



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Case Comment: Dr. Jacob George v The State of Kerala

Chinta Sravani^a

^aDamodaram Sanjivayya National Law University, Vizag, India

Received 20 December 2023; Accepted 13 January 2024; Published 17 January 2024

INTRODUCTION

When the judges are awarding the punishment, they have to follow a certain theory. Theories of punishment are applied all over the world, regardless of common-law countries and civil-law countries. In reality, when awarding the death penalty, it is not correct to award compensation. For example, when the judge is awarding the death penalty along with compensation, the judge follows the deterrent, retributive, and compensatory theories. It depends on the judge who is dealing with the case and which theory applies in that respective case. One should not classify the theories. It can be a mix of one or more theories. H. Kelson, in his *General Theory of Law and State*, described “*sanction as socially organized and consists in a deprivation of possession – life, freedom, or property.*”¹ As stated by Jeremy Bentham, *punishment is evil in the form of a remedy that operates on fear.*² Johan Finnish has said that the *delinquent behavior of a person needs to be taught not with melody but with an iron hand.*³ “There is the need for almost every member of society to be taught what the requirement of the law – the common path for pursuing the common good –

¹ MDA FREEMAN, *LLOYD’S INTRODUCTION TO JURISPRUDENCE* (17th edn, Sweet & Maxwell 2001) 282

² Jeremy Bentham, *The Theory of Legislation* (1995) 167

³ Johan Finniss, *Natural Law and Natural Rights* (Clarendon Press 2001) 262

entails – the vivid drama of the apprehension, trial, and punishment of those who depart from that stipulated common way.”⁴ A detailed explanation by the Kerala High Court on theories of punishment in *Dr. Jacob George v State of Kerala*. This article focuses on the critical analysis of the judgment by both the High Court and the Supreme Court.

FACTS OF THE CASE

Thanakamani, the victim who later became deceased, married a man named Satyam. After one and a half years of marriage, she gave birth to a son. Her husband deserted. After six months of pregnancy, her husband returned and stayed with her for two months. After 2 months, she conceived, and her husband deserted again. This time, she wanted to abort the baby. She informed her mother, who was PW2 in the case regarding the termination of pregnancy. Her mother, who was PW2, informed the victim’s cousin, who was PW 1. Her cousin, by chance, came to know about Dr. Jacob George’s hospital. The victim's mother and the victim’s cousin (PW1) went to Dr. Jacob for the termination of her pregnancy. At ten in the morning, she was admitted to the hospital. A homeopath named Dr. Jacob gave the family the go-ahead to terminate the pregnancy. He informed the victim’s mother and cousin to pay 600 rupees. In that case, 500 rupees were paid right away, and the remaining 100 rupees should be paid right after the operation. On the stipulation day, the doctor performed the surgery with a knife and perforated the uterus. After 5–6 hours of the operation, the victim became deceased at 3:00 pm. The Assistant Session’s Judge framed the charges under the IPC under S.312 and S.314. S.312 deals with the cause of miscarriage, and S.314 deals with the punishment for causing the miscarriage. The punishment is extended to 10 years and a fine. The judge acquitted the accused, saying that the prosecutor failed to prove beyond a reasonable doubt. The state filed an appeal before the High Court, and the High Court also took suo moto cognizance. The High Court upheld the judgment of the Assistant Session’s Judge’s acquittal into conviction. Dr. Jacob was awarded 4 years of imprisonment and a fine of Rs. 5,000, and out of that, Rs. 4000 shall be paid

⁴ Macklin Fleming, *Of Crimes and Rights: The Penal Code Viewed as a Bill of Rights* (W.W. Norton & Company 1978)

to the surviving son of the victim. Dr. Jacob filed a special leave petition with the Supreme Court under Ar. 136.⁵

LEGAL ISSUE

1. Whether the quantum of the sentence awarded by the High Court can be reduced.

REASONING

From the side of the appellant, their contentions were that: The prosecution failed to prove it beyond a reasonable doubt. The council concluded that the entire testimony was based on the victim's mother and cousin, an interested witness. The nurses turned hostile. They raised the contention that it was the victim's cousin who had attempted to end the pregnancy using an uncivilized means by inserting the stick and rod in the victim's uterus.

From the side of the respondent, report their contentions, which are that: The autopsy report clearly shows that the perforation of the uterus was done by Dr. Jacob. The person who admitted the victim stated that he was the person who took the victim's admission. From the appellant's side, the last plea was for mercy. His period should be reduced to the period he has already undergone. The appellant contended that he should be released on probation.

JUDGEMENT

What is the quantum of the sentence that should be reduced? Which theory can be followed?

Retribution Theory: The Supreme Court stated that if retribution was applied in the case, eye for eye, the doctor has taken life, so the doctor also should be deprived of life, but S. 312 and 314 do not involve the death penalty or punishment of 10 years; there is no scope of retribution. Retribution theory is an end-to-end theory.

Deterrent Theory: The doctor should be punished in a way that creates an opportunity to. The appellant's two-month suspension and our decision to affirm his conviction are likely to hurt

⁵ *Dr. Jacob George v State of Kerala* 1994 SCC 430

the practice and should discourage others from engaging in unlawful acts similar to the one that occurred at the band

Reformative Theory: One more anticipated result of serving a sentence is reformation. We believe the appellant's two-month confinement behind the iron bars and stone walls made him realize how much his homeopathic practice needed to change. By keeping the appellant inside the prison walls for approximately two months, the reformative aspect of the punishment has served its intended purpose. During this time, he was able to learn about the trauma associated with incarceration. As a result, he is now expected to take precautions to ensure that he does not commit any crimes in the future that could land him in jail.

Compensatory Theory: The Supreme Court stated that the amount of compensation shall be enhanced to 1 lakh rupees. He should submit it before 6 months to the nationalized bank in the name of the victim's surviving son and report it to the registrar. If the compensation is not paid within 6 months, his original punishment will be revived.

HIGH COURT AND SUPREME COURT ANALYSIS

The post-mortem examination performed by PW11, who asserts that Thanakamani's death should have occurred approximately 36 hours before his examination on the 17th at approximately 3:00 pm, would also support the testimony of PW1 on the precise time and date of the victim's death. There is no doubt regarding the nurses (PW3, PW4) turning hostile, as they were the employees of Dr. Jacob; they may tend to change their testimony. HC did not believe that the victim's cousin, who had attempted to end the pregnancy using uncivilized means by inserting a stick and rod into the uterus, should inform the police before operating. Therefore, HC cancelled the contention. The Supreme Court stated, 'Had he been a qualified doctor? While conducting the operation, if he commits a mistake, we can release him on probation, but he is not a qualified doctor, as evidenced by the autopsy report. Dr. Jacob George cited *Manchikampillai v State of Madras*. The appellant argued in that case that, even though he is a doctor, because of his error of judgment toward the patient, probation was an extension. If the probation was extended to him, why not to the appellant? But in the *Manchikampillai*, the

doctor was qualified, so the precedent is not extended. The Supreme Court stated that it is not a fit case to extend probation.

AUTHOR'S OPINION

The case of *Dr. Jacob George v the State of Kerala* presents a complex scenario where the application of different theories of punishment comes into play. The retributive, deterrent, and compensatory theories have been evaluated in the context of the awarded sentence and compensation. The judgment of the High Court and Supreme Court reflect the nuanced considerations of the legal system in balancing justice, reformation, and deterrence. The case raises important questions about the appropriate application of punishment in the context of criminal acts and the need for a comprehensive approach to addressing such legal matters.

CONCLUSION

The case commentary concludes by emphasizing the significance of considering the specific circumstances of each case when determining the appropriate theory of punishment to be applied. It underscores the need for a balanced approach that considers the principles of retribution, deterrence, and reformative theory. It also highlights the importance of the judiciary's role in ensuring that justice is served while considering the potential for rehabilitation and the impact of the punishment on the individual. Furthermore, it underscores the complexity of applying multiple theories of punishment in a single case and the need for a nuanced approach to sentencing. It also emphasizes the role of precedent and legal principles in guiding the judiciary's decisions, as evidenced by the reference to previous cases and legal doctrines. Overall, this case commentary provides a comprehensive analysis of the legal and ethical considerations involved in the case of *Dr. Jacob George v The State of Kerala*, shedding light on the intricate interplay of various theories of punishment and their application in real-world legal scenarios.