Ramchand Chetandas Bathija Vs Dr. Pijush Mukherjee and State

Court: Calcutta High Court

Date of Decision: July 24, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 313
Penal Code, 1860 (IPC) â€" Section 304A

Citation: (2008) 1 ILR (Cal) 103

Hon'ble Judges: Sadhan Kumar Gupta, J

Bench: Single Bench

Advocate: G.R. Saha, T. Chakraborty, Debasis Saha, S.S. Manna, H.S. Chakraborty and S. Purkayastha, for the Appellant;C.R. Bag and Chandra Sekhar Bag for Respondent No. 1 and Swapan Kumar Mallidk, for the Respondent

Final Decision: Dismissed

Judgement

Sadhan Kumar Gupta, J.
This appeal has been preferred against the judgment and order dated March 27, 1998 passed by the Ld. Judge,

Special Court (Essential Commodities Act), - Cum-Additional Sessions Judge, Alipore in Criminal Appeal No. 53 of 1997, wherein the Id. Judge

was pleased to acquit the opposite party No. 1 of all the charges thereby setting aside the judgment and order of conviction, as passed by the Id.

Additional Chief Judicial Magistrate, Alipore in Case No. TR-27 of 1993.

2. Case of the Appellant is that he filed a petition of complaint before the Id. Magistrate, Alipore against one Dr. V. N. Chadda and Dr. Pijush

Mukherjee alleging therein that due to their negligent act his daughter Nita died in the hospital. It was stated in the petition of complaint that the

complainant"s daughter aged about 18 years and who was of sound health, fell sick on or about March 10, 1985. From March 12, 1985 up to

18th March, 1985 Nita was suffering from various troubles including pain on the left side of her stomach. As such, on 18th March, 1985 the

complainant went to the residence of Dr. Chadda at about six in the morning and on his request said doctor visited the complainant"s house at 7.30

a.m. and prescribed some medicines and advised rest. In spite of that there was no improvement on the condition of Nita and as such, she was

taken to the chamber of said Dr. Chadda who was informed about the complications from which Nita was suffering. Said Doctor assured that

there was nothing to worry and prescribed some new medicines which were to be administered with the old ones. As in spite of that the condition

of Nita deteriorated, so at about 9.30 p.m. on that day Dr. Chadda came to the complainant''s house and examined Nita and advised that she

should be admitted to the Calcutta Medical Research Institution. Accordingly, Nita was admitted in the said hospital under the care of Dr. Pijush

Mukherjee, accused No. 2. Dr. Mukherjee started treatment of Nita after taking instruction from Dr. Chadda over telephone. In the hospital Nita

was given glucose. But with the administration of glucose her thirst for water did not diminish and she was given two injections -so that she could

sleep. Due to the pushing of the second injection Nita began to loose her consciousness. On the next morning the complainant found that his

daughter was sleeping very deeply and she was struggling for breath. Seeing the condition of the patient Dr. Mukherjee. rang Dr. Chadda and

informed him about the condition of the patient. Thereafter oxygen was given to Nita and she was transferred to Intensive Therapy Unit on

2.3.1985 at about 5 p.m. it was found that the count of Sugar in the blood of Nita was 800 m.g. In spite of that antidote was administered to her.

On the next day Nita expired in the said hospital at about 4.10 a.m.

3. The complainant has alleged that when Nita was admitted in the hospital then at that time in the column for preliminary diagnosis three diseases

were mentioned viz. Diabetis Ketoasidosis (hereinafter referred to as D.K.), Malignant Malaria and G.B. Syndrome. Although, doctors had D. K.

in mind, still no test for sugar either in urine or in blood was ordered. This fact, according to the complainant, indicates gross negligence on the part

of the doctors. According to him it was sheer criminal negligence to administer dextrose solution from 11 p.m. to 8 p.m. of the next day i.e. for

twenty hours during which period the patient passed on to deep unconsciousness and this fact is sufficient indication about the casual manner and

the criminal negligence by which the doctors treated the patient. As such, the complainant has claimed that both the doctors should be punished as

per provisions of Section 304A of the Indian Penal Code.

4. On the basis of the said complaint, cognizance was taken and trial was held against those two accused persons. During trial, complainant

examined three witnesses. The accused persons did not examine any witness in their defence. The defence case, as it transpires from the trend of

cross-examination and the statements made u/s 313 Code of Criminal Procedure is that of complete denial and that there was no willful negligence

in the treatment of the patient.

5. Ld. Magistrate, after hearing the parties and upon consideration of the materials on record, was pleased to hold both the accused persons guilty

for the offence u/s 304A of the Indian Penal Code and sentenced them accordingly.

6. Being aggrieved by and/or dissatisfied with the said order of conviction, both the doctors preferred an appeal before the Id. Additional Sessions

Judge. Said appeal was ultimately heard by the Id. Judge, E.G. Act, cum-Additional Sessions Judge, Alipore, who by his judgment was pleased to

acquit Dr. Pijush Mukherjee and at the same time sent the matter for retrial before the Id. Magistrate so far as Dr. V.N. Chadda is concerned and

directing the Id. Magistrate to allow the complainant to adduce evidence as to whether there was any infrastructure available in the said hospital at

the time of the incident regarding test of blood of the patient at the interval of two hours.

7. Against this order of retrial on a particular point, so far as Dr. V.N. Chadda is concerned, the complainant did not prefer any appeal/revisional

application. However, it transpired that against the said order, a revisional application has been preferred on behalf of Dr. Chadda before this

Court.

8. Be that as it may, so far as this appeal is concerned, we are to consider the legality and validity of the order of acquittal, as passed by the Id.

Additional Sessions Judge, Alipore so far as Dr. Pijush Mukherjee is concerned. According to the Appellant the order of acquittal of Dr. Pijush

Mukherjee has caused serious miscarriage of justice. Ld. Judge was not at all justified in exonerating the said doctor on the ground that he simply

treated the patient under the instruction of Dr. V. N. Chadda. When the patient was admitted in the hospital, at that time Dr. Mukherjee had to

examine the condition of the patient and he should have made necessary arrangement for adequate and proper treatment of the said patient. Ld.

Judge did not appreciate the prosecution evidence in proper perspective while acquitting the Respondent/Dr. Pijush Mukherjee. He has further

claimed that from the'' materials on record there cannot be any doubt that the daughter of the Appellant expired due to the medical negligence of

the opposite party No. 1 and another doctor. The Appellant further claimed that as soon as in the hospital paper the symptom was mentioned as

D.K."", a professional doctor like the opposite party No. 1 ought to have taken step to combat it promptly and vigorously. He did not care to

administer insulin till very late on the day next after her admission to the hospital. Even after the diagnosis of D. K. with count of sugar in blood

being as high as 800 mg. the opposite party No. 1 continued to administer dextrose 5 per cent solution and the insulin was given in an inadequate

dose in the body of the patient, which is against accepted norms of the medical science. The course of treatment, as followed by the Respondent,

is a clear proof that he did not take appropriate care in treating the patient and this negligence must be termed as gross criminal negligence for

which he should be held guilty for the offence u/s 304A of the Indian Penal Code.

9. But instead of convicting the Respondent, the Id. Judge was pleased to hold him not guilty and thereby acquitted him of the charge. The order,

so passed by the Id. Judge is clearly perverse in nature and the result of non appreciation of the evidence on record. As such, the Appellant by

filing this appeal has prayed for setting aside the order of acquittal and to pass necessary order of conviction so far as this Respondent is

concerned.

10. In support of his contention, Id. Advocate for the Appellant, first of all, argued that from the very beginning this Respondent along with Dr.

Chadda were negligent in treating Nita in the Hospital. According to him, the doctors were aware about the fact that the patient was suffering from

blood sugar and for that reason the word "D.K." was mentioned in the diagnosis chart. In spite of this knowledge, the doctors did not care to

administer insulin to the patient and instead continued with administering glucose and thereby aggravated the condition of the patient. This act on

the part of the doctors must be treated to be grossly negligent criminal act and as such, they are liable to be punished as per provisions of Section

304A of the Indian Penal Code.

11. Mr. Saha, Id. Advocate for the Appellant further argued that even when the blood sugar report of the patient was received then also the

Respondent/doctor did not take any step to discontinue with glucose and in not giving insulin with adequate dose. According to the Id. Advocate

for the Appellant the evidence on record shows that the doctors acted recklessly in treating the patient and thereby endangering her life and as

such, they are criminally liable in addition to civil liability in tort. In this respect he has relied upon the decision reported in Dr. Suresh Gupta Vs.

Govt. of N.C.T. of Delhi and Another, . Ld. Advocate for the Appellant further argued that in fact by pushing dextrose in the body of the patient

while she was suffering from blood sugar is equal to pushing poison inside the body of a patient and as such, it should be held that death of Nita

took place due to such irresponsible act on the part of the Respondent/doctor. In this respect he has relied upon the decision reported in State of

Himachal Pradesh v. Vilas Maruti Sutar 1998 Cre. L.J. 387 and Juggankhan Vs. State of Madhya Pradesh, .

12. Mr. Saha, Id. Advocate for the Appellant also argued with much stress that the treatment, as conducted by both the doctors so far as Nita

was concerned, certainly shows that it was done in grossly rash and negligent manner and as due to such act Nita died, so both the doctors should

be held guilty for committing the offence u/s 304A of the India Penal Code.

13. According to the Id. Advocate for the Appellant the Id. Magistrate was perfectly justified in coming to the conclusion that the patient died due

to gross negligence on the part of both the doctors and as such, he was pleased to convict them accordingly. Ld. Appellate Court while acquitting

the Respondent/doctor failed to appreciate the evidence in its proper perspective and without any reason whatsoever he was pleased to disbelieve

the statement of the P.W. 2 Dr. S. Bhattacharjee, who deposed as an expert. This non appreciation of the material evidence, as available in the

record, by the Id. Appellate Court certainly caused failure of justice and the judgment, so passed by the Id. Appellate Court must be held to be

perverse in nature and under such circumstances, the order of acquittal, as passed by the said Appellate Court should be interfered with and

should immediately be set aside and an order of conviction should be passed against the Respondent/doctor. In support of his contention that the

High Court can always interfere with the order of acquittal if it is found that the evidence on record was not at all properly considered, he has cited

decisions reported in Bhagwandas Vs. The State of Rajasthan, , State of Madhya Pradesh Vs. Sanjay Rai, , Shivaji Sahebrao Bobade v. State of

Maharashtra AIR 1973 S.C. 2262, Smt. Ramani Bala Devi v. Kanai Lal Malakar AIR 1965 Tri 17 and Harisingh M. Vasava Vs. State of

Gujarat, . I have taken into consideration the ratio, as decided in those decisions. It is now the settled position that the High Court, in exercise of its

appellate jurisdiction can always interfere with the order of acquittal passed by the Court below if it appears that the relevant material evidence

were ignored by the Court below or it was totally misappreciated and thereby resulting in miscarriage of justice. If these things are available, then

certainly the High Court can always interfere with order of acquittal. On the basis of the legal principle, as discussed above, let us now consider as

to whether the order of acquittal, as passed by the Id. Appellate Court so far as the Respondent/doctor is concerned, is justified or not.

14. It may be pointed out that it is the case of the complainant that his daughter Nita was admitted in the hospital by the Respondent/doctor on the

advice of Dr. V.N. Chadda, the senior Doctor, who admittedly was the family physician of the complainant. The complainant has claimed that after

the admission the condition of Nita deteriorated and although in the medical history sheet it was observed that she was suffering from D.K. along

with other diseases, still the Respondent/ doctor administered glucose and did not think of administering insulin to the said patient/Nita. Due to such

action on the part of the Respondent, the condition of Nita deteriorated and ultimately she expired. The complainant has claimed that there was

gross negligence on the part of the said doctor in the treatment of the patient and it should amount to criminal negligence, as mentioned in Section

304A of the Indian Penal Code. It appears that he Id. Magistrate accepted the contention of the complainant that although, from the very beginning

the doctor was aware that the patient had blood sugar, still no step was taken for administering insulin to her and instead glucose was administered

thereby allowed the blfiod sugar count to increase further. Now the question is whether this Respondent was aware about the fact that Nita had

blood sugar. It may be mentioned here that Nita was very young and the Respondent/doctor cannot be disbelieved when he claimed that it was not

in his mind that such a patient would suffer from blood sugar. It may also be pointed out that patient was admitted in the hospital on the advice of

Dr. Chadda and the Respondent/ doctor simply followed the instruction of the said Dr. Chadda who in his statement, made u/s 313 Code of

Criminal Procedure, was candid enough to admit that whatever medical steps were taken by the Respondent/doctor was under his advice. I have

already pointed out that this Doctor Chadda was the family physician of the complainant and he had the occasion to treat the said patient before.

As such when this Dr. Chadda claims that it was beyond his imagination that the patient had blood sugar, then that claim cannot be said to be

unusual particularly when the complainant also being the father of the deceased did not suspect such a symptom before hand. So it must be said

that the Respondent/doctor had sufficient reasons for not administrating insulin at the very outset to the patient concerned.

15. Ld. Advocate for the Appellant argued that it appears from the medical history-sheet that the word "D.K." was there from the very beginning

and it necessary means that the Respondent/doctor was aware that the patient was suffering from blood sugar. But if we look into the evidence as

well as the document concerned, then it will appear that at the very outset the patient was treated for hysteria, malignant malaria and for other

diseases. The word "D.K." was inserted subsequently. The explanation of the Respondent/ doctor is that when after the blood report was received

then only he could come to know that patient was suffering from blood sugar and immediately he entered the word "D.K." in the medical history-

chart. The manner in which this word "D.K." has been inserted-in the said chart also supports the contention of the Respondent/doctor. Ld.

Appellate Court also believed such claim of the Respondent/doctor. This finding of the Id. Appellate Court cannot be said to be unjust and

importer, as claimed by the Id. Advocate for the Appellant. Moreover, if the claim of the Appellant is to be accepted, then we are to believe that

both Doctor Chadda and Dr. Mukherjee allowed administration of glucose on the body of Nita although they had full knowledge that Nita was

suffering from blood sugar. This attitude on the part of the doctors is unthinkable, particularly when it is the admitted position that Dr. Chadda was

the family physician of the complainant. It is unbelievable that Dr. Chadda being a reputed doctor of a renowned hospital, intentionally took such

steps in order to cause death of Nita, as claimed by the complainant. Under such circumstances, I am of opinion that the Id. Appellate Court was

perfectly justified in observing that the doctors had no knowledge about the fact that Nita was suffering from blood sugar when she was admitted.

16. Ld. Advocate for the Appellant further argued that even when the blood report was received showing that Nita was suffering from blood

sugar, then also the doctors did not think it necessary to administer insulin at a higher dose and in discontinuing with administration of dextrose. But

from the evidence, as available in this case, it appears that after the blood report was received, such step was taken. The doctors have claimed that

the dose of insulin, as administered was perfectly justified in view of state of health of the patient concerned. In this respect there cannot be any

doubt that the doctors are the best persons to take a decision to that effect. It is not possible for the Court to come to a different conclusion in

absence of any concrete counter evidence given by a proper person. The Supreme Court in various judgments has clearly stated that the doctors

are the best judge to select the method of treatment that is to be administered to a particular patient. In this respect the decision reported in Jacob

Mathew v. State of Punjab (2005) 5 Supreme 2971 is very much relevant. It is the leading decision on the point of medical negligence and the

Supreme Court in no uncertain terms has indicated the course that is to be followed while deciding such type of cases. It has been observed therein

that if the doctor while treating a patient is always afraid of any future criminal consequence in respect of his treatment, then it will not be possible

for him to give proper treatment to the patient. Indiscriminate prosecution of medical professional for criminal negligence is certainly counter

productive and does no service or good to the society. A doctor may commit mistake while treating a particular patient. But simply because there

was a mistake on the part of a doctor in treating a patient that cannot be said to be a criminal negligent act, as claimed by the complainant by filing

this case. In deciding whether there was criminal negligence on the part of the doctor it must be assured that there was gross negligence on the part

of the doctor in treating a particular patient.

17. So far as the treatment of Nita is concerned, it appears that Dr. Mukherjee, the Respondent herein, was in-charge of the said patient in the

hospital and the said patient was admitted under Dr. Chadda who was in fact controlling the treatment. It has transpired from the evidence that

while the treatment was going on and when Nita''s condition did not improve in spite of treatment, then both the doctors decided to consult with

two eminent physicians of the city. Accordingly the two doctors also examined the patient and approved the treatment which was going on. It

means that both the doctors viz. Dr. Chadda and Dr. Mukherjee were very much concern about the patient and as they could not detect the cause

of the disease properly so they thought it prudent to consult other two eminent physicians of the city. Had there been any intention on the part of

the doctors to cause harm to the patient intentionally, then they would not have invited those two doctors. This fact certainly goes to show that

there was no basis of the claim of the complainant that the doctors were grossly negligent in treating Nita in the said hospital.

18. it is the settled position that when such type of allegation of criminal negligence arises against any doctor, then in order to accept such

contention the Court is to take appropriate medical assistance while coming to a definite conclusion. It is to be established before -the Court by a

competent medical person that the doctors were grossly negligent in treating the patient. The complainant was very much aware about this settled

position and as such, he examined the P.W. 2 Dr. S. Bhattacharjee in support of this contention. It appears that the complainant has claimed that

this P.W. 2 is an expert in the line and this contention was also accepted by the Id. Magistrate. But the Id. Appellate Court did not accept the

P.W. 2 as an expert and thereby did not place any reliance on his evidence in order to hold that the accused persons were guilty of gross

negligence, as alleged by the complainant. It appears that the qualification of this doctor is M.B.B.S. He has got very little practice, as admitted by

him. He has no expertise in treating diabetic patient. All these things have been admitted by this doctor in his evidence. If we look into this

evidence, then it will appear that he mainly relied upon the books of medical jurisprudence written by various medical authors. But simply by

quoting from the authority is not sufficient to hold a person guilty of gross negligence. Authors give their opinions in respect of a particular symptom

after considering various aspects including the availability of proper infrastructure in the hospital where the patient was treated. What is applicable

in a particular country may not be applicable in another country also. It is always dangerous to place reliance on the opinion of the author given in a

book written on medical science unless and until it is supported by a competent medical expert by way of giving evidence in Court in order to

come to a conclusion as to whether in a given case, on the basis of such observation in the book, it can be said that the doctors who were treating

the patient at the material time were grossly negligent, the evidence, as given by the P.W. 2 does not at all inspire confidence and I think that the Id.

Appellate Court was perfectly justified in not placing reliance upon the evidence of this witness. The decision of the Id. Appellate Court in this

respect, cannot be said to be perverse in nature. Nor it can be said that he failed to appreciate the evidence of P. W. 2 in proper perspective. In

the decision reported in Jacob Mathew v. State of Punjab (Supra) which also relied upon the decision reported in Dr. Suresh Gupta v.

Government of NCT of Delhi (Supra) and the case reported in Balam v. Friern Hospital Management committed (1957) WLR 582 the Hon''ble

Supreme Court has given a guideline for deciding as to whether a particular act of a doctor should be considered to be grossly negligent or not. In

the said decision the Hon''ble Supreme Court clearly opined that 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 move skilled

doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. A highly skilled professional may be

possessed of better qualities but that cannot be made the basis or the yard stick for judging the performance of the professional proceeded against

on indictment of negligence. I have already discussed above that the doctors while treating Nita followed the accepted medical practice as per their

knowledge and experience and even if there is an error in the treatment of the said patient; that cannot be equated with ''gross negligence''. Death

of a young girl is always painful and we can presume the suffering of mental agony on the part of her parents. But simply for that reason a doctor

cannot be punished for a criminal offence like Section 304A of the Indian Penal Code. If that is allowed to be done, then the doctors will be

thinking twice for treating the patient in case of emergency and will not take any step which is required urgently for saving a critical patient. That will

be a very dangerous situation for the society and it should not be encouraged. If there is any deficiency in the treatment of the patient resulting to

here death, then it is always open for the complainant to file a civil case praying for damages against the erring doctor. Unless and until gross

criminal negligence is established, it is not permissible to proceed against a medical professional for the offence u/s 304A of the Indian Penal Code.

To my mind, the Id. Appellate Court was perfectly justified in holding that the Respondent/doctor was not guilty for the offence charged with and I

find no reason whatsoever to interfere with the said finding, particularly when it appears from the judgment that when Dr. V.N. Chadda, under

whom the patient was admitted in the hospital, was also found not guilty by the said Appellate Court and that finding of the said Court was not

challenged by the complainant by way of preferring any appeal or revision. True it is, so far as Dr. Chadda is concerned, the Id. Appellate Court,

although held that he was not grossly negligent in treating the patient, still he sent the matter to the Id. Magistrate for allowing the complainant to

adduce further evidence regarding the infrastructure available in the hospital at the material time. But in spite of this finding that Dr. Chadda was not

grossly negligent in treating the patient, the complainant/Appellant did not take any step in challenging the said decision. As such, it can be

presumed that this finding of the Appellate Court has been accepted by the complainant/Appellant. I have already observed that Dr. Chadda has

clearly admitted that whatever steps this Dr. Mukherjee/ Respondent took in respect of the treatment of Nita, was done under his instruction. So

when there was no indictment by the Court so far as Dr. Chadda is concerned, then it cannot be said that the Respondent/ doctor Pijush

Mukherjee should be held guilty for the offence u/s 304A of the Indian Penal Code.

19. Considering all these things, I am of opinion that there is no merit in this appeal and I find no scope for interference with the order of acquittal,

as passed by the Id. Appellate Court so far as this Respondent/ doctor is concerned. To my mind, the order of acquittal, as passed by the Id.

Appellate Court should be confirmed.

20. In the result, the Appeal is dismissed on contest. The order of acquittal, as passed by the Id. Appellate Court in respect of accused/

Respondent/Dr. Pijush Mukherjee is concerned, is confirmed.

21. Send a copy of this order along with L.C.R. to the Court below at once for information and taking action, as indicated above.

Xerox certified copy, if applied for, be handed over to the parties on urgent basis.