
(1998) 11 BOM CK 0037

In the Bombay High Court

Case No : Criminal Revision Application No. 282 of 1996

Dr. Mrs. Mrudla Suresh Deshpande

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 304A

Citation : (2001) 3 BOMLR 205

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : Mrs. Mohite-Dere, for the Appellant; Mr. M.P. Galeria, Assistant Public Prosecutor, for the Respondent

Judgement

D.G. Deshpande, J.—The petitioner is a qualified medical practitioner, who is facing prosecution before the Sessions Judge. Pune, for offences u/s 304 of the I.P.C. She filed an application before the Sessions Judge, Pune on 5.12.1994 for her discharge from offence u/s 304 Part (1) or Part (II) of the I.P.C. and prayed that the case be sent to the J.M.F.C., Pune, for trial u/s 304(A) of the I.P.C. This application of the petitioner-accused was rejected by the Additional Sessions Judge and hence, this Revision.

2. Counsel for the petitioner produced the copy of the entire charge-sheet that was filed against the petitioner. Charge-sheet shows that one patient by name Gulab Bansidhar Panda of Pune was admitted in the hospital for removing stones-gall bladder disease. However, before performing the operation the present accused-petitioner administered anaesthesia to the patient and it appears from the charge-sheet that excess anaesthesia was administered to the patient and therefore surgery was required to be performed wherein the patient died.

3. It is in this background that the case was registered against the present petitioner and she was prosecuted.

4. It was contended by the counsel for the petitioner that from the facts narrated

by the prosecution in the charge-sheet no offence u/s 304 Part (I) or (II) could be made out against the petitioner and at the most she could be prosecuted for offence u/s 304(A) of the I.P.C. i.e. causing death by negligence. Counsel for the petitioner relied upon certain Judgments in respect of her contentions, namely :

1. Orissa High Court Judgment in Dr. Debendranath Tripathi & Ors. v. State of Orissa & 5 Ors.
2. Allahabad High Court Judgment, Ram Niwas v. State of U.P.
3. Supreme Court Judgment in Juggankhan v. The State of Madhya Pradesh.

On the other hand it was contended by the learned A.P.P. that when the petitioner-accused was a qualified doctor, she had the requisite knowledge of the fact that if anaesthesia was administered in excess or if some mistake was committed by her while administering anaesthesia, the same would necessarily result in the death of a patient. Therefore, according to him, the case was rightly pressed by the prosecution for offences u/s 304 Part (II). He further contended that at any rate, it was open to the accused to face the trial before the Sessions Court and if ultimately it was found by the Sessions Judge that no offence u/s 304 Part (II) was made out, the Sessions Judge was empowered to convict the accused u/s 304(A) of the I.P.C.

5. The three cases relied upon by the counsel for the petitioner negate the submissions made by the learned A.P.P. in the case of Orissa High Court, similar question on a similar facts was raised as per the F.I.R. in that case, it was alleged that the deceased died due to negligence on the part of the Surgeon and his associates and from the statements made during investigation, it was specific case of the prosecution and supported by the post-mortem examination that the death was due to asphyxia caused due to heavy dose of anaesthesia. In the background of this fact, the provisions of Sec. 304(I) and (II) and also 304(A) the Orissa High Court ultimately came to conclusion that it could hardly be said that the injury was caused either with the intention of causing the same or with the knowledge that by such act the patient was to meet his death. It is further observed that any negligence on the part of the doctor if carrying out operation ordinarily bears no intention of causing culpable homicide or a knowledge that it would likely to result in death. In the ruling of Allahabad High Court referred to above, the accused was not a qualified doctor but he had administered an injection resulting in death of the patient but even in that case he was found guilty u/s 304(A) of the I.P.C. In the case of the Supreme Court referred above Homoeopath administering poisonous medicines to patient without studying its effect resulting in death of the patient. But even in that case he was guilty u/s 304A of the I.P.C. From these three cases, it will be clear that consistently it has been the view of the Courts that if a patient die on account of the negligence of the doctors, during operation or during medical treatment then the cases would generally come u/s 304A of the I.P.C.

6. It is true that all these cases arise out of the conviction of the accused and not

at the stage of framing of charge of filing of the charge. However, principles of criminal law would not depend upon the stage of the case but will have to be considered with reference to the facts disclosed in the prosecution papers.

7. The counsel for the petitioner has produced the copy of the charge-sheet and even after going through the charge-sheet, no evidence of offences u/s 304 Part (I) or (II) is made out. The Additional Sessions Judge though has considered some other rulings has not considered this aspect of the matter, might be because these rulings were not cited before him. For all these reasons, the Revision is required to be allowed and the proceedings against the petitioner u/s 304 either Part (I) or (II) required to be quashed, However, directions of the following nature is necessary. Hence, the order :

ORDER

1. Revision Application allowed. Rule made absolute. Petitioner accused is discharged from offence u/s 304(11) and trial against her u/s 304A of the I.P.C. will proceed according to law.
2. It is clarified that if during trial sufficient material is placed before the Magistrate by the prosecution on the basis of which charge u/s 304 Part (II) can be framed, then the Magistrate will be at liberty to pass appropriate orders in that regard.
3. Revision Application disposed of accordingly.