

(2000) 07 BOM CK 0060

In the Bombay High Court

Case No : Criminal Revision Application No. 45 of 1994

Dr. Baban Lahanu Gangurde and Another

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Maharashtra Medical Practitioners Act, 1961 — Section 33(2)
Penal Code, 1860 (IPC) — Section 304, 304A, 314

Citation : (2001) 5 BomCR 52 : (2001) 1 MhLj 431

Hon'ble Judges : Pratibha Upasani, J

Bench : Single Bench

Advocate : V.R. Bhonsale and S.A. Ingawale, for the Appellant; D.S. Mhaisapurkar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Upasani, J.—This Criminal Revision Application is filed by the petitioners/ original accused, being aggrieved by the order dated 30th June, 1990 passed by the Additional Sessions Judge, Malegaon, framing charges against the petitioners. The learned Additional Sessions Judge, Malegaon framed the charges against the petitioners as follows :

"Firstly, that on or about 26-9-1991 at 9.30 p.m. and upto 29-6-1991 till 11.00 p.m. you accused No. 2 with intention to cause death of the patient by name Sau. Meenabai w/o. Bhalchandra Wani, in your "Mauli" Hospital at Camp Road, Malegaon and you without any legal authority and certificate of Medical Association and/or without any licence from lawful authority operated deceased Meenabai and thereby said Meenabai died due to the bodily injury upon her person and you accused No. 2 committed an offence u/s 304 of I.P.C. and within my cognizance. Alternatively, that you accused No. 2 treated the lady patient Sau. Meenabai Balchandra Wani in your Hospital "Mauli" between 26-6-91 at Malegaon caused death of the said lady by giving her injection (unsuitable to her

aliment or trouble) rashly and negligently, which is not amounting to culpable homicide and thereby you committed an offence punishable u/s 304(A) of I.P.C. and within my cognizance.

Secondly, that you accused No. 2 at the aforesaid day, date and place with intention to cause the miscarriage of deceased Meenabai and thereby caused said miscarriage and due to your said act the death of said Meenabai was caused and thereby you committed an offence punishable u/s 314 of I.P.C. and within my cognizance. Thirdly, that on the aforesaid day, time and place, you accused Nos. 1 and 2 after committing the aforesaid offence with intent and knowledge to make the aforesaid offence disappear and to screen the real offender from justice handed over the dead body of said Meena to her legal heirs and you Accused Nos. 1 and 2 committed an offence punishable u/s 201 r.w. 34 of I.P.C. and within my cognizance.

Fourthly, that you accused Nos. 1 and 2 being legally bound to inform the police the fact of commission of aforesaid offence you intentionally committed to inform the same and thereby committed an offence punishable u/s 176 r.w. 34 of I.P.C. and within my cognizance.

Fifthly, that at the aforesaid date, time and place, you accused No. 2 being not registered as registered Medical Practitioner under the provisions of Maharashtra Medical Practitioners Act, gave Allopathic treatment to Sau. Meena in your Hospital and thereby committed an offence punishable u/s 33(2) of Maharashtra Medical Practitioners Act, 1961 and within my cognizance."

2. Few facts which are required to be stated are as follows :

The petitioner No. 1 is a doctor, who is running a Nursing Home by name "Mauli" at Malegaon, holding degree of M.B.B.S and Diploma in Gynaecology. Petitioner No. 2 is not an M.B.B.S. doctor and is not having any qualification in Gynaecology. She is B.E.M.S. (Bachelor of Electro-Homeopathic Medicine System) and has completed two years" course in Ayurveda Vidya Visharad.

3. On 26th June, 1991, one Meenabai Balchandra Vani, aged 22 years, was brought to Mauli Nursing Home by her husband Bhalchandra Narayan Vani for performing her abortion. She was two months" pregnant at that time. Since the couple"s first daughter was only nine months old and since Meenabai"s health was not so satisfactory, the couple did not want second child so early. So, the couple came to Mauli Hospital for getting abortion of Meenabai performed. At that time, accused No. 1 Dr. Baban Lahanu Gangurde had gone out of town. This was told by his wife Kamal Baban Gangurde accused No. 2. Kamal got the patient admitted in the Hospital. At about 11 O" clock in the morning, accused No. 2 gave two injections to Meenabai and after about 15 minutes, accused No. 2 performed abortion (operation) of Meenabai. However, immediately thereafter, Meenabai started getting pains in her stomach. The complainant Bhalchandra accordingly reported this to Accused No. 2, who examined her and gave one more injection. However, there was no improvement in Meenabai"s condition.

She started getting more pain in her stomach. Complainant therefore got scared and went at his residence to bring his mother. By the time he came back to the Hospital along with his mother, the patient Meenabai was put on saline, which continued till 5.00 p.m. There was no improvement in her condition. At about 6.30 p.m., accused No. 1 Dr. Baban Gangurde came to the Hospital, and examined Meenabai. Thereafter, he hurriedly went to his up-stair residence. Thereafter, after some time, some other doctors assembled at the Hospital. Dr. Baban Gangurde accused No. 1 informed the complainant Bhalchandra to call other relatives of Meenabai and also told that second operation was required to be performed on the patient Meenabai. All the relatives of Meenabai got petrified and started asking as to what necessitated the second operation again. Accused No. 1 thereupon, informed them that because of the first operation, some complications were created in the uterus of Meenabai, and therefore, she was having excessive bleeding, and therefore, the second operation was required to be performed to rectify the mistake. Consent of Bhalchandra was taken, and thereafter, at 10 O'clock in the night, the patient was taken to operation theatre and was brought out after about two hours. About three four other doctors, including both the accused were inside the operation theatre at the time of the operation. In all, eight bottles of blood was given to the patient. Some other medicines were also given, as prescribed by accused No. 1. However, inspite of all these, the condition of Meenabai went on deteriorating and ultimately, after two days, in the few hours of Saturday, the patient again started having unbearable pains. Complainant therefore again requested the Accused No. 1 to examine the patient. Accused No. 1 telephoned some other doctor by name Dr. Sanjay Shah, and they continued to treat the patient, but with no success, and the patient Meenabai expired on 29th June, 1991 at 5.45 a.m. All the relatives of the patient were very scared. Accused No. 1 told the complainant to take the dead body at his residence and accordingly, on the same day, last rites were performed. Thereafter, complainant thought that the police would take some action against the husband and wife. He was convinced that death of his wife was caused because of the negligence of Dr. Kamal Gangurde accused No. 2. He came to know after enquiry that she had a bogus degree and she was not qualified to perform abortion, and that, despite this, she performed abortion on Meenabai and because of the complications resulting therefrom, the catastrophe took place.

4. After the death of Meenabai, complainant's friends, well-wishers and relatives started paying condolence visit to him. One Mr. Dhruva Narayan Wagh also had come to meet him. At that time, he narrated the entire incident to him, and at that time, he learnt that accused No. 2 who performed abortion of Meenabai, had bogus degree and that, she was only learning under accused No. 1. Mr. Dhruva Narayan Wagh told the complainant to make complaint with the police. However, mental condition of the complainant was very disturbed, so he told Mr. Wagh to make complaint, which he did. Complainant also thought that police, of their own, would take some action against the accused. But nothing was done by the

police, even though, there was a complaint filed by Mr. Dhruva Wagh. Thereafter, the complainant made a complaint Exhibit C is the typewritten copy of the First Information Report.

5. After completing the formalities, Additional Sessions Judge, Malegaon framed charges in Sessions Case No. 74 of 1992 against both the accused on 30th June, 1993 u/s 201 read with Section 34 of the Indian Penal Code and also u/s 176 read with section 34 of the Indian Penal Code, as the incident was not reported by the petitioners to the police though they were required to do so. The main charges were framed against accused No. 2 Sau. Kamal Baban Gangurde. They were u/s 304 of the Indian Penal Code, and alternatively, u/s 304-A, 314 of the Indian Penal Code. She was also charged u/s 33(2) of Maharashtra Medical Practitioners Act, 1961.

6. Being aggrieved by the framing of charge as aforesaid, the petitioners have approached this Court by filing this Criminal Revision Application.

7. Mrs. Bhonsale, appearing for the petitioners, has contended that charge u/s 304 of the Indian Penal Code against accused No. 2 should not have been framed by the Additional Sessions Judge. She stated that it was a more serious offence and that accused No. 2 did not have intention of causing death of the patient Meenabai. As far as other charges were concerned, it appears that no grievance is there with respect to these charges framed against the petitioners. However, prayer is made that the charge framed against the accused No. 2 u/s 304 of the Indian Penal Code be quashed.

8. I have heard Mrs. Bhonsale for the petitioners at length. I have also heard Mr. Mhaisapurkar, the learned A.P.P. I have also gone through the copy of the First Information Report and the statement of the complainant dated 20th September, 1991. I have also perused the order dated 24th January, 1994 passed by the Additional Sessions Judge, Malegaon.

9. As far as charge u/s 304 of the Indian Penal Code is concerned, it is nobody's case that accused No. 2 Kamal Baban Gangurde had intention of causing death of the patient Meenabai. But section 299 of the Indian Penal Code, which gives definition of culpable homicide, does not include ingredient of "intention" of the doer alone. It also includes element of "knowledge". For the sake of convenience, definition of culpable homicide as given in section 299 of the Indian Penal Code, is reproduced below :

"299. Culpable homicide.---Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

10. Thus, it can be seen that what is relevant for our purpose, is the second part of the definition of culpable homicide as given in section 299 of the Indian Penal Code. It is nobody's case that accused No. 2 Kamal Gangurde had intention of

causing death of the patient Meenabai, but she certainly had knowledge that when she had no educational qualifications to perform abortion and if inspite of that, she was venturing upon this act, her act was so dangerous that it was likely to cause death. This element of knowledge can certainly be attributed to her. Her educational qualification are very poor. She has the background of having Degree in B.E.M.S. and she has learnt something in Ayurveda. She has no degree or even diploma of allopathic medicine, leave aside any knowledge of gynaecology and obstetrics. She had no knowledge of female anatomy to perform the operation of abortion. Inspite of knowing her limitations, inspite of knowing that she was not qualified to perform such operation, she ventured to do that, therefore the "knowledge part" of the definition of Section 299 of the Indian Penal Code has to be attributed to her, and there is no escape from this situation. Performing abortion is a very delicate type of operation, which many times, proves to be risky one, and has to be handled by a person, who is qualified to perform it. Petitioner No. 2 Kamal Baban Gangurde knew that she had no such qualification, and inspite of that, she performed the said operation, resulting into the death of the patient. Therefore, at this prima facie stage, it cannot be said that any error was committed by the Additional Sessions Judge in framing charge against accused No. 2 u/s 304 of the Indian Penal Code. Hence, the following order :

Criminal Revision Application No. 45 of 1994 is rejected.