THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Muhammad Hashim Khan Kakkar
Mr. Justice Ishtiaq Ibrahim

Crl.P.L.A. 955 of 2020
(against the Judgment dated 16.07.2020 passed by Islamabad High Court, in Crl. Appeal. No. 193/2017)

Amjad Ali

...Petitioner(s)

VERSUS

Dr. Taqdees Naqaish & others

...Respondent(s)

For the Petitioner : Mr. Mudassar Khalid Abbasi, ASC
a/w Petitioner

For Respondent : Raja Ikram Ameen Minhas, ASC

For the State : Mr. Tahir Mehmood, State Counsel

Assisted by : Ms. Tayyaba Munir, Law Clerk

Date of hearing : 06.10.2026

JUDGMENT

ISHTIAQ IBRAHIM, J. Through the instant Criminal Petition, Amjad Ali, petitioner-complainant, seeks leave to appeal against the judgment dated 16.07.2020, passed by the learned Islamabad High Court, Islamabad, whereby the appeal preferred by the petitioner-complainant, was dismissed and the judgment dated 25.10.2017, passed by the learned Judicial Magistrate, Section 30, Islamabad-West ("Trial Court"), acquitting the respondents-accused in Private Complaint No.128/2016, dated 16.12.2016, instituted under Sections 319, 322 and 34, PPC, was upheld.

2. The respondents-accused are Medical Practitioners/doctors associated with Shifa Hospital, Islamabad. The wife of the petitioner was brought to the said hospital on account of labour pain and was operated upon in the Labour Room, where she gave birth to twin female babies. The grievance of the petitioner-complainant is that, contrary to his request, the accused doctors administered spinal anaesthesia instead of an epidural injection, as a result whereof his wife allegedly

developed back pain which, with the passage of time, became severe and ultimately resulted in her death.

3. Having heard the arguments of learned counsel for the parties, it appears from the record that on the same allegations, initially FIR No.83 dated 19.06.2013 under section 322 PPC was registered by the complainant against the accused doctors but the same was subsequently cancelled by the competent authority after investigation. On 16.12.2016, after a period of more than three years, the complainant filed a private complaint. The core contention of the petitioner rests on the assertion that the respondent-doctors committed the offence of Qatl-i-Khata under Section 318 PPC (punishable under Section 319 PPC), thereby rendering their premature acquittal under Section 249-A Cr.P.C. illegal. To evaluate the propriety of the acquittal, we must first examine the statutory parameters of Section 318 PPC a plain reading of which reveals that while intention to cause death or harm is absent, the death must be the direct result of a "mistake of act" or "mistake of fact," which in the realm of medical treatment requires establishing gross criminal negligence or reckless disregard of professional duty rather than a mere clinical mishap or error of judgment. Here we would like to elaborate on the concept of negligence and how such negligence is to be treated in case of medical professionals. Negligence is either the omission to do something which a reasonable and prudent person would ordinarily do in the circumstances, or the commission of an act which such a person would refrain from doing.[1] For negligence to give rise to legal liability, there must be three elements namely, a duty of care, a breach of that duty, and damage resulting from such breach. The existence of an error or an undesirable outcome, by itself, does not establish negligence as the commission or omission complained of must be connected with the injury sustained.

4. Negligence, however, requires particular consideration where the allegation concerns a medical professional and can be assessed using the Bolam's test. In *Bolam v. Friern Hospital Management Committee, [(1957) 2 All ER 118]*, it was held:

> "Where you get a situation which involves the use of some special skill or competence, then the test.....is the standard of ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well-established

[1] Law of Torts, Ratanlal & Dhirajlal Twenty-fourth Edition 2002, at p.441-442

> law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art....
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> [A doctor] is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art....Putting it the other way round, a [doctor] is not negligent, if he [has acted] in accordance with such a practice, merely because there is a body of opinion which [takes] a contrary view."

A mere error of judgment, an accident, or a simple lapse in care does not, without more, establish professional negligence. A medical practitioner cannot be held liable merely because another course of treatment was available or a more experienced practitioner might have adopted a different approach. The relevant inquiry is whether the practitioner acted in accordance with a practice accepted as proper by the medical profession at the material time and exercised the degree of care and competence reasonably expected in the circumstances. Nor can liability be founded merely upon the failure to adopt extraordinary precautions simply because, in hindsight, they might have prevented the eventual harm. A medical professional may be found negligent where the requisite professional skill is lacking or where the skill possessed is not exercised with reasonable competence in the particular case. The applicable standard is that of an ordinarily competent practitioner exercising ordinary professional skill in the relevant field, rather than that of the most highly skilled or exceptionally experienced specialist. The law does not demand perfection from a medical practitioner and it only requires the exercise of reasonable professional competence in the discharge of the duty owed to the patient.

5. It is equally important to distinguish negligence actionable under civil law from negligence attracting criminal liability. Conduct sufficient to establish civil negligence does not necessarily constitute a criminal offence as in numerous situations a case for civil liability will be made but criminal liability will not be made out.[2] Criminal liability requires a substantially higher degree of negligence, characterised by grossness or a degree of recklessness sufficiently serious to warrant penal consequences. The doctrine of *magna culpa dolus est* (great negligence is equal to intention), can be applied to the issue at hand. According to this doctrine, when the degree of negligence is gross, it raises the presumption that the act was intended. The degree of

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[2] Malay Kumar Ganguly vs Sukumar Mukherjee [AIR 2010 SUPREME COURT 1162]

carelessness is measured by the imminence of the threatened mischief - the greater and more imnnent the mischief, the more probable it is that the mischief was intended. Intent in such cases, though not actual, is implied. If the alleged negligence is lower than gross negligence, there can be no mens rea to the crime and hence, such negligence cannot be criminalised, though it might attract civil penalty. An ordinary lapse in care, even where it results in injury, cannot, without more, sustain a criminal prosecution. The conduct must be assessed in its entirety, having regard to the nature of the duty, the circumstances in which it arose, the precautions reasonably required, and the gravity of the departure from the standard expected of a prudent professional. Accordingly, criminal negligence on the part of a medical practitioner is established only where the act or omission is of such a grave and culpable nature that an ordinarily competent practitioner, exercising reasonable prudence in the same circumstances, would not have acted or omitted to act in that manner. The risk undertaken must be of such a character and magnitude that the resulting harm was sufficiently foreseeable and the conduct displayed a gross disregard for the safety of the patient. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not be enough to hold the doctor criminally liable. We are of the view that for prosecution to establish that a death occurred due to medical negligence under provisions of Section 319 Qatl-i-Khata by rash and negligent act the prosecution must prove (i) the existence of duty; (ii) a breach of the duty causing death and (iii) the breach of the duty must be characterized as gross negligence by that medical professional. The mere fact that injury or death has occurred during medical treatment cannot, in itself, substitute for proof of this heightened degree of negligence.

6. In the present case, the record reflects that the post-operative complications were managed under standard medical protocols, and the initial administrative censure by the regulatory body (PMDC) was subsequently withdrawn upon finding no medical negligence. Furthermore, the petitioner failed to bring on record any specific illegal act or gross professional indifference attributable to the respondent-doctors that could constitute a criminal "mistake of act or fact." Also, prior to the operation, consent of the petitioner-complainant had admittedly been obtained by the accused doctors. No previous ill-will,

animosity or enmity has been alleged against any of the accused doctors. The allegation, in substance, rests upon the assertion that spinal anaesthesia was administered instead of an epidural injection. However, the mere fact that a particular medical procedure or mode of anaesthesia was adopted, which subsequently resulted in an untoward outcome, by itself, does not establish the commission of a criminal offence unless the prosecution is able to prove through reliable and legally admissible evidence, that the act complained of was attended with the requisite criminal intent or culpable negligence, which is lacking in the instant case.

7. The circumstances of the case may also be examined in the light of Section 88 PPC, which embodies a statutory protection in respect of an act done in good faith for the benefit of a person with his express or implied consent. The provision, in substance, contemplates a situation where an act is not intended to cause death and is done in good faith for the benefit of a person who has consented, expressly or impliedly, to suffer the harm caused by the act or to run the risk thereof. The accompanying illustration makes the legislative intent even more explicit which states that where a surgeon, knowing that a particular operation carries a risk of death, nevertheless performs the operation upon a person suffering from a painful ailment, without intending to cause death and in good faith for the patient's benefit, with the patient's consent, such act does not constitute an offence merely because the known risk materializes. The protection afforded by Section 88, PPC, however, is not absolute. The provision cannot be construed as granting immunity to a medical practitioner from criminal liability for every act performed upon a consenting patient. The essential ingredients of the provision must co-exist, namely, that the act is done for the benefit of the person concerned, in good faith, without intention to cause death, and with the requisite consent. Thus, consent, though an important constituent, is not by itself determinative of criminal liability. The real question is whether the impugned act falls within the protective ambit of the statutory provision and whether the prosecution has produced material sufficient to establish that the act was performed otherwise than in good faith or with the requisite criminal culpability.

8. Tested on the touchstone of the aforesaid principle, the circumstances obtaining in the present case do not bring the

respondents-accused outside the protective scope of Section 88, PPC. The wife of the petitioner was admitted to the hospital for the purpose of delivery, underwent an operative procedure and successfully delivered twin female babies. The procedure was undertaken for her medical benefit and, as noticed above, consent had been obtained before the operation. There is nothing on record to suggest that any of the accused doctors intended to cause her death or that the administration of anaesthesia was undertaken for any purpose other than her medical treatment. Equally, there is no material establishing that the procedure was undertaken in bad faith or with knowledge of any circumstance which would convert the medical act into a criminally culpable one.

9. We, therefore, find that the learned Trial Court as well as the High Court have assigned cogent and convincing reasons for acquitting the respondents-accused by invoking the provisions of section 249-A Cr.P.C. No misreading or non-reading of any material piece of evidence, perversity or illegality has been pointed out which may warrant interference by this Court. Accordingly, this petition is dismissed and leave to appeal is refused.

Judge

Judge

Islamabad
The 6th day of October 2026

Approved for Reporting
M. Siraj SPS/ Tayyaba Munir, Law Clerk