



informant in their house. For that reason he used to pick up quarrel with her parents. On 21.01.2006 at about 9 am the accused picked up quarrel with his mother for the aforesaid reason. When the informant tried to rescue her mother the accused got furious and threatened her to assault in such a manner that her unborn child will be dead. After giving such threatening the accused dealt three kick blows on the belly of the informant causing pain and bleeding. On 18.02.2006 when the pain became unbearable the informant went to Balugaon Govt. Hospital. In the Hospital she as advised to go Ava Hospital for further treatment. After examination in the said hospital the doctor opined that the child in her womb to be dead. Thereafter the informant went to the Christian Hospital for women and children situated at Berhampur where she delivered a still child. After being discharged from the said hospital as well as after being fit the informant came to the court and filed a complaint petition which was registered as ICC Case No. 26/2006 in the court of Learned J.M.F.C., Banpur. After recording initial statement as well as making inquiry U/s 202 Cr.P.C. the Learned J.M.F.C., has taken cognizance of the offence U/s 315 of the I.P.C. Hence this case.

3. The plea of the accused is one of complete denial and false allegation made by the informant for the partition of the landed properties.

4. The point for determination in this case are :-

Whether the accused dealt kick blows on the belly of the informant with an intention to prevent the child in the womb of the informant being borne alive or to cause it to die after birth?

5. To substantiate its case prosecution had examined as many as five witnesses. Out of which P.W.4 is the complainant, P.W.1, 2 & 5 are her mother, father and sister whereas P.W.3 is the doctor. On the other hand defence had examined none.

6. For better appreciation of the evidence the evidence of the informant is taken into account first. Regarding the alleged occurrence it was stated by the informant P.W.4 that the said occurrence took place at 9 AM at the backyard of her parents house. At the relevant time she was carrying for seven months and her father had brought her to their house for her delivery. The accused who happens to be her brother was not happy about this fact. At that particular time the accused was assaulting their mother. when she protested he gave three kick blows on her belly causing pain. However 15 days after the alleged occurrence she went to Balugaon C.H.C for treatment. There the doctor had advised her to go to Ava Hospital for ultrasound. At Ava Hospital the doctor namely Maharana Babu conducted ultrasound and found the child in the womb to be dead. Thereafter she went to Berhampur medical where she delivered the said dead child. Apart from the informant four other witnesses were examined from the side of the prosecution. Out of them P.W.3 is the medical officer and others are the occurrence witnesses. The said occurrence witnesses are the father, mother and sister of the informant. All the said witnesses while being examined as P.W.1,2 and 5 corroborated the statement of the informant regarding the assault made by the accused on the belly of the informant with contradictions on some points such as :- the reason for which the occurrence started , the date of examination of the informant by the doctors, regarding the fact of intimation about this occurrence to the police and filing of the complaint case. All the four occurrence witnesses are related to each other as well as to the

accused. During the course of hearing of the case, the accused had taken the plea of previous enmity between them which resulted in the present allegation against him. During his examination U/s 313 Cr.P.C. he also stated the same thing. The said witness while being examined by the prosecution also admitted the said fact of strained relationship between them. Enmity or strained relation is a double edged weapon which acts both ways. Some time it gives motive for commission of the offence and some times it gives motive for false implication. So when there exist enmity between the parties the evidence of the witnesses should be scrutinized more carefully so that the fact of false allegation against the accused can be ruled out. Here as admitted by both the parties they have strained relationship with each other. So it will be proper to scrutinize the evidence carefully to separate the grains from the chaff. We have to see whether those contradictions bears some significance or not? Whether those are fatal to the case of the prosecution or not? Now coming to the said contradictions;- So far as the cause of occurrence is concerned it was the case of the prosecution that the informant had been to her parent's house for her delivery but the accused who is her brother was not happy about this matter as he did not like spending money on the informant. It was categorically mentioned in the complaint petition filed by the informant that for this reason only on 21.01.2006 at about 9 A.M. the accused picked up quarrel with her mother and assaulted her. When the complainant went to rescue her she was threatened by the accused and was assaulted on her belly by means of kicks. This fact was also stated by the informant during her examination in the court. whereas the other witnesses examined as P.Ws 1, 2 and 5 did not assign that reason for the occurrence. According to them on the date of occurrence the accused was plucking coconut and the mother of the

informant was collecting it. Due to this fact altercation of words between the accused and P.W.1 taken place. Thereafter the accused assaulted P.W.1 and when P.W.4 the informant went for her rescue she was assaulted by the accused. This fact was categorically stated by P.W.1 in para-3 of her cross examination while answering to the question of the counsel for the accused regarding the cause of the occurrence. She further stated that apart from that there was no other reason for the quarrel. This fact was necessary and plays a vital role because intention plays a vital role and one of the major ingredient of section 315 of I.P.C. The complaint petition filed by the informant reveals that the accused had an intention to cause the miscarriage of child and he has stated clearly this thing before giving kicks on the belly of the informant but the said fact was not stated either by the informant herself or by any other witnesses.

So far as examination of the informant by the doctor, intimation to the police and filing of the complaint case are concerned it was mentioned in the complaint petition that though the occurrence took place on 21.01.2006 the informant was taken to medical on 18.02.2006 for treatment. Thereafter she went to Ava Hospital where she came to know about the death of unborn child. Subsequently on 02.03.2006 she went to Berhampur where she delivered the dead child and after becoming fit she filed the complaint petition on 12.04.2006. Whereas during the examination of the said witnesses all of them stated different dates of going to the Medical, intimating to the police and filing of the case. The informant herself stated that after fifteen days of the assault first she went to the Balugaon C.H.C for treatment then to Ava Hospital and Berhampur Medical. On the other hand her father disclosed that on the date of the occurrence itself they went to the medical being sent by the police. P.W.1 her mother stated that they

went to the medical two to three days after the occurrence. Similarly P.W.5 her sister disclosed that they went to the Medical on the next date of the occurrence. As revealed from the statement of the said witnesses there was no consistency in the statement of these witnesses regarding the date when the informant was taken to the medical for treatment. If the medical report and statement of P.W.3 the medical officer is believed the informant went to the Ava Hospital on 19.02.2006 that means 28 days after the alleged occurrence. So far as filing of the complaint petition is concerned the same was filed on 12.04.2006 that means nearly 51 days after the occurrence. The delay for filing of the complaint case after such a long gap of time was not properly explained by the prosecution. The statement of the witnesses reveals that they had been to the Police Station on the date of the occurrence and intimated the same to the police but there is nothing in the case record suggesting the same. P.W.2 further in para-3 of his cross examination had stated that after their intimation to the police about the occurrence police sent them to the Hospital but no medical requisition is available in the case record. On the other hand the complaint petition reveals that this fact was not intimated to the police. Both these things are clearly contradictory to each other. As mentioned earlier both parties are having inimical relationship with each other. In this circumstance this inordinate unexplained delay is considered to be fatal to the prosecution case. From the discussion made above many contradictions were found in the statement of the witnesses. Considering the aforesaid facts as well as the strained relationship between the parties it is thought to find out independent corroboration to the prosecution case. Although the occurrence took place at the backyard of informant's house which is an open place no other witness was examined by the prosecution

except the victim, her parents and sister. It was specifically asked to P.W.1 as to who else have seen the occurrence to which she replied that although 150 other houses are there in village Nuagada and she shouted drawing attention of the people none of the said villagers came to the spot. On the other hand P.W.5 in para-4 of her cross examination disclosed that some persons of the village such as Punia Palei, his wife Dumi, Noka Raul and others had been to the place of occurrence and have seen the incident. But the prosecution did not examine any other outsider including those persons whose names were stated by P.W.5 in para-4 of her cross examination. In addition to that although P.W.2 and 5 are claiming themselves to be the witnesses to the occurrence, if the version of P.W.1 is believed at the time of occurrence apart from the victim and herself no other was present. So far as the presence of P.W.2 is concerned it was stated by this witness (P.W.1) that her husband P.W.2 arrived at the spot after attending the call of nature. By that time the accused had assaulted her and was dragging P.W.4 to a distance but P.W.2 did not interfere nor tell anything to the accused. Further she stated that she can not say if her husband has seen the occurrence by standing at the spot or went inside the house. If the version of P.W.5 made in Para-4 line-six of the cross examination is believed P.W.2 was not at all present in the house at the time of the occurrence rather he came to his house two hours after the incident. If the version of P.W.1 and 5 are believed P.W.2 was never present at the place of occurrence although he claims himself to be an eye witness to the occurrence. Similarly if the version of P.W.1 is believed neither P.W.2 nor P.W.5 were present in the house at the time of occurrence.

7. To prove a case U/s 315 I.P.C. the prosecution has to prove that the accused had done the alleged act with an intention of causing the miscarriage of a woman with a child. The criminal liability envisaged by this section will not extend to a case where the abortion or miscarriage was caused by totally extraneous factors or ones which were not directly connected with it. The prosecution is required to prove beyond reasonable doubt that it was that very act which ultimately caused the miscarriage. That is nexus between act done by the accused and the miscarriage. That nexus must be direct. Here in this case the prosecution has to prove that very nexus between the alleged act committed by the accused and ultimate miscarriage. P.W.4 the informant stated in her examination in chief that soon after the assault she sustained pain. However she went to Balugaon C.H.C for treatment 15 days after the occurrence. There are some contradictions regarding the date of the examination of the informant by the medical officer which was discussed earlier. However we go by the statement of the informant and the medical officer. As per the statement of the informant at C.H.C., Banpur she was referred to Ava Hospital for Ultrasound. Doctor Maharana after examination at Ava Hospital opined that the child in the womb is dead. As mentioned earlier we have to find out as to whether this miscarriage of the informant was caused by the alleged kick blows given by the accused or not. In this regard the report of the Medical officer bears great significance. The Medical officer was examined by the prosecution as P.W.3. During his examination in chief he stated that on 19.02.2006 he had examined the informant and had conducted the ultrasound. During his ultrasound he found the foetus child to be dead at the gestational period of 27 weeks. However he did not opine about the reason for the death of the unborn child. However during his cross examination in

para-3 he stated that upon examination of the informant he found the placenta in its normal place. There was no internal injury in the foetus in the placenta and the uterus. So far as the cause of death of the foetus is concerned he clearly stated that “ since the placenta was in normal condition cause of death of the foetal child was never attributed to any external or internal injury. Since there was no injury in placenta the cause of death of the child may be due to some natural causes such as physiology disorder, anomia or anything that causes less supply of oxygen and food to the foetal child”.

If this statement of the M.O is believed it can be said that the alleged act of the accused said to have been done if any has no nexus with the death of unborn child. That apart the prosecution did not examine the doctor who had treated the informant at Berhampur. The prosecution during the course of hearing of the case had produced and marked the prescription and ultrasound report of the informant as Ext.1 and 2. At the time of marking of the said document the same were marked with objection from the side of the defence. During the course of cross examination it was brought out from the mouth of P.W.3, the Medical officer that both the said documents are not the original documents rather the copies of the original. He further admitted that the said copies were not prepared by him from the original. During the course of argument the learned counsels appearing for the accused submitted that as the said documents are not the original documents and were not marked in accordance with Section 65 of the Indian Evidence Act reliance should not be placed on those documents. On perusal of the said documents as well as the statement made by the P.W.3 it is found that in fact those are the Xerox or carbon copies but not the original. The carbon copy of a report can be admitted as primary evidence when it is prepared by a doctor by one uniform process by

which the original was prepared. This was reiterated by the Apex Court in the Case of Prithi Chand- vrs- State reported in AIR-1989 SC-702. But here it was admitted by the doctor himself that he has not prepared the copy from the original. So it can not be accepted as primary evidence. So far as the secondary evidence is concerned neither it was prepared in one of the form it should be prepared from the original as mentioned U/s 63 of the Evidence Act. Similarly at the time of marking the document as secondary evidence by the prosecution the provision U/s 65 of the Evidence Act was not followed. Under these circumstances I am of the opinion that although the medical prescription and ultrasound report were marked by the prosecution the same can not be relied upon as evidence against the accused. So from the aforesaid discussion I am of the opinion that the prosecution was not able to prove its case beyond all reasonable doubt.

In the result I hold the accused not guilty U/s 315 I.P.C. and acquit him u/s. 235(1) Cr.P.C. He be set at liberty forthwith and be discharged from the bail bond.

As no seizure was made in this case no order regarding the disposal of the seized property is made.

Asst. Sessions Judge, Banpur.

Typed to my dictation & corrected by me. Judgment being sealed and signed is pronounced in the open court today i.e. on 17.07.2014.

Asst. Sessions Judge, Banpur.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION.

P.W.1. Radha Sura

P.W.2. Bharamara Sura

P.W.3. Dr. Antaryami Maharana

P.W.4 Sabita Gouda

P.W.5 Lata Dalei

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE.

NONE.

LIST OF EXHIBIT MARKED FOR THE PROSECUTION.

Ext.1. Copy of Ultrasound report.

Ext. 2 Xerox copy of prescription.

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.

Asst. Sessions Judge, Banpur.