

## ACCIDENT VICTIMS AND THE CRIMINAL LAW

ONE OF the grey areas of the law is that relating to the legal consequences of accidents and the action to be taken after a victim is injured, particularly in an accident caused by a motor vehicle. For reasons which cannot be ascertained, it has always been assumed that if a person dies or is injured in an accident, no one should touch the body of the deceased or treat the injured victim, until the formalities of the law have been completed. It is common knowledge that when a person is seriously injured, every moment thereafter is of vital importance. The adjective "vital" in the preceding sentence has been deliberately used. The difference between life and death may often depend on whether medical treatment is administered within the first few minutes after the accident when the victim is fighting for survival. It is fortunate that someone has considered it proper to obtain a clarification of the legal position from the highest court of the land.

### I The legal principles

The judgment of the Supreme Court pronounced on the 28th August, 1989 in *Parmanand Katara v. Union of India*,<sup>1</sup> will be analysed presently. Before that is done, it may be convenient to refer to certain connected principles and provisions. The Constitution of India lays down in article 21 a prohibition against depriving any person of life or personal liberty except according to procedure established by law. This cryptic article is adequate notice, to all concerned, of the importance that is attributed by the Constitution-makers to the right to life. Unfortunately, however, the constitutional philosophy does not percolate easily into the line of thinking to which the bureaucracy has, for a long period, been accustomed. Illustrative of this hard position is a case reported in the press. A person driving a scooter was knocked down by a speeding car. A gentleman who was on the road, and who saw the victim of the accident bleeding profusely, took him to the nearest hospital. But the doctor there refused to attend to the case, because that particular hospital was not authorised to handle medico-legal cases. He advised the Good Samaritan to take the victim to another hospital, so authorised. This hospital was situated at a distance of about 20 kilometers. The Good Samaritan did carry the victim to that hospital, but, on the way, the victim succumbed to his injuries. The case mentioned above is not an isolated or unique one, it occurs daily, and one does not know how many lives could have been saved, if the law were clear on the point.

### II A recent judgment

That has now happened. Parmanand Katara has acted as a Good

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1. J.T. 1989(3) S C 496

Samaritan and come to the rescue, not only of victims of accident, but also to the rescue of doctors and others concerned with accidents. On reading the newspaper report mentioned above, he took the trouble of applying to the Supreme Court under article 32 of the Constitution, asking for a direction to the Union of India that every injured citizen brought for treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death and in the event of breach of such direction, apart from any action that may be taken for negligence, appropriate compensation should be admissible. After hearing the Union of India, the Medical Council of India and the Indian Medical Association, the Supreme Court held that a doctor does not contravene the law of the land by proceeding to treat the injured victim before the police formalities are completed.<sup>2</sup> In fact, no one has so far been able to discover any provision of law which can come in the way of a doctor treating a victim of accident without complying with the supposed formalities of the police. It is true that if the death of a human being occurs in certain suspicious circumstances, the law imposes a duty on the police to get an inquest report from the nearest executive magistrate empowered to hold inquest, as laid down in section 174 of the Code of Criminal Procedure, 1973. That section applies, *inter alia*, to a case of death by machinery or accident, or death under circumstances raising a reasonable suspicion of the commission of an offence. But the section has no application while the victim is living. In fact, there is a moral duty to save life while there is still hope. The Indian statute law does not impose on citizens a duty to make efforts to save a dying man. But such a duty is recognised at least by the ethics of the medical profession. Ever since the time of Hippocrates, doctors have considered it their sacred duty to make efforts to save life. Even in India, the current Code of Ethics of the Indian Medical Council, paragraph 3, provides: "I will maintain the utmost respect for human life from the time of conception."

### III Medical ethics in India

This is not a new development of a Western concept. Writers on medical science in ancient India shared the same philosophy and some of them have given detailed guidance on the subject. In the law of torts, a doctor who accepts a patient must thereafter treat the patient to the best of his knowledge and judgment and must exercise reasonable care and skill according to the accepted professional standards. The law of criminal procedure in India enacts no prohibition against immediate treatment of the victim of an accident, or for that matter, even the victim of a suspected crime. The assumption that a doctor should not touch such a victim is purely the result of misunderstanding of the law, fostered by bureaucratic indifference. It is,

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2. *Ibid.*

therefore, a matter of great satisfaction that the confusion is not removed. In fact, it appears from the judgment of the Supreme Court that in 1986, a meeting held under the chairmanship of the Director General of Health Services, Government of India, took a decision from which the first paragraph may be quoted:

Whenever any medico-legal case attends the hospital, the medical officer on duty should inform the Duty Constable, name, age, sex of the patient and place and time of occurrence of the incident, and should start the required treatment of the patient. It will be the duty of the "Constable on duty to inform the concerned Police Station or higher police functionaries for further action.

Full medical report should be prepared and given to the police, as soon as examination and treatment of the patient is over. The treatment of the patient would not wait for the arrival of the Police or completing the legal formalities.

#### IV Article 21 of the Constitution

The Supreme Court, in its judgment, has specifically approved of the above guidelines. Quoting article 21 of the Constitution, the court has made the following observations:

A doctor at the Government hospital positioned to meet this State obligation is, therefore, duty-bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way.<sup>3</sup>

#### V Calling doctors as witnesses

The above quotation is from the judgment of Justice Ranganath Misra. Concurring with this judgment, Justice Oza, in his judgment has also dealt with the question of medical personnel being called often in the court as witnesses, and has expressed the hope that everyone concerned will keep in mind that a man in the medical profession should not be unnecessarily harassed for interrogation or any other formality and "should not be dragged during investigation at the police station". He also expressed the hope that

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3. *Supra* note 1 at 502.

the law courts "will not summon a medical professional to give evidence unless the evidence is necessary and even if he is summoned, attempt should be made to see that the men in this profession are not made to wait and waste time unnecessarily".

These observations were presumably a response to the suggestion made in the affidavit filed before the Supreme Court by the Medical Council of India in the light of the need to prevent unnecessary harassment to doctors. The council made the following suggestion:

It is submitted that Evidence Act should also be so amended as to provide that the Doctor's diary maintained in regular course by him in respect of the accident cases would be accepted by the courts in evidence without insisting the doctors being present to prove the same or subject himself to cross-examination/harassment for long period of time.<sup>4</sup>

The Indian Medical Association also, in its affidavit, mentioned that private practising doctors "are harassed by the police and are, therefore, reluctant to accept the roadside casualties". Probably, it would be desirable to put the suggestion made by the Indian Medical Council on a statutory footing after due examination. While government records enjoy certain special status as public documents, this privilege or facility is not available to medical records of private hospitals. It should not be too difficult to find some solution with proper safeguards. In fact, the guidance given by the Supreme Court can also be usefully incorporated in the statute law of India, so that it becomes known to all concerned and also becomes easily acceptable to doctors, law enforcement officials, public spirited citizens and lawyers.

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4. *Id.* at 504.

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