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IN THE HIGH COURT OF DELHI : NEW DELHI
CRL.Rev. P. No. 689/2010

Decided on: September 05, 2011

STATE

..... Petitioner

Through: Mr. Manoj Ohri, APP for the
State with SI Premvir Singh, PS
Sultanpuri.

versus

SATISH KUMAR

..... Respondent

Through: None.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 16679/2010(Delay)

For the reasons stated in the application, the delay of 170 days in
filing of the petition is condoned.

Application stands disposed of.

CRL.Rev.P. No. 689/2010

1. Present petition is directed against the order dated 2nd

February, 2010 passed by the Addl. Sessions Judge in S.C. No. 125 of 2009 discharging the Respondent for offences punishable under Section 306 IPC.

2. Learned APP for the State states that the impugned order is illegal, bad in law and passed by the learned trial court without appreciating the evidence placed on record. It is stated that the prosecution witnesses have specifically stated that the Respondent used to beat, thrash and harass the deceased Sonia after consuming liquor and also did not provide money for the household expenditure. There was sufficient material placed by the prosecution before the learned Addl. Sessions Judge to satisfy that a prima facie case is made out against the Respondent. The statement of the Complainant Raj Kumari is clear and cogent wherein she has stated that the Respondent gave up his job and would mercilessly beat the deceased Sonia demanding money for liquor. The learned Addl. Sessions Judge failed to appreciate that the allegations leveled against the Respondent are serious in nature and the present case is covered under Section 107(iii) IPC. Hence, the impugned order passed on the basis of surmises and conjectures is liable to be set aside.

3. I have heard learned APP for the State and perused the

record.

4. Briefly, the prosecution case is that the wife of the accused/ Respondent namely Sonia committed suicide by setting herself ablaze. DD Entry No. 6B was recorded on 7th August, 2005 in respect of the information received from SGM Hospital, Mangolpuri where the deceased was admitted by the accused and from there she was referred to L.N.J.P. hospital where she succumbed to the injuries sustained by her. On the basis of the complaint made by Smt. Raj Kumari mother of the deceased Sonia FIR was registered in the instant case. In the complaint it is alleged that her daughter Sonia was married to the Respondent Satish Kumar in the year 1995 living in railway colony, barfkhana, Delhi. She was having two children and everything was alright for 6-7 years of the marriage. About 2 -3 years back, the accused had built his house in Sector-20, Rohini. Since he shifted to Rohini he started drinking and used to beat the deceased. It is also stated that the Respondent stopped giving money to the deceased for household expenses and stopped his printing work because of which deceased was compelled to work in Anganwari for running her household expenses and at times she also used to take money from the complainant. She has stated that because the accused used to require

money for buying liquor he used to pressurize the deceased and demanded money from her. On the morning of the date of incident she was told by her other daughter Maya Devi who is also residing in Delhi that Sonia has sustained burn injuries and was admitted in a hospital.

5. On a perusal of the aforementioned complaint it is clear that the couple was residing together peacefully since 1995 and were blessed with two children. The Complainant has in her complaint expressly admitted that the relations between the Respondent and the deceased were amicable and it was only after drinking the Respondent used to harass the deceased. There was no demand of dowry or any other cruelly meted out to the deceased. The only allegations of harassment against the Respondent is that which has been stated by the mother of deceased in her complaint that as the accused had stop earning, he demanded money for liquor.

6. Simpliciter abusing and humiliation does not amount to abetment of suicide. There is no positive act proximate to the time of occurrence on the part of accused which led or compelled the deceased to commit suicide. For an act to fall within the ambit of offence of abetment to commit suicide an active role instigating or aiding the doing of a thing is required. It has to be borne in mind that there must be

proof of direct and indirect acts of incitement to the commission of suicide.

7. The parameters of ‘abetment’ have been provided in Section 107 of the Indian Penal Code. Section 107 I.P.C. defines abetment to mean that a person abets the doing of a thing if he firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. In the case in hand there is no element of instigation or engaging by the Respondent/accused which had drawn the deceased to take the extreme step of committing suicide.

8. In *Bhagwan Das vs. Kartar Singh and Ors* (2007) 11 SCC 205, the hon’ble Supreme Court held:

“9. The word "abetment" has been defined in Section 107 IPC as follows:

Abetment of a thing - A person abets the doing of a thing, who -

First - Instigates any person to do that thing; or,

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that

conspiracy, and in order to the doing of that thing; or Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 - A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of the act, and thereby facilitates the commission thereof, is said to aid the doing of the act.

10. Learned Counsel for the appellant has relied on the decision of this Court in Brij Lal v. Prem Chand and Anr. [1989]2SCR612 . In that case it was held that:

Where there was overwhelming evidence that the accused had made the life of his wife intolerable by constantly demanding money and made it clear to her that if she wanted to die, she may do so on very same day and give him relief forthwith, thereby spurring her and goading her to commit suicide, the case would squarely fall under the first category of abetment under Section 107.

11. On the other hand, learned Counsel for the respondents relied on the decisions referred to in the impugned judgment. Thus in Netai Dutta v. State of West Bengal 2005CriLJ1737 where a suicide note was involved, this Court came to the conclusion that in the suicide note there was no reference of any act or incident whereby the appellant was alleged to have committed any willful act or omission or intentionally aided or instigated the deceased to have committing suicide. Hence, it was held that there was no abetment to suicide.

12. Similarly, in Mahendra Singh and Anr. v. State of M.P. AIR1998SC601 , it was observed by this Court that it is common knowledge that the words uttered in a quarrel or

in the spur of the moment or in anger cannot be treated as constituting mens rea. In that case the appellant said to the deceased "to go and die". As a result of such utterance, the deceased went and committed suicide. However, the Supreme Court observed that no offence under Section 306 IPC read with Section 107 IPC was made out because there was no element of mens rea.

13. In Randhir Singh and Anr. v. State of Punjab AIR2004SC5097 , it was observed that "more active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC."

15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 IPC read with Section 107 IPC.

16. However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 IPC, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due to demand of dowry soon before her death then Section 304B IPC may be attracted, whether it is a case of homicide or suicide. Vide Kans Raj v. State of Punjab and Ors. 2000CriLJ2993 , Satvir Singh and Ors. v. State of Punjab and Anr. 2001CriLJ4625 , Smt. Shanti and Anr. v. State of Haryana 1991Cr iLJ1713."

9. At the stage of framing of charge, the Court was to see that the facts alleged raise a strong suspicion against the accused. Keeping in view the facts of the case there was no strong suspicion of the Respondent having committed the offence. Thus, in the order passed by

the learned Sessions Judge observing that no element of instigation, intentionally aiding by acts or commission of illegal omission which are essential for constituting an offence of abetment to commit suicide suffers from no illegality. The present petition is dismissed being devoid of any merit. Trial Court Record be sent back.

MUKTA GUPTA, J.

SEPTEMBER 05, 2011
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