
(2008) 09 AHC CK 0234
In the Allahabad High Court

Dr. Praveen Kumar Jain

APPELLANT

Vs

State of U.P. and Ram Ji Pateria

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 482
Penal Code, 1860 (IPC) — Section 227, 304, 304A, 482

Citation : (2008) 09 AHC CK 0234

Hon'ble Judges : S.N.H. Zaidi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N.H. Zaidi, J.—This revision has been directed against the order dated 15.12.2007 passed by Additional Sessions Judge, Court No. 5, Jhansi in Sessions Trial No. 19/07, State v. Praveen Kumar, rejecting the discharge application and framing the charge of Section 304 I.P.C. against the revisionist.

2. The facts giving rise to this revision, in brief, are that an FIR was lodged at police station Mawabad, Jhansi by Ramji Pateria (O.P. No. 2) with the allegations that his wife Smt. Rajeshwari was admitted on 14.04.2005 in the Life Line Hospital, Jhansi with the complainl of pain in her abdomen and chest by the revisionist, who was running that hospital and was also a Professor in Maharani Laxmi Bai Medical College Jhansi, and after several tests it was diagnosed that she was having a stone. On 16.04.2005, when the complainant asked for the discharge of his wife, the revisionist prescribed an injection of "Penidure A-1 La-12" to the patient. The patient and the complainant informed the revisionist that the doctors of All India Institute of Medical Sciences (AIIMS), New Delhi had prohibited the said Injection to her and showed him the prescription slips of AIIMS.

3. The revisionist, however, insisted upon giving the said injection to her and accordingly that injection was given to Smt. Rajeshwari, but soon thereafter her body became stiff and she went in coma and ultimately died. On that report, a

case u/s 304-A I.P.C. was registered against the revisionist, but after investigation the police submitted the charge sheet u/s 304 I.P.C. and the Magistrate took cognizance thereon. Against the charge sheet and the cognizance, the revisionist filed a petition (Criminal Misc. Application No. 11750/2005) u/s 482 Cr.P.C, before the High Court. The said petition was dismissed on 06.04.2007 by this Court. After the case was committed to the court of Sessions, the accused moved an application for his discharge u/s 227 Cr.P.C. before the trial Judge. The learned lower court rejected the discharge application and observed that there were sufficient grounds to frame the charge of Section 304 I.P.C. against the accused. Being aggrieved with that order, the accused has filed this revision.

4. I have heard the learned Counsel for the revisionist and the learned AGA for the State and perused the material on record. No Counsel appeared for O.P. No. 2.

5. The contention of the learned Counsel for the revisionist is that even if the allegations of the prosecution are taken as undisputed, though denied, yet the offence of Section 304 I.P.C. is not made out against the revisionist as from the evidence on record it cannot be presumed that the revisionist had intended to cause the death of Smt. Rajeshwari or had knowledge that her death would be caused by giving that injection. It has also been contended that there is also no documentary evidence on record to show that she had died as a result of giving Penidure LA-12 injection or due to wrong medical treatment. It has been pointed that no post-mortem examination of the deceased was conducted and as per provisional death certificate given by the Hospital, which is part of Annexure-8 to the affidavit, the patient had died due to Cardio-pulmonary arrest.

6. It has also been pointed out by the revisionist's Counsel that neither the Investigating Officer had collected the prescription of the AIIMS in which Penidure LA-12 injection was allegedly written as prohibitive to the patient, nor the complainant had given the same to the Investigating Officer or filed before the trial court and thus there is no documentary evidence on record to prima facie show that the said injection was prohibited to the patient and the accused had the knowledge of that fact. It has further been contended that since the lower court has not taken into consideration the above circumstances while deciding the discharge application of the accused-revisionist, therefore, the impugned order is bad in law.

7. The fact that Penidure LA-12 injection was prescribed by the revisionist and it was given to Smt. Rajeshwari on 16.04.2005, is not disputed to the revisionist and is corroborated by the copy of the case sheet of Smt. Rajeshwari filed by the revisionist.

8. The learned lower court, after referring to the order dated 6.4.07 passed by this Court on the petition of Section 482 Cr.P.C., has observed that since the High Court did not quash the charge sheet filed u/s 304 I.P.C. and the prosecution

evidence is the same, it would not be proper to draw any inference from the record contrary to the findings of the High Court. This shows that the trial court, while passing the impugned order, was influenced by the observations of this Court and did not independently consider the evidence to see whether from the evidence on record the offence of Section 304 I.P.C. is made out or not.

9. It appears that, during the hearing of the petition filed u/s 482 Cr.P.C., the observations of the Hon''ble Supreme Court made in the case of Jacob Mathew v. State of Punjab and Anr. reported in 2005 (53) ACC 251 : 2005 SCCL. Com. 456 were brought to the notice of this Court wherein the Apex Court has laid down certain guidelines for prosecuting the doctors .The Supreme Court in paragraphs 48 and 49 of the judgment has observed thus:

48. As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on an increase. Sometimes, such prosecutions are filed by private complainants and sometimes by police on an F.I.R. being lodged and cognizance taken. The Investigating Officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash and negligent act within the domain of criminal law u/s 304-A I.P.C. The criminal process once initiated, subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end, he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standard.

49. We may not be understood as holding that doctors can never be prosecuted for an offence for which rashness or negligence is an essential ingredient. All that we are doing to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence, there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainants prefers recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such proceedings have to be guarded against.

10. This Court after referring the above observations of the Supreme Court, had held that in this case chargesheet had not been submitted u/s 304-A I.P.C. but for the offence of Section 304 I.P.C., i.e., culpable homicide not amounting to murder, and the Hon''ble Supreme Court had laid down the guidelines where the doctors had been prosecuted for an offence having the element of "negligence" or "rashness" but in the offence of culpable homicide not amounting to murder there was no element of "rashness" or "negligence", hence the above case law was not applicable in case where a doctor was being prosecuted for the offence of Section 304 I.P.C.

11. The Hon''ble Apex Court in the case of Dr. Suresh Gupta v. Government of

N.C.T. of Delhi (L) 2004 ACC 257 has held that:

20. For fixing criminal liability on a doctor or surgeon, the standard of negligence required to be proved should be so high as can be described as "gross negligence" or "recklessness". It is not merely lack of necessary care, attention and skill. The decision of the House of Lords in *R. v. Adomako* 1994 (3) All ER 79 relied upon on behalf of the doctor elucidates the said legal position and contains following observations:

Thus, a doctor cannot be held criminally responsible for patient's death unless his negligence or incompetence showed such disregard for life and safety of his patient as to amount to a crime against the State.

21. Thus, when a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as "criminal". It can be termed "criminal" only when the medical man exhibits a gross lack of competence or inaction and wanton Indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.

12. It also appears that this Court, after considering the allegations made in the FIR, did not find it expedient to interfere in the proceedings pending before the court below and accordingly refused to quash the proceedings, in exercise of the jurisdiction u/s 482 Cr.P.C.

13. With utmost regard to brother V.D. Chaturvedi J., I respectfully disagree with his view that the law laid down in *Jacob Mathew's* case (supra) is not applicable in the present case, merely on the ground that the chargesheet was filed u/s 304 I.P.C. In my view, this case is to be seen in the light of the above observations made by the Hon'ble Apex Court and it has full application in the instant case. The court is never guided by the Section of offence mentioned by the Investigating Officer in the charge-sheet. The court is required to consider the record of the case and the documents submitted therewith to find out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. In this endeavour, the trial court was required to arrive at its independent conclusion, but it appears that the trial court had failed to discharge its legal obligation in the instant case.

14. From the perusal of the impugned order it also appears that the learned trial court did neither properly consider the evidence and the documents on record, nor see:

(1) whether there was any motive or intention on the part of the accused to give wrong treatment to the patient admitted in his hospital, for causing her death,

(2) the effect of the absence of the alleged prescription slip of AIIMS, New

Delhi, relating to the prohibition of Penidure LA-12 injection to Smt. Rajeshwari Devi,

(3) the effect of the absence of documentary evidence relating to the cause of death due to non conduction of post mortem examination of her dead body, and

(4) whether the ingredients of the offence of Section 304 I.P.C. were attracted to the facts and circumstances of the case.

15. In my view, in the instant case, the above circumstances were relevant for the trial court to see whether any offence is made out against the accused, without being influenced by the order of this Court passed u/s 482 Cr.P.C., but it appears that it has failed to consider them.

16. The Hon''ble Supreme Court in Union of India (UOI) Vs. Prafulla Kumar Samal and Another, has observed that in exercising jurisdiction u/s 227, the Judge has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced, any basic infirmities appearing in the case and find out whether a prima facie case against the accused has been made out. The Judge should not make a roving into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. The test to determine the prima facie case would naturally depend upon the facts of each case. By and large if two views are equally possible and the judge is satisfied that the evidence giving rise to some suspicion is not grave, he will be fully justified in discharging the accused.

17. In view of what has been stated above, it is evident that the learned lower court did not consider the relevant circumstances of the case and the evidence, including the documents, on record and had committed material irregularity in passing the impugned order. The impugned order is, therefore, suffering with illegality and cannot be allowed to sustain.

18. The revision is, accordingly, allowed. The impugned order dated 15.12.2007 passed by the trial court is set aside. The case is sent back to the trial court to decide the question of charge against the accused alongwith his discharge application afresh in the light of the observations made in this judgment and the law laid down by the Hon''ble Apex Court in the cases of Jacob Mathew and Dr. Suresh Gupta (supra), independently of the order of this Court in the proceedings u/s 482 Cr.P.C., after giving an opportunity of hearing to the parties.

19. Office is directed to send the record of the lower court back to it immediately.