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CASE COMMENT: ARUNA RAMCHANDRA SHANBAUGH V. UNION OF INDIA

~ Aarya Dubey¹

SUPREME COURT CASE: 7 March 2011

PETITIONER: Aruna Ramachandra Shanbaugh

RESPONDENT: Union of India

BENCH: Hon'ble Justice Markandey Katju and Justice Gyan Sudha Misra

INTRODUCTION

Article 21² The Constitution guarantees to all persons Right to life and personal liberty. Over the years, the scope of the aforementioned Article has been expanded by the Indian judiciary at several instances, to include Right to Privacy, Right to Sleep, Right to pollution free environment, Right to Food, Right to Medical care, etc. within its ambit³. However, whether the Right to Life also includes Right to Die within its scope has often been a subject of controversies and discussions. In many parts of the world, issues concerning the end of a person's life peacefully have risen to the centre of public debates in recent decades. Right to die with dignity, as well as the associated rights to euthanasia and assisted suicide are the rising topics of human rights concern.

Aruna Ramachandra Shanbaugh v. UoI is a landmark judgement in this regard. The petition was filed on behalf of the petitioner by her supposed next friend. The Original Jurisdiction of the SC under Article 32 of the Constitution, was invoked to let the petitioner, who was in an alleged persistent vegetative state (hereafter, PVS), die a peaceful death. Although in several previous cases, *Gian Kaur v. State of Punjab*⁴ For instance, it has been held that the scope of Article 21 doesn't include Right to Die, and could have outrightly rejected the petition on the ground that

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² INDIA CONST. art. 21.

³ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

⁴ Gian Kaur v. State of Punjab, 1996 AIR 946.

there is no evidence of the violation of fundamental right, the Court decided to entertain the case, and permitted the petition.

FACTS OF THE CASE

Aruna Shanbaug, on whose behalf the petition was filed, was a nurse at the King Edward Memorial Hospital of Mumbai. On the evening of November 27th, 1973, she was assaulted by a sweeper, who used a dog chain to strangle her neck. He then attempted to rape her but discovering that she was on her menstruation, he engaged in anal intercourse (sodomization). The next morning, she was found lying on the floor, covered in blood, in an unconscious state. Allegations were that her brain was damaged due to the constriction of her neck, which had stopped the supply of oxygen.

It was further alleged that 36 years had passed since that incident, but Aruna's condition has not shown any sign of improvement to any of the treatments so far. Since all these years, she had been lying on the same bed, under the nursing care of the hospital staff. Absolutely devoid of any human element and with no possibility of her recovering from this state, it was prayed by the petitioner before the Hon'ble Court that Aruna be stopped feeding food and allowed to die a peaceful death.

ISSUES RAISED

1. Should the life-supporting systems of a person, who is in a PVS, be removed to let him/her die a peaceful death, and should that be made lawful?
2. Does the next friend of the person who is in a vegetative state and thus not able to file the petition, have the right to file it on his/her behalf?
3. Should the request of the next friend to let the patient die peacefully, be respected, if such a wish had not been expressed by the patient already?

CONTENTION OF THE PETITIONER

Mr. Shekhar Naphade, the learned counsel for the petitioner, pleaded before the Hon'ble SC to allow euthanasia for Aruna, who has been in a vegetative state for 36 long years, so as to put an end to her sufferings, distress and agony. The judgement of the SC in *Vikram Deo Singh Tomar v. State of Bihar*⁵ was relied upon where the scope of Article 21 was discussed over. It was observed

⁵ *Vikram Deo Singh Tomar v. State of Bihar*, AIR 1988 SC 1782.

that every individual is privileged to a standard of living commensurate with his/her human individuality, and the Right to live with dignity is the fundamental right of every Indian citizen. Relying on yet another judgement of the Hon'ble Court, *P. Rathinam v. Union of India*⁶, where it was held that Article 21 includes the Right to Die, it was contended by the learned counsel that life does not mean a 'mere animal existence', but a 'worthy living', and withholding of life-support systems should be legal and lawful, if the life of a person is so poor that it would be rather better if it doesn't continue.

It was further pleaded by the learned counsel that considering the debilitated, enfeebled and crippled condition of Aruna, who is alive only on the battered food which is put in her mouth by the nursing staff, and has no possibility, as faint as it may be, of any recovery, she should be relieved from the excruciating pain and continuing sufferings of her disabled life.

CONTENTIONS OF THE RESPONDENT

As per the statement of Dr. Sanjay Oak, the Dean of the KEM Hospital, where Aruna was being provided the required clinical treatment and nursing care, she (Aruna) was "very much alive". She relished non-vegetarian food, loved listening to devotional songs, and would express her displeasure by shouting when the tape recorder was turned off. The Dean further mentioned in his statement that the hospital staff, who have had taken such an exceptional care of her that she has not developed even a single bed sore all these years, have not done so because they were duty bound, but out of sheer love and affection. It was also asserted by him that putting her on euthanasia would not just be difficult for the Hospital staff to accept, but will also be outrightly wrong, immoral, and unjust.

The learned Attorney General representing the respondents, drew the attention of the Hon'ble Court to the report of the Law Commission of India, 2006 on 'Medical Treatment to Terminally Ill Patients', and stated that it has not been granted the acceptance by the Government of India. Withholding the life support system, Aruna was currently put on, would be a criminal offence, as it has yet not been recognized by the Indian law and Judiciary. The learned counsel asserted that even if euthanasia is made legal, there's a greater risk attached as the relatives or kith and kins of a person may conspire with the doctors to get the terminally ill patient killed, for his property. It

⁶ P. Rathinam v. Union of India, 1994 AIR 1844.

was also contended that the petition lacked *locus standi*, as if anyone, it is the Nursing Staff and not Pinky Virani, who should be considered the next friend to Aruna, as it is them who have been taking care of her medical and daily needs meticulously all these years. Thus, if anyone, it is the Hospital and its staff who can file a writ petition on behalf of Aruna Shanbaug before the Hon'ble Court.

RATIONALE OF THE JUDGMENT

There were some divergences in the allegations made by Pinky Virani, who had filed the petition on Aruna's behalf, and the counter affidavit filed by Dr. Amar Ramaji Pazare, Professor and Head of the KEM Hospital. Thus, to examine and prepare a report of the physical and mental conditions of Aruna, a team of 3 distinguished doctors was appointed by the SC. In the physical examination, her pulse rate, blood pressure, and respiratory rate were recorded normal on the charts with no signs of respiratory distress or breathlessness. She also seemed to enjoy listening to devotional songs and relish the food of her liking. As per the findings of the mental examination, it was observed by the doctors that although she was conscious, she appeared to be unaware of her surroundings and herself, and started making sounds and gestures on realizing the presence of humans around her. In the report prepared by the team, it was thus submitted that Aruna Shanbaug was neither 'brain dead' nor 'comatose', though she meets the criteria of being in a PVS.

Although withholding life-support systems, assisted suicide, and passive euthanasia have been incorporated into the legal system of several countries, the situation has remained dicey in India. In the landmark judgement of *Gian Kaur v. State of Punjab*⁷ which override the decision in *P. Rathinam v. Union of India*⁸, it was held by the SC that both euthanasia and assisted suicide are contrary to the Indian law, and could be made legal only by the legislations. However, the Hon'ble SC, in the present case opined that *Section 309*⁹ of IPC (which punishes anyone attempting to commit suicide), which although held its constitutional legality in *Gian Kaur v. State of Punjab*, should now be deleted by the Parliament. In view of the Hon'ble Court, any person who attempts to commit suicide does so in mental agony, and needs our support and care instead of punishment. A clear difference between active and passive euthanasia was also drawn by the SC, and it was

⁷ *Gian Kaur v. State of Punjab*, 1996(2) SCC 648.

⁸ *P. Rathinam v. Union of India*, 1994(3) SCC 394.

⁹ Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860.

held that passive euthanasia can be allowed in 'rarest of the rarest cases', with the approval¹⁰ of the concerned High Court (hereafter, HC).

It was observed by the SC that Aruna Shanbaug who was allegedly dead already, was not so. Any person is considered dead only if one's brain is dead, but it was clearly evident from the medical examination reports that Aruna's brain showed some activity as she could realize the presence of people around her, and could express her likes and dislikes by making sounds and gestures. On deciding the question of validity of withholding the life-support system, it was observed that there is no such statutory provision in India for a person who is either in PVS or incompetent to take his own call in this regard.

The law was laid down by the SC and was to be in force until any law on the subject is made by the Parliament. It was laid down that in situations where the person is not in a state to express his consent on the discontinuance of the life-support facilities, it would be on the parents or spouse or other close relatives or next friend to decide it on his/her behalf, with the assent of the concerned HC, provided such a decision is made in the best interest of such person and a bona-fide manner.

The SC thus rejecting the petition filed before them, stated that Aruna Shanbaug could not be allowed passive euthanasia as she was not yet brain-dead, and the same has been proved by her medical reports. In furtherance, the Court stated that there was no locus standi in the present case as Pinki Virani cannot be said the next friend to Aruna. If anyone, it was the hospital and nursing staff which could have filed the petition on her behalf.

INFERENCE

Although the judgement was a progressive step in the Indian Judiciary which not only abolished the obsolete *Section 309* of the IPC, and legalised passive euthanasia, there indeed were certain lacunas, which remained unaddressed.

Aruna was sodomized that unfortunate night, however there were no charges of anal rape against her culprit. He was merely charged with 'attempt to murder' and 'robbery' for having stolen a watch and earrings. That the victim was sodomized was not even mentioned in the First Information Report (FIR). It is terribly sad that in a country like India, where the daily newspapers

¹⁰ INDIA CONST. art. 226.

are replete with heinous incidents of rape and gang rape of young women and little girls, their culprits- a menace to society, breathe in the air of freedom with even no charges of rape framed against them.

On the other hand, although the legalisation of passive euthanasia is widely celebrated in India, it has opened doors to immense misuse by the hands of greedy, and the opportunists. It is often overlooked by the law givers and law makers that no law will be really effective and serve its purpose, until the mindset and thinking of every Indian changes for the better. Thus, devising of laws alone ain't going to bring any revolutionary change in the brutally corrupted society; it is the formulation of laws coupled with the realisation of social conscience, and the spread of education that will actually help to arrive at any solution.

