

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.A. 36 of 2021

***Sankar Chatterjee
Vs.
The State of West Bengal & Ors.***

For the Appellant : Mr. Dipanjan Datta
Mr. Sayan Datta

For the Respondent
Nos. 2 to 4 : Mr. Satadru Lahiri

For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Provas Bhattacharyya
Mr. Sandip Chakraborty

Heard on : 06.12.2021 & 07.12.2021

Judgment On : 21.12.2021.

Bibek Chaudhuri, J.

This is an appeal against the judgment and order of acquittal passed by the learned Additional Sessions Judge, Second Court at Barrackpore on 25th November, 2019. The accused persons of Sessions Case No.56 of 2017 corresponding to Sessions Trial No.1(03)/2019 were acquitted from the charge under Section

304/120B/34 of the Indian Penal Code. The *de facto* complainant of the aforesaid case is the victim of the instant case.

One Smt. Smiriti Chatterjee passed away on 12th April, 2014 at about 5 A.M. After about three months and nine days, the *de facto* complainant, Sankar Chatterjee filed a complaint under Section 156(3) of the Code of Criminal Procedure praying for sending the petition of complaint to the Inspector-in-Charge, Belghoria Police Station for causing investigation treating the petition of complaint as F.I.R. The Officer-in-Charge, Belghoria Police Station received the said complaint on 22nd July, 2014 and started Belghoria Police Station Case No.346 of 2014 under Section 304A/120/34 of the Indian Penal Code against the accused persons /private respondents.

Investigation was complete and charge sheet was filed against the respondents under Section 304A/120B/34 of the Indian Penal Code on 18th September, 2014. Subsequently, a supplementary charge sheet was filed against the accused persons adding Section 304 of the Indian Penal Code.

Since the offence under Section 304 of the Indian Penal Code is exclusively triable by the Court of Sessions, the case was committed to the learned Sessions Judge, North 24 Parganas. Subsequently, the said Sessions Case No.56 of 2017 was transferred to the Second

Court of the learned Additional Sessions Judge, Barrackpore for trial and disposal.

The learned Additional Sessions Judge on conclusion of trial held the accused persons not guilty and acquitted them from the charge under the provisions of 235(1) of the Code of Criminal Procedure by delivering his judgment dated 25th November, 2019.

Being aggrieved by and dissatisfied with the aforesaid judgment and order of acquittal the *de facto* complainant has preferred the appeal.

Brief fact of the case is as follows:-

Smt. Smiriti Chatterjee, a septuagenarian lady and mother of the appellant and respondent No.1, suffered illness on 11th April, 2014 and was admitted to Sahid Khudiram Bose Hospital at 10 P.M. On 11th April, 2014 she was suffering from chest pain since evening at 6 P.M. Ultimately at 10 P.M. the accused persons admitted her to a private hospital situated at a walking distance of about ten minutes from the residence of the deceased. The *de facto* complainant being the elder son used to reside separately since 2005. In the year 2008 the said Smt. Smiriti Chatterjee suffered from cerebral attack. The appellant bore all medical expenses of his mother and she was recovered. On 11th April, 2014 though the mother of the appellant and respondent No.1 was complaining of chest pain, she was finally

admitted to a private hospital at 10 P.M. The appellant was informed about illness and hospitalization of her mother by the maid servant of the respondent No.1 at about 11.40 P.M. The appellant rushed to the hospital and found that the condition of his mother was very serious. Subsequently, on 12th April, 2014 at 5 A.M. the said Smt. Smiriti Chatterjee died in the hospital. The appellant collected all medical reports and documents of his mother and came to know from the medical report and the doctors that as per medical advice if his mother was kept in ventilation with external pacemaker support she might not have expired. It is alleged that the mother of the appellant died due to utter negligence of the respondents. The respondent No.1 with his wife and son conspired together to keep the mother of the appellant in the hospital without proper medical treatment causing her death.

It is already noted that subsequently police submitted charge sheet against the accused persons under Section 304 of the Indian Penal Code.

In order to bring home the charge against the accused persons prosecution examined ten witnesses. Amongst them P.W.1 is the *de facto* complainant and appellant of this case. P.W.2 Shibu Acharya is the brother of the deceased Smt. Smiriti Chatterjee. P.W.3 Subash Chatterjee is another brother of the deceased. P.W.4 Gouri

Chatterjee is the wife of the appellant. P.W.5 Alok Roy Chowdhury is the neighbour of the appellant. P.W.8 Dr. Manoj Sharma and P.W.9 Dr. Suhit Mallick were the Medical Officers attached to Sahid Khudiram Bose Hospital at the relevant point of time. Rest witnesses are the police personnel.

The petition of complaint, formal F.I.R. and series of medical documents were marked exhibits during trial of the case which I propose to refer subsequently in the body of the judgment. It is submitted by the learned advocate for the appellant that in the instant case the evidence of the medical officers and medical examination reports are two vital pieces of evidence from which it could be ascertained as to whether the accused persons were guilty for committing offence under Section 304/120B/34 of the Indian Penal Code. At the outset the learned advocate for the appellant draws my attention to the medical report marked exhibit-5 collectively from trial of the case. From the medical report it is ascertained that the mother of the appellant was admitted to the hospital under Dr. Manoj Sharma. The said Manoj Sharma deposed during trial of the case as P.W.8. In his evidence he stated that the patient was admitted with acute inferior wall Myocardial infraction with carcinogenic shock with complete heart block with gasping respiration. She was incubated under oxygen and nebulizer support. She was also under proper

medication. P.W.8 further stated that they advised for ventilation support and temporary pacemaker support to be provided to the patient. P.W.8 also explained the seriousness of the matter to the patient party and also about the cost of procedures. However, the patient party declined to go for ventilation support and pacemaker support by giving written consent upon treatment sheets. The accused /respondent No.3 put his signature on the treatment sheet stating, *inter alia*, that they (patient party) want to keep the patient in ventilation and external pacemaker support. P.W.8 opined that the patient might have survived had the patient party complied with his advice for keeping the patient under ventilation and external pacemaker support.

It is submitted by the learned advocate for the appellant that the learned Court below failed to appreciate the evidence of P.W. 8. The mother of the appellant used to stay at Premises No. 2, Shiba Pada Pal Pally, Ariadaha within Police Station – Belghoria. The respondent no. 1 and his son, respondent no. 3 used to run a grocery shop business in one room of the said house. The appellant resides at D.G. Apartment Which is at a distance of about 10 minutes walk from Premises No. 2, Shiba Pada Pal Pally. The mother of the appellant and respondent no. 1 became ill at about 6 p.m. on 11th April, 2014. She was taken to a private hospital at about 10 p.m. Had she been

taken to hospital, she could have been survived. Moreover, the respondents did not inform the appellant about the illness of their mother though the appellant used to bear all medical expenses of his mother. The deceased suffered a cerebral attack in the year 2008. At that time, the appellant spent entire money for medical expenses of his mother.

It is further submitted by the learned advocate for the appellant that the respondents were absolutely negligent in the matter of prompt medical treatment of the mother of the appellant which resulted in her unfortunate demise.

The learned advocate for the appellant also draws my attention to the evidence of P.W. 9, Dr. Suhit Mallick who was the Residential Medical Officer of Sahid Kudhiram Bose Hospital on 11th April, 2014. It is found from his evidence that the condition of the patient was very critical. He medically treated the patient. Initially, when she was brought to the hospital she advised oxygen inhalation and necessary drugs. It is also found from his evidence that he advised the patient party to keep the patient in mechanical ventilation and temporary pacemaker. But the patient party refused to comply with his advice and the respondent no. 3 put his signature on the endorsement that they do not want to give mechanical ventilation and temporary pacemaker. Learned advocate for the appellant submits

that the learned Trial Judge was not at all justified while considering the evidence of Dr. Manoj Sharma (P.W. 8) that his evidence was *mala fide* and motivated. The learned Trial Judge raised a question as to why Dr. Manoj Sharma was present on the date and time of admission of the patient in the hospital. I am in conformity with the submission made by the learned advocate for the appellant that the learned Trial Judge was absolutely wrong in observing that the evidence of Dr. Manoj Sharma was *mala fide* and motivated. Dr. Sharma had no personal interest in the instant matter. The learned Trial Judge failed to consider the treatment sheets (exhibit – 5 collectively) where it is recorded that the patient was admitted under Dr. Manoj Sharma. Therefore, presence of Dr. Sharma to treat Smt. Smiriti Chatterjee was obvious and natural.

The question that requires to be adjudicated in the instant appeal is as to whether the specific act and/or omission by the respondents amounts to causing culpable homicide not amounting to murder.

It is needless to say that the deceased was the mother of the appellant and respondent no. 1. The deceased used to reside at Premises No. 2, Shiba Pada Pal Pally, Ariadaha. The appellant resides at a distance of about 10 minutes walk from the said house. The respondent no. 1 being the younger son of the deceased admitted her

mother to the above-named private hospital at about 10 p.m. on 11th April, 2014. Initial medical treatment was done after her admission to the hospital. From the evidence of Dr. Suhit Mallick who medically examined the patient after admission it is found that the patient was restless, the periphery was calm and cold, the monitor indicated the heart rate of the patient which was 25 to 30 per minute, oxygen saturation was 80 per cent and the patient had crepitation in chest. The patient was also suffering from diabetes mellitus type – II and hypertension. Admittedly, the patient was not kept in mechanical ventilation with external pacemaker support.

According to Section 299 of the Indian Penal Code, a person commits culpable homicide if the act by which death is caused is done – (a) with the intention of causing death or (b) with the intention of causing such bodily injury as is likely to cause death or (c) with the knowledge that the act is likely to cause death.

There is no dispute that the respondents did not want to keep the deceased in ventilation and external pacemaker support. Therefore, it is to be adjudicated as to whether such act by the respondents was with the intention of causing death or that they had knowledge that the act was likely to cause death. It is clear from careful reading of the provision contained in Section 299 that the former part of it emphasizes on the expression 'intention', while the

latter part concerns with 'knowledge'. Both these are positive mental attitudes, however, of different degrees. The mental illness in culpable homicide, i.e., the mental attitude towards the consequence of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted above, it would be culpable homicide. Therefore, it is for the Court to decide on the basis of the evidence on record if the respondents' disagreement in keeping the deceased in mechanical ventilation with external pacemaker support was done with the intention of causing death or that the respondents had knowledge that the patient would die if she was not kept in mechanical ventilation with external pacemaker support.

It is found that the patient had one cerebral attack in the year 2008. She was a known patient of type – II diabetes mellitus with hypertension. It is also not in dispute that the patient was treated with conservative medicine.

Under such circumstances, nobody even the Doctors cannot state with certainty that the deceased would survive if she was kept in ventilation with pacemaker support.

On careful perusal of the photostat copy of the treatmentsheet of the deceased, it is found that at the time of her admission to the hospital her blood pressure could not be found on measurement.

Pulse rate could not be detected on examination. Heart rate was 25-30 per minute. Oxygen saturation was 80%. After medication blood pressure rose to 90/40. Subsequently, it declined. The patient had Trop-T positive. There was few crepts in the chest. Therefore, the Medical Officers who deposed in this case rightly stated that the patient might have survived if she was in ventilation support. "Might have" includes also "might not have". Moreover, the cause of death was acute myocardial infraction in a known case of diabetes mellitus T-II and hypertension. The treating Doctor did not find any abnormality in the cause of death. The allegation of culpable homicide cannot be proved without post-mortem examination. The Doctor did not find any abnormality as to the cause of death and for this he did not advise for post-mortem examination of the deceased. Therefore, there is absolutely no evidence of causing culpable homicide by the accused/respondents.

It will not be out of place to mention that the relation between the appellant and the respondent no. 1 and his family members are not cordial. After the death of their mother a partition suit is going on between them and other brothers and sisters. It is alleged by the appellant that the respondent no. 1 alone tried to grab their entire ancestral property. The heirs of the deceased have dispute over their shares of money and other valuable articles left by their mother.

Therefore, the learned Trial Court rightly held that the appellant filed a false complaint under Section 156(3) of the Code of Criminal Procedure against the respondents only to harass them.

Last but not the least, the petition of complaint under Section 156(3) of the Code of Criminal Procedure does not contained any averment to the effect that prior to filing of the complaint under Section 156 (3) of the Code of Criminal Procedure he lodged a complaint before the Police authority under the local Police Station. There is also no averment as to whether the local Police Station failed to take any action on his complaint and that he made further complaint before the higher authority of the Police. Though the decision of the Hon'ble Supreme Court in ***Priyanka Srivastava & Anr. -Vs.- State of U.P. & Ors.*** reported in ***(2015) 6 SCC*** was delivered on 19th March, 2015 containing certain guidelines and duties to be performed by the Police authority in case of submission of delayed complaint under Section 156 (3) of the Code of Criminal Procedure, it is always open for the Court to hold under the facts and circumstances narrated above that the appellant filed the complaint under Section 156(3) of the Code of Criminal Procedure against the respondents only to harass them. The petition of complaint is the effect of afterthought and concoction.

For the reasons stated above, I do not find any material to interfere with the judgment passed by the learned Trial Judge in Session Case No. 56 of 2017 corresponding to Sessions Trial No. 01(03) of 2019 (C – 56 of 2017).

The instant appeal is, therefore, **dismissed** on contest.

The respondents are discharged from bail bond.

Let a copy of this judgment be sent to the learned Court below for information and necessary action.

The appellant is at liberty to act on the server copy of this judgment.

Urgent photostat certified copy of this judgment, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Bibek Chaudhuri, J.)

***Suman/Srimanta
A.Rs. (Court)***