

IN THE SUPREME COURT OF INDIA
 CRIMINAL APPELLATE JURISDICTION
 CRIMINAL APPEAL NO. 470 OF 2013

AMAR S/O WAMANRAO DESHMUKH

...APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA & ORS.

...RESPONDENT(S)

O R D E R

1. The challenge in this appeal is against an order dated 25.06.2009 passed by the High Court of Judicature of Bombay at Aurangabad by which the criminal proceeding under Section 304A/201 I.P.C. (For short the 'Code') read with Section 34 of the Code against the accused-respondents was quashed. Aggrieved, the complainant, who is the brother of the deceased, has approached this Court by means of the present appeal under Article 136 of the Constitution of India.

2. The core facts which are required to be noticed for the purpose of the present case are that

Signature Not Verified

the
 Digitally signed by
 Madhu Bala
 Date: 2015.08.08

deceased viz. Shweta, who was aged about 21

10:20:07 IST
 Reason:

years and undergoing her studies, had reported to the Sai Hospital and Critical Care Unit situated in

2

Samarthnagar, Aurangabad City at about 9.45 P.M. on

13.09.2008. Pathological tests done immediately before indicated that she was suffering from Falciparum Malaria. She was treated in the Hospital, details of which will be noticed.

Subsequently, she was moved to the Intensive Care Unit around midnight when she was gasping for breath and shortly thereafter the young lady passed away at about 1.45 a.m. Two committees of experts went into the case and submitted their respective reports, details of which will also be noticed. The F.I.R. was filed by the complainant on 5th December, 2008 i.e. nearly two and a half months after the incident narrating, in sequential order, the detailed facts of the case on which allegations of criminal negligence was made against the respondents-accused. In the F.I.R. the complainant has also stated that the Hospital Authorities, including the accused-Doctor, did not make available the requisite documents pertaining to the treatment of the deceased in time. It was further stated in the F.I.R. that though the grand-father of the deceased who was present in the Hospital at the time of her death had insisted on a post-mortem, such request was, however, refused by the accused and the Hospital Authorities.

3

3. We are aware of the fact that we have to proceed in the matter on a note of extreme caution sounded on several occasions by this Court, details of which need not be recapitulated save and except that the cognizance of an offence alleging criminal negligence against medical professionals ought to be treated with the highest degree of circumspection as the dividing line between the criminal negligence and error of judgment may be thin. We have also to take note of the judgment of the Constitution Bench of this Court in 2014 (2) SCC 1 Lalita Kumari Vs. Government of Uttar Pradesh & Ors. wherein this Court while carving out an exception to the rule of

prompt registration of an F.I.R had clearly laid that a case of medical negligence is one category of cases where a preliminary inquiry would be justified even before the registration of the F.I.R.

4. The bone of contention between the parties in the present case was the alleged refusal of the deceased to take, orally, quinine tablets which was prescribed by the doctors at the time of her admission. The deceased refused to take the tablets

4

orally as she was reactive to the drug. The doctor, therefore, prescribed the drug through an injection. While the respondents-accused contend that such prescription recommend administration of the drug through I.V. drip after being mixed with normal saline and in fact has produced some material in this regard, the case of the complainant is that the drug was administered by an Intra-venous injection in one go. Apparently, within an hour of the administration of the drug, the deceased collapsed and had breathing problems and was removed to the I.C.U.

5. While the first report of the Committee is highly inconclusive being in the nature of a preliminary report. Certain unnatural features in the stand taken by the respondents-accused so far as the claim of administration of drug through I.V. fluid is concerned was noticed by the Second Enquiry Committee. The claim was found to be not supported by requisition of the necessary I.V. apparatus, cost of which was not included in the bills. The statement of the nurse recorded by the said Enquiry Committee also appears to be ambiguous and in fact is capable of being, prima facie, understood as if

the drug was administered by I.V. injection and not through I.V. fluid. Above all, there is the claim of the complainant who was present at the spot that the injection was not administered through I.V. fluid and that the doctor was not present at that time though the claim of the doctor is otherwise. The prescription requiring the drug to be administered by I.V. Fluid, as claimed by the respondents-accused, was apparently not furnished to the complainant by the Hospital Authorities inasmuch as though the immediately connected papers have been placed on the record of the case, the vital page has not been so placed. The very nature of the contents of the vital page also makes it imperative for the respondents to make the same a part of the counter affidavit which has not been done. However, at the time of hearing, the same has been placed before us. In such circumstances, it is difficult for us and, therefore, we refrain from commenting on veracity of the said document i.e. prescription for administration of quinine injection through I.V. Fluids.

6. The claimant has urged that post-mortem was demanded but refused by the respondents-accused. The

6

accused-doctor, on the contrary, had taken the stand that the grand- father of the deceased had agreed to forego the post-mortem examination. The Second Enquiry Committee found the stand of the accused not tenable, as the memo of refusal not signed by the grand-father of the deceased.

7. In the light of the above the conclusions/findings recorded by the second Enquiry Committee become relevant and would require a reproduction which is made below:

Conclusions:

1. The Committee does not agree with the statement of the doctor that the patient had suffered cerebral malaria as well as the Death Certificate.
2. From the laboratory test, it appears that the patient was suffering from Falciparum malaria. In this situation generally the patients are given injection larinet and quinine.
3. The Committee feels that the injection quinine is related to the death of the patient.
4. There is known adverse effect of quinine on the heart. Therefore the Committee feels that the death of the patient might have caused due to the effect of quinine on the heart. The Committee is unable to express its opinion that whether the E.C.G. submitted in this matter pertains to that patient only or not.
5. The reaction of quinine rarely occurs. But this possibility also cannot be denied.

7

6. From the contradictory statements made by the relatives of the patient as well as doctor, no definite inference can be drawn that whether the injection quinine was given to the patient through the vein or from the drip. However, as per the say of the relatives if the injection is pushed by the nurse from the vein, then it become the cause of death of the patient. Under these circumstances, it can prove that there was negligence on the part of the concerned doctor and nurse.
7. It is incumbent upon the doctor to inform the police and perform the post mortem if after bringing the patient in good physical condition, dies all of a sudden within three hours and the cause of his death is suspicious so that the definite cause of death of the patient can be got known. In the instant matter, if the relatives of the deceased had really made force to make the post mortem, then the act of the doctor of not doing so is not proper.

Sd/-

Dr. P.G. Dixit,
Chairman and Prof. H.O.D.
Forensic Department
G.M.C. Nagpur

Sd/-

Dr. R.S. Bindu
Member and H.O.D.
Pathology Department
G.M.C. Aurangabad

Sd/-

Dr. Mangla Sonwani (Borkar)
Member Secretary and H.O.D.
Medicine Department,
G.M.C. Aurangabad

8. On an overall conclusion of all that has been stated above, we are of the view that the criminal proceeding against the accused must be allowed to reach its logical conclusion. Vital facts on which

8

the culpability of the accused will have to be determined are not free from doubt or dispute. Such facts can only be established in course of a regular trial. We, therefore, interfere with the order of the High Court; allow this appeal and direct that the criminal proceeding against the accused-respondents shall now be recommenced and shall be concluded within the earliest possible time frame. We also make it clear that all our observations in the present order are for the limited purpose of deciding the issue as to whether the matter should go for trial or not and the same should not be understood as expression of any opinion on the culpability of the accused or otherwise which will naturally, have to be adjudicated in the trial in accordance with law.

.....J.
[RANJAN GOGOI]

NEW DELHI
5TH AUGUST, 2015
ITEM NO.101(PH)

COURT NO.8

.....J.
[N.V. RAMANA]
SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 470/2013

AMAR S/O WAMANRAO DESHMUKH

Appellant(s)

VERSUS

STATE OF MAHARASHTRA & ORS.
(With appln. (s) for stay and office report)

Respondent(s)

Date : 05/08/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s) Mr. Satyajit A.Desai,adv.
 Ms. Anagha S. Desai,Adv.
 Mr. Debopriyo Pal,Adv.

For Respondent(s) Mr. S.M. Chandrashekar,Sr.Adv.
 Mr. Shirish K. Deshpande,Adv.
 Mr. R.B. Deshmukh,Adv.

 Dr. R. R. Deshpande,Adv.

 Mr. Kunal A. Cheema,Adv.
 Mr. Nishant Ramakantrao Katneshwarkar,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the singed
order.

(MADHU BALA)
COURT MASTER
(Signed order is placed on the file)

(ASHA SONI)
COURT MASTER