

Case Report

A Case of Criminal Abortion by a Quack (unqualified person) Supreme Court Views

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Abstract

Unsafe abortion is one of the four main causes of maternal mortality and morbidity. One of the reasons for unsafe abortion is because safe abortion services are frequently not available, even when they are legal for a variety of indications in almost all countries including India.

A case of alleged illicit sexual relations of an unmarried woman of 27 years and consequently pregnancy and criminal abortion by an unqualified and inexperienced doctor came before the SC in appeal. Accused doctor had been convicted and sentenced by the trial court for seven years along with fine, concurred by the MP High Court. Case came before the SC in Appeal by the co-accused in this case. Various issues related to provisions of Indian Penal Code (IPC), Medical Termination of Pregnancy Act and Rules, qualification and experience of the doctor for MTP, Approval of the place for MTP, and issue of conviction and sentence of alleged accused, etc. has been discussed to create awareness among stakeholders to avoid further cases of criminal abortions in India. This may help in decreasing maternal morbidity and mortality in India due to criminal abortions.

Key Words: Expert Opinion, Post-mortem, Criminal Abortion, MTP, Conviction, Appeal, Supreme Court, High Court, Trial Court, Common Intention, Cross-Examination, Trial, Pregnancy, Illicit Relations

Introduction:

Unsafe abortion accounts for 13% of maternal deaths [1], and 20% of the total mortality and disability burden due to pregnancy and childbirth. [2]

Almost all deaths and morbidity from unsafe abortion occur in countries where abortion is severely restricted in law and in practice. Every year, about 47000 women die from complications of unsafe abortion [3]; an estimated 5 million women suffer temporary or permanent disability, including infertility. [4]

Where there are few restrictions on access to safe abortion, deaths and illness are dramatically reduced. [5]

Governments agreed in the United Nations International Conference on Population and Development, 1999 (ICPD+5). [6]

Review and appraisal process that “in circumstances where abortion is not against the law, health systems should train and equip health-service providers and should take other measures to ensure that such abortion is safe and accessible. Additional measures should be taken to safeguard women’s health”. [6]

The original document, *Safe abortion: technical and policy guidance for health systems*, published by the World Health Organization (WHO) in 2003 [7] and subsequently in 2012 [9] started from this mandate. They recommended that States reform laws that criminalize medical procedures that are needed only by women, and that punish women who undergo these procedures [8], both of which are applicable in the case of abortion.

They also recommended that States should ensure timely and affordable access to good-quality health services, which should be delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality, and is sensitive to her needs and perspectives. [8]

Issues emerged [1]:

- Issue of MTP Act and its Provisions
- Issue of Qualification and Experience for MTP
- Issue of Approved Place for MTP
- Expert Opinion

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- Issue of Applicability of Provisions of IPC:
- Issue of Conviction and Sentence

Background of the Case:

Appellant Surendra Chauhan (Chauhan) has been convicted for an offence under Section 314/34 Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.10000/- 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 Section 314/34 IPC. Sharma had also been convicted under Section 314 IPC and similarly sentenced as Chauhan by the trial court. [10]

Appeal before the MP High 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 the Supreme Court under Article 136 of the Constitution against the judgment of the High Court. [10]

Facts of the Case:

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. [10]

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. [10]

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. [1]

Forensic Expert Opinion:

Dr. D.C. Jain is the Professor of Forensic Medicines in Medical College, Raipur. In his deposition he said that in his opinion "Deceased was pregnant foetus should be in uterus. Foetus 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." [10]

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.

PM Examination:

In his cross-examination he said that shock also takes place during the fear. Dr. H. K. Joshi performed post-mortem on the dead body of Alpana. According to him **cause of death was shock.**

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.

SC Observations on Issue of Qualification & Experience for MTP:

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 Ayurveda.

SC opined that Alpana met her death in the clinic of Sharma either due to shock or without applying anaesthesia while she was being aborted.

SC observed that 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. [10]

Issue of Applicability of Provisions of IPC:

Section 314 IPC is 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."

SC observed that 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. [1]

Questions for Consideration before the SC:

Two questions have been raised before the SC for 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 of them wanted 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.

Case Law on Limitation of SC in Appeal under Article 136 of the Indian Constitution:

SC clarified that as far back in 1954 the SC in Dinabandhu Sahu vs. Jadumoni Mangaraj and Others [1955] [11] said that SC 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.

Evidence Recovered during Investigations:

During the course of investigation police also recovered some instruments from the dickey 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 dickey 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 Code of Criminal Procedure 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 went 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." [10]

Defence by Alleged Accused Sharma:

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 lie 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 @ 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 @ 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 @ 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 I 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." [10]

Defence Rejected by the SC:

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]

SC Observations on the Issue of Conviction and Common Intention:

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."

Physical Presence of the Accused:

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. [12]

Case Law on Common Intention: Attending Circumstance

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. [13]

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. [10]

SC Observations on the Issue of Intention:

SC observed that there is concurrent finding [of the trial court and High Court] 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 Section 314/34 IPC. [10]

Issue of MTP Act and its Provisions:

SC observed that 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.

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.

Issue of Approval of Place for MTP:

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. A 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 gynaecological surgery;
(b) Anaesthetic equipment resuscitation equipment and sterilisation equipment;
(c) Drugs and parenteral fluids for emergency use."

SC Final Observations on the Issue of conviction: Competency to MTP, Approved Place

SC observed that 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 Section 314/34 IPC. [10]**

Issue of Punishment:

The question then arises of the sentence awarded to Chauhan. Division Bench of SC on the issue of sentence observed that 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. 25000 and in default of payment of fine 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.

With above terms SC partially allowed appeal and reduced the sentence awarded to Chauhan. [10]

Summary and Conclusions:

Lack of awareness about the legal provisions on MTP, illiteracy, lack of adequate infrastructure and qualified and experience doctors along with social stigma are responsible for such type of preventable immature deaths.

Such types of cases are substantially responsible for increased mortality and morbidity of woman in India.

Governments both at Central and State Level along with NGOs should act proactively to create awareness of the legal provisions of the MTP in different parts of the India.

Given the clear link between access to safe abortion and women's health, it is recommended that laws and policies should respect and protect women's health and their human rights. [9]

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