



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.746 OF 2004

Sou. Ujwala w/o Shrikant Zamare

Age : 45 years, Occu: Medical Practitioner,

R/o Shivajinagar, Parbhani, Dist. Parbhani.

...Appellant/ accused

-VERSUS-

1. The State of Maharashtra.

2. The Collector, Parbhani,
District Parbhani.

3. Bhimrao s/o Narhari Narwade,
Age : 44 years, Occu: Service as
Junior Clerk in District Court
Parbhani.

R/o Hudco Colony, Parbhani,
District Parbhani.

...(Orig. Complainant)

...RESPONDENTS

AND

CRIMINAL APPEAL NO.841 OF 2004

The State of Maharashtra.

Through Police Station,

New Mondha, Parbhani.

...Appellant/ State

- VERSUS -

Ujwala w/o Shrikant Zamare,

Age : 50 years, Occu. : Medical Practitioner,

R/o Parbhani, Dist. Parbhani.

...Respondent/ accused

...

Shri S.S. Chapalgaonkar, Advocate h/f Shri S.P. Chapalgaonkar,
Advocate for the accused.

Shri G.O. Wattamwar, APP for the State/ prosecution.

Ms. Madhaveshwari S. Mhase, Advocate for the original complainant/ informant.

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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 01 October 2025

Pronounced on : 14 October 2025

JUDGMENT :-

1. Since both these appeals arise out of the same impugned judgment, therefore, they are being decided by this common judgment. In this judgment, for the sake of convenience, the parties are referred to in their original capacity i.e. Ujwala Shrikant Zamare as accused, the State of Maharashtra as prosecution State and Bhimrao Narhari Narwade as complainant or informant.

2. The impugned judgment and order in these appeals is dated 14.10.2004 passed by learned 2nd Ad-hoc Additional Sessions Judge, Parbhani, in Sessions Trial No.23/1998, thereby, acquitting the accused of offence punishable under Section 314 of the Indian Penal Code, 1860 (for short, 'the IPC') and convicting her for offence punishable under Section 304-A of the IPC and sentencing her to suffer simple imprisonment till rising of the Court and to pay fine of Rs.2000/-, in default to suffer

rigorous imprisonment for three months and shall also pay compensation under Section 357 of Code of Criminal Procedure (for short, 'the CrPC') of Rs.1,00,000/- to the legal heirs of deceased Sunanda. On failure to deposit compensation, same shall be recovered under the provisions of Maharashtra Land Revenue Code by way of attachment or any other process according to law. Amount of compensation shall be paid to the heirs of victim within the period of three months from the date of said judgment.

3. Brief facts leading to filing of these appeals can be summarized as under:-

As per the prosecution, the accused (Ujwala Shrikant Zamare) is a private medical practitioner having hospital under the name and style as "Gurukrupa Maternity and Nursing Home' at Shivajinagar, Parbhani. She holds M.B.B.S., D.G.O.. Her husband is also serving as doctor and holds M.D. in Anesthesiology in the same hospital. On 29.10.1996, the deceased Sunanda w/o Bhimrao Narwade went to hospital of the accused in order to check pregnancy along with a neighbor woman. Accused examined her and diagnosed that she was

pregnant of eight weeks. As the deceased Sunanda desired to terminate pregnancy, she expressed her willingness for Medical Termination of Pregnancy (for short, 'MTP'). Therefore, the accused after obtaining consent of the deceased and her husband (complainant), carried out MTP. As per the prosecution, due to negligence on the part of accused while conducting MTP operation, the deceased Sunanda sustained injuries to her internal organs i.e. uterus and intestine. The accused herself disclosed this fact to the informant Bhimrao Narwade and told that family planning operation is required to be performed on Sunanda else she would not survive. It is the case of prosecution that, the accused then obtained consent of the deceased Sunanda and Bhimrao Narwade and also carried out family planning operation in her hospital on 29.10.1996 at 6:00 PM. In spite of operation, the condition of Sunanda did not improve and she was having pains in stomach and her condition got deteriorated. Therefore, on 04.11.1996 at about 12:00 PM, the accused asked the complainant Bhimrao Narwade that Sunanda be shifted to the Government Hospital for proper treatment, upon which Sunanda was taken to Government Hospital at Parbhani. During treatment at Government Hospital, on 05.11.1996 at 12.30 p.m. Sunanda

died. Therefore, the complainant Bhimrao Narwade lodged Crime No. 245/1996 under sections 304-A of Indian Penal Code with Police Station New Mondha, Parbhani, alleging therein that the accused did not exercise due care to Sunanda while performing operation in her hospital because of which internal organs of Sunanda were damaged and as result, she passed away.

4. After registration of the crime, investigation was set in motion. The postmortem examination revealed that death was due to endotoxic shock resulting from injury to the intestine. Upon completion of investigation, the charge-sheet was filed. On the application being filed by the complainant Bhimrao Narwade, Section 314 of the IPC was added. Thereafter, the case was committed for trial to the Sessions Court, Parbhani. The charge was framed and read over to the accused, to which, the accused pleaded not guilty and claimed to be tried. The prosecution led oral as well as documentary evidence consisting of five witnesses, out of them three are doctors. After hearing both sides and considering evidence on record, the learned 2nd Ad-hoc Additional Sessions Judge, Parbhani, passed the impugned judgment and order dated 14.10.2004. Hence, both these appeals,

one by the accused against conviction and one by the State/ Prosecution for enhancement of sentence.

5. According to learned advocate Shri Chapalgaonkar for the accused, she is now 71 years of age and is registered medical practitioner. She was duly qualified and competent to perform gynecological procedures. On 29.10.1996, the deceased Sunanda had come to hospital as she wanted to terminate her pregnancy as she was already having three kids and she was middle age woman. The accused is protected by Sections 3 and 4 of the Medical Termination of Pregnancy Act as these provisions do not prescribe any previous examination before performing MTP. However, at the time of performing MTP, the accused noticed certain perforations in wall of uterus. As such, she immediately stopped said operation and called the senior-most surgeon Dr.Wattamwar to examine the patient Sunanda. The accused along with Dr.Wattamwar decided to operate Sunanda by performing exploratory laparotomy so that perforations caused can be treated. Accordingly, the said operation was performed and thereafter, the deceased Sunanda was in her hospital till 04.11.1996. However, the condition of Sunanda got

deteriorated, therefore, her husband was advised to take her to Civil Hospital for further treatment. According to learned advocate for the accused, the accused had treated Sunanda as per medical ethics and as such, there is no negligence on her part, due to which her death is alleged to have been caused. The exploratory laparotomy surgery was performed by senior-most Dr. Wattamwar and the accused. Since Dr. Wattamwar expired, he could not be examined. Therefore, the accused alone cannot be held guilty of alleged negligence. Learned advocate, therefore, strongly contended for giving benefit of doubt to the accused and prayed for quashing the judgment and order of conviction. In support of above submissions, learned advocate Shri Chapalgaonkar has relied upon the judgments in *Jacob Mathew vs. State of Punjab and another reported in (2005) 6 SCC 1*, *Dr. Suresh Gupta vs. Government of NCT of Delhi and another, reported in (2004) 6 SCC 422*, *Neeraj Sud and another vs. Jaswinder Singh (minor) and another, reported in 2024 SCC Online SC 3069* and *State of Punjab vs. Gurmej Singh, reported in (2002) 6 SCC 663*.

6. *Per contra*, learned APP appearing for the State/

prosecution and learned advocate Ms. Mhase appearing for the complainant/ informant, have strongly opposed the prayer of the accused. They have contended that it is the accused alone, who is responsible for gross negligence while treating the deceased. The accused had not taken previous precautionary examinations before carrying out firstly MTP and thereafter, exploratory laparotomy. If the accused had taken said care, life of Sunanda could have been saved and at the most, Sunanda would have kept baby. The manner in which the accused performed MTP and applied force while performing MTP, it resulted in perforations not only to uterus, but also to intestine. The accused did not use proper equipment while conducting MTP and did not handle ovum forceps during curating which led to perforations to uterus and intestine.

7. According to learned advocates for the prosecution and the complainant, considering serious condition of Sunanda and the request of the accused, the complainant allowed the accused to carry out exploratory laparotomy for repairing perforations. Along with the said exploratory laparotomy, tubectomy was also performed, however, the complainant did not

give any consent for conducting tubectomy. Senior-most Dr. Wattamwar was present at the time of exploratory laparotomy. There was perforation to uterus. There was also broad ligament-cyst of size 3x4 inches, which was removed. There was about 100 c.c. of intraperitoneal blood, which was also removed. The right side tubectomy was done. The surgeon traced intestine to find out intestinal perforation, but there was no perforation apparently. It has come on record that the patient's condition was stable post operative, however, on fifth day her condition was deteriorated and she developed paralytic ileus. The patient was shifted to Civil Hospital and there, a team of doctors consisting of Surgeon, Gynecologist and Resident Medical Officer (Clinical) examined the patient and suggested re-exploration of abdomen. This was undertaken on 04.11.1996 and the doctors noticed two perforations side by side. There was four liters of faecal matter which was aspirated and the repair was done. However, post operation, the patient's condition was unsatisfactory and inspite of all emergency measures, she expired on 05.11.1996 at about 12:35 pm. Postmortem was carried out and it was opined that the probable cause of death is cardio respiratory arrest due to endotoxic shock due to perforation

peritonitis with septicemia with uterine perforation.

8. Learned advocates for the prosecution and the complainant strongly submitted that it was the accused alone, who is mainly responsible for deteriorating condition of the deceased Sunanda. If the accused had taken proper care at the time of MTP, life of the deceased could have been saved. The manner in which the accused performed MTP and further exploratory laparotomy, that caused injuries not only to uterus, but also to intestine. Due to said injuries, Sunanda died. Accordingly, they prayed for enhancing sentence and compensation awarded to the accused.

9. After hearing the submissions of learned advocates, I have gone through evidence on record minutely. It is evident that on 29.10.1996, MTP was performed on deceased Sunanda by the accused and during that procedure, perforations were caused not only to uterus, but also to intestine. The accused tried to overcome said perforations by carrying out exploratory laparotomy with the help of surgeon Dr. Wattamwar. Accordingly, they performed exploratory laparotomy for treating perforations, however, even after said surgery, the condition of Sunanda

deteriorated. She was, therefore, referred to Civil Hospital for further treatment. Despite having been treated by topmost available doctors at Civil Hospital, life of Sunanda could not be saved and, therefore, she expired on 05.11.1996.

10. According to Shri Chapalgaonkar, perforations caused to uterus and intestine could be attributed to Dr. Wattamwar being senior-most surgeon and not the accused. However, Ms. Mhase has pointed out from the record that at the time of performing exploratory laparotomy, main operation was carried out by the accused and Dr. Wattamwar was just present along with her. Hence, the issue of shifting accusation towards Dr. Wattamwar is improbable. After considering evidence of all witnesses, it is evidently clear that it is the accused, who acted in gross negligence while performing MTP and due to which, injuries not only to uterus, but also to intestine have been caused, which resulted in death of Sunanda. The medical evidence on record would show that perforations were caused while performing MTP. The witnesses, who are experts in their medical field, have specifically stated as regards the said gross negligence at the hands of the accused. Medical evidence on record and the

statements of witness doctors corroborate with each other. Standard procedures, which were required to be undertaken by the accused, have not been followed while treating deceased Sunanda. As such, it is clear that the accused is liable to be held responsible for death of deceased Sunanda due to her negligence.

11. This Court also finds it appropriate to refer to the medical evidence and the findings recorded by the learned Sessions Court as well as the Quality Assurance Committee constituted under the authority of the Deputy Director of Health Services, Aurangabad. The testimonies of PW1 Dr. Ashok Manikrao Janapurkar, PW 2 Dr. Mohan Mavalge and PW 3 Dr. Ganesh Polawar, are strongly consistent with each other to conclude that there was gross negligent at the behest of the accused/ appellant while treating the patient. It is categorically held that on reopening of the abdomen during the second exploratory laparotomy at the Civil Hospital, there was clear evidence of uterine perforation of about 1½ inches anteriorly, which had been sutured, and of two perforations to the jejunum, each measuring 1 x 1 cm, about three feet away from the ligament. There was also presence of about four litres of faecal

fluid in the peritoneal cavity, indicating advanced peritonitis. These findings, coupled with the postmortem report at Exhibit-61, conclusively establish that the perforations to the uterus and intestine were sustained during the MTP procedure conducted by the accused.

12. It is necessary to ascertain whether the negligence of the accused/ appellant was gross or not. Dr. Polawar in his evidence stated that at the time of second exploratory laparotomy in civil hospital on 04.11.1996, four liters of fluid and faecal matter was saturated in the peritoneum which ultimately resulted in peritonitis. This goes to show that the condition of Sunanda was deteriorated in the night of 03.11.1996. There was formation of bacteria which ultimately resulted in formation of toxin in her body due to which doctors were required to perform second exploratory laparotomy. However, it is also come on record that necessary investigation required prior to tubectomy operation was not done by the accused/ appellant. The record revealed that no precautionary measures were undertaken by the accused. Even before carrying out exploratory laparotomy on 29.10.1996, no stomach investigation was done to find out gravity of

perforation. Non performance of such previous examinations by the accused/ appellant before undergoing MTP and thereafter, exploratory laparotomy would amount to gross negligence.

13. Further, the Quality Assurance Committee in its meeting dated 15.02.1997, after detailed deliberation, observed that the MTP procedure had been carried out by the accused without undertaking essential pre-operative investigations and that the tubectomy procedure was also performed without the consent of the patient or her relatives. The Committee found that the probable cause of death was “cardio-respiratory arrest due to endotoxic shock resulting from perforation peritonitis with septicemia and uterine perforation.” The Committee also emphasized the lack of due care in pre-operative and post-operative management and recommended that in future, confirmation of pregnancy, minimal investigations, and proper postoperative observation be mandatorily followed. The findings of the Quality Assurance Committee, being a specialized medical body, lend independent corroboration to the prosecution case and the expert evidence on record that the death of Sunanda was directly attributable to negligent acts and omissions of the

accused while conducting the MTP procedure and subsequent treatment.

14. However, on the point of sentence, Shri Chapalgaonkar submitted that the accused is 71 years of age and as such, she is not in active practice. She has already undergone sentence awarded by learned Sessions Judge. She has also agreed to pay compensation to legal heirs of deceased Sunanda. He, therefore, prayed that the appeal filed by the accused be disposed of in view of sentence already undergone by her.

15. The judgments relied upon by learned advocate for the accused in *Jacob Mathew (supra)*, *Dr. Suresh Gupta (supra)* and *Neeraj Sud (supra)*, are clearly distinguishable on facts. In these judgments, the Hon'ble Supreme Court dealt with cases where death occurred despite due professional care, and where an element of gross negligence was not established. However, in the present case, evidence of the medical experts clearly demonstrates that the accused failed to adhere to the standard procedure required for conducting MTP and thereby caused perforations to vital internal organs of the patient. The degree of deviation from accepted medical practice is so glaring that it

exceeds the domain of a mere error and falls squarely within the ambit of gross negligence contemplated under Section 304-A IPC. In *Gurmej Singh (supra)*, the facts are different wherein, the question of due professional care or gross negligence in a medical context does not arise. Hence, the judgments relied upon by Shri Chapalgaonkar do not come to the aid of the accused.

16. In view of the evidence discussed hereinabove, this Court is satisfied that the prosecution has proved that the accused failed to exercise reasonable care expected of a qualified medical practitioner while performing the MTP procedure. Injuries caused to the uterus and intestine of the deceased were direct consequences of such negligent conduct. The death of Sunanda is the result of rash and grossly negligent treatment. Therefore, the conviction of the accused under Section 304-A of the IPC is justified and does not warrant interference. However, considering the age of the accused and considering the agony suffered by the family of the deceased and the degree of negligence, the fine awarded deserves to be enhanced and paid to legal heirs of the deceased.

17. In view of the discussion hereinabove, **Criminal**

Appeal No.746 of 2004 filed by the accused fails and is hereby dismissed. Criminal Appeal No.841 of 2004 filed by the State/Prosecution is partly allowed. The impugned judgment and order dated 14.10.2004 passed by the learned 2nd Ad-hoc Additional Sessions Judge, Parbhani, is modified to the following extent:

(a) The conviction of the accused under Section 304-A of the Indian Penal Code is maintained. However, in place of compensation under Section 357 of the Code of Criminal Procedure, the accused shall pay a fine of ₹1,02,000/- (Rupees One Lakh and Two Thousand only), out of which ₹2,000/- shall be paid to the State, and ₹1,00,000/- shall be paid to the legal heirs of deceased Sunanda.

(b) The fine amount shall be deposited before the Trial Court within a period of one month from today. In default of payment of fine, the accused shall suffer rigorous imprisonment for three months.

(c) On deposit of fine as above, legal heirs of deceased Sunanda are at liberty to withdraw the same.