

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-432-DB-2014

Date of decision: 10.05.2016

Buta Singh

..... Appellant

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. S.S. Rangi, Advocate
for the appellant.

Dr. Deipa Singh, Addl. A.G., Punjab.

Mr. Rajbir Singh, Advocate
for respondents No. 2 and 3.

Respondent No. 4 in person.

RAMENDRA JAIN, J.

Respondents No. 2 to 4 namely, Dr. Parvesh Jain, Dr. Rosy Jain and Dr. Vinod Kumar (hereinafter to be referred as 'the private respondents') were booked and tried under Sections 304 and 120-B of the Indian Penal Code (IPC), on the allegations that out of greed they acted negligently which resulted into the death of Harwinder Pal Kaur wife of appellant-Buta Singh.

2. In nutshell, Harwinder Pal Kaur was 7-8 months pregnant with minor problems. On 20.06.2009, she was admitted in Jain Hospital,

Khanna owned by respondents No. 2 and 3, where she gave birth to a child through caesarian operation done by respondent No. 4. Since, the child was to be kept in incubator, so, initially, he was shifted to Krishna Hospital then to Apollo Hospital, Ludhaina. In the meanwhile, the condition of Harwinder Pal Kaur also turned serious, so, she too was referred to Apollo Hospital, Ludhiana situated around 40 Kms. away from Khanna, where she was declared brought dead. Consequently, the appellant-complainant raised grouse that the death of his wife had occurred on account of negligence on the part of respondents No. 2 and 3, who at the relevant time were abroad by assigning their job to respondent No. 4 to look after their hospital, who was not a competent person to conduct the aforesaid operation and shifted her to Apollo Hospital, Ludhiana in an ordinary vehicle and not in ambulance.

3. On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the learned trial Court did not find itself convinced with the prosecution story and, thus, acquitted the private respondents vide impugned judgment dated 30.10.2013.

4. Being dis-satisfied, the complainant has filed the present appeal for conviction of the private respondents by setting aside the impugned judgment.

5. Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. From the report dated 17.12.2009 given by the Board of Doctors, it was clearly evident that the private respondents were negligent in their conduct.

Respondent No. 4 was not a Obstetrician and Gynae Specialist and thus, was not competent to conduct caesarian operation upon Harwinder Pal Kaur. There was no incubator available, besides all other necessary facilities which are required for conducting the caesarian operation in the hospital of respondents No. 2 and 3, but out of greed, they conducted the caesarian operation of Harwinder Pal Kaur in a negligent manner and as a result thereof, she died. The trial Court has erred in ignoring the foolproof prosecution evidence on the record, while acquitting the private respondents.

6. On the other hand, learned counsel for respondents No. 2 and 3, besides respondent No. 4 in person, vehemently opposed the above arguments.

7. After giving our thoughtful consideration to the submissions made by learned counsel for the parties, we find no merit in the instant appeal for the reasons to follow.

8. Undisputedly, Harwinder Pal Kaur had died on account of Acute Respiratory Distress Syndrome (A.R.D.S.) which had occurred as a result of embolism clot or meconium which means that unborn child had passed faeces in the womb of the mother which was unpredictable and un-preventable. It is also not disputed that consent of the appellant and his wife Harwinder Pal Kaur (deceased) was obtained prior to surgery.

9. PW-4 Dr. Savreet Kaur, has clarified that ARDS can occur even without surgery and in the present case, possibility could not be ruled out that deceased had died due to Amniotic Fluid Embolism.

10. PW-8 Dr. Balwinder Singh Kalsi, who was part of the

Medical Board constituted to investigate the cause of death of Harwinder Pal Kaur vide his report Ex. PW-8/E had opined that “acute respiratory distress syndrome (A.R.D.S.) could have occurred as a result of embolism of clot or meconium during or immediately after the lower segment caesarian suction operation. This complication can happen during such surgery. For this, surgeon and the staff cannot be held directly responsible, but to manage this complication and to save the life of the patient is the responsibility of the treating doctor”.

11. The above medical opinion and evidence, led by the prosecution by any stretch of imagination, do not suggest that the private respondents had any role or had ever acted negligently or were responsible for the death of Harwinder Pal Kaur.

12. A perusal of the trial Court record shows that complaint No. 839 dated 29.11.2010 filed by the appellant under Section 12 of the Consumer Protection Act on the similar allegations against the private respondents and one Dr. Sushil Kumar Bansal was dismissed by the District Consumer Disputes Redressal Forum, Ludhiana, vide order dated 23.12.2011 (Ex. D-1).

13. We have gone through the impugned judgment and found no illegality or perversity in the same.

14. The instant appeal, being completely devoid of any merit is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 10, 2016
rishu