

IN THE SUPREME COURT OF INDIA
Criminal APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 770 OF 2009

Anjana Agnihotri & Anr.Appellant(s)

Vs.

The State of Haryana & Anr.Respondent(s)

ORDER

This Appeal is directed against the judgment dated 23.04.2008 of the Punjab and Haryana High Court whereby the High Court upheld the order of Additional Sessions Judge dated 24.09.2004 by which the order dated 30.11.2000 of the learned Sub-Divisional Judicial Magistrate, Dabwali discharging the appellants for having committed offences under Section 304A Indian Penal Code, 1860 and Section 18-C/27-B of the Drugs and Cosmetics Act, 1940, was set aside.

The prosecution story is that Santosh Rani (deceased) was admitted to the Agnihotri Hospital run by the appellants herein. On 15.11.1998 at about 5.00 a.m. Santosh Rani was expecting a child and she was advised caesarian operation. Such operation was conducted at about 8.00 a.m. and a male child was born. After the birth of the child the doctors felt that blood was required

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to Santosh Rani. Thereafter, her husband Nand Lal and

brother Bhajan Lal offered to give blood and this blood was taken

and transfused to Santosh Rani at about 2.30 p.m. At about 2.00 a.m. the next morning Santosh Rani expired. Thereafter, Mulkh Raj, brother of the husband of the deceased filed an FIR with the police. It is important to note that in the FIR it is stated that in the hospital the blood of Nand Lal and Bhajan Lal was taken by the dispenser and Dr. Agnihotri of the hospital. It is further stated that these two persons tested the blood and transfused it to Santosh Rani and oxygen was also administered.

The main allegation against the appellants in the case is that they did not attend to Santosh Rani from 2.30 p.m. to 2.00 a.m. The Trial Court on the application of the accused discharged them relying upon the judgment of this Court in Jacob Mathew vs. State of Punjab & Anr. (2005) 6 SCC 1 case. The Additional Sessions Judge set aside the order of discharge and the order of Additional Sessions Judge in revision has been upheld. In Jacob Mathew's Case this Court clearly held that in criminal law medical professionals are placed on a pedestal different from ordinary mortals. It was further held that to prosecute the medical professionals for negligence under criminal law, something more than mere negligence had to be proved. 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. Such a medical profession may be liable to pay damages but unless negligence of a high order is shown the medical

professionals should not be dragged into criminal proceedings. That is why in Jacob Mathew's case (supra) this Court held that in case of criminal negligence against a medical professional it must be shown that the accused did something or failed to do something in the given facts and circumstances of the case which no medical professional in his ordinary senses and prudence would have done or failed to do. Therefore, this Court also directed in such cases an independent opinion of a medical professional should be obtained in this regard. We may make reference to the following observations in Jacob Mathew's case (supra). While concluding the judgment this Court gave certain guidelines. We need not refer to all, however Para 48(7) which is relevant is as under:

"(7) 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."

Further this Court held in para 52 as under:

"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."

In the present case the appellants failed to obtain any opinion of an independent doctor. The postmortem report does not show that the death of Santosh Rani had occurred due to the transfusion of blood. The only negligence that could be attributed to the accused is that they carried out the blood transfusion in violation of some instructions issued by the Chief Medical Officer that blood should be obtained from a licensed blood bank and that no direct blood transfusion from the donor to the patient should be done. In our opinion even if this is true the negligence is not such as to fall within the ambit of Jacob Mathew's case (supra).

In view of the above, we set aside the judgment of the High Court and restore the order of the trial court and discharge the appellants.

The Appeal is accordingly allowed.

Pending application(s), if any, shall stand(s) disposed of.

.....J.
(DEEPAK GUPTA)

.....J.
(HEMANT GUPTA)

New Delhi;
6th February, 2020.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 770/2009

ANJANA AGNIHOTRI & ANR.

Appellant(s)

VERSUS

THE STATE OF HARYANA & ANR.

Respondent(s)

(List the matter on 04.2.2020. (Ref.: R/P dated 23.10.2019))

Date : 06-02-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE HEMANT GUPTAFor Appellant(s) Mr. Vivek Sharma, Adv.
Mr. Vivek Narayan Sharma, AORFor Respondent(s) Mr. Atul Mangla, AAG.
Mr. Enderjeet, Adv.
Mr. Prince Jindal, Adv.
Mr. Ashish Kaushik, Adv.
Mr. Vishwa Pal Singh, Adv.
Dr. Monika Gusain, AORUPON hearing the counsel the Court made the following
ORDER

The Appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(SUMAN WADHWA)
AR CUM PS(PRADEEP KUMAR)
BRANCH OFFICER

Signed order is placed on the file.