

Original Article

Death due to Dengue: A Case of Criminal Medical Negligence: SC

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ABSTRACT

The complaint had been filed by the complainant namely Prabhat Kumar Singh bearing C.C. No. 3229(C) of 2016, pending before the Ld. Court of CJM, Patna dated 06.10.2016 is that his daughter has been virtually killed by the petitioner of the first case and the doctor sitting in the laboratory inasmuch as the petitioner of the first case has treated the daughter of the complainant negligently and the doctor sitting in the laboratory had failed to conduct further pathological test for dengue. The aforesaid batch of cases have been filed before Patna High Court against the order dated 24.12.2016 passed by the Ld. A.C.J.M., Patna in C.C. No. 3229(C) of 2016, whereby and whereunder cognizance has been taken against the aforesaid petitioners under Sections 304, 316/34 of the Indian Penal Code. In a case of alleged death due to criminal medical negligence, Patna High Court in its judgment dated: 14.08.2020 observed that for negligence to amount to a criminal negligence, the element of *mens rea* must be shown to exist and it is recklessness that constitutes *mens rea* in criminal law as far as negligence is concerned and there should be reckless state of mind and intention to cause harm and only then the same would amount to criminal negligence. Patna High Court concluded that it cannot be said that the petitioners have not followed the practice acceptable to the medical profession, which is apparent from the prescriptions and test reports annexed to the writ petitions. Division Bench of Supreme Court observed that it is clear that the Trial Court may have to call upon the complainant to first examine the professional Doctor as witness in support of the case made out in complaint and then proceed to consider the matter afresh on its own merits and in accordance with law. Trial Court shall proceed in the matter on its own merits without being influenced by any observation made in the two orders which have been set aside or for that matter in this order. All contentions and remedies available to both sides are left open.

Keywords: Dengue, Death, IUD, Medical negligence, Dengue test

BACKGROUND OF THE CASE

The aforesaid batch of cases arise out of the same impugned order dated 24.12.2016 passed by the Ld. Additional Chief Judicial Magistrate (A.C.J.M.), Patna in C.C. No. 3229 (C) of 2016, hence both the cases have been taken up for hearing together, with the consent of the parties and are being disposed of by this common

Judgment.

The aforesaid batch of cases have been filed against the order dated 24.12.2016 passed by the Ld. A.C.J.M., Patna in C.C. No. 3229(C) of 2016, whereby and whereunder cognizance has been taken against the aforesaid petitioners under Sections 304, 316/34 of the Indian Penal Code.

Facts of the Case

The complaint filed by the complainant namely Prabhat Kumar Singh bearing C.C. No. 3229(C) of 2016, pending before the Ld. Court of CJM, Patna dated 06.10.2016 is that the daughter of the complainant was married five years back with one Lokesh Kumar and subsequently she became pregnant whereupon she came under the treatment of Dr. Mrs. Prabha Sinha ^[1].

The deceased daughter of the complainant is stated to have gone to the hospital of the petitioner of the first case on 21.02.2016 where she was treated and certain medicines were prescribed apart from being advised to get certain tests conducted at Manas Lab situated in the said hospital namely, Manas Nursing Home whereupon all the pathological tests of the daughter of the complainant was done.

On 13.09.2016, the daughter of the complainant had rushed to the doctor i.e. the petitioner of the first case on account of some problem in pregnancy, whereafter the petitioner of the first case had given some medicines and also prescribed certain tests.

Dengue Test: Issue of Conduct

Again, the tests were conducted at Manas Lab after taking the blood sample of the deceased daughter of the complainant. Since the doctor had prescribed Dengue test, the complainant was quite perplexed and had visited the aforesaid lab in the evening whereupon he was told that there was nothing in the report and Dengue test had turned out to be negative, however, no report was given to the complainant and when the complainant had again requested the doctor sitting in the lab to repeat the Dengue test, since his daughter was pregnant since last seven months and was suffering from fever, the doctor sitting in the lab became angry and had abused the complainant, whereafter the complainant was forcibly ousted from the said premises.

On the evening of the same day i.e. on 13.09.2016 the complainant had gone to meet the petitioner of the first case and had shown all the reports whereupon he was told that everything was fine, however, the complainant

had requested the doctor to again get the Dengue test of his daughter conducted since she was suffering from fever since a long time, to which the petitioner had threatened the complainant and had called her staff who had then snatched the lab report from the hands of the complainant and had thrown him out of the clinic.

It is the case of the complainant that the petitioner had always been negligent in treating his daughter and ultimately his daughter became very serious on 16.09.2016 and at about 2:00 A.M. the nurse and staff of the petitioner informed the complainant that the baby had died in the abdomen of his daughter and she is very serious, hence the staff ousted the complainant along with her daughter from the nursing home at 2:15 A.M. on 16.09.2016 without being provided any prescription as also after having fleeced the complainant of a sum of Rs. two lacs within four days.

Diagnosis of Dengue

It is the case of the complainant that having left with no option he had taken his daughter to Kurji Holy Family Hospital and admitted her there and subsequently he was told that his daughter was suffering from Dengue, which had been diagnosed on the basis of pathological test conducted there on 17.09.2016.

Issue of Mother Death/IUD

The complainant was further informed by the hospital authorities that the baby had already died in the abdomen of his daughter, on account of negligence of the doctor treating her and her condition was serious. Ultimately, on 18.09.2016 at about 12:15 a.m., the daughter of the complainant died and the death certificate issued by Kujri Holy Family Hospital clearly states that the daughter of the complainant was suffering from Dengue.

Alleged Medical Negligence

It is thus the allegation of the complainant that the his daughter has been virtually killed by the petitioner of the first case and the doctor sitting in the laboratory inasmuch as the petitioner of the first case has treated the daughter of the complainant negligently and the doctor sitting in

the laboratory had failed to conduct further pathological test.

Case before ACJM, Patna

Ld. Court of ACJM, Patna by the impugned order dated 24.12.2016 passed in Complaint Case No. 3229 (C) of 2016, on the basis of the materials available on record, averments made in the complaint petition and considering the evidence on record has prima facie come to a finding that on account of negligence on the part of the accused doctor Prabha Sinha, the daughter of the complainant and the child in her foetus have died as also the proprietor of Manas Lab and doctor of the lab are also having complicity inasmuch as a wrong report pertaining to the daughter of the complainant has been furnished, accordingly cognizance has been taken against the aforesaid petitioners under Sections 304 and 316/34 of the Indian Penal Code.

Case before Patna High Court

As far as the first case i.e. Cr. W.J.C. No. 930 of 2017 is concerned, the Ld. Senior Counsel for the petitioner has submitted that the allegations made in the complaint petition are false and concocted and the order taking cognizance is bad in law in view of the settled proposition of law as propounded by the Hon'ble Apex Court and this Hon'ble Court in a catena of cases.

It is submitted that the petitioner of the first case is a competent and well qualified doctor, who has treated several pregnancy cases and there has been no complaint whatsoever much less any complaint of negligence in respect of treatment and conducting operations.

It is further submitted that as far as the present case is concerned, there is no fault on the part of the petitioner and the fact is that the daughter of the complainant was under the treatment of the petitioner since February, 2016 since she was pregnant and on 13.09.2016 she had come to the nursing home of the petitioner for regular check-up and was having fever since one day, thus on the very same day blood test and other tests were conducted and probably on account of incubation period, the Dengue

test, conducted at Manas lab had turned out to be negative, whereafter the petitioner had advised the requisite treatment to be followed and then the complainant and his daughter had left the clinic.

In the late evening of 16.09.2016, the complainant and his daughter had again come up for check up at the clinic of the petitioner and the daughter of the complainant had made a complaint that there was no movement of the child in the abdomen whereupon ultra sound was conducted at Maurya X-ray at about 11:00 P.M., which is not in any manner connected with the clinic of the petitioner and it was detected that the fetus was dead, hence the petitioner had advised for induction of labour pain and upon the complainant and his daughter having agreed for the same, the process was started and saline water was administered for safe delivery of the dead foetus, however, in the meantime, dark brown mixed blood started oozing out from the mouth and nose of the daughter of the complainant, hence in the night of 16.09.2016, complainant was advised to take the patient to the medical emergency department of PMCH, Patna since she required immediate medical treatment for vomiting and ICU facility was not available at the nursing home of the petitioner.

Thereafter, a detailed slip was given to the complainant for reference regarding the problem of the daughter of the complainant so that appropriate treatment could be administered at PMCH, however, the complainant, at his own risk, got his daughter admitted in Kurji Holy Family Hospital in the early morning of 17.09.2017 whereupon several pathological tests appear to have been conducted and it was detected that the daughter of the complainant was suffering from Dengue. It is submitted that the complaint case has been filed only on the Davidson's Principles and Practice can be found at Annexure-7 to the writ petition of the second case.

As far as the petitioner no. 2 of the second case is concerned, he is merely the husband of the petitioner of the first case and is also a well-qualified doctor possessing MBBS degree, MD in General Medicine and FICP degree. However, no allegation has been levelled in the

complaint petition as far as the petitioner no. 2 of the second case is concerned.

Issue of Mens Rea

In nutshell, the petitioners has submitted that no *mens rea* is present as far as the aforesaid petitioners are concerned and moreover, no case is made out against the petitioners herein under Sections 304, 316/34 of the Indian Penal Code, by any stretch of imagination, which is apparent from a bare perusal of the materials on record, the averments made in the complaint petition and the evidence on record.

DISCUSSION ON CASE

Stand of the Doctor/Hospital

The petitioners has thus submitted that the petitioners are well qualified doctors, they possess the requisite skill for treating the patients and there is no allegation in the complaint petition that the petitioners herein have done 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, hence it is submitted that there is no material on record so as to warrant prosecution of the petitioners for criminal negligence, thus the impugned order dated 24.12.2016 passed by the Ld. ACJM, Patna in C.C. No. 3229 (C) of 2016 is fit to be set aside.

Stand of the Patient Side: Issue of Professional Misconduct

Per contra, the complainant has though not controverted the aforesaid principles laid down by the Hon'ble Apex Court in a catena of decisions, however, has submitted that paragraph no. 11 of the complaint petition would show that the complainant was abused and thrown out of the clinic by the staff of the Hospital when he had prayed for conduct of repeat test for Dengue disease and moreover paragraph no. 16 of the complaint petition would also show that the staff of the petitioner of the first case had informed the complainant that the baby had died in the abdomen of the daughter of the

complainant and his daughter was also serious, hence had forcibly ousted the complainant and her daughter from the nursing home in the night of 16.09.2016 at about 2:15 A.M.

Issue of Gross Negligence

It is thus submitted that the said averments itself are sufficient to show the gross negligence on the part of the petitioners, hence the Ld. ACJM, Patna by the impugned order dated 24.12.2016 passed in C.C. No. 3229 (C) of 2016 has rightly taken cognizance of the offence under Sections 304, 316/34 of the Indian Penal Code against the petitioners herein.

It is further submitted that in any view of the matter the complainant is a poor person who has lost his only daughter and there are ample evidence and material on record to prima facie make out a case against the petitioners herein under Sections 304, 316/34 of the Indian Penal Code, thus the present petitions are fit to be dismissed.

I have heard the parties and perused the materials on record as also gone through the catena of judgments referred to by the Ld. Senior Counsel for the petitioners.

A bare perusal of the materials on record would show that the petitioners are well qualified doctors and they possess the requisite skills which they profess to possess and the said fact is not disputed by the complainant as well.

It is a well settled law that criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

Issue of Mens Rea

For negligence to amount to a criminal negligence, the element of *mens rea* must be shown to exist and it is

recklessness that constitutes *mens rea* in criminal law as far as negligence is concerned and there should be reckless state of mind and intention to cause harm and only then the same would amount to criminal negligence.

Issue of Negative Dengue Test

Thus, from the evidence on record and the averments made in the complaint petition, it is apparent that requisite treatment was administered by the petitioner of the first case, whereafter a test for Dengue was also conducted on 13.09.2016, however, the daughter of the complainant had tested negative, which might be on account of incubation period, as discussed herein above in the preceding paragraphs, inasmuch as the daughter of the complaint was having fever only since past one day.

Issue of Standard of Care: Peer Review

Therefore, it cannot be said that the petitioners have not followed the practice acceptable to the medical profession, which is apparent from the prescriptions and test reports annexed to the writ petitions.

Issue of Alleged Gross Negligence

High Court found that neither there is any evidence nor averment in the complaint petition to show that the petitioners herein had engaged in very high degree of negligence so as to constitute the ingredients warranting prosecution of the petitioners for criminal negligence or to show that the petitioners 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 resulting in a rash and negligent act.

Issue of Insufficient Evidence

Patna High Court found that there was no evidence that death of complainant daughter is the direct result of rash and negligent act of the petitioners. There is also no evidence that petitioner had reckless state of mind with an intention to cause harm. There was lack of post-mortem report showing cause of death of the deceased. Therefore Patna High Court set aside the order of ACJM,

Patna order dated 24.12.2016. This Court (Patna High Court) further finds that in the recent past there has been a spurt in the cases to implicate the doctors after demise of the patient, some on account of extortion of illegal money from the doctors and some due to other reasons, only to harass the doctors, out of frustration and because of these factors, guidelines have been laid down by Hon'ble Apex Court in the case of Jacob Mathew [R] (Supra) and in the case of Kusum Sharma [R] (supra).

Case before Trial Court (ACJM)

These appeals take exception to the judgment and order dated 14.08.2020 passed by the High Court of Judicature at Patna in CWJC Nos. 930 and 1585 of 2017, whereby the summoning order passed by the Court of ACJM, Patna in C.No.3229(C) of 2016 dated 24.12.2016 came to be set aside ^[1-9].

The appellant had filed a complaint before the ACJM's Court at Patna against the private respondents for offence punishable under Section 304, 316/34 of the Indian Penal Code. The Trial Court after recording the evidence of three witnesses was persuaded to issue summons to the private respondents in connection with the stated offence vide order dated 24.12.2016.

Case before Patna High Court

The private respondents, therefore, assailed that order by way of writ petitions before the High Court. The High Court, in our opinion, completely glossed over the reasons which had weighed with the Trial Court as noted in order dated 24.12.2016, but was impressed by the fact that there was no evidence regarding *mens rea*, to show malicious or bad intent.

This view taken by the High Court is erroneous. For, when it is a case of medical negligence, it need not be because of *mens rea* as intent. *Sans mens rea* in the above sense also it would still constitute offence of medical negligence. Be that as it may, as aforesaid, the High Court did not advert to the reasons which had weighed with the Trial Court for issuing summons to the private respondents.

Case Law Cited

At the same time, it is noticeable that the Trial Court had summoned the private respondents without insisting for medical evidence or examination of professional Doctor by the complainant in support of his case made out in the complaint, as required in terms of the exposition of this Court in *Jacob Mathew vs. State of Punjab & Anr.* reported in (2005) [2].

SUMMARY AND CONCLUSIONS

Resultantly, in Division Bench of SC opined that, the appropriate course is to set aside the impugned judgment and order of the Patna High Court as well as summoning order issued by the Trial Court dated 24.12.2016 and relegate the parties before the Trial Court for reconsideration of the issue afresh. Division Bench of SC observed that it is clear that the Trial Court may have to call upon the complainant to first examine the professional Doctor as witness in support of the case made out in complaint and then proceed to consider the matter afresh on its own merits and in accordance with law [9-14]. Division Bench of SC further said that the Trial Court shall proceed in the matter on its own merits without being influenced by any observation made in the two orders which have been set aside or for that matter in this order. All contentions and remedies available to both sides are left open. The appeals are disposed of in the above terms

REFERENCES

- [1] Mohit Kumar Shah, J. Dr. Prabha Sinha vs. The State of Bihar through Senior Superintendent of Police, Patna and Ors., CWJC No. 930 of 2017. Date of Judgment: 14.08.2020. Patna High Court.

- [2] Mohit Kumar Shah, J. Dr. Mrs. Aditi Raj, Daughter of Dr. Pranay Kumar Sinha and Wife of Shri Pankaj Kumar and Ors. vs. CWJC No.1585 of 2017. Date of Judgment: 14.08.2020. Patna High Court.
- [3] Order dated 24.12.2016 passed by the Additional Chief Judicial Magistrate, Patna in Complaint Case No. 3229 (C) of 2016
- [4] A.M. Khanwilkar, J., Sanjiv Khanna, J. Prabhat Kumar Singh vs. The State of Bihar and Ors. etc., CrI. Appeal Nos. of 2021 (Arising out of SLP(CrI.) Nos. 2395-2396 of 2021). Date of Judgement: 06.08.2021. SC.
- [5] Dr. Hemendra Nath Thakur vs. State of Bihar, 2006(2) PLJR 159.
- [6] *Jacob Mathew vs. State of Punjab*, (2005) 6 SCC 1: 2005 SCC (Cri) 1369.
- [7] *Jayshree Ujwal Ingole vs. State of Maharashtra*, (2017) 14 SCC 571.
- [8] *Achutrao Haribhau Khodwa vs. State of Maharashtra* [(1996) 2 SCC 634].
- [9] *Kusum Sharma vs. Batra Hospital*, (2010) 3 SCC 480.
- [10] *Bolam case* [(1957) 1 WLR 582; (1957) 2 All ER 118].
- [11] *Martin F. D'Souza vs. Mohd. Ishfaq*, (2009) 3 SCC 1.
- [12] *Law of Torts, Ratanlal & Dhirajlal* (edited by Justice G.P. Singh).
- [13] *Juggankhan vs. State of M.P.* [(1965) 1 SCR 14; (1965) 1 Cri LJ 763].
- [14] *Kurban Hussein Mohammedali Rangwalla vs. State of Maharashtra* [(1965) 2 SCR 622; (1965) 2 Cri LJ 550].

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