

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No. 531 of 2010**

**DR. V.K. JAIN**

**Appellant(s)**

**VERSUS**

**STATE OF RAJASTHAN & ORS.**

**Respondent(s)**

**O R D E R**

The appellant is aggrieved by the order of the High Court dated 12.12.2008 setting aside the order of the Additional District & Sessions Judge, Kishangarh, Ajmer dated 02.11.2007. The latter order had set aside the order of cognizance dated 30.05.2002 against the appellant under Section 304A of the Indian Penal Code, 1860 ("IPC") passed by the Judicial Magistrate.

Learned counsel for the appellant submits that reading the complaint as it is, on the very face of it no offence is made out under Section 304A, IPC. There is no allegation whatsoever of any medical negligence against the appellant who is an anesthetist at a government hospital. The appellant had only administered anesthesia injection to the wife of respondent no.2 to facilitate a caesarian delivery. Loss of consciousness is a natural consequence of administering the injection. It cannot constitute negligence. The surgery was to be performed by respondent no.3. The allegations themselves

state that the lady developed complications and had to be shifted to a bigger hospital at Ajmer where she required a pace maker. In these circumstances if the new born child did not survive, the appellant cannot be held responsible by any reasonable standard of prudence. Reliance is placed on *Jacob Mathew v. State of Punjab & Another*, (2005)6 SCC 1.

Learned counsel for the State submitted that the appellant is stated to have pressurised the complainant to come to his wife's private clinic for the delivery. The allegation is of improper administration of anesthetic injection resulting in the death of the child soon after delivery. In any event, these are matters to be examined in trial.

No one appears on behalf of the complainant, respondent no.2 despite service of notice. We have considered the submissions on behalf of the appearing parties.

The allegations in the complaint are that the wife of respondent no.2 was expecting. She was under the supervision of respondent no.3 at the government hospital, Kishangarh where the appellant was an anesthetist. The appellant had suggested to the complainant to have the child delivered at the private clinic run by the wife of the appellant at lesser expense. The wife of the complainant lost consciousness upon the appellant administering her injection at the hospital on 23.10.2001. She regained consciousness and had to be shifted to the hospital at Ajmer where a pacemaker was installed but the child did not survive after delivery.

We are of the opinion that loss of consciousness upon

administration of anesthesia is but a natural consequence. The complainant himself admits that his wife then regained consciousness at the hospital at Kishangarh. Apparently, there was no fault on part of the appellant. There is no allegation or material annexed to the complaint that the appellant was not a qualified anesthetist or that the anesthesia was administered to the patient in a negligent manner or in improper dosage. The fact that the patient developed complications because of her own bodily infirmity is evident from the fact that a pacemaker had to be installed at the government hospital at Ajmer after which she delivered the child on 26.10.2001. Unfortunately the child did not survive and expired at the hospital at Ajmer on 14.11.2001, after more than two weeks. We find it difficult to accept that the death of the child was a consequence of the anesthesia administered to the patient. There is no material whatsoever with regard to the post mortem report of the child with regard to the cause of death. It cannot be lost sight of that the child survived for more than two weeks. The appellant states that the child was born with the umbilical cord around his neck and response time after delivery was delayed by about seven minutes. There is no rebuttal to this fact. In absence of any prima facie material against the appellant, who is a doctor, it shall not be appropriate to subject him to the travails of a criminal prosecution on vague allegations.

In *Jacob Mathew* (supra), with regard to medical negligence as an offence under Section 304A IPC it was observed:

"48.(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."

In the facts and circumstances of the present case, we are satisfied that on the face of the complaint itself no offence is made out against the appellant under Section 304A IPC to sustain the order of cognizance. Resultantly, the order of cognizance dated 30.05.2002 and the order of the High Court dated 12.12.2008 are set aside with regard to the appellant.

The Criminal Appeal is allowed.

Pending application(s), if any, shall stand disposed of.

.....J.  
(Navin Sinha)

.....J.  
(Indira Banerjee)

New Delhi  
August 8, 2019

**ITEM NO.109**

**COURT NO.12**

**SECTION II**

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**Criminal Appeal No(s). 531/2010**

**DR. V.K.JAIN**

**Appellant(s)**

**VERSUS**

**THE STATE OF RAJASTHAN & ORS.**

**Respondent(s)**

**Date : 08-08-2019 This appeal was called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE NAVIN SINHA**  
**HON'BLE MS. JUSTICE INDIRA BANERJEE**

**For Appellant(s)**

**Mr. Sumit Singh Somria, Adv.**  
**Ms. Charu Mathur, AOR**

**For Respondent(s)**

**Mr. Milind Kumar, AOR**  
**Mr. Vishal Meghwal, Adv.**  
**Ms. Pragati Neekhara, AOR**

**UPON hearing the counsel the Court made the following**  
**O R D E R**

**The Criminal Appeal is allowed in terms of the signed order.**

**Pending application(s), if any, shall stand disposed of.**

**(MANISH SETHI)**  
**COURT MASTER (SH)**

**(SAROJ KUMARI GAUR)**  
**BRANCH OFFICER**

**(Signed order is placed on the file)**