

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20-01-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.471 of 2015

R. Nagarajan (M/49)

... Appellant/Accused

Vs.

State Rep. by
Inspector of Police
Kadathur Police Station
Erode District
Crime No.321/2012

... Respondent /Complainant

Criminal Appeal under Section 374 of the Code of Criminal Procedure, 1973 against the conviction and sentence passed in S.C.No.138 of 2014 dated 09-07-2015 on the file of the Sessions Judge, Mahalir Needhi Mandram, (FTC) Erode.

For appellant :: Mr. M. Venkataraman, SC
for Mr.M. Selvanandam

For respondent :: Mr. P. Govindarajan, APP

JUDGMENT

The convictions and sentences dated 09-07-2015 passed in S.C.No.138 of 2014 by the Mahalir Fast Track Court, Erode are being challenged in the present criminal appeal.

2. The case of the prosecution is that the accused during the relevant period has served as a Pharmacist in Kattupullampalayam Government Primary Health Centre. Since the accused knows Allopathy medicines has run a Clinic under the name and style of 'Nagaraj Clinic' in Karattupalayam. The accused has used to give treatment to patients. On 15-09-2012, at about 7:00 a.m., the defacto complainant has brought her female child by name Anusree aged one and a quarter years(1 1/4) to the Clinic of the accused. The accused has administered an injection to the said child. The defacto complainant has brought her child to her house and within 15 months, the said child has become unconscious and subsequently, taken to Gobichettipalayam Hospital where it is stated that the said child has already passed away. On 05-10-2012, the defacto

complainant has given a complaint and the same has been registered in Crime No.321 of 2012.

3. On receipt of the complaint, the Investigating Officer viz., P.W.16 has taken up investigation, examined connected witnesses and also made arrangement for exhumating interred body. After exhumation, the Doctor by name Jayasingh viz., P.W.13 has conducted autopsy. After transfer of P.W.16, his successor-in-office viz., P.W.17 has conducted further investigation and after completing the same, laid a final report on the file of the Judicial Magistrate No.II, Gobichettipalayam and the same has been taken on file in P.R.C.No.9 of 2014.

4. The Judicial Magistrate No.II, Gobichettipalayam after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court has committed the case to the Court of Sessions, Erode Division and taken on file in S.C.No.138 of 2014 and subsequently, made over to the Trial Court.

5. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed a first charge against the accused under Section 13(3) of the Indian Medical Council Act, 1956 and also under Section 304(2) of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 17 have been examined and Exs-P1 to P21 and M.Os.1 to 9 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The Trial Court after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 13(3) of the Indian Medical Council Act and sentenced him to undergo one year Rigorous Imprisonment and also imposed a fine of Rs.1000/- (Rupees One thousand only) with usual default clause. The accused has also been found guilty under Section 304(2), IPC and sentenced to undergo seven years' Rigorous Imprisonment and also imposed a fine of Rs.10,000/- (Rupees Ten thousand only) with usual default clause. Against the convictions and sentences passed by the Trial Court, the present criminal appeal has been preferred at the instance of the accused as appellant.

9. The consistent case of the prosecution is that during the relevant period, the accused has served as a Pharmacist in

Government Primary Health Centre, Kattupullampalayam and since he knows Allopathy Medicines, he run a Clinic in his native village under the name and style of 'Nagaraj Clinic' and used to give treatments to patients and on 15-09-2012, at about 7 a.m., the defacto complainant has brought her female child, Anusree for getting treatment from the accused and he administered an injection to the said child and immediately after 15 months, the said child has become unconscious and subsequently, brought to Gobichettipalayam Hospital where it is declared that the said child has already passed away.

10. The learned counsel appearing for the appellant/accused has raised the following points:

(a) The occurrence is said to have taken place on 15-09-2012 whereas the defacto complainant has given a complaint on 05-10-2012 and autopsy has been conducted on 08-10-2012. But, the prosecution has not explained huge delay either in giving complaint or in conducting post-mortem.

(b) Even assuming without conceding that the accused has given treatment to the deceased, he has done it in good faith with a view to save her life. Under the said circumstances, he cannot be fastened with liability under Section 304 (2), IPC.

11. The learned Additional Public Prosecutor has also repeatedly contended to the effect that in the instant case, replete evidence is available for the purpose of proving that during the relevant period, the accused has run a Clinic under the name and style of 'Nagaraj Clinic' and he used to give Allopathy Medicines to patients. Likewise, on the date of occurrence, that is on 15-09-2012, the accused has administered an injection to the deceased and only due to that, the deceased has passed away. Since the appellant/accused is not a competent person to give treatment by using Allopathy Medicine and has had no knowledge that it would cause harm to the child/deceased, his act would come within the contour of Section 304(2), IPC and the Trial Court after considering the overall evidence available on record has rightly invited convictions and sentences against him and the same are not liable to be set aside.

12. Basing upon the divergent submissions, the Court has to look into as to whether on 15-09-2012, the accused has administered an injection to the deceased as alleged on the side of the prosecution.

13. The defacto complainant has been examined as P.W.1, and her specific evidence is that she has given birth to twins and the name of one of them is Anushree and on 15-09-2012, she suffered from fever and she along with one Senthil has taken her to the Clinic of the accused and the accused after making initial check up has administered an injection and after fifteen minutes, the said Anushree has become unconscious and

subsequently, she has been taken to Gobichettipalayam, where it is declared that she has already passed away. Further, he has deposed to the effect that the accused has given a Chit, which contains the names of Medicines and the same has been marked as Ex-P2.

14. The said Senthil has been examined as P.W.2 and his specific evidence is that he along with P.W.1 due to ailment of her child has gone to the Clinic of the accused on 15-09-2012 and the accused after making initial check up has administered an injection to the child of P.W.1 and after 15 minutes, the said child has become unconscious.

15. On the side of the prosecution, the letters found in Ex-P2 alleged to have been written by the accused have been compared with the assistance of one Scientific Assistant by name Mohan (P.W.14) and his specific evidence is that he compared the disputed letters with admitted letters of the accused and ultimately, found that both the letters have been written by one and the same person and he filed his report viz., Ex-P15.

16. From the evidence given by P.Ws.1, 2 and 14 coupled with Exs-P2 and P15, the Court can easily come to a conclusion that on the date of occurrence, the accused has run a Clinic under the name and style of 'Nagaraj Clinic' and he also administered an injection to the deceased and only due his treatment, the deceased has passed away.

17. The first and foremost point raised on the side of the appellant/accused is that there is an unexplained delay in lodging a complaint viz., Ex-P1. It is true that the occurrence has taken place on 15-09-2012 whereas Ex-P1 complaint has been given on 05-10-2012. Since, Ex-P1 has been given belatedly, the Court cannot come to a conclusion that no such occurrence has taken place. Therefore, the first point raised on the side of the appellant/accused is sans merit.

18. The specific legal point raised on the side of the appellant/accused is that there is no mens rea on the part of the accused and further, there is no negligence on his part and therefore, he cannot be found guilty under Section 302(2), IPC.

19. The learned Additional Public Prosecutor has befittingly drawn the attention of this Court to the decision reported in 2012 (1) SCC (crl) 953 (Alister Anthony Pareira Vs. State of Maharashtra) wherein the Honourable Supreme Court has held that mere knowledge that the act is likely to cause death and the presumption is that a person knows the natural and likely consequence to his act and therefore, he could very well be brought guilty under Section 302(2), IPC.

20. In the instant case, on the side of the prosecution it is proved that during the relevant period the accused has served as a Pharmacist in Government Hospital. The accused is not a Doctor. Therefore, it is clear that he is totally incompetent to give treatment to patients by using Allopathy Medicines. At the most, in the Hospital he can give Medicines only as per prescriptions of Doctor. But, during the relevant period, he has run a Clinic as mentioned supra and also given treatment to patients by way of giving Allopathy Medicines. Since he is not a competent person to give treatment by using Allopathy Medicines, he knows very well about repercussion and therefore, the act of the accused would very well come within the ambit of Section 304(2),IPC. Therefore, the legal point raised on the side of the appellant/accused also goes out without merit.

21. The Trial Court after analysing the entire evidence available on record has rightly found the accused guilty under the Sections mentioned in the charges. In view of the foregoing narration of factual as well as legal aspects, this Court has not found any force in the contentions put forth on the side of the appellant/accused and altogether the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The convictions and sentences passed by the Trial Court in S.C.No.138 of 2014 dated 09-07-2015 are confirmed.

-sd-
Assistant Registrar

True Copy

Sub-Assistant Registrar

glp

To

1.The Judicial Magistrate NO.II
Gobichettipalayam

2.-do- Thro'The Chief Judicial
Magistrate, Eroder

3.The Sessions Judge, Mahalir needhimandram
Erode

4.-do-Thro The Principal Sessions Judge,
Erode

5.The Inspector of Police
Kadathur Police Station
Erode District

6.The Superintendent
Central Prison Coimbatore

7.The Public Prosecutor
High Court Madras

8.The Section Officer,
Criminal Section, High Court Madras

+1 cc to Mr.S.Selvanandam Advocate vide sr.3206

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