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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 23rd April, 2025***

+ **CRL.L.P. 286/2017**

STATE (GOVT OF NCT OF DELHI)

.....Petitioner

Through: Mr. Yudhvair Singh Chauhan, APP for
the State.

Versus

1. Dr. Vivek Baniyal S/o Hari Chand
R/o Village Dalout, P.O. Cholthara
Teh.Sarkaghat, District Mandi,
Himachal Pradesh

....Respondent No.1

2. Dr. V.K. Bindal S/o Sh. B.D. Bindal
R/o A-26, 1st Floor, Satyawati
Colony, Ashok Vihar, Delhi

....Respondent No.2

3. Dr. Y.P. Munjal S/o Sh. G.D. Munjal
R/o RT-202, Royalton Towers
Princeton Estate, DLF Phase-V
Gurgaon, Haryana

...Respondent No.3

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

Crl.M.A. 7967/2017 (condonation of delay)

1. For the reasons stated in the Application, the same is allowed and delay in filing the Leave Petition is condoned.



2. The Application is disposed of.

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3. Leave to Appeal has been sought against the Judgement dated 11.11.2016 vide which Respondents have been acquitted for the offences under Section 304A IPC, by Chief Metropolitan Magistrate on the ground that the learned Trial Court has not appreciated the testimony of PW-2 and PW-3, who are qualified doctors and fully supported the case of the Prosecution. Moreover, Respondents No.2 & 3 left the deceased under supervision of Respondent No.1 despite being aware that he is not competent to deal with the critical situation. Therefore Ld. CMM has erred in acquitting them for the offences charged vide judgement dated 11.11.2016 and sought Leave to Appeal.

4. For the reasons stated, *the Leave Petition is allowed and accordingly disposed of.*

CRL.A..... (to be numbered)

5. The present Appeal under Section 378(4) of the Code of Criminal Procedure has been filed by the Appellant- State against the Judgment dated 11.11.2016 vide which the Respondents have been acquitted by the learned Chief Metropolitan Magistrate in case FIR No. 635/1998, under Section 304A IPC, registered at Police Station Ashok Vihar, Delhi.

6. At the outset, it may be stated that during the pendency of trial, Dr.Y.P. Munjal- Respondent No.3 expired, which fact was confirmed by the State in its Status Report dated 02.04.2021. The Appeal stands abated against Dr.Y.P. Munjal and is qua Respondents No.1 & 2 only.

7. The Complainant, Murari Lal Gupta made a Complaint stating that on



05.02.1997 that at about 10:30 PM, his son Dr. Subhash Gupta was admitted in Sunder Lal Jain Hospital with the complaint of chest pain. He expired in the morning of 06.02.1997. It was claimed that the demise of his son was on account of negligence on the part of the respondents and other accused, namely, Dr. Rakesh Gupta and Dr. Sunder Lal Jain Hospital.

8. On the basis of his Complaint, FIR was registered and charge-sheet for the offence under Section 304A IPC was filed against Dr. Vivek Baniyal- Respondent No.1, Dr. V.K. Bindal- Respondent No.2 and Dr.Y.P. Munjal- Respondent No.3.

9. During the trial, Application under Section 319 Cr.P.C. was filed on behalf of the Complainant to also summon Dr. Rakesh Gupta and Dr. Sunder Lal Jain Hospital as accused persons, which was allowed.

10. Notice under Section 304A IPC was framed on 03.02.2010 against the above named four persons, to which they pleaded not guilty and claimed trial.

11. The learned Trial Court *vide* Judgment dated 11.11.2016 acquitted the Dr. Vivek Baniyal- Respondent No.1 and Dr. V.K. Bindal- Respondent No.2 and Dr.Y.P. Munjal- Respondent No.3, but convicted Dr. Rakesh Gupta and Dr. Sunder Lal Jain Hospital.

12. Aggrieved by the acquittal of the three Respondents *vide* impugned Judgment dated 11.11.2016, the present Appeal has been filed.

13. ***The impugned Judgment has been challenged by the Appellant-State*** on the grounds that the testimony of PW-2 and PW-3, who are qualified doctors and who have supported the case of the Prosecution, has not been appreciated correctly. Their evidence establishes negligence on the



part of Respondent No.1 as he was not qualified enough and competent to read and monitor the ECG and carry out *intubation procedure*.

14. It was not appreciated that the treatment papers of his deceased son were handed over to the Complainant after one and a half month. The possibility of tampering with the medical records, therefore, cannot be ruled out.

15. Furthermore, *PW-10 Doctor U.A. Kaul* in his cross-examination has specifically stated that in case of a patient of alleged history of gasping and coronary artery disease with unstable angina evolving into an acute myocardial infarction, a team of doctors is required to deal with unstable situation and the treating doctor has to take the decision on the spot. The testimony of PW-10 has not been appreciated in the correct perspective.

16. Also, Respondents No. 2 & 3 handled the case of the deceased with gross negligence and did not bother to remain in hospital to monitor the condition of the deceased continuously. They left the deceased under supervision of Respondent No.1, despite being aware that he was not qualified and competent to deal with critical situations.

17. PW-4 Dr. Ajay Mittal had advised Dr. V.K. Bindal, Respondent No. 2 herein, to conduct necessary tests, including ECHO to diagnose the disease, and therefore, Respondent No. 2 made a request to Respondent No. 4 to conduct the ECHO test, but he refused. Thereafter, Dr.V.K. Bindal did not make any effort to get the ECHO Test done or to inform the Hospital about the refusal of Respondent No. 4, Dr. Rakesh Gupta.

18. It has not been appreciated that there was negligence on the part of Dr.Y.P. Munjal, Respondent No. 3 herein, as he had also failed to take any



step to conduct ECHO Test of the deceased done despite Dr.V.K. Bindal in his statement under Section 313 Cr.P.C. having admitted that it was required to be done. It is therefore, submitted that the impugned Judgment of acquittal against the Respondents, be set aside.

19. Notices were issued to the Respondents vide Order dated 16.12.2024, however, no reply has been filed by the Respondents.

20. ***Submissions heard and record perused.***

21. The allegations against the four accused, namely Dr. Vivek Baniyal, Dr. V.K. Bindal, Dr. Y.P. Munjal and Dr. Rakesh Gupta who were attached to the Sunderlal Jain Hospital, was of medical negligence on their part.

22. The case of the prosecution against ***Respondent No.1- Dr. Vivek Baniyal*** is that he had treated the deceased in CCU without being sufficiently qualified or having enough experience to monitor ECG and treat the ailment. He was not qualified to carry out *intubation* in an emergency situation and administered drops of NTG drips, against the advice of Respondent No.3- Dr. Y.P. Munjal. It was claimed that he was rash and negligent in giving the treatment to the deceased, who died on account of medical negligence.

23. The Treatment Sheet however, shows that it was Dr. Deepanker who had carried out the intubation and not Dr. Vivek Baniyal and therefore, the allegation that he had conducted the intubation on the deceased is false. Furthermore, while as per standard Medical Practice, Dr. Vivek Baniyal was not qualified to read ECG changes and to decide line of treatment, as has also been established by the Committee Report and the testimony of Dr.U.A. Kaul, but the evidence on record shows that he had been given the duty to



handle the patient in CCU. Conferred with the task, he was duty bound to give the best possible treatment as per his ability.

24. In the case of **Dr. Jacob Mathew Versus State of Punjab & Another** (2005) 6 SCC 1 it has been held that a person can be held for negligence only if it is either proved that he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. It was further held that in a particular case a person is not liable for negligence merely because someone else of greater skill and knowledge, would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art.

25. As per **Report of the Medical Board**, it was found that the Dr. Vivek Baniyal, Respondent No.1 did not deviate from the prescribed format of treatment nor had he represented to possess higher skill than what he actually had. His qualifications were known to the family of the deceased and being deputed in CCU, he was required to act as per the *standard medical practices* to treat the patient.

26. PW-3 Dr. Shayma Gupta has deposed that Respondent No.1 had informed the senior doctor about deterioration in the health of the deceased. He tried to stabilize the condition of the deceased according to his qualification and ability, and there was no evidence to reflect that he had failed to act with due diligence.

27. The standard for proving criminal negligence in the case of medical professionals is much more stringent than proving negligence in a civil case.



In order to hold a Doctor guilty of negligence, mere inadvertence or some degree of want of adequate care and caution might create civil liability, but would not be sufficient to hold a person criminally liable.

28. In the present case, Respondent No.1- Dr. Vivek Baniyal has not made any efforts to stabilize the condition in performance of his duty. There is no negligence or lack of skill proved against Respondent No.1; the test laid down in **Dr. Jacob Mathew (Supra)**, is not satisfied. Merely because there could have been an alternate line of treatment, that may have been prescribed by another doctor, cannot be termed as medical negligence. Therefore, no medical negligence can be attributed in case of Respondent No.1- Dr. Vivek Baniyal and Ld. Trial Court has rightly acquitted him.

29. With regard to **Respondent No.2- Dr. V.K. Bindal and Respondent No.3- Y.P. Munjal (since deceased)**, the case of the prosecution is that Dr. V.K. Bindal who was on duty, after examining the ECG, advised to get ECHO Test conducted. The request was made to Dr. Rakesh Gupta. *However, Dr. V.K. Bindal did not make any effort to get the ECHO Test done from some other place.* In fact, he assured PW-3 Dr. Shayam Gupta that all facilities were available in the Hospital to treat the deceased.

30. Further, Dr. V.K. Bindal agreed with Dr. Ajay Mital that NTG drip shall not be started, despite which it was administered to the deceased. It was contended that the NTG drip was administered at 11:00 PM itself but it was started only after Respondent No.3- Y.P. Munjal had examined the deceased at around 01:00 AM in the morning of 6.02.1997, it is claimed that Dr. Bindal did not mention on the Treatment Sheet that as per the advice of Dr. Ajay Mittal, NTG Drip was not to be administered. It was further



claimed by the prosecution that Respondent No.3- Y.P. Munjal did not inform the family members of the deceased about the condition and the treatment being given to him.

31. *The allegations against Dr. V.K. Bindal are that no proper diagnosis was done, no alternate arrangement to get ECHO Test done were made and NTG drip was administered against the advice of Dr. Ajay Mittal.*

32. PW-6 Vinod and PW-7 Ashwani, brothers of the deceased, have deposed that they along with Dr. A.K. Malhotra and Dr. S.K. Mehta had taken the deceased to the hospital on the fateful night as he had complained of uneasiness in chest. The deceased himself walked to the casualty. After about 10-15 minutes of reaching the hospital, Dr. A.K. Malhotra and Dr. S.K. Mehta left. The deceased was examined by Respondent No.2-Dr. V.K. Bindal. ECG was conducted and after reading the same, Respondent No.2-Dr. V.K. Bindal was of the opinion that the ECHO Test is required to be conducted, who in turn requested Dr. Rakesh Gupta for doing the needful, but he refused to do so without any reason.

33. Thereafter, the deceased was shifted to CCU and soon Dr. Shayama Gupta and Dr. Rajesh Gupta, who were friends of the deceased, arrived in the Hospital and enquired about the medical condition of the deceased and also the reason for not conducting the ECHO Test. They also stated that if the required facilities were not available in the hospital, he may be shifted to some other hospital. Respondent No.2-Dr. V.K. Bindal however, replied that the condition of the deceased was stable and all the requisite facilities were available in the Hospital. Dr Rajesh Gupta then called Dr. Ajay Gupta, Cardiologist from AIIMS hospital.



34. PW-4 Dr. Ajay Mittal who arrived at the hospital at around 11:00 PM, examined the deceased and opined that NTG was not required to which Respondent No.2-Dr. V.K. Bindal agreed. *This opinion was given based on the ECG Report and on examination of the deceased.* He, however, further deposed that he was not told that the deceased had been complaining of chest pain for the last few days.

35. PW-4 Dr. Ajay Mittal further deposed in his cross-examination that *when he examined the deceased, proper treatment was being given to him.* After conducting the ECG and examining the other vitals, such as pulse rate etc., the NTG drip was suggested to be started. The Prescription Slip also mentions the advice given by Dr. Ajay Mittal, which was signed by Respondent No.2- Dr.V.K. Bindal, which reflects that after examination of the Report, Dr. Ajay Mittal had come to the conclusion that the deceased was suffering from *Coronary Artery Disease (CAD)*. Dr. Ajay Mittal gave an opinion that the NTG Drip may be deferred for some time owing to *high heart rate*. However, after some time Respondent No.2- Dr.V.K. Bindal came to the conclusion that NTG drip was required to be administered.

36. The Apex Court in the case of **Kusum Sharma & Ors. Vs. Batra Hospital and Research Centre** 2010 (3) SCC 482 has laid down the principles to be considered while determining the charge of medical negligence. It was observed that to constitute medical negligence, there should be circumstances to establish that the medical professional 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 been done.



37. The evidence of PW-4 therefore establishes that there was no medical negligence on the part of Respondent No.2- Dr.V.K. Bindal, who as per his skill and estimation and competence, had taken certain decisions for line of treatment considering deteriorating condition of the deceased. He, as a doctor faced with an emergency, tried his best to redeem the patient and provided best treatment possible in the given situation. There is no evidence on record to show any dereliction or negligence on the part of Respondent No.2- Dr.V.K. Bindal.

38. An additional fact which needs to be mentioned is that the family members of the deceased had sought compensation on account of alleged medical negligence on the part of Respondents, before **National Commission Disputes Redressal Commission** but the same was dismissed by observing that the “*report does not disclose deficiency in treatment but points out desirability in the treatment*”. The Order was upheld by the Apex Court in *Civil Appeal No.5762 of 2008*.

Conclusion:

39. The aforesaid discussion reflects that learned CMM has considered the entire evidence in detail and has rightly concluded that the prosecution has not been able to prove its case of any *criminal negligence* against Respondents, while acquitting them for the offence under Section 304 A IPC.

40. There is no merit in the present Appeal, which is hereby dismissed along with pending Application(s).

(NEENA BANSAL KRISHNA)

2025:DHC:3265



JUDGE

APRIL 23, 2025/r