

*** HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. L.P. No. 40/2007

Date of Decision : 10.04.2012

STATE

..... Petitioner

Through: Mr. Sunil Sharma, APP

Versus

RAMESH SHARMA & ORS.

..... Respondents

Through: Ms. Saahila Lamba, Adv.
for respondent no.3

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

1. This is a leave to appeal filed by the State against the judgment dated 21.11.2006 passed by Shri Rajneesh Kumar Gupta, the learned Additional Sessions Judge, Delhi, acquitting three respondents, namely, Ramesh Chand, Shambhu Nath and Chhotey Lal. It may be pertinent to mention here that so far as Ramesh Chand and Shambhu Nath are concerned, they are stated to have died during the pendency of the appeal and this fact was recorded by my learned Predecessor in the order

dated 22.2.2011 and thus the present appeal is surviving only against the remaining respondent No.3, Chhotey Lal.

2. Briefly stated, the case of the Prosecution is that, on 21.4.1998, the State had received information that a family of 4-5 persons had committed suicide at House No.1/213, Ghat No.6, Yamuna Bazar, Delhi. A Police party was sent to the said house and five dead bodies were found. These were of one Smt. Mithilesh, who was found hanging from the ceiling fan. Apart from this, four children, Shikha and Nidhi were lying on the bed and Umesh and Parul were lying on the floor. On the wall it was found scribed by a sketch pen "Ramesh Hatyara Hai. Shambhu Vah Chhotey Lal Hatyare Hain. In Sabhi Nein Hamain Atam Hatya Karne Ko Majboor Kiya Hai" and during the course of Search of the house, one register containing a suicide note written by the deceased Mithilesh was also found, which was seized.

3. After investigation, a Chargesheet under Section 306/34 IPC was filed against the three respondents, two of whom are dead.
4. The Prosecution, in support of its case, examined 24 witnesses. After recording the statement of the accused persons under Section 313, two defence witnesses were also examined. The learned Trial Court, after hearing the arguments and analyzing the evidence, acquitted all the three accused persons of the charge of abetment of suicide holding that there was absence of *mens rea* to constitute the offence of abetment of suicide and moreover, it was not established that there was any incitement, goading etc. on the part of any of the accused persons with the intention to compel the deceased persons to commit suicide. Accordingly, all the three accused persons were acquitted.
5. I have heard the learned APP for the State and the learned counsel for the respondent no.3. I have also gone through the record. There is no dispute about the

fact that Section 306 IPC makes abetment of suicide as a penal offence. The word 'abetment' has been defined by Section 107 IPC instigating the victim to commit the offence and engage himself in a conspiracy with others for the commission of an offence or intentionally aiding by any act or illegal omission to the commission of the offence. The Hon'ble Supreme Court, in *Sanju alias Sanjay Singh Sengar -vs- State of Madhya Pradesh*, 2002 Cri.L.J.2796, has observed that the word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or to incite. It has been held that the presence of *mens rea* is a necessary concomitant of the instigation. It was also observed that it is a common knowledge that the words uttered in a quarrel or on the spur of a moment cannot be said to be uttered with *mens rea*. Thus, the aforesaid judgment would clearly show that there are two essential things in order to constitute the offence of abetment – firstly, there must be a '*mens rea*' and secondly there must be

an act or omission attributable to the accused which should be the proximate cause of the death of the victim or, in other words, death must be the proximate cause of inciting, goading, compelling or prompting the victim to take his or her own life. If this connection of proximity between the act or the omission and the cause of death is not established, then the offence of abetment will not be made out. In the instant case, there are three material witnesses whose testimonies are crucial in order to see the liability of the only surviving accused so far as the offence under Section 306 IPC is concerned.

6. It is not in dispute that Chhotey Lal was living only as a tenant in the premises purportedly belonging to the deceased Mithilesh, PW1, Gopal Narain Tripathi, the brother of the deceased Mithilesh has testified that Ramesh Chand, who was the brother-in-law of the deceased Mithilesh, had asked Chhotey Lal, that is the only surviving respondent and Shambhu Nath, the respondent no.2, (since deceased), who were the tenants

in the house of the deceased Mithilesh, not to pay the rent to the deceased Mithilesh. It has also been stated that they had stopped the payment of the rent to the deceased Mithilesh, because of which her financial condition had worsened. PW3, Kali Kishan is another material witness who had supported the version that Ramesh Chand was bent upon making the life of the deceased Mithilesh miserable and there were number of disputes pending between Mithilesh and the present respondents regarding the non-payment of the rent. Similarly, PW4, Asha Tripathi, has also deposed that the deceased Mithilesh was related to her as *Nanad* and Ramesh Chand, the *Jeth*, used to harass her and made her life miserable. She had also corroborated that Ramesh Chand had stated to the tenants, namely, the present respondents not to pay the rent to the deceased Mithilesh. Thus, on the basis of this statement, the learned ASJ had concluded that there was absolutely no *mens rea* on the part of the three accused persons nor

was there any act or omission attributable to the said respondents which could be said to be constituting an offence of abetting Mithilesh to take her own life. This Court also subscribe to the same view that before the respondent, Chhotey Lal, could be held to be guilty, there ought to have been some positive evidence with regard to any act or omission on his part which could be said to incite, prompt, goad or compel the victim Mithilesh to take her own life. This representation to Chhotey Lal by Ramesh Chand, who happened to be the relative of the deceased, not to pay the rent to his landlady, namely, Mithilesh, even if assumed to be correct, would hardly, in my view, qualify to meet the requirements of Section 107 IPC so as to constitute abetment, much less can it be said that the offence of abetment is proved *qua* him by the Prosecution.

7. Accordingly, I feel that no ground worth consideration is made out by the learned APP which would warrant the grant of leave to appeal against the impugned judgment

dated 21.11.2006 acquitting the respondents, especially the respondent no.3, Chhotey Lal for an offence under Section 306/34 IPC. I, accordingly, dismiss the leave to appeal as being without any merit. I discharge the Bail Bonds of the respondent no.3.

8. File be consigned to the Record Room.

V.K. SHALI, J.

APRIL 10, 2012
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