

(2013) 11 KAR CK 0348
In the Karnataka High Court
Case No : Criminal Appeal No. 2263 of 2005

State of Karnataka

APPELLANT

Vs

Dr. S. Vijayalaxmi and Dr. K.M. Rajagopal

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) 1 AKR 268 : (2014) ILR (Kar) 156 : (2014) 1 KCCR 417

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : B.T. Venkatesh, SPP-II, for the Appellant; Vishwajith Shetty, for the Respondent

Judgement

N. Ananda, J.—The respondents (hereinafter referred to as accused No. 1 and 2) were tried for an offence punishable under. Section 304-A IPC, in C.C. No. 18336/2000 and they were acquitted. Therefore, the State has filed this appeal. I have heard the State Public Prosecutor for the State and learned counsel for respondents.

2. In brief, the case of prosecution is as follows:

During the year 1999, accused No. 2-Dr. K.M. Rajagopal was the proprietor of Lakshmi Nursing Home, situated in Sheshadripuram at Bangalore. Accused No. 1-Dr. S. Vijayalaxmi was the Consulting Gynecologist and Visiting Doctor of Lakshmi Nursing Home.

3. In the year 1999, P.W. 1-Mala Prasad (wife of P.W. 2- R.A. Prasad) had conceived and she visited Lakshmi Nursing Home during her pregnancy. She was carrying nine months pregnancy. On 03.11.1999, P.W. 1 was admitted in Lakshmi Nursing Home. She was being treated by accused No. 2. Accused No. 1 and 2 had decided that P.W. 1 shall undergo natural delivery however, on 04.11.1999, it was noticed that the fetus (unborn child) in the womb of P.W. 1 was dead due to Retro-placental clot of about 59 ml. Accused No. 1 and 2 informed P.W.'s. 1 and 2 about the death of child. On 05.11.2009, at about 7.30 a.m., there was natural

delivery of dead fetus. P.W. 1 continued to take treatment in Lakshmi Nursing Home for post delivery care for a period of 8 days. Thereafter, she was discharged from the hospital.

4. On 24.11.1999, P.W. 2- R.A. Prasad (husband of P.W. 1) lodged the first information alleging that death of unborn baby (fetus) in the womb of P.W. 1 was due to medical negligence. P.W. 1 has stated, if accused No. 1 and 2 had performed caesarian operation on 04.11.2009, they could have saved the child. On the basis of first information lodged by P.W. 2, the jurisdictional police officer registered First Information Report and after investigation, filed final report against accused No. 1 and 2 for an offence punishable u/s 304-A r/w 34 IPC.

5. In order to bring home the guilt of the accused, the prosecution has relied on the oral evidence of P.W's. 1 to 8 and documents marked as per Ex. P1 to P12. On behalf of the defence D.W. 1- Srimani Rajagopalan was examined.

The prosecution has made allegations of medical negligence against accused No. 1 and 2 who are the Doctors by profession.

6. In a decision reported in Dr. Suresh Gupta Vs. Govt. of N.C.T. of Delhi and Another, , the Supreme Court has held:

Between civil and criminal liability of a doctor causing death of his patient the Court has a difficult task of weighing the degree of carelessness and negligence alleged on the part of the doctor. For conviction of a doctor for alleged criminal offence, the Standard should be proof of recklessness and deliberate wrong doing i.e., a higher degree of morally blameworthy conduct.

To convict, therefore, a doctor, the prosecution has to come out with a case of high degree of negligence on the part of the doctor. Mere lack of proper care, precaution and attention or inadvertence might create civil liability but not a criminal one. The courts have, therefore, always insisted in the case of alleged criminal offence against doctor causing death of his patient during treatment that the act complained against the doctor must show negligence or rashness of such a higher degree as to indicate a mental state which can be described as totally apathetic towards the patient. Such gross negligence alone is punishable.

7. The law is fairly well settled, if allegations of professional negligence are made against the Doctors, they could be made liable for criminal prosecution, only if it is proved that there was negligence or rashness of higher degree of mental state which can be described as totally apathetic towards the patient. Such gross negligence alone is punishable. Mere lack of proper care and attention or inadvertence might create civil liability but not a criminal one.

8. From the evidence of P.W's. 1 and 2, it is established that P.W. 1 had conceived in the year 1999. She was carrying pregnancy of nine months. On 03.11.1999, she was admitted in Lakshmi Nursing Home. She was under the care and treatment of accused No. 1-Dr. S. Vijayalaxmi. Accused No. 1 was the Visiting Surgeon and accused No. 2 was the proprietor of Lakshmi Nursing Home.

9. P.W's. 1 and 2 have deposed; that fetus was alive till 04.11.1999. On 04.11.1999, P.W. 1 noticed the absence of movements of fetus in the womb of P.W. 1. Therefore, accused No. 1 and 2 secured another Doctor from Wenlock hospital. P.W. 1 was subjected to ultra sound test and the death of fetus was confirmed. Accused No. 1 and 2 informed P.W's. 1 and 2 about the death of fetus in the womb due to retro-placental clot.

In view of death of fetus in the womb of P.W. 1, accused No. 1 and 2 thought that there was no necessity to conduct caesarean operation on the following day i.e., on 05.11.1999. On 05.11.1999 at about 7.30 a.m., the dead fetus was removed from the womb of P.W. 1 by natural delivery.

10. It is the grievance of P.W's. 1 and 2 that if accused No. 1 and 2 had conducted caesarean operation on 04.11.1999 when the fetus was alive, they could have saved the child and also prevented pain and agony to P.W. 1.

After the first information was lodged, the fetus was exhumed from the grave. The Doctors were not in a position to give any opinion regarding cause of death as the fetus was highly decomposed.

11. The medical evidence relating to the events that had occurred on 04.11.1999 which had resulted in the death of fetus in the womb of P.W. 1, is given by P.W. 4- Dr. N. Dev Prakash and D.W. 1- Dr. Srimani Rajagopalan.

12. P.W. 4- Dr. N. Dev Prakash has deposed; that on 04.11.1999, he received a phone call from Lakshmi Nursing Home at about 11.00 a.m. Immediately he reached the hospital. At the instance of Doctors of Lakshmi Nursing Home, he did scan on P.W. 1 at about 11.20 a.m., and noticed intra-uterine death of fetus due to retro-placental (blood) clot of about 59 ml and issued a report as per Ex. P6.

This witness was declared as hostile witness and he was subjected to cross-examination by the learned Public Prosecutor.

During cross-examination by the learned Public Prosecutor, he has deposed that Retro-placental clot is of two types, one is revealing and another is conceiving. Such things happen rarely. 16. D.W. 1- Dr. Srimani Rajagopalan has given evidence with reference to documents maintained in the hospital. D.W. 1 has deposed; that placenta is an organ, which protects the baby in the womb by supplying food and oxygen. It comes out after the delivery of baby and the same is attached to umbilicus of the baby. The same is separated after the delivery of baby. If the placenta gets separated from the womb before delivery, that will cut off blood and oxygen supply to fetus in the womb, which would result in death of fetus. It would not be possible for a Doctor to predict separation of placenta before delivery. The separation of placenta from womb before delivery is called Abruption of Placenta. If placenta is separated from womb before delivery, the blood would collect behind the placenta and it is called as Retro-placental clot. After going through the contents of Ex. P6, D.W. 1 has deposed that the death of fetus in the womb was due to Retro-placental clot, in other words, there was

separation of placenta and the fetus in the womb.

13. On careful consideration of evidence of P.W.'s. 1 and 2, we find that accused No. 1 and 2 had confirmed that fetus (unborn child) in the womb of P.W. 1 was alive on 03.11.1999 and P.W. 1 was feeling the movements of fetus (unborn child) in the womb however, on 04.11.1999 at about 10.30 p.m., P.W. 1 did not feel movements of fetus (unborn child) in the womb. Thereafter, she was subjected to Scanning in the very hospital, which confirmed the death of fetus in the womb of P.W. 1.

14. The crucial point for consideration is whether the death of fetus (unborn child) in the womb of P.W. 1 was due to culpable negligence on the part of accused No. 1 and 2.

15. At this juncture, it is necessary to state that abruption of placenta or separation of placenta from the fetus is a rare incident. The Retro-placental clot occurs due to separation of placenta which is otherwise called as abruption of placenta. Therefore, no culpable negligence could be attributed to accused No. 1 and 2 for the death of fetus in the womb of P.W. 1. There is no medical evidence to indicate that there was medical intervention to cause abruption of placenta.

16. The next point for consideration is whether there was culpable negligence on the part of accused No. 1 and 2 for their failure to conduct caesarean operation on 04.11.1999.

17. It is seen from the evidence of P.W.'s. 1 and 2 that P.W. 1 was admitted in Lakshmi Nursing Home on 03.11.1999. P.W. 1 had developed labour pain on 04.11.1999. There was some confusion in the minds of P.W.'s. 1 and 2 whether P.W. 1 should undergo labour pains and give birth to her child by natural delivery or accused No. 1 should perform caesarean operation for delivery of the child. It appears, P.W. 1 had determined to have natural delivery. In the meanwhile, the fetus (unborn child) in the womb of P.W. 1 has lost its breath due to abruption of placenta.

18. The evidence of P.W.'s. 1 and 2 indicates that accused No. 1 and 2 had informed about the death of fetus (unborn child) in the womb of P.W. 1. In fact P.W. 2 had insisted that accused should perform cesarean operation for removal of dead fetus. The Doctors (accused No. 1 and 2) in the interest of P.W. 1 let the fetus to come out from the womb of P.W. 1 by natural delivery, which according to defence version was in the interest of P.W. 1. It is also seen from the evidence of P.W.'s. 1 and 2 that after the death of the child, P.W. 1 continued to take treatment as an inpatient in Lakshmi Nursing Home for a period of 8 days. It appears, P.W. 1 and 2 developed a strong feeling that if accused had performed caesarean operation on 04.11.1999, there would have been delivery of child with life.

19. At this juncture, it is relevant to state that, feeling developed by P.W.'s. 1 and 2 is hardly sufficient to attribute culpable/grave negligence to accused No. 1 and

2. The prosecution has not adduced medical evidence to prove that accused No. 1 and 2 had anything to do with abruption of placenta which had occurred in the womb of P.W. 1.

20. The evidence on record would reveal that till the afternoon of 04.11.1999, P.W's. 1 and 2 were indecisive whether P.W. 1 should undergo natural delivery or she should undergo caesarean delivery. In the circumstances, accused No. 1 and 2 had not taken steps to conduct cesarean operation. That cannot be termed as culpable negligence on the part of accused No. 1 and 2.

21. As already stated, in order to convict the Doctors (professionals), the prosecution has to come out with the case of higher degree of negligence. Mere lack of proper care, precaution and attention or inadvertence might create civil liability but not a criminal one. Therefore, the prosecution was bound to prove the negligence or rashness on the part of accused No. 1 and 2 was of higher degree or that they were totally negligent and apathetic towards P.W. 1.

22. There is one more reason to suspect the case of prosecution.

After accused No. 1 and 2 came to know about the death of fetus in the womb of P.W. 1, they promptly informed the same to P.W's. 1 and 2. The fetus was removed from the womb of P.W. 1 at 7.30 a.m., on 05.11.1999. Thereafter, P.W. 1 remained as inpatient for a period of 8 days in said Nursing Home for post delivery care. It is only on 24.11.1999, P.W. 2 thought of setting the law into motion. If P.W. 2 had noticed high degree of negligence or rashness on the part of accused No. 1 and 2 on 04.11.1999 or 05.11.1999, there was no reason for him to keep silent till 24.11.1999.

The learned counsel for accused has filed a copy of order made in Complaint No. 157/2000 dated 10.07.2006 by Karnataka State Consumer Disputes Redressal Commission at Bangalore. PW1 and 2 had filed aforesaid complaint against accused 1 and 2 for compensation of Rs. 20,00,000/-, alleging medical negligence on the part of accused 1 and 2. On 10.07.2006, Karnataka State Consumer Disputes Redressal Commission at Bangalore has dismissed the complaint. Thus, PW1 and 2 have even failed to establish civil liability on the part of accused 1 and 2. In the circumstances, it is hardly possible to hold that prosecution has proved that death of fetus in the womb of PW1 was due to grave negligence on the part of accused 1 and 2. In the circumstances, the learned trial judge was justified in acquitting the accused.

There are no reasons to interfere with the impugned judgment. The appeal is dismissed.