

In the Court of Sachin Raghu, Additional Sessions Judge, Hamirpur,
H.P.

S.T. Reg No. 50 of 2024

State vs Tushar Jaswal & Others

23.05.2025

Present:- Shri Ajay Thakur Ld. P.P. for State.

Accused Tushar Jaswal produced before me in the custody of HHC Pankaj Kumar No. 161 ASI Vijay Kumar P.L. Hamirpur,

Accused Devender Singh produced before me in the custody of ASI Vijay Kumar, HHC Ramesh Chand No. 252, P.L. Hamirpur,

Accused Amrinder Singh produced before me in the custody of ASI Vijay Kumar, Ct. Ajay Pathania P.L. Hamirpur,

Accused Ajay Kumar produced before me in the custody of ASI Vijay Kumar, Ct. Naresh Kumar No. 222, P.L. Hamirpur, H.P.

Accused Harinder Singh alias Inder produced before me in the custody of ASI Vijay Ct. Naresh, P.L. Hamirpur, H.P.

Sh Rohit Sharma, Adv. for accused at Sr.No.1 to 4.

Shri Kishore Sharma, Advocate for accused at Sr. No.5.

Ld. Defence counsel for accused persons have submitted that prosecution has filed the present Charge-sheet against the accused persons for the commission of offence punishable under Section 103, 117(2), 115(2), 238, 3(5) of B.N.S. 2023 and Section 107, 108 of Mental Health Care Act, 2017 after the completion of investigation.

2. It is their contention that Charge-sheet has been wrongly filed against the accused persons under Section 103 of Bhartiya Nayay Sanhita (in short **B.N.S.**). It is submitted that accused No.1 runs Nasha Mukti Kendra with name and style as “Fresh Foundation Home Society” and their only aim is to re-habilitate the Drug victim. Therefore, there is no question to commit murder of any inmate. So far as the violation of Mental Health Care Act is concerned, then it

cannot be looked into as Charge-sheet itself reveals that Health Department has granted permission to accused No.1 to run this institute for 12 months and accused No.1 had again applied for its renewal on 05.03.2023. It is further submitted that there is no CCTV footage of alleged incident dated 12.07.2024 on 12/1:00 P.M. when alleged beatings were caused to deceased by accused persons. Even the time gap between alleged incident and death of deceased is relevant in the case as deceased died on the next day on 13.07.2024 at 5 P.M. i.e. after passing of more than 30 hours. It is further submitted that complainant Vivek Verma has given statement that on 12.07.2024, medicines were given to deceased Amit. However, he later on gave statement that cause of death of deceased Amit, apart from beatings, was also due to the fact that he was not given treatment in time. Thus, it is submitted that offence does not fall under Section 103 of B.N.S as there is clear exception mentioned in Section 100 explanation (2) of B.N.S. which ultimately takes away the case to Section 105 of B.N.S..

3. On the other hand, Ld. Public Prosecutor submitted that there is sufficient material against the accused persons for the commission of offence punishable under Section 103 of B.N.S. and prayed that charge may be framed against the accused person.

4. I have gone through the police file minutely.

5. It reveals from the same that accused Tushar Jaswal runs re-habilitation Center at Barsar in the name of Fresh Foundation Home Society. The deceased Amit Kumar and injured Aman Preet Singh were admitted in this center for their treatment. The accused Tushar had started renovation work of his house in the month of June and he used to take the inmates of the center to his house to get such work done from them. The accused Tushar has also taken deceased Amit and injured Amanpreet Singh and other inmates to his house for help in his construction work. On 28.06.2024, deceased Amit and injured Amanpreet Singh fled away from his house. The accused Tushar made search for them but they were not found. However on 09.07.2024, the family members of

injured Amanpreet Singh informed him that Amanpreet Singh reached in the house and is creating trouble to them and demanding money. On this accused Tushar brought Amanpreet Singh to the center and on 11.07.2024 Amanpreet Singh was sent to other center namely "Door of Hope". In the night of 11/12.07.2024, accused Tushar also brought deceased Amit and kept him in the family hall of the center. It was found in the investigation that on 12.07.2024, accused Tushar alongwith his co-accused at about 1.30 P.M. to 3.30 P.M. repeatedly caused beatings to deceased with bamboo stick and plastic pipes. The injured Amanpreet Singh was also called from other center i.e. from Door of Hope to rehabilitation center of accused Tushar where Amanpreet Singh was also caused beatings and then Amanpreet Singh was sent back to Door of Hope Center.

6. After the beatings, deceased Amit was not able to walk and he was not given treatment and he was made lay in hall. On 13.07.2024, accused Tushar came to family hall and gave something to eat to deceased but looking at his critical condition, he was shifted to the hall in basement. However, on the same day, at 5.30 P.M., deceased Amit was brought to reception and was made to lay at mattress and by that time deceased Amit had died. Other inmates were locked in the center and then accused persons had fled away from the center. Thereafter, during night time some of the inmates took out the grill of the window and escaped and matter was reported to police. When police reached on the spot, then complainant Vivek Verma got recorded his statement to the police on which basis present F.I.R. was registered.

7. The first point raised by learned defence counsel is that there is no CCTV footage of alleged incident dated 12.07.2024 of 12/1:00 P.M when the alleged beatings were given to the deceased by accused persons. However perusal of the charge-sheet shows that CCTV footage of 12.07.2024 from 12.48 P.M, to 16.01 P.M. and from 16.56 to 16.59 are not available and in this regard, police have sought report from Assistant Engineer, Electrical Division Barsar whereby it is reported that there was electricity failure only for 5

minutes from 14.09 to 14.14 P.M. However CCTV footage is not available for approximately 4 hours and in view of such report of Electricity Department, it is to be explained by the accused persons only. Therefore this contention is of no use.

8. The other point raised is that complainant Vivek Verma stated in his statement that medicine was given to deceased Amit and later on he gave statement that cause of death of deceased Amit apart from alleged beatings was also that treatment was not given in time. Therefore, offence under Section 103 of B.N.S. is not made out. However it is coming out from the record that deceased was given beatings by accused persons on 12.07.2024 at 12/1:00 P.M. with the help of Danda and plastic pipes, then he was not taken for treatment anywhere but he was only shifted to the room of the office only and by that time, he had expired. Thus, no treatment was given to the deceased and it is not known what prevented the accused persons to take him to hospital.

9. Lastly, it is stated that deceased died on next day on 13.07.2024 at 5:00 P.M. after passing of more than 30 hours and thus it is stated that there is a long time gap between alleged incident and death. However perusal of the postmortem report shows that probable time between injury and death is few hours to 3 days and between death and postmortem, the probable time is 24 to 36 hours. Thus the timing corroborates with the alleged incident on 12.07.2024 at 12/1 P.M. As per the postmortem report, 36 injuries were found on the body of deceased and opinion is given by the concerned doctor that cause of death is shock due to sustaining multiple blunt force which are sufficient in ordinary course of nature to cause death. Thus, there is no force in the contentions that there is time gap between alleged incident and death of deceased. Thus, I hold that there is prima-facie case against the accused persons for the commission of offence punishable under Section 103 of B.N.S.

10. It is trite law that Court while framing charges under Section 228 of Cr.P.C/B.N.S.S. is not required to conduct mini-trial and has to merely weigh material on record to ascertain whether the

ingredients constituting the alleged offence are prima-facie made out against the accused persons. **The Hon'ble Apex Court has held in case titled as Sajjan Kumar Vs. C.B.I. (2010) 9 SCC 368** that the Judge while considering the question of framing of charges under Section 227 of Cr.P.C. has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not prima-facie case against the accused has been made out. The test to determine the prima-facie case would depend upon the facts of each case.

11. Thus, it is clear that the Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts emerging when taken at their face value, disclose the existence of ingredients constituting the offence.

12. Therefore, at this stage from the material on record and above discussion, a prima-facie case is made out against the accused persons for the commission of offences punishable under Section 103, 117(2), 115(2), 238, 3(5) of B.N.S. 2023 and Section 107, 108 of Mental Health Care Act, 2017 and there is no ground to discharge them. Hence, the contention of Id. Defence counsel is hereby rejected.

13. At this stage Charge for the commission of offences punishable under Section 103, 117(2), 115(2), 238, 3(5) of B.N.S. 2023 and Section 107, 108 of Mental Health Care Act, 2017 framed and put to all the accused persons to which they pleaded not guilty and claimed trial. Let the case be listed for fixation of evidence on 17.06.2025.

Till then accused persons are further remanded to judicial custody till 17.06.2025 and on which date they be produced before this Court at 10:00 sharp.

(Sachin Raghu)
Additional Sessions Judge,
Hamirpur, H.P.