

Dr. P.B. Desai Vs The State of Maharashtra and Mr. Padmachandra Singhi

Court: Bombay High Court

Date of Decision: Oct. 15, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 388, 389, 390, 397, 401
Maharashtra Medical Council Act, 1965 â€” Section 22(1)(a)
Penal Code, 1860 (IPC) â€” Section 109, 320, 338

Citation: (2013) BomCR(Cri) 173 : (2012) 114 BOMLR 3684

Hon'ble Judges: K.U. Chandiwal, J

Bench: Single Bench

Advocate: Shirish Gupte, @ Mr. Subodh Desai, for the Appellant; U.V. Kejariwal, APP for State and Mr. P.C. Singh, Complainant-Respondent No. 2 in Person Present, for the Respondent

Final Decision: Dismissed

Judgement

K.U. Chandiwal, J.

The original accused no. 1 (Dr. Desai) impugns conviction recorded by the learned Additional Chief Metropolitan

Magistrate, 47th Court, Esplanade, Mumbai on 5.7.2011 and confirmed in criminal appeal no. 432 of 2011 by the learned Additional Sessions

Judge for an offence u/s 338 read with Section 109 of IPC, directing to suffer SI till rising of the Court and to pay Rs. 50,000/- as and by way of

compensation, in default to suffer SI for Three months.

FACTS :

P.W. 1 Padamchandra Singhi as complainant, initiated prosecution through Azad Maidan Police Station against accused no. 1 and Dr. A.K.

Mukherjee. In 1987, the complainant, due to aggravated physical condition of his wife Smt. Leela took her to New York for treatment of cancer

and on the basis of the biopsy of the cervix, the Doctors in New York declared her case to be absolutely inoperable. The patient was brought to

Bombay, advice of Dr. A.K. Mukherjee was taken as she started bleeding from vagina. Consequently, she was admitted at Bombay Hospital

under Doctor Mr. P.B. Desai (Accused no. 1) wherein different kinds of tests including C.T. Scan, blood analysis, Blood Transfusion report,

examination of urine, microscopic examination of centrifugalised deposits were carried. The accused-applicant examined Smt. Leela and suggested

removal of uterus by an operation. He was confronted by the complainant with the reports of New York Hospital as to "was there is any need to

operate the patient", the accused no. 1, renowned oncologist in the field, stated that he knew his job well. The complainant and Smt. Leela desired

that if operation is to be carried on, it will be by accused no. 1 himself. As per convenience and instructions of accused no. 1, 22nd December,

1987 was the date fixed for operation. On the date of operation, the complainant again requested accused no. 1 to give a second thought to

operate his wife. The accused no. 1 did not hear but entered the operation theatre at about 8.30 a.m. The accused no. 1 was carrying operation on

one Mr. Oswal in adjoining room. During the course of opening of abdomen by Dr. Mukherjee, Dr. Mukherjee and Dr. Maniyar called accused

no. 1, he came up to the door of the operation theatre. In spite of remaining at a distance of 6 ft. from the patient, accused no. 1 did not examine her

and simply asked Dr. Mukherjee to close the abdomen as operation could not be performed. Dr. Mukherjee called the complainant near the door

of operation theatre and informed him that the operation could not be performed because of profuse oozing of ascetic fluids and plastering of

intestines, so the abdomen which has been opened was to be closed. The patient Smt. Leela was indoor patient from 09.12.1987 to 4.5.1988, in

room no. 1005 under Accused no. 1. Room no. 1005 was earmarked for Dr. Desai, and never allotted to any other patient without instructions of

Dr. Desai.

2. A bill of Rs. 5,000/- of accused no. 1 was raised by Bombay Hospital, it was sent to Government of Rajasthan and repeated reminders were

sent for releasing the payment. The complainant had objected for charging Rs. 5,000/- as Dr. Desai did not operate his wife. After the

correspondence, Bombay Hospital sent a duplicate bill deleting Rs. 5,000/-.

3. The factual details in the operation theatre could be received by the complainant as his wife was given local anesthesia and she had heard

everything, watched everything in the operation theatre. She told him, accused no. 1 did not operate her. Dr. Mukherjee opened her abdomen, she

was conscious throughout the operation proceeding, Dr. Mukherjee got upset and nervous when he opened her abdomen. The patient was

mentally upset as accused no. 1 has not operated in spite of promise. Patient started feeling pain in the operated part of the abdomen. There was lot

of discharge from fistula. Her physical condition was deteriorating. Whatever she used to take, used to come out of the opening of the abdomen.

The nurses used to dress the wound after cleaning the discharge, minimum 4 to 5 times a day. Thereafter, the patient was required dressing for

near about 20 to 25 times within 24 hours which continued till she was in hospital. The accused no. 1 did not come in the room no. 1005 to see the

patient Smt. Leela after the operation till she was in the hospital. The patient succumbed at Jaipur on 26.2.1989.

4. The complainant had lodged report against accused no. 1 with Maharashtra Medical Council. An inquiry was held consisting of four eminent

doctors in the field. On 13.1.1998 Maharashtra Medical Council gave verdict and held accused no. 1 guilty, under Paragraph 15 of the "Warning

Notice" of the Code of Medical Ethics of the Maharashtra Medical Council and Paragraph 3 under "Disciplinary Action" of the Code of Medical

Ethics of the Medical Council of India and he was warned u/s 22(1)(a) of the Maharashtra Medical Council Act, 1965.

SUBMISSIONS :

5. Shri. Gupte, the learned Senior Counsel, while criticising the conviction had threadbare read evidence, documents and reported judgments. He

submits element of mens rea being an essential component in a grievous hurt, is lacking. The act must be rash and negligent to endanger human life.

The power of revision u/s 397 or 401 of Cr. P.C. deals equally like appellate power under Sections 388, 389, 390 of Cr. P.C. Both the Courts

have misread the evidence associated with lack of appreciation.

6. Mr. Gupte says, the accused no. 1 is globally known surgeon, presented with gallantry awards and credentials. The accused no. 1 has read

medical papers in different Universities in the world. He has been awarded with Padmabhushan by the Government of India, and Dhanwantari

award. He could never be termed to be rash and negligent in opining in exploratory surgery, which was the only decision that could be taken in the

matter of bleeding to the patient.

7. According to Mr. Gupte, Smt. Leela was never a patient of accused no. 1. He was only called upon to give his opinion after 12 days of

admission. The operation was performed by Dr. Mukherjee and not by accused no. 1. There could not be negligence to look after the patient post

operational. Dr. Hegde, one of the defence witnesses who has said, in a given situation exploratory surgery could be the advise and the act or

advice will not be a negligence and would not render a criminal act. As per the Code of Conduct, Senior Doctor would not examine a patient

unless referred. The Medical Council simply warned Dr. Desai. He never charged Rs. 5,000/- for not operating the patient. In the operation

record names of team is disclosed. Dr. Maniyar, Dr. Rashmi were also the members in the team. Dr. Rashmi has been examined as D.W. 1.

8. He says, there could not be a case u/s 338 of IPC as none of the ingredients in Section 320 of IPC are indicated. There could not be gross lack

of knowledge of the subject to accused no. 1. Dr. Desai has protested practice of admitting patients in his name at the hospital. The note shows

name of Dr. Desai without his knowledge.

9. Mr. Gupte has, to emphasis his point, placed reliance to the judgment in the matter of Jacob Mathew Vs. State of Punjab and Another, . He

exhaustively read it and desired to apply parameters to the present case. (II) Dr. Suresh Gupta Vs. Govt. of N.C.T. of Delhi and Another, ; (III)

Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Bapu Godbole and Another, ; (IV) Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and

Others, .

10. The learned APP Smt. Kejariwal invited my attention to Pathalogy report dated 19.12.1987, 18.12.1987 and other identical clinical

examination upto 25.3.1988. She says in all medical papers Ex. P-22, name of Dr. Desai appears to have referred for such test. If on 12.2.1988,

a letter is written by Dr. Desai to the Chairman of Bombay Hospital declining Smt. Leela Singhi to be his patient, then how come his name reflects

in the examination papers maintained by the hospital. The amount of Rs. 5,000/-though was deleted in the subsequent bill, proportionate 1/3rd fees

payable to the juniors remained the same in Exhibit 19 and Exhibit 20. The evidence of P.W. 3 -Theatre Attendant is of importance as it refers the

name of Dr. Desai to be an operating surgeon. The patient had undergone pain and suffering after opening of her abdomen. She was refrained to

follow her ordinary pursuit for more than 30 days. The medical practitioner- a surgeon owes a duty to his patient post operation. Defence raised

by Dr. Desai are unconceivable.

11. The complainant, 84 years old, retired IAS officer prosecuted the cause for last more than 25 years vibrantly, arguing the matter and also

placed written submissions. He read evidence of Dr. Desai in the civil proceedings being Suit no. 1101 of 1989, (The said suit is decreed and Dr.

Desai/Bombay Hospital has preferred appeal.). He says, the available evidence and his communication with Dr. Desai establish that his wife was

the patient of Dr. Desai, and Dr. Mukherjee was his junior. The duplicate bill and original bill issued by the Bombay Hospital did not match as Rs.

5,000/-was deleted later. Even if there was admission of patient as a policy in the name of Dr. Desai, but he had given preference to Dr. Desai

alone as he was a renown Oncologist and if his wife was to be operated as per advice of Dr. Desai, it should have been done by him alone. He

was at pains to explain the negligence and intangible behaviour of Dr. Desai. He dent the stand of Dr. Desai that his wife was not his patient by his

verbal slugfest and the documents. The gravamen of his submission is, his wife was admitted under Dr. Desai, he opined for exploratory surgery

against the advice of expert in the field, even after such opinion, did not operate his wife inspite of calling him, though operation date was fixed with

his convenience, he even thereafter did not take post operative care by visiting the patient.

FINDINGS :

12. The factual details about Smt. Leela having examined at New York in USA and she was examined by Dr. Desai, she was admitted as patient

of Dr. Desai is indicated in the set of documents. The date of operation was fixed as per the convenience and on instructions of Dr. Desai five days

after his advice. He may dispute the same, however the documentary evidence blasts his defence. There was no justification in such narration. The

evidence of P.W. 3 Amar B. Singh, the Theatre Attendant in hospital indicates that he made entries in the register on 22.12.1987. The table where

the register was kept was in between the two operation theater in corridor. He made entries in the Register on 22.12.1987 in respect of all the

operations. This was usual practice at Hospital. He has identified the entries about the operation of Smt. Leela Singhi. He accepts, on 22.12.1987

one Mr. Oswal was operated by Dr. Desai in adjoining operation theater no. 1, at the time of operation of Smt. Singhi. In the list of operation to

be performed by Dr. Desai there were two patients viz. Mr. Oswal and Mrs. Singhi. The name of operation mentioned against Mrs. Singhi is

Exploratory Laprotomy Panhyxtroctomy.

13. Basically, a surgeon of renown caliber should have desisted to fix two operations or multiple operations on a single day where the question of

vitality and life of the patient is paramount. Even if Dr. Desai is expert in his field, the emergent assistance required to be extended by him, was

avoided as he though kept two operations side by side, did not enter in the operation theatre where Smt. Leela Singhi was to be operated at his

advice. Dr. Mukharjee was not to operate the patient, as he was assisting Dr. Desai. He has accepted in civil proceedings that he was at a distance

of Six feet from the patient, near the operation theatre, but did not venture to examine her. He simply advised Dr. Mukherjee, nothing can be done,

close the abdomen. When Bombay Hospital has charged fees of Rs. 5,000/- for operating first class patient like Smt. Singhi, he was expected to

discharge his obligation. The bill was to be paid by the Government of Rajasthan as complainant was an IAS officer serving with said Government.

Two reminders of bills were sent by Bombay Hospital. It was later a faint exercise, due to protest of the complainant, that the bill of Rs. 5,000/-

was recalled. However, the original and initial liability, thereby will not taken away. There is ample material to show, billing pattern applied in the

instant case was prevalent in past and few years later.

14. P.W. 5 Dr. Vyas is Medical Director of Bombay Hospital. He accepted, as per the record it seems that the patient Mrs. Leela Singhi was

admitted in hospital under the care of Dr. P.B. Desai, she was discharged on 5.4.1988. At Exhibit P-22, on 12.12.1987 Dr. Mukharjee made

endorsement for taking opinion of Dr. Desai after taking C.T. Scan report of Mrs. Singhi. When the patient was examined by Dr. Desai in room

no. 1005, on 17th December, 1987 Dr. Mukharjee was not present. The case of Mrs. Singhi was referred to Dr. Borges on 19.12.1987. Dr.

Borges is the Cardiologist who gave opinion for fitness for operation. Dr. Mukharjee has endorsed in the medical case papers on 17.12.1987 that

Dr. Desai has seen the case and advised exploration.

15. The evidence of Dr. Earnest Greenberg Oscar Greenberg illustrates Mrs. Singhi first consulted him on April 10, 1985 regarding the treatment

of her metastatic breast cancer. He answered to some of the questions as under:-

Ques: Do you agree that for the purposes of stopping abnormal bleeding per vagina, hysterectomy is generally an acceptable procedure ?

Ans. No, it all depends upon reason of the bleeding. Bleeding may occur due to:

(1) some lesion in the vagina itself, (2) some lesion on the surface of the cervix, (3) due to some dysfunction in the uterus or from some lesion in the

uterus, (4) due to some coagulation defect. The treatment has to be directed towards the cause of the bleeding. Before deciding the treatment the

cause of bleeding has to be ascertained. The treatment depends upon the condition of the patient also.

Ques: In what cases of abnormal bleeding per vagina you would advise hysterectomy ?

Ans: It has to be decided by the gynecologist.

(The witness volunteers in this case the patient Mrs. Singhi was therefore referred to gynecologist Dr. Alfred Brockunier) (The witness further

volunteers that in the opinion of Dr. Alfred Brockunier surgery was not appropriate looking to the condition of patient Mrs. Singhi. He further

volunteers that he i.e. witness concurred with his opinion i.e. with the opinion of Dr. Alfred Brockunier. The concurred with the opinion of Dr.

Brockunier based on his findings.)

Ques: Is it correct that the findings of Dr. Rockunier are reflected in Exh. P-24/4 i.e. letter dt. 23/11/87 ?

Ans: Yes, they are.

My attention is drawn to reports Exh. P-24/2 and Exh. P-24/3. These two reports mention only that metastatic carcinoma in cervix, primary site,

breast plus involvement of lymphatic channels. They do not say anything about involvement of any other system.

It is correct that Dr. Alfred Brockunier has mentioned in his letter dt. 23/11/87 that there was some enlargement of the corpus with negative

adnexa. It was the finding of Dr. Alfred Brockunier. The meaning of the word corpus is the body of the uterus whereas the opening of the uterus is

known as cervix. Adnexa means ovaries and tubes. They are in the pelvic space by the side of the uterus. Negative Adnexa means nothing

abnormal was palpable in ovaries and tubes. (The witness volunteers nothing was palpable it does not mean that anything abnormal was not found

in ovaries and tubes.)

Ques.: Do you agree or are you aware that surgical approach/when feasible is an important treatment option when metastatic disease is apparently

localised in an organ which can be removed with standard surgery ?

Ans. No.

I don't have any literature to support my answer. X-ray images means C.T. Scan. While answering I have stated, ""while obvious metastasis can be

detected by X-ray images, ""I mean C.T. Scan"". When C.T. Scan did not reveal any abnormality it means no obvious metastasis was detected or

was there. Other imaging studies were not performed by me, Dr. Brockunier or in the hospital in New York showing whether there was obvious

metastasis or not.

Ques: Do you agree that at no time you had any discussion with Mr. Singhi to the effect that hysterectomy or surgery for removal of uterus was to

be performed.

Ans. In view of the findings and in view of the fact that bleeding had stopped that surgery would not be a consideration. Because the tissue of her

pelvis were in such condition that any more extensive surgery would be associated with a great risk of serious complications.

I cannot say whether this talk took place with Mr. Singhi before 20.11.87.

Ques: Is it correct that this was your opinion, (which you conveyed to Mr. Singhi) before November 20th 1987.

Ans. I do not recall when I conveyed my opinion to Mr. Singhi.

This opinion was formed when Dr. Brockunier reported his findings and the pathology report to me. Before I formed my opinion Dr. Brockunier

did not give me anything in writing.

Ques: Before you formed your opinion did not note down what Dr. Brockunier had told you.

Ans. I cannot tell you because I don't have full printed report with me. It may be on Microfiche.

I had not yet received the written report when I formed the opinion. (The witness volunteers that Dr. Brockunier reported him orally) I did form my

opinion before 20.11.87. I have not recorded this opinion namely that hysterectomy should not be performed or surgery should not be performed

for the reasons given above, in Ex. P-24-1.

Ques: Was there any difficulty or any reason for not recording it in your opinion dt. 20.11.87 ?

Ans: My feeling it was not necessary to be recorded therefore I did not give this opinion in writing before 22.12.87.

Qus: Do you agree that in such cases surgery could be performed on the basis of opinion of the doctor after considering the circumstances existing

there ?

Ans. It is basically treating Doctors responsibility to assess all the circumstances to inform the patient and apply his or her decision accordingly.

Qus: doctor therefore if after taking into consideration that in the year 1977 Mrs. Singhi had breast cancer which was treated and controlled and

there was a cancer free period and subsequently after lapse of many years metastatic disease was detected in cervix and nowhere else in such

circumstances the treating doctor could suggest the surgical approach to stop the continuation of the bleeding which continued inspite of hormonal

treatment. Do you agree ?

Ans. We are not talking about a hypothetical question. We are talking about a patient who has already had metastatic disease in pleura although

without any evidence of progression at that time, second she had undergone radiation therapy to the pelvic organs which had resulted in

considerable hardening and scarring of the pelvic tissues even as palpable from the outside. There was also a previous examination and

consultation with gynecologist treating almost exclusively cancer patients whose opinion had been that surgery would have created a serious risk of

complication for the patient and under those circumstances the surgeon who was presented again with the problem of bleeding would have been

best advised to obtain some consultation with additional opinion before proceeding with an operation associated with such risks.

Qus. Do you agree that the dose was so small that it could no lead to hardening of tissues in the pelvis that you are referring to ?

Ans. I do not agree. I have seen such fibrosis secondary to this type of dose occurring sometimes particularly with older radiation equipments used

at that period of time. Second, if the in duration of the tissues that I could actually feel from the outside and that Dr. Brockunier found on

examination inside if that was not due to radiation then it was most certainly due to tumor spread in this part of body. I further say that this was

indeed found at surgery as predicted.

The sum and substance from the crucial part of the evidence is that the decision of exploratory surgery, could not have been taken based on the

C.T. Scan which did not inform any abnormality. When there was already a previous examination and consultation with Gynecologist, the surgery

could have created risk of complications for the patient, the surgeon should have obtained best consultation or addition opinion before proceeding

with an operation associated with such risk. Even if one accepts that in the situation there could not be judgmental error of Dr. Desai to operate,

however, his conduct all throughout calls for condemnation associated with negligence and shows total apathy to the patient. When he could advise

operation and patient accepted, date was fixed as per his convenience, he should have performed operation. He had the gumption to disown the

patient of his own inspite of the fact that Rs. 5000/- were charged by the hospital and repeatedly demanded from the concerned -Government of

Rajasthan. In the bill Exhibit 22, proportionate fees i.e. 1/3rd to Dr. Desai's fees are charged to the junior doctors and others. It also refers that

operation was to be performed by Dr. Desai, the consent was given by the complainant for Dr. Desai.

16. Dr. Desai had occasion to verify the case papers, when he opined for the exploratory surgery. If he had objection about naming the patient

under him, he could have at the inception disputed the same as on 17.12.1987, when he knew the situation. The principle of mens rea turns to be

insignificant in fact situation. The rules of evidence require the Accused to explain of his conduct. With a view to combat the disastrous

consequences of decision to operate several patients, at a time Dr. Desai has to face consequences. The patient treats him next to God believed his

advice, but expected him to do the same which was consented by him. A patient cannot be expected to keep track of everything. Most of the time

papers are changed, or misplaced, patient has normally no access to it. It was fortunate complainant could retain bill of Rs. 5000/- of Dr. Desai,

else hospital and Dr. Desai were disputing levying charges on this score.

17. In the case of "Jacob Mathew Vs. State of Punjab & Anr.", the Supreme Court has elaborately dealt with the term "negligence". It is also

observed, the essential ingredient of mens rea cannot be excluded from consideration when the charge in a criminal court consists of criminal

negligence. It is observed, a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the

result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The Supreme Court in paragraph 49

has observed, "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." To

prosecute a medical professional for negligence under criminal law, it must be shown that the accused himself 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.

18. The evaluation of evidence of complainant P.W. 1 illustrates, Dr. Desai opined for operation but did not conduct surgery and had audacity to

charge bill. The opinion extended on exploratory surgery, was against advice of experts from USA but he felt based on his expertise in the field for

operation, however, he should have given a second thought in the light of the opinion of Dr. Earnest Greenberg. The judgment to carry operation

should have been effect of cogent physical examination, review of all imaging studies tests, which unfortunately has not been done. The patient

provably was admitted under the care of Dr. Desai. He owed responsibility towards the patient having agreed to examine her, he is not permitted

to abandon the patient when he failed to operate her personally, and did not take care for profused bleeding from the operational body part. There

is no question mark to his skill in the field, but the multiple operation scheduled by him, not attending while operation and post operation, has taken

toll of the situation for which the patient suffered, required to undergo hospitalisation pain, suffering for three months. The anguish faced by the

patient and her relation is unparallel. She was required, as per the hospital record, bandage to the open part of the abdomen every hour or

intermittently.

19. It is pertinent, the expert body in the field of the renown Doctors in the Medical Council of Maharashtra has, on examination of available

evidence held Dr. Desai guilty of professional misconduct. The reasons are as under:-

1) The patient Mrs. Leela Singhi was admitted on 9th December, 1987 by the Bombay Hospital Authorities in the Unit of Dr. P.B. Desai on the

basis of a note for admission given by Dr. A.K. Mukherjee. However, it has been brought out in arguments that Dr. P.B. Desai was not

responsible for the care and treatment of the patient as per the prevalent practice of Bombay Hospital which practice needs to be strongly

condemned.

2) The patient was examined by Dr. P.B. Desai on 17/12/1987 after preliminary investigations by Dr. A.K. Mukherjee. Dr. P.B. Desai advised

exploratory Laparotomy inspite of the opinion of cancer specialists from U.S.A. Respecting Dr. P.B. Desai's opinion, the patient agreed for

surgical treatment and desired that Dr. P.B. Desai should operate on her. Accordingly, the operation was fixed on 22nd December, 1987 by Dr.

A.K. Mukherjee in consultation with Dr. P.B. Desai, who would be available on the Hospital premises during operation. During surgery the case

was found to be inoperable and there were complications as result of which the patient suffered for a period of about 3 months. All this would have

been avoided if surgical treatment had not been performed.

3) The Council is of the opinion that a responsible Senior Surgeon is expected to enquire on his own about the progress of the operation when it is

advised by him and is being carried out while he is on the premises. The Council therefore feels that Dr. P.B. Desai, instead of merely advising,

ought to have voluntarily taken more interest and personally seen the situation faced by Dr. A.K. Mukherjee which he did not do.

4) The Council therefore, holds that Dr. P.B. Desai has violated by committing breach of paras Nos. 1, 3, 12 of the Code of Medical Ethics of the

Maharashtra Medical Council and declaration No. 9 and paras 12, 13, 14 of Medical Council of India, New Delhi.

5) The Maharashtra Medical Council therefore holds Dr. P.B. Desai, guilty under Para 15 of the ""Warning Notice"" of the Code of Medical Ethics

of the Maharashtra Medical Council and Para 3 under ""Disciplinary Action"" of the Code of Medical Ethics of the Medical Council of India and

hence Dr. P.B. Desai is warned u/s 22(1)(a) of the Maharashtra Medical Council Act, 1965.

Dr. Desai has been held guilty by Maharashtra Medical Council and it has reached finality. It cannot be doubted, being based on evidence and

documents.

20. Amazingly the record of relevant period of operation theater from 13.10.1987 to 17.10.1988 was misplaced for which an inquiry was

conducted appointed by the Board of Hospital. Two subordinate staff of Hospital will hardly implicate Dr. Desai with negligence, but nobody

should skip the record, method and procedure at said Hospital. It is unacceptable that it was Dr. Mukharjee alone to perform operation being a

cancer surgeon. He was, admittedly a Junior of Dr. Desai. If it was so, there was no reason for Dr. Desai when they met five days prior to surgery

to fix operation, there was no need for him to ensure two operations simultaneously on the same date i.e. 22.12.1987. The case papers referred to

above does not call to dispute that Smt. Leela was admitted in Bombay Hospital under Dr. Desai. The diagonally and marauding opposite stands

taken, by Dr. Desai are not supported by the documents. The testimony of P.W. 1 cannot be said to be uncorroborated it has impetus of

documentary evidence produced from Bombay Hospital.

21. The judgment in the matter of ""Jacob Mathew Vs. State of Punjab & Anr."" or ""Dr. Suresh Gupta Vs. Govt. of NCT of Delhi & Anr."" cannot

be applied with the same scale as the facts in both the matters are distinct. It is well settled, ""each case depends on its own facts and projects

different shades to assess."" One cannot apply same colours of reported case to the facts of the present case. The texture of the present case has

cumulative effect of Dr. Desai disowning the patient, opining for operation, neglecting to operate and then neglecting to take post operational care.

Present case certainly conceive effects of Section 320 of IPC and 338 thereof.

22. Hon"ble Supreme Court in ""Mahadev Prasad Kaushik Vs. State of U.P. & Anr., (2009 ALL MR. (Cri) 1864 (S.C.))"" in paragraph 31

states:-

31. Though the term "negligence" has not been defined in the Code, it may be stated that negligence is the omission to do something which a

reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a

reasonable and prudent man would not do.

23. Dr. Suresh Gupta's case was for quashing the proceedings, however, in the present case such exercise carried by Dr. Desai upto Supreme

Court in Special Leave to Appeal (Cri) no. 959 of 1996 has been negated by the Hon"ble Supreme Court. He was directed to face trial. He

knew, patient's condition was too advanced as he had access to her medical papers, still opt for operation. Dr. Hegde, another expert examined

as defence accepts ""It is correct that the surgeon will not propose ""exploratory Laprotomy"", if the patients condition is too advanced or there is lot

of fluid in the abdomen. The criminality lies in running the risk of decision of operating, then perpetuated by recklessness or indifference as to the

consequences. Dr. Desai, failed to exercise reasonable and proper care and avoided to operate the patient himself inspite of risky decision taken

by him. This involves moral delinquency. Social impact of such crime cannot be lost sight of warranting exemplary condemnation. The violent

indifference, deliberate omission, associated ego demonstrated by Dr. Desai has put the life of the patient in a miserable situation. Patient ultimately

succumbed due to abscess and operational hazards. The findings recorded by both the Courts does not call for interference in the revisional

jurisdiction. The revision is dismissed with costs.