

(2012) 05 DEL CK 0537

Delhi High Court

Case No: Criminal Revision Petition 487 of 2003

Dr. Chander Prakash

APPELLANT

Vs

State (NCT of Delhi) and Another

RESPONDENT

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**Date of Decision:** May 28, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 173, 227, 228
- Penal Code, 1860 (IPC) - Section 279, 299, 304, 304A

**Citation:** (2013) CriLJ 448**Hon'ble Judges:** Pratibha Rani, J**Bench:** Single Bench

**Advocate:** A.K. Singla, in structed by Mr. Gautam Anand, for the Appellant; Rajdipa Behura, APP for State - R-1 with ACP Braham Prakash and SI Pramod Kumar, PS Ashok Vihar and Mr. Satender Sharma, for complainant/R-2, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Hon"ble Ms. Justice Pratibha Rani

1. On 16.05.2001 there was an accident at T-point, Azad Pur, Delhi between a scooter and dumper bearing registration No. HR-38-C-4283 in which deceased Shamshad was seriously injured. He was rushed to Sunder Lal Jain Hospital at Ashok Vihar and from there, shifted to Sushruta Trauma Centre. On arrival at Sushruta Trauma Centre, Shamshad aged about 30 years, was declared "brought dead". A young life was lost but leaving behind a question as to who was responsible for this untimely death of Shamshad i.e. whether he died after suffering fatal injuries in the accident or medical negligence or the inability of the relatives of the deceased to deposit the required amount in the hospital to start the treatment. The deceased has left behind many such questions unanswered. The family was aggrieved that despite being rushed to Sunder Lal Jain Hospital, the precious life of Shamshad could not be saved. Finding himself unable to bear the loss and with a view to bring

justice to the departed soul of his brother Shamshad, the complainant Sh. Azad Hussain Malik started a crusade. It has been pointed out during course of hearing by learned counsel for the complainant that only because of this case now 25% beds are reserved in every hospital for poor and needy persons and they are provided immediate medical treatment. In fact the efforts made by the complainant have not gone waste and though he may regret throughout his life that he could not save the life of his brother, at least due to his efforts many others have been benefited which must have given enough solace to the complainant in his crusade to get justice for his brother.

2. Crl. Rev. P No. 487/2003 was filed by the Chairman, Managing Committee, Sunder Lal Jain Hospital (hereinafter referred to as accused) impugning the order dated 19.05.2003 vide which he was ordered to be charged for committing the offence punishable u/s 304 IPC.

3. On 11.07.2003. When the revision petition came up for hearing, this Court observed that :

A very interesting question of law has cropped up in this petition. The question is whether the Administrator of the hospital can be charged for the offence punishable u/s 304 IPC merely on the premise that he had issued instructions to the doctors and the staff regarding the admission of patients which entail the deposit of money as condition precedent. In the instant case, a patient was brought to the hospital and was not treated in the ICU because of instructions issued by him. The Trial court has deemed this act on the part of the accused as an act amounting to culpable homicide not amounting to murder.

4. Perusal of the record further reveals that on 04.03.2004 after hearing the accused, order was dictated but before affixing signature, this Court felt that matter needed further clarifications and arguments on interpretation of Section 299 IPC and its import on Section 304 IPC. Thereafter on 19.03.2004 on the application of complainant who is brother of the deceased, he was impleaded as a party. On 19.03.2004 the Court felt and ordered as under :

Since an important question of law has arisen which needs further arguments and consideration, I admit Crl.Rev.P.487/2003. Let this matter be listed in the category of "Regular Matters" in the first five matters, in the week commencing 16th August, 2004.

5. Before answering the question of law, it is necessary to refer to the facts leading to the registration of two FIRs in two different Police Stations pertaining to death of Shamshad. FIR No. 207/2001 was registered under Sections 279/304-A IPC at PS Adarsh Nagar on 16.05.2001 at 9.15 pm.

6. Thereafter on typed complaint dated 23.05.2001 filed by Sh. Azad Hussain Malik, brother of the deceased, initially addressed to Commissioner of Police but after

cutting addressed to SHO, PS Adarsh Nagar. The rukka was sent from PS Adarsh Nagar after making endorsement on the complaint referred to above and FIR No. 34/2001 u/s 304 IPC was registered against Sunder Lal Jain Hospital at PS Ashok Vihar.

7. Before referring to the FIR No. 34/2001, PS Ashok Vihar pertaining to this case, it is necessary to refer to the contents of FIR registered at PS Adarsh Nagar under Sections 279/304-A IPC. As per Trial Court Record wherein photocopy of the rukka and copy of FIR No. 207/2001 have been placed, vide DD No. 22-A dated 16.05.2001 recorded at 5.25 pm at PS Adarsh Nagar, information was received from Duty Constable Joginder posted at Sushruta Trauma Centre regarding death of Shamshad, S/o Sh. Allah Noor being got admitted in injured condition by his brother Sh. Azad Hussain Malik. On examination, Shamshad was declared "brought dead". DD No. 22-A was marked to ASI Sahstrapal for necessary action.

8. There is an endorsement on the DD by HC Amar Pal addressed to Duty Officer, PS Adarsh Nagar to the effect that during day time DD No. 17-A was received at PS (Adarsh Nagar) regarding an accident between a scooter and dumper No. HR-38-C-4283 which was marked to ASI Sahstrapal. As per the report given by the ASI, he could not find the scooter or the dumper at the spot nor any information was received from any hospital regarding admission of the injured in the accident. He (HC Amar Pal), on receipt of DD No. 22-A, visited Sushruta Trauma Centre alongwith Ct. Anil Kumar and obtained the MLC of the deceased. He could not find any eye witness in the hospital and on the basis of the MLC, requested for getting a case registered under Sections 279/304-A IPC. The rukka was sent through Ct. Anil Kumar and he proceeded with the dead body to Mortuary, Subzi Mandi. On the rukka, endorsement made regarding the date, time, place of occurrence etc. is given as :

Date & Time of occurrence : 16.05.2001 at about 3 PM Place of occurrence : T-point, Azad Pur, Delhi Time of sending rukka : 16.05.2001 at 8.35 pm

There is another endorsement of Duty Officer HC Jagpal Singh on the margin of this rukka to the effect that :

DD No. 29-A at 9.15 pm dated 16.05.2001 FIR No. 207/2001 u/s 279/304-A IPCHC Jagpal Singh 98/NWPS Adarsh Nagar, 16.5.2001.

What further investigation was carried out by PS Adarsh Nagar in the matter and how HC Amar Pal came to know the time of occurrence as 3.00 pm, cannot be answered from the available record.

9. Pending investigation of case FIR No. 207/2001 PS Adarsh Nagar on 23.05.2001, a typed complaint in Hindi addressed to commissioner of police but after cutting by pen shown to be addressed to SHO, PS Adarsh Nagar, was given by the brother of the deceased. This is the first complaint made after a week of the unfortunate

incident in which the brother of the complainant lost his life. The contents of this complaint go to the root of this case as it holds answers to many questions to be dealt with and answered while disposing of this revision petition.

10. In the complaint to SHO, PS Adarsh Nagar, Sh.Azad Hussain Malik stated that his younger brother Shamshad Ali met with a serious accident on 16.05.2001 on being hit by dumper No. HR-38-C-4283. On seeing the critical condition of Shamshad, he was taken to Sunder Lal Jain Hospital where the doctor on duty in the Casualty asked him to deposit Rs. 25,000/- immediately and he touched the feet of that doctor and requested him to start the treatment informing that he was having Rs. 6500/- at that time and within half-an-hour he would bring the balance amount. The doctor acceded to his request saying "Theek Hai Aap Paise Le Aayiye". He remained under the impression that the doctor would start the treatment of his brother and made a telephone call to his house at Azad Pur to arrange for the money. Condition of his brother was serious but he was not given any treatment at Sunder Lal Jain Hospital. On seeing his critical condition and not being given any treatment, he immediately asked the doctors the reason for not starting the treatment. On this, the doctors replied "Jab Tak Pachis Hazar Rupaye Jama Nahi Ho Jate Tab Tak Upchar Nahi Kiya Ja Sakta Kyonki Doctor Chander Prakash Bahut Sakht Aadmi Hai Jo Iska Malik Hai. Humne Doctor Se Prarthana Kee Ki ilaaz To Aap Nahi KAR Rahe Kewal Apni Ambulance Uplabdh Kara De To Unhone Ambulance Bhi Nahi Di".

11. In the next paragraph in the complaint, he has written that they removed the injured to Trauma Centre in their Maruti Car. The doctor at Trauma Centre said that this was the result of negligence on the part of Sunder Lal Jain Hospital and this fact has also been recorded by the doctor in the MLC and postmortem report but no action has been taken by PS Adarsh Nagar against Sunder Lal Jain Hospital, therefore, he requests that direction be given to PS Adarsh Nagar to take legal action against Sunder Lal Jain Hospital.

12. There is an endorsement by the SHO on the complaint marking it to SI Naresh Kumar. On this very complaint, SI Naresh Kumar has made endorsement addressing Duty Officer, PS Ashok Vihar that on perusal of the complaint, MLC and postmortem report of the deceased Shamshad Ali and the observation of the doctor who conducted the postmortem, prima facie case u/s 304 IPC is made out against the doctor of Sunder Lal Jain Hospital, Ashok Vihar. He requested that a case may be registered giving the date and time of occurrence between 3.00 pm to 4.20 pm and place of occurrence Sunder Lal Jain Hospital. Date and time of sending rukka as 23.05.2001 at 7.50 pm. The FIR No. 34/2001 was registered vide DD No. 13-A at 8.20 pm at PS Ashok Vihar u/s 304 IPC.

13. Vide detailed order, learned ASJ ordered to charge the accused for committing the offence punishable u/s 304 IPC mainly for the reason that no MLC of the patient was prepared, the police was not informed about the accident in contravention of the directions of Apex Court in the case [Pt. Parmanand Katara Vs. Union of India](#)

[\(UOI\) and Others](#), the circular issued by the Ministry of Health and Family Planning. Further as per opinion of Dr. Vikas Rampal of Trauma Centre if the timely emergency life saving surgery had been done, the life of the victim could have been saved and this view was also expressed by the doctor who conducted the postmortem. It is further observed by learned ASJ that in the present case one hour golden rule has been ignored. It has been statistically proved that in high speed of automobile accidents most of the death of victims occur within one hour of the accident and if during this period, patient is given proper first aid, outcome of the accident can be altered. Further that after seeing the MLC, the accused who is a Doctor had the knowledge about the consequences that could follow in case of denial of admission in ICU.

14. After referring to the statement of witnesses recorded u/s 161 Cr.PC and 164 CrPC, learned ASJ was of the view that it was on the direction of the accused that as the attendant failed to deposit an advance of Rs. 25,000/-, the treatment was denied and record was tampered with and even ambulance was denied. Learned ASJ also attached due importance to the fact that there was no malice on the part of the complainant to falsely implicate the accused in this case and there is thus no reason to disbelieve at this stage that the deceased was refused admission at the behest of the accused on failure of the complainant to deposit Rs. 25,000/- for getting the injured patient admitted in ICU and no business rivalry can be attributed to the doctor at Trauma Centre.

15. Learned ASJ, after referring to the provisions of Sections 299 and 304 IPC, gave the following reasons for framing charge for the offence punishable u/s 304 IPC :

A person is said to have committed culpable homicide if he has the knowledge that he is likely, by such act, to cause death. In the present case, even though, the accused is being prosecuted in the capacity of Administrator responsible for running the day to day affairs of the hospital but, he is also a doctor by profession and after seeing the casualty slip, it would have come to his notice that if the patient is not treated in ICU immediately it will cause his death. In this background present case falls U/s 304 IPC and the accused is liable to be proceeded with.

16. On behalf of accused, it has been submitted that the record seized by the police from Sunder Lal Jain Hospital would reveal that the hospital had been providing medical care and treatment to the victims without insisting for full payment and even on that day when Shamshad was brought to the hospital, many patients were admitted and treated without being insisted for complete payment. It has been further submitted that the circular seized by the prosecution are for general guidance and administration of the hospital. The circular dated 04.01.1991 seized by the prosecution indicates that many casualty services would be provided to the patient attending the casualty with no charges for emergency registration card. Learned counsel for the accused also submitted that the complainant had not put any blame on the accused either while giving history at Sushruta Trauma Centre or

in the complaint filed with PS Adarsh Nagar. He even did not refer to any communication, or interaction with the accused by him or by relative Sh. Jamil or by the doctors on duty in the Casualty in his presence during the period the deceased Shamshad was in Sunder Lal Jain Hospital. He has further submitted that Casualty Slip shows that necessary treatment was given to Shamshad, the relatives wanted to shift the patient, doctors on duty advised against it and there are three endorsements by the doctors to this effect duly signed by the brother of the deceased as well Sh. Jamil, relative of the deceased wherein the condition of the patient was informed to be serious and need to admit him in ICU. It has been further submitted that ambulance was available in the hospital and could have been provided by the hospital and even if ambulance was not available, alternative arrangement exists but no such request appears to have been made by the relatives of the deceased.

17. Learned counsel for the accused has referred to the bail order dated 25.07.2001 wherein it is mentioned that on the date application for bail was heard by the Court i.e. on 25.07.2001, the IO admitted that few patients were admitted and treated in the hospital who initially were not able to pay enough money. While arguing the bail application before learned ASJ, the learned counsel for accused has placed reliance on 1999 SCC (Cri) 76 and prayed for granting bail to the accused as no offence punishable u/s 304 IPC or even 304-A IPC has been committed by the accused. It is mentioned in the bail order dated 25.07.2001 that learned APP has also frankly not opposed the grant of bail to the accused and stated that the investigating agency has not so far been able to gather any direct evidence connecting the accused with the commission of offence punishable u/s 304 IPC and even this point was under examination, if at all any offence has been committed by the accused.

18. He has also referred to the report of the Inquiry Committee which found nothing wrong in the treatment given to the deceased. Further emphasizing that the treatment started immediately is clear from the Casualty Slip and as the patient required urgent treatment, priority was given to attend the patient than to prepare the MLC and inform the police first.

19. On behalf of complainant, it has been submitted by Sh. Satender Sharma, Advocate that various circulars seized by the police clearly mention that before a patient is admitted in ICU/Burn Wards, rates are specified which are required to be deposited. It has been emphasized that the accused himself is a doctor apart from Administrator and he had the knowledge about the critical condition of the patient despite that neither ambulance was provided to shift the patient nor the patient was admitted in ICU thus leaving no option for the relatives but to shift the patient which proved fatal. It has also been submitted that accused is an influential person and even to the extent that there was a move to withdraw the prosecution against him. Not only that none of the doctor or the staff in Sunder Lal Jain Hospital can flout his directions.

20. Learned counsel for the complainant has referred to the Casualty Register page 130 wherein there is a noting "refused admission, referring to Govt. Hospital" and time mentioned is 3.10 pm which shows that there is tampering with the record because as per the casualty slip, the time mentioned is 3.30 pm.

21. Learned counsel for the complainant also submitted that the Casualty Slip has to be read in two parts. First part is regarding the treatment given to the patient and about which the complainant has absolutely no grievance that the patient was given required treatment immediately. The grievance of the complainant starts when the patient was not admitted in ICU as the attendant/relative could not deposit Rs. 25,000/- immediately. He submitted that the administrator being fully in the knowledge of the facts of the case knowing fully well that if patient is not treated in ICU, it could prove fatal, ordered the doctors on duty to send the patient out which is clear from the statement of three doctors recorded u/s 164 CrPC. Even efforts of the complainant and other relative Sh. Jamil by touching feet of the accused could not succeed. Thus they had to remove the patient in a private car and Shamshad was declared "brought dead" at the Trauma Centre. This act of denial of admission in ICU Ward without deposit makes him liable u/s 304 IPC.

22. In addition to the arguments advanced by learned counsel for the complainant, learned APP for State has submitted that the case is at the stage of charge and there are statements of doctors u/s 164 CrPC showing that on the instructions of the accused they did not get the patient admitted in ICU and was taken to Trauma Centre by the Attendant, which are sufficient to frame charge against the accused for the offence punishable under Sec.304 IPC as he had knowledge of his acts and omissions, hence impugned order need not be interfered with.

23. I have considered the rival contentions. Before dealing with the contentions made on behalf of parties, it is necessary to refer to the provisions of Section 227 and 228 CrPC and the relevant case law on the subject as to when charge can be framed and in what circumstances, accused may be discharged. Sections 227 and 228 CrPC are reproduced as under :

Section 227. Discharge - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Section 228. Framing of Charge - (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused had committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate [or any other Judicial Magistrate of the first class and direct the accused to appear

before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

24. In the case [Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others](#), after considering the provisions of Sections 227 and 228, Cr.P.C., Court posed a question, whether at the stage of framing the charge, trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held thus :

At the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in [State of Bihar Vs. Ramesh Singh, Union of India \(UOI\) Vs. Prafulla Kumar Samal and Another](#), and [Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others](#), and held thus:-

From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose shift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

25. In the case [Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra](#), it was observed as follows :-

The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it, has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution.



26. In the case, [Avinash J. Mahale and Others Vs. State of Maharashtra](#), the extent of power of the Judge to sift and weigh the evidence at charge stage was considered. Relevant para 11 of the report is extracted hereunder :

11. The principles governing framing of charge or discharge are by now well-settled. At the stage of framing of the charge, the Judge has to weigh and sift the evidence for a limited purpose of ascertaining whether a prima facie case has been made out against the accused warranting framing of charge.

27. In the case [State of M.P. Vs. S.B. Johari and Others](#), it was held as under :-

If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial.

28. Before proceeding further in the matter, it is necessary to look into the Casualty Slip prepared at Sunder Lal Jain Hospital, MLC prepared at Sushruta Trauma Centre and the Postmortem Report. The Casualty Slip prepared on 16.05.2001 at 3.30 pm is in two parts, (i) Presentation; and (ii) Treatment & Advice, which are reproduced as under :

◆Presentation

Treatment & Advice

A Case of RTA O/E Blunt  
injury abdomen Pain  
abdomen Tenderness

both lower limb

Pt. Rallon - ++

Pulse 110/minute

BP 80/60 mmhg

Pt. Admit to ICU

Under Dr. N.K.Grover

Dr.A.K.Chalver

Prognosis explained to  
Attendant that pt. is  
serious

Sd/-

Attendant do not want to admit  
the pt. They refused. Prognosis  
explained .

Relative.

Sd/-

Jamil

Adv :-

Advised to attendant That  
admit the pt. but attendant  
refused.

Given :-

Inj. Voveran 1 amp I/m

Inj. T.T. 1 amp I/m

Given I.V Fluid

RL 1 unit

Given I.V. Hamecel

Sd/-

AzadMalik

Patient/Attendant

C.M.O.

(Signature)

sd/-

The photocopy of the MLC prepared at Sushruta Trauma Centre shows that the date and time of arrival of the deceased as 16.05.2001 at 4.20 pm. It is further mentioned on the MLC that alleged history as told by "brought by" is that the patient met with an accident at Azad Pur, was taken to Sunder Lal Jain Hospital by relatives where he was asked by the doctor on duty to deposit money so that further treatment of his brother can be taken. Brother informed the doctor that he shall deposit the money in 15-20 minutes and he requested for further treatment. Doctor refused to carry on further treatment and asked the patient to be taken out.

As per the postmortem report, the opinion given by the doctor who conducted the postmortem is as under :

Cause of death is hemorrhage shock consequent to spleen rupture as a result of hard blunt force impact.

All injuries are antemortem in nature and consistent with motor vehicle accident. The deceased could have been saved : "Had the proper immediate treatment given to him at Sunder Lal Jain Hospital as a emergency measure

29. From the perusal of above mentioned three documents i.e. Casualty Slip prepared at Sunder Lal Jain Hospital, MLC prepared at Sushruta Trauma Centre and the Postmortem Report, the question arising for consideration are what is the cause of death, who is responsible and answerable for the death of Shamshad and in the given facts, the nature of liability, if any, of the accused i.e. whether it is criminal culpable liability or civil liability, in case the liability is criminal, then whether the accusation made against the accused constitute the commission of offence punishable u/s 304 IPC who is stated to be owner/administrator of the hospital.

30. The postmortem report reveals the cause of death as hemorrhage shock consequent to spleen rupture as a result of hard blunt force impact which is attributable to ante-mortem injuries suffered in motor vehicle accident. No significance can be attached to the observation in postmortem report that the deceased could have been saved had the proper immediate treatment given to him at Sunder Lal Jain Hospital as a emergency measure, for the reason that the casualty card details the treatment provided to the deceased without any delay in the Casualty and treatment could not be faulted by the Inquiry Committee constituted for the said purpose and even the complainant is satisfied with the same. The case FIR No. 207/2001 under Sections 279/304-A IPC registered at PS Adarsh Nagar is also against the driver of the offending vehicle for causing death of Shamshad due to his rash and negligent driving.

31. The case of the complainant is that the hospital insisted for payment of Rs. 25000/- for starting the treatment and despite request to give him half-an-hour to deposit the amount, the treatment was not started compelling him to shift the injured to Sushruta Trauma Centre but unfortunately there he was declared "brought dead". The condition of Shamshad was critical and at three places on the Casualty Slip, the doctors have written that prognosis explained, despite that the relatives wanted to shift the patient from there.

32. After carefully considering the entire material adduced by the prosecution, the case of the prosecution against the accused is that :

(i) He was owner/administrator/Chairman, Managing Committee of the hospital and a strict person.

(ii) The circulars issued by him regarding deposit of payment before admission in the hospital.

(iii) Though the ambulance was available, it was not provided for shifting injured Shamshad.

(iv) Insisting for payment before admitting the patient to ICU resulted in wastage of precious golden hour as no treatment was provided to Shamshad.

(v) Statement u/s 161 CrPC and 164 CrPC of the complainant, Sh. Jamil and the three doctors on duty prima facie show that it was the accused who telephonically instructed that without deposit, patient cannot be admitted in ICU.

33. The following facts emerge from the prosecution's own documents prepared at the time of admission in Sunder Lal Jain Hospital and Sushruta Trauma Centre :-

(i) Immediately after being brought to hospital, the treatment as mentioned on the Casualty Slip and the Casualty Register was given and even learned counsel for the complainant, during arguments, has not faulted with that treatment and expressed his satisfaction.

(ii) The Casualty Slip records at three places the caution by the doctor on duty about serious condition of the injured requiring immediate admission in ICU, thus, advising against shifting to the attendants. The Casualty Slip duly signed by complainant - the real brother and Sh. Jamil - the relative also contains that the attendants refused for admission despite prognosis being explained.

(iii) Neither Sh. Jamil nor the complainant made any remark on the Casualty Slip that patient was being shifted due to their inability to deposit the amount of Rs. 25000/- a precondition for admission in ICU.

(iv) There is no mention in the Casualty Slip (Sunder Lal Jain Hospital) and in the MLC (Sushruta Trauma Centre) both dated 16.05.2001 or in the complaint dated 23.05.2001 that the doctor on duty contacted the accused on phone or the accused himself came to the Casualty or that he was humbly requested by the complaint to give half-an-hour to deposit the amount but the patient was turned out.

(v) The MLC prepared at Sushruta Trauma Centre specifically blames the doctors on duty and not the accused being contacted either by the doctors or by them to seek half-an-hour time to deposit the payment.

(vi) The treatment given at Sunder Lal Jain Hospital must have continued for about 20 to 30 minutes. It being a case of RTA, when the injured is rushed to the hospital either by PCR or passer-by or relatives on getting the information, every hospital and doctor knows that money cannot be deposited immediately and patient has to be given necessary medical aid urgently to save the life. Not only that in view of guidelines of the Apex Court in Pt. Parmanand Katara's case (supra), there was no reason for the doctors on duty to flout the guidelines of Apex court and deny the admission to Shamshad in ICU as the payment could wait but not the treatment.

(vii) The Doctors on duty made three endorsement on the Casualty Slip cautioning again and again against shifting. If the instructions given by the accused were that the patient should be turned out if money is not deposited, there was no reason to repeatedly warn the attendants. In that case, either it could be LAMA or just obtaining signature of the attendants on the Casualty Slip that the patient was being taken away. The decision to shift to Sushruta Trauma Centre might have been taken by the complainant to provide best medical care at the hospital specially equipped to provide best medical care to the patient of RTA (Road Traffic Accident). The complaint dated 23.05.2001 is to the effect that no treatment was given or even started till payment is deposited in the hospital but Casualty Slip speaks otherwise. Learned counsel for the complainant has expressed his satisfaction about the treatment given in the Casualty but did not hesitate to express his anguish that the patient was not taken to ICU and in the process, one hour golden rule has been ignored.

(viii) To be a strict administrator can be a quality necessary to enforce discipline and for better performance expected from the staff. It can by no stretch of imagination convey that by mentioning it in the complaint as conveyed by the doctors on duty to him, constitutes any of the ingredients of Section 304 IPC.

(ix) The circular dated 04.01.1991 mentions that all emergency cases will be treated free of cost. The casualty slip contains the nature of treatment provided to Shamshad on his arrival in casualty and advised to be admitted in ICU under Dr. N.K.Grover and Dr. A.K.Chalver. There is nothing to suggest or remotely indicate that contrary to the instructions contained in circular dated 04.01.1991 applicable to the cases brought in casualty, they were asked to pay for the treatment provided, before permitting them to shift the patient to Trauma Centre. (x). The statement recorded u/s 161/164 Cr.P.C. of the relatives of the deceased and Doctors on duty are in total variance to the initial case as emerged from the documents prepared by the Doctors themselves in the casualty in Sunder Lal Jain Hospital duly signed by the complainant and the relative Sh. Jamil and also the MLC prepared at Trauma Centre by the Doctor on duty recording the brief history given by none else but the complainant. These two documents were prepared when Shamshad was in Sunder Lal Jain Hospital and Sushruta Trauma Centre and there was no time for the complainant/Doctors to concoct a different version. These documents do not contain even a single word to the effect that it was the accused who denied admission to Shamshad in ICU despite their willingness to deposit the amount within 15-20 or 30 minutes.

(xi) The subsequent statement of material prosecution witnesses i.e. the Doctors on duty in the casualty are only an attempt to save their own skin and shift the blame on the Chairman/administrator/owner. In case the accused asked the doctor in Casualty to obtain in writing from the relatives and turn the patient out, where was the occasion for the Doctors to write thrice on the casualty slip that the prognosis

explained, condition serious and explained to the attendant/relative but they refused for admission. In that situation just obtaining the signature of the relatives and writing by the Doctor that the patient was being shifted against the medical advice would have been suffice.

(xii) The complaint dated 23.05.2001 reveal that he touched the feet of Doctors on duty seeking time to deposit the amount. Till filing of this complaint, it was not the case of the complainant that the accused himself came to the casualty, they touched his feet seeking time to deposit within half an hour but he did not agree. The Doctors on duty made a statement that they sought the instruction telephonically to this effect.

(xiii) The observation of learned ASJ that the record has been tampered or submission of learned counsel for the complainant that timings have been wrongly mentioned or even as per Casualty Register, admission was refused is liable to rejected as the reason of difference in timing may be that the watches of the persons making the entries in the Casualty Register or on the Casualty Slip were not tallying in respect of time. Otherwise also, if time of accident is 3.00 pm at Azad Pur, the relatives after getting the information would have taken some time to reach the spot in Azad Pur and removing the injured to Hospital in Ashok Vihar which could not have been done within 10 minutes upto 3.10 pm. The entry in the Casualty Register "Refused admission. Referred to Govt. Hospital" have also been misinterpreted by learned counsel for the complainant as the hospital would not have created an entry of refusal of admission against it if the admission was refused for non-deposit of money. Joint reading of the Casualty Slip and Casualty Register makes it clear that "Refused Admission" meant that the attendants refused to get the patient admitted in that hospital and taking him to Government Hospital i.e. Trauma Centre.

(xiv) The time of the occurrence in FIR No. 207/2001 P.S. Adarsh Nagar is given as 3.00 P.M. As the I.O. did not find any eye witness in the hospital to inform the time of occurrence, he might have recorded the same by approximation calculating journey time from Adarsh Nagar to Ashok Vihar and Ashok Vihar to Trauma Centre. The treatment record reveals that golden one hour was not wasted due to any act or omission or conduct of the accused rather immediately on arrival at the hospital Shamshad was provided the necessary medical treatment. The complainant's counsel has expressed his satisfaction in this regard but did not hesitate to express his anguish that the patient was not taken to ICU and in the process, one hour gold rule has been ignored. The fact that necessary treatment was provided in casualty of the hospital immediately on arrival of the patient shows that the averments made in the complaint that the hospital refused to even start the treatment till the payment was deposited, is not borne out from record.

(xv) The patient was attended to by the Doctors on duty in the casualty and shifted to Trauma Centre against the medical advice by the relatives. In that process,

Shamshad might have remained in Sunder Lal Jain hospital for about 25-30 minutes. In that case, seeking 15-20 minutes or half an hour to arrange the money could not be a reason to deny treatment.

34. It is said that man may lie but documents don't. First FIR dated 16.05.2001 registered at PS Adarsh Nagar on the basis of rukka speaks about cause of death being injuries suffered in RTA. The Casualty Slip prepared at Sunder Lal Jain Hospital as well the history given by "brought by" i.e. the complainant at the time of preparation of MLC at Sushruta Trauma Centre nowhere mentions the name, the role of the accused or that it was the accused who did not allow the patient to be treated at ICU due to non-deposit of money. Rather the doctors on duty in the Casualty have been blamed by the complainant while giving history at the time of preparation of MLC. The Casualty Slip is signed by the complainant as well relative Sh. Jamil which contains repeated cautions from the doctors on duty to the attendants against shifting of the patient in view of his serious condition. But none of them has written any remark on the Casualty Slip about the reason for the shifting or that as they were unable to deposit the payment demanded, the patient was not being treated thus being shifted by them to some other hospital.

35. The complaint made against the hospital on 23.05.2001 contains only one line against the accused that he was projected by the doctors on duty in Casualty to be very strict. Enforcement of discipline amongst the employees or being a strict administrator cannot make the accused liable u/s 304 IPC. The doctors on duty were well aware and conscious of the guidelines of the Apex Court Pt. Parmanand Katara's case (supra). There is not even a whisper in the Casualty Slip (Sunder Lal Jain Hospital), MLC (Sushruta Trauma Centre) or in the complaint filed after one week of the incident that the accused had any role in denying ICU facility to the injured which cost him his life.

36. Therefore, by no stretch of imagination, it can be said that death of Shamshad was caused due to any act or omission of the accused. The preparation of documents in Sunder Lal Jain Hospital and Sushruta Trauma Centre are contemporaneous to the incident, before any of them could even think of the tragedy going to struck the family. The accused has not been named to be the person responsible for denying admission in ICU. Even in the complaint prepared after one week of the death, the blame was put on the doctors on duty in Casualty. These documents did not contain even a single word about the accused to be blamed for the death of Shamshad in any manner whatsoever.

37. The hospital was blamed in the complaint dated 23.05.2001 seeking action only against the hospital for denial of treatment in ICU. The statements recorded u/s 161 CrPC of the complainant and Sh. Jamil and that of the three doctors on duty which are at variance to the facts revealed in the three documents referred to above.

38. Statement of material witnesses were recorded by the IO prior to hearing of the bail application on 25.07.2001. On that date when the bail application was considered by the Court, the stand taken by the prosecution mentioned in the bail order, is extracted as under :

Heard. IO admits that few patient were admitted and treated in the hospital who initially were not able to pay enough money. Ld. counsel for the accused has relied upon 1999 SCC (Cri.) 76 and has prayed for bail to the accused. According to him, no offence punishable U/S 304 IPC has been committed by the accused. Ld. APP has also frankly not opposed the grant of bail to the accused. He says that the Investigating Agency has not so far been able to gather any direct evidence connecting the accused with the commission of offence punishable U/S 304 IPC and even this point is under examination, if at all any offence has been committed by the applicant-accused.

Till that date, the investigation carried out by him did not reveal any act or omission or conduct of the accused which could make him liable u/s 304 IPC. Even thereafter further investigation did not bring any additional material to put him on trial for committing the offence punishable u/s 304 IPC.

39. Non providing of ambulance when attendant were shifting the patient to Trauma Centre, even if it was not asked for by them, may be an instance where there is no negligence in the treatment but may be deficiency in service or civil negligence as was held in similar circumstances in the case Pravat Kumar Mukherjee vs. Ruby General Hospital and Ors. 2 (2005) CPJ 35 (NC). The facts of the present case even if deemed to be true and taken as gospel truth, may give rise to civil liability of the hospital but definitely not any criminal liability of accused.

40. Taking the allegations as they are without adding or subtracting anything, I find that there was no allegation made against the accused that it was he who knowing fully well the condition of Shamshad, did not let him admitted in ICU and patient was turned out even without providing ambulance. The facts as stated in the FIR and the material documents even if they are taken on face value and accepted in their entirety, do not constitute the offence for which the accused has been charged. There is glaring injustice which stares this court in the face. There was no material before learned ASJ to form an opinion that the accused had seen/was shown the Casualty Slip and being doctor he had the "knowledge" that denial of admission in ICU would cause the death of Shamshad so as to make him liable u/s 304 IPC.

41. The revisional power of High Court is a discretionary power which has to be exercised to correct miscarriage of justice but whether or not there is justification for the exercise of that discretionary power would depend upon the facts and circumstances of each case.

42. Keeping the case law in mind, when the record of the present case is examined with particular reference to the act/omission/role attributed to the accused during



the period the deceased Shamshad was in Sunder Lal Jain hospital or in Sushruta Trauma Centre or even thereafter till action was sought to be initiated against Sunder Lal Jain Hospital for the conduct of the doctors on duty in the Casualty, I find the charge to be groundless. This is not a case to proceed against the accused in a criminal case for the offence punishable u/s 304 IPC.

43. In this view of the matter, revision petition is allowed. The impugned order dated 19.05.2003 passed by learned ASJ to charge the accused for committing the offence punishable u/s 304 IPC is quashed and he stands discharged. Registry is directed to send the LCR back alongwith copy of the order.