
(2008) 11 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-10771 of 2007

Neena Gupta

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:

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

Citation : (2008) 27 CriminalCC 858

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Advocate : H.S. Brar, DAG, for the Respondent

Final Decision : Dismissed

Judgement

Ajai Lamba, J.—This petition u/s 482 Cr.P.C. seeks quashing of FIR No.96 dated 20.03.2006 lodged for commission of offence u/s 304A

IPC with Police Station, Civil Lines, District Patiala.

2. The FIR at issue registered at the instance of respondent No.2, Mr.Surinder Singh Chadha narrating that there was lump in the uterus of

Devinder Kaur, aged 42 years, wife of the complainant. In context of the ailment, Devinder Kaur was taken to the petitioner, Dr.Neena Gupta, in

her Clinic, Nitin Nursing Home, Ajit Nagar, Patiala on 05.03.2006. After examination, the petitioner recommended tests and prepared the file for

surgery. Admission fee was taken and certain tests were recommended. The complainant was informed by the petitioner that the surgery would be

conducted on 11.03.2006 (Saturday) at 6.30 A.M. Blood count being less, blood transfusion was required and the complainant alongwith his wife

was called to the Clinic on 10.03.2006. One unit of blood was requisitioned from

Rajindra Hospital, Patiala by scribing sample letter. After starting the transfusion, at about 10.30 A.M. on 10.03.2006, the petitioner went somewhere to attend a function. No care of the patient was taken and Devinder Kaur was left at the mercy of untrained staff. The petitioner came back at around 1.30 P.M. Devinder Kaur was suffering and the complainant could not understand the cause. After returning, enquiries were made by the petitioner. By then, half the bottle had been transfused. One injection was given and the blood bottle was removed. Thereafter, till evening the petitioner did not pay any attention towards the patient i.e. wife of the complainant. By the night, Devinder Kaur started complaining of severe pain in her abdomen, perplexed and dizziness. Despite requests, no attention was paid to her. At 10.00 P.M., the petitioner informed the complainant that the disease of the patient was not within her understanding and the patient may be examined by calling some doctor from outside. The complainant however told the petitioner that because patient had been brought to her clinic and her condition had worsened on account of negligence of the petitioner, it was for the petitioner to call for another doctor at her level.

3. It is alleged that the petitioner after conducting a check up on the wife of the complainant stated that the patient was only making excuses. The complainant was turned out of the room. By then, the patient was suffering from urination problem. The petitioner left while instructing the staff that if urine was not passed, a tube may be put. The petitioner went to her house for sleeping. The tube for urination was inserted, however, it was of no use. The patient was suffering throughout the night. Some treatment was given by the staff. The condition of the patient worsened. The petitioner came on next day i.e. 11.03.2006 in the morning at 7.00 A.M. The petitioner was informed by the staff that the patient had not passed any urine, however, without attending on the patient, the petitioner went to the operation theatre for conducting another surgery on another patient.

4. It is further the allegation that in the meantime, condition of the wife of the complainant became precarious whereupon the petitioner was informed by a Nurse. The petitioner came out of the operation theatre and on seeing Devinder Kaur in a serious condition, Dr.Harbans Lal was called, whereafter some further treatment was given to the patient. During this

period, the petitioner learnt that the condition of the patient had become serious because of blood transfusion. At about 8.00 P.M., the petitioner called the complainant and said that the condition was serious and she had no arrangements. The petitioner had spoken to the doctors in Fortis Hospital, Mohali whose Van and doctors would come and Devinder Kaur may be given treatment there. The complainant was further informed that if the patient was to be given treatment at Fortis Hospital, then decision was required to be conveyed within 10 minutes. The complainant consented whereupon Ambulance from Fortis Hospital came at 10.00 P.M. and the patient was transferred to Fortis Hospital, Mohali.

5. On 20.03.2006 at about 7.00 A.M., wife of the complainant Devinder Kaur died. It is specifically alleged that the death occurred because of negligence and carelessness during the course of treatment given by petitioner, Dr. Neena Gupta. Complaint was made on 20.03.2006 itself.

6. It seems that the matter was referred to the Board of Doctors in view of the nature of complexities. The report has been placed on record as

Annexure P2. The Board was constituted of five doctors which included Civil Surgeon, Patiala; Professor & Head Medicine, Government Medical

College, Patiala; Professor of Surgery, Government Medical College, Patiala; Professor & Head, Forensic Medicine, Government Medical

College, Patiala and Gynecologist, SMO, CHC, Model Town, Patiala. Statements of the complainant, his son, petitioner, husband of the petitioner

and other related persons were taken. The relevant parties were given chances to cross examine the persons who appeared during the course of

enquiry. Following are the relevant contents of the findings:-

Members of the Medical board have observed that:

Blood was procured from an approved blood bank i.e. Rajindra Hospital, Patiala and was of the same blood group as of the patient Mrs. Davinder

Kumar. There is no doubt in this case that patient had a reaction to the blood transfusion. Transfusion reactions are known to occur. Whenever

they occur, it is well known that they can be mild like shivering or they can trigger a continuous harmful body reaction with catastrophic

consequence and with multiple organ failure and even death.

The patient did not undergo any surgery and a blood transfusion was given to build up the patient preparatory to surgery. This is a well accepted

method of treatment. That blood transfusion reaction occurred is well established fact in this case. At the beginning of the manifestation of blood

transfusion, the reaction was mild. This was treated by qualified doctor with stoppage of blood and routine measures like antihistaminic, which is

standard treatment in mild cases. That blood reaction would continue and progress can only be observed by clinical observation and laboratory

tests. Patient was kept under observation. In spite of the repeated requests of the relatives of the patient, the Dr. Neena Gupta did not visit the

patient from 10.00 P.M. of 10.03.2006 to 7.00 A.M. of 11.03.2006. After that, the patient was attended by physician, nephrologist and doctors

of the Nitin Nursing Home and then the patient was referred to Fortis Hospital, Mohali on the expert opinion of Nephrologist.

The patient stayed in Fortis Hospital Mohali, for 8-9 days till death and progressive nature of internal complications seems unstoppable and

unmanageable resulting in the death of the patient.

Members of the Medical Board are of the unanimous opinion that:

The Medical Board is of the opinion that though there appears no gross negligence on the part of the Consultant Gynaecologist, however, the

callous attitude on the part of attending Gynaecologist Dr. Neena Gupta cannot be ruled out. A more energetic approach and a sympathetic attitude

was desirable. This would have satisfied the hurt feelings of the relatives of the deceased.

7. During the first hearing on 05.04.2007, much has been made out on behalf of the petitioner from the concluding portion/opinion of the Board. It

was also contended that another board had been constituted subsequently, however, it would be an unending process if it goes on. Be that as it

may, further proceedings had been stayed vide Order dated 05.04.2007 and therefore, I have been informed by learned counsel for the

respondent that the second board of doctors had not proceeded in the matter.

I have considered the issues involved.

8. In Dr. Suresh Gupta Vs. Govt. Of N.C. T. of Delhi & Anr., 2604(2) Apex Court Judgments 610 (S.C.): 2004(4) Criminal Court Cases 283

(S.C.) :AIR 2004 S.C 4091, the following (relevant) has been held:-

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. Vs*

Adomako (supra) 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.

22. This approach of the courts in the matter of fixing criminal liability on the doctors, in the course of medical treatment given by them to their

patients, is necessary so that the hazards of medical men in medical profession being exposed to civil liability, may not unreasonably extend to

criminal liability and expose them to risk of landing themselves in prison for alleged criminal negligence.

23. For every mishap or death during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecutions of

doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because if the courts

were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own

safety than giving all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and patient. Every

mishap or misfortune in the hospital or clinic of a doctor is not a gross act of negligence to try him for an offence of culpable negligence.

9. In *Jacob Mathew Vs State of Punjab & Anr.*, 2005(2) A.C.J .136 (S.C.): 2005(3) Criminal Court Cases 858 (S.C.): AIR 2005 S C 3180, in

the context of essential components of negligence, sub-paras (2), (5) and (7) of

para 49 may be referred to, which read as under:-

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part

of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional

negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as

a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better

alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to

that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those

precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which

might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while

assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly,

when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally

available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

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(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be

negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to

criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a

higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

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(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do

something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do.

The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

10. In Para 53 of the judgment rendered in Jacob Mathew's case (supra), the following has been observed:-

53. Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the

State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the

future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private

complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion

given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer

should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion

preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and

unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested

in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for

collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the

prosecution unless arrested, the arrest may be withheld.

11. It therefore transpires that a legal duty is cast on a doctor to exercise due care on the part of the party complained of towards the party

complaining the former's conduct within the scope of the duty; breach of the said duty is required to be shown, as also consequential damage.

Judged by the standards laid down, a professional would be liable for negligence on one of the two findings; either he was not possessed of the

requisite skill which he professed to have possessed, or, he did not exercise with reasonable competence in the given case, the skill which he did

possess. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.

12. A practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Deviation

from normal practice is not necessarily evidence of negligence. Mere accident is also not evidence of negligence. Also an error of judgment on the

part of a professional would not per-se be negligence. So long as it can be found that the procedure which was adopted was one which was

acceptable to medical sciences as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure

and not another and the result was a failure. The hazard taken by an accused-doctor should be of such a nature that injury which resulted was most

likely imminent. It must be shown that the accused did something or failed to do something which in the given facts and circumstances, no medical

professional in his ordinary senses and prudence would have done or failed to do.

13. So as to bring the case within the four corners of above said parameters, it has been held that the complaint may be entertained only after

prima facie evidence is produced before the Court in the form of credible opinion given by another competent doctor to support the charge of

rashness or negligence on the part of the accused doctor.

14. In the case in hand, the report points out that the patient did not undergo any surgery. Only blood transfusion was made to build up the patient

and prepare her for surgery. It is also brought out that on blood transfusion, reaction is known to occur. Progress of the reaction can only be

observed by clinical observations and laboratory tests. Whenever reaction occurs, it is well known that there can be mild or it can trigger a

continuous harmful body reaction with catastrophic consequence with multiple organ failure and even death.

15. In spite of the repeated requests of the relatives of the patient, the petitioner did not visit the patient from 10.00 P.M. on 10.03.2006 to 7.00

A.M. of 11.03.2006, whereafter attention was given.

16. The circumstances prima facie indicate that in the meantime, the process had become irreversible and Devinder Kaur went in a shock. Despite

medical aid having been given, she could not be revived and finally expired. The conclusion of the medical board indicates that there appears to be

no gross negligence on the part of the petitioner, however callous attitude on the part of the petitioner cannot be ruled out. The conclusion however

cannot be read in isolation. The observations of the Board are also relevant and have been reproduced hereinabove which clearly indicate that

reaction to blood transfusion became progressive and internal complications seemed unstoppable and unmanageable resulting in death of the

patient in Fortis Hospital, Mohali.

17. Considering the totality of facts and circumstances of the case, I find that deceased Devinder Kaur was 42 years of age. She was yet to be

operated upon. Admittedly, blood transfusion was given at the instance of the petitioner. Reaction to blood transfusion is a known feature. The

petitioner was required to monitor the progress of reaction as the developing complications were reported to the petitioner. Despite such facts

being known to the petitioner, the deceased was left without attention. Reaction is known to be fatal and yet petitioner did not attend on the patient

during crucial hours.

18. The opinion of Board of Doctors having been taken, I find that prima facie, it cannot be said while exercising jurisdiction u/s 482 Cr.P.C. that

the FIR should be quashed. It would be for the Trial Court to consider whether the petitioner was criminally negligent as is required on the touch-

stone of the law as discussed above. While exercising jurisdiction u/s 482 Cr.P.C. under inherent powers, the petitioner cannot be adjudged

innocent. The facts and circumstances do not warrant quashing of FIR.

19. The petitioner would have all the remedies available to her in bringing evidence on record during the course of trial.

The petition is dismissed.

20. Lest it should prejudice the rights of the petitioner, it is made clear that anything said in the order is not an opinion on the merits of the case and

observations have been made only so as to decide the limited issue involved in the petition.