

Juggankhan

Vs

State Of Madhya Pradesh.

Criminal Appeal No. 171 of 1962

(S. Subha Rao, S. M. Sikri JJ)

10.08.1964

JUDGMENT

SIKRI J.

This is an appeal by special leave directed against the judgment of the High Court of Madhya Pradesh confirming the conviction and sentence of the appellant under 302, I.P.C.

The case of the prosecution, in brief, which has been accepted both by the Sessions Judge and the High Court, is as follows. The appellant is a registered Homoeopathic medical practitioner under Madhya Pradesh Homoeopathic and Bio-chemic Practitioners Act (Madhya Pradesh Act 26 of 1951).

In about May 1960, he started residing and practising at Akodiya Mandi. He issued a pamphlet advertising that, among other things, he treated Naru (guinea worm). Lured by this, Smt. Deobi, aged about 20 years, who had been suffering from guinea worm for six weeks, accompanied by her uncle Chisaji (P.W. 3), mother Daryaobai (P.W. 4) and aunt Gulab Bai (P.W. 6) went to the clinic of the appellant on May 30, 1961, at about 8 a.m. She was examined by the appellant and administered 24 drops of mother tincture stramonium and a leaf of dhatura. After taking this medical she started feeling restless and ill; various antidotes were given but she was not relieved. She vomited twice but the vomits were not preserved and sent for examination to the chemical examiner. Ultimately at about 5 p.m. she died.

Dr. Patodia (P.W. 7) performed the autopsy on May 31, 1961, and reported that the cause of death could be ascertained only after the result of chemical analysis is received. He sent to the chemical examiner the stomach with its contents and pieces of liver, spleen and kidney. The chemical examiner, however, reported that no poison could be detected in any of these items. This is seized by the learned counsel for the appellant and he has urged that it has not been proved that death resulted from Dhatura poisoning. But both the courts below have found against him. He further urges that what was administered was not a fatal dose and he has seriously challenged the calculations made by the learned Sessions Judge of the contents of poison in the leaf alleged to have been given to the deceased. He has also challenged the concurrent finding of the courts below that a dhatura leaf and 24 drops of mother tincture of stramonium was administered to the deceased. His final contention is that on the facts found it was not a case of murder under s. 302, I.P.C., but of an offence under s. 304A, I.P.C.

We have looked into the evidence but we are unable to say that the concurrent finding of the courts below that 24 drops of stramonium and a leaf of dhatura were administered is manifestly wrong.

They have relied on the evidence of Chisaji, deceased's uncle, P14, a register of patients maintained by the appellant, P10, the prescription written by the appellant, and the evidence of Shyam Swaroop Mishra, P.W. 14, who recognized the handwriting of the appellant. We think they were right in relying on the above evidence.

We are also of the opinion that the courts below were right in concluding that death resulted from poisoning. It is true that Dr. Patodia could not say what poison caused her death. But he could say that death was due to something that was an irritant, and it could be due to dhatara or belladonna or any other poison. The deceased, according to Chisaji, P.W. 3, was a healthy woman, and had not taken any other medicine before arriving at the clinic. She was at the clinic from 9 a.m. till she died. The only medicine she took, apart from antidotes, was what was administered, i.e., 24 drops of stramonium and a dhatara leaf. She started feeling restless and ill soon after taking these things. On these facts the conclusion of the courts below that death was the result of dhatara poison cannot be said to be erroneous.

The only question that remains is about the nature of the offence committed by the appellant. Should he be convicted under s. 302 or s. 304A, I.P.C. ? In our opinion, the appellant is liable to be convicted under s. 304A and not s. 302, I.P.C.

Dr. Choudhary, P.W. 17, a registered medical practitioner, in the course of his evidence, stated :

"In the opinion of Dr. Modi, the writer of Medical Jurisprudence, a dose of 20 to 20 1/2 grains of dhatara is fatal and according to Dr. Taylor about 16 grains of it is a fatal dose. Therefore, I can say that if a fresh leaf of dhatara of 6 inches length and 4 inches breadth along with 24 drops of stramonium mother tincture of Homoeopathic preparation is given to any patient then the joint effect of both may be fatal and if it is kept in mind that the patient is allergic and idiosyncratic for stramonium then such a dose must be fatal."

This is relied on by the learned Session Judge to determine what would be the fatal dose. We have however looked up Modi's Medical Jurisprudence and Toxicology (14th Edition) and Taylor's Principles and Practice of Medical Jurisprudence (11th Edition) but they do not quite say what Dr. Choudhary had assumed. Modi writes at p. 713 thus :

"Fatal Dose - Uncertain. Four datura fruits pounded and mixed with flour were given to six men, four of whom died. A ripe fruit weighs, on an average, weigh about 2 drachms, and contains the seeds which weigh about 1 1/2 drachms. One hundred dried datura seeds weigh 20 to 20 1/2 grains. A decoction of 125 seeds of datura stramonium has proved fatal to a woman".

According to Taylor (p. 551, Vol. II) :

"Toxicity and Fatal Dose. The active principle, a mixture of hyoscyne, atropine and hyoscyamine, is extremely toxic, and as the plant contains approximately 1/2 to 1 per cent of alkaloids, it must be considered extremely dangerous. The seeds are highly poisonous, inasmuch as they contain a larger proportion of alkaloids than other parts of the plant. Death may take place although the whole of the seeds are ejected.

A child of 2 swallowed about 100 seeds of stramonium weighing 16 grains. The usual symptoms were manifested in an hour, and the child died in 24 hours although

twenty seeds had been ejected by vomiting and eighty by purging. Sufficient alkaloid to destroy life and been absorbed from the entire seeds and carried into the blood.

In a case which became the subject of a trial at Osnabruck, a woman administered to her mother a decoction of the bruised seeds of the thorn-apple, of which it was supposed there were about 125. She very soon became delirious, threw her arms about and spoke incoherently; she died in 7 hours".

Dr. Patodia (P.W. 7) could not definitely say what dose of tincture stramonium should be sufficiently fatal to life. But he further opined that half an ounce of tincture stramonium which is in sufficient excess of the normal medicinal dose (which he put at 10 to 30 drops) will be sufficient to cause death.

On this material we cannot say that it has been established that what the appellant prescribed was necessarily a fatal dose. Further, the finding of the learned Sessions Judge that the leaf weighed 40 grains and the poison Judge that the leaf weighed 40 grains and the poison content would be 15 grains does not proceed on any sound basis. Chisaji described the leaf as a big one but it was green and fresh. Laxminarayan Vaidya, P.W. 13, gave the dimensions of the biggest leaf as having a length of 7 inches and breadth of 3 1/2 inches grown on the land having application of manure. Dr. Choudhary, P.W. 17, said that "on the basis of hypothesis if a fresh leaf of dhatura is 6 inches in length and 4 inches in breadth and is 40 grains in weight, it would contain 27 grains moisture and 13 grains of solid stramonium, i.e., poison." We think that this hypothetical evidence should not have been relied upon to determine the content of solid stramonium in the leaf alleged to have been administered to the deceased. It follows from this that poisonous contents of the leaf have not been satisfactorily established and if this is so, the prosecution has failed to prove that the dose given to the deceased was necessarily fatal. Further, Dr. Choudhary stated that it had not come to his notice that in any of the Homoeopathic systems of medicine stramonium mother tincture or stramonium in potentised form or a green leaf of dhatura is not given for treatment of guinea-worm. According to Dr. R. K. Sings, P.W. 16, mother tincture stramonium can be given for removing foreign bodies, though it is not specifically mentioned in *Materia Medica* of Homoeopathy that it can be used for treatment of guinea-worm. But it will be remembered that in this system treatment is by symptoms.

On these facts, it appears to us that s. 299 I.P.C., does not apply. It cannot be held that the appellant administered the stramonium drops and the dhatura leaf with the knowledge that he was likely by such an act to cause the death of the deceased. Accordingly, we hold that the appellant must be acquitted of the charge under s. 302.

The appellant was charged in the alternative under s. 304A. The learned counsel for the appellant for the appellant urges that the ingredients of s. 304A have not been established inasmuch as it was not a rash or negligent act. As are unable to accept this contention. Stramonium and a dhatura leaf are poisonous. The appellant was registered as a Homoeopath, and in Homoeopathy a dhatura leaf is never administered as such. This much he admits himself. According to the evidence on the record, in no system of medicine, except perhaps in the Ayurvedic system, the dhatura leaf is given a cure for guinea worms. It seems that the appellant prescribed the medicine without thoroughly studying what would be the effect of giving 24 drops of stramonium and a leaf of dhatura. It is a rash and negligent act to prescribe poisonous medicines without studying their probable effect. The learned counsel for the appellant has invited our attention to the case of *John Oni Akerele v. The King* (A.I.R. 1943 P.C. 72) a decision of the Privy Council in an appeal from West Africa. But this decision is wholly distinguishable. The doctor in that case was a duly qualified medical practitioner

and had given an injection of Sobita, which consists of sodium bismuth tartrate. It was alleged that the doctor had given a dose stronger than the proper dose. On one fact, their Lordships came to the conclusion that criminal negligence had not been proved. It is true, as observed by their Lordships, that care should be taken before imputing criminal negligence to a professional man acting in the course of his profession, but even taking this care we have no doubt that the appellant was guilty of a rash and negligent act. Accordingly, we hold that he is guilty under s. 304A, I.P.C.

In the result, the appellant's conviction under s. 302, I.P.C., is set aside and he is convicted under s. 304A and sentenced to 2 years' rigorous imprisonment.

Conviction altered.

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