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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 815/2015**

STATE OF NCT OF DELHI

.....Petitioner

Through: Ms. Shubhi Gupta, APP for the State.
versus

SHAHJAD

.....Respondent

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

25.04.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 397/401 read with Section 482 of the Cr.P.C. seeks the following prayers: -

- a) set aside the impugned order dated 16.7.15 passed by Sh. Pulastya Pramachala Ld. ASJ, Karkardooma Courts, Delhi in FIR No. 704/14 whereby the Respondent has been discharged for offences u/s 304/34 IPC and direct framing of charges under the said sections;
- b) pass any further and other orders which this Hon'ble Court deems fit and proper in the interest of justice.

3. Briefly stating the facts of the present case are that on 20.07.2014 at about 10:00 AM, deceased, Rohit, was near Jama Masjid in F-2 Block, Sunder Nagri, Delhi. It is alleged that the Respondent along with one JCL/CCL, 'S', came to the said spot and started beating the deceased in order to take revenge for an incident that had occurred between them in the past. It is further alleged that the respondent gave severe beatings to the deceased on his chest, abdomen, face and eyes with his knees and feet. Upon seeing the respondent, the complainant, Sarvesh Kumar, tried to intervene and rescue the deceased,

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however, the accused persons did not stop giving beatings to him. Thereafter, both the accused persons fled from the spot and the deceased was taken to GTB Hospital and at about 4:00 PM, he was discharged from the hospital. However, he was again admitted to Kapoor Nursing Home at Dilshad Garden on 21.07.2014 due to body ache and was later shifted to GTB Hospital, where he passed away on 23.07.2014 at about 08:00 PM.

4. A complaint was filed on 24.07.2014, on the basis of which the present FIR bearing No. 704/2014 was registered under Section 304/34 of the IPC at PS Nand Nagri and investigation was initiated. After completion of investigation, chargesheet was filed against the present respondent for the same offences before the Court of competent jurisdiction. Learned ASJ *vide* the impugned order dated 16.07.2015 discharged the present respondent for the offences punishable under Sections 304/34 of the IPC and held that the present case falls under Sections 325/34 of the IPC and remanded the matter to learned CMM, Shahdara, for further proceedings.

5. Learned APP for the State submits that the present respondent along with JCL/CCL had given severe beatings to the deceased and he succumbed to the injuries sustained in the aforesaid incident. It is further submitted that the respondent had given fists and kick blows on the chest, abdomen, eyes and face of the deceased which had caused contusion to pancreas and had, consequently, caused death of the deceased.

6. *Per contra*, learned counsel for the respondent submitted that, as per the MLC and post-mortem report, death of the deceased was on account of pancreatitis, which was caused by malfunction of the pancreas, and the same is not connected with the present incident. It is further submitted that the respondent never intended to cause death of the deceased. Attention of this

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Court has also been drawn towards the opinion of the doctor (O.P. No. 92/14) in respect of the post-mortem report annexed along with supplementary chargesheet and it is submitted that in the said report, the doctor had opined that the external injuries mentioned in the post-mortem report were not sufficient to cause death in ordinary course of nature. It is further submitted that, even otherwise during the pendency of the present petition, the case has been settled with the legal representatives of the deceased on an application filed by the father of the deceased under Section 320(4)(b) of the CrPC for the offences punishable under Sections 325/34 of the IPC and the respondent has been acquitted by the learned Metropolitan Magistrate *vide* order dated 29.02.2024.

7. Heard learned counsel for the parties and perused the record.
8. Learned ASJ while discharging the respondent/accused for the offences punishable under Sections 304/34 of the IPC had passed the following order:

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6. The facts of this case show that accused and his companion confronted Rohit, when they found him in F-2 Block. They started beating him with fist and legs because of an old enmity. A common intention to beat Rohit can be inferred, which could have been formed on the spot by the accused and his companion. However, with only allegation of beating with fist and legs, an intention to kill Rohit cannot be inferred. The dispute revolves around the knowledge, which can be imputed upon the accused regarding the possible consequence of the beating, in *Mohd. Sharif v. State*, 2011 (1) gcc 529, Hon'ble High Court of Delhi, observed that What the offender knew was likely to happen is a question of inference from the nature of the act committed by the offender, his conduct and the surrounding circumstances. The same would depend on a number of factors such as the number of blows inflicted, the part

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of the body where the blows are inflicted, force and impact by which they are inflicted".

7. In the present case, blows were given on face, abdomen and other parts of body of Rohit. in case of sudden beating with fist and legs, by two persons of young age (not having extra ordinary strength and built of body), it cannot be inferred that all blows were given after making a calculation of its impact and out of an intention to cause injury to a particular part of body. Beating with a weapon can be distinguished with beating with fist and legs in respect of the knowledge, which can be imputed upon the assailant regarding the possible consequences of such beating. As per statement of complainant, accused Shahjad had pushed Rohit on the ground and it was JCU Shahrukh who gave blows with knees on the abdomen of Rohit.

8. In the case cited by defence counsel, Delhi High Court after referring to three other cases involving incident of beating with fist and legs, came to conclusion that the assailant cannot be attributed with the knowledge that the physical beating given to the deceased with kicks and fist blows would result in unfortunate demise. The court referred to finding given in the case of **Om Singh v. State, 2009 (4) JCC 3194** with approval, wherein in the given circumstances an inference was gathered to the effect that the assailant started beating the deceased with a common intention to cause grievous hurt, as while brutally kicking and giving fist blows they were supposed to have known that their collective acts would result in grievous injury to the deceased. With such inference raised by the court, conviction was altered to one u/s 325/34 I PC.

9. After applying the principle enunciated in aforesaid cases in the present case, even if I accept the evidence and facts projected by prosecution, still I am unable to infer a knowledge on the part of accused to the effect that beating Rohit with fist and legs on different part of body would have resulted into death of Rohit. Therefore, I do find that a case u/s 304/34 IPC is not made out against accused Shahjad. In my opinion, at the most a case u/s 325 r/w 34 IPC would be made out

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against accused Shahjad.

10. Since offence u/s 325 IPC is triable by MM, therefore, case is remanded to Ld. CMM, Shahdara to try the case herself or to assign the case to other MM, for trial u/s 325 r/w 34 IPC against accused Shahjad.”

9. As per the case of the prosecution, fists and kick blows were given by the respondent on the face, abdomen and other parts of the body of the deceased. The respondent along with his companion, CCL/JCL had gone to beat the deceased to settle his score with regard to injuries caused to them by the deceased. It is not the case of the prosecution that the alleged beatings were given by some weapon or any article. Perusal of the FIR, shows that as per complainant, JCL/CCL had pushed the deceased on account of which he fell down and thereafter, beatings were given to the deceased.

10. It is a matter of record that the deceased was discharged on the same day and on the next day, he was again admitted in the hospital on account of body pain. Post-mortem report (PM Report No. 997/14) dated 24.07.2014 of the deceased reflects that the death of the deceased was on account of hemorrhagic pancreatitis produced by blunt force.

11. It has also come on record by way of the subsequent opinion (O.P. No. 92/14) of the doctor, obtained regarding the cause of the death of the deceased, that the external injuries on the face and on dorsum of right foot were not sufficient to cause death in ordinary course of nature.

12. The Hon’ble Supreme Court in **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4**, had observed and held as under: -

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) **That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding**

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out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. **By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.**

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

(emphasis supplied)

13. The Hon’ble Supreme Court in **Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368**, while analysing the scope of Sections 227 and 228 of the CrPC, has observed and held as under: -

“Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

- (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
- (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

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(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) **At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.** For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) **If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”**

(emphasis supplied)

In view of the aforesaid facts and circumstances of the present case and the law laid down by the Hon’ble Supreme Court, this Court finds that the impugned order does not suffer from any legal infirmity or perversity and thus, no grounds for interference with the impugned order are made out.

14. Even otherwise, during the pendency of the present petition, on an application filed by the father of the deceased, complainant, under Section



320 of the CrPC for compounding before the learned Metropolitan Magistrate, the present case for the offences punishable under Sections 325/34 of the IPC has been compounded *vide* order dated 29.02.2024. A statement of the father of the deceased, complainant, has also been recorded to that extent before the learned Metropolitan Magistrate. The same has also been verified by way of a status report dated 17.04.2025 authored by Insp. Santosh Kumar Rawat.

15. In view of above, the present petition is dismissed and disposed of accordingly along with all pending applications, if any.

16. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

17. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

APRIL 25, 2025/ns/kr

[Click here to check corrigendum, if any](#)