DMC/DCF.14/Comp. 3812/2/2/2023/ 12th September, 2023

**O R D E R**

The Delhi Medical Council through its Disciplinary Committee examined an Order dated 24.03.2023, in the matter titled State Vs. Ajay Gupta (Cr. Case no. 7049/2019 FIR No.150/2018 Keshav Puram) passed by the Hon’ble Court, wherein certain observations have been made by the Learned Metropolitan Magistrate in regard to preparation of a post mortem report by Dr. Sandeep Garg.

The Order of the Disciplinary Committee dated 11th July, 2023 is reproduced herein-below:-

The Disciplinary Committee of the Delhi Medical Council examined an Order dated 24.03.2023, in the matter titled State Vs. Ajay Gupta (Cr. Case no. 7049/2019 FIR No.150/2018 Keshav Puram) passed by the Hon’ble Court, wherein certain observations have been made by the Learned Metropolitan Magistrate in regard to preparation of a post mortem report by Dr. Sandeep Garg.

The Disciplinary Committee perused the Order dated 24th March, 2023 of the Hon’ble Court of Shri Vaibhav Chaurasia MM-04, copy of Post Mortem No.245/18 dated 13.04.2018, written statement of Dr. Sandeep Kumar Garg, additional written statement of Dr. Sandeep Kumar Garg and other documents on record.

Dr. Sandeep Kumar Garg presented before the Disciplinary Committee.

It is noted that the Hon’ble learned Metropolitan Magistrate-04 (North West), Rohini Courts in his Order dated 24th March, 2023 in Cr. Case no.7049/2019, State Vs. Ajay Gupta, F.I.R. No.150/218 (Keshav Puram) has observed that brief facts as has been alleged leading to the registration of present case has been that the victim Raghunandan was sleeping on the top floor and had accidently slipped down in the Dal Pit and turned unconsciousness. He was shifted to hospital and was declared brought dead. Investigation was taken up in this case and autopsy in the present case was done by Dr. Sandeep Garg. As far as mode of death is concerned, he has opined homicide, however, as far as further facts are concerned, he has stated that involvements of two or more than two persons cannot be ruled out. It is pertinent to mention herein that postmortem report is only fact finding inquiry and the autopsy surgeon herein seems to have gone beyond the scope of postmortem examination and opined as to facts where two or more persons as per him cannot be ruled out. It is not clear whether he has witnessed crime as he has categorially opined with respect to the facts. Further, I do not see any reason as to why he has limited himself to stating the number of person involved, but have omitted other facts which may have been essential unfolding crime. Dr. Sandeep Garg was inquired as to whether he has visited the scene to which he has replied in negative and have only stated that he had written such a opinion only to aid the investigators and to apply what has been taught to him in medical school. This does not seem to help as such facts as has been supplemented by him only goes on to prejudice the investigative agency rather than aiding them. Time and again since 2009, Delhi Medical Council has been issuing circulars wherein several doctors have been impressed upon to observe caution in postmortem report where the autopsy surgeon have gone beyond their scope and furnish opinion which is neither within their ambit nor they have any evidence to furnish such opinion. Analogy can be drawn from the DMC order no. DMC/DC/F.14/2/Comp.412/2009.73553 dated 02nd June, 2009 issued from H&FW, Govt. of NCT of Delhi where it is apparent that it is inappropriate to go beyond the scope of postmortem and to opine anything which cannot be stated other than as per medical knowledge. Further, it is impressed upon that no hypothetical fact situation must be proposed by the doctor until and unless he has witnessed such crime. Perusal of the postmortem report reveals that yellow coloured chana dal were found up to the secondary bronchioles. This itself bears the testimony that such dal is ante-mortem phenomena. Had it been otherwise, it will not have been possible that such Dal could be found up to secondary bronchioles. Further the abrasions seems to be natural which would have been sustained by the victim while he would be struggling when there would have been shortage of breath and the reflexes of the body would have revealed themselves in such odd hour. Notice be issued to Delhi Medical Council and copy of Postmortem Report be sent to the Delhi Medial Council to enquire into the matter and to state whether the autopsy surgeon is within his limits to state the facts and if yes, then why all other facts he has omitted. Further the Court is of the opinion that opinion qua homicide or suicide or accidental would have been suffice. When the doctor is not involved in the investigation, which is prerogative of police officials, then any deposition on his part with respect to the facts which he has mentioned in the postmortem report appears to be unsustainable. It is also not tenable that when the doctor has not visited the scene of the crime, on what evidences and proof had he furnished opinion that the involvement of two or more than 2 persons cannot be ruled out, which is something which is best known to Dr. Sandeep Garg, which requires a full-fledged enquiry on the part of Delhi Medical Council and such practice on the part of the autopsy surgeon is not appropriate. It is also interesting to note that the autopsy surgeon in the present case have categorically opined that deaths is due to asphyxia as a result of sustained obstruction of a Airway from outside and within which was sufficient to cause death in the ordinary course of nature. This language which has been emphasized by this court, have been used categorically in Section 300 of Indian Penal Code. What has motivated such autopsy surgeon to make such an opinion could not be culled out. When he has already furnished his final opinion in the form of homicide and that too supplemented by facts, the imperative of further opinion is futile. Henceforth this Court deems it fit that Delhi Medical Council should take the cognizance of the matter and appropriately report with respect to the viability of such postmortem report be furnished. Enquiry also be conducted with respect to Dr. Sandeep Garg and he should be afforded an opportunity to explain himself.

Dr. Sandeep Kumar Garg in his written statement averred that he conducted the postmortem No.245/2018 dated 13th April, 2018 as per norms. The finding written by him in the postmortem report No.245/2018 dated 13th April, 2018 are facts and as per the complaint filed by the Hon’ble MM that stating two or more than two persons cannot be ruled out was outside the prerogative of autopsy surgeon; he would like to humbly state that whatever findings are available related to the dead body must be mentioned in the postmortem report because it the only chance to get the most out of it, as it will be cremated thereafter. It is very absurd to say that an autopsy surgeon was not present at the crime scene, as if it was true then no findings can be written. Forensic medicine is a science and not assumptions.

Dr. Sandeep Kumar Garg in his additional written statement averred that the injuries and findings mentioned in the postmortem report No.245/18 dated 13th April, 2018 are consistent with homicide, as it will be explained below.

As mentioned in judicial complaint, for which, the Disciplinary Committee was made, that involvement of two or more than two persons cannot be rule out, he wants to say that :-

1. Injuries mentioned in postmortem report are on front aspect of limbs, chest, abdomen and upper lip on inner aspect (which occurred due to indentation of tooth).
2. He is of the opinion that one person was pushing down the head of the deceased via upper back of neck and lower part of head (occiput) into the dal-pit to suffocate him. Other person/s were holding the limbs.
3. During struggle, the deceased sustained injuries as mentioned in the postmortem report, that too on front aspect only (supports the opinion) as the deceased was made to lie in prone position.
4. The injuries mentioned in the postmortem report are possible by this mechanism and to do so on an average built man (also mentioned in the postmortem report), it would take about two or more than two persons, as there were no fatal injury to the body which could have debilitated the deceased before choking/suffocating him down.

Also, he wants to state that involvement of two or more than two persons is a possibility made while doing postmortem. As a forensic expert, he cannot ignore any facts or assumptions. He also requests that all the relevant inquest papers, viscera reports, investigation report or other documents like crime scene or any review opinion must be submitted before him for the final opinion of the case.

In view of the above, the Disciplinary Committee makes the following observations :-

1. It is noted that as per “Modi’s Medical Jurisprudence & Toxicology”, ‘*the cause of death includes any disease or injury, responsible for initiating the train of events (brief or prolonged), which resulted in death of the individual.*

*The manner of death is the fashion in which death occurred. If death occurs from disease alone, the manner of death is natural. If death results from an injury or is hastened as the result of injury in an individual rendered vulnerable by pre-existing natural disease, the manner of death is unnatural (which could be homicidal, suicidal, accidental or of undetermined origin depending on the circumstances of the death).*

*The mode (or mechanism) of death is the physiological disturbance or derangement, resulting from the cause of death, which is incompatible with life, for example, asphyxia, syncope, coma. The mode of death is also termed primary mode of death or proximate cause of death. The mode of death is alone is unacceptable as a cause of death.”*

1. It is noted that Dr. Sandeep Kumar Garg who prepared the postmortem report No. 245/18 dated 13.04.2018 regarding the opinion as to cause of death has stated that ‘Death is due to asphyxia as a result of sustained obstruction/occlusion of airways(Both nostrils & mouth) from outside and within which was sufficient to cause death in ordinary course of nature. Mode of Death- Homicide where in involvement of 2 or more than 2 persons cannot be ruled out.
2. It is observed that the observations regarding the mode of death relating to involvement of two or more than two persons cannot be ruled out, are unwarranted; being in the realm of pure speculation, as no scientific explanation has been put forth by Dr. Sandeep Kumar Garg regarding his aforementioned observations relating to mode of death. Dr. Sandeep Kumar Garg, thus, failed to exercise due diligence.

In light of the observations made herein-above, it is the decision of the Disciplinary Committee that Dr. Sandeep Kumar Garg is directed to undergo 03 hours of Continuing Medical Education (C.M.E.) on the subject related to ‘Asphyxial Death’ and submit a compliance report to this effect to the Delhi Medical Council and also to exercise due diligence, in future.

Matter stands disposed-off.

Sd/: Sd/: Sd/:

(Dr. Maneesh Singhal) (Dr. Satish Tyagi) (Dr. Sarvesh Tandon)

Chairman, Delhi Medical Association, Expert Member,

Disciplinary Committee Member, Disciplinary Committee

Disciplinary Committee

The Order of the Disciplinary Committee dated 11th July, 2023 was confirmed by the Delhi Medical Council in its meeting held on 21st August, 2023.

The Council further confirmed that Dr. Sandeep Kumar Garg shall undergo 03 hours of Continuing Medical Education (C.M.E.) on the subject related to ‘Asphyxial Death’, within a period of three months from the date of the Order and submit a compliance report to this effect to the Delhi Medical Council.

This observation is to be incorporated in the final Order to be issued. The Order of the Disciplinary Committee stands modified to this extent and the modified Order is confirmed.

By the Order & in the name of

Delhi Medical Council

(Dr. Girish Tyagi)

Secretary

Copy to :-

1. Hon’ble Court of Shri Vaibhav Chaurasia, Metropolitan Magistrate-04, North West, Room No. 112, First Floor, Rohini Court, Delhi-**w.r.t. Cr. Case no.7049/2019, State Vs. Ajay Gupta, FIR No.150/2018 (Keshav Puram)-for kind consideration of Ho’ble Court.**
2. Dr. Sandeep Kumar Garg, Specialist Gr-III (Forensic Medicine), Department of Forensic Medicine, Through Medical Superintendent, Babu Jagjivan Ram Hospital, Jahagir Puri, Delhi- 110033.

(Dr. Girish Tyagi)

Secretary

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