

(1959) 08 MP CK 0034

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 190 of 1959

Dr. Khusaldas Pammandas

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 12-08-1959

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : AIR 1960 MP 50 : (1960) CriLJ 234 : (1959) JLJ 602 : (1959) 4 MPLJ 966

Hon'ble Judges : P.V. Dixit, J

Bench : Single Bench

Advocate : M.B. Rege, for the Appellant; S.L. Dubey, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, J.

The petitioner has been convicted by the Additional District Magistrate of Indore u/s 304A, I. P. C. and sentenced to six months' rigorous imprisonment. His appeal against the convictions and sentence was rejected by the Third Additional Sessions Judge of Indore. The accused has now preferred this revision petition.

The facts found are that on 11th March 1957, Sub-Inspector Mohite was feeling tired and exhausted at about 6 p.m. and so he sent for the petitioner, who is a Hakim registered u/s 46 of the Madhya Bharat Indian Medicines Act, 1952. On arrival, the petitioner examined Mohite and found that he had no temperature. He, however, advised Mohite to take a Procain Penicillin injection. Mohite accepted the suggestion. The petitioner then gave a Penicillin injection to Mohite, who immediately after he was injected perspired profusely, vomitted and died.

The petitioner got scared at the effect of the injection and ran to Dr. Akbarali for help. Mohite expired before Dr. Akbarali could reach his residence. The petitioner, while admitting that he went to fetch Dr. Akbarali, denied altogether having given

any injection to Mohite. The facts that the applicant gave a Procain Penicillin injection to Mohite and that immediately after receiving the injection Mohite died are amply established by the evidence on record and were not rightly disputed before me by the learned counsel for the applicant.

Learned counsel for the petitioner, however, contended that the giving of the injection was not a rash or negligent act on the part of the applicant within the meaning of Section 304A, I. P. C., inasmuch as the applicant was a qualified Hakim" and was registered as such and had previously given injections to several people of the same nature; that he had received training in the art of giving injections; and that he had never before caused the death of a patient by giving an injection. Learned counsel referred me to *Rex v. Bateman* (1925) 94 LJKB 791 where it was held that to render a medical practitioner criminally responsible for the death of his patient, it must be established that his negligence or incompetence passed beyond a mere matter of compensation between subjects and showed such disregard for life and safety of others as to amount to a crime against the State, and that a medical practitioner who undertakes the treatment of a patient owed a duty to the patient to use a fair and reasonable standard of care and competence in administering the treatment.

In my opinion, it is impossible to acquit the petitioner of the offence of which he has been convicted. The applicant is a Hakim. It matters not whether he was a registered or unregistered Hakim. The question is whether he had any knowledge of penicillin treatment of the precautions to be taken before giving a Penicillin injection and of the methods of counter-acting any adverse reaction of the injection. As a Hakim he clearly had no occasion to make a study of Penicillin injections or for the matter of that of any injection given Sn allopathic treatment.

Hakim treat maladies of human beings in way totally different from that followed in allopathic treatment. The petitioner sought to prove by the evidence of one Dr. Apte that he had received training in giving injections. He also relied on the statement of Dr. Akbarali that on several occasions he had taken some patients to Dr. Akbarali for consultation and Dr. Akbarali had advised him to give some intra-muscular injections to the patients.

These statements at the most show that the petitioner knew the technique of giving injections, that is to say, he knew all that had to be done to a syringe and a needle for making them ready for giving an injection, how to fill it with the liquid to be injected, and as to how and where to pierce the needle for giving an injection. These statements cannot be read as meaning that the accused had all the knowledge of the subject of penicillin injection. Dr. Akbarali deposed to the precautions which a medical practitioner ought to take before giving a Procain Penicillin injection and the remedies that should be applied for combating any adverse reaction of the injection. It has been stated in Price's "Practice of Medicine" (9th Edn.), at page 10:

"On the other hand, sensitivity to penicillin is increasing in frequency, and

causing difficulty in administration. In patients sensitised by previous treatment or it is said, by suffering from skin mycoses an injection of penicillin may produce urticaria and fever. Occasionally it may result immediately in vasomotor collapse, which has even been fatal. Sensitised patients may be recognised by injecting a small dose intradermally, which causes wheal formation within a few minutes. It is a wise precaution to apply this test to any patient giving a history of previous reactions or suffering from asthma or other allergic condition. Such reactions can be prevented in sensitised patients by adding an antihistamine compound to the penicillin to be injected."

When the applicant was put a question about these precautionary measures and the remedial steps after a Penicillin injection is given, he said that what Dr. Akbarali had deposed was true. But if he was aware of them, he showed no evidence of them. In fact he totally denied having given any injection to Mohite. It was not his defence that he had on several occasions before given Penicillin injections to Mohite and that the deceased had stood the injections well. He did not plead that before giving the injection he had carried out a test to find out whether Mohite was or was not allergic to the injection. The truth is that the petitioner was never aware of the dangerous effects of Penicillin injections in the case of some patients and did not know anything about the subject of penicillin injections. It is the petitioner's ignorance of the knowledge that makes his act rash and negligent. The fact that a person totally ignorant of the science of medicine or practice of surgery undertakes a treatment or performs an operation is very material in showing his gross ignorance from which an inference about his gross rashness and negligence in undertaking the treatment can be inferred. As the applicant had no knowledge whatsoever of Penicillin injection treatment, his act of giving Procain Penicillin injection to Mohite was, in my opinion, clearly rash and negligent within the meaning of Section 304A, I. P. C.

The case relied on by the petitioner and other cases dealing with the question of negligence on the part of qualified medical practitioners have no applicability here. In those cases, the fatality which resulted could be put down to an error of judgment on the part of the medical practitioners. Here, as the petitioner had no knowledge of Penicillin treatment at all, there was no question of forming any judgment on his part in the giving of a Penicillin injection and no room for any error in it. In *John Oni Akerele v. The King* AIR 1943 PC 72 a reference has been made to the case of *Hex v. Crick* (1859) 1 F and F 519. In that case Pollock C. B. summing up the case against the prisoner, who was not a regular practitioner had administered lobelia, a dangerous medicine, which produced death, said:

"If the prisoner had been a medical man, I should have recommended you to take the most favourable view of his conduct, for it would be most fatal to the efficiency of the medical profession if no one could administer medicine without a halter round his neck."

These observations only show that where a practitioner is utterly ignorant of the science of medicine or practice of surgery, then a favourable view of his conduct

in giving any treatment prescribed in that science cannot be taken and his ignorance alone would make his act of giving treatment rash and negligent.

In my judgment, the conviction of the petitioner must be affirmed. No doubt Hakims and Vaidyas are legitimately entitled to exercise their profession for which they have been trained. But at the same time it is very necessary that they should not dabble in medicines and treatments of which they have no knowledge whatsoever. It is very essential that the public, and especial the poorer part of the public, who very often rely upon such practitioners as Hakims and Vaidyas, should be protected from ignorant experiments in medicines and injections of dangerous character.

The applicant has been sentenced to six months' rigorous imprisonment. I do not think it necessary for the ends of justice to sustain this severe sentence passed on the petitioner. What the petitioner did was without any intention to cause harm or death to Mohite. He acted as he thought, for the benefit of the patient. In my opinion, it would be sufficient to inflict the penalty of fine instead of imprisonment. The sentence of six months' rigorous imprisonment is, therefore, set aside and a fine of Rs. 500/- is imposed on the applicant for the offence u/s 304A, I. P. C. In default of payment of fine, he shall suffer one month's simple imprisonment.