

Emperor Vs. P.U. Desouza

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Court : Allahabad

Decided On : Jan-13-1920

Reported in : (1920)ILR42All272

Judge : Tudball, J.

Appellant : Emperor

Respondent : P.U. Desouza

Judgement :

Tudball, J.

1. The applicant in this case has been convicted of causing death by a rash and negligent act under Section 304A. of the Indian Penal Code and has been sentenced to three months' simple imprisonment and to pay a fine of Rs. 150. There are three counts, and the sentences were ordered to run concurrently. The plea taken on revision is that the act done by the applicant, though it may have been negligent, was not so grossly negligent as to fall within the Criminal Law. The facts may be briefly stated:

2. Messrs. A. John and Co., at Agra, employed the appellant as a doctor in the dispensary in connection with their Mills for the purposes of their employee's. The appellant is not a qualified man. He apparently has served for a large number of years in the drug department of Messrs. Treacher & Co., in Bombay and for eight

years has been employed in Agra in charge of the dispensary in question. The courts below have both held that the dispensary at the Mills of Messrs. A John & Co., was very carelessly and badly managed. When visited by the Joint Magistrate, poisonous medicines were found here and there mixed up with non-poisonous medicines, and though a poison cupboard was supplied it was kept unlocked. On the date on which the present occurrence took place the applicant had to prepare a large amount of quinine mixture to be given to certain patients who were suffering from fever. To assist him he had a compounder who like himself was also with-out any qualifications. The compounder apparently was absent on this day. The accused in order to prepare 24 ounces of quinine mixture had to put in a certain amount of quinine hydrochloride. He went to the cupboard in which non-poisonous medicines were usually kept, and took from it a bottle still inside its original wrapper as it came from the manufacturer. On the outside of that wrapper was printed the word 'poison.' Apparently he did not look at that. He tore open the wrapper and threw it on the floor. The bottle was similar in shape and colour to that in which quinine hydrochloride was supplied. The label was of the same size. There was no distinctive poison label on the bottle itself, but on the label was printed strychnine hydrochloride, Apparently the appellant's eye did not catch this, for he mixed the whole bottle-ful into a mixture, gave it to eight persons to take, all of whom took it; seven died within a very short time; one fortunately vomited and ejected it. It is unnecessary to set out the accused's subsequent conduct. The question for decision is whether, in acting as he did, the applicant was guilty of such gross negligence as to bring him within the purview of Section 304A. Both the courts below have held that he was, and after a long and patient hearing and considerable consideration, I am of the same opinion. Apparently the dispensary which was in the charge of the accused was very carelessly managed. It must have been within his knowledge that the medicines were not properly arranged. This would throw upon him a still greater burden, and it was his duty to be very careful indeed to see that the medicines that he was administering were proper ones. It is true that in a well-kept dispensary a compounder would not expect to find poisonous medicines in a cupboard which ordinarily contained non-poisonous medicines; but in the present case there was good reason for the present applicant to take extra care. Instead of that he took a bottle which on the

outside wrapper bore the word ' poison ' in distinctive letters without glancing at it, and without even reading the label on the bottle, he administered poison, which resulted in the death of seven persons. In my opinion this is gross and criminal negligence and the conviction was a proper one. There remains the question of sentence. Keeping in view the result of the applicant's care- lessness it is impossible to say that the sentence of three months' simple imprisonment is too heavy. The result is that I disallow the application.

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