
(2011) 05 PAT CK 0044

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 21 of 1994

Khopri Modi, Krishnadeo Modi and Tuka Modi

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235, 313
Penal Code, 1860 (IPC) — Section 312, 313, 39

Citation : (2011) 59 BLJR 3152

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dharnidhar Jha, J.—The three Appellants were charged u/s 313 IPC for being tried by the learned 2nd Additional Sessions Judge, Munger in Sessions Case No. 629 of 1985. By judgment dated 12.01.1994 they were found guilty of committing the above offence and after being heard u/s 235 Code of Criminal Procedure each of the three Appellants was directed to undergo rigorous imprisonment for seven years as also to pay a fine of Rs. 1,000/- and in case of default in making the payment of fine each of them was further directed to suffer rigorous imprisonment for three months. The Appellants have preferred the present appeal to question the propriety and correctness of the judgment of conviction and the sentences passed upon each of them.

2. The prosecution case is contained in the fardbeyan (Ext-3) of Kabitri Devi(P.W.4) recorded on 19.07.1985 at 9.30 P.M. It was stated by P.W.4 that she was a resident of Ramtalli Gunj where she had some agricultural land and she was carrying out agricultural operations there. Her Pattidars were creating trouble to her and wanted to oust her from her properties as her father had turned old and her only brother was a physically handicapped person.

3. It was further stated that she had given her agricultural land on Batai to P.W.1 Rameshwar Paswan. On Sunday, i.e., on 14.07.1985 at about 12 A.M. while

P.W.1 was ploughing the said field, the Appellants went over there and obstructed P.W.1 from ploughing the field. P.W.1 came to P.W.4 and informed her about the incident as a result of which she went to Ramtalli Gunj from Bikrampur Kajara to know the reason for stopping the ploughing of her field. The Appellants abused her and also threatened and assaulted her. It was in fact alleged that the Appellants assaulted her with fists and slaps on her belly and back and she felt pain in her abdomen as she was carrying a foetus of three months in her womb. The informant further stated that after 3-4 days of the incident she started bleeding per her private part and as such, she went to the doctor and she aborted there.

4. On the basis of Ext-3, Ext-4, the FIR of the case, was registered and the investigation was taken up by P.W.2 Lakhan Mahton who after recording the fardbeyan and drawing up the FIR, took up the investigation of the case and in that connection went to the place of occurrence on 19.07.1985 at 10.30 A.M. and inspected the same. He went to the field also which was being ploughed allegedly by P.W.1 and found some part of it ploughed and the other part unploughed. He recorded the boundary of the field. He, thereafter, recorded the statements of witnesses. He obtained the injury certificate from the doctor and finding materials sufficient sent up the three Appellants for their trial, which ultimately ended in their conviction.

5. The defiance of the Appellants was that they had falsely been implicated on account of the dispute for the land in which they also held shares. Their further defiance was that P.W.4 had illicit relationship with a man and when she became pregnant from that man, he had caused the lady to miscarry. So as to erasing the evidence of the affair and taking advantage of the situation, the lady for putting criminal pressure upon the Appellants had falsely implicated them for putting criminal pressure upon them, so that they relinquished their claim over the disputed land.

6. During the course of the trial, the prosecution examined as many as six witnesses in addition to the investigating officer, S.I. Sheo Kumar Singh. The other witnesses included P.W.1 Rameshwar Paswan who was allegedly ploughing the field in dispute, the subject matter of the dispute between the parties, on the date of occurrence and who as per the evidence of the witnesses including himself went to inform P.W.4 Kabitri Devi about the accused persons coming to the field, getting the oxen unyoked and thereafter informing the lady where after she was assaulted on her arrival at the spot. P.W.2 is Lakhan Mahton who along with P.W.3 Brajnandan Mahto has given eye witness account to the assault given by the Appellants to P.W.4 Kabitri Devi, the victim of offence of being assaulted and miscarrying on that account. P.W.5 is Dr. Kumar Shyam Ratan Singh who had examined the lady P.W.4 on 19.06.1985 in the State Dispensary, Kajara and had recorded in his report that she had recently been aborted of a pregnancy of about four months and the same might be due to fall or injury. The abortion took place, in the opinion of P.W.5, between 12 to 48 hours of examination of the lady

by him.

7. Considering the evidence of above witnesses, the learned trial Judge held the Appellants guilty and passed sentence upon them as indicated at the very outset of the present judgment.

8. After going through the evidence of the witnesses what appears stated by them is that the field was being ploughed by P.W.1 and the Appellants came over there and objected to the ploughing of the field by P.W.1 who was asked to unyoke the oxen and he readily complied with the command of the Appellants. P.W.1, thereafter, went to inform P.W.4 who came and made enquires from the Appellants as to why they had stopped ploughing of the field and had got the oxen unyoked upon which the Appellants, as per the witnesses, assaulted the lady on her belly and back. Witnesses have stated that the assault was quite massive and further that the lady was feeling the pangs of pain in her belly. Some of the witnesses, like, P.W.3 Brajnandan Mahton and P.W.1 Rameshwar Paswan stated that P.W.4 Kabitri Devi was carrying a pregnancy of three months in her womb.

9. The evidence of the witnesses including that of P.W.4 that she was carrying a pregnancy of four months and that was within the knowledge of the accused persons appears completely absent. It is true that the witnesses have stated that Kabitri Devi was carrying the pregnancy, but they have not stated that the pregnancy of the lady was known to the accused persons and further known to the witnesses including the lady. None of the witnesses have stated that they knew that in order to getting her to miscarry, the Appellants had assaulted her in such a way as to cause the effect of the assault into miscarriage of the lady. While I was looking to the lower court records and in that course when I turned to the statements of the Appellants recorded u/s 313 Code of Criminal Procedure, I could not find any question put to any of the Appellants that they had knowledge of the fact that P.W.4 was carrying a pregnancy and that they assaulted the lady with a view to causing her to miscarry who was quick with a child. They had been knowing about the pregnancy of the lady and had assaulted her to cause the lady to miscarry does not appear put to any of the Appellants. In fact the only question which was put to Appellant Khopri Modi and Appellant Krishnadeo Modi was that the doctor had reported that the lady had miscarried a few hours prior to her examination by P.W.5.

10. The offence of miscarriage has been defined by Section 312 of the IPC which reads as under:

Causing miscarriage.- Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and, if the woman be quick with the child shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable

to fine.

11. On perusal of the above provision what appears is that the act of causing the woman to miscarry must be voluntarily and the fact that the woman was quick with a child must also be known to the accused who had by any means intended to cause the lady to miscarry otherwise than to save her life.

12. The word "voluntarily" has been defined by Section 39 of the IPC which reads as under:

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.

13. Thus, what appears from the definition of the term "voluntarily" is that before doing an act so as to causing an effect an accused must have the knowledge as to what he wants to cause or he must have the reason to believe that the act which he was likely to commit or was committing was likely to end in or cause the desired effect. Thus while doing the act for causing an effect, the person who wishes to cause the effect, must by evidence be shown knowing as to what effect in context to a particular situation was either likely to be caused by his acts or by the acts which he was likely to commit. It must be shown by evidence that he was aware of the existence of a particular situation or state of thing which might be affected by the commission of an act by him and further, that acts done by him were meant to bring about the effect in the existing state of a thing or a person. Whether the person is doing an act or contemplating to do it, his knowledge about a particular situation and his intent to change it or his belief of the change likely to be affected by his acts already done or to be done has to be established by evidence. It may only be in the above state and nature of evidence that the offence u/s 312 IPC can be said to be constituted. On a bare perusal of Section 312 IPC it may be gathered that the accused must know that the lady was quick with a child and then should be shown by evidence to have committed some acts so as to causing the miscarriage that is, to cause the effect, then only the act could be said to be committed voluntarily, making the offence complete. This is what I deduce from the plain reading of Sections 39 and 312 IPC.

14. I have already referred to the material evidence which was adduced by the prosecution during the trial of the Appellants. A couple of witnesses or the lady herself might have stated that she was carrying a pregnancy of three months on the day she was assaulted, but no part of the evidence indicates that any of the Appellants knew that she was carrying such pregnancy. No evidence is available on the record further to indicate that knowing that the lady was carrying the pregnancy, the accused persons were intending the lady to miscarry and so as to causing that particular effect, they were intentionally and knowingly assaulting her either on her belly or on her back to cause the lady to miscarry the child and thus to be aborted. If this had been the evidence then the charge u/s 313 Code

of Criminal Procedure which makes the offence of causing miscarriage of a lady who was quick with a child could be said to be constituted and proved. This is where the learned trial Judge appears faltering while appreciating the evidence.

15. The other error in which the learned Judge was indulging, probably unintentionally, was not putting the above circumstances of knowledge about the pregnancy of P.W.4 and doing an act intentionally so as to causing the effect of miscarriage to the Appellants during their examination u/s 313 Code of Criminal Procedure I must be fair to the learned trial Judge to note that he has not said any where in his judgment that the evidence was proving the necessary ingredients of Section 312 IPC so that the acts of the Appellants might be fully covered by the definition of the offence punishable u/s 313 IPC. The learned trial Judge, in fact, has not even discussed the provision of law and did not further discuss the evidence for applying the provision to it so as to raising the inference on the constitution of the ingredients of the offence punishable u/s 313 IPC. This is the fallacy the judgment suffers from.

16. In the result, the judgment and order of conviction are hereby set aside by allowing the appeal. The Appellants are acquitted of the charge u/s 313 IPC. The Appellants are on bail, they shall stand discharged from the liabilities of their respective bonds.