ANJANA ANGNIHOTRI v. THE STATE OF HARYANA & ANR.

(Criminal Appeal No. 770 of 2009)

(Decided on February 6, 2020)

* ANUSHKA MEHUL SHAH[1]

I. **Introduction**.

The recent judgement passed by Supreme Court[2] stirred the nation and propelled the debate with respect to the eminent question: *Can doctors be placed on a higher pedestal, different from ordinary mortals, while adjudicating for criminal negligence?* The Supreme Court's decision, affirmatively stating the above, has created huge resentment amongst citizens, who have felt threatened with respect to their consumer rights and right to receive fair justice. Medical negligence ordinarily, gives rise to civil as well as criminal liability. Under civil wrongs an aggrieved person can claim compensation, whereas criminal wrongs punish the wrongdoers with fines or imprisonment. Hence the gravity and consequences of criminal offenses being evidently greater, the Court has resorted to providing a shield to medical practitioners, on account of fair and reasonable practice, or even vexatious litigations. Weighing the fairness of this decision, analyzing its impact and forecasting possible objections, form the crux of this commentary.

II. **Facts**.

The case stemmed from and FIR filed by Mulk Raj, the brother-in-law of the deceased, Santosh Rani. The facts of the case state that, on the morning of November 15, 1998, the deceased was admitted to the hospital run by the appellants. She was an expecting mother and due for a caesarian operation. The operation was subsequently conducted and a male child was born to her, shortly after which, the doctors felt that the deceased required blood transfusion due to a lot of blood loss in the process. Thereafter, the deceased's husband, Nand Lal and brother, Bhajan Lal, offered to give blood, and it was transfused to the deceased at 2 pm, that afternoon. Around 2 am the next morning, the deceased expired. The basis of filing

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[2] Anjana Agnihotri v. The State of Haryana & Anr., Criminal Appeal No. 770 of 2009 (Supreme Court, 06/02/2020).

the FIR was that the deceased was not attended to, from the event of transfusion in the afternoon, till 2 am the next morning. The accused was consequently charged under Section 304 A of the Indian Penal Code, on account of alleged criminal negligence, as well as, Section 18-C/27-B of the Drugs and Cosmetics Act, 1940. The Trial Court, relying on the judgement in *Jacob Mathew v State of Punjab & Anr.*[3], discharged the accused by order dated, November 30, 2000. On appeal, the order was set aside by the Additional Sessions Judge on September 24, 2004, and the same was upheld by the Punjab & Haryana High Court via order dated March 23, 2008. However, the Supreme Court while dealing with the case, relied on the *Jacob Mathew* case, and reiterated that in order to hold the accused liable for criminal negligence, the defense will be required to prove that the accused did something, or failed to do something, which in the given facts and circumstances, no medical practitioner in his ordinary senses and prudence would have done or failed to do. Simply put, it meant that, a negligence of high order needs to be proved, in order to prosecute medical professionals. In addition, an independent and competent opinion of a medical practitioner engaged in government service, capable of giving and unbiased opinion, pursuant to application of the Bolam test, would be required before proceeding against and doctor for negligent acts or ommissions. The Supreme Court also stated that in medicine, professionals are obligated to take the best decisions when dealing with their patients. These decisions may not be correct always, but this does not amount to criminal negligence on their behalf. The Court then went on to state that the only negligence attributable to the accused would be the carrying out of blood transfusion in violation of instructions of the Chief Medical Officer i.e. directly from the donor to the patient. Conclusively, the Supreme Court, in its order dated February 6, 2020, set aside the decision of the High Court and discharged the accused.

III. **Comments**.

Having witnessed the judgment in the *Ajana Agnihotri* case, it is pertinent to keep in mind the following consideration:

- Are medical practitioners rightly entitled to the protective shield offered, with respect to liability for criminal negligence?

[3] Jacob Mathew v. State of Punjab & Anr., (2005) 6 SCC 1.

- The rationale behind the Supreme Court's pronouncement in the given case, and a probable solution for its practical implementation.

The Court, citing Jacob's case stated the following from the judgement, *"To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent."*[4] *"The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Bolam test to the facts collected in the investigation."*[5] The Bolam test is derived from an infamous case, *Bolam v Friern Hospital Management Committee*[6]. This case lays down the thumb rule for assessing the appropriate standard of reasonable care in negligence cases involving skilled professionals. This test lays down standards which must be in accordance with a responsible body of opinion, irrespective of differing opinions, in the event the defendant has represented himself as having more than average skills and abilities. Put simply, Bolam test states that, *"If a doctor reaches the standard of a responsible body of medical opinion, he is not negligent".*

The primary question that crops up is with respect to correctness of the decision, in light of the Constitution of India. Article 14 of the Constitution of India provides for equality before the law or equal protection of the laws within the territory of India. Medical practitioners too are no less than mere citizens of the country. Every citizen in the country must be subject to the same laws, in the same manner, with absence of any special treatment. Hence provision of additional filters while adjudicating cases of criminal negligence against such practitioners simply leads to violation of Article 14. Section 304 A of the Indian Penal Code, 1980 stated that *"Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or both."* The section itself does not

[4] Jacob Mathew v. State of Punjab & Anr., (2005) 6 SCC 1 [48(7)].
[5] Jacob Mathew v. State of Punjab & Anr., (2005) 6 SCC 1 [52].
[6] Bolam v. Friern Hospital Management Committee, [1957] 1 WLR 582.

indicate any discrimination in its application. Neither does it prescribe the term "gross" or "high order" in order to describe the rash or negligent act. Conclusively, the rationale behind placing the medical practitioners on a pedestal, and the requirement of proving of a high degree of negligence, could seem nothing short of weak and unfair.

Several cases in the past have held medicals practitioners guilty of medical negligence, without any proof of high order negligence. In *V. Kisan Rao v. Nikhil Super Specialty Hospital*, while declaring medical negligence as deficiency, the court also additionally stated that in such cases the complainant is absolved of liability to prove anything else, and the burden is shifted on the accused in turn, to prove that he has taken care and caution to avoid any breach of duty. In *Laxman B. Joshi v. T.B. Godbole and Another*, the court held that, a person who holds himself out, ready to give medical advice and treatment, undertakes that he possesses the prescribed skill and knowledge, and hence owes a duty of care towards the patient. A breach of such duty gives right of action for negligence to the patient.

Necessity to prove a high order of negligence also violates Section 101 of the Indian Evidence Act, to some extent. This Section states that, *"Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."* In this case, the burden of proof was on the prosecutor to show negligence of the medical practitioner, which resulted in the death of the deceased. The admission of the fact of violation of Chief Medical Officer's instructions with respect to blood transfusion, is proof enough to establish his negligence, irrespective of it being of a high order. Nowhere does the Indian Evidence Act lay down an additional requirement of the proof to be of a certain qualification. Hence neither should the judiciary have the freedom to manipulate the law by laying down such requirements, which could have serious adverse effects on the prosecutor patients.

Considering this protective shield given to medical professions, it is only fair that such shield be provided to other professionals as well, in all equality. In the current Anjana Agnihotri decision, the Supreme Court states that *"Medical professionals deal with patients and they are expected to take the best decisions in the circumstances of the case. Sometimes, the decision may not be correct, and that would not mean that the medical professional is guilty*

of criminal negligence." However this immunity is certainly not extended to other professionals, for e.g. lawyers. Section 5 of the Legal Practitioners (Fees) Act, 1926 clearly lays down that, *"No legal practitioner who has acted or agreed to act shall, by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties."* The Supreme Court, in the judgement of *M. Veerappa v. Evelyn Sequira*[7], has held that a lawyer, merely by reason of being a legal practitioner, cannot claim exemption from liability with respect to any loss suffered by the client on account of negligence in the conduct of his professional duties. In *Manjit Kaur v. Deol Bus Service Ltd*.[8], placing reliance on Veerappa's case, it was held that a counsel owes a duty of care to his client. Thus the law states that if a counsel, by his acts or omission, causes the interest of the party hiring him, to be prejudicially affected in any legal proceedings, he will undoubtedly be held accountable. Section 5 of the Legal Practitioners (Fees) Act, 1926 as stated above, does not exclude the liability of advocates for negligence in criminal cases, as allowing such immunity may be violative of the fundamental right of the people to approach the courts for the determination of their rights. Similarly, such additional protective shield given to any other professional practitioners would outweigh the purpose for which it is implemented, and prove highly dangerous, given the high possibility of misuse of this immunity.

However, it is an established fact that criminal jurisprudence stipulates that all penal acts have to be strictly construed and interpreted in favour of the accused, rather than in favour of the prosecution. In justification of the Supreme Court's decision, the following eminent points of criminal law should be considered:

- In order to hold somebody liable for criminal negligence, the complaint must directly be attributable to the injury suffered or caused.
- Fastening of criminal liability necessitates an intent to cause injury i.e. mens rea right from inception.

The prosecution's failure to prove these indispensable ingredients of criminal negligence, is what may have lead the Supreme Court to pronounce the acquittal of the accused. The Supreme Court may also have considered the fact that medical practitioners should be given that extra benefit of doubt, considering the fact that patients may be brought into hospital at

[7] M. Veerappa v. Evelyn Sequira, 1988 SCR (2) 606.
[8] Manjit Kaur v. Deol Bus Service Ltd., AIR 1989 P H 183.

a critical stage and hence inevitably, risk will be involved while performing surgery or administering medicine. In such an event, focus must lie on whether the treatment provided by the doctor would have been adopted by a prudent and reasonable practitioner in a given situation, irrespective of the patient's response to the treatment.

Just as every coin has two sides, there is evidently, also an upside to this decision taken by the Supreme Court. With the passing years, the number of criminal cases files against medical practitioners, are increasing at an alarming rate. They are being charged under Section 304 A (rash and negligent acts causing death but not amounting to culpable homicide), Section 336 (rash or negligent act endangering life), Section 337 (causing hurt to a person by committing a rash and negligent act) and Section 338 (causing grievous hurt to a person by committing a rash and negligent act so as to endanger human life), of the Indian Penal Code. Given the vulnerability of this profession, to vexatious litigation, this decision primarily aims at protecting the medical practitioners from people trying to falsely accuse them, only to claim compensation. It provides an additional barrier of negligence of high order to be proved, in order to prevent genuine innocent practitioners from being dragged into unnecessary criminal proceedings. Given the increase in criminal accusations against practitioners in this profession, absence of this immunity might eventually lead a medical practitioner being better off leaving a terminal patient to his own fate, rather than taking a risk of discretionary action to save him, and facing criminal prosecution incase it fails. This would defeat the whole purpose of the profession.

IV. **Conclusion**.

Hence given the gravity of this judgement, one can only hope that professionals will positively take this immunity in their stride and discharge their duties with care and responsibility as demanded by their profession, as opposed to acting carelessly without caution and subsequently using the immunity as a shield for their wrongdoings. The best manner to implement this decision would be to apply it circumstantially, depending on the facts and circumstances of cases, rather than implementing it as a blanket policy. Providing this immunity to medical practitioners should in no way hamper the genuine claims of patients, and thus, the legitimate pleas of patients should be taken into consideration along with the agony of medical practitioners. After all, balance is always the key.