

# ANKUR ARORA VS. SHEKHAWAT HOSPITAL, 20 FEB 2013

## (ANKUR MURDER CASE)

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Doctors play a supreme role in our lives no matter our age, cultural background, or medical requirements. Nothing is nobler than saving lives, and nothing is more ignoble than failing to do so out of negligence.

The failure becomes worse—rather volatile when one is a doctor. Doctors are very much under the purview of the Consumer Protection Act (“COPPA”) and can be sued for negligence. Doctors play a very important role in each and everyone’s life. However, there are certain cases where the patient dies and the doctors could be charged under the Indian Penal Code (“IPC”).

The Supreme Court has also ruled<sup>1</sup> that the ordinary lack of care is not enough for the doctors to be charged under criminal law because this would make the doctors wary of making the last-ditch effort to save a patient for fear of being charged with the criminal offence. It is important that doctors must perform their job fearlessly.

Facts of the case are as follows:

Dr. Asthana was the Chief Surgeon of Shekhawat General Hospital, where Dr. Romesh and Dr. Riya were also the co-interns. Ankur Arora, an 8-year-old boy was admitted to this hospital by his mother Nandita Arora as he was suffering from stomach ache. After examining him, Dr. Romesh informed Nandita that he is suffering from appendicitis because of which he had to get admitted. In order to cure this, the doctor had to do perform surgery on the boy. The surgical procedure could only be done when the patient was empty stomach. But the young boy had had some biscuits when his mother wasn’t present in the room, she had gone to buy some medicines. The boy had informed about the biscuits to the nurse before the operation. Dr. Asthana operated on the boy even though the patient’s stomach was not empty and forgot to use the (Ryle’s Tube) which is basically used for short- or medium-term nutritional support, and also for aspiration of

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<sup>1</sup> (2013) 199 DLT(CN)3

stomach contents. The boy died as the doctor performed the surgery, even after knowing that he wasn't empty stomach. He died because of the negligence on the part of the surgeon. Later, the Hospital and Dr. Asthana attempted to cover up the incident by saying that the cause of death was a lung failure. Mrs. Nandita filed a case against Shekhwat General Hospital with the help of her lawyer Kajori Sen whereas the co-intern Dr. Romesh favored Mrs. Nandita.

The issues in the case are as follows:

Whether Dr Astana is liable under Section 304A of IPC?

Whether Dr Astana is liable under Section 302 of IPC?

### **Evidence Adduced by Plaintiff**

- 1) Dr. Asthana was told before the operation that Ankur have eaten biscuits but he didn't bother and said he will be using Ryle's Tube but he didn't use during the operation
- 2) Mr. Bharghav was presented in the court and he was the handwriting expert he told the correct time of the meal of Ankur before the operation.
- 3) Dr. Riya recorded the conversation which was taken place between her and Dr Asthana where he accepted that he only killed Ankur.

### **Evidence Adduced by Defendant**

- 1) The signature of the mother on the form before the operation was presented that she had signed on the form which clearly states that the person should be NBM (6-8 hours) before the operation.
- 2) Dr. Riya was presented in the court as she was present at the time of operation, she stated that Ankur lungs got collapsed during operation because of which he died and went to coma.

Laws applying to the Case are as follows-

**Section 7 of the Indian Evidence Act** clearly states that the (facts which are occasion, cause or effect facts in issue are relevant, as in the present case the deceased had biscuits before the operation because of which he died. So, this fact is relevant under this section.

**Section 14 of the Indian Evidence Act** clearly states that (Facts showing the existence of state of mind or of body or bodily feeling): The provision includes negligence. The fact is that the surgeon was already aware that the boy wasn't on an empty stomach and that act of negligence in itself becomes relevant.

**Section 3 of the Indian Evidence Act** (Documentary Evidence): Since the consent form was signed by the victim's mother before the operation, is documentary evidence to the case as per the provision.

**Section 45 of the Indian Evidence Act** (Opinion expert): In this case, the post mortem report clearly shows that the boy had consumed food one hour before the surgery

**Section 24 of the Indian Evidence Act** (Extra Judicial Confession): In this case, the nurse confesses that she had informed Dr. Asthana that he had biscuits while they were in conversation on phone.

**Section 204 of the Indian Penal Code:** Destruction of documents or electronic records to prevent its productions as evidence as in this case, the accused destroyed the evidence by way of removing fingers prints on the documents.

**Section 499 of the Indian Penal Code** (Defamation): In this case, the accused have alleged the other party that they are trying to defame the hospital.

The decision is as follows:

The Supreme Court in the case of Indian Medical Association vs VP Shantha,<sup>2</sup> that medical profession has been brought under the purview of COPPA, 1986's section 2(1)(o). Therefore, any act of negligence by the doctors attracts the provisions of COPPA, 1986.

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<sup>2</sup> 1996 AIR 550, 1995 SCC (6) 651

## CONCLUSION

Doctors play a vital role by holding the great responsibility towards the society. It is their utmost duty to act with duty of care and diligence. In order to be a doctor, a person must have a good character. Death and suffering due to medical negligence are the biggest crimes and the criminal shouldn't go unpunished. A death in an operation theatre is plain murder. It has been very frequent nowadays, as there are several cases reported on victims of medical negligence. Further, need arises to improve our medical jurisprudence in order to prevent other surgeons from committing such an act which leads to death. The medical profession must undertake some serious introspection. The medical sector needs to accept the fact that it has failed miserably in self- governance. It needs to organize various ethical forums so as to revitalize and serve with complete righteousness. They comfort us when we are scared and not at our best and most importantly, doctors talk with us about we can preserve our most valuable resource that is "OUR GOOD HEALTH".



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