
(2009) 05 AHC CK 0885
In the Allahabad High Court
Case No : Criminal M.W.P. No. 1871 of 2009

Smt. Savita Devi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2)

Evidence Act, 1872 — Section 45

Penal Code, 1860 (IPC) — Section 308, 323, 504, 506

Citation : (2009) 2 ACR 2036

Hon'ble Judges : Kant Tripathi, J; Amar Saran, J

Bench : Division Bench

Advocate : S.P. Giri, for the Appellant; A.G.A., for the Respondent

Judgement

Amar Saran, J.—This writ petition has been filed with a prayer that another Medical Board be constituted either in district Allahabad or in any other district except Kaushambi for medical examination of the injured informant Smt. Savita Devi, the Petitioner, on the ground that the report of the Medical Board headed by the C.M.O., Kaushambi. dated 20.10.2008 had arrived at a wholly erroneous conclusion that the head. injury on Savita Devi was not a firearm injury, but that it was self-inflicted. The Petitioner has also prayed for any other relief which this Court may deem fit and proper in the circumstances of the case.

2. Although the prayer made in the writ petition was unusual, however on noticing that the radiologist's report showed that there were two small rounded opaque shadows of metallic density over the skull vault on the frontal bone of the skull, and as the members of the Medical Board had themselves noted that there was a scar mark of the size 1.5 cm. x 0.2 cm. over the scalp on the frontal bone and a small hard object was palpable, which was moveable in all directions and was subcutaneous, an earlier Bench consisting of one of, us, Amar Saran, J. and R. N. Mishra, J. began to entertain some doubt about the reliability of the opinion given by the Medical Board and directed by an order dated 9.2.2009 that the

case be listed on 17.2.2008. On that date we required the presence of the Investigating Officer with the case diary.

3. However, on 17.2.2009 when the Investigating Officer appeared, it was argued by the learned Additional Government Advocate, without filing any counter affidavit or document to that effect, that as the Investigating Officer had informed him that he had already submitted a charge-sheet against the, accused only under Sections 323/504 and 506, I.P.C., hence there was no occasion for this Court to pass an order constituting another Medical Board at that stage and it was open to the complainant-Petitioner to raise all her objections against the said opinion of the Board during trial as well as to cross-examine the concerned doctOrs.

4. As the Petitioner's case was that the incident had taken place at 8.00 a.m. on 1.7.2008 when the accused Banwari Lal and others had arrived at her door variously armed with gun, country-made pistol and bomb and started erecting a wall there, which could have blocked the passage of the complainant and her family members, they had objected, whereupon the accused persons hurled a bomb and resorted to firing. The fire by Bhukhan struck her head. The informant's brother-in-law (Devar) Rajesh and Ram Prakash were also injured and that in order to escape, the informant and others had to rush inside her house and to lock the door.

5. It was further alleged by the complainant-Petitioner that the police minimised the incident and only lodged a non-cognizable report u/s 323/504, I.P.C. which merely mentioned that the accused persons had resorted to abuses and used lathi and danda in the assault, which were plied by both sides resulting in the head injury to Savita Devi. In these circumstances Savita Devi was constrained to move an application on 8.7.2008 before the Judicial Magistrate, Kaushambi u/s 155(2), Cr. P.C. which mentioned inter alia that the S.O. of the police station Sarai Aqil had even threatened to send, her jail on a fabricated case when she had gone to lodge the report on 2.7.2008. However on her insistence the S.O. concerned had orally lodged an N.C.R. (although it was incorrect) and got her medical examination done on 2.7.2008, by the medical officer, C.H.C. Sarai Aqil, Kaushambi. The medical report showed a lacerated wound 1.5 cm. x 3 cm. x skin on her head, 11 cm. from the right ear, but no blackening and tattooing was found, and X-ray of the skull was advised Dr. A. N. Rastogi, the Radiologist, C.H.C./district hospital, Kaushambi, who conducted the X-ray on 3.7.2008 found two small rounded opaque shadows of metallic densities over the skull vault on the frontal bone of skull as noted above. Hence on the order of the Magistrate, the F.I.R. was registered u/s 308/323/504, I.P.C.

6. But as the accused after making allegations against the integrity of the Radiologist, Dr. Rastogi, prayed for constituting a Medical Board, the same was got, constituted by the Investigating Officer, which consisted of Dr. Rajesh Chaddha, (Orthopaedic Surgeon), Dr. Manu Gopal (Radiologist), Dr. B. L. Jaiswal (Medical Officer) and which opinion was counter-signed by the C.M.O. The

Medical Board examined Smt. Savita Devi and submitted the following opinion on 20.10.08:

CHIEF MEDICAL OFFICER KAUSHAMBI: MEDICAL EXAMINATION REPORT OF MEDICAL BOARD No. 2515 Dt. 20.10.08 Savita Devi age about 34 years old female, W/o Shri Brij Raj, R/o Village Piparhat, police station Sarai Aqil district Kaushambi. Resident in front of medical board and examined by medical board members at 12.20 p.m. on dated 20.10.2008 at C.M.O. Office, Kaushambi. On the basis of record, X-ray, X-ray report, statements of Medical Officer and Radiologist as well as physical examination of Savita Devi (concerned patient), we find that

1. Injury report dated 2.7.2008 clearly says that there is no blackening or tattooing at the site of injury. It also did not mention any entry or exit wound. Instead, there is a lacerated wound being mentioned. And there is no injury to other parts of the body.

2. Radiological Report No. 620 dated 3.7.2008 by Radiologist C.H.C. Sarai Aqil, district Kaushambi showing two small rounded opaque shadows of metallic density over the skull on the frontal bone.

3. Medical Officer (who did the medical examination and given injury report) statement dated 23.8.2008 taken by the police officer clearly mentioning that there is no sign of fire arm injury.

4. Physical examination of Savita Devi by board members find a scar mark of size 1.5 cm. x 0.2 cm. over the scalp on frontal bone which seems to be as a result of healed lacerated wound, and feeling of small hard object which is moveable in all directions and subcutaneous Opinion In the light of the above mentioned findings we members of the medical board are in the opinion that injury is not a firearm injury, instead it is self inflicted.

7. The Bench consisting of one of us (Amar Saran, J.) and Hon"ble R.N. Misra, J. examined the said opinion of the Medical Board as well as other papers and observed in the order dated 17.2.2009 as under:

Thus, it is pointed out that the Board while noticing that the injury report dated 2.7.2008 shows a lacerated wound, but there was no injury on any other part of the body, nor any entry or exit wound. The radiologist report dated 3.7.2008 conducted by the Radiologist C.H.C. Sarai Aqil shows two small rounded, shadows of metallic densities over the skull vault on the frontal bone of skull. It also mentions that the medical officer who conducted the medical examination, and gave the injury report was examined by the police officer on 23.8.2008, and he has clearly mentioned in his statement that there was no sigh of fire arm injury. We have examined the said statement, which has been produced by the Investigating Officer present today. This is not the statement of the medical officer who conducted the medical examination on 2.7.2008 at all, but the opinion of the Radiologist who conducted the x-ray. In the statement of the said

radiologist in reply to the question as to how the injury could have been caused, the reply was nil. To another question as to whether if the injury was due to fire arm, how was the injury only received on the head and not on the other parts of the body. To this question also the Radiologist replied that there were two small rounded opaque shadows of metallic densities, which were seen in the x-ray on the head, and he was not in a position to state as to how said injury could have been caused. Thus, this averment in the report of the medical board that according to the doctor who had examined the injury of Savita Devi that it could not possibly have been caused by a fire arm appears to be based on a complete misreading of the statement of the radiologist, and there is no such opinion of the doctor as aforesaid. Another fact which is mentioned in the report of Medical Board was that the physical examination of Savita Devi by board members shows a scar mark of size 1.5 cm. x 0.2 cm. over the scalp on the frontal bone which seems to be as a result of healed lacerated wound and a small hard object could be felt which was moveable in all directions and is subcutaneous.

In the light of above averments the Medical Board reported that the injury was not a fire arm injury, instead it was self inflicted. Prima facie in our opinion this opinion of Medical Board appears to be perverse and wholly unwarranted. The said fire arm injury was received by a woman by a fire arm on 1.7.2008. Her medical examination was conducted on 2.7.2008 when the examining doctor found a lacerated injury on the scalp on the frontal bone region which was kept under observation and x-ray advised. The x-ray on 3.7.2008 showed two radio opaque shadows of metallic density confirming the allegations of firing. The pellet (hard object) even appeared palpable on touch on 20.10.2008 when the opinion was given by the medical board. Simply because only one or two pellets struck the head possibly from a distant fire as there was no blackening and tattooing on the injury and there were no injuries on the rest of the body or exit and entry wound, could it lead to an inference that no fire arm injury at all was received by the injured woman. Thus, it is incomprehensible to us at this stage as to how the board reached a positive opinion that the so-called fire arm injury was not due to a fire arm or that the injured woman, Savita Devi had self-inflicted the said injury on her forehead on the frontal bone over the skull vault.

8. We, however, decided to summon the concerned doctors on 26.2.2009 who constituted the Medical Board because we thought it would be proper to reach a finding about the opinion of the Medical Board and the conduct of the doctors only after giving them an opportunity to explain as to how they had reached, the aforesaid opinion.

9. On 26.2.2009 when the doctors appeared, the earlier Bench questioned them at length as to how they had reached the opinion, but they failed to give any satisfactory basis for their opinion. As the learned Additional Government Advocate produced the note of Dr. M. M. Ahmed dated 23.8.08, who had conducted the initial medical examination of Smt. Savita Devi on 2.7.2008 at 9.00 p.m. at C.H.C. Kaushambi, which was referred to in the opinion of the

Medical Board dated 20.10.2008, and in the order dated 26.2.2009, we observed as follows regarding the opinion of Dr. M. M. Ahmad:

We also regret to note that Dr. M. M. Ahmad; who conducted the initial medical examination of Smt. Savita Devi on 2.7.2008 at 9.00 p.m. at C.H.C., Kaushambi, even after observing that Smt. Savita had a lacerated wound 1.5 cm. x 3 cm. x skin on head 11 cm. from right ear, no blackening and tattooing was found and X-ray of the skull (AP and lateral view) was advised, yet the said doctor has given his opinion on 23.8.2008 to the Investigating Officer to the effect that "at the time of examination there was no wound of firearm injury", which prima facie appears inconsistent with the finding of two small rounded shadows of metallic densities over the skull vault on the frontal bone of skull as noted by Dr. Rastogi, the Radiologist who conducted the X-ray examination at the C.H.C. on 3.7.2008.

10. Also as the members of the Medical Board appeared to be willing to revise their opinion dated 20.10.2008, we further observed as under in the order dated 26.2.2009:

They agree to the observations of the Court that the opinion that the injury received by the victim Smt. Savita Devi was not due to firearm and that it was self-inflicted was not correct.

11. We, thereupon directed Smt. Savita Devi to appear before the Medical Board on 6.3.2009. on which date the Medical Board was to examine her with regard to the documents and papers of this case and to submit its opinion within three weeks.

12. To our dismay, instead of examining the matter after properly applying their minds, they again recorded an opinion on 2.3.2009 that the shadows seen in the X-ray may or may not be due to pellets of fire arm and it cannot be said definitely. A view of ballistic expert can be taken regarding nature of these radio opaque shadows of metallic density.

13. The detailed opinion is as under:

OFFICE OF THE CHIEF MEDICAL OFFICER KAUSHAMBI MEDICAL EXAMINATION REPORT OF MEDICAL BOARD Letter No. Medical Board/Savita Devi/2008-09/491 Dated: 2.3.2009 With reference to letter No. C.M.O./Medical Board/2009/474 dated 27.2.2009, the medical board examined Savita Devi, age about 34 years old, female, W/o Brij Raj, R/o Village Piprahat, P/S Sarai Aqil. district Kaushambi at 1 p.m. on 2.3.2009 at C.M.O. office Manjhanpur Kaushambi.

1. Physical examination of Savita Devi by board, members find a scar mark of size 1.5 cm. x 0.2 cm. over the scalp on frontal bone 13 cm. above from right ear root and 10.5 cm. above from medial end of right eyebrow Shape..... Semicircular with curvature towards left anteriolaterally. Scar is more white than surrounding scalp, tough and glistening. Number of scar.... one. Level of scar..... At the level of scalp, mobility..... Slightly less in comparison to other area of scalp (slightly restricted), none tender, tapering towards posterior and lateral

towards left side) 2 Two hard moveable objects are palpable just near to right anterior part of scar. A X-ray skull AP and lateral view is advised and done at C.H.C. Sarai Aqil on dated 2.3.2009 Radiologist reports says..... Two small rounded radio opaque shadows of metallic density are seen over skull vault of the frontal bone.

Opinion 1. On the basis of above findings and records the board members' opinion are..... The scar seems to be more than 6 months old and as a result of healed lacerated wound. However exact time, nature and causative object could not be ascertained at this stage.

2. Regarding two movable object near scar..... Board has advised X-ray of skull AP and lateral view and X-ray done at C.H.C. Sarai Aqil on dated 2.3.2009. Radiologist reports says two small rounded radio opaque shadows of metallic density are seen over skull vault of the frontal bone.

3. Shadows seen in the X-ray may or may not be due to pellets of fire arm and it cannot be said definitely. A view of the ballistic expert can be taken regarding nature of these radio-opaque shadows of metallic density.

14. The said opinion was placed before this Court on 7.4.2009. As the earlier Bench was not satisfied with, the opinion of the Medical Board, we sent the photocopies of the medical opinion of the Medical Board dated 2.3.2009 and earlier opinion dated 20.10.2008, photo copy of the case diary, orders of this Court dated 17.2.2009 and 26.2.2009, injury report of Smt. Savita Devi dated 2.7.2008 and X-ray report and opinion of the Radiologist to Medico Legal Expert Dr. U. S. Sinha, Forensic Head of the Medical College, Allahabad, for his expert opinion. Dr. Sinha was also required to be present in this Court on 16.4.2009 to give his opinion in the matter.

15. Dr. U. S. Sinha has appeared today, i.e., 16.4.2009 and has submitted a clear cut and categorical opinion in writing, which is as follows:

I thoroughly examined the injury report of Smt. Savita Devi dated 2.7.2008 and x-ray report and opinion of the radiologist dated 3.7.2008 alongwith medical board examination dated 20.10.2008 and 2.3.2009 regarding the physical examination of Smt. Savita Devi, injury report and subsequent radiologist report of 3.7.2008.

OBSERVATION:

1. On the basis of medical documents consists of injury report, radiological findings clearly shows that Smt. Savita Devi was injured by a firearm injury a lacerated wound measuring in 1.5 cm. x 3 cm. over the scalp on the frontal bone which is situated 13 cm. above the right ear root and 10.2 cm. above the right eyebrow. It is well positive findings in relation with two small metallic shadow of 0.3 cm.

2. The type of injury is lacerated wound which is usually mentioned in gunshot

wound because the character and size of the wound which clearly indicates the nature of the weapon. Which has caused such type of injury alongwith 2 small rounded radio opaque shadow of metallic density are seen over skull of frontal bone.

3. This type of injury may usually produced by firearm wounds from the distance 6 yard with standard shot gun and 71 yard with country made pistol.

4. Complainant has already placed F.I.R. to S.P. Kaushambi on 2.7.2008 regarding the firing incident before the medical examination as well as radiological examination.

Hence considering the wound size, shape, character of the wound alongwith presence of 2 small round radio opaque shadow of metallic density over skull of frontal bone is a clear cut case of firearm wound from the distance. In view of the facts and observation regarding above matter, there is no doubt about a firearm injury. However, the small round metallic pellets may be sent to the ballistic expert to know the nature of fired gun.

16. He based his opinion on the books of medical jurisprudence and his wide experience in the field of forensic medicine, large number of publications and his conduct of about 10,000 autopsies. He also endorsed his written opinion on being orally examined by the Court.

17. From the clear and cogent opinion expressed by the medico-legal expert Dr. Sinha, and from the observations of this Court referred to hereinabove, apparently the opinion of Dr. M. M. Ahmad dated 23.8.08 does not appear very reliable. As Dr. Ahmad had initially seen the lacerated wound 1.5 cm. x 3 cm. over the scalp on the frontal bone which is situated 13 cm. above the right ear root and 10.2 cm. above the right eyebrow on the head of Smt. Savita on 2.7.08 and had also advised X-ray of the skull region, which revealed two radio opaque shadows, Dr. Ahmad's opinion on 23.8.08 that "at the time of examination there was no wound of firearm injury" appears on the face of it, to be erroneous.

18. Likewise the two opinions of the medical boards consisting of 4 doctors including the C.M.O., Kaushambi, the initial one being dated 20.10.08 which notes that "In the light of the above mentioned findings we members of the medical board are in the opinion that injury is not a firearm injury, instead it is self inflicted," and the opinion of the Board dated 2.3.09 that "Shadows seen in the X-ray may or may not be due to pellets of firearm and it cannot be said definitely. A view of the ballistic expert can be taken regarding nature of these radio-opaque shadows of metallic density" seem to be erroneous, and self-contradictory too. Self-contradictory because the first opinion of the medical board dated 20.10.08 reaches a conclusion that the injury was not due to fire arm, and at the same time it goes on to suggest that the lady had herself inflicted the injury on her head. In this, regard Dr. Sinha informed the Court that in his vast experience he had never come across such a case where such a fire arm injury on the head of a woman was self-inflicted. The opinion of the medical

board could also be deemed as incompetent, inasmuch as in the second opinion of the Medical Board dated 2.3.09 a vague suggestion has been made that the radio opaque shadows may or may not be due to pellets of a fire arm and a ballistic expert was needed for clarifying this position. It is made clear that it is only a doctor and not a ballistic expert at all who on a perusal of the X-ray and initial injury reports and after touching the moveable hard object on the head of an injured can determine whether the injury is due to a fire arm. If at all, after the still present pellets on Savita Devi's head are extracted, the ballistic expert might succeed in venturing any opinion about the nature of the fire arm which may have caused those pellets to be embedded over the frontal bone of Savita Devi as suggested by Dr. U. S. Sinha.

19. In this view of the matter, we direct that the copy of the written medical opinion of Dr. U. S. Sinha dated 16.4.2009 and copy of this order be forwarded to the lower court for appreciation of the medical opinion in this case. It is of course expected that the trial court shall apply its independent mind in appreciating the medical opinion evidence on record. Also if it appears to the trial Judge that some evidence has been fabricated, falsified or suppressed so as to pollute the course of justice in this case by either side, the trial court shall take appropriate legal actions against the persons responsible for the same.

20. In this case we observe that inspite of two radio opaque shadows of metallic density being seen in the radiological examination of Savita Devi on 3.7.08 which was preceded by the medical examination report on 2.7.08 which revealed a lacerated injury on Savita's head precisely at that point where X-ray was done, the S.O. concerned had only got an N.C.R. under Sections 323 and 504, I.P.C. registered on 2.7.08 and that the use of fire arms appears to have been concealed, compelling Smt. Savita to move the application u/s 155(2), Cr. P.C. to the Judicial Magistrate Kaushambi dated 8.7.08, complaining about these facts, whereafter Section 308, I.P.C. was added to the earlier sections. But again the Investigating Officer appears to have adopted a somewhat unprecedented and unusual procedure in getting a medical board constituted and obtaining an opinion from the board, on 20.10.08 that the injury to Savita's head was not due to fire arm and that it was self-inflicted. Thereafter hurriedly on 23.10.08 a charge-sheet was submitted only under Sections 323, 504 and 506, I.P.C. at Case Crime No. 234A by the police of P.S. Sarai Aqil, so as to nullify the Petitioner's application and radiological reports etc. and claim that she received a fire arm injury. In these circumstances we are prima facie of the view that use of extraneous pressures cannot be ruled out in this case, and we direct the S.P. Kaushambi to get the matter thoroughly probed and in case he is satisfied after an independent enquiry that any of the police officers concerned have engaged in any foul play or malpractice he should take strict action in the matter against the said officers.

21. It will also be open to the complainant/Petitioner to move an application before the competent court for showing that the charge-sheet ought not to have

been submitted only under Sections 323, 504 and 506, I.P.C. but under other some graver sections too, and the Court concerned shall pass appropriate orders thereon in accordance with law.

22. Further the disturbing trend that doctors of late are becoming too careless and often willing tools ever ready to rubber stamp the opinions of Investigating Officers without application of their independent minds appears to have been again highlighted before this Court in the instant case. An opinion erroneously, collusively or dishonestly given by the doctor, who examines a victim can have far reaching consequences especially at the initial stage when a Court considers a bail application or a prayer for staying arrest of an accused or for any other purpose. It is true that subsequently during trial the opinion of the doctor is considered only as an opinion evidence u/s 45 of the Evidence Act, which is relevant, but not conclusive and the Court is free to judicially estimate the value of the doctors opinion evidence by examining how well it can explain and clarify the facts in issue.

23. In the circumstances of the case, we leave it open for the concerned Secretary, Medical Health, U.P. to consider whether it would not be advisable to get a departmental enquiry conducted in the matter for enquiring as to whether the concerned doctors who have constituted the Medical Board and Dr. M. M. Ahmad who initially examined Savita Devi on 2.7.08, but gave his opinion to the Investigating Officer on 23.8.08 have acted incompetently or collusively.

24. In the face of such incompetent expressions of medical opinions by the doctors, which are becoming increasingly prevalent, and which can seriously prejudice the fair conduct of investigations and trials in criminal cases, we would appreciate if the concerned Secretary, Medical Health could develop a system for conducting refresher courses in Medical Jurisprudence for Government doctors who have to undertake medical examinations or post mortem examination of the victims, deceased and others in medico-legal matters.

25. With these observations, this writ petition is disposed of.

The Secretary, Medical Health and the Superintendent of Police, Kaushambi may submit their compliance report to this Court with regard to the aforesaid directions within three months.

The Registrar General and the learned Government Advocate may communicate this order for compliance to the Secretary Medical Health and the Superintendent of Police, Kaushambi, within two weeks.

Copy of the order may be given to the learned Government, Advocate free of cost within four days.