



2025:DHC:3632



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 13.05.2025*+ **CRL.REV.P. 118/2024 & CRL.M.A. 2326/2024**

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.....Petitioner

Through: Ms. Jyoti Nambiar & Mr.
Kunal Narwal, Advs.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State along with
SI Ekta Yadav.Mr. Nishant Sharma, Adv. for
R-2.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The petitioner, by way of the present revision petition, seeks setting aside of the order dated 01.12.2023 [hereafter '*impugned order*'], passed by the learned Additional Sessions Judge (SFTC), Dwarka Courts, New Delhi [hereafter '*Trial Court*'], in SC No. 682/2022, arising out of FIR No. 290/2022, registered on 28.06.2022, at Police Station Dwarka, Sector 23, Delhi.

2. Briefly stated, the present case arises out of the complaint lodged by the petitioner (complainant) wherein she had stated that



she used to reside with her mother, who had separated from her father and was suffering from diabetes and hypertension. As alleged by her, Vinay Malhotra (respondent no. 2), a former part-time driver known to the family since 2021, had re-approached them for work after the COVID-19 pandemic. During this time, he had gained the complainant's trust and had begun staying at their residence. The complainant alleges that over the past few months, Vinay had started administering unprescribed medicines to her mother, claiming that the same had been advised by one Dr. Ajmani. He had also instructed the female attendant to give her mother 8–10 tablets daily at around 11:00 A.M., allegedly without proper medical advice. Vinay had also given the complainant some tablets under the pretext of improving her memory, which had made her feel sedated, dizzy, and forgetful, rendering her unable to care for her mother. The complainant further alleged that taking advantage of the complainant's intoxicated state, Vinay had sexually assaulted her multiple times, secretly took objectionable photos and videos, and used them to blackmail her. He also allegedly threatened to harm the female attendant and misled the complainant's maternal uncle regarding her mother's health condition. Additionally, the complainant also accused him of unauthorized transfers of money from their accounts, theft of valuable items such as gold jewellery, electronics, and her scooter, and of harboring intentions to harm or kill her mother to usurp property. On these allegations, the present FIR was registered for commission of offence under Sections 328/376/384/506 of the Indian



Penal Code, 1860 [hereafter '*IPC*'], on 28.06.2022.

3. During the course of investigation, the complainant was medically examined, and her statement was recorded under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] on 29.06.2022 before the learned Magistrate wherein she reiterated her allegations and stated that the accused had gradually started administering medicines to both her and her mother, claiming that they were prescribed by a doctor named Dr. Ajmani. The complainant stated that neither she nor her mother ever saw the strips or verified the medicines, and that the medications adversely affected her health, rendering her unconscious and disoriented. She further alleged that during these periods, the accused sexually assaulted her and blackmailed her using inappropriate pictures. The complainant also attributed her mother's deteriorating health to the medicines given by the accused. Further, she alleged that the accused took away valuable items, including laptops, a scooty, jewellery, and Rs. 40 lakhs by breaking fixed deposits without consent. During the course of investigation, statements of several other witnesses were also recorded.

4. Eventually, the medical condition of her mother deteriorated and she passed away on 28.07.2022. After completion of investigation, chargesheet and supplementary chargesheet was filed by the police for offence under Sections 328/376/384/506/379/380/411/304 of *IPC* and Section 8 *POCSO Act*.



5. The learned Trial Court, *vide* impugned order on charge dated 01.12.2023, framed charges against respondent no. 2 for offence under Sections 376(2)(n), 376(2)(k), 384, 411, and 506 of IPC, while discharging him from the offence under Section 304 of IPC, and offence punishable under the IT Act. The relevant portion of the impugned order is set out below:

“ Perusal of the FSL examination report dated 31.01.2023 reveals that from the exhibits ‘1’, ‘2’, ‘3’, ‘4’ and ‘5’ no metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, transquilizers and pesticides could not be detected.

Perusal of post mortem report (subsequent opinion) dated 10.07.2023 reveals that death occurred due to Septicemia and its complications consequent upon pneumonia in known case of type 2 diabetes, mellitus, hypertension, hypothyroidism and chronic kidney disease, a natural cause of death.

In the context of these scientific results, the statement of the prosecutrix and other witnesses cannot be given precedence as there is no reason to disbelieve as scientific reports i.e. FSL and the postmortem report (subsequent opinion). Hence, no charge U/s 304 IPC are framed hereby.

With regard to the applicability of the IT Act Cyber Forensic Report dated 16.03.2023 is perused whereby mobile phone marked MP1 and two SIM cards marked SC1 and SC2, pertaining to the accused, were sent for examination. As per result despite many attempts the mobile phone Marked MP1 could not be charged/turn on so on date could be retrieved. In such circumstances, there is very less possibility of extraction of data from the alleged mobile phone. In such circumstances, no charges can be framed against accused under IT Act.

Considering the statement of the prosecutrix whereon the case was registered and her statement U/s 164 Cr.P.C. a clear case of Section 376(2)(n), 376(2)(k), 384, 381, 411 and 506 IPC is made out. Hence, charges U/s 376(2)(n), 376(2)(k), 384, 381, 411 and 506 IPC be framed the accused. ”



6. The learned counsel appearing for the petitioner/complainant argues that the impugned order is liable to be set aside as it reflects a non-application of judicial mind and is based solely on inconclusive medical reports, which at best serve as corroborative evidence and cannot be treated as conclusive proof at the stage of framing of charges. The learned counsel for the petitioner contends that the statement of the prosecutrix clearly discloses the administration of unprescribed medicines by the respondent no. 2, which allegedly led to the deterioration in health and eventual death of the petitioner's mother. This disclosure, it is urged, should have been a vital consideration for framing charges under Section 304 of IPC. The learned counsel emphasizes that respondent no. 2, having knowledge of the victim's pre-existing medical conditions and strained family background, exploited the situation by administering such medications. It is also contended that the seizure memo included a list of unprescribed medications administered by respondent no. 2, including heavy sedatives and psychiatric drugs such as Clonotril-2, Quetiapine, Sizodon, and Zolfresh, which were not prescribed and allegedly used to intoxicate the petitioner and her mother. It is also argued that while the discharge summary indicates internal bleeding and cardiac arrest, the post-mortem mentions cardiac arrest, and the subsequent opinion cites septicemia as the cause of death, and thus, there are contraindications in the medical opinions also. Further, expert analysis sought by the petitioner revealed that the TLC count of her mother were in normal range, which would not support a



diagnosis of septicemia, and there is a failure to explain the internal bleeding. It is further argued that dialysis administered multiple times prior to death would have eliminated any toxic substance, thereby rendering the post-mortem report inconclusive. It is submitted that the impugned order, heavily reliant on such inconclusive reports and ignoring the categorical statements of the complainant as well as other witnesses which were recorded by the police during the course of investigation, is liable to be set aside and charges under Sections 304 of IPC and the relevant provisions of the IT Act ought to be framed against respondent no. 2.

7. The learned counsel appearing for the accused/respondent no. 2 opposes the petition and argues that the impugned order calls for no interference as the learned Trial Court has rightly exercised its judicial discretion and passed the order based on the totality of material placed before it. It is contended that the post-mortem report and subsequent medical opinions, prepared by duly qualified experts, categorically state that the cause of death was septicemia and its complications, which led to a natural death. These expert opinions cannot be discarded merely on the basis of conjecture or the petitioner's own interpretation of selective medical parameters like TLC counts. It is further argued that the learned Trial Court was well within its jurisdiction to consider the expert medical evidence and conclude that a *prima facie* case under Section 304 of IPC was not made out. In view of the above, the learned counsel for the respondent no. 2 prays that the present petition be dismissed.



8. This Court has **heard** arguments addressed on behalf of both the parties and perused the material available on record.

9. In the present case, this Court notes that the allegations in the FIR as well as in her statement recorded under Section 164 of Cr.P.C. had made categorical and serious allegations that respondent no. 2 used to administer unprescribed medicines to her mother, and deliberately prevented her from administering insulin injections to her diabetic mother, and by such acts, he had caused deterioration of her mother's health, leading to her eventual death.

10. This Court further notes that during the course of investigation, statements under Section 161 of Cr.P.C. of several witnesses were recorded, which lend corroboration to the complainant's allegations. The maternal uncle of the complainant, Mr. Dinesh Lalwani, stated that the accused Vinay Malhotra was administering unprescribed medicines both to the complainant, and her mother i.e. Smt. 'AC'. He further alleges in his statement that such continuous administration of unauthorized medication led to the deterioration of his sister's health and ultimately caused her unnatural death. He also stated that the accused blackmailed the complainant (petitioner) to transfer ownership of their apartment in Dwarka to him. Two caretakers, Surinder Kaur and Baljeet Kaur, have also mentioned in their statements recorded under Section 161 of Cr.P.C. that the accused regularly used to give medicines to Smt. 'AC', and when they used to question him about the nature of the medicines, he either used to



misbehave or threaten them, and once, had forbidden the caretaker from returning back to the house of the complainant. Further, the complainant's therapist, Mr. Bhawani Singh, has also stated that he frequently saw the accused at the residence of the complainant, giving medicines to the complainant's mother. Specifically, on 11.06.2022, he had found the complainant's mother in a semi-conscious state, complaining of numbness in her legs. He was thereafter threatened by the accused and was told not to return to the house of the complainant.

11. The complainant had also produced several medicines before the police during the course of investigation, including Clonotril-2, Quetiapine, Sizodon-3, Neurobion Forte, and Zolfresh, claiming that they had been given to her and her mother by the accused. These were seized by the I.O. and deposited in *malkhana*. Further, during police remand, the accused had identified one 'Life Care Medicos', whose shopkeeper had confirmed that accused Vinay Malhotra used to regularly purchase sedative medicines like Zolfresh and Nitirest in the names of his parents and without any prescription or bill.

12. Therefore, the statements recorded during investigation, including those of the complainant, her maternal uncle, the caretakers, the neuro-therapist, and the chemist, *prima facie* indicate that the accused was, allegedly, regularly administering certain medicines to the complainant's mother without any apparent medical supervision or prescription.



13. It is evident from a perusal of the impugned order that the learned Trial Court has discharged the accused without adequately considering these statements and material placed on record. The impugned order reflects that the Court has relied only on the post-mortem report (subsequent opinion) and the FSL report, suggesting natural death of the victim and no toxins being found in her body. However, in this regard, it is apposite to take note of the decision of Hon'ble Supreme Court in ***Ghulam Hassan Beigh v. Mohd. Maqbool Magrey***: (2022) 12 SCC 657. In the said case, the concerned Trial Court had discharged the accused for offence under Section 302 of IPC and framed charge for offence under Section 304 of IPC, only on the basis of post-mortem report wherein it had been opined that the death of victim was caused due to 'cardio respiratory failure'. The Hon'ble Supreme Court held that this approach was erroneous since whether such 'cardio respiratory failure' had any nexus with the incident in question and the alleged assault would have to be determined on the basis of the oral evidence of the eyewitnesses as well as the medical officer concerned i.e. the expert witness who may be examined by the prosecution as one of its witnesses during the course of trial. The relevant observations of the Hon'ble Supreme Court are as under:

“30. The post-mortem report, by itself, does not constitute substantive evidence. Whether the "cardio respiratory failure" had any nexus with the incident in question would have to be determined on the basis of the oral evidence of the eyewitnesses as well as the medical officer concerned i.e. the expert witness who may be examined by the prosecution as one



of its witnesses.”

14. Thus, while the learned Trial Court relied solely on the post-mortem and FSL reports, it did not adequately address the complainant’s categorical allegations regarding the administration of heavy, unprescribed medicines, and also not allowing the complainant to administer insulin to her mother, who was highly diabetic, and that being the alleged cause of unnatural death of her mother. The statements of other witnesses as mentioned above, have *prima facie* corroborated the statement of the complainant, which should have been taken note of, by the learned Trial Court.

15. Therefore, in these facts and circumstances, the learned Trial Court is directed to hear the arguments on point of charge afresh, limited to the alleged offence under Section 304 of IPC, and pass a reasoned order afresh, after considering the entire material on record i.e., the oral evidence as well as scientific evidence.

16. Insofar as the discharge of the accused under the provisions of IT Act is concerned, this Court notes that the mobile phone of the accused was sent to FSL for examination, however, the FSL report opined as under:

“Many attempts were made to charge/ turn on the exhibit Mobile Phone marked "MP1", but the same could not be charged/ turned on. As such, no data could be retrieved from exhibit "MP1" in the laboratory.”

17. The mobile phone of the accused, which formed the basis for



invoking the IT Act, was sent for forensic examination; however, as per the FSL report dated 16.03.2023, despite multiple attempts, the device could not be switched on or charged, and consequently, no data could be retrieved from it.

18. In light of the aforesaid report, and in the absence of any digital evidence having been extracted or made available to substantiate the allegations under the IT Act, no *prima facie* case is made out against the accused for the alleged offence. Accordingly, the view taken by the learned Trial Court while discharging the accused for commission of offence under the provisions of the IT Act warrants no interference.

19. In view of the foregoing discussion, the impugned order is set aside, only to the extent it discharges the accused for offence under Section 304 of IPC. The matter is remanded back to the learned Trial Court, for deciding afresh in terms of direction in paragraph 15 above.

20. With these observations, the present petition alongwith pending application is disposed of.

21. It is however clarified that this Court's direction to pass an order afresh in respect of Section 304 of IPC does not imply any observations on the merits of the case, or an opinion that charge under such section is made out against the accused and the learned Trial Court shall exercise its discretion uninfluenced by this Court's observations, in accordance with law and the material placed before



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it.

22. A copy of this order be sent to the learned Trial Court for information and necessary compliance.

23. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MAY 13, 2025/zp