(2006) 11 P&H CK 0111

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 1457 of 2005

Dr. R.K. Goel	APPELLANT
Vs	
Dharam Singh	RESPONDENT

Date of Decision: Nov. 1, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304A

Citation: (2006) 20 CriminalCC 544

Hon'ble Judges: T.P.S. Mann, J

Bench: Single Bench

Advocate: H.S. Gill, with Mr. Vivek Goyal, for the Appellant; P.S. Brar, for the Respondent

Judgement

T.P.S. Mann, J.

A complaint was filed by Dharam Singh respondent the petitioner on the allegations that his great grandson Gursharan Singh aged 14/15 months, became ill on 30.4.2002 and on the following day he was taken to the hospital of the petitioner where the petitioner told the complainant that the child was suffering from Pneumonia but he was given routine medicines instead of being given proper treatment with the sole motive of prolonging the treatment and getting money in the process. The patient was taken to the doctor on 5.5.2002 and again on 30.5.2002 but he was sent back by the doctor after giving him certain medicines. On 11.6.2002, the position remained the same as even this time the patient was sent back after being prescribed some medicines. On the following day i.e. on 12.6.2002, the patient was admitted by the petitioner in his hospital but the doctor did not properly attend to him and showed negligence and dereliction in duty. On the following day i.e. 13.6.2002 at about 8.00 a.m., the doctor was called from his house to the hospital, who after finding the condition of the patient to be serious, advised certain tests and x-ray besides blood examination. The reports were received at 9.00 a.m. but the doctor did not tell the complainant that the condition of the patient was serious. So much so that the doctor told the complainant to leave the hospital and take the

patient to some other hospital. Immediately, the complainant along with Jaswinder Singh, father of the patient, took him to Guru Gobind Singh Medical College and Hospital, Faridkot, where he was examined by Doctor Karnail Singh, a Child Specialist. Said Doctor Karnail Singh treated the patient and told the complainant that the doctor, who had initially treated him had shown much negligence. The petitioner was admitted in the said hospital. However, at about 4/5 p.m. on the same day, Dr. Karnail Singh referred the patient to Ludhiana Hospital but he died on the way to the said place. An application was, thereafter, submitted by the complainant to Senior Superintendent of Police, Faridkot, who called for a report from Dr. Karnail Singh. In his report Dr. Karnail Singh wrote that if the tests had been got conducted at proper time and correct dose of medicine given, the child could have been saved. In spite of the said report, the police did not take any action and left with no other opinion, the complainant filed a criminal complaint u/s 304-A IPC against the petitioner on 10.12.2002.

2. Preliminary evidence was recorded by way of the testimonies of Dr. Karnail Singh as PW-1 and complainant Dharam Singh as PW-2. However, Chief Judicial Magistrate, Faridkot did not find any convincing evidence on the record to show as to how the treatment given by the accused led to the death of the child. Accordingly, vide order dated 1.12.2004, the Magistrate dismissed the complaint u/s 203 Cr.P.C. The said order was challenged by complainant Dharam Singh by filing a revision which was accepted by Additional Sessions Judge, Faridkot on 3.8.2005. Order passed by Chief Judicial Magistrate dated 1.12.2004, while dismissing the complaint u/s 203 Cr.P.C. was set aside and the case remanded back to the said Court to proceed with the case according to law. Hence, the present revision by the petitioner.

3. Learned counsel for the petitioner has submitted that the petitioner retired as Assistant Professor of Pediatrics from Guru Gobind Singh Medical College and Hospital, Faridkot, which post he held from 1992 to 2001. The petitioner possessed Postgraduate Degree in Medicines. After his retirement, he was running a hospital at Faridkot, where he attended upon children, who were suffering from different diseases.

4. It has been further submitted that the petitioner was neither reckless nor negligent in providing treatment to Gursharan Singh, great grandson of the complainant. He had been giving the proper and adequate treatment by prescribing various medicines so that the child could recover from the ailment he was suffering. Even Dr. Karnail Singh, whom he claim to have given a report against him because of professional jealousy, did not state anywhere that the treatment and the medicines being given to the patient were not for the ailment from which the patient was suffering. It was only stated that the medicines and other treatment were changed thrice from June 11 to June 12, 2002 and that the tests were prescribed only at a very late stage and by that time the condition of the patient had

deteriorated considerably. Hence, no case was made out for proceeding against the petitioner u/s 304-A IPC and the order passed by Additional Sessions Judge, Faridkot, while accepting the revision of the complainant/respondent, deserves to be set aside and that of the trial Court to be restored.

5. Learned counsel for the complainant/respondent while supporting the impugned order passed by Additional Sessions Judge, Faridkot submits that the petitioner though possessed requisite skills, necessary for treating the child patient, did not exercise the same in the manner in which he was required to. The child patient was admitted in the hospital on 11.6.2002 and uptil the morning of 13.6.2002, no tests were prescribed/conducted. Only medicines were prescribed, which were not adequate for treating patient from the ailment. It was only for the first time that on 13.6.2002, it was revealed from the x-ray conducted that the patient was suffering from Pneumonia and by that time it was too late for giving proper medication to the patient and, accordingly, the petitioner was responsible u/s 304-A IPC for causing the death of Gursharan Singh by acting rashly and negligently.

6. I have heard the arguments of learned counsel for the parties and gone through the record of the present petition.

7. The main objection from the complainant side is that the petitioner kept on giving the routine medicines to Gursharan Singh patient and no tests were got conducted uptil the last day i.e. 13.6.2002. The attendants of the patient were not appraised about the ailment from which he was suffering and the petitioner was adopting hit and trial method in curing the patient of the ailment. However, a perusal of para 4 of the complaint itself would show that on 1.5.2002, when Gursharan Singh was taken to the hospital of the petitioner, the petitioner told the attendants, including the complainant, that the child was suffering from Pneumonia. Thus, it could be said that the petitioner was proceeding on the right lines for treating the patient of the ailment. Mere fact that no tests were earlier prescribed, is no ground to hold that the petitioner was rash and negligent in treating the patient. Even the x-ray conducted on 13.6.2002 showed that the patient was already suffering from Pneumonia. There is no opinion from the doctor that any of the medicines being prescribed by the petitioner from 11.6.2002 to 13.6.2002 were not the one, meant to cure a patient of Pneumonia. Thus, the complainant has failed to prove that the medicines given to Gursharan Singh were of such a nature which could cause his death and thus, exposing the petitioner to be tried for rash and negligent act.
Moreover, the petitioner was a specialist in Paediatrics, who had been working as an Assistant Professor in Medical College and Hospital at Faridkot from the year 1992 uptil 2001.

In Dr. Suresh Gupta Vs. Govt. of N.C.T. of Delhi and Another, Hon''ble Supreme Court held that where a patient died due to the negligent medical treatment by the doctor, the doctor could only be made criminally liable for offence u/s 304-A IPC if the

degree of negligence was so gross and his act was so reckless so as to endanger the life of the patient. Further that the Court should be extra cautious in fixing criminal liabilities on the doctors so that the hazards of medical men in medical profession being exposed to civil liability, may not unreasonably extend to criminal liability. It was also held that every mishap or misfortune in the hospital or clinic of a doctor was not a gross act of negligence to try him for an offence of culpahble negligence. The relevant portion of the aforementioned judgment is reproduced hereinbelow :-

Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as `criminal''. It can be termed `criminal'' only when the medical man exhibits a gross lacks of competence or inaction and wanton indifference to his patient''s safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient''s death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.

This approach of the courts in the matter of fixing criminal liability on the doctors, in the course of medical treatment given by them to their patients, is necessary so that the hazards of medical men in medical profession being exposed to civil liability, may not unreasonably extend to criminal liability and expose them to risk of landing themselves in prison for alleged criminal negligence.

For every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecutions of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because if the courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than giving all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and patient. Every mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence.

In the present case also, there is no allegation that the so called act of the petitioner was so reckless so as to endanger the life of Gursharan Singh patient.

In Rakesh Ranjan Gupta Vs. State of U.P. and Another, Hon''ble Supreme Court held that mere delay on the part of doctor to attend to the patient might give rise to civil negligence and not one of culpable negligence falling under the provisions of Section 304-A IPC. It was held as under:-

The above allegations do not disclose, prima facie, a case of rash or negligent act, on the part of the appellant so as to attract the penal provision u/s 304-A IPC. If there was delay on the part of the Doctor to attend on the patient that may at the worst be a case of civil negligence and not one of culpable negligence falling under the above section.

In view of the above discussion, the order passed by Additional Sessions Judge, Faridkot, in accepting the revision of the respondent, cannot be sustained. Accordingly, the present revision is allowed. Order passed by Additional Sessions Judge, Faridkot while accepting the revision of the respondent and remanding the case back to the Court of Chief Judicial Magistrate, Faridkot to decide the case according to law, is set aside and that of the Chief Judicial Magistrate, Faridkot in dismissing the complaint u/s 203 Cr.P.C. is restored.