

THE PHYSICIAN FALSELY ACCUSED: The Case Of Doctor Leonard Arthur

Over the years, numerous doctors have stood trial for murdering their patients, their wives, or even complete strangers, sometimes for money, sometimes for love, sometimes for kicks. Such cases are often sensational, and always attract serious attention from the media. In 1981 though, a case which was anything but sensational, but which raised serious medical and ethical issues, was heard at Leicester Crown Court. Dr Leonard Arthur, a senior consultant paediatrician, was charged with murdering a newborn baby. After an eighteen day trial he was acquitted. The case was, on the face of it, one of mercy killing, but Dr Arthur ended up in the dock only because of flawed forensic evidence.

It all started when Mrs Molly Pearson gave birth to a Down's Syndrome baby in Derby City Hospital on June 28, 1980. The baby, named John, was rejected by both parents, an apparently cruel but not unnatural reaction, especially for a woman who has carried a child for nine months. It may have been that in time Mrs Pearson would have changed her mind, but as is often the case with Down's babies, the child was not otherwise healthy, and Dr Arthur was forced to make one of those decisions that only doctors - and God - can make. He prescribed DF 118 - a morphine type drug - and appended a note to the child's case notes: "Parents do not wish it to survive. Nursing care only".

The baby survived for three days, and that would ordinarily have been the end of the matter, but a member of the anti-abortion campaigning organisation LIFE was present, either in the maternity ward, or somewhere in the hospital, and referred the case to the authorities.

As a result of this, and apparently after some considerable study of the case papers, Dr Arthur was charged with murder on February 2, 1981. Ordinarily a murder suspect can expect a remand in custody, but this was no ordinary case, and he was granted bail on condition that he surrendered his passport. He was as a consequence either suspended or took a leave of absence. On April 2, he was committed for trial, and his bail was renewed on condition that he did not visit the hospital, (1) but later that month he resumed work on condition that he did not treat babies under thirty days old, a wise precaution under the circumstances. He was said to have received massive public support. (2)

The trial of Dr Leonard Arthur for the murder of John Pearson opened on October 13, 1981. Earlier that month, Dr Jolly of London's Charing Cross Hospital had nearly found himself in a similar position, but no charges were brought against him in connection with the death of a two week old spina bifida baby in 1979. (3)

Dr Arthur's defence was financed by the Medical Protection Society, and he was defended by George Carmen QC, whose name was more often associated with libel cases. The Crown was represented by the Birmingham-based silk Douglas Draycott. Draycott, a very experienced QC, had been Recorder of Shrewsbury from 1966-71. Later in his career he would be subjected to a campaign of defamation by the supporters of Satpal Ram, whom he defended unsuccessfully on a murder charge.

Though the prosecution accepted throughout that Dr Arthur's motives had been "of the highest order", the allegation (4) was that the child had died of bronchopneumonia due to

lung stasis caused by dihydrocodeine poisoning and that it had been deliberately deprived of food and medical treatment. Professor Usher who performed the post mortem had concluded, incorrectly, that apart from its Mongolism the child had been born healthy. The defence expert Professor Emery concluded otherwise.

On October 22, Professor Usher conceded that the Crown's case had been "inaccurate and misleading"; far from being an otherwise healthy baby, John Pearson had been born with both brain and lung damage. (5)

On October 27, after hearing submissions, the judge withdrew the murder charge and substituted one of attempted murder. When the defence opened, Dr Arthur himself did not go into the witness box because "his position is clear". Before he testified, the first defence witness, Professor Alexander Campbell, Head of Child Health at Aberdeen University, was warned by the judge against incriminating himself! (6) Other witnesses – doctors and nurses – had received a verbal guarantee of immunity from the Director of Public Prosecutions as they were technically accomplices. (7)

On November 5, after retiring for a mere two hours and four minutes, the jury returned a verdict of not guilty. Women in the public gallery shouted "Thank God", (8) and a relieved Dr Arthur left the court with his wife, but his relief was not to last long, sadly he died from a brain tumour on Christmas Day 1983. (9)

After Dr Arthur's acquittal, the *Lancet's* legal correspondent referred to the legal situation as "very unsatisfactory", but the *British Medical Journal* didn't sit on the fence, stating that an otherwise healthy baby suffering from Down's syndrome should not be allowed to die. If the parents rejected it, the child should be placed with the local authority, but where the parents didn't want everything possible done to preserve life "...our society has no right to insist on maximum medical efforts to preserve the lives of unwanted handicapped babies when it provides them with such a bleak future". (10)

This seemingly fascistic statement sounds a lot worse than it actually is, because the decision to keep such babies alive against all odds is so profoundly difficult that in recent years the medical profession has sought fit to delegate it to the courts. Advances in medical science have meant that many especially premature babies which would have had no conceivable chance of surviving a hundred or fifty years ago can now be saved, but there is a trade off.

Probably the most problematic case was that of the Siamese twins Mary and Jodie. (11) The girls were born on August 8, 2000 in St Mary's Hospital, Manchester, and shared a heart and one pair of lungs. It was accepted that there was no way they could survive for any length of time, and that they must be separated or both would die; the problem was that the weaker twin would have to be sacrificed. The parents opposed the separation on religious grounds, but on August 25, a High Court judge, Mr Justice Johnson, made the impossible ruling that the separation should go ahead. The case went to the Court of Appeal where Lord Justice Ward posed the terrible question: "Do we murder Mary to save Jodie?"

The Law Lords upheld Judge Johnson's ruling, the separation went ahead, and Jodie (Gracie Attard), survived, and at the time of writing is a delightful four year old.

Cases like this are extremely rare, but other cases which are in their own way equally difficult are not at all rare. In October 2004, two such cases were decided by the High Court in which the parents took broadly opposing views.

On October 7, Mr Justice Hedley ruled that Charlotte Wyatt should not be resuscitated if she relapsed. This baby girl was born prematurely, at 26 weeks weighing less than a pound, and with serious heart and lung problems. She had already been ventilated five times, and was profoundly brain damaged. The prognosis was that she would die within a year. The parents wanted their daughter kept alive at all costs, but the judge said it would not be in her best interests to do so.

Two weeks later, a weeping Mrs Ruth Winston Jones appeared at the Court of Appeal where her Counsel argued that her baby son Luke should be allowed to die in “a dignified and peaceful way, but at the right moment and not before”.

The decision made by Dr Leonard Arthur, to allow a doomed baby to die as painlessly and as humanely as possibly, should never have resulted in a prosecution. Decisions such as this are terrible for anyone to have to make; it remains to be seen if they should be made by doctors or lawyers, but at least if the final word rests with a High Court judge there can be no question of a murder indictment at the end of the day. (12)

Notes And References

- (1) *The Times*, April 3, 1981, page 1.
- (2) *The Times*, April 21, 1981, page 3.
- (3) *The Times*, October 6, 1981, page 1.
- (4) On November 14, 1981, after Dr Arthur’s acquittal, *After the Trial at Leicester* appeared as an editorial in the *Lancet*, together with a report in the *Medicine and the Law* column, *Acquittal of Paediatrician Charged after Death of Infant with Down Syndrome*, by the barrister Diana Brahams.
- (5) *The Times*, October 23, 1981, page 5.
- (6) *The Times*, October 28, 1981, page 3.
- (7) *The Times*, October 14, 1981, page 2.
- (8) *The Times*, November 6, 1981, page 1.
- (9) *The Times*, January 5, 1984, page 10.
- (10) *Paediatricians and the law*, published in the *British Medical Journal*, SATURDAY 14 NOVEMBER 1981, pages 1280-01.
- (11) The parents, Rina and Michael Attard, from the Maltese island of Gozo, were not initially identified; the names Mary and Jody were used to protect their anonymity.
- (12) The 13 January 2005 issue of the women’s magazine *Take a Break* contains an article *LET MY BABY LIVE* which throws some light on this difficult subject; in 1995, of the 4004 babies born in Britain between 20 and 25 weeks, only 1200 were born alive, and 811 of these needed intensive care. Disturbingly, the same article reveals that the Dutch Paediatric Association has a policy of not treating babies born at or before 23-4 weeks “since the chances of survival are so small”. This policy appears to be in direct conflict with the British statistics.