JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

"Criminal Appeal No.193 of 2017"

Amjad Ali
Versus
Dr.Taqdees Naqaish, etc

Appellant By:	Raza Rizwan Abbasi Advocate
Respondents By:	M/s Raja Ikram Ameen Minhas and Amir Zar Bhatti, Advocates
State by:	Mr. Zohaib Hassan Gondal, State Counsel with Noor Sub-Inspector.
Date of Hearings:	06.07.2020 and 13.07.2020

Ghulam Azam Qambrani, J: This Criminal Appeal has been directed against the Judgment dated 25.10.2017, passed by the learned Judicial Magistrate Section 30, Islamabad-West, whereby respondents No.1 to 3 were acquitted in private complaint 128/2016, dated 16.12.2016, under Sections 319/ 322/ 34 PPC.

2. Brief facts of the case are that the appellant [Ajmal Ali] filed a complaint against respondents (Dr.Taqdees Naqaish, Dr. Abdullah Ali, Dr. Sehrish Gul, Mst. Rabia & Mst. Soha) stating therein that on 17.05.2012, the appellant's wife got pregnancy related pain and she was taken to Shifa Hospital for consultation with respondent No.1 (Dr.Taqdees Naqaish) around 10:00 a.m. Respondent No.1 decided to go for caesarean and his wife was shifted to Labour Room, then to operation theatre at about 11:00 a.m. Although consent was taken from the appellant, but due to emergency situation, it was signed in haste. After depiction, it was found that no name of Doctor involved in the operation was mentioned on it and after completion of caesarean, wife of the appellant was shifted to a private room around 01:00 pm and appellant was informed about the birth of female twins. On asking, it was transpired that respondent No. 2 (Dr. Abdullah Ali) had administered

spinal injection instead of epidural in violation of request of appellant and with the passage of time, her back pain became worst coupled with vomiting and breathing problems. Around 7:00 pm, blood pressure of his wife (deceased) became low. After some hour, wife of the appellant kept in suffering for long 42 hours and because of the illegal and unlawful act of the respondents, wife of the appellant was expired on 19.05.2012. The appellant prior to filing private complaint moved an application for registration of FIR in the concerned Police Station against the accused, which was not proceeded. After this he filed application under Section 22-A Cr.P.C and after passing of direction, FIR was registered. After registration of FIR, the investigation was conducted and cancellation report of the FIR was moved, which was refused by the learned Judicial Magistrate vide orders dated 29.03.2016. The respondents also moved writ petition in this Court which was dismissed vide orders dated 30.06.2015. Investigating Officer submitted report under Section 173 Cr.P.C while placing the accused persons in column No. 02, feeling aggrieved from the entire proceedings, the appellant filed the private complaint where cursory statement of the appellant and other witnesses were recorded and process was issued against the respondents, as a result of which respondents No.1 to 3 appeared before the Court whereas respondents 4 & 5 never turned-up. Thereafter, respondents filed an application under Section 249-A Cr.P.C which was accepted by the learned trial Court vide impugned Judgment dated 25.10.2017, hence the instant appeal.

3. Learned counsel for the appellant has stated that the impugned judgment is bad in law and is not tenable; that the impugned judgment was passed totally on the basis of interrogation and material which resulted into grave miscarriage of justice; that the impugned judgment is reckless exercise of jurisdiction; that there are sufficient grounds for proceedings against the respondents within the meaning of Section 204 Cr.P.C and without any development, acceptance of application under Section 249-A Cr.P.C is reckless somersault of the Court below. It is further submitted that the case against the respondents is well established through the plenary evidence of the appellant and his witnesses; that the impugned judgment of acquittal passed by the

learned trial Court in favour of respondents, is not in accordance with law and is liable to be set aside.

4. On the other hand, learned counsel for the respondents has stated that the respondents are innocent and have falsely implicated in the private complaint. Further stated that wife of the complainant died due to excessive bleeding after the caesarean, and no negligence can be attributed to the respondents. Further stated that the penalty of censure dated 19.02.2014 by the Disciplinary Committee of P.M.D.C was subsequently waived off by the President of PMDC through order dated 10.08.2015, therefore, the learned Trial Court has rightly acquitted them vide impugned judgment dated 25.10.2017. Lastly, prayed for dismissal of the instant appeal.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

6. Minute perusal of the record reveals that wife of the appellant gave birth to female twins and after her caesarean, she was shifted to the private room, but she continuously complained severe back pain. Respondents kept the patient on pain killers, but in vain and due to excessive bleeding, wife of the appellant died on 19.05.2012.

7. To prove the complaint under Section 319 & 322, it is necessary to make out a case that death of the wife of the appellant was due to the unlawful act of the accused persons, whereas in the instant case, the appellant/complainant had not alleged any specific role against the respondents which could be considered to be illegal or unlawful, resulting into the death of his wife. As per the complainant, he requested to administer epidural injection rather than spinal injection, but the respondents did not accept his request. The provisions of Section 319 reveal that the existence of mistake of act or mistake of fact is essential to impose liability under the provision.

8. The question before the court is that whether the learned trial Court has erred in law while allowing the application of the respondents under Section 249-A Cr.P.C. As stated above, the case of the appellant is that the death of his wife was the result of negligence on the part of the respondents. Learned counsel for the appellant contended that the

respondents have committed an offence under Section 319, P.P.C. read with Section 34 with their common intention. Section 319 prescribes the punishment for the offence of Qatl-e-Khata, as defined in Section 318, therefore, it is necessary to examine the provisions of Section 318 in order to properly appreciate the scope, nature and extent of the offence defined therein, because only then it would be possible to determine whether the learned trial Court has erred in concluding under Section 249-A Cr.P.C that no material has come on the surface against the accused persons for their conviction.

Section 318, P.P.C. provides as follows:--

> *"Whoever, without any intention to cause death of or cause harm to, a person causes death of such person, either by mistake of, act or by mistake of fact, is said to commit Qatl-i-khata."*

The essential element of Section 318 is that there should not be any intention to cause the death of the deceased. The Supreme Court has observed in "*Sajid v. The State*" (**2000 SCMR 167**) that the language of Section 318 is broad enough to include death caused by any rash or negligent act" of the accused. The crucial elements of the offence under section 318 are rashness and/or negligence.

9. In the present case, for constituting offence under Section 318, it would be necessary to prove that the respondent Doctors were so negligent in the discharge of their professional duties that their conduct amounted to either criminal rashness or to criminal negligence.

10. In every mishap or death during medical treatment, the medical officer cannot be proceeded against for punishment. Criminal prosecutions of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the community at large because if the courts were to impose criminal liability on hospitals and doctors for everything that goes wrong, the doctors would be more worried about their own safety than giving all best treatment to their patients. This would lead to shaking the mutual confidence between the doctor and patient. Every mishap or misfortune in the hospital or clinic of a doctor, is not a gross act of negligence to try him for an offence of culpable negligence.

11. It follows from the foregoing analysis that the offence of Qatl-e-Khata under Section 318, insofar as death is caused by a rash or negligent act, and in the specific context of doctors accused of professional negligence, is committed only if it is proved that the accused acted with 'gross negligence' or with reckless disregard or indifference to the consequences of the act which caused the death.

12. Furthermore, nothing is available on record that would in any manner suggest that Section 34 PPC was applicable in the facts and circumstances of the present case. This Section pertains to a criminal act done by several persons in furtherance of their common intention, and in such a situation makes each such person liable for the criminal act. The prerequisites for the application of Section 34 are well established, and laid out by the Hon'ble Supreme Court in "*Shoukat Ali v. The State*" (**PLD 2007 SC 93**). One of the essential elements is a pre-arranged plan or a pre-concert or prior meeting of minds. Nothing was produced by the appellant or his witnesses as would establish or even remotely suggest any pre-arranged plan or concert or prior meeting of minds in the present situation. Thus, there was no probability of the conviction of any of the respondents for gross negligence or all of them on the basis of a common intention, as such the learned trial Court has rightly allowed the application under Section 249-A Cr.P.C.

13. The perusal of the statement of the witnesses shows that the accused/respondents have not considered the repeated request of the complainant for proper treatment, the respondents remained engaged in another medical treatment and failed to monitor the medical position of wife of the appellant.

14. On the application of the appellant to the P.M.D.C against the respondents, meeting of the Disciplinary Committee of P.M.D.C was held on 11.11.2013, whereby respondents No.1 to 3 were issued "Censure" for negligence alongwith "Warning" to the Hospital to improve its system on 19.02.2014. Against the decision of Disciplinary Committee, Dr.Taqdees Naqash, Consultant Gynae/ Obs, Shifa International Hospital, Islamabad, preferred an appeal before the Pakistan Medical &

Dental Council, Islamabad, which was decided by the P.M.D.C in its meeting held on 07.09.2016 in the following manner:-

> *"The PM & DC Council considered the earlier decision of Disciplinary Committee and Executive Committee dated 06th September, 2016 and decided to withdraw the censure since there was no negligence found on the part of Dr.Taqdees Naqash.*

15. In view of the above facts and circumstances, there was no probability or possibility of the conviction of the respondents under Section 318, P.P.C. read with Section 34, and the respondents were rightly acquitted under Section 249-A Cr.P.C., as in the instant case, the prosecution has failed to establish any common intention, preplanning or preconcert against the respondents/ doctors to cause the death of wife of the appellant. Reliance in this regard is placed upon the cases reported as "*Zahoor-ud-Din Versus Khushi Muhammad and 6 others*" (**1998 SCMR 1840**) and "*The State versus Raja Abdul Rehman*" (**2005 SCMR 1544**). I have found no illegality or irregularity in the judgment impugned, nor the same is suffering from any misreading or non-reading, warranting interference by this Court.

16. Resultantly, the instant appeal having no force, is **dismissed.**

(Ghulam Azam Qambrani)
Judge

Announced in Open Court, on this_____ day of July, 2020.

Judge

Rana. M. Ift

"Approve for reporting."