

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1531 of 2024**

Arising Out of PS. Case No.-49 Year-2022 Thana- COMPLAINT CASE District- Jamui

Manoj Kumar Singh Son of Sachidanand Singh R/o Mohalla- Ward No.19,
Krishnapatti, P.S.- Jamui, District- Jamui

... .. Appellant/s

Versus

1. The State of Bihar
2. Rajendra Paswan Son of Mahendra Paswan R/o Village- Kanan, P.S.- Jhajha,
District- Jamui

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Vipin Kumar

For the Respondent/s : Mr.Usha Kumari 1

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 09-12-2024

Heard the parties.

2. This application has been filed on behalf of the appellant for quashing of order dated 13.10.2023 passed in SC/ST Case no. 85 of 2023 arising out of Complaint Case no. 49(C) of 2022 passed by the learned ADJ-I-cum Special Court, SC/ST(POA) Act, and POCSO Act, whereby cognizance for offence under Section 304A, 504 of IPC and Sections 3(1)(r)(s)/3(2)(va) of the SC/ST(POA) Act was taken against the appellant.

3. It is submitted by learned counsel for the



appellant that the appellant was a qualified surgeon, who was running a private clinic under the name of “Godavari Clinic” at Jamui. It is pointed out that the appellant is a well trained doctor as he holds a degree of M.B.B.S, M.S., F.A.I.S. It is pointed out that on 23.03.2022, the informant/respondent no. 2 approached appellant with his wife, where her condition was serious and she was almost in unconscious condition. She was found stabbed by knife and thereafter, she was admitted in the clinic of appellant and taking the serious medical condition of the informant’s wife an undertaking was obtained from informant /respondent no. 2 that the appellant shall not be responsible for any complications or death and with aforesaid note/undertaking the wife of informant /respondent no. 2 admitted in the clinic of appellant, where she remains admitted for 4-5 days, but considering her deteriorating conditions, she was referred to Patna for better treatment on 09.04.2022. Finally, she was brought to Patna where she was admitted in Swastik Hospital, where during the treatment, she died on 16.04.2022.



4. It is submitted that after two months of the death of wife, the informant/respondent no. 2 filed present complaint case. The crux of complaint against appellant is that for one or another reasons, he refused to refer his wife to Patna for better treatment and said delay was caused intentionally as to extort money. He was also stated to be abused in caste name, by appellant.

5. Informant/respondent no. 2 failed to join the present proceedings despite of service of notice.

6. Mrs. Usha Kumari No. 1, learned Spl.PP while opposing the prayer submitted that abuse in caste name is available, whereas she could not disputed the factual aspect which was submitted above by learned counsel for the appellant.

7. In this connection, it would be apposite to reproduce paragraph nos. 48.6 and 48.7 of ***Jacob Mathew vs. State of Punjab and Anr.*** reported in ***(2005) 6 SCC 1***, which reads as under:-

(48.6) *The word “gross” has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so*



held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly".

(48.7) *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."*

8. It appears from the factual aspect of this case that the informant/respondent no. 2 completely concealed the cause of hospitalization of his wife with appellant as from his undertaking it appears that his wife was stabbed on her stomach whereas as per complaint petition it appears that she was suffering from stomach pain. It also appears from undertaking that informant respondent no. 2 gave his consent for treatment or to take appropriate steps which was found best for better treatment of his wife. This is not the case of the complainant that appellant was not a qualified surgeon. From factual aspect of this case it cannot be gathered that appellant was negligent in his decisions. Moreover, the abuse in caste name also not



appears in public view and further this occurrence not appears to be arising out of “atrocities” as defined within the meaning of the SC/ST (POA) Act, 1989.

9. Considering aforesaid, the impugned cognizance order dated 13.10.2023 passed in SC/ST Case no. 85 of 2023 arising out of Complaint Case no. 49(C) of 2022 passed by the learned ADJ-I-cum Special Court, SC/ST(POA) Act, and POCSO Act appears bad in eyes of law and as such same is hereby quashed by taking guiding note of **Jacob Mathew case (supra)**

10. Accordingly, appeal stands allowed.

11. Office is directed to send back the trial court records and proceedings along with a copy of this judgment to the trial court, forthwith, for necessary compliance, if any.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2024
Transmission Date	13.12.2024.

