

DISTRICT : SONITPUR.  
IN THE COURT OF THE ADDL. SESSIONS JUDGE, AT BISWANATH CHARIALI

Ref. :- Sessions Case No.378/12  
Arising out of G.R. Case No.515/11

U/S- 318/312 of the IPC.

Present :- Sri S. Khound.  
Additional District & Sessions Judge,  
Biswanath Chariali.

The State of Assam :: :: Prosecution

- Vs -

Sri Ranjan Gogoi :: :: Accused person.

Appearance :-

For the prosecution/State of Assam : Mr. H. Hazarika, Addl. P.P.  
Biswanath Chariali.

For the accused :- Mr. D. Das, Advocate.  
Biswanath Chariali.

Dates of depositions :- 25-04-13 & 01-10-13.

Date of argument :- 13-05-14

Date of Judgment :- 27-05-14.

**J U D G M E N T**

1. The accused Sri Ranjan Gogoi, S/O- Late Taranath Gogoi, resident of village – Pabhoi Pach Ali under Biswanath-Chariali Police Station in the district of Sonitpur, here in this case has been put to face the trial to answer the charge U/S- 318/312 of Indian Penal Code ( in short the 'IPC').

2. The fact as disclosed in the First Information Report ( in short FIR) is that on 11.07.11 one Sri Atul Borkataki and 13 (thirteen) others lodged FIR alleging that the accused caused miscarriage of one Smti Dipali Khodal and the terminated female issue was thrown to Pabhoi centre which was being eaten by dogs.

3. On receipt of the FIR police registered Biswanath-Chariali P.S. Case No.183/11 U/S-120(B)/312/268/318 of the IPC and investigated the same. On completion of investigation police charge-sheeted the accused for the offence punishable U/S- 318/312 of the IPC.

Contd.....P/2

(2)

4. On appearance learned Court of Sub-Divisional Judicial Magistrate, Biswanath-Chariali furnished copy to the accused and committed the case for trial to the court of Hon'ble Sessions Judge, Sonitpur.

5. On being receipt of this case from the committal court, the learned Sessions Judge, Sonitpur, Tezpur, registered the case and transferred the same to this court for disposal.

6. On appearance of the accused before this court, this court after hearing both the sides formally framed charge against the accused U/S-318/312 of the IPC. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

7. To bring home the charge the prosecution has examined five witnesses including victim. Defence cross-examined said PWs but adduced no evidence. The statement of the accused recorded U/S-313 of the Cr. P.C. Defence plea is of total denial.

**THE POINTS FOR DETERMINATION ARE ;**

8. (i) Whether the accused on 11.07.11 at Rangamari Pabhoi Centre by secretly throwing away the dead-body of a child of the victim intentionally concealed ( or endeavoured to conceive) the birth of said child and thereby committed offence punishable U/S-318 of the IPC ?

(ii) Whether the accused on the same day, time and place voluntarily caused the victim, then being with the child to miscarry, such miscarriage not being caused in good faith for the purpose of saving the life of the said victim and thereby committed an offence punishable U/S-312 of the IPC ?

**DECISION AND REASONS THEREOF**

9. To arrive at a judicial decision, let the evidence on record be appreciated.

10. PW-1, Sri Dhiren Khodal has deposed that accused is known to him but he does not know the informant. About 1 (one) year ago ( from the date of deposition) the younger sister of PW-1 Smti Dipali Khodal suffered from stomach pain for which she was brought

Contd.....P/3

to the chamber of the accused who is a doctor by profession in the chamber the accused pushed one injection and sent back the victim and the informant. On their way back to home the victim Dipali again suffered from pain as such PW-1 and the victim returned back to the chamber of the accused but accused was not found. On that very night PW-1 and Dipali had to stay in the garage of the accused where Dipali gave birth one dead child which was buried by PW-1 behind the house campus of the accused. Thereafter, PW-1 and Dipali again returned home but on the way they were brought back to police station by some people wherefrom he was brought to the court where statement of PW-1 was recorded.

In cross-examination PW-1 deposed that when he went to the house of the accused along with Dipali, then Janaki Khodal also accompanied them and all of them travelled by bus. PW-1 further deposed that after taking the injection Dipali came on walking for about one and half kilometre and then returned to the garage of the accused's house and passed the night there. PW-1 also deposed that regarding delivery of dead child of Dipali and regarding burial of the child, he did not inform the accused. According to PW-1, the accused is not responsible for the occurrence.

11. PW-2 is Smti Dipali Khodal who deposed that informant is not known to her. On the day of occurrence due to her stomach pain she was brought to the chamber of the accused situated at Pabhoi centre by the elder brother of PW-2 i.e. Dhiren Khodal and his wife Janaki Khodal. After arriving the chamber of the accused she was given one injection by the accused and stayed for the night in the garage of the accused's house premises. On that very night she gave birth one dead-child which was later on buried by PW-1 on the backside of accused's house. When PW-2 along with PW-1 returned home then on the road some people came and brought back them to the police station and to the court. PW-2 gave her statement in the court and gave thumb impression.

In cross-examination PW-2 deposed that on the day of occurrence she came to the chamber of the accused along with PW-1 and her sister-in-law by bus. After taking the injection she returned home but due to sudden pain again returned to the house of the accused but at that time no other person was available in the accused's house. PW-2 further deposed that they did not report to the accused

regarding birth and burial of her dead-child as such the accused is not responsible for the occurrence. PW-2 further deposed if accused is acquitted then she has no objection.

12. PW-3 is Smti Janaki Khodal who deposed that accused is known to her and on the day of occurrence she accompanied PW-1 and PW-2 to the chamber of the accused for medical treatment of PW-1 Dipali Khodal of her stomach pain. The accused pushed one injection to PW-2 and thereafter, all of them returned home on the road PW-2 again suffered from pain as such they returned to the house of the accused but accused could not be found as such they had to stay for the night in the garage of accused's house. On the day of occurrence at night PW-2 Dipali gave birth one dead-child which was buried by PW-1 on the backyard of accused's house. Thereafter, PW-3 along with PW-2 & 1 returned home but on the way some people forcefully brought them to the police station wherefrom they were produced in the court and their statements were recorded. Accordingly, PW-3 gave thumb impression in her statement.

In cross-examination PW-3 deposed that when PW-2 Dipali after taking the injection returned home, then after going one and half kilometre distance she again felt pain and returned to the house of the accused and stayed in the garage of the accused's house situated by the side of the road. PW-3 further deposed that accused does not know regarding birth of the dead-child and its burial.

13. PW-4 is Sri Jitu Barhoi who also deposed that he knows the accused and the informant. About one year back ( from the date of deposition) at about 10 a.m. the public gathered at Pabhoi centre where dead-body of one new born child was lying. Thereafter, police came there and took signature of PW-4 in the ejahar which is Ext.1 where Ext.1(1) is the signature of PW-4. He further deposed that how the dead child came to that spot that PW-4 does not know.

In cross-examination PW-4 deposed that he did not see the dead-body of the new born child at Pabhoi centre but he only heard about it. It is further deposed by PW-4 that when police took his signature in ejahar at that time nothing was written there as such PW-4 does not know regarding contents of the ejahar.

14. PW-5 is Sri Bhaben Katoky who deposed that he knows the informant and the accused. On the day of occurrence when he was sitting in the shop of his younger brother situated at Pabhoi centre at that time he heard that body of a dead new-born baby brought by a dog to the pabhoi centre but PW-5 did not see the said dead-child.

In cross-examination PW-5 deposed that police did not record his statement.

15. To bring home the charge U/S-312, IPC, the prosecution is to prove that :-

(a) The victim was a pregnant (b) That the accused has caused the victim to miscarry (c) That such act on the part of the accused was voluntary (d) That such miscarriage has not been caused in good faith for the purpose of saving the life of the victim.

16. To bring home the charge U/S-318, IPC, the prosecution is to prove that :-

(a) There was a birth of child (b) the child has died before or after or during its birth (c) the accused has secretly buried or concealed birth of the child.

17. In the instant case in hand it transpires from the evidence of PW-2 who is the victim, that on the day of occurrence she came to the chamber of the accused for treatment of her stomach pain and the accused pushed one injection and sent her back to her residence along with PW-1 i.e. Dhiren Khodal who is the elder brother of the victim and PW-3 Smti Janaki Khodal who is the sister-in-law of the victim. There is no mention in her evidence that the accused pushed the injection to cause her miscarriage. Thereafter, on the way PW-2 again suffered from stomach pain as such return to the chamber of the accused but accused could not be found and ultimately PW-2 had to stay in the garage of the accused's house for the night and on the same night she gave birth one dead-child which was admittedly buried by PW-1 on the backyard of accused's house. PW-1, 2 & 3 narrated the same sort of occurrence and reiterated that during delivery of dead-child and its burial accused was not present and he was not even reported by the PWs regarding later part of the occurrence i.e. birth

(6)

of the dead-child and its burial. Moreover, police has not seized the vial of injection allegedly pushed by the accused on PW-2 to establish that due to pushing of the medicine by the accused the miscarriage occurred. Apart from that PW-1, 2 & 3 categorically stated that accused is not responsible for the occurrence, as such, they have no objection if accused is acquitted.

18. PW-4 & PW-5 simply stated regarding recovery of one dead-child at Pabhoi centre but they do not know how it came to the spot. Prosecution also failed to prove that the dead-child found at Pabhoi centre and the dead-child which was buried by PW-1 himself on the backyard of the accused's house was the same.

19. In the light of said discussion and on careful scrutiny of evidence on record, I am of the view that the prosecution has failed to prove its case against the accused beyond all reasonable doubts. So, I hold the accused not guilty and he is acquitted of the charge of offence punishable U/S-312/318 of the IPC and set at liberty forthwith.

20. Judgment prepared, signed pronounced and delivered in the open Court under my hand and seal of this Court on this the 27<sup>th</sup> ay of May,2014 at Biswanath Chariali.

( Sri S. Khound. )  
Addl. District & Sessions Judge,  
Biswanath Chariali.

Dictated & Corrected by me

( Sri S. Khound. )  
Addl. District & Sessions Judge  
Biswanath Chariali.

\*\*\*\*\*