Privy Council Appeal No. 15 of 1966

Sunil Chandra Bhattacharya – – – – – – *Appellant*

v.

General Medical Council – – – – – – *Respondent*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH APRIL 1967

Present at the Hearing:

LORD HODSON
LORD GUEST
LORD UPJOHN

[*Delivered by* LORD HODSON]

This is an appeal against a decision of the General Medical Council, acting by its disciplinary committee, that the appellant had been guilty of infamous conduct in a professional respect and that his name should be erased from the Register of medical practitioners. The decision was reached on 27th May 1966 after a three-day hearing.

The appellant was charged with: (1) having in or about March 1957 entered into a professional relationship with a Mrs. Tye when he accepted her, her then husband and their daughter to be his patients under the National Health Service and having attended each member of the family in his professional capacity from time to time; (2) having retained Mrs. Tye and her daughter on his list of patients under the National Health Service until 23rd September 1965; (3) during a period beginning in or about the autumn of 1959 and continuing until 8th May 1965, or thereabouts, having entered into and maintained an improper association with Mrs. Tye; (4) in the course of the improper association having committed adultery with Mrs. Tye on numerous occasions between January 1962 and March 1965 at his surgery and at Mrs. Tye's residence; (5) in particular, having committed adultery with Mrs. Tye at her residence on 11th March 1964.

Except in so far as Mrs. Tye's husband was concerned all the charges were held to be proved.

In announcing the decision of the committee the President said:—

> "Dr. Bhattacharya: I have to announce that the committee have judged you to have been guilty of infamous conduct in a professional respect in relation to the facts proved against you in the charge, and have directed the Registrar to erase from the Register the name of Sunil Chandra Bhattacharya.
>
> I am to add that although the committee has been unable to determine when your improper association with Mrs. Tye began, they have noted that if your own version be accepted, you took Mrs. Tye on to your list for the very purpose of covering the intimacies which were in progress between you. I am asked to say that we consider this, if it was indeed the fact, to have been the plainest possible abuse of your professional position."

The appellant has never admitted that sexual intercourse in the full sense of the expression has taken place between himself and Mrs. Tye since, as he has maintained, he is incapable of that act. Nevertheless, before their Lordships no distinction has been drawn between full intercourse and the sexual intimacies which admittedly took place and the argument on behalf of the appellant has been directed to the question whether on the facts as charged and established as the committee found he has been guilty of infamous conduct and if he has been rightly found guilty whether the penalty of the erasure of his name from the Register should stand.

The appellant's main contention is that he met Mrs. Tye about 1955, that is to say about two years before she became his patient, that he made amorous advances to her almost immediately after meeting her and that the association on the basis of sexual familiarities occurred from 1955 to 1965 inclusive.

She having been in effect his mistress (as he contended) long before she became his patient, he maintains that the committee were wrong in principle in finding him guilty of infamous conduct in a professional respect. With this situation he contrasts the case of the medical man who makes his patient his mistress, which it is admitted on his behalf is an obvious example of conduct properly described as "infamous in a professional respect".

Before dealing further with the facts their Lordships think it well to refer to the accepted definition of such conduct as it appeared in the Medical Act 1858 (21 and 22 Vict. c. 90) s. 29 where the words quoted first appear. The phrase is defined in the judgment of the Master of the Rolls, Lord Esher, in *Allinson v. General Council of Medical Education and Registration* [1894] 1 Q.B. 750 at 760 which reads as follows:

> "I adopt the definition which my brother Lopes has drawn up of at any rate one kind of conduct amounting to 'infamous conduct in a professional respect', viz.: 'If it is shewn that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency', then it is open to the General Medical Council to say that he has been guilty of 'infamous conduct in a professional respect'."

Their Lordships have referred to this definition as "accepted" and regard it as the basis of the robust rule shortly stated by Scrutton L. J. in *R v. General Medical Council* [1930] 1 K.B. 562 at 569 that the council are the judges without appeal of the existence or absence of serious misconduct in a professional respect. In their Lordships' view their jurisdiction on appeal is not confined to considering whether the alleged facts if proved are capable of amounting to infamous conduct in a professional respect, but extends to the consideration whether in the particular circumstances of the case these facts justify a finding of infamous conduct in a professional respect; but in the latter case their Lordships' Board would naturally be very slow to differ from the conclusion of the General Medical Council to whom is entrusted the decision of these matters as representing the responsible body of opinion in the medical profession upon professional matters. The words quoted are to be found in the relevant statute, the Medical Act, 1956. It is convenient to refer to the case of *Felix v. General Dental Council* [1960] A.C. 704 where "infamous or disgraceful conduct in a professional respect" as mentioned in the Dentists Act 1957 s. 25 was under consideration. Lord Jenkins delivering the judgment of the Board said at page 719 that "the words 'infamous or disgraceful conduct' should be construed in conjunction with the words 'in a professional respect'." At page 721 he said "To make such a charge good there must, in their Lordships' opinion, (generally speaking) be some element of moral turpitude or fraud or dishonesty in the conduct complained of, or such persistent and reckless disregard of the dentist's duty in regard to records as can be said to amount to dishonesty for this

purpose." The case then under consideration was of carelessness in charging which was held to be to some extent a question of degree. It was decided that the impugned conduct fell short of the degree of culpability which was covered by the language of the statute.

Returning to the case now under review there was an acute conflict of evidence between the parties but it appears from the second paragraph of the President's address to the appellant that the committee would have come to the same conclusion even if it had accepted the appellant's evidence that the intimate relationship occurred before Mrs. Tye became his patient.

It is on this footing that counsel for the appellant has pressed upon their Lordships that the decision of the committee is wrong in principle. Their Lordships are unable to accede to this argument. It may well be that there is a relevant distinction between the case when the intimate association has existed between a doctor and his female patient before ever any thought arose of her being treated by him professionally and the cases where the situation is reversed. In the language of the Board contained in a judgment delivered by Lord Upjohn in *McCoan v. General Medical Council* [1964] 1 W.L.R. 1107 at 1112 " One of the most fundamental duties of a medical adviser, recognised for as long as the profession has been in existence, is that a doctor must never permit his professional relationship with a patient to deteriorate into an association which would be described by responsible medical opinion as improper." This does not involve the converse proposition that there is nothing improper from a professional point of view in maintaining a pre-existing improper association with a patient and their Lordships would not for a moment accept that as a matter of principle such conduct is not covered by the statutory provisions as to " infamous conduct in a professional respect ".

The tendency of conduct to debase or degrade the standing and reputation of the profession will vary from case to case and there may be cases when the maintenance of a long standing pre-existing association can be regarded as much less serious than those when the professional relationship has deteriorated into an improper association but this is not to exclude the former from the category of those cases which can be made subject to disciplinary action. Their Lordships have thought it right to deal with the matter as one of principle especially as on behalf of the appellant little or no reference was made to the detailed facts of the case.

Counsel appearing on behalf of the General Medical Council did however draw attention to the facts and made it plain that the committee took a comprehensive view of the evidence as a whole after full enquiry and decided accordingly.

The appellant was at all relevant times living apart from his wife from whom he was separated by Judicial Decree. It was established that Mrs. Tye became his patient in March 1957 and that from the autumn of 1959 until June 1961 when Mrs. Tye's husband left home the relationship continued at her home. Mr. Tye also became a patient of the appellant. Subsequently the same relationship was maintained during and after the Tyes' marriage which was brought to an end by divorce in January 1962.

Mrs. Tye maintained throughout, with a single exception of an isolated answer at the beginning of her cross-examination (to be mentioned later), that she met the appellant for the first time in his surgery when she became his patient and that the association developed thereafter. She said that there was no full act of intercourse until after the divorce but thereafter it continued to take place frequently not only at the surgery but also at her own house until May 1965. One incident was described by her in which she was corroborated by a neighbour, Mrs. Kemp, who found her in bed in her house with the appellant on 11th March 1964, the date being fixed by Mrs. Tye by an entry in her diary. The significance of this incident is that the appellant denied that such a thing happened and as the

findings show his denial was not accepted. Moreover, the incident shows a degree of flagrancy which was borne out by other evidence of the appellant's visits to the house of Mrs. Tye and her visits to the surgery.

The appellant on the contrary sought to establish that his association although it continued for many years on a sexual level had advanced during the period when he first met Mrs. Tye, as he said in 1956, to very much the same height as it subsequently reached after she became his patient. He was supported in his statement that he met Mrs. Tye at a date before she became his patient by a Mrs. Cornwall who spoke of a meeting in 1956. Mrs. Tye gave an answer which was quite out of line with the rest of her evidence. When asked as the first question in cross-examination: "*Q*. You met Dr. Bhattacharya a couple of years before you became his patient, did not you? *A*. Yes." It cannot be said however that the committee accepted the appellant's evidence in preference to that of Mrs. Tye on any matters. Her evidence was generally accepted in preference to his in support of the specific charges made against the appellant and all that can be said is that the committee made no finding as to the date when the association began. On this meagre foundation there is little or no room for any argument which can be said to raise the question whether an existing improper relationship which precedes the relationship of doctor and patient may excuse the subsequent maintenance of that association.

On the view most favourable to the appellant of the facts disclosed in this case it is no misuse of language to say that the conduct proved was "infamous in a professional respect".

There remains the penalty of erasure of the appellant's name from the Register which it was contended was severe in the extreme. As has before been pointed out there is no other penalty provided by the Act. Nevertheless, as was declared in the *McCoan* case (supra), all that can be said is that if the sentence is to be set aside it must appear to their Lordships to be wrong and unjustified. This is far from the case here as the facts which have been briefly recited must show.

Their Lordships will for these reasons humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of this appeal.

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In the Privy Council

SUNIL CHANDRA BHATTACHARYA

v.

GENERAL MEDICAL COUNCIL

DELIVERED BY
LORD HODSON

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