

Hans Kumar Vs. State of Madhya Pradesh

Hans Kumar Vs. State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/507430

Court : Madhya Pradesh

Decided On : May-19-2005

Reported in : 2005(4)MPHT414

Judge : Rakesh Saxena, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304 and 304A

Appeal No. : Criminal Appeal No. 354/1998

Appellant : Hans Kumar

Respondent : State of Madhya Pradesh

Advocate for Def. : Amod Gupta, Panel Lawyer

Advocate for Pet/Ap. : Surendra Singh, Sr. Adv. and ;Ashish Tiwari, Adv.

Disposition : Appeal allowed

Judgement :

Rakesh Saxena, J.

1. Appellant has preferred this appeal against judgment dated 2-2-1998 passed by First Additional Sessions Judge, Balaghat in Sessions Trial No. 23/1996 convicting the appellant under Section 304A, IPC and sentencing him to rigorous imprisonment for two years and fine of Rs. 5,000/- and in default simple

imprisonment for six months.

2. In brief, the prosecution story is that on 13-6-1995 Sanjay Kumar a child of about 1 month was suffering from fever, Munna the father of Sanjay, called the appellant, who is a doctor practicing in the village. It is said that the appellant, administered an injection as a result of which Sanjay Kumar died 1-1 1/2 hours later. Complainant Munna, lodged a report at the Police Station, thereupon Merg No. 11/95 was registered. The dead body of the child Sanjay Kumar was sent for post-mortem examination. The post-mortem examination was performed by Dr. N.K. Choudhary (P.W. 3). According to Dr. N.K. Choudhary, the child had died due to asphyxia as a result of anaphylactic bronchospasm or poisoning. He preserved viscera and tissues of skin of punctured area which was referred for chemical analysis. After further requisite investigation, charge-sheet was filed under Section 304, IPC before the Court.

3. Learned Trial Court framed the charges under Section 304 Part I and Section 304A, IPC. The accused abjured the guilt and pleaded false implication.

4. During trial, prosecution examined three witnesses for proving its case. However, the case mainly rested on the evidence of Munna (P.W. 1) the father of the deceased child and Dr. N.K. Choudhary (P.W. 3) who performed the post-mortem examination of the deceased. After appreciation of evidence, the Trial Court did not find the offence under Section 304 Part I of the IPC proved against the appellant. However, on the basis of evidence on record held the appellant guilty under Section 304A of the IPC and convicted him accordingly.

5. Learned Counsel for the appellant, contended that from the prosecution evidence, it could not be held that the deceased had died as a result of the treatment administered by the appellant, as such, in the absence of the proof of the nexus between death and the act of the accused, it can not be held that the appellant was guilty of any rash and negligent act, and causing of death of the victim. On the other hand learned Counsel for the State, submitted that from the evidence of Munna (P.W. 1), it is apparent that the appellant had administered an injection and, thereafter, the child had died. Therefore, it was amply proved that the death of the child was the result of the negligent act of the appellant.

6. Heard learned Counsel of both the sides and perused the evidence and other materials on record. On going through the evidence of Munna (P.W. 1), it appears that when his son whose age was about one month, had suddenly fallen ill, he went to the appellant for treatment and after check-up he administered an injection and also gave some medicine. After about 3-4 hours, the child expired. In Para 4 of his cross-examination, he has said that his son had stopped drinking milk from a day before he was administered injection. He said that he did not know, as to which injection doctor had administered. He had not taken the injection and medicine to the Police Station. In the cross examination, he stated that he had handed over the medicine to the police officer. From his evidence, it is proved that the appellant had administered an injection to the child.

7. The important question for bringing home the charge under Section 304A is that, there must be a nexus between the act of the accused and the death of the victim. Unless the prosecution was able to prove, that the death of the child was a direct result of the rash or negligent act of the accused, the charge under Section 304A, IPC can not be held to be proved. In this light, when we examine the evidence of Dr. N.K. Choudhary (P.W. 3), who performed the post-mortem examination of the child, it is seen that he had found number of punctured marks, which appeared to be that of injection, on the forehead and around the neck of the child. According to him, the marks were 9 in number. He had also found a punctured mark in the right tricep area. All the punctured marks found on the body of the deceased had turned blue. He stated that, he had preserved all those parts of punctured marks for chemical analysis. In Para 8 of his evidence, he opined that the cause of death could have been the asphyxia due to anaphylactic bronchospasm or poisoning. He also admitted that asphyxia might have developed due to several reasons, one of them could have been the food poisoning. He further stated that, blue punctured marks which he had detected on the body, were possible by the bites of some poisonous insects, but, he could not give the definite opinion about the cause of the death, as it could have been ascertained only after the report of the chemical analysis is received. It is also noteworthy that no report of chemical analysis has been produced by the prosecution.

8. On appreciation of the evidence of Dr. N.K. Choudhary (P.W. 3), it can not be held beyond reasonable doubt, that the cause of death, was the reaction of the injection administered by the appellant. The possibility, that the child might have died due to the insect bites of some poisonous insect, can not be ruled out. In the absence of the proof, of the direct link between the act of the accused and the death of the child, the appellant can not be convicted for the charge under Section 304A of the IPC. Thus, the conviction of the appellant is set aside.

9. Accordingly the appeal is allowed. Conviction of the appellant under Section 304A of the IPC is set aside. He is acquitted. Bail bonds of the appellant shall stand discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com