



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 192 OF 2024

Dr. Manju Percy Jilla

Age : 62 years, Occ : Medical Practitioner,
R/o Central Naka Road, Aurangabad.

... Petitioner

Versus

The State of Maharashtra
Through Ambad Police Station,
District Jalna.

... Respondent

**WITH
CRIMINAL REVISION APPLICATION NO. 200 OF 2024**

Dr. Gurupreet d/o Shobhasing Sandhu

Age 49 years, Occ : Service,
R/o : Plot No. 8, Limbewadi,
Sindhi Colony, Mitra Nagar,
Aurangabad.

... Petitioner

Versus

1. The State of Maharashtra

2. Shashikant s/o Namdeo Jadhav,
Age : 35 years, Occ : _____,
R/o : Sindhkhed Raja,
District : Buldhana.

... Respondents

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Mr. Nilesh S. Ghanekar, Advocate for the Revision Petitioner in
Criminal Revision Application No. 192 of 2024.

Mr. Amol N. Kakade, Advocate for the Revision Petitioner in Criminal
Revision Application No. 200 of 2024.

Mr. B. V. Virdhe, APP for the Respondent-State in Both Criminal
Revision Applications.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 25.02.2026

Pronounced on : 07.03.2026

JUDGMENT :

1. Both Revisionists, who are medical practitioners, are dissatisfied by the order dated 29.06.2024 passed by learned Additional Sessions Judge, Ambad on applications Exhibits 15 and 25, which were pressed into service for discharge by invoking Section 227 of Cr.P.C. i.e. to discharge them from offence under Section 304 r/w 34 of IPC.

2. Both Revisionists-original accused are chargesheeted by Ambad Police Station for above offence and for the sake of ready reference, the sum and substance of the prosecution case as reflected in para 15 of the charge sheet, is as under :

“15. Brief Facts of the Case (add separate sheet if necessary) :

“On 18.03.2014, when Megha Tarde, r/o Kingaon, was admitted at the Jilla Hospital, Aurangabad by the informant and witnesses due to complaint of abdominal pain, both the accused persons mentioned in column no.

10 of the chargesheet performed telescopic laparoscopy operation, due to which she suffered intestinal injury causing hole/perforation and infection and she died on 22.03.2014 at 2.45 while under treatment. Both accused had not taken due care while operating the deceased and in spite of knowing that she had suffered hole/injury to her intestine, they discharged her and thus, both accused being responsible for her death, they are chargesheeted for offence under Section 304 r/w 34 of IPC.”

3. The above accusations emanate primarily from the FIR lodged by one Shashikant Namdeo Jadhav, r/o Sindkhed Raja, District Buldhana, wherein he alleged that, his sister Meghabai was being treated for infertility at Jilla Hospital, Aurangabad. According to him, on 18.03.2014, his sister underwent Laparoscopic surgery and also got discharged and he took his sister to his place for rest. On 19.03.2014, his sister made complaint of abdominal pain and blotting and was therefore taken to a local doctor at Sindkhed Raja, namely Dr. Bansod, who conducted sonography and based on its report, informed that there is accumulation of water-like fluid after surgery and he further suggested she to be taken back to the Jilla Hospital where she was operated. Accordingly, all relatives took her to the Jilla Hospital run by Revisionist Dr. Manju Jilla and made her known the reports of Dr. Bansod and requested to take emergent steps for

obtaining x-ray. According to him, apart from failing to take emergent steps, there was negligence on the part of said lady doctor to refer his sister to expert surgeon, as a result of which, condition of his sister started deteriorating. On 21.03.2014, her condition deteriorated further and thereafter she was referred to Dr. Warudkar and Dr. Kandi. However, according to him, for proper treatment, he shifted his sister to Max Hospital at 11.30 p.m. and on 22.03.2014 at 9.00 a.m., surgery was performed at Max Hospital, however, around 2.45 p.m., his sister expired. Hence, he lodged above report, holding above both Revisionists responsible and sought action.

On above report, Ambad police carried out investigation and on its completion, chargesheeted both accused for offence under Section 304 r/w 34 of IPC and they were sought to be tried vide Sessions Case No. 100 of 2021 before the Court of Additional Sessions Judge, Ambad.

Both medical practitioners preferred Exhibits 15 and 25 seeking discharge under Section 227 of Cr.P.C. on various grounds. However, by order dated 29.06.2024, learned Additional Sessions Judge turned down above both applications. Hence, instant revisions by invoking Section 397 of Cr.P.C.

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4. Learned counsel Mr. Ghanekar would, at the outset, highlight the qualifications, achievements and length of medical practice of the Revision Petitioner and would submit that, she is a most experienced medical practitioner in this region. Pleading innocence, he would point out that there is no denial that sister of informant was being treated for infertility at her hospital. But according to him, Revision Petitioner had not performed any medical procedure or any surgery on deceased lady patient. That, merely because she runs the above hospital where deceased lady got admitted and took treatment, she too is impleaded as an accused.

5. He pointed out that the medical record maintained by the hospital shows that deceased lady was diagnosed of history of Portal Cavernoma but was taking treatment for infertility and was desirous of conception. That, the lady patient was admitted in the hospital on 18.03.2014 and after admission, formalities like pre-operative evaluation, required pathological tests, obtaining informed consent, were completed and only on above evaluation and finding her fit to face surgery, Dr. Gurupreet Sandhu (Petitioner in Criminal Revision

Application No. 200 of 2024) conducted laparoscopy. Its clinical notes are maintained in the hospital. He pointed out that, lady patient was also discharged on the same day and taken home by informant as her general condition was stable.

6. He further pointed out that, subsequently, while at home, lady patient complained of abdominal pain and on consulting local Doctor, they again came on 19.03.2014 and all necessary evaluation was again done to find the cause of abdominal pain. That, there was no negligence or deliberate delay in evaluating the patient. According to learned counsel, from the FIR at the instance of brother itself, it is clear that they, on their own accord, decided to shift deceased to Max Hospital even when two experts were consulted and medication was prescribed. That, lady patient was admitted at Max Hospital. Doctor of said hospital was offered with necessary medical history and medical case papers maintained by the hospital of Revisionist regarding surgery dated 18.03.2014. That, second surgery was also performed at Max Hospital and not at her hospital and as such, it is his submission that, it is unreasonable to attribute negligence and death to the Revision Petitioner who had no role in either treating or conducting any operative procedure. That, she had also not participated or assisted during the laparoscopy. According to him,

admittedly informant's sister died at Max Hospital, that too after two to three days of discharge from Petitioner's hospital, and therefore her implication is patently absurd.

7. He further pointed out that, here, cause of death is reported to be "Peritonitis in post-operative case of Exploratory Laparotomy for intestinal perforation following Laparoscopy". According to him, what this medical phrase means is, some perforation and internal bleeding, but it is attributable to various reasons and not mere laparoscopy or surgical procedure.

8. According to him, as required, committee has evaluated entire case papers, medical papers and had tendered report regarding above cause of death and opined that, "the second surgery, i.e. Exploratory Laparotomy, was conducted five days after the first surgery, due to which she suffered infection. Had the patient been operated at the earliest with Exploratory Laparotomy with Colostomy, her death could have been avoided". He pointed out that, above committee comprise of three medical experts and their opinion is not about any negligence, leave aside gross negligence. That, these experts had merely rendered opinion that surgery ought to have been performed at the earliest, however, he added that since being readmitted to the

hospital from 19.03.2014, all proper evaluation procedure was undertaken to understand the cause of abdominal pain. That, experts were also engaged in the said procedure and there was no delay whatsoever. Rather, he reiterated that, lady patient was shifted from their hospital and taken to Max Hospital where Exploratory Laparoscopy was done and the lady patient died thereafter and, as such, implication of petitioner is unwarranted. He also invited attention of this Court to the report of Government Medical College and Hospital, Aurangabad dated 26.10.2025 wherein it has been opined that, “... during operation at Max Hospital, perforation to the intestine was observed. Cause of perforation cannot be specifically stated as to whether it was during surgery at Jilla Hospital, or due to pre existing intermittent fever, or due to patient’s intestinal cancer. However, second time when patient was admitted at Jilla Hospital, there was delay in taking decision of her re-operation. This delay may be ‘doctor’s error of judgment’, but there was no gross negligence”.

9. Learned counsel sought reliance on various judgments of the Hon’ble Apex Court and High Court on discharge as well as medical negligence, and primarily focused on the judgment of Hon’ble Apex Court in the case of **Jacob Mathew**. The citations relied and referred are as under :

1. ***Jacob Mathew v. State of Punjab and Others***, MANU/SC/0457/2005.
2. ***Jayshree Ujwal Ingole v. State of Maharashtra and Others***, MANU/SC/0386/2017.
3. ***Annely Dlima v. Police Inspector, Agacaim Police Station*** [Cri. WP No. 160 of 2018 decided on 27.02.2020 by the Division Bench of this Court at Panaji].
4. ***P. Kanakadurgamma v. State, By Inspector of Police*** [Cri. WP 3741 of 2005 decided on 12.07.2006 by the High Court of Andhra Pradesh].
5. ***Dr. Pradeep s/o Sadashiv Wankhede v. The State of Maharashtra and Another*** [Cri. Application (ALP) No. 503 of 2016 with connected matter decided on 06.07.2017 by the High Court of Bombay at Nagpur].
6. ***Ms. Ins. Malhotra v. Dr. A. Kriplani and Others*** [Civil Appeal No. 1386 of 2001 decided by the Hon'ble Apex Court on 24.03.2009.
7. ***Mrudla Suresh Deshpande v. The State of Maharashtra*** MANU/MH/0224/2001.

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10. Learned counsel Mr. Amol Kakade would adopt the above submissions in support of relief urged for Revision Petitioner Dr. Gurupreet Sandhu.

11. In answer to above, learned APP would strongly resist the relief and justify the order of trial court. According to him, there is sufficient material/grounds for both, framing charge as well as conducting trial. He also seeks reliance on the judgment of this Court at Nagpur dated 17.12.2024 in Criminal Revision Application No. 210 of 2024 i.e. ***Dr. Pravashankar Sunilkumar Mishra v. State of Maharashtra***, reported in 2024 NCBHC-Nagpur 13869.

12. Before touching the merits, it would be profitable to give the brief account of revisionary powers of this Court under Section 397 of Cr.P.C. Though there are catena of judgments, the landmark judgment of ***Amit Kapoor v. Ramesh Chander and another*** (2012) 9 SCC 460 is relied and the relevant observations therein are borrowed and quoted as under :

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well - founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in

accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits”.

13. Here, both revision petitioners are seeking discharge under Section 227 of Cr.P.C. Therefore, it would also be desirable to give brief account of the judicial precedent on discharge and a few landmark judgments which still hold the field, are as under :

In *Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135, the Supreme Court observed that, in exercising powers under Section 227 of the Criminal Procedure Code, 1973, the settled position of law is that the Judge, while considering the question of framing charge under the said Section, has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out and whether the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained

to the Court. Only in such a case, the Court will be fully justified in framing charge and proceed with the trial. On the other hand, if the Judge is satisfied that the evidence produced before the Court gives rise to some grave suspicion, then the Judge will be fully justified in discharging the accused.

In *P. Vijayan v. State of Kerala*, (2010) 2 SCC 135, the Supreme Court has held that the Judge is not a mere post office to frame charge, but the Judge should exercise his judicial mind and discretion to determine whether a case for trial has been made out by prosecution. It was further clarified that the Judge should be satisfied that the evidence produced by the prosecution before the Court discloses grave suspicion that the accused has committed the crime. The Supreme Court has also laid down the following principles :

1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.
2. The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.
3. The Judge has to merely sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the

Police or the documents produced before the Court. It is to be noted here that the Judge has to merely sift the evidence on record and not go in depth of it in order to decide an application for discharge.

4. If the evidence, which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross - examination or rebutted by the defence evidence, if any, 'cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial.
5. It is open to the accused to explain away the materials giving rise to the grave suspicion.
6. The Court has to consider the broad probabilities, the total effort of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, would not entitle the Court to make a roving enquiry into the pros and cons.
7. At the time of framing the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.
8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

In ***Amit Kapoor*** (supra), in paragraphs 17 and 19, the Hon'ble Supreme Court has observed as under :

“Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 CrPC, unless the accused is discharged under Section 227 CrPC. Under both Sections 227 and 228 CrPC, the court is required to consider the “record of the case” and the documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section concerned exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. (para 17)

At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.”

In *State of Karnataka v. M. R. Hiremath*, (2019) 7 SCC 515, the Supreme Court has observed that, at the state of considering an application for discharge, the Court must proceed on the assumption that the material which has been brought on record by the prosecution should be true and the Court should evaluate the material in order to determine whether the facts emerging from the material, taken on its face value discloses the existence of the ingredients necessary to constitute the offence.

In another case of *State of Tamil Nadu v. N. Suresh Rajan*, (2014) 11 SCC 709, advertent to the earlier decisions on the subject of discharge, the Supreme Court observed that at the stage of discharge, the probative value of the materials has to be gone into and the Court is not expected to go deep into the matter. Whereas, what is needed to be considered is whether there is a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge but for the conviction of the accused, the court should come to the conclusion that the accused has committed the offence. The court further observed that the law does not permit a mini trial at the stage of discharge.

14. Keeping in mind the above settled legal position, on sifting the chargesheet with limited purpose, the chronology of events that emerges from medical papers is as under :

- **21.01.2014** – Deceased Megha Dnyaneshwar Tarde, aged 23 years, was being treated for infertility at Jilla Hospital, Aurangabad. As per the history recorded, the deceased was a diagnosed case of **Extra Hepatic Portal Vein Obstruction** (EHPVO) since 2009.
- **18.03.2014** – Deceased underwent a laparoscopic surgical procedure conducted by Dr Gurupreet Sandhu at Jilla Hospital. She was later on shifted to bed and further discharged on the same day.
- **19.03.2014** – Post operation, on the next day at Sindhkhed Raja, District Buldhana, deceased complained of abdominal pain. Medical papers record the presence of the abdominal fluid. Therefore, the deceased was re-admitted at about 7:00 p.m. at the Jilla Hospital.
- **20.03.2014** – At around 9:00 a.m., deceased was seen by Dr. Gurupreet Sandhu and her condition was mentioned as fair, she was afebrile.
- **21.03.2014** – At around 4 p.m., patient (now deceased) complained of pain in the abdomen. As per the second opinion of Dr Nusrat Farooqi, the patient was advised CT scan of the abdomen which revealed evidence of **peritonitis**. The

deceased was considered for **Exploratory Laparotomy** and was referred for immediate surgery to Government Medical College and Hospital, Aurangabad. On the request of the patient, she was referred to the Max Super Speciality Hospital by Dr Manju Jilla, who spoke with Dr, Navin Kasliwal, surgeon at Max Super Speciality Hospital, where she was examined at 11:00 p.m.

- **22.03.2014** - The **Exploratory Laparotomy** was performed for intestinal perforation at 9:00 a.m. However, at 3:00 p.m., the patient **died at Max Super Specialty Hospital.**

15. Thus, on study of medical papers, admission of deceased Megha for Laparoscopic surgery in the hospital of Revision Petitioner Dr. Jilla is of 18.03.2014 and she underwent the same. Medical papers show that on the same day, she was also discharged and taken home by informant brother. Again she was brought back and re-admitted on account of complaint of abdominal pain on 19.03.2014 and on 21.03.2014 she was advised to be taken to the Government Medical Hospital, but on decision of informant and family members, she was taken to Max Super Speciality Hospital and admitted there on the night of 21.03.2014. In this Max Super Speciality Hospital, she underwent “Exploratory Laparotomy” for intestinal perforation at 09.00 a.m. in the morning of 22.03.2014 by the Doctors of the Max

Super Speciality Hospital and unfortunately in the afternoon around 3.00 p.m., Megha succumbed. Inquest panchanama also shows that, death has taken place in Max Super Speciality Hospital.

16. Charge sheet shows that, initially AD was registered on 16.04.2014, however, FIR at the instance of brother is apparently lodged on **17.04.2015 i.e. after more than a period of one year.** During AD inquiry, statements of husband, in-laws and other relatives were recorded on 18.04.2014 and they all in unison stated that they had no complaint against anyone for the death of Megha and it was due to abdominal pain. Such statements are already forming part of chargesheet.

Subsequently, on receipt of report from brother after a year or so, crime is registered and investigation seems to have been undertaken by police on accusation of commission of offence under Section 304 r/w 34 of IPC. Section 304 IPC, for ready reference, is reproduced as under :

“304. Punishment for culpable homicide not amounting to murder.—

Whoever commits culpable homicide not amounting to murder shall be punished with

imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

It is fairly settled position that for proving offence of 304 of IPC it is incumbent upon prosecution to establish that firstly, accused caused death, and secondly it was done with intention of causing death or bodily injury or with knowledge that the act is likely to cause death.

The Hon'ble Apex Court in the case of ***Anbazhagan v. State Represented by Inspector of Police*** (2024) 20 SCC OnLine SC , lucidly summed up the principles to be considered while dealing with case involving Section 304 IPC which encompasses Part I as well as Part II. Explaining the difference between both, it has been highlighted that, the first Part of Section 304 comes into play “when there is guilty

intention”, whereas second Part would apply when there is no such intention but there is “guilty knowledge”. Essence of *mens rea* is also highlighted for attracting the above offence.

17. As regards to qualification of both revision petitioners is concerned, it is emerging that each of the petitioners possess following educational qualification :

Dr. Manju Jilla	-	M.D. (OBST. & GYNAE.)
Dr. Gurumeet Kaur	-	M.B.B.S. D.G.O.C.P.S.

The Aurangabad Municipal Corporation has issued Certificate of Registration to Jilla Hospital since 24.07.1985.

18. Thus, there is no dispute that, the hospital run by Dr. Manju Jilla is an approved and recognized maternity hospital wherein Revision Petitioner Dr. Gurupreet Sandhu is engaged as a Doctor and from their academic acquisitions, they both seem to be qualified and experienced medical practitioners.

19. On carefully going through the papers, as regards to Revision Petitioner Dr. Manju Jilla is concerned, there is nothing to show that

since admission of deceased Megha, she herself conducted any procedure over deceased and it is so apparent from the clinical notes which are part of charge sheet. Procedure of Laparoscopy is shown to be performed by Dr. Gurupreet Sandhu and hospital case papers, i.e. pre and post operation, are at her instance. But again, after conducting Laparoscopy on 18.03.2014, informant had taken discharge of his sister and had been to his native and on next day, when there was complaint of abdominal pain, there, local doctor seems to have been consulted, who opined formation of fluid and re-directed them to the hospital of Dr. Jilla. Admittedly, since 19.03.2014 to 21.03.2014, lady patient was in the Jilla Hospital and treated conservatively. Informant brother has merely attributed delay in obtaining x-ray and conducting necessary tests. He alleges that necessary steps were not taken for referring his sister to an expert.

Papers which are part of chargesheet show that, expert by name Dr. Gopanpallikar initially examined Megha and advised color Doppler. On 21.03.2014 one surgeon Dr. Nusrat Farooqui was called for second opinion, who advised CT scan and on receipt of report of CT scan, decision about Exploratory Laparotomy surgery was taken and for want of post operation ICU backup, it seems to have been decided to refer the lady patient for immediate surgery to

Government Medical College and Hospital, Aurangabad. Accordingly, a referral note was also prepared on 21.03.2015 addressed to Dr. Warudkar, Head of the Department of Surgery at said Govt. Medical College and Hospital. However, it seems that for proper treatment, informant/brother of deceased and relatives seems to have in stead shifted her to Max Super Speciality Hospital.

Papers show that, deceased was admitted in Max Super Speciality Hospital on 21.03.2014 at around 11.00 p.m., wherein all clinical notes of previous diagnosis, treatment and details of laparoscopy done five days back were noted by Dr. Ritesh Sony, also a surgeon. Treatment seems to have immediately commenced upon admission and necessary pathological tests were being got done. Thereafter, patient seems to have been seen by Dr. Navin Kasliwal and call of undertaking Exploratory Laparotomy seems to have been taken by him too, and the same seems to have been accordingly done at 09.00 a.m. on 22.03.2014. After said procedure, notes show that, patient did not recover. However, Max Hospital has maintained papers of consent prior to Exploratory Laparoscopy and relatives have signed over consent forms which show that they were made aware of the prognosis of the patient.

20. Thus, what is emerging from above discussion is that, after discharge from Petitioner's hospital, second procedure was done at Max Hospital. Consequently, material in the charge sheet suggests involvement of another hospital after discharge from Petitioner's hospital. As regards to involvement of Dr. Manju Jilla is concerned, there is nothing in the charge sheet for participating in Laparoscopy done on 18.03.2014. Apparently, it was done by Dr. Gurupreet Sandhu, but she too seems to be well qualified and experienced surgeon and after her procedure, lady patient was discharged and taken at native by her brother.

21. Here, postmortem findings suggest death due to **“Paritonitis in post-operative case of Exploratory Laparotomy for intestinal perforation following Laparoscopy”** which, in common language, means perforation/bleeding to intestine. *Prima facie*, there is no evidence of bleeding since discharge from Jilla Hospital dated 18.03.2014. Local doctor has, on sonography, recorded a finding about accumulation of fluid/water. As stated above, second procedure is shown to be done at Max Hospital, after which deceased reportedly died. Consequently, there is no material to directly connect both Petitioners with the death of Megha. Even Expert Committee's opinion does not show any “gross” negligence in conducting

Laparoscopic procedure or that said procedure itself had led to Paritonitis.

22. At this juncture, it would be fruitful to refer to the judgment of Hon'ble Apex Court in the case of **Jacob Mathew** (supra), which is invariably leaned upon by Courts while dealing with cases of medical negligence, wherein in paragraph 48, the Hon'ble Apex Court has summed up its conclusions on several issues of law on medical negligence, which are borrowed and reproduced as under :

“(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a

doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fall if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

- (3) *A professional may be held liable for negligence on one of the two findings: either 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. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

- (4) *The test for determining medical negligence as laid down in Bolam s case, 1957 1 WLR 582, 586 holds good in its applicability in India.*
- (5) *The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.*
- (6) *The word 'gross' has not been used in Section 304A of 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 304A of the IPC has to be read as qualified by the word 'grossly'.

(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) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence."

Finally, in paragraph 50 of **Jacob Mathew** (supra), the Hon'ble Apex Court has prescribed guidelines in matters of prosecution of medical professionals. In this paragraph, the Hon'ble Apex Court has noted that, cases of doctors (surgeons and physicians) being subjected to criminal prosecution are on rise. Sometimes such prosecutions are

filed by private complainants and sometimes by the police on an FIR being lodged and cognizance taken. The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under Section 304A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standards.

From the conclusions recorded by the Hon'ble Apex Court in *Jacob Mathew* (supra), it is clear that negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations come into play. A case of occupational negligence is distinct from one of professional negligence. A mere lack of care or an error of judgment or an accident, is not a proof of negligence on the part of a medical professional. (emphasis supplied) So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot

be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.

23. In the light of above settled position and on reverting to the case in hand and on revisiting the expert committee's opinion, it is emerging that, both reports do not specifically or pin-pointedly attribute death due to any "gross" negligence in surgery conducted on 18.03.2014. Since admission of deceased in the hospital of Revision Petitioner on 19.03.2014, no procedure of whatever nature was done in the said hospital. Allegations are of not heeding to the request of informant to conduct x-ray examination. Therefore, taking above material into consideration, apparently there does not seem to be a case of medical negligence, leave aside "gross" negligence.

24. To sum up, no role whatsoever is shown to be played by Revision Petitioner Dr. Manju Jilla in conducting any procedure like Laparoscopy. Her participation is not shown at the time of said procedure. As regards to Revision Petitioner Dr. Gurupreet Sandhu is concerned, after said procedure conducted by her, patient was discharged and initially taken home, then brought back on

19.03.2014, but again thereafter, there is no procedure at her hands. Rather, second procedure is done at distinct hospital with which neither of the Petitioners have any concern. Apparently, death has occurred after second procedure at Max Hospital.

25. Even papers show that, informant brother has set law into motion almost after a year or so. As stated above, in earlier statements during AD inquiry, these very persons, i.e. husband, in-laws and other relatives, did not blame either of the Petitioners for the death. Rather, they attributed it to abdominal pain. Surprisingly, one year thereafter, in subsequent statements on lodgment of FIR, they are attributing negligence to both Revision Petitioners. However, in view of the above observations of the Hon'ble Apex Court in ***Jacob Mathew*** (supra) and also bearing in mind the essential ingredients for attracting Section 304 IPC which are reflected in the case of ***Anbazhagan*** (supra), here, none of the ingredients are shown to be existing in the entire chargesheet. In the totality of above discussed facts and circumstances, it is a fit case for discharge. Hence, both Revision Petitioners succeed. Accordingly, following order is passed :

ORDER

- I. Both the Criminal Revision Applications are allowed.
- II. The common order dated 29.06.2024 passed by Additional Sessions Judge, Ambad below Exhibits 15 and 25 in Sessions Case No. 100 of 2021, is hereby quashed and set aside.
- III. The Applications Exhibits 15 and 25 filed in Sessions Case No. 100 of 2021 stand allowed. Both the Revision Petitioners stand discharged from offence under Section 304 r/w 34 of IPC in Sessions Case No. 100 of 2021 (Crime No. 77 of 2015 registered at Ambad Police Station, District Jalna).
- IV. The Criminal Revision Applications are accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

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