

Cr. Appeal (S.J.) No.1678 of 2006

[*Against the Judgment of conviction and order of sentence dated 28.11.2006 passed by learned Additional Sessions Judge, F.T.C.-7, Hazaribagh in S.T. No.176 of 1998]*]

Niraj Kumar @ Pappu S/o Misra Modi resident of village-Patraru (Block More) P.S. Patratu, District-Hazaribagh

.... Appellant
Versus

The State of Jharkhand Respondent

For the Appellants : Mr. B.M. Tripathi, Sr. Advocate
Mrs. Indu Shekhar Gupta, Advocate
For the State : Mr. Bishwambhar Shastri, A.P.P.

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGEMENT

05/12/2024

By court:

1. The present appeal is directed against the Judgment of conviction and order of sentence dated 28.11.2006 passed by learned Additional Sessions Judge, F.T.C.-7, Hazaribagh in S.T. No.176 of 1998, whereby and whereunder, the appellant has been held guilty and convicted for the offences under Section 304A of Indian Penal Code and sentenced to undergo R.I. of 3 years.

FACTUAL MATRIX

2. The prosecution story of this case is in nutshell that on 15.08.1997 at about 7:30 AM, the informant went to Block Hospital for treatment of his child suffering from cough-cold aged about 3 months, but the Block Hospital was closed due to 15th August. Thereafter, the informant reached near Block More and found a doctor namely Dr. L.P. Sah present in Jai Medical Hall, then he contacted with the doctor and got his little child checked up from him, who prescribed some medicine with injection. After taking prescription, the informant gave the prescription to Neeraj Kumar @ Pappu, the owner of Jai Medial Hall then Niraj Kumar(appellant) supplied the medicine and injected the said injection to the child of the informant, as a result of which, the little child became unconscious and died subsequently.
3. Upon above information, the FIR being Patratu P.S. Case No.136 of 1997 was registered against the appellant and after completion of investigation, charge-sheet was submitted against him for the offence under sections 304A of Indian Penal Code. After taking cognizance, the case was committed to the court of Sessions and S.T. No.176 of 1998 was registered.
4. Learned counsel for the appellant assailing the impugned judgment and order of sentence of the appellant has submitted

that admittedly the informant's child aged about 3 months had died due to maltreatment and wrong prescription of medicine prescribed by the doctor whose name has been appeared in the FIR itself but he has not been made accused in this case. The appellant is alleged to be a shop owner of the medical store who supplied the medicine as per prescription issued by the doctor to him. It is further submitted that the concerned doctor had applied the injection to the kid, as a result of which the kid became faint and died. Therefore, the negligence on the part of the doctor itself is direct cause of death of the child and the appellant is only supplier of the medicine. As per prescription, there is no evidence at all that the appellant has supplied the medicine against the prescription or the wrong injection. Even if, it may be assumed that the wrong injection was supplied, the doctor, who injected the child, must have assured himself about the genuineness and right medicine to be applied to the child. In course of trial, the said doctor was not impleaded by the prosecution even invoking the provision under section 319 of Cr.P.C for coming to right conclusion of this case. The appellant has falsely been roped in this case and without proper consideration of evidence available on record, learned

trial court has illegally passed the impugned judgment and order, which is liable to be set aside, acquitting the appellant.

5. Learned A.P.P. appearing for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that in the FIR, it is alleged that the appellant being owner of the medical shop provided injection to the informant and applied the said injection to the small kid due to which he died. Therefore, there was negligence on the part of the appellant not properly identifying the injection as per prescription and due to his negligence, the small kid of the informant caused to death. Hence, there is no illegality and infirmity in the impugned judgment and order passed by learned court concerned. Therefore, this appeal is fit to be dismissed.
6. I have gone through the record of the case along with the impugned judgment and order in the light of contentions raised on behalf of both side. It appears that the FIR was lodged by one Indradeo Singh stating *inter alia* that his son aged about 3 months caught ill, then he first visited with Dr. L.P. Sah near Jay Medical Hall. The prescription was issued by the doctor then he purchased the medicine from the shop of

the appellant and just after giving the injection to little child, the condition of the child became deteriorated and died.

It further appears that in order to prosecute the appellant, 8 witnesses were examined by the prosecution.

The informant has been examined as P.W.8. According to his evidence on oath, he deposed that he contacted with the Dr. L.P. Sah for treatment of his child, thereafter, the doctor, after examining the child said that his child is suffering from cough-cold and fever only and there is nothing else. He also prepared a prescription, which was presented to the medical shop of the appellant from where the medicines were given and injection was applied by the said doctor. Thus, in clear terms, it is indicated that the injection was given by the doctor to the child, thereafter, the child died.

P.W.7 Dr. Mahendra Prasad Choudhary, who conducted the autopsy on the dead body of the deceased but no certain cause of death was opined and viscera was preserved. It also appears that viscera is not available during trial of the case. **P.W.1 Gobind Singh, P.W.2 Rekhar Devi, P.W.3 Rajendra Singh, P.W.4 Munna Singh** are hearsay witnesses as they deposed that they have heard about the incident from the informant.

7. It is also noteworthy that the informant (P.W.8) has admitted that at the instance of learned A.P.P., he has deposed that when the child became unconscious, the present appellant snatched prescription from him and suggested him to go with the child to Ranchi for better treatment. He has also claimed that he was not identifying the appellant prior to the occurrence. The informant can also identify the doctor who prescribed the prescription to his child. The prosecution has not brought on record the prescription issued by Dr. L.P. Sah, which was major lacuna in the prosecution case, which has been trite to be filled up by tutoring the informant.
8. In the above circumstances, without proving the prescription and without examining the concerned doctor namely Dr. L.P. Sah, the prosecution story against the appellant cannot stand. There is also specific admission of the informant in his deposition at trial that the injection was applied by the doctor not by the present appellant.
9. In the aforementioned facts and circumstances, the conviction and sentence of the appellant for the offence under section 304A of IPC is absolutely unjustified and beyond the weight of evidence available on record.

10. Accordingly, the Judgment of conviction and order of sentence dated 28.11.2006 passed by learned Additional Sessions Judge, F.T.C.-7, Hazaribagh in S.T. No.176 of 1998 is set aside, allowing this appeal.

11. The appellant is on bail, hence, he is discharged from bail bond. The sureties is also discharged.

12. Pending I.A(s), if any, is also disposed of accordingly.

13. Let the copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

05/12/2024

N.A.F.R./Pappu-