
(2014) 04 DEL CK 0056
In the Delhi High Court
Case No : Criminal Appeal 251 of 2006

Ravinder Ram Chander Banshi	Vs	APPELLANT
State of NCT of Delhi		RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 304, 365, 471

Citation : (2015) 213 DLT 259

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Bhupesh Narula, Advocate for the Appellant; Varun Goswami, A.P.P, Advocate for the Respondent

Judgement

Indermeet Kaur, J.—The appellant is aggrieved by the impugned judgment and order of sentence dated 30.4.2005 and 10.5.2055 respectively wherein he has been convicted under Section 304, IPC and has been sentenced to undergo rigorous imprisonment for a period of 4 years and to pay a fine of Rs. 5000/- in default of payment of fine to undergo SI for 6 months. Benefit of Section 428 of the Cr.P.C. has been granted to the appellant. For the offences under Sections 365 and 471, IPC for which he had been charge-sheeted he stood acquitted. Nominal roll of the appellant shows that as on the date when he was released on bail he had undergone a sentence for a period of 1 year 8 months and 19 days besides remissions earned of 5 months 16 days meaning thereby he has undergone a sentence of about 2 years 2 months on the date of his release.

2. On 8.12.1997 complaint (P.W.-1/A) was lodged by P.W.-1 (Shri Ram) stating that his son had died because of the medical negligence of the appellant. His version was that his 9 months old baby boy was suffering from diarrhoea and was vomiting; on 7.12.1997 at about 8.00 p.m. his wife Meena (P.W.-2) had taken the child to Jayanti Asha Clinic in Mahavir Colony, Delhi which was being run by the appellant; his son was admitted in the clinic and the appellant

administered glucose to the child intravenously. His wife who was also not feeling well was also given an injection. The doctor had prescribed medicines both for his child and his wife but since the shops were closed by the time P.W.-1 reached the market he was not able to get those medicines. During the night P.W.-1 informed the doctor that the condition of his son was deteriorating and he should be permitted to take his child to some other hospital but he was not allowed to do so. The appellant assured him that his child would become well. The appellant himself went to Kanjhawla to bring medicines; thereafter he gave an injection to his son with a promise to return in the morning; he did not come back; his son expired at 10.30 a.m. This is the gist of P.W.-1.

3. Pursuant to this complaint FIR under Sections 304/ 365/ 471, IPC had been registered against the appellant. He was absconding but he was finally arrested by the Investigating Officer SI Dharam Singh (P.W.-8) on 10.12.1997. Documents about his medical practice which included a certificate Ex. P-5 and a degree from Hindustan Commercial Institute (Biharsharif) Nalanda (Ex. P-1) were seized.

4. The post mortem of the victim was conducted on 9.12.1997. The report was proved as Ex. P.W.-7/A through the version of Dr. Ashok Jaiswal (P.W.-7). He had opined the cause of death as follows: "Presence of urticarial rashes on the body with mark visceral congestion and edematous laryngeal mucosa. All suggested death occurring as a result of anaphylaxis reaction to IV fluid/drug administered. The exact nature of which was to be determined on viscera and fluid analysis report. Time since death was about 24 hours."

5. The exhibits which had been seized by the investigating officer were sent to the CFSL for a scientific analysis. The CFSL vide its report vide its report Ex. P.W.-7/B noted that common drugs/common poisons were not detected in the contents of the exhibits marked as I, II, III and 2 and 3.

6. On the basis of the aforementioned evidence collected by the prosecution accused was held guilty under Section 304 of the IPC and convicted as aforementioned.

7. On behalf of the appellant arguments have been addressed in detail. It is pointed out by the learned Counsel for the appellant that the judgment of the trial Court suffers from inherent infirmities; there is no record of the treatment which was meted out to the victim. No expert opinion has been obtained; merely on the oral versions of P.W.-1 and P.W.-2 who are interested witnesses being the parents of the victim, the appellant has been convicted. It is pointed out that P.W.-2 in her version in Court admitted that her child had been removed to another clinic but record of that clinic had not been obtained. Moreover the Investigating Officer has stated that the dead body was retrieved from the clinic of the appellant; these contradictions are unexplained. It is pointed out that P.W.-1 has admitted that he was given a list of medicines to bring for his child but this list has not surfaced in the course of investigation. It is submitted that the report of the CFSL is contrary to the report of the post-mortem as the CFL had reported a case of non-poison whereas the post-mortem opined it to be a

case of anaphylaxis reaction to IV fluid. Benefit of doubt accordingly accrues to the appellant and he is entitled to an acquittal.

8. Arguments have been refuted by the learned public prosecutor. It is pointed out that on no count does the impugned judgment call for any interference. It is submitted that the appellant in the course of the examination had admitted through his Counsel that he was not even a Matriculate; he not being a medical practitioner thus had no right to administer any kind of medicine upon the victim; by his act he had full knowledge that he could have even caused death of such a small child; the victim being only nine months old child. It is pointed out that there is no contradiction in the report of the CFSL and the post-mortem report as the CFSL also noted it to be a case of non-poison; the post-mortem has noted it to be a case of death as a result of reaction to IV fluid which has been injected in the body of the victim. It cannot be said that these two versions are contrary. It is further pointed out that it has come on record that the appellant has agreed to pay a sum of money to the father of the victim and in fact P.W.-1 in a later part of his cross-examination had admitted that he had compromised the matter with the petitioner which also clearly shows that it was a case of medical negligence writ large and that was the reason why the appellant had agreed for this compromise.

9. Arguments have been heard and record perused.

10. P.W.-1 is the complainant; he was the father of the victim who was a nine months old baby on the date when he succumbed to his death. P.W.-1 has reiterated the averments which he had made in his complaint Ex. P.W.-1/A. He has deposed that on 7.12.1997 his wife Meena (P.W.-2) had taken his son to Jayanti Asha Clinic of Dr. Ravinder Ram Chander (appellant) where he was admitted and he was administered glucose by the appellant. The doctor assured P.W.-1 that his son would become alright; he has given a list of medicines which was to be brought from chemist shop; since the chemist shop was closed he could not purchase these medicines. He stated that his wife was also unconscious and medicines had to be brought for her also. Further deposition being that since the condition of his child was not improving he requested the appellant to discharge his child so that he might remove him to some other hospital for treatment but this was declined by the doctor. The doctor had gone to Kanjhawala to bring medicines and after returning he gave an injection to his son; thereafter the doctor went out of the clinic with a promise to come after sometime; his son expired at about 10.30 a.m on the following morning. His further deposition being that because of the wrong treatment and negligence of the appellant his son had died. Further submission being that this clinic had been opened just a few days prior to this incident. In his cross-examination, he admitted that he has taken some money from the accused and compromised the matter and because of this compromise he had given a different statement although admitting that his complaint Ex. P.W.-1/A is the correct version.

11. The mother of the victim Meena was examined as P.W.-2. She has also

deposed on the lines of P.W.-1. She was an illiterate; she stated that because her son was unwell she had taken him to the clinic of the appellant where he was examined and glucose was administered to him; she paid Rs. 50/- to the doctor. She had in fact told the doctor that it was winter months glucose should not be given to the child; she asked the doctor to discharge her son but he did not agree and kept him for the whole night. Her child died because of this injection; there was swelling on his body. The doctor had also given her two tablets pursuant to which she became unconscious; she has further deposed that she had taken her child to another doctor in the locality where he was brought in a dead condition. In cross-examination, she denied the suggestion that her child was already weak when he was taken to the clinic of the appellant.

12. Upender Sharma (P.W.-3) was known to the appellant residing near his house. He deposed that on 10.12.1997 the appellant was arrested on his identification; the appellant was running his clinic in the name of Asha Clinic.

13. The victim had been subjected to a post-mortem and as noted supra the cause of death was opined as anaphylaxis reaction to IV fluid administered to the child. P.W.-7 as on oath stated that on the examination of the body of the child multiple needle prick marks on back of the left hand with subcutaneous effusion of fluid and swelling was noted; skin along with the subcutaneous tissue along the track of the needle showed infiltration of blood; Urticarial rashes giving erythematous look to the body seen on face, both arms, chest, abdomen, thighs and legs were also observed; no other marks of external injury or violence were seen on the body; there was no sign of dehydration.

14. The doctor had directed the investigating officer (P.W.-8) to collect the sealed IV fluid and send it for analysis. The CFSL vide its report dated 31.1.2000 had reported no poison on the contents of the exhibits which were sent to them; these were four exhibits i.e. one glass phial without label and seal containing a little dried blood, one sealed glass phial marked as 2 and labelled as SKIN PIECE" containing a small piece of skin in a turbid liquid and another sealed cloth parcel marked as 3 and containing empty plastic bottle and a plastic tube with syringe type end.

15. The Investigating Officer (P.W.-8) had also visited the clinic of the appellant "Jayanti Asha Clinic" and seized its name board. The appellant was otherwise absconding till when he was arrested two days after the incident i.e. on 10.12.1997 on the identification of P.W.-3. Relevant would it be to state that in the course of trial before the trial Judge the Counsel for the appellant under instructions from the appellant admitted that he was not a Matriculate meaning thereby that he admittedly had no decree to practice as a medical practitioner. The seizure memo Ex. P.W.-8/D related to two documents Ex. P-1 and Ex. P-5 both of which did not permit the appellant to practice as a doctor.

16. In this background the impugned judgment holding that the appellant was guilty of offence under Section 304 of the IPC does not call for any interference.

It has come on record that the appellant had administered glucose IV fluid to the victim without having either a degree or a qualification or knowledge to do so; he was only a quack; he had committed a fraud upon the victim and by posing himself as a doctor administered medical care to a nine month old baby knowing fully well that he was not qualified to do so. This can be nothing short of medical negligence. By his act, he well knew that he could have caused the death of the victim. This is evident not only from the versions of P.W.-1, P.W.-2 and P.W.-8 but also the factum that postmortem of the victim Ex. P.W.-7/A had noted several needle prick marks on the back of left hand of the child with subcutaneous effusion of fluid and swelling; track of the needle showed infiltration of blood. There were rashes on the body which were all over the face, both arms, chest, abdomen, thighs and legs. All these go to show that a person who was not qualified to do an act had done so. This act on the part of the appellant was done with the full knowledge that by his act he could have caused the death of the victim. He did not have the qualification of a doctor yet he projected himself as one. He had played with the life of the victim which has resulted into his death.

17. On no count does the impugned judgment call for any interference. The punishment for the offence under Section 304, IPC part II is imprisonment which may extend to 10 years or with fine or both.

18. Keeping in view the serious allegations which stand proved on record and the life of a hapless victim having been lost for the act of the appellant, no leniency is called for even in the sentence which is already on the lesser side.

19. There is no merit in the appeal. Dismissed. Bail bond cancelled; surety discharged. Appellant be taken into custody to serve the remaining sentence.