

(1967) 07 BOM CK 0020

In the Bombay High Court

Case No : Criminal Application No. 1514 of 1966

P. Joseph Varghese and Another

APPELLANT

Vs

H.J. Chinoy and Another

RESPONDENT

Date of Decision : 11-07-1967

Acts Referred:

Coroners Act, 1871 — Section 19, 24, 24(6), 29, 8

Citation : AIR 1968 Bom 426 : (1968) 70 BOMLR 238 : (1968) CriLJ 1610

Hon'ble Judges : Palekar, J;Chitale, J

Bench : Division Bench

Advocate : S.D. Vimadalal, P.R. Vakil and K.G. Menon, I\ b. by Mulla and Mulla and C.B. Co, for the Appellant; V.H. Gumaste, Government Pleader, for the Respondent

Judgement

Chitale, J.—This is a petition by Dr. P. Joseph Varghese and Air India, a Corporation incorporated under the Air Corporation Act, praying that the verdict of the Coroner of Bombay regarding the death of Vasudev Dattatraya Kamat be quashed either wholly or in part.

2. Dr. Varghese is a fully qualified medical practitioner in the employment of Air India as the Chief Medical Officer. He has held that post for several years. There are other doctors working under Dr. Varghese. The deceased Vasudev Dattatraya Kamat was employed by Air India as a Ground Engineer. He was treated at the Air India Clinic by Dr. Varghese, as well as by the Deputy Chief Medical Officer Dr. Narula on several occasions prior to 2nd April 1966, when he, i.e., the said Vasudev Dattatraya Kamat died in unfortunate circumstances which are as follows.

3. On 2nd April 1966 the said Kamat approached Dr. Varghese. Mr. Kamat disclosed symptoms of influenza and on clinical examination Dr. Varghese found that he (Kamat) had also developed early signs of bronchopneumonia Dr. Varghese alleges in the petition that Kamat was suffering from sustained high blood-pressure. His blood-pressure was recorded on about six occasions from

9-12-1964 onwards and that he was treated for high blood-pressure by Dr. Narula. The case-history of Kamat further disclosed that in the past he was injected streptopenicillin on six occasions without any complaint of reaction. Dr. Varghese further alleges that after ascertaining from the said Kamat that in the past he did not get reaction due to penicillin and that he was not suffering from any allergy which contra-indicated the use of penicillin, Dr. Varghese injected into him, i.e. Kamat, Dicrysticin (Streptopenicillin) intramuscularly. After giving this injection, the said Kamat was asked to wait at the clinic and also to collect the mixture and the tablets that are prescribed for him. Within fifteen minutes thereafter an attendant rushed to Dr. Varghese and informed him that Kamat's condition was serious. Dr. Varghese rushed to the spot where Kamat was lying and with the assistance of Dr. Narula and Dr. Kurade he gave all possible medical help such as injections of hydrocortisone, coramine antisthene Artificial respiration was also given and was continued. According to Dr. Varghese, he did not inject adrenaline in view of the history of sustained high blood-pressure. Finding that Kamat's condition was getting more serious, it was thought desirable to remove him to Nanavati Hospital at Vile-parle in an ambulance. Dr. Kurade and one Hanuman, a dresser of the clinic, accompanied Kamat in the ambulance, while Dr. Varghese followed the ambulance, in his car. On reaching Nanavati Hospital, Dr. Subodh Thakkar an honorary physician, tried to revive Kamat, but those attempts failed and ultimately Kamat was declared to be dead. Police were informed immediately. The dead body of Kamat was sent to the morgue at J.J. Hospital. Subsequently, the Coroner in his discretion decided to hold inquest with the aid of Jurors.

4. At the inquest deceased Kamat's brother, who is a Brigadier in Military, expressed some suspicion, although he started by saying that he was interested only in finding out the cause of death. In view of this, there is a full-fledged inquiry before the Coroner with the aid of the Jury. Several doctors gave evidence. Dr. Varghese was advised by the Coroner not to give evidence, since suspicion was expressed against him. Since the propriety of this action on the part of the Coroner is not challenged before us, we do not propose to go into that question.

5. After recording evidence, the Coroner charged the Jury and recorded its verdict in the prescribed form. The relevant portion of the verdict reads thus:

"We the said Jurors, find unanimously that the death of the said deceased which occurred in before admission in Nanavati Hospital as on/or about the 2nd day of April 1966 was caused by anaphylactic shock due to penicillin injection.

We came to conclusion that there is negligence on the part of Dr. Varghese.

Sensitivity test should have been performed before injecting the penicillin and adrenaline should have been injected.

Dr. Varghese was justified in sending the patient to the Nanavati Hospital but he should have accompanied him".

By the present petition, Dr. Varghese and Air India challenge the legality of the above verdict. In the petition, the petitioners have alleged that the Coroner did not conduct the inquiry properly, he expressed a bias in favour of the relations of the deceased and during the course of the inquiry he made several observations, which were prejudicial to Dr. Varghese and his legal advisers. It is further alleged that the several observations of the Coroner had a prejudicial effect on the minds of the Jurors causing prejudice to Dr. Varghese. It is further alleged that the verdict of the Jury. It is stated that the first paragraph of the above-quoted portion of the verdict was not in fact the verdict of the Jury since the Foreman of the Jury was not asked about it, and the first paragraph of the above-quoted portion was never in fact pronounced as verdict of the Jury.

6. The material contention raised by this petition is that the Coroner failed to put proper and pointed questions to the Foremen of the Jury in order to ascertain its verdict and in fact no proper verdict is recorded. It is urged that there is no finding or verdict of the Jury that Kamat's death was occasioned by a criminal act of another person, yet the verdict as recorded mentions that there was negligence on the part of Dr. Varghese and this, according to the petitioners, is not warranted by any of the provisions of the Coroners Act.

7. Before dealing with the contentions raised on behalf of the petitioners, we may refer to a recent decision of this Court, viz., Shriprakash Shivram Potdar Vs. The State, . This decision lays down, after referring to S. 29 of the Coroners Act, that High Court has the power to quash the inquisition, though not merely on technical grounds. This power is to be exercised to cure substantial defects. In that particular case the Court held that there was no evidence whatever on which the verdict of the Jury as to negligence could be based. By the final order the portion of the inquisition relating to negligence was quashed.

8. We may also refer to the relevant provisions of the Coroners Act. Section 8 provides that the Coroner himself shall hold a sort of preliminary inquiry and if he is satisfied as to the cause of death, he may direct that post-mortem examination is not necessary even though the death was sudden. S. 9 provides that if prior to or during the inquiry under S. 8 the Coroner has reason to suspect that any of the various circumstances mentioned in S. 9 exists and if it appears to the Coroner that there is reason for holding an inquest by a Jury, he shall proceed to hold such inquest. Clause (e) of S. 9 is material and is relied upon by the learned Government Pleader. That clause reads thus:

"(e) That the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public;

and in any other case, if it appears to the Coroner either before or in the course of the preliminary inquiry that there is reason for holding an inquest by Jury, he shall proceed to hold such inquest, whether or not the cause of death arose within his jurisdiction:

Provided that such inquest shall not be held in the case of death arising out of an offence triable under the Bombay Public Safety Measures Act, 1947".

Clause (e) of S. 9 indicts that the Coroner shall be justified in holding an inquest by Jury, if he has reasons to suspect that the circumstances disclosed in the particular case are prejudicial to the health or safety of the public or any section of the public. Section 17 authorises the Coroner to summon witnesses. Section 19(1) provides that all evidence recorded under the Act shall be on oath and the Coroner shall be bound to receive the evidence tendered on behalf of the person who is alleged to have caused or to be concerned in causing the death in question and S. 19(2) prescribes the manner in which the statement of such person shall be recorded by the Coroner, Sub-section (3) of S. 19 provides that for the purpose of S. 26 of the Evidence Act a Coroner shall be deemed to be a Magistrate. Section 20 provides that evidence shall be recorded as prescribed by S. 356, Cr. P. C. and for the purpose of S. 2 of Coroner shall be deemed to be a Magistrate. Section 24 is the material section; it sets out the contents of an inquisition and prescribes the manner in which an inquisition is to be drawn up. Section 25 provides that if in the opinion of the Coroner's Jury the death of a person is caused by another person by an act which amounts to an offence under the law prevalent in India, the Coroner shall immediately, after the inquest, forward a copy of the inquisition with names and addresses of the witnesses to the Commissioner of Police. Section 26 authorises the Coroner to issue a warrant for the apprehension of a person or persons responsible for causing the death in question and to send him forth with to a Magistrate empowered to commit him for trial. These are the relevant provisions for the purpose of this petition.

9. Mr. Vimadalal for the petitioner contends the provisions of S. 24 which are mandatory were not followed by the Coroner. Section 24 sets out the contents of the inquisition. Mr. Vimadalal points out that although Clause (4) of S. 24 requires the names of the Jurors to be set out in the present case. That, however, is merely a technical defect. Mr. Vimadalal further contends that Clause (5) of S. 24 requires the Coroner to ask the Foreman the Jury's verdict as to where, when and by what means the deceased came by his death. In the present case, Mr. Vimadalal contends that the Coroner did not ask the Jury to give its verdict as to where, when and by what means the deceased came by his death. In other words, he did not ask the Jury to give its verdict regarding the cause of death. It is true that the expression "Cause of death" with reference to the Coroners Act has a wider scope than the expression "Cause of death" as contemplated by medical opinion, but what Mr. Vimadalal contends is that no verdict on this point was taken and recorded by the Coroner. Since there were allegations against the Coroner in the petition this Court called for the Coroner's report while admitting the petition. In his report while admitting the petition. In his report, with regard to the cause of death, the Coroner says:

".....It is true that in the verdict as recorded, it is stated "the death of the deceased which occurred in/at before admission to the Nanavati hospital on an

about the 2nd day of April 1966 was caused by an anaphylactic shock due to a penicillin injection". This was stated in view of the cause of death mentioned in the post mortem report. When the post-mortem report specified the cause of death, it was not necessary to question the foreman as to what according to them was the cause of death".

From this report of the Coroner it is obvious that what was actually done was that the cause of death as it appears in the inquisition was merely copied from the post mortem notes. In his report the Coroner in terms says that it was not necessary to question the Foreman as to what according to the Jury was the cause of death. In our opinion, the Coroner was wrong in not recording the Jury's verdict as to the cause of death. Clause (5) of S. 24 does require him to record the Jury's verdict with regard to the items mentioned in Clause (5). As already observed, the Jury under the Coroners Act has to find out the facts and circumstances relating to the cause of death, which would be the basis of their verdict under Clause (6) of S. 24. Clause (6) requires the Coroner's Jury to find out whether the death was occasioned by the Criminal act of another, if so, who is guilty of that criminal Act. In order to record the verdict under Clause (5) would certainly be material. It is surprising that the Coroner merely copied out in the inquisition the cause of death and the circumstances attending the same.

10. Mr. Vimadalal points out that from the report of the Coroner himself it is clear that although the Coroner is of the view that Dr. Varghese was negligent, he is not of the opinion that the said negligence amounted to a criminal act. The relevant portion of the Coroner's report reads thus:

".....The verdict of the Jury was taken in a form which is partly printed with blanks which require to be filled up. It was not necessary to question the Foreman of the Jury as suggested in this para in view of the verdict of the Jury and the evidence in the case. After the verdict was taken down as per my dictation, it was read over to the Jury which accepted it to be correct. The Jury's verdict could not be on the question as to whether the first petitioner was guilty of any criminal act. If I had specially asked the Foreman whether the Jury meant that the negligence was criminal negligence, and if the Foreman had (as was probable) replied in the affirmative, the position of the first applicant would have been prejudiced....."

"Nor have I interpreted the verdict of the Jury as amounting to a pronouncement that there was criminal negligence. For, in that case, I would have forwarded (as I would have been bound to do u/s 25 of the Coroners Act) a copy of the inquisition proceedings to the Commissioner of Police. It is indeed a fact that I have not sent any papers to the Commissioner of Police".

It is clear from the report of the Coroner himself that in his opinion there was no evidence indicating that Kamat's death was occasioned by a criminal act. In other words, in the Coroner's opinion there was no evidence to indicate that negligence of Dr. Varghese amounted to a criminal act. From the report of the

coroner it appears that he understood the Jury's verdict also to be to the same effect. Relying on this, Mr. Vimadalal contends that the Coroner's Jury can consider the question of negligence only in order to find out whether the negligence, if any, caused the death in question and it amounts to a criminal act. If in the opinion of the Coroner and his Jury, even though there was some negligence on the part of Dr. Varghese, it did not amount to a criminal act, it is urged, the coroner had no authority to record by way of Jury's Verdict a mere finding as to negligence, when according to the Jury and the Coroner such negligence did not amount to a criminal act causing the death in question, and that too without recording that negligence was not the cause of the death in question and it (negligence) did not amount to a criminal act. In our opinion, the nature of Coroner's Jury's verdict under S. 24 is very clear. Under Clause (5) of S. 24 the Coroner's Jury is required to find out where, when and by what means the deceased came by his death. Read in its context, in our opinion, the expression "by what means the deceased came by his death" means the cause of death and the circumstances attending the cause of death. After having ascertained the cause of death and the circumstances attending the cause of death, the Coroner's Jury has to find out whether that cause and the said circumstances indicate that the death in question is occasioned by a criminal act of another person and, if so, who is that other person? In the present case, as already pointed out, there is no verdict of the Coroner's Jury on the question as to the cause of death. In other words, there is no verdict of the Coroner's Jury under clause (5) of S. 24. If there is no verdict under Clause (5), it is difficult to see how there was any occasion to record a verdict under Clause (6) of S. 24. In any case, if the Coroner and his Jury were clear that the evidence did not establish that Kamat's death was occasioned by a criminal act of another person, it was not proper for the Coroner to record a mere finding of the Jury as to negligence. The sole object of inquest by Coroner's Jury is to find out whether the particular death in question is occasioned by a criminal act or commission of another person. Hence, it is necessary that the Coroner should put pointed questions to the Foreman of the Jury with a view to ascertain accurately their verdict under Clause (6) of S. 24. S. 24 does not provide for recording any findings besides those indicated by Cls. (1) to (6) of S. 24 in the manner prescribed by the Second Schedule to the Act. Mr. Vimadalal contends that the Coroner and his Jury are not entitled to record a mere finding as to negligence unless that negligence amounted to a criminal act, as contemplated by Clause (6) of S. 24, because such a finding would affect prejudicially the person concerned in a Civil Court. It is urged that the Coroner and his Jury is precluded from recording any finding which may prejudicially affect the liability of the person concerned in a Civil Court. In support of this contention, reliance is placed on Halsbury's Laws of England, 3rd, Edn., Vol. 8, p. 506, Para 947. The relevant portion, reads thus:

".....In the course of the summing up the Coroner must warn the Jury against making any comments or riders except those permitted and against

framing their verdict in such a way as to appear to determine any question of civil liability".

Mr. Gumaste, the learned Government Pleader, relies on the foot-note (a) at p. 506 of the same volume. That foot-note reads thus:

"(a) How the deceased came by his death is wider than merely finding the medical cause of death. The Coroner must also investigate the circumstances surrounding the death. Nevertheless he should not, for instance, allow questions designed to discredit witness".

Relying on this foot-note, Mr. Gumaste contends that the Coroner's Jury was entitled to record the verdict in question stating that there was negligence on the part of Dr. Varghese, sensitivity test should have been done before injecting penicillin, adrenaline should have been administered and Dr. Varghese should have accompanied Kamat in the ambulance, even though in the Jury's opinion this negligence on the part of Dr. Varghese did not amount to a criminal act causing the death in question. We are unable to accept this contention of Mr. Gumaste. The above-mentioned foot-note merely indicates that the expression "how the deceased came by his death" is wider than the expression "cause of death" in medical terms. Undoubtedly, the Coroner and his Jury will be entitled to take into account the circumstances surrounding the death in question, but these circumstances are to be considered merely to find out whether the cause of death and the circumstances attending the death in question disclosed that it was caused by a criminal act of another person. From, that it does not follow that even though the Jury was of the opinion that the death in question was not caused by a criminal act of another person, a finding as to negligence, though it did not amount to a criminal act, can be recorded under S. 24. We have already pointed out the findings arrived at by the Coroner and his Jury in this case and in view of those findings we do not see any justification whatever for recording a mere finding in the inquisition that there was negligence on the part of Dr. Varghese, stating what he should have done what he failed to do. The learned Government Pleader relies on Clause (a) of S. 9 to justify the inclusion of the finding as to negligence in the inquisition. In our opinion, Clause (e) of S. 9 does not justify the recording of the above finding in the inquisition. Section 9, read as a whole, merely indicates in what circumstances the Coroner would be justified in holding an inquest by Jury. Clause (e) of S. 9, in our opinion, indicates that if there are any circumstances attending the death in question which endanger public health or safety, the Coroner would be entitled to hold an inquest by Jury. But Clause (e) had no bearing on the question as to what should be recorded in the Coroner's Jury's verdict under S. 24. For that purpose S. 24 is the only section which deals with the contents of an inquisition. The learned Government Pleader contends that in view of Clause (e) of Section 9 which indicates the very purpose of an inquest by Jury, even u/s 24, the Coroner's Jury would be justified in mentioning in its verdict the circumstances indicated in Clause (e) of S. 9. According to the learned Government Pleader, in the present case recording of

the facts mentioned in the inquisition, viz., there was negligence on the part of Dr. Varghese in not having taken the sensitivity test before injecting penicillin and in not injecting adrenalin, would be fully justified, because according to him the very purpose of the present inquest by the Jury would be frustrated if these facts are not recorded. This contention overlooks the basic purpose of an inquest under the Coroners Act. The sole purpose of an inquest under the Coroner Act is to find out the cause of death, whether the death in question was caused by any criminal act and, if so, whose criminal act it was. The Coroner's Jury would no doubt be justified in taking into account the circumstances indicated by Clause (e) of S. 9 while arriving at its findings under Clauses (5) and (6) of S. 24. At the highest, it may be said that the Jury's verdict is to the effect that the death in question was occasioned by a criminal act of another person, in that even the facts leading to such a conclusion may find place in the verdict. In our opinion, even mentioning such facts in the verdict is not strictly necessary, although the verdict may not be liable to be set aside merely on the ground that such facts are mentioned, if the ultimate verdict is that death was occasioned by a criminal act of another person. But in the absence of a positive, i.e., affirmative finding under Clause (6) of S. 24, there is no occasion whatever for recording the facts which are relevant for consideration in arriving at a finding to be recorded under Clause (6) of S. 24. It must be remembered that an inquest under the Coroners Act is merely a preliminary step to determine whether criminal proceedings should be started against the person concerned. In this respect, reference may be made to Archibald Criminal Pleading, Evidence and Practice, 36th Edn., p. 110, para 402. The relevant passage lays down that the finding at a Coroner's inquest held with a Jury accusing any person of causing the death of another is equivalent to the preferment and signing of a bill of indictment and upon such inquisition the accused must be committed for trial for murder, manslaughter or infanticide. The position in India under the Coroners Act seems to be the same in view of Ss. 25 and 26 of the Coroners Act. In our opinion, it was not open to the Coroner's Jury to record a verdict of mere negligence when admittedly the Coroner and his Jury did not find that negligence to amount to a criminal act. The form of the inquisition is given in the Second Schedule to the Coroners, Act. The present case would fall under Clause (1) given in that form if the Coroner's Jury could record the verdict that Kamat's death was caused by a rash or negligent act of Dr. Varghese which amounted to an offence under S. 304-A, I.P.C., but did not amount to culpable homicide. The Jury has not recorded any such verdict. In view of this, it is impossible to find any justification for recording the finding of mere negligence, as is done in the present case.

11. Mr. Vimadalal emphasised, in our opinion rightly, that very high degree of proof is necessary in such a case for arriving at a finding as to negligence amounting to a rash and negligent act, as contemplated by S. 304-A, I. P. C. In the present case, the evidence before the Coroner clearly indicates that the medical opinion was sharply divided on the question of the propriety of the treatment given by Dr. Varghese to Kamat. It is true that Dr. Nene's evidence

may indicate some negligence on the part of Dr. Varghese. Even so, there is ample evidence of eminent doctors to the contrary. In this state of evidence it is impossible to hold that there was negligence on the part of Dr. Varghese, which may amount to a rash and negligent act u/s 304-A, I.P.C. We are aware that we are not entitled to interfere with the verdict on facts, but we have made these observations only to express that the Coroner and his Jury were right in holding that even if there was any negligence, it did not amount to a criminal act as contemplated by Clause (6) of S. 24, nor any rash or negligent act as contemplated by S. 304-A, I.P.C. There was, however, no occasion to record any finding as to mere negligence; indeed, the above observations of ours should not be taken to mean that we agree with the finding recorded by the Coroner's Jury that Dr. Varghese was negligent. We prefer to express no opinion on that point.

12. The next question for consideration is whether the verdict of the Coroner's Jury as a whole should be quashed or only a part thereof should be quashed. As pointed out above the Foreman of the Jury was not asked about the cause of death by the Coroner. Even so, it is clear that there was no dispute that Kamat died because of anaphylactic shock due to penicillin injection. This was recorded in the post-mortem notes and is incorporated in the inquisition also. Even before us, this fact is not disputed. In view of this, we see no reason to quash that part of the verdict merely on the ground that the Foreman was not asked about it by the Coroner. The inquiry does reveal that Kamat died due to anaphylactic shock due to penicillin injection.

13. With regard to the next three paragraphs that follow, we had that there was no occasion to record what is stated in these 3 paragraphs. Mr. Vimadalal contends that if these findings as recorded remain, they are likely to affect Dr. Varghese prejudicially in his career, as well as in the Court, in our opinion, this apprehension is well founded. On the interpretation of S. 24, in our opinion, the Coroner's Jury had no authority to record the verdict stating that Dr. Varghese was negligent unless in the Jury's opinion such negligence amounted to a criminal act. So also the Jury had no occasion, nor authority to record that in the particular circumstances of the case what Dr. Varghese should have done i.e., what he failed to do or what he should not have done, unless in the Jury's opinion the particular act or omission responsible for the death in question amounted to a criminal act as contemplated by Clause (6) of S. 24 of the Coroner's Act. We, therefore, direct that the following portion of the inquisition shall stand quashed:-

"We came to conclusion that there is negligence on the part of Dr. Varghese. Sensitivity test should have been performed before injecting the penicillin and adrenalin should have been injected. Dr. Varghese was justified in sending the patient to the Nanavati Hospital but he should have accompanied him".

14. The learned Government pleader submits that if we are not satisfied with the present verdict, we should order a fresh inquest. In our opinion, it is unnecessary to do so. As already pointed out, the cause of death is correctly recorded and

that is all that is necessarily in the present case. We, therefore, think it unnecessary to direct a fresh inquest.

15. Before parting with this case, we are constrained to observe that the Coroner has not conducted the inquiry properly. His report shows that he was working under tension. It is difficult to understand what exactly this tensions means. There seems to be no reason for tension merely because a case is keenly contested. What is worse is that the Coroner admittedly passed several remarks during the proceedings. The Coroner says that he indulged in these remarks to reduce the tension. In our opinion it is, not proper to pass such remarks or make observations like those that are objected to very often, particularly when there is a Jury. Some of the remarks, which the Coroner admittedly made, are such as to affect the mind of the Jury prejudicially. For example, the Coroner admits that he made the following remark when Dr. Aspi Golwala was sought to be examined on behalf of Dr. Varghese:-

"Mr. Vakil, are you going to examine Dr. Vakil's junior?"

Thereupon Mr. Vakil, the learned Advocate for Dr. Varghese, said that Dr. Golwala was in the past working with Dr. Vakil, but now he was practicing on his own and was an Honorary Physician to the Governor of Maharashtra. The Coroner thereupon admittedly remarked:

"So, what? The honorary posts are matter of a push and a pull and it did not mean anything".

In our opinion, the petitioner Dr. Varghese rightly makes a grievance against such a remark during an inquest by Jury. When Dr. Parekh was examined, the Coroner asked him certain questions as to the advisability of removing Kamat to a hospital from Air India Clinic. With reference to an answer by Dr. Parekh, the Coroner remarked: "that means toying with the life of a human being". This remark too was in our opinion objectionable. There are some more remarks of this type. The Coroner should have remembered that he Jurors are laymen and it is but natural that any remarks by the presiding officer should make a deep impression on their minds. The Coroner made some remarks even about the Advocate for the petitioner Dr. Varghese, though there seems to be no occasion for the same. In our opinion, such remarks should have been avoided. Such remarks do lower the advocate in the estimate of the Jurors. Some of the remarks made by the Coroner appear to us to be wholly unnecessary and irrelevant. His remarks about the witnesses were also likely to create adverse and unjustified impression on the minds of the Jurors. During inquest by Jury, the Coroner should avoid making remarks expressing approval or disapproval so as to affect the Jury's mind prejudicially against a party interested in the inquest. So also, in our opinion, the Coroner was not justified in making remarks like the above ones just to relieve the alleged tension in Court. The Coroner must bear in mind that although the proceedings before him need not be monotonous, they must not lost the serenity which they deserve. The Coroner must also bear

in mind that he was to take care to see that the mind of the Jurors must not be swayed one way or the other by Coroner's uncalled-for remarks during the inquest. So also the Coroner has to bear in mind the provisions of S. 24 of the Coroners Act while recording the verdict. He has to record the verdict under the various clauses of S. 24 by putting proper and pointed questions to the Foreman of the Jury.

16. For reasons indicated above, we direct that the following portion from the inquisition shall stand quashed:-

"We came to conclusion that there is negligence on the part of Dr. Varghese.

Sensitivity test should have been performed before injecting the penicillin and adrenalin should have been injected.

Dr. Varghese was justified in sending the patient to the Nanavati Hospital but he should have accompanied him".

17. Rule made absolute to that extent.

18. It is clear from the record of this inquest that medical opinion is sharply divided on the question as to what precautions should be taken before giving a penicillin injection with a view to avoid anaphylactic shock at times resulting in death. We think it is advisable that the Indian Medical Council considers this vital question and issues necessary instructions for the guidance of medical practitioners in this respect.

19. A copy of this judgment shall be sent to the President, Indian Medical Council.

20. Order accordingly.