
(2008) 02 RAJ CK 0046
In the Rajasthan High Court

Sarita Upneja (Dr.) (Smt.)	Vs	APPELLANT
State of Rajasthan and Another		RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Penal Code, 1860 (IPC) — Section 304, 304A

Citation : (2008) CriLJ 3097 : (2008) 3 RCR(Criminal) 218 : (2008) 2 RLW 1766

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties. In an unfortunate incident happened on 19.1.2001 in Shakuntala Nursing Home, Sri Ganganagar, Smt. Manju Devi died after giving birth to a girl child on 15.1.2001. A FIR was lodged on the same day, 19.1.2001 by one Nanak Chand Singhal s/o Durga Prasad Agarwal, a relative of deceased Manju Devi. The case was registered and thereafter, post mortem was also conducted and the post mortem report dated 19.1.2001 was obtained by the prosecution. The post mortem says as under:

Conclusion - In the opinion of the Board the cause of death is Haemorrhagic shock due to injury of Rt Fornix of Vagina and Rt side Cervix (tear) leading to huge Haematoma in Rt Broad ligament Extending Retro peritoneally in Pelvis and upto lower Pole of Kidney and Bladder base.

2. A medical board was also constituted who gave its interim report on 23.1.2001. The statement of various witnesses were recorded u/s 161 CrPC wherein the statements of Dr. K.L. Gupta and Dr. Indra Pal Singh Poonia who signed the report dated 23.1.2001 were also recorded. In addition to above statements of two doctors, the statement of Dr. Kailash, Jr. Specialist (Medicine), Govt. Hospital, Sri Ganganagar; Dr. Ram Patap Poonia, CMHO, Harjumangarh; Dr. BR Kataria, Jr. Specialist (Gynae), Govt. Hospital, Sri Ganganagar; Dr. Ashok Gupta of one Mahaveer Nursing Home, Raisinghnagar, relative of deceased and

Dr. Ashok Garg, MD (Medicine) were also recorded. After investigation, a challan was submitted in the Court and cognizance was taken by the Court vide order dated 22.3.2001 after registering the criminal case No. 141/2001 u/s 304 Part II IPC and the case was committed to the Court of Sessions Judge by order dated 30.3.2001.

3. Learned Additional Sessions Judge, Sri Ganganagar vide order dated 18.10.2002 held that no case u/s 304 Part-II IPC is made out and it is a case u/s 304A IPC only and since it is triable by the Magistrate, therefore, the same was sent to the Court of Chief Judicial Magistrate, Sri Ganganagar. The petitioner has challenged the prosecution by preferring this petition u/s 482 CrPC on the ground that from the material available on record, no case is made out of committing any offence by the petitioner u/s 304A IPC or even of any other offence.

4. It is submitted that the continuation of the prosecution of the petitioner on the basis of the case of the prosecution is nothing but abuse of process of the Court and deserves to be quashed. Learned Counsel for the petitioner vehemently submitted that Manju Devi was admitted in the petitioner's hospital and the petitioner is doctor and having speciality degree of MS in Obstetrics and Gynaecology. She was awarded degree as back as in the year 1979 and the copy of the decree is placed on record by the prosecution itself. She is in practice of medical profession and running her hospital which according to the learned Counsel for the petitioner was established in the year 1987. The petitioner is handling the cases of delivery also regularly.

5. The victim was admitted in the petitioner's hospital for delivery on 15.1.2001 and she delivered a girl child in normal course meaning thereby without surgery. Her condition was good after delivery and it is relevant that she gave birth to child only within 2-3 hours after her admission in the Nursing Home of the petitioner. In delivery, as per the prosecution case itself, victim Smt. Manju Devi suffered some injury in vaginal part. She was given blood of three bottles. She was taken care fully not by the petitioner herself but by other expert doctors also who gave treatment to Smt. Manju Devi. She tried her best to give best treatment to Smt. Manju Devi but because of "die", she could not be saved by the best efforts of the petitioner and even with the help of other expert doctors. According to learned Counsel for the petitioner, there is no negligence of the petitioner in handling the case of delivery and in taking care after delivery.

6. Learned Counsel for the petitioner referred statements of various witnesses to show that from the statement of all the witnesses, it is clear that the patient was fully attended and rather say continuously under full supervision of the petitioner and other doctors. There is no allegation that Smt. Manju Devi was not handled properly at the time of delivery or she was given wrong treatment deliberately at the time of delivery of child. Even as per the statement of Dr. K.L. Gupta and Dr. Indra Pal Singh Poonia, who gave interim report against the petitioner, in the cases of delivery, one injection "Prostodin" is given to the patient in certain circumstances which induces the delivery of the child and it is not the case of the

prosecution that the said injection is prohibited for administration to the pregnant ladies, rather say, the said injection is required to be given in certain circumstances which have been explained by these two very doctors who opined against the petitioner's competence. All the doctors also stated that in this process, there is possibility of injury to the internal part of the lady and, therefore, this is one of the eventuality that in this process, the lady may suffer some injury and it is not due to the fault of any doctor but it is one of the consequences of such type of delivery when the child is delivered after giving injection of Prostodin.

7. From the evidence of all the witnesses, it is proved that the patient was taken care of fully and in view of the fact that the patient gave birth to a female child, it may have been a case of puerperal psychosis and, therefore, even a doctor for mental diseases was also called and he gave one injection to Smt. Manju Devi. A physician was also called to examine Smt. Manju Devi and he also gave his treatment to the patient. Furthermore, in view of fall in the hemoglobin to the level of 7 gm%, she was given blood and as per the statements of Dr. K.L. Gupta as well as Dr. Indra Pal Singh and other doctors, in the case of profuse bleeding, fast blood transfusion is done and in a case where there is a bleeding from the vaginal part, it is packed and that has been done in this case also as per the statement of said above two doctors.

8. Not only this, even Dr. K.L. Gupta in his statement clearly admitted that a well known physician Dr. Ashok Garg was called and he is a well experienced doctor and when he examined Smt. Manju Devi, then Dr. Ashok Garg also should have given proper treatment to Smt. Manju Devi. In the present case, as per the statement of doctors also, Dr. Garg gave his treatment and gave injection to Smt. Manju Devi. Learned Counsel for the petitioner also pointed out that Dr. Ashok Gupta, a relative of the deceased Manju Devi, was the doctor who attended her before she died and he thoroughly enquired about the condition of Smt. Manju Devi from the petitioner which is clearly mentioned in the statement of Dr. Ashok Gupta wherein before the death of Smt. Manju Devi, the petitioner told Dr. Ashok Gupta that one Dr. Rajnish Agarwal also examined Smt. Manju Devi and the petitioner explained about all the treatment given to Manju Devi and by other doctors.

9. It is also not the case of the prosecution that any of the doctors like Dr. Ashok Gupta or Dr. Ashok Garg or any doctor who attended Smt. Manju Devi advised otherwise to the petitioner in the matter of treatment of Smt. Manju Devi. In view of all the evidence which has been placed on record of the Court below by the prosecution itself, it is clear that there is no allegation worth the name against the petitioner of handling the case of delivery of Smt. Manju Devi properly or not taking care after delivery but it is a case where unfortunately the patient died inspite of every care in treatment given by various doctors and not the petitioner alone. According to learned Counsel for the petitioner, in the profession of any type, it is not expected from every one to be expert of highest

degree and there may be different judgments for one situation of different experts and that is why the profession is called profession of personal skill and it is not a mechanical process.

10. Learned Counsel for the petitioner also submitted that there may be cases where negligence may be inferred from the totality and entirety of the facts but the negligence which can be termed to be the negligence to the extent of criminal negligence there must be more reasons to believe that it is not ordinary negligence having at the most civil consequences. In professional negligence, the intention may also be relevant under certain circumstances.

11. It is also submitted that all presumptions should be drawn in favour of professional because of the reason of his standards of education which is sufficient for him to teach him that he should not be negligent in performing his duties causing loss of life or even harm to person. Learned Counsel for the petitioner relied upon the judgment of the Hon''ble Apex Court delivered in the case of Jacob Mathew Vs. State of Punjab and Another, wherein the Hon''ble Apex Court in detail explained the essential components of duty, breach and resulting damages.

12. The Hon''ble Apex Court in the above case held that mere deviation from normal professional practice is not necessarily evidence of negligence nor error of judgment on the part of professional is per se negligence and the medical practitioner cannot be held negligent because he chose to follow one procedure and not another and the result was a failure. The Hon''ble Apex Court also pointed out distinction between negligence in civil law and negligence in criminal law. The Hon''ble Apex Court clearly held that 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.

13. Learned Counsel for the petitioner also relied upon the judgment of the Hon''ble Apex Court delivered in the case of Dr. Suresh Gupta Vs. Govt. of N.C.T. of Delhi and Another, wherein the Hon''ble Apex Court held that the prosecution has to come out with a case of high degree of negligence on the part of the doctor. In the case before Hon''ble Supreme Court, the opinion of medical experts was that there was negligence on the part of the accused in "not putting a cuffed endotracheal tube of proper size" and in a manner so as to prevent aspiration of blood blocking respiratory passage. Such act of doctor was held to be a negligent act but not so reckless or grossly negligent so as to make him criminally liable. Learned Counsel for the respondent No. 2/ complainant as well as learned Public Prosecutor submitted that whether it is a case of gross negligence of doctor can be examined only after evidence and cannot be examined at this stage.

14. Learned counsel for the respondent No. 2 vehemently submitted that it was a

case of normal delivery and serious injury was not noticed by the petitioner doctor and if noticed, then she did not give treatment which is required to be given to such patients and instead of putting stitches, she put a pack on the wound and thereby she committed gross negligence. The Medical Board was constituted and it clearly opined that the cause was treatable and if the treating lady doctor - petitioner would have diagnosed the injury timely and treated promptly/immediately, the deceased would have been saved.

15. Her packing the Vagina was also the reason for the Medical Board to hold the petitioner guilty of willful negligence and the Medical Board also opined that the petitioner lacked professional competency as she is not used to handle such Primi Gravida delivery complications. In view of the above report, the prosecution cannot be thrown out. Learned Counsel for the complainant also submitted that the expert doctors clearly opined that it was a case of negligence in handling the patient by the petitioner which is a clear case from the statements of Dr. Indra Pal Singh Poonia, Dr. Kailash, Dr. Ram Pratap Poonia, Dr. BR Kataria as well as statement of Dr. Ashok Gupta. All the doctors stated that the injection Prostodin can be given in certain circumstances only and is not given in a case where the delivery is possible normally and in this case, the injection Prostodin was given to Smt. Manju Devi.

16. The child was examined by the doctors and they found that the head of the child was of normal size and there was no sign of delivery of child by any medical instrument. The doctors also clearly observed that the petitioner instead of giving stitch to the wound gave packing only and gave 3 bottles of blood in short time whereas 1 bottle of blood should have been given in 4 to 5 hours time. Dr. Ram Pratap Poonia opined that the petitioner should not have put packing for blocking the blood but she admittedly put packing. It is also submitted that the contention of the petitioner that the death was due to "die" was not accepted by any of the doctors except Dr. Ashok Garg who stated that in the present case, death may be due to "die". I considered the submissions of learned Counsel for the parties and perused the record also as well as the judgments relied upon by the learned Counsel for the petitioner.

17. From a bare perusal of the facts stated in the FIR and the material submitted by the prosecution, prima facie case is made out against the accused person of committing any offence, then that prosecution cannot be quashed by exercising powers u/s 482 Cr. PC. But if no case of committing any offence is made out by prosecution, if evidence of prosecution is taken as true then allowing prosecution to proceed is abuse of process of Court only. In the present case, if we recapitulate the entire facts, then as per the prosecution case itself, Smt. Manju Devi was admitted on 15.1.2001 in Shakuntala Nursing Home, Sri Ganganagar at 12:30 PM and she gave birth to a girl child at about 3:00 PM on the same day. The delivery was not septic but it was a normal delivery. In the night of 15.1.2001 itself, the deceased was given 3 bottles of blood and according to the prosecution itself, the petitioner, who was in-charge of her own Nursing Home,

was attending the patient and it is not the case of the prosecution that the patient was not attended by the doctor or by the hospital staff.

It will be relevant to mention here that on 19.1.2001 itself, the day on which FIR was lodged by Nanak Chand, his statements were recorded by the police wherein he gave entire facts from the time of admission of Smt. Manju Devi in the petitioner's hospital, delivery and thereafter deterioration of condition of Smt. Manju Devi and the petitioner's calling various doctors including Dr. Rajeev Agarwal and as suggested by the complainant Nanak Chand Himself, physician Dr. Ashok Garg was also called.

18. There was consultation between the petitioner and Dr. Ashok Garg and thereafter, blood test for hemoglobin was advised and Nanak Chand was told that the blood pressure of Smt. Manju Devi 110 and 90 and a Lasix injection was also given. Dr. Ashok Gupta again in the evening of the same day was consulted as he was on visit to check some other patient. However, Nanak Chand stated that it was a case of negligence of the petitioner in handling the delivery case resulting into death of Manju Devi.

Dr. Ashok Garg was also examined on 19.1.2001 and he in his statement u/s 161 CrPC stated that when he examined Manju Devi, he found her condition normal and the blood pressure was slightly higher and there were symptoms of less blood in the body of patient. The petitioner on the same day at about 7:00 PM on telephone informed Dr. Ashok Garg that Manju Devi's TLC was 20000, hemoglobin was 7.4 and urine report was normal. Dr. Ashok Garg on telephone advised about, further treatment for Smt. Manju Devi. Even in the night of 19.1.2001 (18.1.2001 and 19.1.2001) at about 4:00 AM, petitioner telephoned Dr. Ashok Garg and when he reached at the petitioner's nursing home, Dr. Rajeev Agarwal also reached there. Dr. Ashok Garg in his statement clearly stated that death of Smt. Manju Devi may be due to "DIC". It appears that Dr. Ashok Garg was again examined on 9.2.2001 as he has said nothing against the petitioner and again stated that in his opinion, the patient died due to "DIC". Dr. K.L. Gupta, Dr. Indra Pal Singh, Dr. Kailash Sharma, Dr. Ram Pratap Poonia, Dr. BR Kataria and Dr. Ashok Gupta also gave their statements before the police and in their statements, they stated that injection Prostodin is normally not given before delivery and in case, it is grave case of PPH, then injection Prostodin is given. Dr. Ashok Gupta stated that in case of profused bleeding and when ovary becomes abnormal and is not reaching to its normal position, then injection prostodin is given. He also stated Uratt injection prostodin is given before delivery, then some times some tear may come.

19. Dr. Kailash Sharma was examined on 7.2.2001 and he stated that it depends upon the condition of the patient and if the condition requires, 3 units of blood can be given to the patient. He also explained in what circumstances, the internal part of lady may be damaged during delivery. Injection prostodin is used for increasing the contradiction of ovary. Injection prostodin is a strong injection and it is not used in full term pregnancy. In somewhat manner, it can be inferred

from the statements of the doctors that the petitioner might have committed a mistake of giving injection prostodin to the patient but whether it was not needed to the patient and still it was given knowing it well that it will not help the patient in delivering the child, there is no evidence.

The patient was given treatment by giving blood because of the reason of falling of hemoglobin to the level of 7.4. Dr. K.L. Gupta in his statement clearly stated that as per the post mortem report and as per their own report, the victim died because of profuse bleeding and he further stated that in a case of emergency, fast blood transfusion is given to save-the life and further very clearly stated that in case of profuse bleeding also, fast blood transfusion is given. Dr. Ashok Gupta can be said to be the first person who saw Smt. Manju when she was alive.

20. Dr. Ashok Gupta also thoroughly inquired about the treatment given to Smt. Manju by the petitioner and he was told that even one Dr. Rajnish Agarwal examined the patient. As per the statement of Dr. Ashok Gupta himself, the petitioner informed Dr. Ashok Gupta before death of Smt. Manju that in view of her condition, even the opinion of doctor of mental disease was also called and the patient was got examined from such expert doctor who also gave treatment to Smt. Manju. Dr. Ashok Gupta in his statement further after knowing that 3 units of blood was given to the patient advised that since it is a case of yet less blood in the body of patient, therefore, the other tests may be conducted and if necessary, more units of blood be given to the patient. He also stated that at that time, a relative Hari Om was also present and he informed that his blood group is A+ and he is ready to give blood.

21. Dr. Ashok Gupta and other doctors attended the patient when her condition was deteriorating and it was got done by the petitioner herself is the evidence placed by the prosecution itself in the Court, then how she can be said to be a doctor negligent in performing and discharging her professional duties? It will be again worthwhile to mention here that in treatment, negligence may be at any point of time and, therefore, it will be appropriate to recapitulate that it is not the case of prosecution that smt. Manju Devi was not given proper treatment before her delivery and there is no evidence that she should not have been given injection of Prostodin.

Dr. K.L. Gupta and Dr. Indra Pal Singh Poonia merely gave their statements that in what circumstances, this injection is given and not given but there is no evidence that in the case of deceased, this injection should not have been given and could not have been given and if given, then it was a grave negligence on the part of the doctor.

22. This was the position prior to and at the time of delivery by Smt. Manju and the evidence with respect to the act and alleged omissions of the petitioner after delivery of child have already been considered in detail above. The prosecution failed to demonstrate rather say level any allegation that the patient was not taken care of at any point of time and contrary to it, there is positive evidence

that in certain circumstances, one injection of Prostodin is given and in that situation, there may be damage to the internal part of the body which may result in profuse bleeding, therefore, it is one of the situation in the delivery cases and only question relevant is whether this situation was created by the doctor by his gross negligence? and further whether after noticing this injury, whether any care was taken or not? And if not whether, it was a criminal negligence of the doctor? As stated above, at the cost of repetition, it is clear that the prosecution's entire evidence only shows that the patient was fully attended by the doctors and unfortunately, the patient could not be saved inspite of the efforts made by not only the petitioner but other doctors including a distant relation doctor of the patient herself.

23. The important material piece of evidence relied upon by the prosecution and learned Counsel for the complainant is the medical board's report which is required to be considered carefully. In the matter of gynae problem, a Board was constituted consisting of Dr. R.P. Poonia, CMHO, Sri Ganganagar; Dr. Satish Sharma, PMO/Dr. K.L. Gupta Acting PMO, District Hospital, Sri Ganganagar and these doctors in their report dated 23.1.2001 held that the petitioner is not used to handle such Primi Gravida delivery complications. Meaning of Primi Gravida delivery is primary delivery or a first delivery. This finding was recorded on the basis of post mortem report, statement of post mortem board members, statement of petitioner herself, statement of staff members of the petitioner's hospital and on the basis of bed head ticket record of deceased Smt. Manju.

24. The petitioner is post graduate in Obstetrics and Gynaecology since 1979 and running her hospital since 1987, the incident took place in the year 2001, then in that situation, before holding the petitioner not used to handle such cases, whether the medical board inquired about the number of cases handled by the petitioner during her not only MBBS but after MBBS during her MS, apart from the fact that whether she conducted such cases in her hospital in last about more than a decade. Be it as it may be, the medical opinion says that it is a traceable cause and if the treating lady doctor Smt. Sarita Upneja (Gynaecologist) of Shakuntala Nursing Home, SGNR would have diagnosed the above injury/tear timely and treated promptly/immediately, the deceased would have been saved. The report is on the face of it quite ambiguous as whether by this report, the medical board wants to say that the cause was not diagnosed by the petitioner or she diagnosed but did not gave treatment properly. In the next para, it has been stated that the petitioner came to know that there was bleeding through vagina of Smt. Manju and she had packed the vagina and she also transfused 3 units of blood but she has not tried to find out the site, source and severity of bleeding neither she had taken it seriously nor treated timely and efficiently.

25. Again the position is the same that how when the petitioner came to know about bleeding from vagina but was not knowing the site, source and severity of bleeding if she packed the wound. As per the medical report itself, the site and source of bleeding was from vagina and the petitioner came to know it, put

packing also. It is stated that the petitioner did not took it seriously and nor treated timely and efficiently, then the doctor witnesses produced by the prosecution itself say that to save the life in case of profuse bleeding, one of the treatment was to give fast blood transfusion and one of the further treatment was to pack the wound. However, the wound could have been stitched but none of the doctors opined that it was because of the only reason that the stitch was not given, therefore, the patient died.

26. Be it as that may be, it may be error of judgment only that instead of giving stitch, the pack may serve the purpose and there is no positive evidence on record to demonstrate that that was the only possible way of treatment for the particular patient victim Smt. Manju Devi. This Court is not the expert nor sitting over the opinion of the expert but since the medical board went to the extent of saying that the petitioner was not used to handle even primary delivery cases and when Dr. K.L. Gupta and Dr. RP Poonia gave their own statement wherein it is mentioned that after profuse bleeding, to save life of the patient, fast blood transfusion is also given, therefore, this Court examined the medical board's report dated 23.1.2001 and found some substance in the submission of learned Counsel for the petitioner that none of the members of the medical board was gynae expert and if their report can be accepted, then why the treatment given by a gynae expert - petitioner cannot be expected to be a treatment given by the expert for saving the life of the patient. Furthermore, the fact that the other experts were also called and were permitted to give treatment of the patient clearly shows that it is a case of very unfortunate death during time of recovery of the victim.

27. The facts of the case have been referred in somewhat detail because of the Wason that if it is a case of gross and criminal negligence of the doctor, then he should face the consequences. But if we go by the reasons given in the judgments delivered in the cases of Jacob Mathew and Dr. Suresh Gupta (supra), then the present case cannot be said to be a case where the petitioner can be prosecuted because of the reason as held by the Hon''ble Supreme Court that negligence Is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Mere deviation from normal professional practice is not necessarily evidence of negligence. So also, an error of judgment on the part of a professional is not negligence perse and a medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was failure.

28. The Hon''ble Apex Court also held that the 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 of prosecution. In Jacob Mathew's case (supra), the Hon'ble Supreme Court clearly held that the complainant has to clearly make out a case of negligence before medical practitioner is charged with or proceeded against criminally.

29. This Court is also of the view that in this case, the prosecution failed to make out any case of such type of negligence of doctor so that she can be proceeded against for her prosecution. On the basis of material produced by prosecution if the petitioner is prosecuted, then it will be abuse of process of Court only. In view of the above reasons, the petitioner succeed. Consequently, this misc. petition is allowed and the prosecution of the petitioner in Case No. 80/2003 State v. Dr. Sarita Upneja pending in the Court of Chief Judicial Magistrate, Sri Ganganagar is quashed.