M.Cr.C.No.1298/2013
(Dr. Ajay Chandrawat & Ors. v. State of M.P. & Anr.)

22/02/2017

Shri Sanjay Singh, Counsel for the applicants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent No.1/State.

This petition under Section 482 of CrPC has been filed calling in question the FIR in Crime No.06,07/2013 registered by Police Station Veerpur, District Sheopur for offence punishable under Section 304-A of IPC.

The prosecution story in short is that on 28.01.2013 one L.T.T. Camp (Laparoscopic Tubectomy) was organized at Primary Health Centre, Veerpur, District Sheopur in which 90 females sterilization operations were carried out. In that camp, deceased Smt. Meera Jatav and Smt. Sushila Rawat were also registered for LTT operations. It is alleged that during the treatment Smt. Sushila and Smt. Meera were given injections and immediately thereafter their health deteriorated. Both the ladies were referred to District Hospital Sheopur which is at a distance of about 100 – 110 Kms. When the patients reached to the District Hospital Sheopur, they were found dead. The applicant No.1 was working as Medical Officer, Primary Health Centre, Veerpur, District Sheopur whereas applicants No.2 was working as Lady Health Visitor, Primary Health Centre, Veerpur, District Sheopur, applicant No.3 was working as ANM, Community Health Centre, Veerpur, District

Sheopur and the applicant No.4 was working as ANM, Primary Health Centre, Veerpur, District Sheopur. During the investigation, the Chief Medical and Health Officer, Sheopur constituted a team of four doctors to conduct a detailed enquiry into the death of Smt. Meera and Smt. Sushila. After considering the record and the statements of the witnesses, the committee found that Smt. Sushila had five children whereas Smt. Meera had three children and accordingly they had opted for L.T.T. operation. The consent letter for the operation was signed by Smt. Meera herself whereas Smt. Sushila had affixed her thumb impression in the said form. The signatures of the witnesses were also obtained. Before conducting operations, the applicants had carried out preliminary physical test and had given instructions for certain tests like hemoglobin, sugar test etc. Instructions were also issued that the patients should not consume after 4-5 in the morning. The operations were performed by Dr. O.P. Shukla. The applicants No.2 to 4 had given the injection Diazepam 2m I/W, injection Atropine 1ml I/M, injection Pentazocin 1ml I/M and injection Liqnocoin+Adronallin 10 CC (Each) as prescribed by Doctors. The operations started at about 12 PM. After 5-6 operations were carried out, all of a sudden, one patient Mamta started shivering. The moment applicant No.2 noticed the condition of the patient Mamta, she immediately called the

applicant No.1, who after examining the deceased gave necessary medicines and referred for Sheopur but the attendants of the beneficiary did not take her to Sheopur and since the beneficiary was also feeling good, therefore, L.T.T. operations were continued. The incident was also narrated to Dr. Shukla who also attended the deceased Smt. Meera and Smt. Sushila. After attending all the patients, the patients Smt. Meera and Smt. Sushila with the consent of the doctors were referred to District Hospital Sheopur. The District Hospital Sheopur is situated at a distance of about 100-110 Kms and when the patients reached to the hospital, they were found dead. The dead body were sent for postmortem and the mode of death was found to be asphyxia due to respiratory failure. Subsequently, viscera and prickmark site (injection site) were preserved for further examination. It was also found by the committee that Smt. Meera and Smt. Sushila were fit for LTT operations, as they were fulfilling all the minimum requirement and all necessary health checkups were conducted. The necessary medicines were given under the instructions of Dr. O.P. Shukla and the applicant No.1. At that time, the health of the beneficiaries started deteriorating. They were immediately attended and they were sent to District Hospital Sheopur in an ambulance along with all necessary

medical equipments. However, both of them died on the way to the Hospital. In the postmortem report, it was found that the L.T.T. operation was not performed and fallop ring was not found. The empty vials, the medicines which were used for conducting the operations and necessary test report were also sealed by the committee and after recording the statements of the witnesses, a report was submitted by the committee. In the report, although, it is not specifically mentioned that whether there was any negligence on the part of the doctors or not but the manner in which the report has been prepared it is clear that the applicants No.2 to 4 had administered only those injections which were prescribed by the doctors. Necessary medical precautions were taken before conducting L.T.T. operations and during that period the health condition of Smt. Sushila and Smt. Meera started deteriorating. They were immediately attended by the doctors and thereafter they were sent to District Hospital Sheopur in an ambulance which was fully equipped with medical equipments. The FSL report has also been received. In the viscera and prickmark site of both the deceased persons diazepam clorfenamina maleate was found and no poison was found. Thus, according to the FSL report also only the presence of medicines was

found in the viscera as well as prickmark site of the deceased persons.

It is submitted by the counsel for the applicants that even assuming that there is any negligence on the part of the doctors then that by itself would not be a negligence in criminal law. The element of mens rea must be shown and the degree of negligence should be much higher. However, in the present case, the L.T.T. operations were performed by Dr. O.P. Shukla and the applicant No.1 was working under his instructions whereas the applicants No.2 to 4 were giving the injections as per the prescriptions of the doctors. Even, the committee has not found any negligence on the part of the applicants. The FSL report also suggest that medicines which have been prescribed by the doctors have been given and under these circumstances it cannot be said that the applicants are guilty of offence punishable under Section 304-A of IPC.

Per contra, it is submitted by the counsel for the State that the L.T.T. operation camp was organized and although the operations were being performed by Dr. O.P. Shukla but the allegations are that before the operations could be performed, the health condition of two ladies deteriorated, ultimately, they died. As the patients were being handled by the applicants, therefore, it

is submitted that there is a *prima facie* case against the applicants to *prima facie* show that they were negligent in performing their duties.

Heard the learned counsel for the parties.

If the report submitted by the committee is considered then it would be clear that all the beneficiaries who had got themselves registered for L.T.T. operations were given pre operational treatment. According to the report all necessary tests were also carried out. However, for the reasons not known to the committee, the physical condition of three ladies deteriorated but they were immediately attended. One beneficiary namely Smt. Mamta had recovered. However on the advise of Dr. O.P.Shukla and the applicant No.1, the beneficiaries Smt. Sushila and Smt. Meera were referred to District Hospital Sheopur for further treatment. Necessary treatment to recover was also given. The beneficiaries were sent to the District Hospital Sheopur by an ambulance which was fully equipped with necessary medical equipments. However, it appears that as the District Hospital Sheopur is situated at a distance of 100-110 Kms, therefore, Smt. Sushila and Smt. Meera expired on way to the Hospital. Thus, it is clear that there is nothing in the report given by the committee which may point out towards the gross negligence of the

applicants.

In the case of **Jacob Mathew vs. State of Punjab** reported in **(2005) 6 SCC 9**, the Supreme Court has held as under:-

> "48. We sum up our conclusions as under:-
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> (1) Negligence is the breach of a duty caused by 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. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.
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> (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.

(3) A professional may be held 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. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam v. Friern Hospital Management Committee, [1957] 1 W.L.R. 582, at p.586 holds

good in its applicability in India.

(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.

(6) The word 'gross' has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304A of the IPC has to be read as qualified by the word 'grossly'.

(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.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.

> 52. 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 [1957] 1 W.L.R. 582, 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."

The Supreme Court in the case of **A.S.V. Narayanan Rao v. Ratnamala** reported in **(2013) 10 SCC 741**, after considering the report

submitted by the Medical Council of India, came to the conclusion that as according to the Medical Council of India as well as the Andhra Pradesh Medical Council "doctors seem to have made an attempt to do their best as per records" came to a conclusion that the prosecution of the doctor is uncalled for and negligence, if any, on the part of the concerning doctor, cannot be said to be "gross".

If the facts and circumstances of the present case are considered in the light of the judgments passed by the Supreme Court in the cases of **Jacob Methew (supra)** and **A.S.V. Narayanan Rao (supra)**, it is clear that no negligence much less the gross negligence has been found by the committee of four doctors constituted by the Chief Medical and Health Officer.

It is unfortunate that two ladies have lost their lives but unless and until gross negligence is found on the part of the doctors, they cannot be criminally prosecuted.

In the present case, the reply has been filed by the State and even in the reply, it is merely mentioned that prima facie it has been found that both the ladies died because of the injections given by the applicants. It is also mentioned that as the fallop ring was not found therefore, it clear that the LTT operations on both the ladies was not

performed. In the reply, it is mentioned that as both the ladies had come from their house in hale and healthy condition and their physical condition started deteriorating only after administering of the injections, therefore, they had expired. It is not the case of the prosecution that some other injections were given in place of what was prescribed by the doctors. It is also not the case of the prosecution that the applicants No.2 to 4 were not competent and authorised to administer injections. Once, the injections prescribed by the doctors were given to the beneficiaries Smt. Sushila and Smt. Meera by the applicants No.2 to 4 and in absence of gross negligence on their part in giving the injections, it cannot be said that the applicants No.2 to 4 have in any manner committed an offence punishable under Section 304-A of IPC. Similarly, the applicant No.1 is a MBBS Doctor working on the post of Medical Officer, Primary Health Centre, Veerpur, District Sheopur. L.T.T. operations were being performed by Dr. O.P. Shukla and the applicant No.1 was assisting him. All necessary tests which are required to be performed prior to the operation were performed and when it was reported that the physical condition of some of the patients is deteriorating then the applicant No.1 immediately attended them and gave first aid to the

beneficiaries and also informed Dr. O.P. Shukla. Subsequently, in consultation with Dr. O.P. Shukla, both the beneficiaries were referred to District Hospital Sheopur and they were sent in an ambulance which was fully equipped with medical equipments. Under these circumstances, it cannot be said that the applicant No.1 did not take all the precautions which were expected of him at the relevant time.

Under these circumstances, this Court is of the considered view that the applicants were not negligent much less gross negligent in performing their duties.

Accordingly, this petition succeeds and the FIR No.06,07/2013 registered by Police Station Veerpur, District Sheopur is hereby quashed.

It appears that the charge-sheet has not been filed so far in view of the interim order dated 21.02.2013 passed by this Court.

Accordingly, this petition succeeds and is hereby **allowed**.

(G.S.Ahluwalia)
Judge

(ra)