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LAWS ON MISCARRIAGE IN **INDIA**

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Abstract

Miscarriage is technically understood as the expulsion of the ovum or embryo from the uterus within the first six weeks after conception; between that time and before the expiration of the sixth month, when the child may possibly live, it is termed abortion. When the delivery takes place soon after the sixth month, it is denominated premature labour. Miscarriage means the premature expulsion of the child or foetus from the mother's womb at any period of pregnancy before the term of gestation is completed but the criminal act of destroying the foetus at any time before birth is termed in law, procuring a miscarriage.

Introduction

Sections 312 to 318 of Chapter-XVI in the Indian Penal Code, 1860 explain the provisions about "Offences of the causing of Miscarriage, of Injuries to Unborn Children of the Exposure of Infants, and of the Concealment of Births". These provisions are intended to prevent illegal abortions, injuries against unborn children, etc.

Section 312 of the Code states that whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage is 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 is quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be also liable to fine. A woman, who causes her to miscarry, is within the meaning of this Section. Section 312 does not permit any person including the pregnant woman to miscarry. However, the only

exception given by the Section is that to save the life of the pregnant woman miscarriage can be allowed.

The wrong-doer, who causes miscarriage in ordinary pregnancies, shall be punished with imprisonment for up to three years or with a fine or with both. If the wrong-doer causes miscarriage to the woman be quick with the child and shall be punished for a term extending up to seven years plus a fine.

If any person attempts to cause a miscarriage but fails to do the same and a child is born, then, the provisions of Section 312 do not apply. However, the provisions of Section 511 (attempt) read with Section 312 should apply, and the wrong-doer should be punished accordingly.¹

A, an unmarried girl, is in love with B, who absconds after she gets pregnant. A Takes country medicines with the intention to miscarry. Is A guilty of any offence? Yes. A is guilty according to the Explanation appended to Section 312. The offence under Section 312 is non-cognizable, bailable and shall be enquired by a Metropolitan Magistrate or by a Magistrate of the first class.

Section 313 of the Code says that whoever commits the offence defined in the last preceding Section without the consent of the woman, whether the woman is quick with a child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable in fine.

In the offence under Section 312, the pregnant woman's consent is inherent. In the offence under Section 313, there is no consent of the pregnant woman. A person, who causes miscarriage, against the consent of the pregnant woman, shall be punishable under Section 313 for imprisonment for life or imprisonment extending up to ten years plus a fine. The offence under Section 313 is cognizable, non-bailable, and non-compoundable, and shall be inquired by the Court of Session.

Section 314 says that 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.

¹ Queen Emp. vs. Aruna Bewa (1873) 19 WR.

If the act is done without the women's consent: Section 314 also says that if the act is done without the consent of the woman, the wrong-doer shall be punished either with imprisonment for life or with the punishment above mentioned.

If a person attends to miscarriage but fails in his attempt as a result, the pregnant woman dies, then, the offender shall be punished with imprisonment up to ten years plus a fine. If an offender does the offence without the pregnant woman's consent, he shall be punished with imprisonment for life plus a fine.

Explanation to Section 314 says that no mens rea in the offender need not be proved. It is not necessary for the purpose of Section 314 that the offender should know that the act is likely to cause the death of a woman. Hence rash, negligent or involuntary act of the offender can attract the provisions of this Section.

Section 316 says that whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A, knowing that he is likely to cause the death of a pregnant woman does an act which, if it causes the death of the woman would amount to culpable homicide. The woman is injured, but does not die, but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this Section.

The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child if any part of that child has been brought forth, though the child may not have breathed or been completely born.

The provisions of Section 316 and Third Explanation to Section 299 apply to the incident causing the death of the child in the womb where the pregnancy has advanced beyond the stage of quickening and where the death is caused after the quickening and before the birth of the child, imprisonment of either description for a term which may extend to ten years, or with fine, or with both under Section 316.

An act done against the mother or with an intention or with knowledge comes under Section 299. An act done against the child or mother with the intention of preventing the child from being born alive or causing it to die after its birth comes within the purview of Section 316. Punishment is imprisonment for life, or imprisonment for 10 years and a fine under Section 299. Punishment is imprisonment of either description for a term which may extend to ten years, or with a fine or with both under Section 316.

Question and Answer

1. Q: M with the intention of causing the death of child N leaves him in a forest. Q has rescued N. Has M committed any offence?

Ans: Yes. M is guilty under Section 317. Concealment of birth by secret disposal of a dead body: Section 318 lays down that whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth of a such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

This Section is also intended to prevent infanticide. If the birth of a child is concealed, and its dead body is disposed of secretly, the law presumes that the person does it intentionally and he did infanticide. The provisions of this Section apply to those persons, whoever secretly burying or otherwise disposing of the dead body of a child. It is immaterial whether the such child died before or after or during its birth. If the child concerned is fully developed and born alive or dead then only this Section applies. If it is in the foetus stage only, then Section 318 does not apply, but Sections 312 and 511 shall apply.

2. Q: Maneka an unmarried girl of 17 gave birth to a child. Shortly after its birth, she abandoned the baby in a thicket not far from the home of Viswam her lover. The child was picked up after some time by Viswam's mother, but unfortunately, it died presumably from want of sustenance. It was found that the child did not die as a consequence of overexposure. Decide the offence if any committed.

Ans: Here Section 315 applies. Maneka is the wrong-doer. She could not have abandoned the baby in a thicket. There may be disputes between her and her lover. They must be settled between them before the elders or the Court of Law. For their fault, the innocent child is not held

responsible. Unfortunately, the child was found dead presumably from want of sustenance. To provide adequate nourishment to a newly born baby, it is the duty of the mother of the baby, i.e., Maneka. She failed in providing nourishment to the baby. She left the baby for her own fate. Hence she shall be held liable under Sec. 315. Viswam's mother is not responsible. As soon as she noticed the baby, she picked up with the intention to save her.

The city and educated people well know about amniocentesis and other ways of determining the sex of the child, while the child is in the womb. The village and uneducated people do not know such types of tests. Hence, the people, who hate female children, cause the death of the female children at the time or after birth. In some cases, to grab the property of someone and to remove the legal male heir, certain crooked and villainy people kill the child at the time of the birth or after its birth. Section 315 imposes penalties on such people. The only exception is given in this Section that if there is any danger to the life of the mother and it is necessary to kill the child as per the medical expert's opinion, then the Section accepts such incidence from the purview of the offence under this Section. Ten years or with fine or with both. The offence is cognizable, non-bailable, non-compoundable, and triable by the Court of Session.

Cases Laws

1. In the case of Maideen Sab vs. State of Karnataka (1993) CrLJ 1430 (Kar.), the pregnant woman was admitted at the hospital-cum-house of the accused-doctor by her relatives, who went away to their house. The doctor gave the medicines for abortion. The woman felt unconscious and died. The accused immediately absconded from the city. He gave an extra-judicial confession before three witnesses that due to his mishandling only she died. The dead body was buried as it was decomposed. No postmortem was conducted. Based upon the circumstantial and chain of circumstances established and proved, the Court punished the accused.

Section 315 lays down that whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall if such act is not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment or either description for a term which may extend to ten years, or with fine, or with both.

2. In the case of Murugan vs. State of Tamil Nadu (1991 CrLJ 1680 Mad), the accused/husband struck his wife and caused her death. The postmortem report stated that she was carrying a child of 20 weeks. The trial Court imposed punishment under Section 316 opining that foetus gets life after 12 weeks of conception. The offence is cognizable, non-bailable, non-compoundable, and triable by the Court of Session.

Exposure and abandonment of child under twelve years, by parent or person having care of it: Section 317 lays down that whoever being the father or mother of a child under the age of twelve years or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. The nature of offence under this Section is cognizable, bailable, non-compoundable and triable by a Magistrate of the first class. This Section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be if the child dies as a consequence of the exposure.

