Privy Council Appeal No. 50 *of* 1955

Ong Bak Hin - - - - - - - - - - *Appellant*

v.

The General Medical Council - - - - - - *Respondent*

FROM

THE MEDICAL DISCIPLINARY COMMITTEE OF THE GENERAL MEDICAL COUNCIL

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH MARCH, 1956

Present at the Hearing:
LORD OAKSEY
LORD TUCKER
LORD COHEN
LORD KEITH OF AVONHOLM
MR. L. M. D. DE SILVA

[*Delivered by* LORD TUCKER]

In this case the appellant Dr. Ong Bak Hin, who had been at all material times a medical practitioner registered under the Medical Acts, appealed to Her Majesty in Council under section 20 of the Medical Act, 1950, from a determination of the Medical Disciplinary Committee on 25th November, 1955, that he had been guilty of infamous conduct in a professional respect and that the Registrar be directed to erase his name from the Register.

This determination was arrived at after an inquiry which had been held as a result of information as to the conduct of the appellant sent to the General Medical Council by the Director of Medical Services for the Federation of Malaya in accordance with Rule 12 (2) (*b*) of the Medical Disciplinary Committee (Procedure) Rules, 1951 (S.I. No. 665 of 1951).

The conduct referred to in the information supplied to the Council was to the effect that the appellant had been convicted and sentenced by the Supreme Court of Malacca on 14th August, 1953, for performing an operation with intent to cause miscarriage which caused death contrary to section 314 of the Penal Code for the Federation of Malaya.

The formal charge before the Disciplinary Committee alleged that on 18th May, 1953, the appellant, being registered under the Medical Acts, with intent to cause the miscarriage of Tee Bee Geok unlawfully performed an operation of abortion which caused her death and thereby committed an offence under section 314 of the Penal Code of the Federation of Malaya of which he was convicted in the High Court of Malacca on 14th August, 1953, and sentenced to five years imprisonment (reduced on appeal to two years), and concluded with the words:—"And that in relation to the facts alleged you have been guilty of infamous conduct in a professional respect".

At the inquiry Mr. Widgery, a Solicitor, appeared to place the facts before the Committee and the appellant was represented by Mr. Taylor, of Messrs. Hempsons, Solicitors. The Committee had the advice of a Legal Assessor.

The evidence adduced in support of the charge consisted of a statutory declaration by the Registrar of the Court of Appeal for the Federation of Malaya to which were exhibited :—

(*a*) A certificate by the Assistant Registrar of the Supreme Court of Malacca of the conviction on 14th August, 1953.

(*b*) The record of the hearing in the High Court consisting of:—

(1) The charge.

(2) Notes of evidence made by the trial Judge.

(3) Judge's reasons for sentence.

(4) List of exhibits at the trial.

(5) Statement of deceased woman dated 22nd May, 1953, being Ex. P.1 at trial.

(6) Extracts from medical text books put in at trial.

(7) Copies of Notice and Petition of Appeal to Court of Appeal of Federation of Malaya.

(8) Certified copies of Order and Judgment of Court of Appeal.

The copies of the record of the hearing in the High Court of Malacca provided for the members of the Disciplinary Committee had been "edited" by the deletion of certain passages in the evidence which the Legal Assessor considered would not have been admissible in a criminal court in England and certain further passages at the request of the appellant's Solicitor. The summing up of the Judge at the trial was also omitted.

The appellant appeared and gave evidence and was cross-examined at the inquiry.

At the conclusion the President announced the decision of the Committee to the effect that the appellant was adjudged to have been guilty of infamous conduct in a professional respect and that the Registrar had been directed to erase his name from the Register.

At the inquiry the appellant's Solicitor submitted at the outset that justice could not be done to his client unless the witnesses who had given evidence at his trial were called to give oral evidence before the Committee. He agreed that the documentary evidence was admissible but contended that the Committee in their discretion should exclude it in the interests of justice. He expressly stated that he did not ask for an adjournment. The Legal Assessor pointed out that the Committee had no power to compel the attendance of witnesses from Malaya and advised the Committee to proceed on the documentary evidence. Certain passages were then deleted or covered up at the request of the appellant's Solicitor and in this form the record of the criminal proceedings was put in. The Solicitors on each side drew the attention of the Committee to such portions of the evidence as they considered relevant but it was agreed that the Committee should be at liberty to look at any parts they wished and the desirability of the whole of the evidence of one of the witnesses, viz. Dr. Bennett, being read was stressed.

It was contended before their Lordships by Counsel for the appellant that the proceedings at the inquiry outlined above were defective and not strictly in accordance with the rules of procedure to which reference will shortly be made, and that the determination of the Committee should be set aside. He said that the notes of evidence given by Dr. Bennett should not have been received unless the Committee were satisfied that an attempt had been made to secure his personal attendance and that he had refused to attend. He further submitted that if the notes of evidence were received they should all have been read out before the Committee and that failing this the Committee should have read the entire evidence themselves which he said they could not have done in the time available having regard to the length of the hearing and the short mid-day adjournment.

It will be convenient here to refer to the relevant sections of the Medical Acts and the Rules of Procedure made thereunder.

Section 29 of the Medical Act, 1858, as amended by the Medical Act, 1950, reads :—

> "If any registered medical practitioner shall be convicted by any Court in the United Kingdom or the Republic of Ireland of any felony misdemeanour crime or offence or shall after due enquiry be judged by the General Medical Council to have been guilty of infamous conduct in any professional respect, the General Medical Council may if they see fit direct the registrar to erase the name of such medical practitioner from the register."

By Section 14 of the Medical Act, 1950, the functions of the General Medical Council under Section 29 of the Medical Act, 1858, were transferred to and became exercisable by the Medical Disciplinary Committee.

By Section 16 of the Medical Act, 1950, the Medical Disciplinary Committee were required to make rules as to procedure and evidence to be approved by the Privy Council. The Medical Disciplinary Committee (Procedure) Rules, 1951, were approved by Order in Council and are Statutory Instrument No. 665 of 1951.

Rule 28 of these Rules under the heading "Cases relating to conduct—proof of Charges" provides :—

"28. In cases relating to conduct where the practitioner appears, the following order of proceedings shall be observed as respects proof of the Charge or Charges :—

> (*a*) If a complainant appears, he shall open the case against the practitioner. If no complainant appears, the Solicitor shall present the facts on which the complaint or information is based.
>
> (*b*) Next the complainant, if any appears, or, if no complainant appears, the Solicitor shall adduce evidence of the facts alleged in the Charge or Charges or such of those facts as he is prepared to prove."

Rule 63 reads :—

> "The Committee may receive any such oral or other evidence as would be receivable in a Court of law, and in addition may, after consultation with the Assessor to the Committee, treat any statement of fact contained in any document as evidence of that fact."

The position of the General Medical Council in relation to its disciplinary powers under the Medical Act of 1858 was considered by the House of Lords in proceedings by way of certiorari in the case of *The General Medical Council* v. *Spackman* [1943] A.C. 627. Viscount Simon, L.C., at page 634 after referring to Section 29 of the Act of 1858 said :—

> "That section draws a significant distinction between a case in which the impeached practitioner has been convicted of felony or misdemeanour and a case in which the allegation of infamous conduct is not connected with a criminal conviction. In the former case the decision of the Council is properly based on the fact of the conviction, and the practitioner cannot go behind it and endeavour to show that he was innocent of the Charge and should have been acquitted. In the latter case the decision of the Council, if adverse to the practitioner, must be arrived at 'after due inquiry', and this of course means after due inquiry by the Council."

After referring to the refusal of the Council to hear evidence tendered with a view to showing the practitioner was not guilty of the adultery of which he had been found guilty by the Divorce Court, he proceeded :—

> "It is worth observing that this problem does not arise only in connection with conclusions reached in the Divorce Court. A jury's verdict of justification in proceedings for slander, judgment for the plaintiff in an action for seduction, a bastardy order made by a bench of magistrates—all these and many other instances of adverse conclusions reached in a Court of law might conceivably in certain circumstances lead to a charge against a medical man of infamous conduct in a professional respect. It seems obvious, in these other instances, that while the Council might well treat the conclusion

reached in the Courts as prima facie proof of the matter alleged, it must when making 'due inquiry' permit the doctor to challenge the correctness of the conclusion and to call evidence in support of his contention.

. . . . . .

. . . . . .

This does not mean that the Council has to rehear the whole case by endeavouring to get the previous witnesses to appear before it, though in special circumstances the recalling of a particular witness, in the light of what the accused or his witnesses assert, may, if feasible, be desirable. The Council will primarily rely on the sworn evidence already given at the trial."

Lord Atkin at page 637 said:

"It is not disputed that where there has been a trial, at least before a High Court Judge, the notes of the evidence at such trial and the judgment of the Judge may afford prima facie evidence in support of the Charge . . . ."

Lord Wright at page 645 said:

"The Council very properly have treated the decree of the Divorce Judge as prima facie evidence. So it is, and very strong evidence too, especially considering that the respondent did not appeal but paid the £1000 damages awarded against him."

Later he said:

"Most of the cases before the Council must involve questions of fact which they have to decide as best they can. It can only be in comparatively rare cases that the cause of complaint is a matter which has been decided in a Court of law other than by a conviction for felony or misdemeanour. The Court decision should indeed ease that duty, because the proceedings and judgment of the Court at least give the Council prima facie evidence which may be for practical purposes unanswerable by the practitioner . . . ."

That case concerned a finding of adultery which at that time was not conclusive. The law in that respect has now been altered, but the observations of the noble Lords in that case are—subject to the effect of the Rules of Procedure—in their Lordships' opinion applicable to such a case as the present where the conviction, not having taken place in the United Kingdom or the Republic of Ireland, is only prima facie evidence of the infamous conduct alleged.

In so holding their Lordships have not lost sight of the changes produced by the Medical Act, 1950, in the position of the Medical Disciplinary Committee, as compared with the General Medical Council under the Act of 1858, whereby they are now empowered to compel the attendance of witnesses and the production of documents, to administer oaths, and are required to make rules as to procedure and evidence which have statutory force, and by which a right of appeal from their determination is given. They are, however, not a court of law but a domestic forum charged in certain cases, of which the present is one, with the peculiar duty of making "due inquiry" into the circumstances attending the conviction in a distant country of a medical practitioner with a view to deciding—of which they alone are the judges—whether he has been guilty of infamous conduct in a professional respect. This duty they cannot adequately perform unless they are in possession of the whole of the proceedings in the Criminal Court in which the conviction occurred. It would be unfortunate if they have precluded themselves from so functioning by the Rules which they have made and in particular by Rule 63. It is not easy to decide whether the whole of the proceedings in Malaya would have been "receivable in a court of law". No court of law in this country is charged with precisely the same function as that entrusted to the Committee and the admissibility of documents may depend upon the precise issue before the Court. The Record of proceedings is in their Lordships' opinion a "document" within the meaning of the

second limb of Rule 63 (see the decisions under the Evidence Act, 1938 —which it may however be noted does not apply to Scotland—in *Edmonds* v. *Edmonds* [1947] P. 67, *Bullock* v. *Borrett* [1939] 1 A.E.R. 505 and *Barkway* v. *South Wales Transport Co.* [1948] 2 A.E.R. at p. 472). The admissibility of such documents is however limited to the statements of fact contained therein, and such a restriction may render the task of the Committee and Legal Assessor extremely difficult in dealing with the Record of proceedings in the Criminal Court and would exclude the Judge's charge to the jury and other parts of the Record which it is clearly desirable the Committee should see.

In the present case the Record, with certain excisions, was put in by consent as soon as the Committee had quite properly decided that the attendance of the witnesses from Malaya was not practicable and that their absence did not vitiate the proceedings. The consent to the admission of the Record is fatal to any objection on this score now being put forward before the Board, nor do their Lordships consider there is any substance in the contentions that the whole of the evidence was not read out in Court or that it was incumbent upon the Committee to read portions not considered by either side to have sufficient relevance to require the attention of the Committee to be directed thereto.

Their Lordships desire, however, to draw the attention of those concerned to the desirability of an alteration in the Rules of Procedure whereby the Committee can be empowered beyond all question to receive in evidence and examine the whole of the officially authenticated proceedings of the convicting Court in this class of case.

For the reasons stated above their Lordships are of opinion that there has in this case been no miscarriage of justice and they have accordingly humbly advised Her Majesty that this appeal should be dismissed.

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In the Privy Council

ONG BAK HIN

v.

THE GENERAL MEDICAL COUNCIL

[DELIVERED BY LORD TUCKER]

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