended that Chauhan could not be convicted with the aid of Section 34, IPC. Section 34, IPC is as under:

34. Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

11. Under Section 34 a person must be physically present at the actual commission of the crime for the purpose of facilitating or ' promoting the offence,

the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design is itself tantamount to actual participation in the criminal act. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. (Ramaswami Ayhangar v. State of Tamil Nadu : 1976 CriLJ1563 . The existence of common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purpose of common intention even the participation in the commission of the offence need not be proved in all cases. The common intention can develop even during the course of an occurrence (Rajesh Govind Jagesha v. State of Maharashtra : 2000 CriLJ380 . To apply Section 34, IPC apart from the fact that there should be two or more accused, two factors must be established : (i) common intention and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked, in every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case.

12. There is concurrent finding that Sharma with intent to cause the miscarriage of Alpana with child by his act caused her death and the act was done in furtherance of the common intention of Chauhan. He has thus been rightly convicted under Sections 314/34, IPC.

13. There is another aspect of the matter. After coming into force of the Medical Termination of Pregnancy Act, 1971 provisions of IPC relating to miscarriage became subservient to that Act because of non obstante clause in Section 3 which Section is as under:

3. (1) Notwithstanding anything contained in the Indian Penal Code, a registered medical practitioner shall not be guilty of any offence under that Code or under any

other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of Sub-section (4). a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in goods faith, that -

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or(11) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.- Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.- Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in Sub-section (2), account may be taken of the pregnant women's actual or reasonable foreseeable environment.

(4)(a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in Clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

14. Under Section 4 of the Act termination of pregnancy shall be made in accordance with the Act and at a hospital established or maintained by the Government or a place approved by the Government for the purposes of the Act. Rule 4 of the Medical Termination of Pregnancy Rules, 1975, framed under the Act, provides as to how a place under Section 4 could be approved and how inspection etc. of such place is to be carried out place shall not be approved under Section 4:

(i) unless the Government is satisfied that termination of pregnancies may be done therein under safe and hygienic conditions; and

(ii) unless the following facilities are provided therein, namely:

(a) An operation table and instruments for performing abdominal or gynecological surgery;

(b) anaesthetic equipment resuscitation equipment and sterilization equipment.

(c) drugs and potential fluids for emergency use.

15. In the present case Sharma was certainly not competent to terminate the pregnancy of Alpana nor his clinic had the approval of the Government. Even basic facilities for abortion were not available in his clinic. Chauhan took Alpana to the clinic of Sharma with Intent to cause her miscarriage and then her death was caused by Sharma while causing abortion, which act was done by Sharma in furtherance of the common intention of both Sharma and Chauhan, There is no escape from the conclusion that Chauhan had been rightly convicted under Sections 314/34, IPC.

16. The question then arises of the sentence awarded to Chauhan. We are of the opinion that the sentence awarded is rather on the higher side. We would, therefore, reduce the sentence of imprisonment to one and half years (18 months) rigorous imprisonment but would enhance the fine to Rs. 25,000 and in default of payment of the Chauhan to undergo further rigorous imprisonment for a period of one year. In case fine is realised the same shall be payable to Lalita Soni, mother of Alpana.

17. The appeal is thus partly allowed.

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