Shakila Vs State By Circle Inspector

Court: Karnataka High Court

Date of Decision: July 26, 2019

Acts Referred: Code Of Criminal Procedure, 1973 â€" Section 230, 300(5), 311, 313, 316, 318, 319, 319(4), 398
Indian Penal Code, 1860 â€" Section 34, 376, 406, 420, 448, 506
Evidence Act, 1872 â€" Section 132

Hon'ble Judges: Mohammad Nawaz, J

Bench: Single Bench

Advocate: S.T.Bikkannavar, Honnappa, Pavan Kumar G., Shankarappa S.

Final Decision: Allowed

Judgement

1. These criminal revision petitions are directed against the Order dated 01.12.2018, passed in Sessions Case No.3/2015 on the file of the Court of

Principal Sessions Judge at Tumakuru, whereby the learned Sessions Judge allowed the application filed by the learned Public Prosecutor under

Section 319 of Cr.P.C. and issued accused summons to C.W.25/P.W.15Ã¢â‚¬"Dr.Susheela B.R., C.W.10/P.W.10-Shakeela and C.W.11/P.W.11-

Farzana for answering charges under Sections 313, 316 and 318 of IPC.

2. Crl.R.P. No.8/2019 is preferred by C.W.10/P.W.10 and C.W.11/P.W.11 and Crl.R.P. No.136/2019 is preferred by C.W.25/P.W.15.

3. I have heard the learned counsel for the petitioners and the learned HCGP for the respondent/State.

4. The case of the prosecution is that;

Accused No.1 with a false assurance of marriage, committed forcible sexual intercourse with the victim/P.W.1. and subsequently under the guise of

marriage, he continued the said act, due to which the victim became pregnant. Her parents admitted her to Kunigal Government Hospital, wherein she

delivered a female child on 01.11.2013. The said child was given to P.W.11 through P.W.10 to look after. However, the child died on the same day

due to ill-health and the child was buried. During the panchayat held, accused No.1 refused to marry the victim and he put life threat to the victim.

Accused No.2 by lifting a size stone threatened the victim with dire consequences.

Charge-sheet was filed against accused Nos.1 and 2 for the offences punishable under Sections 448, 406, 420, 376 and 506 r/w. Section 34 of IPC.

During the course of trial, on behalf of the prosecution 16 witnesses came to be examined. The learned Public Prosecutor filed an application under

Section 319 of Cr.P.C. for summoning C.W.25/P.W.15-Dr.Susheela B.R.,

C.W.10/P.W.10-Shakeela and C.W.11/P.W.11-Farzana as accused, for framing charges against them for the offences punishable under Sections 313,

316 and 318 of I.P.C. The learned Sessions Judge by an Order dated 01.12.2018 was pleased to allow the said application and issued accused

summons to them. Aggrieved by which, the present revision petitions are filed.

5. According to the prosecution, when the victim became pregnant, accused No.1 took her to Kunigal Government Hospital and with his connivance

the doctor and the nurses performed abortion. The medical record at Ex.P7 reveals that there was cervical tear which is common during abortion and

there was a history of MTP at General Hospital, Kunigal which is marked as Ex.P13. The said abortion was performed with the help of the Medical

Officer [P.W.25] and medical assistant [P.W.10], without the consent of the victim. In the delivery note it was stated that the baby was handed over

to the patient. However, there is no signature of the person who received the baby. Medical Officer Dr.Susheela B.N., [P.W.15] has not given proper

treatment to the baby, though its health condition was deteriorating. The abortion was performed without proper medical examination, blood test and

scanning and the weight of the baby was corrected as 2.2 kg. in the delivery note from 1.2 kg. C.W.25/P.W.15 thereby committed offences

punishable under Sections 313 and 316 of IPC. Further, C.W.10-Shakeela, who was working with C.W.25 as ANM in Kunigal Government Hospital,

with her connivance, handed over the baby to C.W.11-Farzana to look after. However, the said baby died on the same day and the baby was buried.

Hence, C.W.10/P.W.10 and C.W.11/P.W.11 committed the offence punishable under Section 318 of IPC.

6. The learned counsel appearing for the petitioners vehemently contended that the impugned order passed by the Court below thereby allowing the

application filed by the prosecution under Section 319 of Cr.P.C. and issuing summons to the petitioners herein, who are otherwise shown as

witnesses in the charge-sheet and who have been examined as P.Ws.10, 11 and 15, is illegal and unsustainable in law. It is contended that there are

no prima facie material showing the involvement of these petitioners in committing the offences much less the one now alleged against them.

7. The learned counsel for the petitioners would contend that the prosecution filed an application under Section 319 of Cr.P.C. to implead P.Ws.10, 11

and 15 as additional accused. During the pendency of the said application, another application was filed under Section 311 r/w. Section 230 of Cr.P.C.

to recall P.W.15 for further examination, which was allowed. After further examination, P.W.15 was treated hostile. Exs.P16 to 20 were marked. It is

contended that the evidence of the witnesses, relied upon by the prosecution to implead the petitioners as additional accused does not indicate that the

petitioners have committed offences now alleged against them. On the other hand, perusal of their evidence in the proper perspective clearly goes to

show that the petitioners are innocent and they have not committed any offence as alleged by the prosecution. It is contended that the evidence of

these petitioners have been made use to self-incriminate them and no prosecution can be launched against the nature of statement falling within

Section 132 of the Evidence Act on the basis of the answer given by such witness before the Court. It is further contended that when the prosecution

case itself is that the child was born and subsequently it died due to ill-health, then the same will not amount to causing miscarriage or abortion and

therefore, the petitioners cannot be held responsible for the death of the said child. The ingredients of the offences now alleged against the petitioners

are not made out. Therefore, the learned counsel for the petitioners seeks to set aside the impugned order passed by the learned Sessions Judge by

allowing the revision petitions.

In support of the contentions raised, the learned counsel for the petitioners placed reliance on the following decisions:

1. AIR 2015 SC 1816 [R.Dineshkumar alias Deena Vs. State, rep. by Inspector of Police and Ors.]

2. (2014)3 SCC 92 [Hardeep Singh Vs. State of Punjab and Others]

3. (2000)3 SCC 262 [Michael Machado and Another Vs. Central Bureau of Investigation and Another]

4. AIR 2019 SC 734 [Labhuji Amratji Thakor & Ors. Vs. The State of Gujarat & Anr.]

5. AIR 2019 SC 1174 [Sunil Kumar Gupta and Others Vs. State of Uttar Pradesh and Others]

Per contra, the learned HCGP appearing for the respondent/State would contend that the evidence of the prosecution witnesses examined before the

Court below incriminate the present petitioners having committed offences for which the accused summons are rightly issued against them. The

evidence of the petitioners themselves are self-incriminating. He submits that without conducting proper medical examination and without taking

proper care, P.W.15 has performed abortion with the connivance of accused No.1. Baby was handed over to P.W.11 by P.W.10 and thereafter when

the baby died, it was buried without brining to the notice of the victim/P.W.1 and others. He submits that the learned Sessions Judge after considering

the evidence of P.Ws.1, 2, 7, 14 as well as P.Ws.10, 11 and 15 has rightly allowed the application filed by the prosecution and issued summons to the

petitioners to implead them as additional accused and therefore he submits that there is no infirmity or illegality in the impugned order passed by the

Court below and accordingly, seeks to dismiss the revision petitions.

By placing reliance on the decision of the HonÃ¢â‚¬â„¢ble Apex Court in the case of S.MOHAMMED ISPAHANI VS. YOGENDRA CHANDAK

AND OTHERS reported in 2018 Crl.L.J 1412, he contends that, even where the name of any person is not found in the charge-sheet, the Court is not

powerless and if the trial Court finds that a particular person should be summoned, even though not named in the charge- sheet, it can do so by virtue

of Section 319 of Cr.P.C.

8. I have perused the material on record and given anxious consideration to the submissions made by the learned counsel appearing on both side.

The question that arises for my consideration is as to whether the prosecution has made out sufficient ground to allow the application filed under

Section 319 of Cr.P.C and to proceed against the petitioners by impleading them as accused?

9. Charge sheet was filed against accused Nos.1 and 2 for the offences punishable under Sections 448, 406, 420, 376, 506 r/w. Section 34 of IPC. The

petitioners herein are shown as C.Ws.10, 11 and 25 in the charge-sheet. During the course of trial, the prosecution got examined P.Ws.1 to 16. The

petitioners i.e., C.W.10 was examined as P.W.10, C.W.11 was examined as P.W.11 and C.W.25 was examined as P.W.15. P.Ws.10 and 11 were

treated hostile by the prosecution and they were cross-examined by the learned Public Prosecutor. Further, the examination-in-chief of P.W.15 was

conducted on 08.01.2018. The said witness was recalled on 19.09.2018 and further examination-in-chief was conducted by the learned Public

Prosecutor. The said witness was also treated hostile and she was cross-examined. Thereafter, the prosecution filed an application under Section 319

of Cr.P.C. to implead P.Ws.10, 11 and 15 as additional accused alleging that P.W.15 has committed the offences punishable under Sections 313 and

316 of IPC and P.Ws.10 and 11 have committed an offence punishable under Section 318 of IPC.

10. The prosecution mainly relies upon the evidence of P.Ws.1, 2, 7 and 14 as well as P.Ws.10, 11 and 15 [petitioners herein] to implead the

petitioners as additional accused.

11. The learned Sessions Judge has relied on the evidence of P.W.7-Dr. Manjuladevi H.K., who has deposed that when the complainant was

examined on 08.11.2013, she was 7 months pregnant and there was bilateral cervical tear/slit because of abortion and the complainant was aborted 15

days prior to her examination. The trial Court has observed that the weight of the baby which was 1.2 kg. was subsequently manipulated as 2.2. kg.

and the same is certified by P.W.15. For handing over the baby to the custody of the complainant, no documents are produced. No consent was

obtained. It is observed that in the instant case it may not be proper to use the word Ã¢â‚¬Ëœabortion Ã¢â‚¬â„¢ but it amounts to Ã¢â‚¬Ëœmiscarriage Ã¢â‚¬â„¢, which is a

forcible termination of pregnancy. It is observed that nothing prevented P.W.15 from obtaining consent of the mother/complainant. Hence, prima facie

the evidence discloses that the offences under Sections 313 and 316 of IPC are attracted against P.W.15.

12. The trial Court has also observed that, according to the medical evidence, the child was suffering from breathing problem and P.W.10-medical

assistant allowed to transfer the child, which is also trafficking and when the child died she has asked one Ismail to bury the child. According to

P.W.10, the child was transferred from the complainant to P.W.11. However, according to P.W.15, the child was handed over to the complainant.

Hence, the learned Sessions Judge was of the view that there is prima facie evidence against P.Ws.10 and 11 for having committed the offence

punishable under Section 318 of IPC.

13. To appreciate as to whether there are prima facie material against the petitioners so as to implead them as additional accused, it is very much

necessary to appreciate and examine the relevant evidence of the material prosecution witnesses, who are examined before the trial Court.

14. P.W.1 is the complainant/victim in this case. A perusal of her evidence goes to show that when she informed accused No.1 about her pregnancy,

he told her that he will marry her after the child is aborted and asked her to come to Kunigal Government Hospital. On 01.11.2013, she went to

Kunigal Government Hospital. There the doctor performed abortion. However, she has again deposed that she delivered a premature baby and

accused No.1 informed her that the baby has been handed over to C.W.10/P.W.10, who was working as a nurse in the hospital. After she returned to

the house, as she was tired, when her mother enquired her, she informed the whole incident to her mother. In the panchayat, accused No.1 denied his

role and both accused Nos.1 and 2 threatened her with dire consequences. Thereafter, she lodged a complaint on 07.11.2013.

15. P.W.2 is the father of P.W.1. He has deposed that his daughter informed him that when she was alone in the house, accused No.1 committed

forcible sexual intercourse. They came to know about the pregnancy of their daughter, when she was 7 months pregnant. When enquired, his

daughter informed about the incident. In the panchayat, accused No.1 denied the entire incident and a quarrel ensued. Accused No.2 attempted to

assault his daughter with a stone. Thereafter, the villagers pacified the quarrel. In the cross-examination, he has deposed that on 01.11.2013, a female

baby was born to his daughter. He has admitted that the said baby was given to C.W.10/P.W.10 to look after but, the baby died on the same day and

it was buried. On 23.01.2014, the skeletal remains of the baby was exhumed.

16. P.W.7 is the doctor who was working as a Gynecologist at the District Hospital, Tumakuru. She has deposed that on 08.11.2013, she examined

the victim who was brought with a requisition from Amrathur Police. She gave history of forcible sexual harassment regularly etc. She issued a

certificate as per Ex.P7. She has deposed that the victim was either aborted or premature delivery took place and abortion was less than 15 days. In

the cross-examination, she has stated that symptoms regarding Ã¢â‚¬Ëœabortionâ€™ and Ã¢â‚¬Ëœdeliveryâ€™ cannot be distinguished.

17. P.W.14 was working as a Radiologist in Tumkuru District Hospital. He has deposed that after taking scanning he has issued report as per Ex.P13

stating that the victim had undergone abortion. He has further stated that the victim gave the history that in the Kunigal hospital abortion was

performed. In the cross-examination he has deposed that when the victim was sent to him for examination, he was informed that the victim had

undergone abortion.

18. It is relevant to see that none of the above witnesses examined by the prosecution have specifically deposed that C.W.15/P.W.15 performed

abortion. According to P.W.1, it was accused No.1 who informed her that he handed over the baby to P.W.10. None of the other witnesses implicate

or speak about the baby being handed over by P.W.10 to P.W.11.

19. The perusal of the evidence of the above prosecution witnesses goes to show that in fact the complainant delivered a baby girl and due to ill-health

the baby died and on the same day it was buried. Admittedly, it was a premature baby and there was breathing problem.

20. The prosecution has placed reliance on the evidence of these petitioners who are examined as P.Ws.10, 11 and 15. P.W.15 has deposed that she

advised the complainant to take the baby to a higher hospital. However, she took the baby against the medical advise. The complainant got admitted in

the hospital by mentioning her name as Ã¢â‚¬ËœSarojaâ€™. However, she has signed in the document as Ã¢â‚¬ËœHemavathiâ€™. P.W.15 was recalled and

further examined by the Public Prosecutor. She was treated hostile and cross-examined by the Public Prosecutor. She has denied that the entry made

in Ex.P17 reporting that the discharge was against medical advice was manipulated. She has denied that, the baby was forcibly aborted, the condition

of the baby was critical and without giving treatment to the baby or referring the baby to the child specialist she transferred the baby without the

consent of the mother or her guardian. She has denied that though the baby was weighing 1.2 kg. she manipulated the records by showing the weight

of the baby as 2.2 kg. with an ulterior motive.

21. The evidence of P.W.10 goes to show that the parents of the complainant had brought the complainant to the hospital and she told them to show

her to P.W.15. In the morning at about 6.30 a.m. a female baby was born and since the baby was not in good health, P.W.15 advised them to take the

baby and to show the baby to some other doctor and he advised them to show the baby to one Dr. Manjunath. She has further deposed that the

parents of the complainant requested her to handover the baby to some one to look after the baby and the parents consented to give the baby to

P.W.11. However, the baby died on the same day and with the consent of the parents, the baby was buried.

22. P.W.11 has deposed that when she had gone to the hospital the parents of the complainant were telling to handover the baby to someone and

when she was enquiring, the baby died in the hospital itself.

23. Both P.Ws.10 and 11 were treated hostile by the prosecution. They have denied the suggestion made by the learned Public Prosecutor. There is

nothing elicited so as to implicate them as accused. On the other hand, the suggestion of the learned prosecutor to P.W.10 itself shows that it was the

parents of the complainant who told that they did not want the baby and requested P.W.10 to look after the baby and therefore, P.W.10 told them that

the baby can be handed over to a childless person.

24. As observed hereinbefore, it is evident on record that a premature baby was born to the complainant which had breathing problem and the baby

died on the same day and it was buried. Even according to P.W.1, it is accused No.1 who informed that he handed over the baby to P.W.10 and she

has not witnessed accused No.1 handing over baby to P.W.10. P.W.2 was partly treated hostile by the prosecution. The suggestion put to P.W.2 is

that a baby girl was born to his daughter on 01.11.2013 and it was given to Shakila [P.W.10] to look after. But, the baby died on the same day and it

was buried. P.W.2 has admitted the suggestion as true. P.W.2 was therefore very much aware that his daughter delivered a baby and the baby died

on the same day and it was buried. He has not made any allegation either against P.W.15 or against P.Ws.10 and 11. The material on record does not

lead to an inference that P.W.15 voluntarily caused miscarriage or did any act causing the death of a quick unborn child. Further, that P.Ws.10 and 11

have secretly buried or disposed off the dead body of baby and intentionally conceived the birth of the baby so as to attract the offences punishable

under Sections 313, 316 and 318 of IPC. The evidence and material on record discloses that a premature baby was born and due to ill-health the baby

died and it was buried on the same day. P.W.7 has admitted in her cross-examination that the symptoms regarding Ã¢â‚¬Ëœabortionâ€â„¢ and

Ã¢â‚¬Ëœdeliveryâ€â„¢ cannot be distinguished.

25. The HonÃ¢â‚¬â„¢ble Supreme Court in the case of SUNIL KUMAR GUPTA AND OTHERS [Supra] has observed that, for exercising jurisdiction

and its discretion in terms of Section 319 of Cr.P.C., the Courts are required to apply stringent tests, by referring to the case of SARABJIT SINGH

AND ANOTHER VS. STATE OF PUNJAB AND ANOTHER, reported in (2009)16 SCC 46, wherein it is held as follows:

Ã¢â‚¬Å“Ã¢â‚¬Â¦ For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such

which would reasonably lead to conviction of the person sought to be summoned.

* * *

Ã¢â‚¬Â¦ Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof

viz., (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied.Ã¢â‚¬â€‹

26. In the case of LABHUJI AMRATJI THAKOR & ORS. [supra] it is held as under:

Ã¢â‚¬Å“The mere fact that the Court has power under Section 319 Cr.P.C. to proceed against any person who is not named in the F.I.R. or in the Charge

Sheet does not mean that whenever in a statement recorded before the Court, name of any person is taken, the Court has to mechanically issue

process under Section 319 Cr.P.C. the Court has to consider substance of the evidence, which has come before it and as laid down by the

Constitution Bench in Hardeep Singh (supra) has to apply the test, i.e., Ã¢â‚¬Å“more than prima facie case as exercised at the time of framing of charge,

but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.Ã¢â‚¬â€‹

27. In HARDEEP SINGH VS. STATE OF PUNJAB AND OTHERS [supra] at para 105 and 106 the HonÃ¢â‚¬â„¢ble Apex Court has held as under:

Ã¢â‚¬Å“105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where

the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other

person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before

the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil

of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more

than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would

lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In section 319 CrPC

the purpose of providing if Ã¢â‚¬Å“it appears from the evidence that any person not being the accused has committed any offenceÃ¢â‚¬ is clear from the

words Ã¢â‚¬Å“for which such person could be tried together with the accusedÃ¢â‚¬. The words used are not Ã¢â‚¬Å“for which such person could be

convictedÃ¢â‚¬â€‹. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.Ã¢â‚¬â€‹

28. In MICHAEL MACHADO AND ANOTHER VS. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER

[supra] it is held as follows:

Ã¢â‚¬Å“The basic requirement of Section 319 Cr.PC is that the court must have reasonable satisfaction from the evidence already collected during trial or

in the inquiry regarding two aspects: First, that some other person, who is not arraigned as an accused in that case has committed an offence. Second,

that for such offence that other person could as well be tried along with the already arraigned accused. It is not enough that the court entertained

some doubt, from the evidence, about the involvement of another person in the offence.

But even then, what is conferred on the court is only a discretion as court be discerned from the words Ã¢â‚¬Å“the court may proceed against such

personÃ¢â‚¬. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another

person whenever it comes across evidence connecting that other person also with the offence. A judicial exercise is called for, keeping a conspectus

of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time

which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other

persons.

The court while deciding whether to invoke the power under section 319 of the code. Must address itself about the other constraints imposed by the

first limb of sub-section (4) of Section 319, namely, that proceedings in respect of newly-added persons shall be commenced afresh and the witnesses

re-examined. The whole proceedings must be recommenced from the beginning of the trial, summon the witnesses once again and examine them and

cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite large in number the court

must seriously consider whether the objects sought to be achieved by such exercise are worth wasting the whole labour already undertaken. Unless

the court is hopeful that there is a reasonable prospect of the case as against the newly-brought accused ending in being convicted of the offence

concerned, the court should refrain from adopting such a course of action.

29. It is no doubt true as contended by the learned HCGP that the Court is not powerless and if the trial Court finds that a particular person could be

summoned even though not named earlier, it can do so by virtue of Section 319 of Cr.P.C.

30. In Hardeep SinghÃ¢â‚¬â„¢s case, the HonÃ¢â‚¬â„¢ble Apex Court has reiterated the above position and further held that the power under Section 319 of

Cr.P.C. can be exercised against a person not subjected to investigation, or a person placed in column 2 of the charge-sheet and against whom

cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can

be commenced against him directly under Section 319 of Cr.P.C. without taking recourse to provisions of Section 300(5) r/w. Section 398 of Cr.P.C.

31. The HonÃ¢â‚¬â„¢ble Apex Court in Hardeep SinghÃ¢â‚¬â„¢s case has further observed that power under Section 319 of Cr.P.C. is a discretionary and an

extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The test that has to be

applied is one which is more than a prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the

evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under

Section 319 of Cr.P.C.

32. The learned Sessions Judge apart from the evidence of the prosecution witnesses viz., P.Ws.1, 2, 7 and 14 has also acted upon the evidence of

P.Ws.10, 11 and 15, the petitioners herein, to issue accused summons to them.

33. The HonÃ¢â‚¬â„¢ble Apex Court in the case of R.DINESHKUMAR ALIAS DEENA VS. STATE, REP. BY INSPECTOR OF POLICE AND

ORS. [supra] held that the policy under Section 132 of the Evidence Act appears to be to secure the evidence from whatever sources it is available

for doing justice in a case brought before the Court. In the process of securing such evidence, if a witness who is under obligation to state the truth

because of the oath taken by him makes any statement which will criminate or tend to expose such a witness to a Ã¢â‚¬Ëœpenalty or forfeiture of any kind

etc.Ã¢â‚¬â„¢ the proviso grants immunity to such a witness by declaring that Ã¢â‚¬Ëœno such answer is given by the witness shall subject him to any arrest or

prosecution or be proved against him in any criminal proceedings.Ã¢â‚¬â„¢ The proviso to Section 132 of the evidence Act is a facet of the rule against

self-incrimination and the same is statutory immunity against self-incrimination which deserves the most liberal construction. Therefore, no prosecution

can be launched against a maker of statement falling within the sweep of Section 132 of the Evidence Act on the basis of the answer given by a

person while deposing a witness before the Court.

34. In the instant case as discussed supra, admittedly, P.W.1 delivered a premature baby which had breathing problem and the baby died on the same

day. From the material on record, it cannot be said that P.W.15 has committed the offence punishable under Section 313 or 316 of IPC and P.W.10

and P.W.11 have committed an offence punishable under Section 318 of IPC. The ingredients of the said Sections are not made out so as to implead

the petitioners herein as additional accused, in the light of the decisions of the HonÃ¢â‚¬â„¢ble Apex Court.

In view of the above discussion, the revision petitions deserve to be allowed. Accordingly, the following:

ORDER

The revision petitions are allowed.

The Order dated 01.12.2018 passed in Sessions Case No.3/2015 on the file of the Court of Principal Sessions Judge at Tumakuru thereby allowing the

application under Section 319 of Cr.P.C. issuing accused summons to C.W.25/P.W.15, C.W.10/P.W.10 and C.W.11/P.W.11 is hereby set aside.