CASE COMMENT: MALAY KUMAR GANGULY V. SUKUMAR MUKHERJEE & ORS.

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INTRODUCTION

Malay Kumar Ganguly v. Sukumar Mukherjee & Ors.[1] has been a very crucial judgment, decided by a two-judge bench of the Supreme Court of India, for the doctrine of medical malpractice and civil liability vis-a-vis criminal liability of medical professionals in India. This case revolves around the death of Anuradha Saha, who was admitted to AMRI Hospital and received huge amounts of Depomedrol during her treatment for Toxic Epidermal Necrolysis (TEN) without any supporting treatment. The complainant made allegations of negligence against the treating doctors and filed criminal charges under S.304-A of the IPC[2], along with a consumer grievance. While disposing of the prosecution charges and releasing the doctors from the charge sheet in the criminal matter, the top court observed that criminal negligence not only constitutes negligence but also gross negligence, which goes far beyond ordinary negligence. However, the Court believed that civil negligence prevailed in the case because of irrational steroid treatment without proper monitoring.

FACTS

1. Mrs Anuradha (wife) and Dr Kunal Saha (husband) were from the United States of America. Both of them came to Kolkata as tourists on April 1, 1998. Mrs Anuradha, who was a child psychologist at Columbia University, and Dr Kunal Saha, who was working as an HIV/AIDS researcher, were visiting India on tourist visas.
2. On May 7, 1998, as the condition of severe rash reappeared, Dr Mukherjee diagnosed her with "Angio-Neurotic Oedema with Allergic Vasculitis". He prescribed her

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[1] Malay Kumar Ganguly v. Sukumar Mukherjee & Ors, (2009) 9 SCC 221.
[2] The Indian Penal Code, 1860, § 304-A, No. 45, Acts of Parliament, 1860, § 304-A (India).

Depomedrol injection of 80 mg twice a day for three days, and he himself gave the first dose of medicine.

3. On May 11, 1998, Mrs Anuradha was admitted into AMRI hospital under the supervision of Dr Mukherjee and was treated by him with a high dose of steroids, and Dr Mukherjee went out of the country to attend a conference on that very day.
4. The dermatologists, Drs. A.K. Ghoshal and Baidyanath Halder (R-2) correctly identified the problem, which was that of toxic epidermal necrolysis (TEN). However, inappropriate high doses of steroids were used in treatment, which were said to be administered without support treatment such as fluids, nutrition support, infection surveillance or burn unit facilities.
5. Over a period from 12-16 May 1998, her health condition deteriorated, but the medical record did not keep proper documentation, monitoring of vital signs and conducting of investigation tests was not done.
6. Subsequently, she was evacuated to Breach Candy Hospital on 17 May 1998, where her condition of toxic epidermal necrolysis (TEN) was detected by Dr Farokh Udwadia, who found the usage of an inappropriate dosage of steroid in Kolkata. The supportive treatment followed. She seemed to have recovered temporarily, but unfortunately died due to septicemic shock resulting in multiple organ failure and cardio-respiratory failure on 28 May 1998.
7. Dr Mukherjee, Dr Halder, and Dr Abani Roy Chowdhury (R-3) have been charged with crimes based on S.304-A. Simultaneously, Dr Kunal Saha approached the NCDRC and the West Bengal Medical Council for some sort of relief.
8. The Trial Court found R-1 and R-2 guilty under criminal negligence, while the verdict of the Calcutta HC was completely opposed to that of the Trial Court. Finally, the criminal case was dismissed, but a case of medical negligence was found civilly, which was referred to NCDRC for compensation.

ISSUES

1. Does the medical treatment that was provided by the doctors, and particularly the unnecessary use of excessive steroids, without any proper treatment, amount to medical negligence?
2. Are the negligent acts committed by the doctors and hospital responsible for the death of Anuradha Saha?

3. Is there any criminal negligence on the part of the accused doctor's u/s 304-A of the IPC?

ARGUMENTS

Appellant: It is contended that Dr Sukumar Mukherjee had not shown due diligence in carrying out his obligations, as he ought to have directed Anuradha Saha to see a specialist dermatologist upon noting the symptoms of the skin rash at first. The disease 'Angio-Neurotic Oedema with Allergic Vasculitis' was said to be misdiagnosed, as it contradicted the usual practices in the medical field.

It is contended that the prescription of Depomedrol 80 mg twice a day was said to be medically unnecessary and extremely excessive in comparison with the dosage recommended by the manufacturer, Pharmacia, which stated that the patient should take small amounts either once a week or fortnightly. Depomedrol was said to be inappropriate for use in treating acute cases of TEN due to its long action feature, and should be prescribed for treating chronic ailments such as asthma and arthritis.

It is contended that the consumption of further steroids after diagnosis of the condition TEN by Dr Baidyanath Halder on 12 May 1998 was said to make the health situation of the complainant worse due to the concentration of steroids already in her system. Ten cases of patients had never been administered mandatory treatment in terms of fluid intake, nutrition, wound care, infection, and intensive care in AMRI Hospital, according to the complainant.

It is contended that the hospital's negligence due to not checking the vital statistics and keeping proper documentation was seen as a serious breach of protocol in a hospital. According to the complainant, the ban placed by Dr Halder against administering needle pricks to the patient was an effort to prevent giving intravenous fluids and pathology testing.

It is contended that the inadequate documentation from AMRI Hospital of 22 pages was evidence of the patient's poor treatment at the hospital, according to the complainant. Phone records indicating multiple phone calls made to Dr Abani Roy Chowdhury in that time frame implied his involvement in treating the patient.

It is contended that the accusation of any tampering with the course of treatment made against Dr Kunal Saha had been thrown out of court since his role was not recorded anywhere in the

treatment history, save at the time of admission. The fabrication of the certificate of transfer as an accused crime had been defended by pointing out the fact that "for better treatment" was in the handwriting of Dr Balaram Prasad.

It is contended that many national and international medical practitioners had deemed the given treatment to be nothing but sheer medical malpractice or a violation of professional standards. The medical professionals' gross negligence had been enough to bring them to court and convict them for manslaughter under S.304-A, though this principle was not recognised by the High Court.

Respondent: It is contended by the defence that Dr Kunal Saha provided inadequate information about the medicines and treatment of the drugs given to Anuradha Saha, which would affect the diagnosis made by the doctors. In particular, it should be noted that Dr Sukumar Mukherjee did not have access to the findings of the pathology reports he recommended for examination.

It is contended that of great significance was the fact that the defence made references to the report produced by the West Bengal Medical Council, which found no evidence of any negligence by the doctors, since it was a professional body established for such purposes. Furthermore, it should be emphasised that Dr Abani Roy Chowdhury was not the main doctor to treat Anuradha Saha because even Dr Kunal Saha admitted this fact.

It is contended that another allegation that was made was that there was no evidence that Dr Halder and Dr Roy Chowdhury had discussed anything or supervised the treatment of Anuradha, and Dr Halder admitted in S.313 CrPC[3] proceedings that the prescription was drawn only by himself. It was also said that the “joint prescription” that was quoted as one of the grounds in the complaint could not be treated as evidence, as it was written by Dr Kunal Saha.

It is further contended by the defence that no one among the witnesses could point out Dr Roy Chowdhury as the one who had prescribed the medicine to Anuradha in AMRI hospital. Since Dr Roy Chowdhury was acquitted by both the Trial Court and the Calcutta HC, there was no reason for the Supreme Court to interfere under Article 136 of the Constitution.[4]

[3] The Code of Criminal Procedure, 1973, § 313, No. 2, Acts of Parliament, 1974 (India).
[4] India Const. art. 136.

It is contended that the accusation that the transfer certificate is interpolated by the patient's side, hence no evidence can be provided for the 'for better treatment' words in the certificate. Moreover, the defence claimed that Dr Kunal Saha had taken excessive medical risks while shifting the critically ill Anuradha patient from Kolkata to Mumbai by an air ambulance, thereby increasing the chances of her getting infections in transit.

It is contended that the argument was that Dr Kunal Saha interfered in the procedures being followed in the hospital treatment of Anuradha and prevented the nursing staff from monitoring her blood pressure and body temperature. The infection leading to Septicaemia and ultimately the death of the patient could have been acquired during her transportation to another city.

It is contended that there is no specific procedure or remedy that can be followed to treat Toxic Epidermal Necrolysis, which is a highly uncommon disease and hence miscalculation cannot be considered as negligence.

It is contended that the aspect of criminal liability of doctors as per S.304A was explained in such a way that criminal proceedings were applicable if the cause was found to be gross negligence or very high negligence, but not because of a mistake made during diagnosis or an alternative mode of treatment selected by them. It was finally mentioned that doctors have not taken any fees from the patient.

JUDGEMENT

Ratio Decidendi: Criminal and Civil Medical Negligence Determination: According to the SC, the standard of proof required to prove criminal medical negligence as per S.304-A is higher than that of civil negligence. Simple medical negligence or mistake of judgment shall constitute only civil negligence. The acts have to be extremely gross and reckless to constitute crimes.

No Cumulative Negligence Doctrine Applicable for Criminal Charges: Furthermore, it was held that in the given case, more than one doctor committed negligence, resulting in the deteriorating condition of Anuradha Saha. For holding them criminally liable, there had to be gross negligence individually. Hence, while cumulative negligence might make them liable to pay compensation, it will not make them liable for criminal charges.

Standards of Care Required for Medical Malpractice: Coming to the determination of the standard of care required for cases of medical negligence, it was ruled that, according to the principles laid down in Bolam v Friern Hospital Management Committee[5] and Bolitho v City and Hackney Health Authority,[6] the doctor is required to show reasonable skill and competence in performing his/her job. In addition to this, the basis of any opinion expressed by him or her should be logical and rational.

Unfounded Administration of Steroids Is Civil Negligence: In accordance with the judgment of the Court, the administration of Depomedrol 80 mg twice daily by Dr Sukumar Mukherjee had no basis under any well-known school of medicine. Administering heavy amounts of steroids without the provision of supportive treatment amounts to civil negligence.

Supportive Treatment Is Necessary for a Patient Suffering from TEN Condition: The Court realised that when a patient is suffering from TEN condition, he must receive prompt and necessary support, including the provision of fluids intravenously, treatment of skin wounds, nutrition, and infection control. Failure to provide all this became the failure on the part of AMRI Hospital.

Proving Non-existence of Negligence in a Case of Medical Negligence: Once an initial case or proof of civil medical negligence has been established, it is then left to the hospital and other medical professionals involved to disprove the negligence.

Evidence Act Not Compulsory for Consumer Tribunals: In its decision, it was held that while the expert reports on the medical aspects of the matter cannot be used in a criminal proceeding, since these reports have not undergone cross-examination in accordance with the Evidence Act, they may still be used by consumer tribunals.

Obiter Dicta: Informed Consent Right of the Patient- The Court highlighted that patients are entitled to know all the dangers and complications associated with medication.

Doctors Should Not Apportion the Fault: It was considered very unjustified that the senior doctors attempted to pass the buck among themselves to evade accountability.

[5] Bolam v. Friern Hosp. Mgmt. Comm., [1957] 1 W.L.R. 582, [1957] 2 All E.R. 118 (Q.B.).
[6] Bolitho v. City & Hackney Health Auth., [1998] A.C. 232, [1997] 4 All E.R. 771 (H.L.).

Refusal of Opinions of Calcutta High Court: The opinion regarding the liability of Dr Kunal Saha for the death of his wife, expressed by the Calcutta HC, was highly objected to by the SC.

Liability of Hospital Regarding Nosocomial Infection: The Court stated that hospitals owe a duty to their critically ill patients to protect them from nosocomial infection.

Res Ipsa Loquitur in Civil Cases: It can be applied in civil cases involving medical negligence because of obvious errors, but it cannot be applied in criminal cases.

Bolitho Test: It was acknowledged by the Court that there was a shift from the unquestioning faith of the court in medical opinions to the more patient-friendly attitude of the Bolitho test, which requires a rational explanation of the conduct.

CONCLUSION

Malay Kumar Ganguly v. Sukumar Mukherjee & Ors. can certainly be regarded as an important judgment by Indian jurisprudence, especially pertaining to the specific distinction between criminal and civil liabilities in the context of medicine. It should be noted that the Supreme Court has clearly stated that the treatment given to Anuradha Saha has indeed been highly negligent, taking into account the considerable departures from the usual medical practices, including, among others, the prescription of high amounts of Depomedrol along with the absence of necessary supportive treatment for TEN. Indeed, the doctors and AMRI Hospital have been held liable, emphasising the importance of providing due care, diagnosis, proper monitoring and resources. Finally, it can be asserted that the judgment given by the Supreme Court is truly progressive, since it applies the Bolitho test instead of the traditional Bolam test in dealing with this case.

In any case, it would be appropriate to consider certain deficiencies related to the court's perception of criminal negligence in this case. Even though the court took into account all the mistakes in the work of the doctors, they were acquitted by applying S.304-A IPC based on the fact that criminal negligence presupposes proving the guilt of the accused persons individually. This approach was criticised because it involved the requirement of establishing excessive standards of criminal liability, which allowed the doctors not to be punished on the basis of cumulative criminal negligence. Nevertheless, the mentioned verdict can be considered highly significant in terms of patients' and doctors' interests.